

cc: Planning Counsel

COUNTY OF NEVADA

(Attach pages if needed)

APPEAL TO BOARD OF SUPERVISORS

(Per Article 5 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 decision, except for recommendations on general plan amendments which by State law are subject to a **five (5) calendar day** appeal period. (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

Nevada County, Nevada County Zoning Administrator
Agency Name

PLN17-0073 CUP17-0015, EIS17-0022
Agency File No. and all related permits and approvals

11/29/17
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 Regarding:

PUBLIC WORKS DECISIONS:

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

FIRE AGENCY DECISIONS:

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

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

_____ Hazardous Vegetation Abatement (Lodal 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: _____

_____ See Attached: Appeal Burning Bush Cell Tower
Approval PLN 17-0073, CUP-0015, EIS 17-0022

II. STATEMENT OF THE REASONS FOR THE APPEAL:

_____ See attached: Appeal Burning Bush Cell Tower Approval
PLN 17-0073, CUP-0015, EIS 17-0022

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

See Attached: Appeal Burning Bush Tower Approval
PLN-0073, CUP17-0015, EIS17-0022

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

See Attached: Appeal Burning Bush
Tower Approval PLN-0073, CUP17-
0015, EIS17-0022

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

See Attached: Appeal Burning Bush Tower
Approval PLN-0073, CUP17-0015,
EIS17-0022

VI. IDENTIFICATION OF THE APPELLANT(S):

Johanna Finney [REDACTED]
(Name) (Mailing Address) (Telephone)

10 other Appellants: See Attached [REDACTED]
Appeal Burning Bush Tower Approval
PLN-0073, CUP17-0015, EIS17-0022

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

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

Johanna Finney
(Name/Representative)

[REDACTED]
(Mailing Address)

[REDACTED]
(Telephone)

Appellant:

Johanna Finney
(Sign)

Dated:

12/11/17

Johanna Finney
(Print)

FOR OFFICE USE ONLY

\$1,457.80

Filing Fee

12/11/2017

Date Filed

Jane P. Smith
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



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY**

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

Planning Department Environmental Health Building Department Department of Public Works Agricultural Commissioner

**AGREEMENT TO PAY
LAND USE APPEAL**

Nevada County Community Development Agency (NCCDA) Appeal fees are based on Board of Supervisor approved fee schedules. Hourly fees and fees for services by departments not included in the original appeal fees are billed to the applicant based on the Board approved fee schedule in effect at the time services were performed and once the final appeal decision has been rendered by the Board. This *Agreement To Pay* form must be signed and original signatures submitted to the Clerk of the Board along with the completed forms and the initial payment of fees. Copy of current fee schedule is attached to the appeal packet.

I/We understand that the NCCDA may bill for services not included in the original appeal fee, and I/We agree to pay such billing within thirty (30) days of the mailing of such billing. 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, will have no effect upon the decision of the appeal by the Board of Supervisors.

Appellant Information:	Invoices and/or notices to be mailed to:
Project: ⁰⁰⁷³ PLN17-0073, CUP17-0015	Name: Johanna Finney
EIS 17-0022*	Address: [REDACTED]
all related permits + approvals	Telephone: [REDACTED]

NCCDA staff is authorized to consult with necessary governmental agencies concerning this project. They are also authorized to consult with the following individuals concerning this appeal:

I certify under penalty of perjury that I am the party authorized to enter into this fee agreement. 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 the letter is received by the Nevada County Community Development Agency.

Johanna Finney Date: 12/11/17 DL#: C5079815
Signature
Johanna Finney PH#: [REDACTED]
Printed Name

Appeal Burning Bush Cell Tower Approval
PLN17-0073, CUP17-0015, EIS17-0022

I. APPEAL

Nevada County, Nevada County Zoning Administrator

Agency File No's PLN17-0073, CUP17-0015, EIS17-0022, and all related permits and approvals

PLANNING AGENCY DECISIONS:

[Check the following boxes:]

X .Environmental Impact Report: L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.20 Appeals of the Adequacy of the EIR

X. Land Use Applications: L-II Zoning Regulations; 5.12 Administration and Enforcement

X. Negative Declaration: L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration

X. Rules of Interpretation

FIRE AGENCY DECISIONS:

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

List All Agency Action(s) Taken That Are Being Appealed:

1. Adoption of the Mitigated Negative Declaration (EIS14-005) (Attached to Staff Report dated 11/29/2017 2) and Mitigation Monitoring and Reporting Program.
2. Approval of the proposed Use Permit (CUP17-0015) subject to the attached Conditions of Approval (Attachment 1) and the associated EIS.
3. Any related permits or actions authorized by the above approvals.

II. STATEMENT OF THE REASONS FOR THE APPEAL:

The decision of the Nevada County Zoning Administrator on the Mitigated Negative Declaration (EIS14-005) and Mitigation Monitoring and Reporting Program is not in compliance with CEQA and there is substantial evidence of potentially significant impacts on the environment raised by Appellants and others that require further study, mitigation and/or an EIR. See Attachment 2 for some specific examples of the non-compliance with CEQA.

The Conditional Use Permit was improperly approved because the application failed to include required information for cell tower approval, the approval violates a number of provisions of the Land Use and Development Code and other laws, the approval is inconsistent with the Nevada County General Plan, and there is not sufficient credible evidence to support the findings made by the Zoning Administrator in approving the CUP. See Attachment 2 for some specific examples of the problems with the CUP approval.

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

- All provisions of the Mitigated Negative Declaration (EIS14-005) and Mitigation Monitoring and Reporting Program including, without limitation, those portions specifically discussed in Attachment 2.
- All provisions of the Conditional Use Permit (CUP17-0015) including, without limitation, those portions specifically discussed in Attachment 1.

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

Reverse the decision of the ZA on the Mitigated Negative Declaration (EIS14-005) and Mitigation Monitoring and Reporting Program and the Use Permit (CUP17-0015.) Require a focused EIR be prepared which will include consideration of alternative sites not as close to residences or as visible.

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

The Appellants are not opposed to cell towers. We are opposed to putting one on this particular site, in a rural residential neighborhood 30 feet from property lines. There are alternative sites available with much less impacts on the neighbors and the environment. We believe the Board has a duty under CEQA, the County General Plan and the Use Permit findings to consider the broader public interest and require AT&T to look at other less sensitive sites, regardless of the Applicant's preference for this site.

VI. IDENTIFICATION OF THE APPELLANTS.

Burning Bush Neighborhood Association Group, Unincorporated

Johanna Finney

[REDACTED]
[REDACTED]
[REDACTED]

Cynthia Pierce

[REDACTED]
[REDACTED]
[REDACTED]

Alex Giron

[REDACTED]
[REDACTED]

Appeal Burning Bush Cell Tower Approval
PLN17-0073, CUP17-0015, EIS17-0022

Lisa Reinhardt

[REDACTED]
[REDACTED]

Shawn Blue

[REDACTED]
[REDACTED]

Ryan McVay

[REDACTED]
[REDACTED]

Krsna Bryant

[REDACTED]
[REDACTED]

Govinda Bryant

[REDACTED]
[REDACTED]

Matt King

[REDACTED]
[REDACTED]
[REDACTED]

Dorothy Sullivan

[REDACTED]
[REDACTED]
[REDACTED]

Don Rivenes

[REDACTED]
[REDACTED]

NOTE: Appellants have not had opportunity to review all of the information with regard to this project. Pursuant to L-II 5.12 K, Appellants will supplement this appeal with additional concerns and evidence at the Appeal Hearing.

*

Attachment 1:



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9851 <http://mynevadacounty.com>

Sean Powers
Community Development Agency Director

Brian Foss
Planning Director

November 30, 2017

**NOTICE OF CONDITIONAL APPROVAL
CONDITIONAL USE PERMIT**

Sara King
Shore 2 Shore Wireless
Post Office Box 6043
Folsom, CA 95763

File No: PLN17-0073; CUP17-0015; EIS17-
0022
APN: 34-090-03

At the special meeting of November 29, 2017, the Nevada County Zoning Administrator approved the above referenced Conditional Use Permit (PLN17-0073; CUP17-0015; EIS17-0022) for the AT&T Burning Bush Road project to allow the construction and operation of a new cell tower communication facility located at 19406 Burning Bush Road in Nevada City, subject to the following conditions of approval:

A. PLANNING DEPARTMENT

1. This Use Permit (U17-0015) authorizes the applicant to construct a 130-foot mono-pine communication tower along with nine (9) panel antennas and 18 remote radio head/units installed on the mono-pine, an 80" by 80" walk-in utility cabinet, 15kW emergency backup generator with 54-gallon diesel tank located within an acoustical cabinet, two manually operated outdoor light fixtures with cut-off shields and a six (6) foot high redwood fence to enclose the lease-site. Access to the project site for construction and equipment maintenance is provided from an existing private paved driveway that comes off of Burning Bush Road. Construction/Installation equipment and AT&T maintenance vehicles will use an existing graveled parking area adjacent to the project lease-site for parking. The project lease-site is 900-square feet and located within the northeastern corner of a 10.76-acre parcel, APN 34-090-03.

To support safe ingress and egress to the project site four (4) gravel turnouts will be installed. Two along Royal Plum Way and two along Burning Bush Road. Vegetation management to reduce fire fuels within five (5) feet on both sides of the right-of-way paved surface will also be conducted and maintained.

The PG&E will convey electrical power through a new underground conduit and line. The conduit will be installed via underground directional boring. All borings and surfacing areas will be placed away from existing oak trees in coordination with PG&E power run requirements. Electrical power will be brought to the lease-site from an

existing line at a joint pole location located approximately 1,500 feet south west of the lease-site.

The generator approved for this project is a Diesel 15 kW 48 VDC. A test cycle of the generator occurs once every week or two, between the hours of 8AM and noon, and may last up to 10-minutes. The Lmax (maximum noise level, time weighted, root mean square sound level) dBA level in the FR zoning district is 75dBA when the noise source occurs between the hours of 7AM and 7PM. The noise assessment states that based on equipment specification and distance (modeling), the backup generator at full capacity will produce 62.67 dBA at the nearest property line (30-feet to the north and 30-feet to the east) and 39.15 dB at the nearest neighbor residence, 450 feet away measured as a single noise event level (SNEL). A significant reduction in noise beyond the modeled level can be expected due to the surrounding absorbent materials (shrub and tree vegetation layers, undulating topography and the acoustical cabinet the generator operates within). Therefore, the test cycle, with a maximum dBA rating of 62.67, is an absolute worse-case noise level when evaluated against Nevada County's Lmax and Leq which both rely on time weighted means and averages. The periodic testing of the generator will occur within acceptable noise limits outlined in the Land Use Code. The Land Use and Development Code, Sec. L-II 4.1.7C.8., exempts construction activities and emergency services or functions from the provisions of the Noise Ordinance, therefore, the construction of the facility and the operation of the generator during electrical power outages is exempt.

The project is in compliance with Nevada County Land Use and Development Code co-location requirements, Sec. L-II 3.8.G; "Owners of all approved towers shall be required to agree to allow future co-location by other carriers, and to provide an efficient process for handling co-location requests." The proposed project design has reserved space within the 900-square foot project lease-site to allow up to two (2) additional carriers to co-locate and install similar size equipment and emergency generator within an acoustical cabinet.

2. Pursuant to the requirements of the 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, December 11, 2017.
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 Use Permit (December 11, 2020) (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 the attached Defense and Indemnity Agreement. No further

permits or approvals shall be issued for the project, unless and until the applicant has fully complied with this condition.

5. Prior to permit finalization, the applicant shall contact the Planning Department for a field inspection to verify all Conditions of Approval and ordinance requirements have been satisfied. Fees for such inspection shall be applicable on the project building permit.
6. Prior to issuance of building permits, improvement plans shall include a note that the communication tower and supporting equipment shall be finished and maintained in non-glare colors and finished consistent with the material samples provided and kept on file with the Planning Department that minimize their visibility to the greatest extent possible, including bark treatment, antenna socks and branches, and sand/pebble treatment of the equipment shelter. Equipment attached to the tower shall match the color of the tower. Equipment attached to the tower shall match the color of the tower.
7. To ensure noise standards are met now and in the future, as changes may be made due to additional carrier development or equipment replacement, this condition of approval also requires applicants to submit specification sheets and a letter from a Noise Specialist certifying that any proposed equipment, in conjunction with existing equipment, would fall within the County noise standards found within Nevada County LUDC Section L-II 4.1.7 under the Rural zoning district standards at the building permit review stage. Specifically,
7 a.m. to 7 p.m. – 55 dB Leq and maximum 75 dB Lmax
7 p.m. to 10 p.m. – 50 dB Leq and 65 dB Lmax
10 p.m. to 7 a.m. – 40 dB Leq and 55 dB Lmax

Equipment testing of generators will only occur during weekdays and between the hours of 8:00 a.m. and noon.

8. This approval is for two fully shielded, downward facing light fixtures as shown in preliminary plans and in compliance with Nevada County Land Use & Development Code Section L-II 4.2.8. All outdoor light fixtures shall be located within the lease area. Fixtures shall be fully shielded and directed downward to prevent light trespass and to prevent the light source or lens from being visible from adjacent residential uses and roadways. Improvement plans shall depict the location, height and positioning of all light fixtures and shall provide a description of the type and style of lighting proposed. Fixtures shall have high efficiency lamps. High pressure sodium, and mercury vapor light fixtures are prohibited. Lighting shall be on manual controls with no motion sensors so as to be fully controlled by the maintenance technician.
9. A permanent, weatherproof, facility identification sign, no more than 12 inches by 24 inches in size, identifying the facility operator and a 24-hour phone number, shall be placed on the fence 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. Signage shall be limited to required address and facility identification signs and emergency and safety hazard signage as contained herein.

10. The mono-pine communication tower shall be engineered to accommodate a minimum of two (2) additional carriers in addition to AT&T. The communication tower shall be designed to accommodate the co-location of all proposed devices associated with the antennas, transmitters, cables, array structures, and radios on this tower. The tower owner shall allow future co-location by other carriers and shall provide an efficient process for handling co-location requests if an agreement is reached by the carriers and technologically feasible, avoiding signal interference issues between the carriers.
11. Pursuant to Land Use and Development Code Sec. L-II 3.8.G, prior to issuance of improvement and building permits, 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.
12. Pursuant to Land Use and Development Code Sec. L-II 3.8.F.5, the applicant shall include a note on all improvement 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 unless the County Fire Marshal requires fuel modification. Native trees are the preferred vegetation."
13. The facility shall comply with all Federal Communications Commission regulations concerning radio frequency emissions.
14. Include a roadway condition inventory of Burning Bush Road photo-documenting the pavement conditions prior to construction of the tower facility as part of the building permit submittal for Planning Department review. At the request for permit final, a follow-up photo-documentation of pavement conditions from the same pre-project locations is required to be submitted showing that any impacts to Burning Bush Road that may have occurred as a result of the construction of the communication tower facility, were returned to pre-construction conditions by the applicant.
15. In compliance with both State and local air quality requirements, the applicant shall use reasonable precautions to minimize dust generation. Such methods shall be noted on the improvement plans prior to approval.
16. All equipment must be in compliance with Nevada County LUDC Section L-II 4.1.7, Rural zoning district noise standards. Include HVAC and generator specification sheets as part of the building permit submittal for Planning Department review, showing equipment compliance with these standards.
17. All equipment operators and employees involved in any form of ground disturbance at any phase of project improvements shall be advised of the remote possibility of encountering subsurface cultural resources. If such resources are encountered or

suspected, work 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 and the Native American Heritage Commission be contacted and, 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. A note to this effect shall be included on the grading and construction plans for each phase of this project, and shall be included on the Supplemental Data Sheet prior to recordation of each phase of the project.

18. **Native American Monitoring (Mitigation Measure 17A).** Prior to project construction, the contractor must contact the United Auburn Indian Community of the Auburn Rancheria for project monitoring. Paid Native American monitors from culturally affiliated Native American Tribes must be invited to monitor the vegetation grubbing, stripping, grading or other ground-disturbing activities in the project area to determine the presence or absence of any cultural resources. Native American representatives from cultural affiliated Native American Tribes act as a representative of their Tribal government and shall be consulted before any cultural studies or ground-disturbing activities begin. Native American representatives and Native American monitors have the authority to identify sites or objects of significance to Native Americans and to request that work be stopped, diverted or slowed if such sites or objects are identified within the direct impact area. Only a Native American representative can recommend appropriate treatment of such sites or objects.

Timing: Prior to issuance of permits for construction

Reporting: Approval of construction permits

Responsible Agency: Planning Department

19. Prior to issuance of a building permit the applicant shall provide Nevada County Planning Department documentation of the utility easement in which electrical power will be transmitted to the project lease-site.

B. BUILDING DEPARTMENT

1. The applicant shall provide complete site, grading and erosion control plans for review at time of building/grading permit submittal in conformance with Nevada County Land-Use Code Chapter V, Article 19.
2. The applicant shall provide two sets of wet stamped/signed complete geotechnical evaluation reports at the time of building/grading permit submittal.
3. The applicant shall provide two sets of wet stamped/signed complete structural calculations for the tower and equipment shelter at the time of building permit submittal.
4. The applicant shall provide complete electrical plans shall be included as part of the building permit submittal.

5. Complete and submit the special inspection and testing agreement for all project special inspections including grading, foundation excavation, concrete, steel reinforcement, welding and high-strength bolting.
6. An available fault current letter from the electrical service provider shall be submitted at time of building permit application submittal.
7. The applicant shall provide verification that building permits have been obtained and finalized all structures onsite including storage containers.

C. ENVIRONMENTAL HEALTH

1. This project results in a facility with hazardous material quantities (diesel fuel) above the thresholds stated in. Prior to final building permit, and in compliance with California Health and Safety Code, Sections 25500-25519, the applicant must apply for an obtain a permit for the storage of hazardous materials from the Nevada County Department of Environmental Health, Certified Unified Program Agency. The operator shall secure and annually review the permit for this facility within 30 days of becoming subject to applicable regulations. The applicant must adhere to all applicable codes and regulations regarding the storage of hazardous materials and the generation of hazardous waste set forth in California Health and Safety Code Section 25500-25519 and 25100-25258.2 including the electronic reporting requiring to the California Environmental Reporting System.
2. Minor plan check by the Environmental Health Department will be required prior to building permit issuance. The applicant shall provide applicable fees and a minimum of one set of plans/drawings (reduced to 11x17) for the above ground storage tank specifications.

D. NEVADA COUNTY FIRE MARSHAL

1. Turnouts shall be improved along Royal Plum Way and Burning Bush Road at specified locations and shall be designed in compliance with Title 14, Section 1273.06. Contact the Fire Marshal's Office to specific locations.
2. Access from Burning Bush Road leading to the Project Lease-Site shall meet all Driveway standards including the following elements of Title 14, Section 1273.01, 1273.02, 1273.05, 1273.10, & the Fire Safety Regulations of Nevada County.
3. Driveway
 - a. The new section of driveway leading to the Project Lease-Site shall support the imposed load of at least 75,000lbs. Surface width shall be ten (10) feet minimum with one (1) foot shoulders for driveway grades up to sixteen percent (16%).
A turnaround shall be provided within 50' of the proposed lease parcel.

- b. Vegetation Management along Royal Plum Way, Burning Bush Road, and the driveway accessing the Project Lease-Site shall be maintained within a "Fuel Modification Area". Trees may be limbed and remain within this zone as long as they do not impede into the traffic lane. All brush and understory shall be removed. Nevada County Public Works, Standard Drawings C-1.
4. Provide a 2-A:10-B:C portable Fire Extinguisher in an "All Weather" shelter. The extinguisher shall be mounted in an approved location within fenced area of the leased parcel. CFC-Section 906.

E. NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT

1. **Authority to Construct Permit (Mitigation Measure 3A).** 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 CARB 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 the 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 permit issuance

Reporting: Agency approval of permits or plans

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

F. 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 \$2,216.25 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.

The Zoning Administrator considered the Initial Study and found that the project, with the approved mitigation measure and conditions imposed, will not have a significant effect on the environment.

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


AT&T Burning Bush Road Approval
PLN17-0073; CUP17-0015; EIS17-0022

Supervisors within a ten-day period from the date of the Zoning Administrator decision (deadline 5 p.m. on December 11, 2017).

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

NEVADA COUNTY ZONING ADMINISTRATOR

Brian Foss

By: 
Tine Mathiasen
Clerk to the Zoning Administrator

enc: Defense and Indemnification Agreement

cc: Pamela Swartz
AT&T Wireless
Building Department
Environmental Health
Nevada County Fire Marshal
Northern Sierra Air Quality Management District

Attachment 2:

Site Location and Alternatives Sites.

Planning Agency Decisions:

Land Use Applications: L-II Zoning Regulations; 5.12 Administration and Enforcement

Rules of Interpretation: L-II Zoning Regulations; 1.4 Rules of Interpretation Regarding:

Provisions of Appeal: Conditions of Approval & Mitigation, Monitoring and Reporting Plan (MMRP) shown in Attachment 1 of the proposed Use Permit (CUP17-0015) making findings A-L pursuant to Sections L-II 5.6.G and L-II 5.5.2.C of the Nevada County Land Use and Development Code:

- D. “The site for the proposed use is adequate in size, shape and location to accommodate the proposed use and all facilities needed for that use and reasonable expansion thereof, if any, and to make appropriate transitions to nearby properties and permitted uses thereon, without compromising site development standards, because the project is 356 feet from the western boundary line, 445 feet from the southern boundary line, 30 feet from the northern property line, and 30 feet from the eastern property line;”

Reason for Appeal: The property is not adequate in size, shape and location to accommodate the proposed use. The tower is proposed in a rural residential neighborhood with many smaller parcels. The Location of the tower 30 feet from the adjoining property and only 450 feet from neighboring houses is far too close for a 130-foot high tower. The tower will be intrusive and out of keeping with the rural neighborhood. There will be few areas on the neighboring properties where the tower will not be visible. The construction of the tower and boring for the 1500 feet of power line extension will bring heavy equipment on private roads, damaging the roads and overburdening the easement.

- E. “The proposed use is allowed within and is consistent with the purposes of the “FR-40” zoning district within which the project is located, which allows communication towers with an approved use permit;”

Reason for Appeal: The FR-40 zoning district is not reflective of the actual predominant uses in this area. It was overlaid on the parcels after much of the area was already subdivided into much smaller residential parcels. To look only at the nominal zoning as the basis for establishing setback requirements rather than the actual character of the neighborhood is an overly narrow interpretation of the cell tower and use permit regulations. The County needs to consider the residential character of the area and if not deny the permit, at the very least require the Applicant to set back the tower a distance equal to 100% of the height from the property lines.

- G. The proposed use and facilities are compatible with, and not detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area, because the proposed use is effectively screened from nearby properties and is in compliance with or exceeds all required setbacks;

Reason for Appeal: Location of the tower 30 feet from the adjoining property does not comply with the setback requirements for residential neighborhoods. It will directly impact neighboring properties and is not compatible with the rural residential character of the neighborhood. The construction and operation of this commercial use will overburden the private roads leading to the site.

Provisions of Appeal: Sec. L-II 5.6 Use Permits

A. Purpose: To provide for those land uses that may be appropriate and compatible in a zoning district, depending on the design of the individual project and the characteristics of the proposed site and surrounding area. Such uses may either raise major land use policy issues or create serious problems for adjoining properties or the surrounding area if such uses are not properly designed and located. It is the intent of this Article to establish appropriate standards for permit processing and the location, design and operation of such land uses, to avoid their creating problems or hazards, to provide for the compatibility of such land uses with adjacent properties and the surrounding area, and to assure their consistency with the General Plan.

Provisions of Appeal: Title 3 Land Use and Development Code, Chapter II: Zoning Regulations, Article 3 Specific Land Uses, Sec. L-II 3.8 Communication Towers and Facilities –

A. Purpose. To establish standards for the siting and design of communication facilities that promote the availability of adequate public services while ensuring compatibility with adjacent land uses.

D. Application Requirements. All land use applications for new communication towers shall include the following information: 1. Detailed information to justify the need for the proposed tower site, i.e., search ring, the desired service area, technical reasons for the proposed tower height and specific site selection standards.

Site Selection Standards – ZA Staff Report, Pg. 12-13: “LUDC Section L-II 3.8E.1.d Restricts towers from being installed within two miles of another unless certain screening criteria are met. AT&T’s coverage improvement goals are achieved when they are able to locate each cell tower within ¼ to ½ mile from the optimal coverage location (see Figure 8. Service Improvement Objective of the ZA Staff Report).

Reason for Appeal: The Use permit regulations and CEQA require consideration whether the project is “properly located”. Other sites are available in less populated areas where easements for electricity will not be difficult or is already available. There are already identified sites closer to the target area for optimal coverage. The ZA refused to consider evidence of other better sites and made the determination to approve this site without adequately discharging the obligation to consider whether this was the proper location for the tower and make significant reasonable findings why this site is preferable to other feasible sites.

AT&T’s “Alternative Site Location Analysis” (ALSA) indicates they chose three potential sites in the area. The site selected appears to be the furthest of the three from the Federal “optimal coverage location.” The two sites that were closer were not selected for reasons that were

unclear to the property owners. The ASLA states the reason for choosing the Burning Bush site was because the "primary candidate has a slightly more responsive property owner." The ALSA also states that the site they selected achieves their coverage objective while "simultaneously allowing for a least intrusive means of coverage." However, the report does not provide any specific facts to support this conclusion.

Neither AT&T or the County has considered whether access for construction and utilities is legally available for this site. The surrounding neighbors will not grant easements for access (See Easement Statements attached), or for electricity or utility lines and believe the heavy equipment will overburden and damage their roads. The Burning Bush Neighborhood Association group (unincorporated) disagrees with AT&T's (and the County ZA's) choice. They are united in full opposition to this project being built on the subject property.

Request to the Board:

1. Applicant shall provide written documentation of any Facility Sites in Western Nevada County in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. From said Facility Site, it shall demonstrate with written documentation that these Facility Sites are not already providing, or do not have the potential by adjusting the site, to provide adequate coverage and/or adequate capacity to the said Facility Site. The documentation shall include, for each Facility Site listed, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of tower or structure, type of antennas, antenna gain, height of antennas on tower or structure, output frequency, number of channels, power inputs and maximum power output per channel. Potential adjustments to these existing Facility Sites, including changes in antenna type, orientation, gain, height or power output shall be specified. Radio plots for each of these facility sites, as exists, and with adjustments as above shall be provided as part of the application.
2. Applicant shall demonstrate with written documentation that they had examined all facility sites located near said Facility Site, in which applicant has *no* legal or equitable interest whether by ownership, leasehold or otherwise to determine whether those existing Facility Sites can be used to provide adequate coverage and/or adequate capacity to the surrounding said Facility Site. The documentation shall include, for each facility site examined, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of tower structure, type of antennas proposed, proposed antenna gain, -propose antennas on tower or structure, proposed output frequency, propose number of channels, compose power input and propose maximum power output per channel. Radio plots for each of these facilities sites, as opposed, shall be provided as part of the application.
3. Applicant shall demonstrate with written documentation that they have analyzed the feasibility of repeaters in conjunction with the Facility Sites listed in compliance A, 1&2 (above) to provide adequate coverage and/or adequate capacity to surrounding area of said Facility Site. Radio plots of all repeaters considered for use in conjunction with these Facility Sites shall be provided as part of the application.
4. Suggestions for the board for pursuing alternative sites:

A. Forest Service land in the area: Forest service land locations rules allow towers & already host several towers & has power. AT&T may have failed to consider this option as a potential build site, and if they did consider it, they have not given reason as to why it would not provide an ideal solution.

B. Alternative Site #2: The alternative site on Cooper Road is in the most remote area of the three choices. The land is in an area with fewer small parcels and houses and is more heavily forested, making the tower less visible. Reportedly, the landowner may be willing to take on the project.

C. Alternative Site #3: The landowner who was initially approached for this AT&T project is still interested in participating. AT&T's chosen Alternative #1 (on Barn Hallow) has existing power to the edge of the property. It offers a more direct path for service vehicles and emergency personnel. There is already a cleared area. The building location is doubled to the nearest resident in comparison to the current selected site. It is understood that the nearest neighbors are in favor of a tower installation in this location.

D. Last option: At the very least, the location of the tower on the existing selected site should be revisited as the location is not ideal for a variety of reasons:

- ◆ It was stated at the public hearing on 11/29/17 by AT&T and Shore 2 Shore representative Carl Jones that the chosen build location on the property was done so solely as a convenience to the property owner P. Swartz. She could have chosen any location on this ten acre parcel of property, but she decided to place it just 30 feet from her neighbor's 2 acre parcel property line.
- ◆ Setbacks – in the least, the tower should be setback as to not intrude on the closest neighbor's small parcel in relation to the subject property. The code for towers in residential zoning requires a setback of at least 100% of the tower height. This standard should be applied to FR40 parcels as well. Especially considering these generally more remote FR-40 parcels and much larger parcels can afford a larger setback. This would create less disturbance in the case that the neighbor's smaller parcel will be affected.
- ◆ If necessary, the Cell phone tower zoning requirements should be modified in a manner that allows for relocation of towers within reasonable boundaries based on the local opinion.

5. Required Documentation:

1. Copies of all submittals and showings pertaining to: FCC licensing; Environmental Impact Statements; Notice of Construction or Alteration; Aeronautical Studies; and all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed.

6. Proposed additional testing information: The Appellants request that the Board require a balloon visibility test. We understand that this is commonly done to more accurately determine visibility

impacts. It involves raising a minimum three-foot diameter brightly colored balloon at the site and at the maximum height of the proposed tower. The dates (including a second date, in case of poor visibility on the initial date), times, and location of this balloon test shall be advertised, by the applicant, at seven and 14 days in advance of the first testate in the newspaper with a general circulation in the County of Nevada. The applicant shall inform the County of Nevada and its planning board, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 9 AM and 5 PM of the dates chosen.

Attachment 3:

----- Forwarded message -----

From: [REDACTED]
Date: Thu, Dec 7, 2017 at 8:05 PM
Subject: Re: Cell Phone Tower Nevada County
To: Johanna Finney [REDACTED]

Dorothy Sullivan

Owner of the property located at [REDACTED]

I am in complete disagreement with AT & T building a cell phone tower near my property.

i would have appeared at the hearing, however I was on the east coast. I was notified TWO DAYS prior to the council meeting regarding AT&T.

Residential Property owners have concerns when a Corporation becomes a Neighbor. Their will be construction, heavy utility trucks traveling on our roads. Their will be regular maintenance of such a site.

As neighbors of this proposed cell site we have questions.

What type of tower is being erected?

What is the height of the tower? How many cellular units will be installed? Will their be guide wires? If their are guide wires how far out will they extend? Will a generator be on the property?

Will a utility building be built? How often will AT&T maintenance vehicles be traveling on our roads?

I am confident AT&T has had the land surveyed, quite some time ago. When was AT&T scheduled on the Councils Agenda? I question the reasons for the secrecy, and lack of timely notifications to the surrounding property owners

Property owners were denied the right to make an informed decision regarding a corporate neighbor by AT&T and our City Council.

Respectfully,

Dorothy Sullivan
[REDACTED]
[REDACTED]

I Dorothy Sullivan property owner of [REDACTED]

[REDACTED] give approval to be listed as appellant regarding the AT&T cell Tower

----- Forwarded message -----

From: **Dsull37449** [REDACTED]
Date: Thu, Dec 7, 2017 at 9:18 PM
Subject: Re: Cell Phone Tower Nevada County
To: Johanna Finney [REDACTED]

I Dorothy Sullivan
[REDACTED]
[REDACTED]

I deny an easement to PG&E for utility to this project site.

Respectfully

Dorothy Sullivan

From: Lisa Reinhardt <[REDACTED]>

Date: December 8, 2017 at 4:35:05 PM PST

We, the property owners of [REDACTED], have denied utility easement access to AT&T with regards to the proposed Burning Bush Rd. cell tower.

----- Forwarded message -----

From: **Matt King** [REDACTED]

Date: Thu, Dec 7, 2017 at 5:51 PM

Subject: Cell Tower opinion

To: [REDACTED], Johanna Finney [REDACTED]

Thanks to both of you for the call, I also received the notice just before thanksgiving, and wanted to have more hands on of what was happening but the notice was too short for me to make the meeting and I did not have any Local contacts, I actually did have one contact but it was for the Beasley's but they have moved and the new owner is the one proposing to install the tower.

Thank you for your contact information I now have someone Local to call if needed.

Who was it that had my number and what is their address and phone number I will add them as a contact as well.

I do not want to see this tower from our property and I will not grant a power easement.

The address of our property is

[REDACTED]

[REDACTED]

[REDACTED]

I did call planning with questions and they sent me information related to the application I will forward it shortly.

I also have talked to a friend that is a loan agent and he is going to see if he can look into the easement you were told was there.

I can say for sure that my dad never granted an easement when he was alive and my mom as well would have never granted an easement.

Matt

Sent from my iPad

----- Forwarded message -----

From: **Matt King** [REDACTED]

Date: Thu, Dec 7, 2017 at 6:24 PM

Subject: Re: Cell Tower opinion

To: Johanna Finney [REDACTED]

[REDACTED]

Matt