



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

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Sean Powers  
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**NEVADA COUNTY BOARD OF SUPERVISORS**  
**Board Agenda Memo**

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**MEETING DATE:** May 28, 2019

**TO:** Board of Supervisors

**FROM:** **Brian Foss, Planning Director**

**SUBJECT:** Resolution denying the appeal filed by Jens Larson, Rod Corvington, Kurt Anderson, Charles McCollough, George Basso, and Scott Kastning regarding a Conditional Use Permit (CUP17-0016), a Petition for Exceptions to Driveway Standards (MIS18-0012), and the Mitigated Negative Declaration (EIS17-0023) for a 110-foot-tall monopine telecommunication tower and equipment facility.

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**RECOMMENDATION:** Adopt the attached Resolution (Attachment 1) to deny the appeal and uphold the decision of the Zoning Administrator to approve the Conditional Use Permit (PLN17-0074, CUP17-0016) and the Petition for Exceptions to Driveway Standards (MIS18-0012), and to adopt the Mitigated Negative Declaration (EIS17-0023).

**FUNDING:** This hearing will have no impact on the General Fund. This project will affect the Planning Department's FY 18/19 budget for staff time.

**ATTACHMENTS:**

1. Resolution to Deny the Appeal and affirm the Zoning Administrator's decision to approve the Conditional Approval for the Conditional Use Permit and the Petition for Exceptions to Driveway Standards, and affirm the Zoning Administrator's decision to adopt the Mitigated Negative Declaration.
2. Appeal to the Board of Supervisors
3. March 28, 2019 Notice of Conditional Approval
4. March 27, 2019 Zoning Administrator Staff Report (with attachments)
5. February 25, 2019 Zoning Administrator Memo
6. March 27, 2019 Zoning Administrator Summary of Proceedings
7. Project Improvement Plans

8. Structural Calculations – Private Bridge
9. Photo Simulations

## **BACKGROUND**

The project parcel is located on a private road that is approximately 1.3 driving miles north of You Bet Road, and 3.3 miles east of State Highway 174. This parcel and surrounding parcels are zoned General Agricultural with a 10-acre minimum parcel size (AG-10) and have a General Plan designation of Rural with a 10-acre minimum parcel size (RUR-10). Adjacent parcels and several parcels in the area range in size from 2.5 acres to 10.0 acres, with the exception of a 55.10-acre parcel to the east of the project site. Parcels in the neighborhood generally have rural residential uses. The proposed monopine telecommunication facility would be located near the center of the 2.32-acre parcel, in an area with rolling to steep terrain and dense vegetation.

The project was originally applied for in June 2017, and was revised and resubmitted three subsequent times to address incomplete items. In May 2018, an application for a Petition for Exceptions to Driveway Standards was added to the project because of the increased grade and reduced width of the proposed driveway. The application was deemed complete in December 2018, and resulted in the following project description and improvement plans (Attachment 7):

**Project Description:** The project is a combined application proposing a Conditional Use Permit and a Petition for Exceptions to Driveway Standards for the construction of an unmanned 110-foot-tall monopine telecommunication tower and equipment facility. The project proposes a 900-square-foot lease area (30' x 30') that would be used as the tower site and equipment facility. The project includes an additional 600-square-foot area (30' x 20') adjacent to the equipment facility to reserve as a potential lease area for up to three other carriers. The proposed telecommunication tower would contain nine (9) panel antennas, eighteen (18) remote radio heads/units, and space for additional carriers. The facility would contain a 64-square-foot (8' x 8') walk-in equipment cabinet with two downward facing, fully shielded lights. A backup 20-kw diesel generator with a 92-gallon fuel tank on a concrete slab would be installed for use during power loss. Up to three additional equipment cabinets or shelters and backup generators may be installed by other carriers in the second lease area (600 square feet) at a later phase in the project. A six-foot tall chain-link fence with three strand anti-climb barrier (totaling 7 feet in height) would initially be constructed around the 900-square-foot facility area, with potential for the same fencing to be installed around the 600-square-foot area designated as the lease area for other carriers. The project includes 230 feet of driveway improvements along an existing driveway, and additional grading to construct a new 225-foot long driveway to the telecommunications facility. Approximately 300 feet

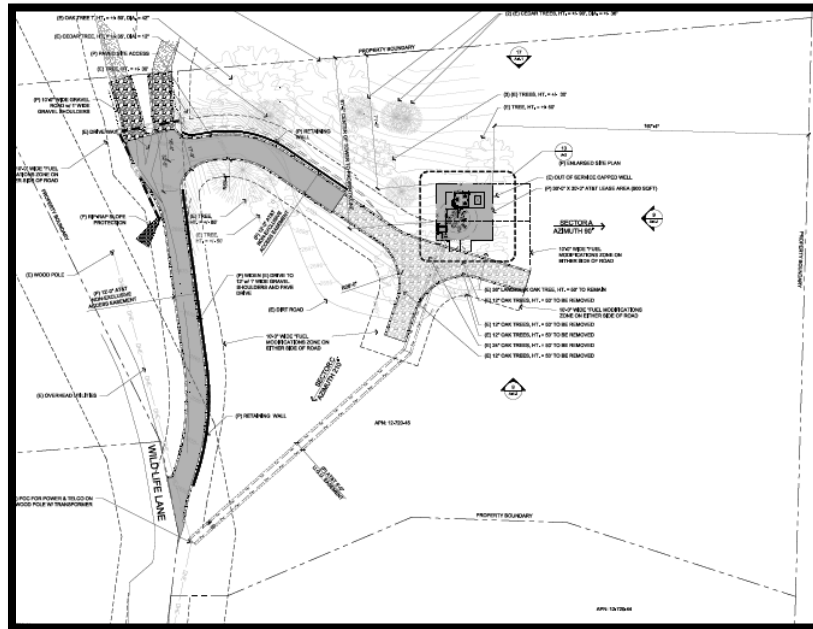
of the driveway would be paved with asphalt concrete (AC). The rest of the driveway and a new hammerhead turnaround would be gravel. Two retaining walls up to 6 feet in height would be installed along the driveway, and two 12-inch culverts would be installed across and along the existing driveway. A Petition for Exceptions to Driveway Standards is proposed to allow a driveway grade of up to 25%, and to allow a reduced driveway width of 12 feet along the existing section of driveway that would be paved, instead of the standard width of 12 feet with 1-foot shoulders for grades that exceed 16%. The driveway is accessed off an existing private road—Wild Life Lane. Power and telecommunication lines would be brought to the project site by underground conduit from an existing utility pole on Wild Life Lane. The utilities would be located in a 215-foot long and 5-foot wide easement through the project parcel. The project includes trimming for vegetation management along Wild Life Lane and the proposed driveway. For road maintenance, gravel would be added to the existing turnouts along the private roads that lead to the project site. Five oak trees that are 10-24 inches at diameter breast height (dbh or 4'6"), along with shrubs, incense cedar trees and Douglas fir trees would be removed for the installation of the telecommunications tower site and driveway.

The project was first heard at the Zoning Administrator hearing on February 27, 2019. During the public comment period, the property owner withdrew his authorization for the project. Other public comments were made, primarily opposing the project due to health concerns from being near a telecommunications tower. The Zoning Administrator took no action on the adequacy of the Mitigated Negative Declaration or the Mitigation Monitoring and Reporting Program, and no action was taken toward approval or denial of the proposed Conditional Use Permit or the Petition for Exceptions to Driveway Standards. The Zoning Administrator continued the project indefinitely, to allow the property owner and applicant time to work out any issues. On March 4, 2019, the project representative, Epic Wireless Group LLC, contacted the Planning Department and advised that the property owner was in support of the project and asked to reschedule the hearing. Planning Department staff contacted the property owner, Michael Stapleton, and verbally confirmed on March 13, 2019, that he has given his authorization for this project to be scheduled for a second hearing on March 27, 2019, to seek approval. Staff asked the property owner to respond to an email, giving authorization for the project directly to the County. On March 20, 2019, Michael sent an email to staff advising to schedule the hearing and stating that he will not oppose the project. Staff also talked to the property owner on May 6, 2019, after the appeal was filed and verified that he still gives consent for the project.

The second Zoning Administrator hearing was held on March 27, 2019, where the project was approved. Some of the same concerns that were in the appeal and in the public comments sent to the Board of Supervisors after the appeal was filed, were also brought up at the Zoning Administrator hearing. There was discussion regarding radio frequency emissions, property values, visual impacts, noise, the bridge on the private road leading to the

telecommunications tower site, and road impacts. These concerns are discussed under the appeal arguments in this staff report. The site plan (Figure 1) with the driveway improvements and lease area, along with a photo of the project site (Figure 2) are shown below.

**Figure 1: Site Plan**



**Figure 2: Project Site**



**THE APPEAL:** The appeal (Attachment 2) cites a summation of four main reasons why the appellant believes the project should be denied: (1) environmental concerns and an inadequate environmental review; (2) potential damage to the unengineered bridge and private road; (3) failure to comply with County ordinances; and (4) the property owner lacked capacity to enter into an agreement, and consent by the property owner was given under duress. After the appeal was filed there were multiple public comments opposing the project that were sent to the Board of Supervisors. The main concern brought up in the public comment letters is for health impacts from being near a tower, but other comments were regarding the same topics included in the appeal, along with noise, visual impacts and property values. Each of the items in the appeal and in the public comment letters are discussed below.

### **Argument 1: Environmental Concerns**

The appeal does not discuss any specific environmental concerns, but lists “environmental concern of sensitive area” in the appeal. One of the public comment letters brought up concerns for waterways, sensitive ecosystems and contamination to groundwater from the capped well. Staff completed a thorough environmental review of the site and the project has been mitigated to address environmental impacts. The Mitigated Negative Declaration with a complete analysis of the site is included in Attachment 4 (page 28). The brief summary below discusses the biological inventory completed for the site and environmental concerns that were brought up in the public comment letter.

**Environmental Resources:** A biological inventory of the site was prepared by one of Nevada County’s Pre-Qualified Biological Consultants, Edward Beedy, on June 7, 2017. As the project and the location of the driveway was revised, an updated biological inventory was completed by Edward Beedy on May 17, 2018. Surveys of the site were conducted by the biologist both times to assess habitats and identify any resources in and around the project area. The biological inventories identified one landmark oak tree near the proposed lease area and the hammerhead turnaround for the driveway. Mitigation was added to the project in Condition of Approval (COA) A.22 to protect the oak tree during construction. Temporary construction fencing would be installed around a 10-foot buffer from the base of the tree and it would be identified as an Environmentally Sensitive Area on improvement plans. No other sensitive resources are in or around the project area. The closest waterway is Greenhorn Creek, which is approximately 1,100 feet to the southeast of the project site and would not be impacted. The project also includes mitigation for weed-free erosion control measures to protect native vegetation (COA A.20), and a nesting bird survey is required if construction will occur during the nesting season (COA A.21).

**Capped Well:** In the project area where the secondary lease area for additional carriers is located, there is a capped well. Condition of Approval C.2 requires that the well is formally

abandoned prior to building permits being issued for improvements to the site. This would require a professional well driller to work with the Environmental Health Department to obtain a permit to abandon the well, by filling the void in the well casing from the top of the well to ground water, and adequately sealing the well to prevent contamination. This is required to be completed prior to construction of the lease area and it would prevent contamination to ground water. Analysis of environmental resources and groundwater were included in the initial study, in Section 4 (Biological Resources) and in Section 10 (Hydrology/Water Quality).

## **Argument 2: Damage to Private Road and Bridge**

The project site is located approximately 1.3 miles north of You Bet Road (County maintained), off a private road—Wild Life Lane. The appeal lists potential damage to the un-engineered bridge and damage to the private road. Similar comments were made at the Zoning Administrator hearing, regarding whether the bridge would be able to support construction vehicles and concerns for the private road. During the hearing staff discussed structural calculations that were completed by a registered professional engineer for the bridge and staff discussed a Condition of Approval (A.14) to require a road analysis, before and after construction, to assess road damage. Additional details and a revised condition for further protection of the road are discussed below.

Project Traffic: The project would require some additional traffic during the construction phase of the project. Construction vehicles, comparable to the same vehicles and equipment used to construct residences in the area, would travel to the project parcel and would slightly increase traffic for a short duration. Some of the comments made were for the proposed project being a large facility with traffic impacts. The initial equipment facility would only be 900 square feet with a 64-square-foot equipment cabinet. If other carriers are added to the site at a later time, the facility may be expanded by an additional 600 square feet with up to three similar sized equipment cabinets. Traffic to the site would be extremely minimal, with only one weekly or biweekly trip to the site for each carrier, for maintenance of the site. Initially, the telecommunications tower would be installed with one carrier, but it has potential for up to three more carriers. At full capacity under this Use Permit, this would generate a total of four weekly to biweekly traffic trips.

Private Bridge: Along Mulberry Lane, which is a private road that leads to Wild Life Lane where the project site is located, there is an older one-lane bridge that seems appears to be built prior to the time that building permits were required in Nevada County, which was in 1962. Staff does not know the exact year that the bridge was built, but there is a residence that was constructed at the end of the road in 1961, which implies that the bridge existed prior to that time. A picture of the bridge is shown in Figure 3 on the following page.

**Figure 3: Private Bridge on Mulberry Lane**

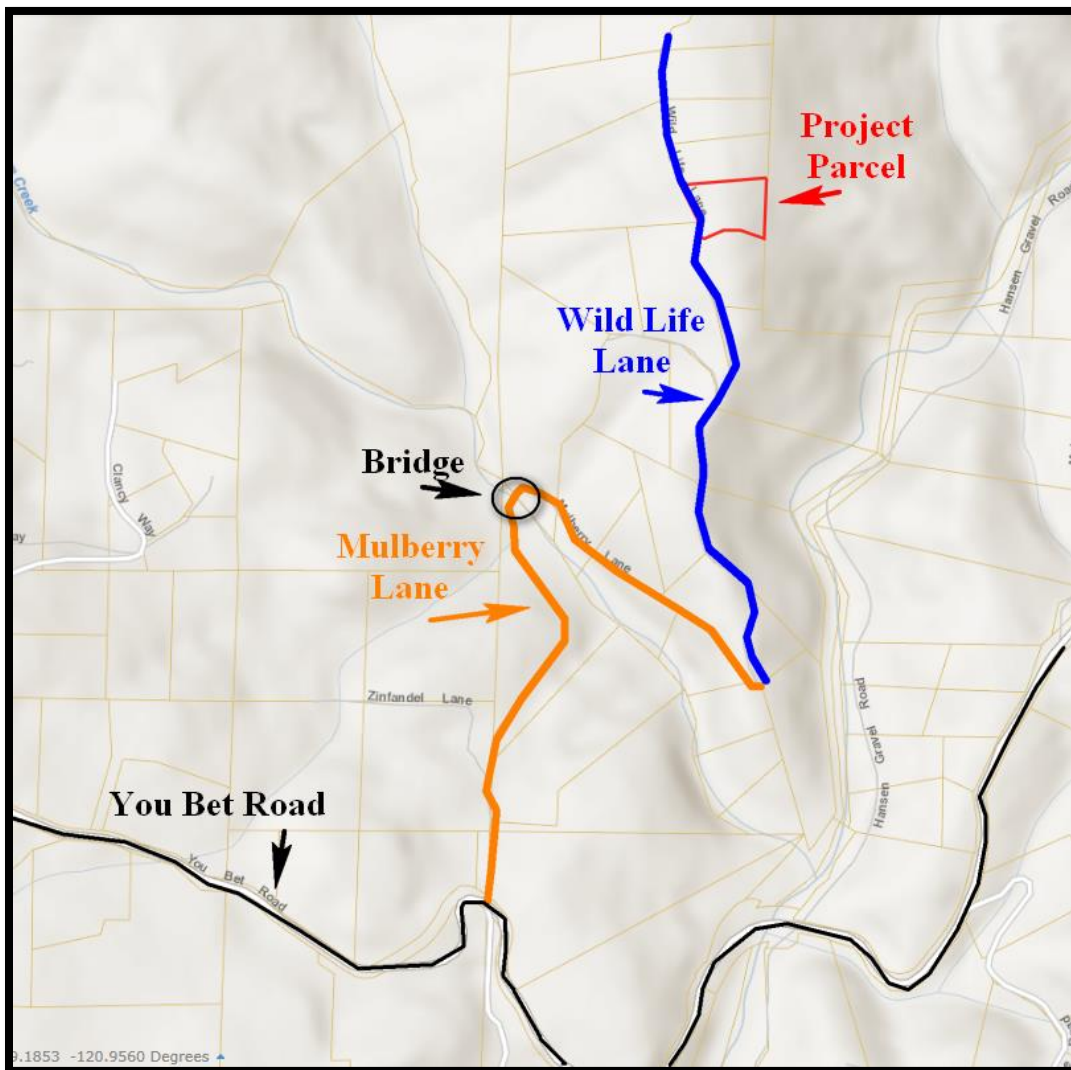


As part of the review for this project, the Deputy Fire Marshal, Matt Furtado, conducted a site visit to determine if the parcel has adequate access for a telecommunications facility. Because of the older bridge along the private road and a lack of records for the bridge, the Office of the Fire Marshal required that the bridge crossing was certified by a structural engineer, showing that it can support the maximum imposed load and vertical clearances of the California Vehicle Code. Registered Professional Engineer Paul Zacher completed structural calculations and stamped a report dated January 19, 2018, certifying the adequacy of the bridge. The engineered report was submitted with the project application in May 2018 and was reviewed by the Office of the Fire Marshal before the project application was deemed complete.

Private Road/Road Analysis: The project Conditions of Approval (A.14) requires a road analysis to determine the condition of Wild Life Lane before and after the construction of the telecommunications facility. If there is any damage to the road, repairs would have to be made by the applicant. The condition requiring the road analysis was discussed at the Zoning Administrator hearing, and staff discussed the condition with the private road administrator, Kurt Anderson, after the hearing. Staff agreed to provide the road analysis to the private road administrator for feedback, and to make sure that all potential damage was reported and repaired.

After receiving the appeal and public comments, additional concerns have been brought up for damage to private roads and the bridge. In the comments the project is referenced as being 1.25 miles up the private road, which would include the preceding private road—Mulberry Lane. Although the appeal and public comments do not specifically discuss the road analysis condition or Mulberry Lane, the public comments allude that Mulberry Lane is included with their concerns for damage to the private road. The map below (Figure 4) shows the two private roads off the County maintained road—You Bet Road.

**Figure 4: Private Roads to Project Parcel**



To address these concerns, staff has worked with the project applicant to revise Condition of Approval A.14 for the roadway analysis to include Mulberry Lane and the bridge. This



revision would cover the entire series of private roads from the County maintained road (You Bet Road) to the project site. The revised condition is below:

Roadway Analysis: As part of the building permit submittal, include a roadway analysis for the Planning Department that shows photos of Mulberry Lane and Wild Life Lane, including the bridge crossing over Little Greenhorn Creek, which documents the condition of the roads prior to construction of the tower facility. At the request for permit final, a follow-up analysis of the roadways and bridge is required to be submitted, with photos showing that any impacts to the private roads or bridge that may have occurred as a result of the construction of the telecommunication tower facility, have been repaired by the applicant.

With this revision, the entire series of public roads leading to the project site would be included in the required road analysis, and if there is any damage from the project construction, the applicant would be required to make repairs before the building permits are finalized.

### **Argument 3: Failure to Comply with County Ordinances**

The appeal cites “failure to comply with County ordinances” in the summation of arguments, but it does not specify an ordinance or an issue. The project complies with the Land Use and Development Code (LUDC), Section L-II 3.8 for Communication Towers and Facilities. This section has location standards and design standards for new facilities. In addition, communication towers are a permitted use in the AG zoning district with approval of a Use Permit, and the project is consistent with General Plan Policy 1.7.18, which seeks to “encourage and support a sustainable and technologically current high-speed broadband transmission system that reliably connects Nevada County businesses and residences to national networks as a means to reduce transportation impacts, improve air quality, enhance citizens’ quality of life and promote economic development.”

### **Argument 4: AT&T Agreement with Property Owner**

The appeal cites that the “property owner lacked capacity to enter into an agreement & consent was under duress.” No additional information or details were provided in the appeal.

Agreements between private corporations and property owners are private agreements that occur without the County’s knowledge or involvement. Once an agreement is made and a land use application is applied for, the County verifies that the applicant is the property owner or has the authority to apply for a project. This is verified by the property owner’s signature on the application or with an authorized agent letter to allow a representative to act as an agent for the property owner. For this project, a letter of authorization was signed

by the property owner, Michael Stapleton, on June 26, 2017, and was submitted with the application. If the property owner listed matches County records for the property owner or responsible party for the parcel, no additional action is taken. In this case, the property owner gave his consent for the project in June 2017, and for the second Zoning Administrator hearing to be rescheduled for the project to proceed in March 2019. The County does not have the authority to get involved in private agreements between property owners and corporations.

### **Additional Arguments/Public Comments**

Although the appeal filed on April 4, 2019, did not include any other arguments or issues with the project, several public comment letters were sent to the Board of Supervisors. The main objection for the tower is for potential health impacts from being near a cell tower and radio frequency emissions. Additional comments were made regarding noise, visual impacts, and property values. Staff's responses to the additional comments are discussed below.

Radio Frequency Emissions: The Telecommunications Act of 1996, as amended, 47 USC 332(c)(7)(B)(iv) specifically 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." Because of the Telecommunications Act, the County cannot deny a project based on radio frequency emissions, as long as the project would be in compliance with the Federal Communication Commission (FCC) limits.

To show compliance with the FCC, the project application included a Radio Frequency – Electromagnetic Energy (RF-EME) Compliance Report (Attachment 4, page 83), which was prepared by EBI Consulting and certified by a Registered Professional Engineer, Michael McGuire. The report evaluates RF-EME exposure levels in relation to the maximum exposure levels set by the FCC for both general public exposure and occupational exposures. This report shows compliance with these standards. At the nearest walking/working surface, the power generated by the antennas is approximately 3.5 percent of the FCC's general public limit, and only 0.70 percent of the FCC's occupational limit. At ground level, the maximum power generated is only 3.0 percent of the FCC's general public limit and 0.60 percent of the FCC's occupational limit.

Furthermore, all telecommunication towers are reviewed for licensing by the FCC after local jurisdiction approvals are granted. The licensing review would include a review of the project for compliance with the FCC emission standards, which would ensure that the project remains in compliance after the County's approval process has been completed, and if additional carriers are added to the site. The project Conditions of Approval (A.12)

also requires compliance with FCC regulations. With the project meeting these requirements, the County would not be able to deny the project based on concerns for radio frequency emissions.

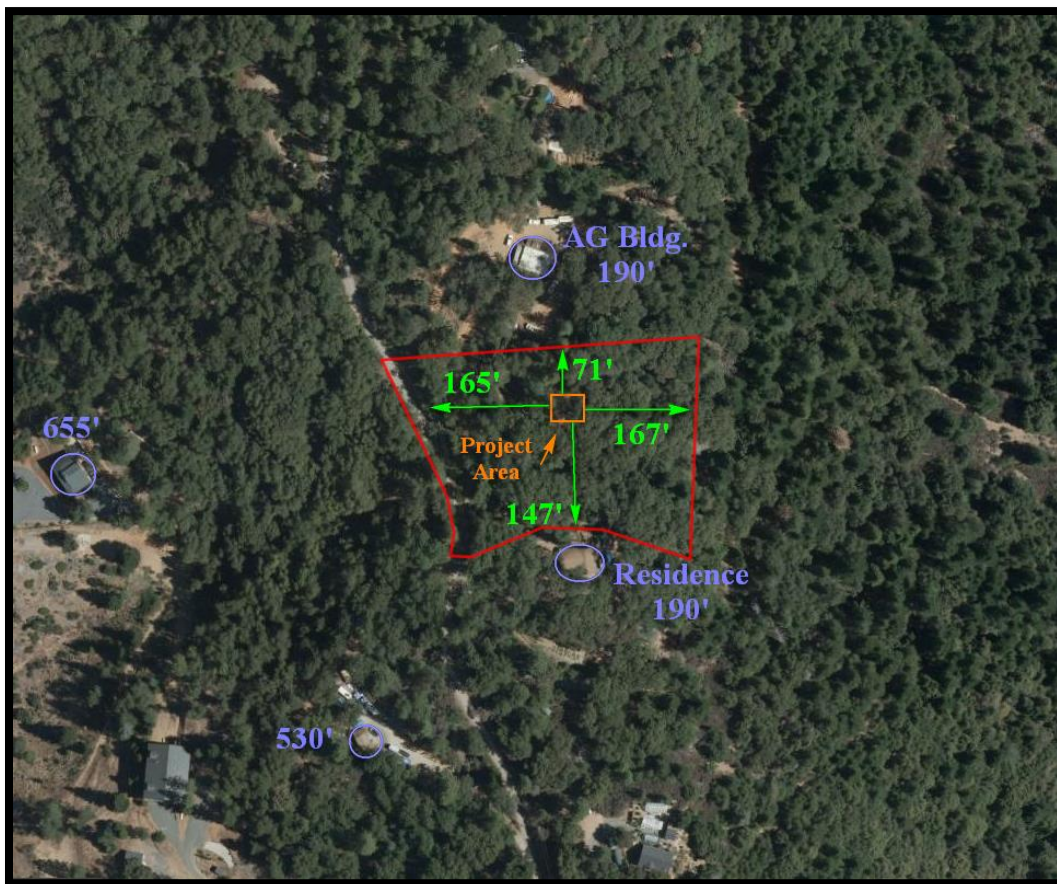
Noise: Three of the public comments sent to the Board of Supervisors were regarding noise and potential industrial noise levels. The project has been reviewed, conditioned, and mitigated for compliance with the County noise standards. The two noise producers at the site include a backup generator for use during power outages and a heating, ventilation, and air conditioning (HVAC) system to cool equipment in the equipment cabinet. The backup generator would be tested weekly or biweekly for approximately ten minutes at a time. The HVAC system would operate intermittently, with peak usage during warmer months. An Environmental Noise Assessment Report (Attachment 4, page 73) was prepared by Shore 2 Shore Wireless, Inc. on March 1, 2018, to evaluate potential noise impacts. The generator would produce 44.98 dB at the nearest property line. The HVAC system would produce 22.79 dB at the nearest property line, but because of the location and orientation of the HVAC system, it would produce 36.61 dB along the eastern property line. If both the HVAC system and generator were in operation at the same time, they would produce a combined noise level 65 dB, which would be 44.98 dB at the nearest/loudest property line. The Nevada County noise standard during the daytime is 55 dB Leq for an average noise level, and 75 dB Lmax for peaks in noise. The generator and HVAC system combined would be under the daytime noise standards. Because the generator is not expected to be in continuous operation, unless of an emergency power outage, this noise level would only occur during the weekly or biweekly testing of approximately ten minutes at a time. The HVAC system alone, which would be a regular noise producer, is under the Nevada County noise standard for daytime, evening and nighttime noise levels (shown below), and would be comparable to a small, residential HVAC system or a window air conditioning unit.

Time Period		Noise Level, dBA	
Start	End	L eq	L max
7 am	7 pm	55	75
7 pm	10 pm	50	65
10 pm	7 am	40	55

The noise predictions provided in the noise assessment are based on the manufacturer's specifications for the equipment, the location, and the distance to the property line. The predictions do not include any external absorbent materials. Because of the dense vegetation surrounding the site, it is likely that the noise predictions are high estimates and that the actual noise levels would be lower at the property lines. Due to the high estimates still being in compliance with the County noise standards, additional noise predictions with

calculations for noise absorbent materials was not required. Figure 5 below shows the project area, distances to property lines and some of the nearest residences on adjacent parcels. It should also be noted that the closest residence—190 feet south of the project site—is owned and occupied by the same property owner as the project parcel. The measurements shown are from the edge of the equipment facility to the property lines. The tower itself would be located ninety-one (91) feet from the northern property line.

**Figure 5: Project Area and Surrounding Improvements**



Visual Impacts: Two of the public comments sent to the Board of Supervisors expressed concerns for the visual impacts of the tower. This project site was analyzed for visual impacts and this site would provide more concealment than many other tower sites. The vegetation in the area is dense and the terrain has rolling to steep slopes, making it difficult to see very far into parcels from public views. In addition, this site is located in a rural area with very few private or public roads. Other than the road that leads to this parcel, the next closest roadways are approximately 1,500 feet away or more. The proposed tower would be located near the center of the 2.32-acre parcel and would have a monopine design to camouflage the tower to look like a pine tree. If/when other carriers are added to the site,

the conditions of approval (A.6) would require that any equipment added to the tower would be non-glare colors and consistent with materials included in this project, including bark treatment, antenna socks and branches. The proposed tower would be 110-feet-tall. Within 100 feet of the tower, there are two cedar trees that are approximately ninety (90) feet tall and several other oak, pine and cedar trees in the area range from approximately thirty-five to eighty-five (35-85) feet tall. Because of the terrain and existing vegetation, the proposed tower is expected to blend in with the surroundings.

The project application included photo simulations (Attachment 9) to show what the tower would look like from four public views. The monopine would be beyond existing vegetation from all of these views and could not be seen in any of the photo simulations. Figure 6 below shows View 2, which is looking into the project parcel from Wild Life Lane. This angle has the most direct view toward the project site with the least amount of topographic changes, and the photo simulation shows that the tower cannot be seen past the vegetation. Nevada County Planning Department staff also conducted a site inspection of the project area and determined that the tower and equipment facility would not be in direct public view, and would likely be concealed by vegetation from all public views. The California Environmental Quality Act (CEQA) aesthetic standards do not require a visual or aesthetic assessment to be conducted from a view that is not open to the public, such as from private property; therefore, no views were evaluated from private property. If portions of the tower can be seen from private parcels, the tower would be among existing vegetation and would be expected to blend in.

**Figure 6: Photo Simulation from Wild Life Lane (View 2)**



Property Values: Staff's analysis of the project is limited to reviewing the project for compliance with the Land Use and Development Code and to complete an environmental review, in compliance with CEQA standards. Project impacts to property values is not included in the CEQA analysis or in the Land Use and Development Code, and it is not within the purview of the land use permit.

**APPEAL CONCLUSION:** The Board of Supervisors does not have to adhere to the determination of the Zoning Administrator; however, staff finds that the project conditions of approval are consistent with the Nevada County LUDC for the reasons discussed above, and that the mitigated negative declaration adequately addresses environmental impacts. The project has been reviewed and conditioned to reduce impacts to the surrounding neighborhood and has adequately addressed noise and visual impacts from the project. To thoroughly address all concerns that were brought up in the appeal and the following public comments, Condition of Approval A.14 has been revised to ensure protection of Mulberry Lane, Wild Life Lane and the private bridge, by requiring a road analysis before and after the project construction, to ensure that any damage is repaired by the applicant. The bulk of the public comments were regarding health concerns and radio frequency emissions. Due to federal laws (Telecommunications Act), the County is restricted from denying a telecommunications tower project because of radio frequency emissions, as long as it is in compliance with the FCC standards. The radio frequency report submitted with this application certifies that the emission levels would be in compliance with FCC limits. The project as proposed, and with the revision to the road analysis, meets the requirements of the Land Use and Development Code.

**SUMMARY:** The findings and record in support of the Zoning Administrator's final decision are found in the attached March 28, 2019, Notice of Conditional Approval (Attachment 3). Before taking action on this appeal, the Board should independently consider the Notice of Conditional Approval and the discussion presented in this report. This information provides the reasons in support of those new findings listed in the Resolution to deny the appeal, and uphold the conditional approval of the Conditional Use Permit and the Petition for Exceptions to Driveway Standards, and to affirm the Zoning Administrator's decision to adopt the Mitigated Negative Declaration.

**Please contact me should you require additional information or background.**

**Item Initiated by:** Sadie Caldas, Associate Planner

**Approved by:** Brian Foss, Planning Director