Revised Attachment 2 (Revised 12/29/2017)
Written Statement On Appeal - Full Explanation of the Legal Basis and Ground for the Appeal
AT&T Burning Bush Road Use Permit (U17-0015) Appeal
(PLN17-0073; CUP17-0015; EIS17-0022)

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NEVADA COUNTY
BOARD OF SUPERVISORS

Legal Basis and Grounds for Appeal

We hereby submit these additional grounds to support our appeal of the November 29, 2017 decision of the Nevada County Zoning Administrator to approve a Conditional Use Permit (CUP17-0015) ("CUP") and accompanying Mitigated Negative Declaration (EIS14-005) ("MND") allowing for the installation and operation of a 130-foot tall communication tower with the capacity for three co-located facilities at 19406 Burning Bush Road in an unincorporated area of Nevada County ("Project").

As presented below, the Administrator's decision should be reversed based on the Project's failure to 1) comply with the requirements of the California Environmental Quality Act ("CEQA"); 2) include required information for cell tower approval as required by County Code; 3) comply with development standards set forth in the County Code and other laws; 4) inconsistency with the Nevada County General Plan; and 5) support the findings made by the Zoning Administrator with sufficient credible evidence.

The Project proposes the installation of a massive industrial structure amidst a quiet rural residential community lacking any such commercial facilities. The Project proposes that noise impacts will be insignificant without providing any information about the existing noise setting, nor the potential cumulative noise generated by up to three operating facilities as well as a Heating, Ventilation and Cooling (HVAC) system that will be running continuously. The Project does not explain how these impacts, along with the construction of a 130-foot industrial pole will not have measureable and significant aesthetic and noise impacts to the surrounding residential communities. The Project also fails to meet County Code and General Plan requirements designed to minimize the construction of new towers, allowing them only where absolutely necessary and in locations that will minimize impacts to neighboring communities. Here, the Project has not submitted the information necessary for the County to make these findings. To the extent that information is presented it suggests that the development standards set forth in County Code will be violated by the Project.

These claims are summarized below.

A. CEQA Violations

The Project violates CEQA in several ways.

First, the MND does not provide an adequate analysis of noise impacts. The rural residential community where the Project is located is extremely quiet, with little to no artificial noise. The MND presents no information on the existing noise setting and thus has no basis for comparing the noise impact of the proposed facility. Instead, the MND's analysis is limited to comparing the noise generated by the Project to the maximum noise levels allowed under the County Code. However, compliance with the Code does not mean that noise impacts will not be significant, particularly given the likely substantial change in ambient noise once the Project is operating. In addition, the MND does not provide adequate analysis of the cumulative noise

impacts that will occur when the facility is fully operational, with three companies using the facility, and the MND does not present any information about the noise impacts of the Heating, Ventilation and Cooling (HVAC) system that will run continuously in the warmer months. Nor is there mention of who will be monitoring the proposed test runs of the generators and how to mitigate an issue if they run more frequently.

Second, the MND does not provide an adequate analysis of the aesthetic impacts of building a 130-foot tower in this residential area. The size of the tower means it will be viewable from public areas, as well as homes in the immediate vicinity of the Project. The MND includes only a few photos showing the proposed Project from vantage points that do not adequately represent the affected viewsheds.

Third, the County lacks adequate information to show that the Project is in compliance with FCC regulations regarding Maximum Permissible Exposure (MPE) Limits for general public exposures. As a result, there is no exemption for this Project from CEQA's requirements that the potential adverse environmental impacts of all pollutants be analyzed as part of any discretionary approval.

Fourth, the MND does not demonstrate that alternative locations for the Project, in non-residential or less-residential areas where homeowners will not be affected or less affected, are infeasible. Instead, the Project's alternative location analysis merely concludes the proposed site "had a slightly more responsive property owner and therefore was selected over" alternative locations. This conclusion does not provide evidence that these less-impactful, alternative locations were not feasible to avoid the impacts discussed above.

Finally, the MND does not identify or discuss how the Project is inconsistent with policies and requirements of the County General Plan and code, as discussed below.

B. Violations of General Plan Policies and Development Code Standards.

1. General Plan Policies

The Project conflicts with General Plan policies to sustain a quality environment and to minimize conflicts due to incompatible land uses. In this case, the Project proposes an industrial facility in a residential area. Although a Forestry zoning overlay was placed on this area, the majority of parcels are well below the 40-acre minimum and consist of residential, not commercial or industrial use. Thus, General Plan policies dictate that the area should be treated as residential for purposes of determining setback requirements, allowable noise levels, aesthetic effects and overall compatibility of uses. In particular, the code for towers in residential zoning requires a setback of at least 100% of the tower height. Location of the 130-foot tower 30 feet from the adjoining property does not comply with the setback requirements for actual residential areas such as ours.

2. County Code Standards.

The County Code requires that cell phone towers meet certain requirements that have not been satisfied in this instance.

First, the County Code requires that cell phone tower applications provide detailed information to justify the need for the proposed tower site based on factors such as search ring, the desired service area, technical reasons for the proposed tower height and specific site selection standards, and including a list of existing towers within the desired service range, information regarding co-location opportunities and evidence of negotiation for co-location on existing towers where such opportunities. Here, the Project does not provide adequate information to justify a finding that there is a need for the proposed tower site in this location.

Second, County Code requires that new towers not be installed in a location that is not developed with communication facilities or other public or quasi-public uses unless it blends with the surrounding, existing, natural and man-made environment so as to be *effectively unnoticeable*. Here, the Project will clearly be 'noticeable,' given the size of the tower and the sounds of the facility operation, which will change the acoustic environment of the surrounding residential areas substantially.

Third, the Project Application does not meet the standards set forth in County Code § L-II 3.8.D for what constitutes a complete application under the Code.

3. Compliance with Telecommunications Act of 1996

The Telecommunications Act of 1996, 47 USC 332(c)(7)(B)(iv) prohibits "local government [from] regulat[ing] the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." The County in this instance has conducted no analysis of the environmental effects of radio frequency emissions on local residents in the area, but lacks adequate information to determine that the Project is exempt from such an analysis based on compliance with FCC regulations. In this case a Radio Frequency – Electromagnetic Energy (RF-EME) Compliance Report was prepared for the Project. However the Report is inadequate to show FCC compliance based on 1) lack of information showing how far away from the tower the maximum power density will occur; 2) lack of information showing maximum Effective Radiated Power at each of the frequencies to be broadcasted in order to establish the actual compliance level of the Project; and 3) no assessment of the cumulative RF power density that will reasonably be anticipated with full buildout of the planned project including two additional co-locators. In addition, the Staff Report and all related permit documents state, "The mono-pine communication tower shall be engineered to accommodate a <u>minimum</u> of two (2) additional carriers in addition to AT&T." What is the maximum number of carriers that can be located on the tower? Will the county be approving a permit for AT&T and two co-locators without requiring other applications if more than two co-locators will be installed?

The FCC regulations require carriers to provide a comprehensive assessment of how the cumulative emissions on proposed co-location sites, as well as other sites in the area, will meet the Maximum Permissible Exposure (MPE) Limits for general public exposures. The information and analysis provided in this instance does not meet that standard and thus there is no exemption for this Project from state law requirements that the potential adverse environmental impacts of pollutants be analyzed as part of any discretionary approval under CEQA.

A more detailed accounting of these and additional points are presented below:

I. Land Use, Site Justification, Optimal Coverage Location

Provisions of Appeal:

1. ***Nevada County Title 3 Land Use and Development Code, Chapter II, Zoning Regulations, Article 5 Administration and Enforcement:***
   - *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.
     - B. *Use Permit Application Content.* A Use Permit application shall be filed with the Planning Department, signed by the owner of the property for which the Use Permit is sought or by the authorized representative of the owner. Filing shall be on forms provided by the Planning Department, accompanied by appropriate fees pursuant to the latest adopted resolution of the Board of Supervisors. Said application shall consist of maps, diagrams, plans, elevations, written reports, and other information as prescribed by the Planning Director, necessary to adequately describe the project. Such information shall be adequate to evaluate the proposal and demonstrate compliance with the General Plan, zoning ordinance and other related Chapters of the Land Use and Development Code.

   - *Sec. L-II 5.5.2 Development Permit, (C) Decision and Findings:*
     6. 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;
     8. Highways, streets, and roads on and near the site are adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use and adequate provision has been made for project specific impacts and the

cumulative effect traffic generated by the proposed use so that it will not create or add to an identified problem before construction of needed improvements for which a development fee has been established and imposed upon the project;

11. All feasible mitigation measures have been imposed upon the project.
12. The conditions provided in the decision are deemed necessary to protect the public health, safety, and general welfare. Such conditions may include, but are not limited to:
    a. Regulation of use, setbacks, buffers, fences, walls, vehicular ingress and egress, signs, noise, vibration, odors, the time of certain activities, duration of use, and time period within which the proposed use shall be established.

2. ***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.

2) Submit a list of existing towers within the desired service range, information regarding co-location opportunities and evidence of negotiation for co-location on existing towers where such opportunities exist.

4) A visual study from surrounding areas that includes a computerized photo simulation of the tower on the site.

6) Towers that are located a distance that is less than 100% of their height from a property line, a habitable structure or other tower, shall include a report by a structural engineer licensed by the State of California, certifying that the proposed tower is designed to withstand without failure the maximum forces expected from wind, earthquakes, and ice, when the tower is fully loaded with antennas, transmitters and other equipment and camouflaging. The report shall describe the tower structure, specifying the number of and type of antennas it is designed to accommodate, providing the basis for the calculations done and documenting the actual calculations performed.

E. Locational Standards for New Towers.

1) Communication towers shall be located to minimize their visibility and the number of distinct facilities present, as follows:

b. No new tower shall be installed in a location that is not developed with communication facilities or other public or quasi-public uses unless it blends

with the surrounding, existing, natural and man-made environment so as to be effectively unnoticeable.

d. No tower shall be installed closer than 2 miles from another readily visible, uncamouflaged or unscreened facility unless it is a co-located facility, is on a multiple-user site, or is designed to blend with the surrounding existing natural and man-made environment so as to be effectively unnoticeable.

2) Communication towers shall be set back from property lines as follows:

a. Where adjacent property is zoned within residential districts, a tower shall be setback from the property line no less than 100% of its height.

3. ***Nevada County Zoning Administrator Staff Report File No. PLN17-0073, CUP17-0015, EIS17-0022 and Attachments:***

1) Recommended Conditions of Approval & MMRP
2) Initial Study/Mitigated Negative Declaration
3) Environmental noise Assessment Report
4) Radio Frequency – Electromagnetic Energy Compliance Report
5) Project Plan Set (12 Sheets)

Legal Basis and Grounds for Appeal

CEQA calls for a discussion of land use compatibility impacts, conflicts with a general plan or zoning designation, and conflict with any applicable land use plan or policy adopted for the purpose of avoiding or mitigating an environmental impact. There will be physical land use compatibility impacts from the Project that make it impossible to conclude that the Project is consistent with Ordinance L-II 3.8, General Plan policies, and FR zoning.

It is stated in the ZA Staff Report on page 16, under Recommendation II:

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;

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;

F. 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.

Both the Nevada County Zoning Ordinance and General Plan are intended to avoid land use incompatibility throughout the county. The Use Permit Regulations and CEQA require consideration whether the project is "properly located." **This project site raises major land use**

policy issues and creates serious problems and hazards for adjoining properties and the surrounding area and is not properly designed and located for this residential neighborhood. The following sections underscore this policy theme and the appellants believe that the Board will find the project incompatible with surrounding uses:

General Plan: There are four Central Themes in the General Plan (pages 7/8), two are relevant to land use compatibility in this case:

--Sustaining a quality environment;

--Planned land use patterns will determine the level of public services appropriate to the character, economy and environment of each region.

There are six Supporting Themes in the General Plan, including:

--Minimize conflicts due to incompatible land uses.

The Forest land use designation includes text related to land use compatibility:

General Plan Forest Land Use Designation (Policy 1.2.4 o)

o. Forest (FOR) is intended to provide for production and management (including timber harvesting and related operations) of timber resources, and compatible recreational and low density residential uses. Within the Forest designation, the minimum parcel size should be 40+ acres, in order to provide for preservation of the timber resource and protection of resource management needs and opportunities.

Aesthetic impacts factor in to land use impacts, often mitigated by setbacks or reductions in mass or height. Larger setbacks can and must be considered to avoid land use compatibility impacts and inconsistency with the General Plan and Ordinance L-II 3.8. This is because the project is surrounded in part by relatively small residential- sized lots of 2.51, 11.55, 10.72 acres. These lots will be impacted by the towers more than if they were located on 40 acre + parcels. In addition, when the location of homes on these parcels is taken into consideration, the FR-40 zoning district is not reflective of the actual predominant uses in this area. The FR-40 zoning overlay was done in 1995 after 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 communication tower and use permit regulations. The code for towers in residential zoning requires a setback of at least 100% of the tower height. The location of the 130-foot tower 30 feet from the adjoining property would not comply with the setback requirements for residential neighborhoods. The County needs to consider the actual residential character of the area.

We request that the Board deny the permit based on the Inaccurate Finding of No Impact in the Land Use/Planning section in the MND and in staff Findings on General Plan and Zoning Consistency. **The project will be inconsistent with the General Plan and Zoning Ordinance and will be incompatible with surrounding land uses based on the discussion above.**

We request that the Board deny the permit because the applicant has not proven "the need for proposed tower and desired service area" as demonstrated below:

In the ZA Staff Report on page 12 under Site Justification it is stated that "LUDC Section L-II 3.8E.1.d Restricts towers form 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) with consideration of topography and nearby obstructions."

The burden of proof for significant gap is on the carrier and to prove that this parcel is the optimal site for cell coverage. It was not proven by AT&T that this project site will meet the minimum requirements for the Covered America Fund (CAF) which AT&T has stated is funding this project. The guidelines of CAF state, "To ensure CAF support is used efficiently, the FCC has focused on areas that are clearly unserved or underserved by unsubsidized service providers....To remain eligible, a census block cannot be served with voice and broadband of at least 10/1 Mbps (based on Form 477 data) by an unsubsidized competitor or price cap carrier. A preliminary list and map of eligible census blocks have been released." Where is the study proving that this area needs a tower and fits these specifications? Residents near the proposed site on Burning Bush have come forward to prove that they have both wireless streaming data and cell communication coverage. In this case, Verizon service already covers much of the project area.

Telecommunication companies that have accepted CAF Phase II support, must meet the following requirements for voice and broadband services:

- **Speed**: Service providers must offer broadband at speeds of at least 10 megabits per second downstream and 1 Mbps upstream.
- **Latency**: Service providers' network latency cannot be higher than 100 milliseconds round trip. Latency is the time it takes for a data packet to travel back and forth through a network.
- **Usage Allowance**: Currently, the carrier must offer at least one plan with a minimum usage allowance of at least 150 gigabytes per month, or in certain circumstances, a plan with 100 GB of usage.
- **Pricing**: Service providers must offer service at rates reasonably comparable to rates in urban areas.
- **Accountability**: Recipients will be required to file annual reports and build-out milestone certifications, and to submit the locations where they offer qualifying service on a rolling basis. Recipients that fail to meet the terms and conditions of support are subject to non-compliance measures including increased reporting obligations and possible withholding and/or recovery of support.

Technology-Neutral Service Tiers

Bids will be accepted for four service tiers, each with varying speed and usage allowances, and two latency tiers, one high latency and one low latency.

Performance Tier	Speed	Usage Allowance	Weight
Minimum	≥ 10/1 Mbps	≥ 150 GB	65
Baseline	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	45
Above Baseline	≥ 100/20 Mbps	2 TB	15
Gigabit	≥ 1 Gbps/500 Mbps	2 TB	0

Latency	Requirement	Weight
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS of ≥4	25

The applicant has not proven that they will meet these standards at this Project location. Coverage Maps presented by AT&T and Staff were low resolution, there were no details as to what type of coverage is available at this time in the chosen service area, nor was the number of residents who will actually be serviced by this project provided. In addition, the coverage map that was included in the slide presentation by ZA Staff may have not been factual, as it was showing coverage would extend to Nevada City, but it was stated at the 11/29/17 hearing it will only be one to two miles. The map showing existing cell coverage map seemed to underestimate the actual coverage area, and the future coverage map seemed to overestimate. (ZA Staff Report, p. 13, Figure 8. Service Improvement Objective).

According to AT&T's Alternative Site Location Analysis (ASLA), a tower in this area is only expected to cover 125 homes and businesses. It does not say it will be *new* coverage. It does not

identify the 125 homes to be covered. Where is the data and the study proving this? The coverage map from Connect America Fund Phase II which is funding this AT&T Project shows a small area for the Burning Bush project. It does not show the population to be served in this area.

Coverage gaps must be proven by telecom providers, not just estimated or surmised. It has not been proven by the applicant that there is a significant gap in coverage, nor that the project significantly improves public safety as they claimed in the public hearing on 11/29/17. Predictive capacity is not guaranteed under the pre-emptive clauses of the 1996 Telecommunications Act. This is a misread and overreach of the Act by telecom providers.

Case Law: The U.S. Court of Appeals for the Third Circuit in APT v. Penn Township. http://www2.ca3.uscourts.gov/opinarch/983519.txt. The provider must show that its facility will fill an existing significant gap in the ability of remote users to access the national telephone network. In this context, the relevant gap, if any, is a gap in the service available to remote users. Not all gaps in a particular provider's service will involve a gap in the service available to remote users. The provider's showing on this issue will thus have to include evidence that the area the new facility will serve is not already served by another provider.

Case Law: http://cdn.ca9.uscourts.gov/datastore/opinions/2009/10/13/05-56106.pdf The US Court of Appeals for the Ninth Circuit found Sprint's projected coverage maps unclear in *Sprint vs. Palos Verdes* in defining "significant gap". In any event, that there was a "gap" is certainly not sufficient to show there was a "significant gap" in coverage. In addition, the Court noted how Sprint already had existing cell towers throughout the city. It also acknowledged that public remarks and residents' drive test results contained in the staff report "further illustrate that Sprint's existing network was, at the very least, functional."

Residents near the proposed site on Burning Bush have come forward to show that they have both wireless streaming data and cell communication coverage. In this case, Verizon service already covers much of the project area.

Regarding whether there is a significant gap in coverage, the Board can ask the applicant to 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.

The Board can require the applicant to 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, proposed 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.

The Board can require the applicant to demonstrate with written documentation that they have analyzed the feasibility of repeaters in conjunction with the Facility Sites listed in compliance with the documentation requested 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. In addition, the Board can require the applicant to provide 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.

The Board can inquire as to why the applicant did not conduct a balloon visibility test, something that is routinely 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.

Deny the Project permit because the applicant and the ZA did not provide adequate and reasonable findings as to why the Burning Bush Project site is preferable to other feasible sites.

AT&T's "Alternative Site Location Analysis" (ALSA) indicates three potential sites were chosen in the area. The site selected on Burning Bush Road appears to be the furthest of the three from the Federal "optimal coverage location." Both of the alternative sites are closer to the identified optimal coverage target area, both are closer to easements for electricity and will not be difficult to obtain or are already available, and one of the sites is located in a less populated area.

The two sites that were closer to the "optimal coverage location" were not selected for reasons that are 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."

Alternative Site #2 – the Summers Place located at 19844 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 better screened, making the tower less visible. Reportedly, the landowner is willing to take on the project.

Alternative Site #1 located at 15440 Barn Hollow Road 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 distance is doubled to the nearest resident in comparison to the current selected site. The landowner who was initially approached for this AT&T project is still interested in participating.

Carl Jones, representative of AT&T and Shore 2 Shore, stated at the ZA public hearing on 11/29/17 that the exact location of the Project site was done so solely as a convenience to the property owner Pamela Swartz. She could have chosen any location on this ten-acre parcel of property, but she decided to have it placed just 30 feet from her neighbor's 2.5 acre parcel property line.

The appellants also question why nearby Forest Service land was not proposed in the application. Forest service land rules and regulations allow communication towers, and potential areas may already host towers and have the necessary power easements. AT&T failed to include this option as a potential build site, and if they did consider it, they did not include this in the ALSA.

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 ASLA does not provide any specific facts to support this conclusion, and as discussed above and below, this site is actually the most intrusive site of all three chosen in the ASLA.

Deny the Project permit because neither AT&T nor the County has provided evidence that access for construction and utilities is legally available for PG&E electricity boring. In addition, no discussion or evidence of legal easements has been provided for the four proposed gravel turnouts to support ingress and egress to the project site (two along Royal Plum Way and two along Burning Bush Road). The surrounding neighbors will not grant easements for access or utility lines (see Attachment 3).

The construction of the tower, ground equipment and boring for the 1500 feet of power line extension will bring heavy equipment on private roads, damaging the roads and overburdening the local residents with construction on these private roads. The Notice of Conditional Approval states that the Use Permit includes a roadway conditional 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-constructions conditions by the applicant. **This permit includes no mention of such damage measures for Royal Plum Way and this issue must be addressed by the Board.** In addition, the permit must be overruled until it can be determined how long the roads will be obstructed and it determined what the definition of "reasonable precautions taken to minimize air disturbance."

II. Incomplete RF-EME Compliance Report - *Nevada County Zoning Administrator Staff Report File No. PLN17-0073, CUP17-0015, EIS17-0022, Attachments 4 - Radio Frequency – Electromagnetic Energy Compliance Report*

EBI Consulting did not submit a complete Radio Frequency RF-EME Compliance Report.

1. It is unknown how far away from the tower the maximum power density will occur. A specific figure for RF radiation at ground level expressed in microwatts per centimeter squared (uW/cm2) must be provided. The Report provides data allowing only an approximation of the maximum power density, and does not specify at what distance it will occur from the cell tower. Percent of standard metrics do not allow for an actual prediction to be determined. The actual predicted RF power density maximum cannot be determined because the AT&T RF Compliance Report does not provide adequate information to do so. The Report lacks a maximum power density prediction at a given distance from the cell tower, what the maximum power density is in uW/cm2, and the basis for determining for the uncontrolled public limit at this combination of frequencies and power outputs for each. See attachment *a. cp-Burning Bush Map* for distance to nearby residences for reference.

2. The maximum Effective Radiated Power at each of the frequencies to be broadcasted needs to be provided (700 MHz, 850 MHz, 1900 MHz, 2300MHz). Since the actual compliance level for MPE will be determined by a calculation that combines each contributing frequency and its proportionate contribution to the overall cumulative RF output, the actual compliance level (in microwatts/cm2) is missing from this Report. If AT&T's consultant does not provide this, it prevents any independent verification of the RF modeling conclusions. See attachment *b. Power Density Calculation Worksheet* which requests all the data needed to perform calculations of RF Power Density for the compliance report. Also missing from the report are findings regarding the antenna gain, such as down-tilt, which can have a very significant effect on how much RF power density is predicted and formulated.

3. The RF Compliance Report for this Project is deficient because co-located build outs permitted under this application are not characterized in the RF Compliance Report. Missing from the RF report are the Cumulative Projections of RF during the build-out of the two co-location projects. In addition, the Staff Report and all related permit

documents state, "The mono-pine communication tower shall be engineered to accommodate a minimum of two (2) additional carriers in addition to AT&T." What is the maximum number of carriers that can be located on the tower? Will the county be approving a permit for AT&T and two co-locators without requiring other applications if more than two co-locators are planned?

4. The project description indicates future development is being permitted with no assessment of the cumulative RF power density that will reasonably be anticipated with full buildout of the planned project. An RF Compliance Report must be required for the full-buildout of the cell tower (the complete project) that includes co-located carriers.

5. As stated attachment c. "*Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields*" by the Federal Communications Commission in the OET BULLETIN 65 Edition 97-01, August 1997, from the Office of Engineering & Technology on page 38: "The rules adopted by the FCC specify that, in general, at multiple transmitter sites actions necessary to bring the area into compliance with the guidelines are the shared responsibility of all licensees whose transmitters produce field strengths or power density levels at the area in question in excess of 5% of the exposure limit (in terms of power density or the square of the electric or magnetic field strength) applicable to their particular transmitter (*See* 47 C.F.R. 1.1307(b)(3), as amended.) When performing an evaluation for compliance with the FCC's RF guidelines all significant contributors to the ambient RF environment should be considered, including those otherwise excluded from performing routine RF evaluations, and applicants are expected to make a good-faith effort to consider these other transmitters. For purposes of such consideration, significance can be taken to mean any transmitter producing more than 5% of the applicable exposure limit (in terms of power density or the square of the electric or magnetic field strength) at accessible locations. The percentage contributions are then added to determine whether the limits are (or will be) exceeded. If the MPE limits are exceeded, then the responsible party or parties, as described below, must take action to either bring the area into compliance or submit an EA…

   Applicants and licensees should be able to calculate, based on considerations of frequency, power and antenna characteristics the distance from their transmitter where their signal produces an RF field equal to, or greater than, the 5% threshold limit. The applicant or licensee then shares responsibility for compliance in any accessible area or areas within this 5% "contour" where the appropriate limits are found to be exceeded…

   The following policy applies in the case of an application for a proposed transmitter, facility or modification (not otherwise excluded from performing a routine RF evaluation) that would cause non-compliance at an accessible area previously in compliance. In such a case, it is the responsibility of the applicant to either ensure compliance or submit an EA if emissions from the applicant's transmitter or facility will result in an exposure level at the non-complying area that exceeds 5% of the exposure

limits applicable to that transmitter or facility in terms of power density or the square of the electric or magnetic field strength."

The above policy states that the co-locators approved for this Project must be accountable if they contribute in excess of 5% of the exposure limit. The EXISTING first antennas in the Burning Bush Road project produce 5.2% of the exposure limit (see screen shot of the RF Compliance report paragraph below). Logically the next ones will be equal or greater RF exposure and the RF report must include this information.

> At the nearest walking/working surfaces to the AT&T antennas, the maximum power density generated by the AT&T antennas is approximately 5.20 percent of the FCC's general public limit (1.04 percent of the FCC's occupational limit). The composite exposure level from all carriers on this site is approximately 5.20 percent of the FCC's general public limit (1.04 percent of the FCC's occupational limit) at the nearest walking/working surface to each antenna. Based on worst-case predictive modeling, there are no areas at ground level related to the proposed AT&T antennas that exceed the FCC's occupational or general public exposure limits at this site. At ground level, the maximum power density generated by the antennas is approximately 4.40 percent of the FCC's general public limit (0.88 percent of the FCC's occupational limit).

The findings of the ZA Staff Reports is insufficient. It requires a full report of the project impacts based on the full-buildout of the cumulative wireless co-location project, rather than the initial AT&T three-sector antenna facility. In addition, the Staff Report and all related permit documents state, "The mono-pine communication tower shall be engineered to accommodate a minimum of two (2) additional carriers in addition to AT&T." What is the maximum number of carriers that can be located on the tower? Will the county be approving a permit for AT&T and two co-locators without requiring other applications if more than two co-locators are brought in?

Deny the permit because the MND and RF Report do not take into account the RF impacts of the co-location carriers in future phases, and a reasonable assumption of future power output from each. This is commonly done by municipalities to assure compliance with CEQA and other requirements for approving a development permit. **Without this information, the County is approving a permit without full assessment of the entire project.**

III. Inaccurate Findings - Negative Declaration: L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration (EIS14-005)

Per Sec. L-II 5.5.2 Development Permit, (C) Decision and Findings – The Appellants object to the ZA approval of PLN17-0073; CUP17-0015; EIS17-0022 on the basis that all feasible mitigation measures have NOT been imposed upon the project. (*Sec. L-II 5.5.2 Development Permit, (C) Decision and Findings, 11.)*

Migratory Birds

In the Initial Study and the MND, under the section Biological Resources, and regarding the Existing Setting and the Impact Discussion, it states the "Biological Inventory (Beedy, 2017)

prepared for the project site found no state or federally listed threatened or endangered plant or animal species or any other special status species are expected to occur due to the absence of suitable habitat."

This study was performed on the proposed project site, but no study was done for the adjacent property. A distance of 30 feet from the adjacent property means that bird species on that adjacent property can be impacted either during the construction phase, or during the operation of the communications tower.

The Migratory Bird Treaty Act (MBTA) states: "No person may take (kill), possess, import, export, transport, sell, purchase, barter, or offer for sale, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit…" Under the MBTA it is illegal to destroy a nest that has eggs or chicks in it or if there are young birds that are still dependent on the nest for survival.

The Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning Division of Migratory Bird Management U. S. Fish and Wildlife Service Falls Church, Virginia August 2016 states:

Construction, operation, and maintenance activities - Adults, eggs, or nestlings can experience direct mortality through:

a. Trauma or death during vegetation removal;

b. Trauma or death during tower maintenance; and

c. Death of eggs or nestlings when actions or activities cause adults to abandon nests.

Bird nesting is disturbed by human presence during construction and maintenance, and from nearby noise. The HVAC system in the ground equipment will be operating during part of the nesting season, which may cause nest abandonment.

The Migratory Bird Act still applies whether the species is listed or not. The following is a list of migratory birds that have nested in the Burning Bush area's Oak woodland habitat: Red-breasted Sapsucker, Nuttal's Woodpecker, Pileated Woodpecker, Downy Woodpecker, Olive-sided Flycatcher, Western Wood-Pewee, Pacific-slope Flycatcher, Ash-throated Flycatcher, Cassin's Vireo, Hutton's Vireo, Wrentit, American Robin, Western Bluebird, Orange-crowned Warbler, Nashville Warbler, Black-throated Gray Warbler, Purple Finch, Oak Titmouse, Bushtit, Red-breasted Nuthatch, Western Tanager, and Black-headed Grosbeak.

The United States Department of Interior wrote a letter regarding the proposal for telecommunications towers (ER 14/0001) (ER 14/0004) and their findings have bearing on the proposed CUP for Burning Bush Road:

> "The placement and operation of communication towers, including un-guyed, unlit, monopole or lattice-designed structures, impact protected migratory birds in two significant ways. The first is by injury, crippling loss, and death from collisions with

> towers and their supporting guy-wire infrastructure, where present. The second significant issue associated with communication towers involves impacts from non-ionizing electromagnetic radiation emitted by them…It has been argued that communication towers including "short" towers do not impact migratory birds, including at the population level *(e.g.,* Arnold and Zink 2011), but recent findings have contradicted that assertion (Manville 2007a, 2013a, Longcore *et al.* 2012, 2013)…. Radiation studies at cellular communication towers were begun circa 2000 in Europe and continue today on wild nesting birds. Study results have documented nest and site abandonment, plumage deterioration, locomotion problems, reduced survivorship, and death *(e.g.,* Balmori 2005, Balmori and Hallberg 2007, and Everaert and Bauwens 2007). Nesting migratory birds and their offspring have apparently been affected by the radiation from cellular phone towers in the 900 and 1800 MHz frequency ranges- 915 MHz is the standard cellular phone frequency used in the United States. However, the electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today. This is primarily due to the lower levels of radiation output from microwave-powered communication devices such as cellular telephones and other sources of point-to-point communications; levels typically lower than from microwave ovens. The problem, however, appears to focus on very low levels of non-ionizing electromagnetic radiation. For example, in laboratory studies, T. Litovitz (personal communication) and DiCarlo *et al.* (2002) raised concerns about impacts of low-level, non-thermal electromagnetic radiation from the standard 915 MHz cell phone frequency on domestic chicken embryos- with some lethal results (Manville 2009, 2013a). Radiation at extremely low levels (0.0001 the level emitted by the average digital cellular telephone) caused heart attacks and the deaths of some chicken embryos subjected to hypoxic conditions in the laboratory while controls subjected to hypoxia were unaffected (DiCarlo *et al.* 2002)." (See attachment *d. us.doi.comments-birds.pdf*)

Deny this Project permit based on the lack of a nesting survey to determine if active avian nests are present on or near the project site (Mitigation Measure 4B). If active nests are found on or within 500 feet of the site, disturbance or removal of the nest shall be avoided until the young have fledged and the nest is no longer active. The project biologist shall recommend a buffer based on the species, site conditions, and the proposed construction activities near the active nest, and the sighting shall be reported to California Department of Fish and Wildlife and the California Natural Diversity Database.

Fire and Facility Equipment Safety

Provisions of Appeal: Safety Regulations; General Requirements (Fire Safety Reg. Hearing Body) L-XVI Fire Safety Regulations; 2.7 Appeals; Fire Safety Standards (County Fire Marshal or Fire Chief) Sec. G-IV 7.2 Application of Article

1. **Deny this permit based on the lack of fire turnout specifications, lack of property easements for pull outs, lack of mitigation and monitoring of damage measures for Royal Plum Way, and a lack of fire break for the adjoining property.**

   In the Notice of Conditional Use Permit for the AT&T Burning Bush Road project it states: To support safe ingress and egress to the project site four gravel pull outs will be installed – two along Royal Plum Way and two along Burning Bush Road. Vegetation management to reduce fire fuels within five feet wide by 40 feet long on both sides of the right-of-way paved surface will also be conducted and maintained....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 Marshall's Office to specific locations.

2. The Initial Study/Mitigated Negative Declaration states that the proposed project would have no impact on exposing people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildland are adjacent to urbanized areas or where residences are intermixed with wildlands. This is FALSE. **This project will have Significant Impact on the surrounding wildlands and residences.**

   The project area is in a Very High Fire Hazard Severity Zone as designated by Cal-Fire, and is quite remote and difficult for emergency personnel to access. Typically, the Fire Code specifies that there be a 100-foot clearance around the structure. That would mean 70 feet of clearance would be needed on the adjacent properties to the north and to the east, as they are only 30 feet from the project site. The ZA rules state that in this FR-40 zone, only 30 feet is required. Therefore, on two sides of the tower, there will only be a 30-foot clearing in a very heavily forested, extreme fire danger zone. The property to the north is over 300 acres of uninhabited wildland which traverses to the Yuba River and backs up the N. San Juan canyon, which is also wildlands.

   Communication towers do catch fire. Among the causes: overheating of equipment, improper cooling, lightning strikes, and other malfunctions. The Initial Study and Mitigated Negative Declaration do not take into account the increased risk of fire at the site of the antennas, transmitters and other equipment on the tower. Even proper grounding may not always offset potential equipment damage or failure from massive jolts and sudden ground current, including accessory building and generator explosions.

3. Because these towers may present an increased risk of fire in an already extremely high danger zone, along with the recent decline of insurance carriers willing to issue policies in the area, nearby property owners will potentially come up against having their own hazard insurance policies cancelled and become unable to obtain new policies for hazard insurance. The Appellants ask the Board to give consideration to the potential of property insurance availability being affected and becoming prohibitively expensive or even unavailable to homeowners in the vicinity of the proposed tower. This further reduces the desirability and

therefore market value of homes in the area and **the Appellants request that the Board consider this as the taking of property without due process.**

Structural Report is Inadequate

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.

6. Towers that are located a distance that is less than 100% of their height from a property line, a habitable structure or other tower, shall include a report by a structural engineer licensed by the State of California, certifying that the proposed tower is designed to withstand without failure the maximum forces expected from wind, earthquakes, and ice, when the tower is fully loaded with antennas, transmitters and other equipment and camouflaging. The report shall describe the tower structure, specifying the number of and type of antennas it is designed to accommodate, providing the basis for the calculations done and documenting the actual calculations performed.

In addition to the lack of an adequate fire break for adjacent properties, the discussion of the fall zone of the tower is missing from the structural report. Cell towers collapse because of structural problems or because they are unable to withstand sustained winds or wind gusts. Even with thorough review, cell towers designed to withstand 130 mile per hour winds have snapped in winds less than 55 mph. Winds on the ridge in the project area are known to be as high as 55 mph. Cellular phone gear (antennas) have snapped and caused severe fires. Towers have also collapsed due to construction errors (31%), to ice (29%), to special wind (19%), to aircraft (11%) and to anchor failure (10%). Mechanical failure can be caused by stress, extreme overload, defect in material, fatigue, corrosion, poor workmanship, insufficient maintenance, and sabotage, as well as any combination of these factors. Communication towers are constructed of multiple individual components, the failure of one or more of which can cause a complete structural failure, and concomitant collapse. Some of the most common areas and elements of failure which result in the collapse these towers are baseplates, flanges, joints, bolts and guy wires.

Regarding the fall-zone, towers need to be distanced at least twice the height of the tower from any adjacent property line. The distance and height of this tower from the nearby property 30 feet away is inadequate as a safety zone, because it is does not give a safe area in case of a serious mechanical failure and collapse of the tower. This is a serious flaw in the site selection process. In addition, there is no mention of liability and who will be responsible for fire and damage issues arising if this tower catches fire or fall on adjacent property. **Deny the permit for these reasons and lack of the applicant's proof of a signed and verified insurance policy covering liability in case of a fire caused by the tower, and coverage for damage from a downed tower.**

Note that at the Building Permit Phase of the project, the applicant will be required to submit complete structural calculations for the tower and equipment shelter at the time of building permit submittal. It is also required that 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. **There is no mention of whether the structural calculations and equipment will be for just one locator or all three co-locators. The calculations need to be for all three co-locators especially since a tower build-out will impact the structural integrity and potential load on the tower increasing risk of mechanical failure and collapse.**

Noise

Provisions of Appeal: Negative Declaration: L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration; Policy 9.1.2e

The findings of Less Than Significant Impact or No Impact regarding Noise are false. For instance, there is no information regarding noise levels from the proposed air conditioning unit for the equipment and how that will be determined at the building permit phase. The only statement regarding noise from this source is that it will meet the County of Nevada noise standards.

Table 9.1 defines the noise limits for Land use designations. The properties in the area have the FR-40 designation with the limits highlighted in the table below.[1]

TABLE 9.1
NOISE STANDARDS

Exterior Noise Limits				
Land Use Category	**Zoning Districts**	**Time Period**	**Noise Level, dBA**	
			L_{eq}	L_{max}
Rural	"A1" "TPZ"	7 am - 7 pm	55	75
	"AE" "OS"	7 pm - 10 pm	50	65
	"FR" "IDR"	10 pm - 7 am	40	55
Residential and Public	"RA" "R2"	7 am - 7 pm	55	75
	"R1" "R3"	7 pm - 10 pm	50	65
	"P"	10 pm - 7 am	45	60
Commercial and Recreation	"C1" "CH" "CS"	7 am - 7 pm	70	90
	"C2" "C3" "OP"	7 pm - 7 am	65	75
	"REC"			
Business Park	"BP"	7 am - 7 pm	65	85
		7 pm - 7 am	60	70
Industrial	"M1" "M2"	any time	80	90

Table from Chapter 9, Nevada County General Plan

There is a provision in the code, Policy 9.1.2e that will allow for the imposition of a more restrictive standard. Under this provision consideration must be given to the unique conditions currently in the area.

"9.1.2e. Because of the unique nature of sound, the County reserves the right to provide for a more restrictive standard than shown in the Exterior Noise Limits table contained in this policy. The maximum adjustment shall be limited to be not less than the current ambient noise levels and shall not exceed the standards of this policy or as they may be further adjusted by Policy 9.1.2.b."

As seen in attachment *e. 19NO9E27_FR-40 map*, of the 52 parcels in section 27, thirty-seven have the FR-40 zoning designation, but only three of those are close to or greater than 40 acres in size. Most other parcels range from two to ten acres. Half of the parcels have dwellings. A prime reason for choosing to live in this area is the quiet nature of the area. During the day, there is almost no background noise. One can listen to birds, insects and other wildlife without the interference of the background sound of motors and other evidence of industrial man. This quiet nature is embraced and encouraged, and we reject one property owner's and AT&T's intrusion upon this quite nature by the need to air condition space for inanimate things. **Deny the project based on the Significant Impact it will have which will result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.**

Aesthetics

Regarding Aesthetics on page 34 of the Mitigated Negative Declaration and whether the project would (a) result in demonstrable, negative, aesthetic effects on scenic vistas or views open to the public, it states that the proposed project will have *less than significant impact; and,*

Regarding whether the proposed project would (c) substantially degrade the existing visual character or quality of the site and its surroundings, it states that it would have *no impact; and,*

Regarding the Impact Discussion (1a) stating that based on submitted visual simulations, the mono-pine cell tower will not be visible from Barn Hollow Road (Figure 5), and the top of the tower will be visible from Burning Bush Road (Figure 4) at the entrance to the project property, however, the "mono-pine tower will blend in with the natural vegetation;

1. **The issue of Aesthetic Impacts relates directly to the land use compatibility issue and the conclusions on aesthetic impacts are in error.**
2. Ordinance L-II, 3.8 E.1.b. states no new tower shall be installed in a location that is not developed with communication facilities or other public or quasi-public uses unless it blends with the surrounding, existing, natural and man-made environment so as to be effectively unnoticeable. This has not been demonstrated in the MND. For those driving

by the site, living near the site, and visiting the local residents and parcel owners on Burning Bush Road, the tower will not "blend in".

3. The photo-simulations (Figures 4 and 5) are of extremely poor quality, not accurate, deceptive and not representative of the view. The simulated photo shows a photo-shopped tree (not an actual visual of what a mono-pine tower looks like) that is the same height as the surrounding trees. The same is true regarding Figure 5. The coordinates, calculations and methods used to measure the distance from where the photos were taken to the proposed site, and the view from the road to the top of the proposed tower were not provided.
4. In addition, photo simulations from all areas of concern (adjoining properties and nearby residences) were not taken.
5. The applicant did not erect posts and orange tape showing the height and diameter of the entire tower installation which provides a true visual of the tower.
6. The communications 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, thus disturbing our scenic vistas. On page 7 of the Staff Comment in the ZA Staff Report it states that the "the top of the proposed 130-foot mono-pine would be at approximately 3,493 feet elevation, and tree-top elevation of the surrounding cedars and pines ranges from 3,428 to 3,464. The adjacent trees range from 65' to 100'. This will have *Significant Impact on Aesthetics* when the top of the tower can be very easily seen coming out 30 to 60 feet higher than the surrounding trees. This destroys the "scenic vista" from surrounding properties, and will very easily be seen when property owners drive up Burning Bush Road and walk out their homes, especially when standing on a deck 12-feet off the ground at the nearest residence. These surrounding properties were purchased by the appellants with a desire to be undisturbed in nature. This tower will destroy their view of nature, and devalue properties.
7. Finally, one of the most glaring deficiencies in the Mitigated Negative Impact Report regarding Aesthetics is that it did not provide an accurate and precise visual simulation of the full build-out on the cell tower with the additional co-location equipment from all surrounding views. In addition, the Staff Report and all related permit documents state, "The mono-pine communication tower shall be engineered to accommodate a <u>minimum</u> of two (2) additional carriers in addition to AT&T." What is the maximum number of carriers that can be located on the tower? Will the county be approving a permit for AT&T and two co-locators without requiring other applications if more than two co-locators are to be included?
8. While the Telecommunications Act of 1996 states that health concerns will not impact decisions regarding location of cellular antennas, Congress is unable to dictate the marketplace that responds to such installations. **The appellants argue that installing these antennas constitutes a taking of property without due process.** Even if there is an attempt to disguise it as a fake metal pine tree, real estate professionals are required by the California Realtors Association (CAR) that sellers and licensees must disclose material facts that affect the value or desirability of a property including conditions that

are known outside and surrounding areas – see attachment f. and excerpt below from Seller Property Questionnaire (SPQ paged 3-4 revised 12/16):

K. NEIGHBORHOOD: **ARE YOU (SELLER) AWARE OF...**

1. Neighborhood noise, nuisance or other problems from sources such as, but not limited to, the following: neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife ..... [ ] Yes [ ] No

Prospective property buyers will take the existence of a nearby cellular antenna cluster into account. Studies and realtor feedback show buyers do not want to buy property located near a tower, and the selling price of the property dropping significantly:

a. Study by the National Institute for Science, Law & Public Policy (NISLAPP) "**Neighborhood Cell Towers & Antennas—Do They Impact a Property's Desirability?**" initiated June 2, 2014, has now been completed by 1,000 respondents as of June 28, 2014. Conclusion: An overwhelming 94 percent of home buyers and renters surveyed say they are less interested and would pay less for a property located near a cell tower or antenna.
   - 94% said a nearby cell tower or group of antennas would negatively impact interest in a property or the price they would be willing to pay for it.
   - 79% said under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas.
   - 89% said they were generally concerned about the increasing number of cell towers and antennas in their residential neighborhood.

b. Study by Sandy Bond, PhD of the New Zealand Property Institute, and Past President of the Pacific Rim Real Estate Society (PRRES), **The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods,** was published in *The Appraisal Journal* of the Appraisal Institute in 2006. The Appraisal Institute is the largest global professional organization for appraisers with 91 chapters.
   - The sales data that occurred before a Cell Phone Base Station, i.e., antenna (CPBS) was built were compared to sales data after a CPBS was built to determine any variance in price, "If purchasing or renting a property near a CPBS, over a third (38%) of the control group respondents would reduce price of their property by more than 20%."

c. New York Times news story, "A Pushback Against Cell Towers," published in the Real Estate section, on August 27, 2010, found that property values will decrease 4 to 10%, depending on the nearness and size of a cellular installation. "Homeowners have given voice to concerns that proximity to a monopole or antenna may not be just aesthetically unpleasing but also harmful to property values. Many also perceive

health risks in proximity to radio frequency radiation emissions, . . ." Tina Canaris, an associate broker and a co-owner of RE/MAX Hearthstone in Merrick, N.Y., said, "You can see a buyer's dismay over the sight of a cell tower near a home just by their expression, even if they don't say anything." http://www.nytimes.com/2010/08/29/realestate/29Lizo.html?_r=1&ref=realestat

d. New York Times story, **"Cell Towers Are Sprouting in Unlikely Places,"** January 9, 2000 (fears that property values could drop between 5 and 40 percent because of neighboring cell towers).

e. **Court Case:** A Houston jury awarded $1.2 million to a couple in 1999 because a 100-foot- tall cell tower was determined to have lessened the value of their property. Property values depreciated by about 10 percent because of the tower. Nissimov,R., "GTE Wireless Loses Lawsuit over Cell-Phone Tower,"; Houston Chronicle, February 23, 1999, Section A, page 11.

f. Story in the Barrington [Illinois] Courier- "**Tower Opponents Ring Up a Victory**"; by Phil Brozynski, Review, February 15, 1999, 5, reporting how the Cuba Township assessor reduced the value of 12 homes following the construction of a cell tower in Lake County, IL. http://spot.colorado.edu/~maziara/appeal&attachments/Newton-43- LoweredPropertyValuation/

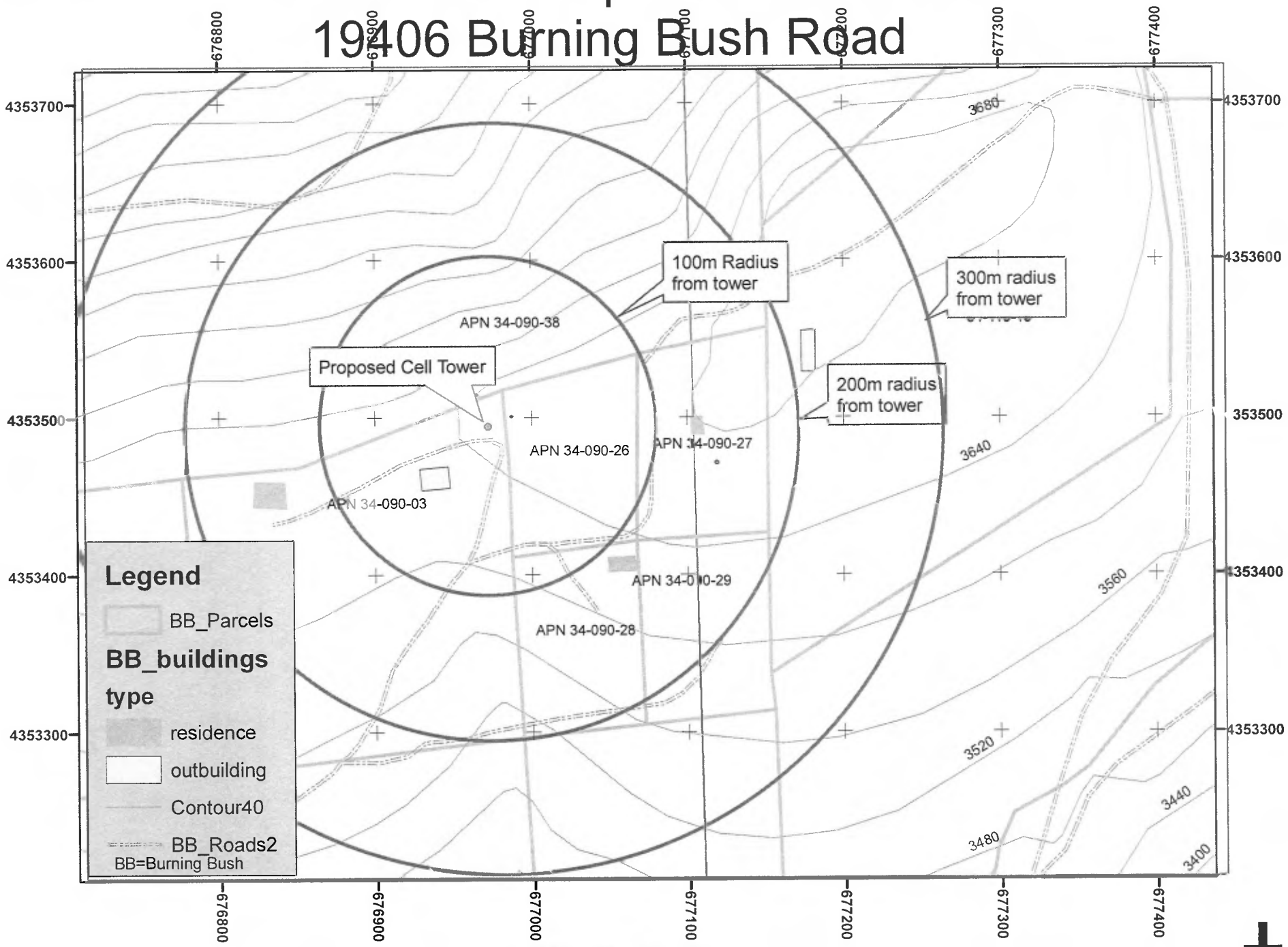
Deny this permit based on the Federal Communications Act of 1996 mandating the County with the authority to deny permit applications for a cell tower based on aesthetics. Deny this permit based on false finding of Less Than Significant Impact, and No Impact on Aesthetics in the existing setting. The proposed project will 1) have Significant Impact and result in demonstrable, negative, aesthetic effects on scenic vistas and views open to the public, and 2) Substantially degrade the existing visual character and quality of the site and its surroundings. **Deny the permit on the basis that the Nevada County Board of Supervisors is protecting the nearby citizens' investments in their homes and land against unwanted intrusions by communication towers and antennas and that this project constitutes a taking of property without due process.**

Attachments:

a. cp-Burning Bush Map
b. Power Density Calculation Worksheet
c. FCC OET RF Exposure Guidelines
d. us.doi.comments-birds.pdf
e. 19NO9E27_FR-40 map
f. Seller Property Questionnaire

Att Written Statement of Appeal (V17-0015, PLN17-0073, CUP17-0015; ED17-0022)
Attachment a.

PLN17-0073 Proposed Cell Tower
19406 Burning Bush Road



Santini recommends that base stations be located >300m from residences

GPS coordinates in UTM Zone 10S NAD83

Attachment D. – (Written Statement on Appeal - V17-005, PLN17-0073, CUP17-0015, EIS17-0022)

POWER DENSITY CALCULATION WORKSHEET

I. Transmitting Facility Data

Number of Channels: _____per antenna/sector Total: _____

ERP per channel planned: _____ design maximum, if different: _____ for design maxin

Total ERP per antenna/sector: _____

Lowest transmit frequency: _____MHz Carrier: _____

Location: Latitude _____°_____'_____" Address: _____

Longitude _____°_____'_____" _____

II. Antenna Details

Manufacturer: _____ Model No: _____

Antenna Gain:_____dBd Beam tilt:_____°

Sectorized: Yes 👎 No 👎

No. of Sectors: _____ Bearing: Sector A_____° B_____° C_____° D_____°

Coverage per Sector: Sector A_____° B_____° C_____° D_____°

III. Center of Radiation

Height above ground: _____feet Ground Elevation AMSL: _____feet

IV. Desired Output Data

Points of interest: A_____feet B _____feet C _____feet

Power densities of interest: Occupational Standard 👎 Public Standard 👎

Specific power density: A_____$\mu W/cm^2$ B _____$\mu W/cm^2$ C _____$\mu W/cm^2$

Closest building within 1000 feet -	Residence 👎	Business 👎
From base of tower:	_____feet	_____ feet
Ground Elevation AMSL:	_____feet	_____ feet
No. of floors:	_____	_____
Highest floor height above ground:	_____feet	_____ feet

Restricted access: Yes 👎 No 👎 Distance to fencing from base of tower:_____feet

V. Comments: _____

_____

_____

_____

C. Attachment - Written Stmt on Appeal (U17-0015, PLN17-0673, CUP-0015, EIS17-0022)

Federal Communications Commission
Office of Engineering & Technology

Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields

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August 1997

the FCC. Therefore, at multiple-transmitter sites, all significant contributions to the RF environment should be considered, not just those fields associated with one specific source. When there are multiple transmitters at a given site collection of pertinent technical information about them will be necessary to permit an analysis of the overall RF environment by calculation or computer modeling. However, if this is not practical a direct measurement survey may prove to be more expedient for assessing compliance (see Section 3 of this bulletin that deals with measurements for more information).

The rules adopted by the FCC specify that, in general, at multiple transmitter sites actions necessary to bring the area into compliance with the guidelines are the shared responsibility of all licensees whose transmitters produce field strengths or power density levels at the area in question in excess of 5% of the exposure limit (in terms of power density or the square of the electric or magnetic field strength) applicable to their particular transmitter.[22] When performing an evaluation for compliance with the FCC's RF guidelines ***all*** significant contributors to the ambient RF environment should be considered, including those otherwise excluded from performing routine RF evaluations, and applicants are expected to make a good-faith effort to consider these other transmitters. For purposes of such consideration, significance can be taken to mean ***any*** transmitter producing more than 5% of the applicable exposure limit (in terms of power density or the square of the electric or magnetic field strength) at accessible locations. The percentage contributions are then added to determine whether the limits are (or would be) exceeded. If the MPE limits are exceeded, then the responsible party or parties, as described below, must take action to either bring the area into compliance or submit an EA.

Applicants and licensees should be able to calculate, based on considerations of frequency, power and antenna characteristics the distance from their transmitter where their signal produces an RF field equal to, or greater than, the 5% threshold limit. The applicant or licensee then shares responsibility for compliance in any accessible area or areas within this 5% "contour" where the appropriate limits are found to be exceeded.

The following policy applies in the case of an application for a proposed transmitter, facility or modification (not otherwise excluded from performing a routine RF evaluation) that would ***cause non-compliance*** at an accessible area previously in compliance. In such a case, it is the responsibility of the applicant to either ensure compliance or submit an EA if emissions from the applicant's transmitter or facility would result in an exposure level at the non-complying area that exceeds 5% of the exposure limits applicable to that transmitter or facility in terms of power density or the square of the electric or magnetic field strength.

For a renewal applicant whose transmitter or facility (not otherwise excluded from routine evaluation) contributes to the RF environment at an accessible area ***not in compliance*** with the guidelines the following policy applies. The renewal applicant must submit an EA if emissions from the applicant's transmitter or facility, at the area in question, result in an exposure level that exceeds 5% of the exposure limits applicable to that particular transmitter

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[22] *See* 47 C.F.R. 1.1307(b)(3), as amended.

in terms of power density or the square of the electric or magnetic field strength. In other words, although the renewal applicant may only be responsible for a fraction of the total exposure (greater than 5%), the applicant (along with any other licensee undergoing renewal at the same time) will trigger the EA process, unless suitable corrective measures are taken to prevent non-compliance before preparation of an EA is necessary. In addition, in a renewal situation if a determination of non-compliance is made, other co-located transmitters contributing more than the 5% threshold level must share responsibility for compliance, regardless of whether they are categorically excluded from routine evaluation or submission of an EA.

Therefore, at multiple-transmitter sites the various responsibilities for evaluating the RF environment, taking actions to ensure compliance or submitting an EA may lie either with a newcomer to the site, with a renewal applicant (or applicants) or with all significant users, depending on the situation. In general, an applicant or licensee for a transmitter at a multiple-transmitter site should seek answers to the following questions in order to determine compliance responsibility.

(1) New transmitter proposed for a multiple-transmitter site.

- Is the transmitter in question already categorically excluded from routine evaluation?

- If ***yes***, routine evaluation of the application is not required.

- If ***not excluded***, is the site in question already in compliance with the FCC guidelines?

- If ***no,*** the applicant must submit an EA with its application notifying the Commission of the non-compying situation, unless measures are to be taken to ensure compliance. Compliance is the responsibility of licensees of all transmitters that contribute to non-complying area(s) in excess of the applicable 5% threshold at the existing site. If the existing site is subsequently brought into compliance ***without*** consideration of the new applicant then the next two questions below apply.

- If ***yes***, would the proposed transmitter cause non-compliance at the site in question?
- If ***yes***, the applicant must submit an EA (or submit a new EA in the situation described above) with its application notifying the Commission of the potentially non-complying situation, unless measures will be taken by the applicant to ensure compliance. In this situation, it is the responsibility of the applicant to ensure compliance, since the existing site is already in compliance.

- If ***no***, no further environmental evaluation is required and the applicant certifies compliance.

attachment d. Written Stmt. on Appeal (UI7-0015), PLN17-0673, CUP 17-0015, EIS17-0022)

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB - 7 2014

TAKE PRIDE IN AMERICA

In Reply Refer To: (ER 14/0001) (ER 14/0004).

Mr. Eli Veenendaal
National Telecommunications and Information
Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Veenendaal:

The Department of the Interior (Department) has reviewed the above referenced proposal and submits the following comments and attachment for consideration. Because the First Responder Network Authority (FirstNet) is a newly created entity, we commend the U.S. Department of Commerce for its timely proposals for NEPA implementing procedures.

The Department believes that some of the proposed procedures are not consistent with Executive Order 13186 Responsibilities of Federal Agencies to Protect Migratory Birds, which specifically requires federal agencies to develop and use principles, standards, and practices that will lessen the amount of unintentional take reasonably attributed to agency actions. The Department, through the Fish and Wildlife Service (FWS), finds that the proposals lack provisions necessary to conserve migratory bird resources, including eagles. The proposals also do not reflect current information regarding the effects of communication towers to birds. Our comments are intended to further clarify specific issues and address provisions in the proposals.

The Department recommends revisions to the proposed procedures to better reflect the impacts to resources under our jurisdiction from communication towers. The placement and operation of communication towers, including un-guyed, unlit, monopole or lattice-designed structures, impact protected migratory birds in two significant ways. The first is by injury, crippling loss, and death from collisions with towers and their supporting guy-wire infrastructure, where present. The second significant issue associated with communication towers involves impacts from non-ionizing electromagnetic radiation emitted by them (See Attachment).

In addition to the 147 Birds of Conservation Concern (BCC) species, the FWS has listed an additional 92 species as endangered or threatened under the Endangered Species Act. Together with the bald and golden eagle, this represents 241 species of birds whose populations are in trouble or otherwise merit special protection, according to the varying criteria of these lists. The Department suggests that FirstNet consider preparing a programmatic environmental impact statement (see attachment) to determine and address cumulative impacts from authorizing FirstNet projects on those 241 species for which the incremental impact of tower mortality, when

added to other past, present, and reasonably foreseeable future actions, is most likely significant, given their overall imperiled status. Notwithstanding the proposed implementing procedures, a programmatic NEPA document might be the most effective and efficient method for establishing best management practices for individual projects, reducing the burden to individual applicants, and addressing cumulative impacts.

Categorical Exclusions
The Department has identified 13 of the proposed categorical exclusions (A-6, A-7, A-8, A-9, A-10, A-11, A-12, A-13, A-14 A-15, A-16, A-17, and A-19) as having the potential to significantly affect wildlife and the biological environment. Given this potential, we want to underscore the importance of our comments on FirstNet's procedural guidance under Environmental Review and Consultation Requirements for NEPA Reviews and its list of extraordinary circumstances in Appendix D.

Environmental Review and Consultation Requirements for NEPA Reviews
To ensure there are no potentially significant impacts on birds from projects that may otherwise be categorically excluded, the Department recommends including the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act to the list of requirements in this section.

Extraordinary Circumstances
To avoid potentially significant impacts on birds from projects that may otherwise be categorically excluded, the Department recommends including species covered under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act to the list of environmentally sensitive resources. Additionally, adding important resources to migratory birds such as sites in the Western Hemisphere Shorebird Reserve Network and Audubon Important Bird Areas to the paragraph on areas having special designation or recognition would help ensure their consideration when contemplating use of a categorical exclusion.

Developing the Purpose and Need
The Department recommends inclusion of language that would ensure consideration of all other authorities to which NEPA is supplemental as opposed to simply the FirstNet mission. As currently written, the procedures are limited to ensuring the purpose and need considers the FirstNet mission. If strictly applied, this approach would severely limit the range of reasonable alternatives, and likely preclude consideration of more environmentally benign locations or construction practices.

Environmental Review Process, Apply NEPA Early in the Process, Where Action is by Non-Federal Entity
The Department recommends that FirstNet be required to coordinate with federal agencies having jurisdiction by law or special expertise on construction and lighting of its network of towers.

Thank you for the opportunity to comment on the draft document. If you have any questions concerning the comments, please contact Diana Whittington, NEPA Migratory Bird lead, at (703) 358-2010. If you have any questions regarding Departmental NEPA procedures, contact Lisa Treichel, Office of Environmental Policy and Compliance at (202) 208-7116.

Sincerely,

Willie R. Taylor
Director, Office of Environmental Policy
and Compliance

Enclosure

Literature Cited

Longcore, T., C. Rich, P. Mineau, B. MacDonald, D.G. Bert, L.M. Sullivan, E. Mutrie, S.A. Gauthreaux, Jr., M.L. Avery, R.C. Crawford, A.M. Manville, II, E.R. Travis, and D. Drake. 2013. Avian mortality at communication towers in the United States and Canada: which species, how many, and where? Biological Conservation 158: 410-419.

U.S. Fish and Wildlife Service. 2008. Birds of Conservation Concern, 2008. United States Department of Interior, Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, VA. 85 pages. *http://www.fws.gov/migratorybirds*.

Enclosure A

Background

The placement and operation of communication towers, including un-guyed, unlit, monopole or lattice-designed structures, impact protected migratory birds in two significant ways.

The first is by injury, crippling loss, and death from collisions with towers and their supporting guy-wire infrastructure, where present. Mass mortality events tend to occur during periods of peak spring and fall songbird bird migration when inclement weather events coincide with migration, and frequently where lights (either on the towers and/or on adjacent outbuildings) are also present. This situation has been well documented in the U.S. since 1948 in the published literature (Aronoff 1949, see Manville 2007a for a critique). The tallest communication towers tend to be the most problematic (Gehring *et al.* 2011). However, mid-range (~400-ft) towers as proposed by the First Responder Network Authority (FirstNet, a newly created entity under the Department of Commerce) can also significantly impact protected migratory birds, as can un-guyed and unlit lattice and monopole towers (Gehring *et al.* 2009, Manville 2007a, 2009, 2013a). Mass mortalities (more than several hundred birds per night) at unguyed, unlit monopole and lattice towers were documented in fall 2005 and 2011 in the Northeast and North Central U.S. (*e.g.*, Manville 2007a). It has been argued that communication towers including "short" towers do not impact migratory birds, including at the population level (*e.g.*, Arnold and Zink 2011), but recent findings have contradicted that assertion (Manville 2007a, 2013a, Longcore *et al.* 2012, 2013).

The second significant issue associated with communication towers involves impacts from non-ionizing electromagnetic radiation emitted by these structures. Radiation studies at cellular communication towers were begun circa 2000 in Europe and continue today on wild nesting birds. Study results have documented nest and site abandonment, plumage deterioration, locomotion problems, reduced survivorship, and death (*e.g.*, Balmori 2005, Balmori and Hallberg 2007, and Everaert and Bauwens 2007). Nesting migratory birds and their offspring have apparently been affected by the radiation from cellular phone towers in the 900 and 1800 MHz frequency ranges – 915 MHz is the standard cellular phone frequency used in the United States. However, the electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today. This is primarily due to the lower levels of radiation output from microwave-powered communication devices such as cellular telephones and other sources of point-to-point communications; levels typically lower than from microwave ovens. The problem, however, appears to focus on very low levels of non-ionizing electromagnetic radiation. For example, in laboratory studies, T. Litovitz (personal communication) and DiCarlo *et al.* (2002) raised concerns about impacts of low-level, non-thermal electromagnetic radiation from the standard 915 MHz cell phone frequency on domestic chicken embryos – with some lethal results (Manville 2009, 2013a). Radiation at extremely low levels (0.0001 the level emitted by the average digital cellular telephone) caused heart attacks and the deaths of some chicken embryos subjected to hypoxic conditions in the laboratory while controls subjected to hypoxia were unaffected (DiCarlo *et al.* 2002). To date, no independent, third-party field studies have been conducted in North America on impacts of tower electromagnetic radiation on migratory birds. With the European field and U.S. laboratory evidence already available,

independent, third-party peer-reviewed studies need to be conducted in the U.S. to begin examing the effects from radiation on migratory birds and other trust species.

Discussion

Collision Deaths and Categorical Exclusions

Attempts to estimate bird-collision mortality at communication towers in the U.S. resulted in figures of 4-5 million bird deaths per year (Manville 2005, 2009). A meta-review of the published literature now suggests, based on statistically determined parameters, that mortality may be 6.8 million birds per year in Canada and the U.S.; the vast majority in the United States (Longcore *et al.* 2012). Up to 350 species of birds have been killed at communication towers (Manville 2007a, 2009). The Service's Division of Migratory Bird Management has updated its voluntary, 2000 communication tower guidelines to reflect some of the more recent research findings (Manville 2013b). However, the level of estimated mortality alone suggests at a minimum that FirstNet prepare an environmental assessment to estimate and assess the cumulative effects of tower mortality to protected migratory birds.

A second meta-review of the published mortality data from scientific studies conducted in the U.S. and Canada (Longcore *et al.* 2013) strongly correlates population effects to at least 13 species of Birds of Conservation Concern (BCC, USFWS 2008). These are mortalities to BCC species based solely on documented collisions with communication towers in the U.S. and Canada, ranging from estimated annual levels of mortality of 1 to 9% of their estimated total population. Among these where mortality at communication towers was estimated at over 2% annually are the Yellow Rail, Swainson's Warbler, Pied-billed Grebe, Bay-breasted Warbler, Golden-winged Warbler, Prairie Warbler, and Ovenbird. Longcore *et al.* (2013) emphasized that avian mortality associated with anthropogenic sources is almost always reported in the aggregate, *i.e.*, "number of birds killed," which cannot detect species-level effects necessary to make effective and meaningful conservation assessments, including determining cumulative effects. These new findings strongly suggest the need for at least an environmental assessment by FirstNet, or more likely, an environmental impact statement.

Radiation Impacts and Categorical Exclusions

There is a growing level of anecdotal evidence linking effects of non-thermal, non-ionizing electromagnetic radiation from communication towers on nesting and roosting wild birds and other wildlife in the U.S. Independent, third-party studies have yet to be conducted in the U.S. or Canada, although a peer-reviewed research protocol developed for the U.S. Forest Service by the Service's Division of Migratory Bird Management is available to study both collision and radiation impacts (Manville 2002).

As previously mentioned, Balmori (2005) found strong negative correlations between levels of tower-emitted microwave radiation and bird breeding, nesting, and roosting in the vicinity of electromagnetic fields in Spain. He documented nest and site abandonment, plumage deterioration, locomotion problems, reduced survivorship, and death in House Sparrows, White Storks, Rock Doves, Magpies, Collared Doves, and other species. Though these species had historically been documented to roost and nest in these areas, Balmori (2005) did not observe these symptoms prior to construction and operation of the cellular phone towers. Balmori and Hallberg (2007) and Everaert and Bauwens (2007) found similar strong negative correlations

among male House Sparrows. Under laboratory conditions, DiCarlo *et al.* (2002) raised troubling concerns about impacts of low-level, non-thermal electromagnetic radiation from the standard 915 MHz cell phone frequency on domestic chicken embryos – with some lethal results (Manville 2009). Given the findings of the studies mentioned above, field studies should be conducted in North America to validate potential impacts of communication tower radiation – both direct and indirect – to migratory birds and other trust wildlife species.

Literature Cited

Arnold, T. W., and R.M. Zink. 2011. Collision mortality has no discernable effect on population trends of North American birds. Plos ONE 6:e24708.

Aronoff, A. 1949. The September migration tragedy. Linnaean News-Letter 3(1):2.

Balmori, A. 2005. Possible effects of electromagnetic fields from phone masts on a population of White Stork (*Ciconia ciconia*). Electromagnetic Biology and Medicine 24:109-119.

Balmori, A., and O. Hallberg. 2007. The urban decline of the House Sparrow (*Passer domesticus*): a possible link with electromagnetic radiation. Electromagnetic Biology and Medicine 26:141-151.

DiCarlo, A., N. White, F. Guo, P. Garrett, and T. Litovitz. 2002. Chronic electromagnetic field exposure decreases HSP70 levels and lowers cytoprotection. Journal Cellular Biochemistry 84: 447-454.

Everaert, J., and D. Bauwens. 2007. A possible effect of electromagnetic radiation from mobile phone base stations on the number of breeding House Sparrows (*Passer domesticus*). Electromagnetic Biology and Medicine 26:63-72.

Gehring, J., P. Kerlinger, and A.M. Manville, II. 2009. Communication towers, lights, and birds: successful methods of reducing the frequency of avian collisions. Ecological Applications 19:505-514.

Gehring, J., P. Kerlinger, and A.M. Manville, II. 2011. The role of tower height and guy wires on avian collisions with communication towers. Journal of Wildlife Management 75: 848-855.

Longcore, T., C. Rich, P. Mineau, B. MacDonald, D.G. Bert, L.M. Sullivan, E. Mutrie, S.A. Gauthreaux, Jr., M.L. Avery, R.C. Crawford, A.M. Manville, II, E.R. Travis, and D. Drake. 2012. An estimate of avian mortality at communication towers in the United States and Canada. PLoSONE 7(4) 17 pp, Open Access.

Longcore, T., C. Rich, P. Mineau, B. MacDonald, D.G. Bert, L.M. Sullivan, E. Mutrie, S.A. Gauthreaux, Jr., M.L. Avery, R.C. Crawford, A.M. Manville, II, E.R. Travis, and D. Drake. 2013. Avian mortality at communication towers in the United States and Canada: which species, how many, and where? Biological Conservation 158: 410-419.

Manville, A.M., II. 2002. Protocol for monitoring the impacts of cellular telecommunication towers on migratory birds within the Coconino, Prescott, and Kaibab National Forests, Arizona. Peer-reviewed research monitoring protocol requested by and prepared for the U.S. Forest Service. Division of Migratory Bird Management, USFWS. 9 pp, March 2002.

Manville, A.M., II. 2005. Bird strikes and electrocutions at power lines, communication towers, and wind turbines: state of the art and state of the science – next steps toward mitigation. Pages 1051-1064 *In* C.J. Ralph and T.D. Rich (eds), Bird Conservation Implementation in the Americas: Proceedings 3rd International Partners in Flight Conference, U.S.D.A. Forest Service Gen. Technical Report PSW-GTR-191, Albany, CA.

Manville, A.M., II. 2007a. Comments of the U.S. Fish and Wildlife Service submitted electronically to the FCC on 47 CFR Parts 1 and 17, WT Docket No. 03-187, FCC 06-164, Notice of Proposed Rulemaking, "Effects of Communication Towers on Migratory Birds." February 2, 2007. 32 pp.

Manville, A.M., II. 2007b. U.S. Fish and Wildlife concerns over potential radiation impacts from cellular communication towers on migratory birds and other wildlife – research opportunities. Invited Presentation to "Congressional Staff Briefing on the Environmental and Human Health Effects of Radiofrequency (RF) Radiation," House Capitol 5, Washington, DC. 16 page PowerPoint presentation. May 10, 2007.

Manville, A.M. II. 2009. Towers, turbines, power lines and buildings – steps being taken by the U.S. Fish and Wildlife Service to avoid or minimize take of migratory birds at these structures. Pages 262-272 *in* T.D. Rich, C. Arizmendi, D.W. Demarest, and C. Thompson (eds.). Tundra to Tropics: Connecting Birds, Habitats and People. Proceedings 4th International Partners in Flight Conference, McAllen, Texas.

Manville, A.M., II. 2011. Estimates of annual human-caused mortality to North American birds (with literature citations). Division of Migratory Bird Management, USFWS, for public distribution. 12 pages.

Manville, A.M., II. 2013a. Anthropogenic-related bird mortality focusing on steps to address human-caused problems. A White Paper for the Anthropogenic Panel, 5th International Partners in Flight Conference, Snowbird, Utah. August 27, 2013. 16 page peer-reviewed White Paper.

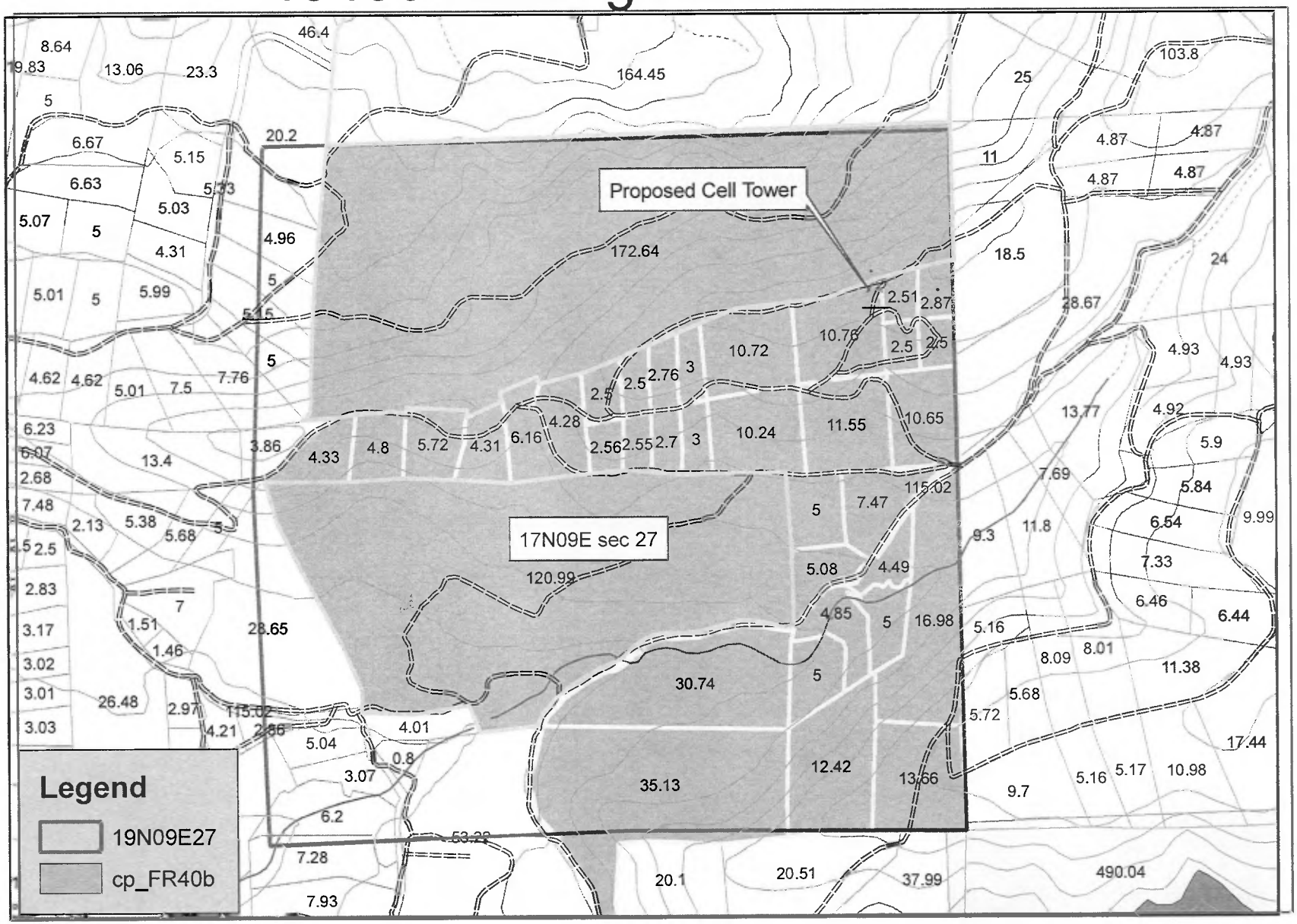
Manville, A.M., II. 2013b. U.S. Fish and Wildlife Service (USFWS) revised guidelines for communication tower design, siting, construction, operation, retrofitting, and decommissioning -- Suggestions based on previous USFWS recommendations to FCC regarding WT Docket No. 03-187, FCC 06-164, Notice of Proposed Rulemaking, "Effects of Communication Towers on Migratory Birds," Docket No. 08-61, FCC's Antenna Structure Registration Program, and Service 2012 Wind Energy Guidelines. Division of Migratory Bird Management, Arlington, VA. 5 pages.

U.S. Fish and Wildlife Service. 2008. Birds of Conservation Concern, 2008. United States Department of Interior, Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, VA. 85 pages. *http://www.fws.gov/migratorybirds*.

Attachment - Written Stmt. on Appeal - (VI7-0015, PLN17-0073, CUP17-0010, EIS 17-0022)

e.

PLN17-0073 Proposed Cell Tower
19406 Burning Bush Road



numbers = Parcel size in acres
Parcels outlined in blue: FR-40 > 40 acres
Parcels outlined in red have zoning other than FR-40
Parcel in green = public land

0 62.5 125 250 375 500 Meters
Scale: 1:13,000

GPS coordinates in UTM Zone 10S
NAD83

Attachment F. - Written Statement on Appeal (VAR17-0005, PLN17-0073, CUP17-0005, EIS17-0022)

CALIFORNIA ASSOCIATION OF REALTORS®

SELLER PROPERTY QUESTIONNAIRE

(C.A.R. Form SPQ, Revised 12/16)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should complete an Exempt Seller Disclosure (C.A.R. Form ESD) or may use this form instead.

I. Seller makes the following disclosures with regard to the real property or manufactured home described as _____, Assessor's Parcel No. _____, situated in _____ County of _____ California ("Property").

II. The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.

III. Note to Seller: PURPOSE: To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Answer based on actual knowledge and recollection at this time.
- Something that you do not consider material or significant may be perceived differently by a Buyer.
- Think about what you would want to know if you were buying the Property today.
- Read the questions carefully and take your time.
- If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.

IV. Note to Buyer: PURPOSE: To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Something that may be material or significant to you may not be perceived the same way by the Seller.
- If something is important to you, be sure to put your concerns and questions in writing (C.A.R. form BMI).
- Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
- Seller's disclosures are not a substitute for your own investigations, personal judgments or common sense.

V. SELLER AWARENESS: For each statement below, answer the question "Are you (Seller) aware of..." by checking either "Yes" or "No." Explain any "Yes" answers in the space provided or attach additional comments and check section VI.

A. STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED:	**ARE YOU (SELLER) AWARE OF...**
1. Within the last 3 years, the death of an occupant of the Property upon the Property	[ ] Yes [ ] No
2. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.)	[ ] Yes [ ] No
3. The release of an illegal controlled substance on or beneath the Property	[ ] Yes [ ] No
4. Whether the Property is located in or adjacent to an "industrial use" zone (In general, a zone or district allowing manufacturing, commercial or airport uses.)	[ ] Yes [ ] No
5. Whether the Property is affected by a nuisance created by an "industrial use" zone	[ ] Yes [ ] No
6. Whether the Property is located within 1 mile of a former federal or state ordnance location (In general, an area once used for military training purposes that may contain potentially explosive munitions.)	[ ] Yes [ ] No
7. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision	[ ] Yes [ ] No
8. Insurance claims affecting the Property within the past 5 years	[ ] Yes [ ] No
9. Matters affecting title of the Property	[ ] Yes [ ] No
10. Material facts or defects affecting the Property not otherwise disclosed to Buyer	[ ] Yes [ ] No
11. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code Section 1101.3	[ ] Yes [ ] No

Explanation, or [ ] (if checked) see attached; _____

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

EQUAL HOUSING OPPORTUNITY

Blue Lighthouse Realty, 1198 S.W. 13 Avenue Boca Raton, FL 33486 Phone: (786)268-9722 Fax: 21742 Salado,
Jorge Zea

Property Address: _____ Date: _____

B. REPAIRS AND ALTERATIONS: **ARE YOU (SELLER) AWARE OF...**

1. Any alterations, modifications, replacements, improvements, remodeling or material repairs on the Property (including those resulting from Home Warranty claims) [ ] Yes [ ] No
2. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? [ ] Yes [ ] No
3. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) [ ] Yes [ ] No
4. Any part of the Property being painted within the past 12 months [ ] Yes [ ] No
5. If this is a pre-1978 Property, were any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces completed in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule [ ] Yes [ ] No

Explanation: _____

C. STRUCTURAL, SYSTEMS AND APPLIANCES: **ARE YOU (SELLER) AWARE OF...**

1. Defects in any of the following, (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances [ ] Yes [ ] No
2. The leasing of any of the following on or serving the Property: solar system, water softener system, water purifier system, alarm system, or propane tank (s) [ ] Yes [ ] No
3. An alternative septic system on or serving the Property [ ] Yes [ ] No

Explanation: _____

D. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT: **ARE YOU (SELLER) AWARE OF...**

1. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs [ ] Yes [ ] No

Explanation: _____

E. WATER-RELATED AND MOLD ISSUES: **ARE YOU (SELLER) AWARE OF...**

1. Water intrusion into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property [ ] Yes [ ] No
2. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property [ ] Yes [ ] No
3. Rivers, streams, flood channels, underground springs, high water table, floods, or tides, on or affecting the Property or neighborhood [ ] Yes [ ] No

Explanation: _____

F. PETS, ANIMALS AND PESTS: **ARE YOU (SELLER) AWARE OF...**

1. Pets on or in the Property [ ] Yes [ ] No
2. Problems with livestock, wildlife, insects or pests on or in the Property [ ] Yes [ ] No
3. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above [ ] Yes [ ] No
4. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above. [ ] Yes [ ] No
   If so, when and by whom _____

Explanation: _____

Buyer's Initials (_____) (_____) Seller's Initials (_____) (_____)

Property Address: _____ Date: _____

G. BOUNDARIES, ACCESS AND PROPERTY USE BY OTHERS: **ARE YOU (SELLER) AWARE OF...**

1. Surveys, easements, encroachments or boundary disputes . . . . . [ ] Yes [ ] No
2. Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways or other forms of ingress or egress or other travel or drainage . . . . . [ ] Yes [ ] No
3. Use of any neighboring property by you . . . . . [ ] Yes [ ] No

Explanation: _____

H. LANDSCAPING, POOL AND SPA: **ARE YOU (SELLER) AWARE OF...**

1. Diseases or infestations affecting trees, plants or vegetation on or near the Property . . . . . [ ] Yes [ ] No
2. Operational sprinklers on the Property . . . . . [ ] Yes [ ] No
   (a) If yes, are they [ ] automatic or [ ] manually operated.
   (b) If yes, are there any areas with trees, plants or vegetation not covered by the sprinkler system . . . . [ ] Yes [ ] No
3. A pool heater on the Property . . . . . [ ] Yes [ ] No
   If yes, is it operational? . . . . . [ ] Yes [ ] No
4. A spa heater on the Property . . . . . [ ] Yes [ ] No
   If yes, is it operational? . . . . . [ ] Yes [ ] No
5. Past or present defects, leaks, cracks, repairs or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired . . . . . [ ] Yes [ ] No

Explanation: _____

I. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS: **ARE YOU (SELLER) AWARE OF...**

1. Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property. . . . . [ ] Yes [ ] No
2. Any declaration of restrictions or Architectural Committee that has authority over improvements made on or to the Property . . . . . [ ] Yes [ ] No
3. Any improvements made on or to the Property without the required approval of an Architectural Committee or inconsistent with any declaration of restrictions or Architectural Commitee requirement. . . . . [ ] Yes [ ] No

Explanation: _____

J. TITLE, OWNERSHIP LIENS, AND LEGAL CLAIMS: **ARE YOU (SELLER) AWARE OF...**

1. Any other person or entity on title other than Seller(s) signing this form . . . . . [ ] Yes [ ] No
2. Leases, options or claims affecting or relating to title or use of the Property . . . . . [ ] Yes [ ] No
3. Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association or neighborhood . . . . . [ ] Yes [ ] No
4. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest based groups or any other person or entity . . . . . [ ] Yes [ ] No
5. Any PACE lien (such as HERO or SCEIP) or other lien on your Property securing a loan to pay for an alteration, modification, replacement, improvement, remodel or material repair of the Property? . . [ ] Yes [ ] No
6. The cost of any alteration, modification, replacement, improvement, remodel or material repair of the Property being paid by an assessment on the Property tax bill? . . . . . [ ] Yes [ ] No

Explanation: _____

K. NEIGHBORHOOD: **ARE YOU (SELLER) AWARE OF...**

1. Neighborhood noise, nuisance or other problems from sources such as, but not limited to, the following: neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks,

freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife . . . . . [ ] Yes [ ] No

Explanation: _____

L. GOVERNMENTAL: **ARE YOU (SELLER) AWARE OF...**

1. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property . . . . . [ ] Yes [ ] No
2. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions or retrofit requirements that apply to or could affect the Property. . . . . [ ] Yes [ ] No
3. Existing or contemplated building or use moratoria that apply to or could affect the Property . . . . . [ ] Yes [ ] No
4. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property . . . . . [ ] Yes [ ] No
5. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways and traffic signals . . . . . [ ] Yes [ ] No
6. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal or cutting or (iii) that flammable materials be removed . . . . . [ ] Yes [ ] No
7. Any protected habitat for plants, trees, animals or insects that apply to or could affect the Property . . . . . [ ] Yes [ ] No
8. Whether the Property is historically designated or falls within an existing or proposed Historic District . . . . . [ ] Yes [ ] No
9. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies . . . . . [ ] Yes [ ] No

Explanation: _____

M. OTHER: **ARE YOU (SELLER) AWARE OF...**

1. Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents, pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property whether oral or in writing and whether or not provided to the Seller. . . . . [ ] Yes [ ] No
   (If yes, provide any such documents in your possession to Buyer.)
2. Any occupant of the Property smoking on or in the Property. . . . . [ ] Yes [ ] No
3. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer . . . . . [ ] Yes [ ] No

Explanation: _____

VI. [ ] (IF CHECKED) ADDITIONAL COMMENTS: The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.

Seller _____ Date _____

Seller _____ Date _____

By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.

Buyer _____ Date _____

Buyer _____ Date _____

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