



RESOLUTION No. 24-406

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION MAKING FINDINGS, ACCEPTING THE APPEAL FILED BY JEFF AND KRISTIN PHALEN, ET AL., FROM THE DECISION OF THE NEVADA COUNTY PLANNING DEPARTMENT FOR THE CONDITIONAL APPROVAL FOR A CONDITIONAL USE PERMIT (PLN23-0179; CUP23-0015; EIS23-0010) FOR A COMMUNICATION FACILITY LOCATED AT 20896 DOG BAR ROAD, GRASS VALLEY, CALIFORNIA 95949 (APN: 027-010-018) AND TO SCHEDULE A PUBLIC HEARING ON JULY 9, 2024 AT 2:30PM

WHEREAS, on June 12, 2024, the Nevada County Planning Department provided notice of a conditional approval for a Conditional Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) for a communication facility located at 20896 Dog Bar Road, Grass Valley California 95949 (APN: 027-010-018); and

WHEREAS, on June 24, 2024, Jeff and Kristin Phalen filed an Appeal to the Board of Supervisors regarding the conditional approval for Conditional Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) for a communication facility located at 20896 Dog Bar Road, Grass Valley California 95949 (APN: 027-010-018); and

WHEREAS the Appeal filed by Jeff and Kristin Phalen named additional individuals opposed to the proposed unmanned wireless communication facility; and

WHEREAS, pursuant to Nevada County Code section 12.05.120.B, the Board of Supervisors may use the provisions of such article in conducting public hearings on land use matters; and

WHEREAS, pursuant to Nevada County Code sections 12.05.120.D, any decision of the Planning Agency is appealable to the Board of Supervisors within 10 calendar days after the date of the decision, except amendments to the General Plan or zoning ordinance, which shall be filed within 5 calendar days; and

WHEREAS, Appellant filed a timely appeal on June 24, 2024 which included a statement on the appeal as required by Nevada County Code section 12.05.120.F; and

WHEREAS, pursuant to Nevada County Code section 12.05.120.G, the Board of Supervisors shall determine if the appeal was filed within the applicable time limits and may set the matter for public hearing as soon as time on their agenda permits, and in accordance with any other time requirements of law.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Nevada that:

1. Appellant is an interested party who has standing to appeal the Nevada County Planning Department's conditional approval for a conditional approval for a Conditional Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) for a communication facility located at 20896 Dog Bar Road, Grass Valley California 95949 (APN: 027-010-018); and
2. Appellant's appeal of the Nevada County Planning Department's approval of Conditional Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) for a communication facility located at 20896 Dog Bar Road, Grass Valley California 95949 (APN: 027-010-018) was filed within 10 days of the decision, the appeal is deemed to be timely pursuant to Nevada County Code section 12.05.120.D, and
3. The contents of the appeal satisfies the minimum requirements set forth in Nevada County Code section 12.05.120.F which include identification of the project and decision being appealed, statement of the reason for the appeal, statement of the specific provisions being appealed, statement of the action being requested, summation of the arguments being raised and identification of the appellant, and
4. Appellant's appeal of the Nevada County Planning Department's approval of Conditional Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) for a communication facility located at 20896 Dog Bar Road, Grass Valley California 95949 (APN: 027-010-018) is hereby accepted by the Board of Supervisors and the Clerk of the Board is directed to schedule a Public Hearing on this appeal on July 9, 2024 at 2:30 p.m. at the Nevada County Board Chambers at 950 Maidu Avenue, Nevada City, CA 95959.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 9th day of July 2024, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarthout, Susan Hoek, and Hardy Bullock.

Noes: None.

Absent: None.


Abstain: None.

Recuse: None.

ATTEST:

TINE MATHIASSEN
Chief Deputy Clerk of the Board of Supervisors

By: 


Hardy Bullock, Chair

RECEIVED

JUN 24 2024

COUNTY OF NEVADA

(Attach pages if needed)

APPEAL TO BOARD OF SUPERVISORS

NEVADA COUNTY
BOARD OF SUPERVISORS

(Per Article 5.12 of Chapter II of the Land Use and Development Code)

Any applicant or interested party may file an appeal with the Board of Supervisors requesting review of any final action taken by Various County Agencies. Such appeal shall be filed with the Clerk of the Board of Supervisors within **ten (10) calendar days** from the date of the Agency's Action, except amendments to the General Plan or Zoning Ordinance, which shall be filed within **five (5) calendar days**. (If the final calendar day falls on a weekend or holiday, then the deadline is extended to the next working day.) Filing shall include all information requested herein and shall be accompanied by the appropriate filing fee. The statements (required below) must contain sufficient explanation of the reasons for and matters being appealed in order to facilitate the Board of Supervisors initial determination as to the propriety and merit of the appeal. Any appeal which fails to provide an adequate statement may be summarily denied. The filing of such an appeal within the above stated time limit shall stay the effective date of the action until the Board of Supervisors has acted upon the appeal.

I. APPEAL: I/We, the undersigned, hereby appeal the decision/recommendation of the

The zoning administrator
Agency Name

CUP23-0015
Agency File No.

6/24/24
Date of Decision

PLANNING AGENCY DECISIONS:

- ☐ Environmental Impact Report
L-XIII California Environmental Quality Act; County CEQA
Guidelines and Procedures, 1.20 Appeals of the Adequacy of the EIR
- ☐ Floodplain Management Regulations (Floodplain Administrator)
L-XII Floodplain Management Regulations; 1.4 Administration
- ☐ Historic Preservation Combining District
L-II Zoning Regulations; Zoning Districts; 2.7.2 HP Combining District
- ☐ Inoperable Vehicles
L-II Zoning Regulations; Administration and Enforcement, 5.20
Abatement and Removal of Inoperable Vehicles
- ☒ Land Use Applications
L-II Zoning Regulations; 5.12 Administration and Enforcement
- ☐ Negative Declaration
L-XIII California Environmental Quality Act; County CEQA
Guidelines and Procedures, 1.12 Negative Declaration
- ☒ Rules of Interpretation
L-II Zoning Regulations; 1.4 Rules of Interpretation

PUBLIC WORKS DECISIONS:

_____ Roadway Encroachment Permit
G-IV General Regulations; 4.A Regulating Roadway Encroachments;
15.1 Appeals

CDA DECISIONS:

_____ Outdoor Events
G-V Revenue; 2 Outdoor Events; 2.14 Appeal Process

FIRE AGENCY DECISIONS:

_____ Fee Assessments (Fire Protection District)
L-IX Mitigation and Development Fees; Fire Protection Development
Fees; 2.6 Appeal from Fee Assessment

_____ Fire Safety Regulations; General Requirements (Fire Safety Reg. Hearing Body)
L-XVI Fire Safety Regulations; General Requirements; 2.7 Appeals

_____ Hazardous Vegetation Abatement (Local Fire Official)
G-IV General Regulations; 7.9 Appeals Process (No Fee to File Appeal)

ENVIRONMENTAL HEALTH DECISIONS:

_____ Sewage Disposal (Sewage Disposal Technical Advisory Group)
L-VI Sewage Disposal; 1.18 Appeals

_____ Water Supply and Resources (Health Officer)
L-X Water Supply and Resources; 5.1 Appeal Procedures

List All Agency Action(s) Taken That Are Being Appealed: We are appealing
the decision of the administrator to grant
the conditional use permit.

II. STATEMENT OF THE REASONS FOR THE APPEAL:

Please see attached

III. STATEMENT OF THE SPECIFIC PROVISIONS WHICH ARE BEING APPEALED:

The Land Use and Development Code of the
county of Nevada, CA. Sections: L-II 3.8(D)(1),
3.8(E)(1) and L-II 3.8(A).

IV. STATEMENT OF THE CHANGES OR ACTION REQUESTED OF THE BOARD
OF SUPERVISORS:

Overturn the administrators
decision to grant the conditional use
permit.

V. SUMMATION OF THE ARGUMENTS TO BE RAISED BY THE APPELLANT(S):

Please see attached

VI. IDENTIFICATION OF THE APPELLANT(S):

Jeff + Kristin Phalen
(Name)

Bruce Roush

Janet Brisson

McNaughton Household

Jerry + Ashley Permenter

Sandy Mallory

Max + Lisa Krewson's

+ 76 OTHER NEIGHBORS!!!

VII. NOTICE: (Multiple appellants should select one representative for purposes of notice.

All notices to appellant(s) should be mailed to: (Please Print)

Kristin Phalen
(Name/Representative)

[REDACTED]
(Mailing Address)

[REDACTED] (Telephone)

Appellant:

Kristin Phalen
(Sign)

Dated: 6/24/24

Kristin Phalen
(Print)

FOR OFFICE USE ONLY

\$1,803.60

Filing Fee

06/24/2024

Date Filed

The ll, chief Deputy COB
Received By

Appeal form to be returned to: Nevada County Board of Supervisors Office, Eric Rood
Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959-8617. (530) 265-1480

Appeal of The Granting of Sequoia Developments Services Inc's
Application for a Conditional Use Permit, CUP23-0015

It is respectfully submitted that this appeal of the granting of the above-referenced Conditional Use Permit should be granted, and the application for the Condition Use Permit should be denied in its entirety, upon the following grounds:

1. Granting the Conditional Use Permit would not only violate Sec L-II 3.8 of the Land Use and Development Code of the County of Nevada, it would inflict upon the appellant the precise types of adverse impacts which that section of the Code was specifically enacted to prevent.
2. Sequoia and Verizon have wholly failed to submit any probative evidence, whatsoever, to establish any actual need for the facility, in the absence of which Sec. L-II 3.8(D)(I) prohibits the granting of such application.
3. The installation of the proposed thirteen-story cell tower will inflict substantial albeit wholly unnecessary adverse impacts upon the appellant's real property, in direct violation of the requirements of the Code.
4. Sequoia and Verizon have wholly failed to establish that the granting of the application would comply with the requirements of Sec. L-II 3.8(E)(1), in the absence of which the application cannot be granted.
5. The applicant has failed to establish that its proposed siting of the proposed tower would minimize the number of towers needed to provide coverage within the County, or would minimize the adverse visual impact of the tower, both of which are required under SEC L-II 3.8(E)(1).
6. The submissions submitted by the applicant are inherently defective, as a matter of law, and cannot serve as a basis for the County to grant the Conditional Use Permit.
7. The irresponsible placement of the proposed tower less than 500 feet from the appellant's property would not only inflict a severe adverse aesthetic impact upon the appellants home, but will inflict a substantial loss to the financial value of the appellant's home, both of which are entirely unnecessary.

RECEIVED

JUN 24 2024



COUNTY OF NEVADA

COMMUNITY DEVELOPMENT AGENCY

NEVADA COUNTY
BOARD OF SUPERVISORS

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9854 <http://www.mynevadacounty.com>

Agricultural Commissioner

Building Department

Environmental Health

Planning Department

Dept. of Public Works

AGREEMENT TO PAY

Nevada County Community Development Agency fees are based on Board of Supervisor approved fee schedules. Hourly fees and fees for services in excess of a minimum fee collected, including re-inspections, are billed to the applicant based on the Board approved fee schedule in effect at the time the work is performed by staff. This *Agreement To Pay* form must be signed and original signatures submitted to the NCCDA along with the completed permit forms and the initial payment of fees. Copies of current fee schedules are available from our Customer Service Staff or on the web at <http://www.mynevadacounty.com>

I/We understand that the NCCDA will bill as services are rendered, and I/We agree to pay such billing within thirty (30) days of the mailing of such billing for the project/permit. If payments on outstanding invoices are not made within thirty (30) days after the date of the invoice, County staff may cease work on the project until the required payment is made, subject to any other provisions of the law. All fees must be paid prior to the granting of any permits, approvals, or any land use entitlement for which services are required. The collection of fees, however, does not guarantee the granting of any permits, approvals, or land use entitlements for which I/We are applying.

Site Information:

Invoices and/or notices to be mailed to:

APN: 027-010-018	Name: Kristin Phalen
Property Owner/Business Name (if applicable): Jennifer	Address: [REDACTED]
Address: 20896 Day Bar Rd	Telephone: [REDACTED]
Grass Valley, CA 95949	Email: [REDACTED]

☐ I would like to opt out of receiving County emails related to this project.

NCCDA Staff is authorized to consult with necessary governmental agencies and the following individuals concerning this project: _____

I certify under proof of perjury that I am the property owner or that I am authorized to enter into this fee agreement on his/her behalf. I have read the conditions concerning Nevada County Community Development Agency Fees and I understand that in the event that the billing party I have indicated does not pay required fees, I will be responsible for payment. I further agree to advise the department in writing should I no longer be associated with the above referenced project/property, rendering this agreement invalid as of the change of the date that the letter is received by the Nevada County Community Development Agency.

Signature: Kristin Phalen Dated: 6/24/24 CDL# _____
Printed Name: Kristin Phalen Tel #: [REDACTED]

THIS SECTION FOR OFFICE USE ONLY

Service: _____	Program: _____	Job No: _____
DPW #: _____	Project File #: _____	Billing Code: _____
Amount Collected: \$ _____	Receipt #: _____	Date of Receipt: _____
Service: _____	Program: _____	Job No: _____
DPW #: _____	Project File #: _____	Billing Code: _____
Amount Collected: \$ _____	Receipt #: _____	Date of Receipt: _____



**NEVADA
COUNTY**
CALIFORNIA

Community Development Agency

Planning Department

Planning@nevadacountyca.gov
www.nevadacountyca.gov/Planning

950 Maidu Avenue, Suite #170
PO BOX #599002
Nevada City, CA 95959

PH: (530) 265-1222 ext. 2
FAX: (530) 265-9854

June 13, 2024

Conditions of Approval

Conditional Use Permit

Madison LaScalza
Sequoia Deployment Services, Inc
1 Spectrum Pointe
Lake Forest, CA 92630

File No: PLN23-0179, CUP23-0015, EIS23-0010
APN: 027-010-018

At the regular meeting of June 12, 2024, the Nevada County Zoning Administrator approved the above referenced Condition Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) for a communication facility located at 20896 Dog Bar Road, Grass Valley California 95949 subject to the following conditions of approval:

A. PLANNING DEPARTMENT

1. The project is an application for a Conditional Use Permit (CUP23-0015) proposing the construction and operation of a new unmanned wireless communication facility located at 20896 Dog Bar Road, Grass Valley, in southeast Nevada County. The proposed facility will be designed as a one-hundred twenty-nine foot (129) tall faux pine tree (monopine) with antennas at a tip height of one-hundred twenty-four (124) feet. All brackets, antennas, and remote radio units will be painted green to match the faux pine tree. The facility will be contained within a 30' x 30' (900 square feet) Verizon lease area that will be surrounded with eight-foot tall chain-link fencing with a gate and a Knox Box entry system. The lease area will contain three equipment cabinets, a diesel generator, a PG&E transformer, and other communication-related equipment. The site will be accessed by an existing 12-foot wide dirt access road with a hammerhead turn-around at the end. Vegetation thinning to reduce fire hazard will occur along the access road and around the tower lease area. Approximately 550 feet of underground power and fiber cables are proposed to be trenched from the lease area to a PG&E pole and Verizon Wireless fiber point of connection.
2. Pursuant to the requirements of the Nevada County Land Use and Development Code, the applicant is hereby notified that this project is not valid until the expiration of the ten (10) day appeal period from the date of the Zoning Administrator's final action on the project.
3. Construction pursuant to this permit approval must be completed and the use commenced thereon within three (3) years from the effective date of the approval of the Conditional Use Permit (June 24, 2027) (i.e. Final Project Action), unless an extension of time for reasonable cause is requested prior to the expiration date, and granted by the Zoning Administrator pursuant to Section 5.10 of the Nevada County Land Use and Development Code. If no extension is granted, the permit shall become null and void, as to the portion of the approved use not completed.
4. Within 15 days after project approval, the applicant shall sign and file with the Nevada County Planning Department a Defense and Indemnity Agreement provided herewith. No permits or approvals shall be issued for this parcel, including without limitation a Building Permit, Grading Permit, unless and until the applicant has fully complied with this condition.

5. Prior to Final of any Improvement Permits, the applicant shall contact the Planning Department for a field inspection to verify all Conditions of Approval, Mitigation Measures, and ordinance requirements have been satisfied. Fees for such inspection shall be applicable on the project Building Permit.
6. The design, colors, configuration, and materials of the monopine and associated improvements including the 900 square foot lease area shall be in substantial conformance with the design authorized in this approval, as represented on the approved plans kept on file with the Planning Department.
7. There shall be no lighting on tower, unless required by the Federal Aviation Administration. All lights not required by the FAA, including the 6 service lights, shall be fully shielded and downward facing to prevent the light source or lens from being visible from adjacent properties and roadways. Fully shielded shall mean a light which does not allow any light dispersion to shine above the horizontal plane from the lowest light emitting point of the light fixture and which precludes visibility of the light source.
8. The following Best Management Practices used to protect natural vegetation, and control/contain noxious and invasive weeds, and minimize impacts to wildlife habitat are required to be added to all future building plans and shall be followed:
 - a. Minimize disturbance areas, try not to remove natural litter, duff and/or topsoil and/or replace if litter/duff or topsoil is temporarily removed.
 - b. Minimize disturbance to native plants.
 - c. Clean all equipment and personal gear before accessing the Project area, and before leaving a site within the project area with known weed occurrences in order to remove any weed propagules.
 - d. Survey potential disturbance areas for noxious weeds and treat, remove or contain prior to commencing any ground disturbing activities.
 - e. Immediately reseed and mulch any ground disturbance.
 - f. Use mulch from onsite, i.e. pine needle mulch, chipped wood or brush, do not bring in non-native straw.
 - g. Use only certified weed free seed, use seed mixes composed of local native plant species.
 - h. Use silt fences and/or wattles around soil stockpiles to limit erosion.
 - i. Park all equipment and store all materials in previously disturbed areas such as gravel areas.
9. Prior to issuance of Improvement or Building Permits, pursuant to Nevada County Land Use and Development Code Section, L-II 3.8.G, the applicant shall provide a Facility Maintenance/Removal Agreement to the Planning Director, binding the developer and successors in interest, to an agreement to maintain the facility as approved and notify the County of intent to vacate the site, agreeing that the applicant will remove all facilities within 12 months unless the site is occupied by a successor; or the applicant shall provide a cash bond equal in cost to removing the tower and associated facilities.
10. Pursuant to Land Use and Development Code Section L-II 3.8.F.5, the applicant shall include a note on all improvements plans as follows: "Existing trees and other screening vegetation in the vicinity of the facility and along the access or utility easements, shall be protected from damage during construction. All areas disturbed during project construction shall be replanted with vegetation compatible with vegetation in the surrounding area except where the County Fire Marshal requires fuel modification. Native trees are the preferred vegetation."
11. The facility shall comply with all Federal Communications Commission regulations concerning radio frequency emissions.
12. A permanent, weatherproof, facility identification sign, no more than 12" x 24" in size, identifying the facility operator and a 24-hour phone number, shall be placed on the fence, the equipment building or tower base. If larger signage is required by the FCC, the applicant shall provide proof of the requirement, and signage shall not exceed the required size.

13. **Mitigation Measure 1A: Installation of Privacy Slats in Fencing:** Improvement plans shall reflect that earth-toned privacy slats or solid fencing will be installed around the lease-area perimeter. The solid fencing or privacy slates shall be installed at the project site prior to final inspection from the Planning Department.
Timing: Prior to issuance and final of building permit
Reporting: Agency approval of permits or plans and site inspection
Responsible Agency: Planning Department
14. **Mitigation Measure 4A. Avoid Impacts to Nesting Birds.** If construction occurs during the active bird nesting season (i.e., March 1 to July 31) a qualified biologist should perform a pre-construction nesting bird survey to ensure that no active bird nests are disturbed or destroyed. If, however, construction occurs before March 1 or after July 31 no mitigation would be required.
Timing: Prior to building/grading permit issuance and during construction
Reporting: Agency approval of permits or plans
Responsible Agency: Planning Department
15. **Mitigation Measure 4B. Avoid Spillage of Oils and Other Contaminants.** The contractor shall exercise every reasonable precaution to protect the project site from pollution with fuels, oils, bitumen, calcium chloride, and other harmful materials. Construction byproducts and pollutants such as oil and washwater shall be prevented from discharging onto the ground at the construction site.
Timing: Prior to building permit/grading issuance and during construction
Reporting: Agency approval of permits or plans
Responsible Agency: Planning Department
16. **Mitigation Measure 4C. Provide Copies of Mitigation Measures to Contractors.** To ensure the proper and timely implementation of all mitigation measures contained in this report, as well as the terms and conditions of any other required permits, the applicant shall distribute copies of these mitigation measures and any other permit requirements to the contractors prior to grading and construction.
Timing: Prior to building/grading permit issuance and during construction
Reporting: Agency approval of permits or plans
Responsible Agency: Planning Department
17. **Mitigation Measure 5A: Halt Work and Contact the Appropriate Agencies if Cultural Resources are Discovered during Project Construction.** All grading and construction plans shall include a Note outlining the requirements provided below to ensure that any cultural resources discovered during project construction are properly managed. These requirements including the following: All equipment operators and employees involved in any form of ground disturbance shall be trained to recognize potential archeological resources and advised of the remote possibility of encountering subsurface cultural resources during grading activities. If such resources are encountered or suspected, work within 200 feet shall be halted immediately and the Nevada County Planning Department shall be contacted. A professional archaeologist shall be retained by the developer and consulted to access any discoveries and develop appropriate management recommendations for archaeological resource treatment. If bones are encountered and appear to be human, California Law requires that the Nevada County Coroner be contacted. If the remains are determined to be Native American, the coroner will notify the Native American Heritage Commission, and the procedures outlined in California Environmental Quality Act Sections 15064.5(d) and (e) shall be followed. If Native American resources are involved, Native American Organizations and individuals recognized by the County shall be notified and consulted about any plans for treatment.
Timing: Prior to building permit/grading issuance and during construction
Reporting: Agency approval of permits or plans
Responsible Agency: Planning Department

18. Mitigation Measure 9A: Submission of a 7460-1 Notice of Proposed Construction or Alteration application.

Prior to issuance of the Building Permit or Grading Permit, the applicant shall submit a 7460-1 application for approval from the Federal Aviation Administration of the evaluation of the proposed wireless telecommunication facility, which is in compliance with Title 14 of the Code of Federal Regulations, Part 77. The applicant shall demonstrate that the proposed monopine has been evaluated by the Federal Aviation Administration through the submission of the results of the evaluation to the Planning Department.

Timing: Prior to building permit/grading issuance

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department

19. Mitigation Measure 13A: Limit construction activities to reduce noise impacts. Hours of operation for construction activities shall be limited to the hours of 7 a.m. to 7 p.m. Monday through Friday. These limited hours of operation shall be noted on project plans, which shall be reviewed and approved by the Planning Department prior to permit issuance.

Timing: Prior to building permit/grading issuance and during construction

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department

20. Mitigation Measure 13B: Installation of Sound Enclosure. The generator shall be configured with a Level 2 sound attenuated enclosure. This requirement shall be noted on the site plan and documentation verifying the Level 2 sound attenuated enclosure shall be provided to the Planning Department prior to final of the building permit.

Timing: Prior to building permit issuance/final

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department

21. Mitigation Measure 13C: Prohibition of Nighttime Generator Testing. The generator shall only be operated for non-emergency functions such and maintenance and testing between the hours of 9 AM and 2 PM. If the generator is programmed to run automatically, the start-up schedule shall be provided to the Planning Department. This requirement shall be noted on the site plan.

Timing: Prior to building permit issuance/final

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department

22. Mitigation Measure 18A: Unanticipated Tribal Cultural Resources. The following mitigation measures shall be required and shall be included as notes on all future site plans: If any suspected Tribal Cultural Resources (TCRs) are discovered during ground disturbing construction activities, all work shall cease within 100 feet of the find, or an agreed upon distance based on the project area and nature of the find. A Tribal Representative from a California Native American tribe that is traditionally and culturally affiliated with a geographic area shall be immediately notified and shall determine if the find is a TCR (PRC §21074). The Tribal Representative will make recommendations for further evaluation and treatment as necessary.

When avoidance is infeasible, preservation in place is the preferred option for mitigation of TCRs under CEQA and UAIC protocols, and every effort shall be made to preserve the resources in place, including through project redesign, if feasible. Culturally appropriate treatment may be, but is not limited to, processing materials for reburial, minimizing handling of cultural objects, leaving objects in place within the landscape, or returning objects to a location within the project area where they will not be subject to future impacts. Permanent curation of TCRs will not take place unless approved in writing by UAIC or by the California Native American Tribe that is traditionally and culturally affiliated with the project area.

The contractor shall implement any measures deemed by the CEQA lead agency to be necessary and feasible to preserve in place, avoid, or minimize impacts to the resource, including, but not limited to, facilitating the appropriate tribal treatment of the find, as necessary. Treatment that preserves or restores the cultural character and integrity of a TCR may include Tribal Monitoring, culturally appropriate recovery of cultural objects, and reburial of cultural objects or cultural soil. Work at the discovery location cannot resume until all necessary investigation and evaluation of the discovery under the requirements of the CEQA, including AB52, have been satisfied.

Timing: Prior to Issuance of grading/improvement/building permits and throughout construction

Reporting: Planning Department Approval of Grading and Construction Permits

Responsible Agency: Planning Department

23. **Mitigation Measure 19A: Appropriately Dispose of Vegetative and Toxic Waste.** Neither stumps nor industrial toxic waste (petroleum and other chemical products) are accepted at the McCourtney Road transfer station and if encountered, shall be properly disposed of in compliance with existing regulations and facilities.

Timing: Prior to building permit/grading issuance and during construction

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department

B. DEPARTMENT OF ENVIRONMENTAL HEALTH

1. The facility operator shall adhere to all applicable codes and regulations regarding the storage of hazardous materials and the generation of hazardous wastes set forth in California Health and Safety Code. The fuel storage on site for the diesel generator requires an annual Environmental Health operating permit. This permit must be applied for prior to the final of the construction permit. Applicant can contact: Environmental.Health@nevadacountyca.gov for direction.
2. NCDEH shall have full access rights to the facility, including roads across private property, for the purposes of inspecting and or investigating complaints related to the storage and disposal of hazardous materials, 24 hours per day, 7 days per week. If private gates restrict access to the facility, NCDEH shall be provided with keys or combinations of said gates, or be allowed to apply a lock to a chain of locks, should one exist. NCDEH access shall be part of the lease agreement with the private property owner.

C. BUILDING DEPARTMENT

1. Complete erosion control, grading, drainage, construction and utility plans shall be submitted for review at time of building/grading permit submittal in conformance with Nevada County Land-Use Code Chapter V.
2. 2 sets of wet stamped/signed site drainage calculations shall be provided at time of building permit submittal.
3. 2 sets of wet stamped/signed geotechnical evaluation reports shall be submitted at time of building/grading permit submittal.
4. All project plans shall be designed and wet stamped/signed by a California Licensed Design Professional for each prospective field of the project.
5. Completion of the County of Nevada Special Inspection Agreement will be required at time of building permit submittal for all required special inspections.

6. An electrical fault current letter shall be submitted from PG&E at time of building permit submittal.
7. Prior to permit issuance please reinstate or void permits 01073711 and 02076375.
8. Update plot plan to show all structures with their associated permit number. If a permit is required but was not issued for a structure, a building permit shall be applied for prior to building permit issuance for the communication tower.

D. NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT

1. **Mitigation Measure 3A: Authority to Construct Permit from the Northern Sierra Air Quality Management District.** Building, altering, replacing, or operating any source of air contaminants, whether portable or stationary (but not mobile), may require an Authority to Construct permit from the Air Pollution Control Officer, unless the Northern Sierra Air Quality Management District (NSAQMD) determines that such equipment is exempt from permitting or unless such equipment is currently registered with California Air Resources Board under the Portable Equipment Registration Program. The applicant shall contact Joe Fish of NSAQMD at (530) 274-9360 x103 (or email at joe@myairdistrict.com) in order to determine whether or not a future generator's engine requires permitting from the NSAQMD. The results of that contact shall be documented and provided to the Planning Department prior to issuance of any improvement permits, and an Authority to Construct permit obtained if applicable.

Timing: Prior to building/grading permit issuance

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department and Northern Sierra Air Quality Management District

2. **Mitigation Measure 3B: Mitigate any asbestos discovered during construction.** Prior to issuance of grading permits or improvement plans, all plans shall incorporate, at a minimum, the following asbestos control measures, which shall be implemented in the field: If serpentine, ultramafic rock or naturally occurring asbestos are discovered during construction or grading, the Northern Sierra Air Quality Management District shall be notified within 24 hours, and specific requirements contained in Section 93105 of Title 17 of the California Code of Regulations must be strictly complied with.

Timing: Prior to building/grading permit issuance and during construction

Reporting: Agency approval of permits or plans

Responsible Agency: Planning Department and Northern Sierra Air Quality Management District

3. A note shall be placed on associated building or grading plans stating that any future construction projects less than one acre must adhere with dust mitigation measures in Northern Sierra Air Quality Management District's Rule #226.

E. DEPARTMENT OF PUBLIC WORKS

1. Mobilization for this work and construction shall not inhibit traffic on Red Dog Road.
2. The project driveway shall conform to the County's Private Driveway encroachment standard as shown in the County's Standard Drawings (B-1). Compliance with the standards must be shown on future building plans. Any driveway improvements within the County right of way require an encroachment permit from the County prior to any work within the right of way.
3. Prior to any work within the County right of way, the applicant shall obtain an Encroachment Permit from the County Public Works Department, which includes a Traffic Control Plan showing all public roadways where work is to be performed and indicates each stage of work, closure dates for street and section of closure (if necessary and otherwise allowed by local jurisdiction), signage, flaggers, and any other pertinent information. The Traffic Control Plan shall be reviewed and approved by the County before the contractor begins work.

4. Per Nevada County Land Use and Development Code section L-XVII 3.4(M)(5), security gates shall not be installed without approval of the Fire Marshal's Office or the fire authority having jurisdiction. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times.

F. NEVADA COUNTY OFFICE OF THE FIRE MARSHAL

1. Provide Defensible Space to all communication equipment /generator and the tower itself on site within a 50' radius, by removing all flammable vegetation.
2. Pertaining to the driveway accessing the lease area the following shall be identified on the site plan or included as Notes on the plan:
 - a. Located at Dog Bar Road the address will be displayed utilizing letters or numbers at least 4-inches in height, ½-inch stroke, reflectorized, with a contrasting background color on the sign.
 - b. The gate access will be a minimum 14-foot wide.
 - c. One hammerhead turnout will be provided at the first bifurcation on the driveway approximately 50Ft from the tech parking area.
 - d. The identified 10-foot Fuel Modification Zone will adhere to the following prescription. All brush shall be removed, trees will be thinned as needed to achieve an average 20' spacing. All trees within the Fuel Modification Zone will be limbed to a minimum height of 8-feet. All branches extending over the identified driveway will be limbed to maintain a minimum of 15-foot vertical clearance.
3. A Fuel Modification Zone surrounding the lease area shall be identified.
 - a. Vegetation shall be maintained for a distance of not less than 100-feet in all directions from the lease area. Ground vegetation shall be thinned as appropriate to minimize direct flame transmission to equipment within the lease area while providing for native habitat and erosion control. All trees within 100-feet of the lease area shall be limbed to a minimum of 15-feet from ground level or one third the height of the tree, whichever is less.
4. Pursuant to Land Use and Development Code L-II 4.3.18.C.2, prior to approval of the building permit, the applicant shall remove and reduce brush, flammable vegetation or combustible growth consistent with the provisions of Public Resources Code 4291 and the Nevada County Defensible Space Standard described under the policies of General Plan Goal FP-10.11. These policies require a firebreak free of flammable vegetation 30 to 100 feet around the structure and a fuel break with spatially separated vegetation 30 feet from the structure, as well as clearance around driveways of 10 feet on the sides and 15 feet overhead. Flammable vegetation is defined by General Plan Policy FP-10.11.2 as any live or dead vegetation that is combustible during normal summer weather. Vegetation which is pruned, limbed, cultivated, or considered ornamental shrubbery or plants, provided it is maintained and/or irrigated and does not form a means of rapidly transmitting a fire from the surrounding wildlands, is not considered flammable vegetation and is permissible to be retained.
5. Provide a 2-A:10-B:C portable Fire Extinguisher in an "All Weather" shelter, as required by California Fire Code Section 906. The extinguisher shall be mounted in an approved location within fenced area of the leased parcel.
6. The onsite generator and stored fuel will be complicit with all applicable standards the California Fire Code.

G. CALIFORNIA DEPARTMENT OF FISH & WILDLIFE

1. Pursuant to Section 21089 of the California Public Resource Code and Section 711.4 et. seq. of the California Fish & Wildlife Code, a fee in the amount of \$2,916.75 must be paid as a condition of filing the Notice of Determination for this project. This fee must be submitted to the Planning Department within 5 days of the permit approval with the check made payable to the County Clerk, County of Nevada. Without payment of this fee, the 30-day Statute of Limitations on court challenges to this project's approved environmental document will remain open, which could affect the permit validity. This fee is required to be collected on behalf of the State Department of Fish & Wildlife, and is subject to change.

You are hereby notified that the action of the Zoning Administrator is final; however, if you are dissatisfied with any action of the Zoning Administrator, you may appeal to the Board of Supervisors within a ten-day period from the date of the Zoning Administrators decision (deadline 5 p.m. on June 24, 2024).

Please find enclosed a Defense and Indemnification Agreement. Please sign this form and return within 15 days of project approval.

NEVADA COUNTY PLANNING DEPARTMENT

BRIAN FOSS, PLANNING DIRECTOR

By: David Nicholas, Associate Planner

enc: Defense and Indemnification Agreement
Facility Maintenance/Removal Agreement

DEFENSE AND INDEMNIFICATION AGREEMENT

This Defense and Indemnity Agreement ("Agreement") is made and entered into between the County of Nevada, a political subdivision of the State of California ("County"), and _____ for Verizon Wireless ("Applicant"), and is effective as of _____, 2024. This Agreement is made with regard to the following facts:

RECITALS

WHEREAS, Applicant is the lessee of the real property located in the unincorporated area of Nevada County at 20896 Dog Bar Road, Grass Valley California, APN 027-010-018, for which the Applicant has applied for a Conditional Use Permit (PLN23-0179; CUP23-0015; EIS23-0010) ("PROJECT APPROVAL"); and,

WHEREAS, the Project is a land use development project or other land use decision for which a defense and indemnification agreement is required pursuant to the conditions of the Project Approval; and,

WHEREAS, it is in the public interest for County and Applicant to enter into this Defense and Indemnification Agreement as Applicant will benefit from the County's processing of the application and the Project Approvals that may result therefrom.

NOW THEREFORE, in consideration of the processing of the application and any resulting Project Approval and the mutual promises and agreements contained herein, and in satisfaction of an express condition of the Project Approval, the Applicant hereby agrees as follows:

1. The Applicant agrees to defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees (collectively "County Parties") to attack, set aside, void or annul the above-referenced project approval or any of the proceedings, acts or determinations taken done or made as a result of County's processing and/or approval of the Project or, or to impose personal liability against such agents, officers, or employees based upon or arising out of the project approval. Applicant's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with the California Environmental Quality Act or with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Applicant's obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against the County, all settlement costs and/or any claim for private attorney general fees claimed by or awarded to any party from the County. Applicant further agrees to cooperate in good faith with County in performance of obligations as set forth in this Agreement.

2. The County shall notify the Applicant promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, Applicant shall assume

the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to the County Counsel's Office and Applicant, and the prompt payment of the attorneys' fees and costs of such counsel. In the event of a disagreement between the County and Applicant over litigation issues, County shall have the authority to control the litigation and make litigations decisions, including but not limited to, settlement or other disposition of the matter. If County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Applicant fails to promptly assume the defense of the claim, action, or proceeding or to promptly employ counsel reasonably satisfactory to County, then County may employ separate counsel to represent or defend the County, and Applicant shall pay the reasonably attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefore. At its sole discretion, the County may participate in the defense of any such claim, action, or proceeding in good faith, either through County Counsel's Office at the Applicant's expense or through outside counsel at the County's expense; but such participation shall not relieve Applicant of his obligations under this Agreement.

3. Applicant's obligations to defend and indemnify under this Agreement shall apply whether or not there is concurrent, active, or passive negligence on the part of County Parties. Applicant's obligations under this Agreement shall be effective regardless of whether any or all Project approvals and/or actions by the County regarding the Project remain valid or are invalidated by the court.

4. Failure to promptly defend or indemnify the County is a material breach which shall entitle County to all remedies available under the law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify shall constitute grounds upon which the County decision-making body may rescind its approval(s) associated with the Project, and a waiver by Applicant of any right to proceed with the Project or any portion thereof.

5. Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all of any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, the Applicant may be released from such obligations if the Applicant obtains the County's prior written consent to such transfer, which consent shall not be unreasonably withheld.

6. All notices required under this Agreement shall be in writing and shall be deemed given as of the date of actual delivery if by personal delivery or sent by a nationally recognized overnight carrier, or three days after deposit in the United States mail, first class postage prepaid, to the addresses indicated below:

For Applicant:

For County: Planning Director

Nevada County Planning Department
950 Maidu Avenue
Nevada City, CA 95959
Attn: Brian Foss

With a copy to: County Counsel
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Either party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other party, as provided herein.

7. This Agreement shall be binding upon Applicant and his heirs, executors, administrators, assigns and successors in interest.

8. Upon execution of this Agreement, it may be recorded with the County Recorder's Office and become a lien on any real property attached to the Project Approvals.

9. This Agreement shall constitute the complete understanding of the parties with respect to the matters set forth herein. Neither party is relying on any other representation, oral or written. This Agreement may not be changed except by a written amendment signed by all parties.

10. It is agreed and understood that this Agreement shall be interpreted fairly in accordance with its terms to effectuate the intent of the parties and not strictly for or against any party by reason of authorship that none of them is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

11. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, that it has full and complete authority to do so, that it has consulted with or had the opportunity to consult with an attorney prior to executing this Agreement, that it enters into this Agreement knowingly and voluntarily, and that it agrees to be bound by the terms of this Agreement.

IN WITNESS WHEREOF, the County and Applicant(s) have caused this Agreement to be duly executed, as of the date first set forth above.

COUNTY:

COUNTY OF NEVADA, a political
subdivision of the State of California

APPLICANT:

Verizon Wireless

Approved as to form:

By: _____
Katharine L. Elliott
County Counsel

Name: _____

Signature: _____

Title: _____

FACILITY MAINTENANCE/REMOVAL AGREEMENT

This FACILITY MAINTENANCE/REMOVAL AGREEMENT ("Agreement") is entered into by and between Verizon Wireless ("Applicant") and the County of Nevada ("County").

RECITALS

WHEREAS, County approved Use Permit CUP23-0015, authorizing an un-manned mobile communication facility to be developed at 20896 Dog Bar Road, Grass Valley CA, 95949, ("Facility").

WHEREAS, the conditions of approval of the permit require, among other things, that the Applicant and the County enter into a facility maintenance/removal agreement with regard to the Facility.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Maintenance and Removal.

- A. The Applicant shall properly maintain the Facility in accordance with the requirements of the Conditions of Approval for Use Permit No.: CUP23-0015.
- B. The Applicant shall provide written notice to the County upon any such time that the Applicant vacates the site of the Facility. The Applicant agrees to remove the Facility within 12 months of delivery of such notice to the County unless the site is re-occupied by the Applicant or is occupied by a successor before such 12-month period concludes.

Section 2. Miscellaneous.

- A. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.
- B. Any notice or demand required herein shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, by confirmed fax, or by reliable overnight courier to the address of the respective parties set forth on the signature page. Any notice served personally shall be deemed delivered upon receipt, and served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. The County or the Applicant may from time to time designate any other address for this purpose by written notice to the other party.
- D. This Agreement shall be governed, construed and interpreted under the laws of

the State of California. This Agreement shall be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against either party. This Agreement shall not be interpreted or construed against the party preparing it.

- E. In the event of any dispute or legal proceeding between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees, incurred in connection with such dispute or legal proceeding, or counterclaims or cross- complaints, any action to confirm, correct or vacate an arbitration award, any appeals and any proceeding to establish and recover such costs and expenses, in such amount as the court or arbitrator determines reasonable.
- F. Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation, or expiration, of this Agreement will so survive.
- G. Each person executing this Agreement for either the Applicant or the County represents and warrants, for himself or herself and for the party for which the person purports to act, that such person is authorized to execute the Agreement on behalf of such party, that such person is acting within the scope of such person's authority, and that all necessary action has taken to give such party the authority, and the party has the authority, to enter into this Agreement and be bound by the terms of this Agreement.

Remainder of page left intentionally blank

IN WITNESS WHEREOF, the parties have executed this Agreement as of _____, 2024.

COUNTY:

Address, Phone

THE COUNTY OF NEVADA

950 Maidu Avenue
PO BOX 599002
Nevada City, CA 95959
ATTN: Community Development Agency
Tel.: (530) 265-1222

By: _____

Name: _____

Title: _____

APPLICANT:

Address

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature

Seal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature

Seal