

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: February 26, 2015

Staff: Joe Prutch

SPECIAL USE PERMIT

FILE NUMBER: S14-0009/AT&T Cell Tower Skyline Drive

APPLICANTS: New Cingular Wireless, LLC/AT&T

AGENTS: John Pek and Chris Hatch

REQUEST: Special Use Permit to allow the construction of a wireless telecommunication facility consisting of a 113 foot monopine tower with nine panel antennas and FAA lighting, equipment shelter to match residence, related ground equipment within shelter, and solid wood fence and gate. This item was continued from the January 22, 2015, meeting to review a supplemental alternative site analysis and revised site plans submitted by the Applicant.

LOCATION: On the south side of Skyline Drive approximately, one mile northeast of the intersection with U.S. Highway 50 and Pioneer Trail, in the South Lake Tahoe area, Supervisorial District 5.

APN: 081-102-01

ACREAGE: 0.32 acre

GENERAL PLAN: Adopted Plan (AP) - Tahoe Regional Plan, Plan Area Statement (PAS) 120, Tahoe Paradise Meadowvale, Residential Land Use Classification

ZONING: TR-1 (One-Family Residential - Tahoe)

ENVIRONMENTAL DOCUMENT: Negative Declaration

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Adopt the Negative Declaration based on the Initial Study prepared by staff; and
2. Approve Special Use Permit S14-0009 based on the Findings and subject to the Conditions of Approval as presented.

BACKGROUND

On July 31, 2014, New Cingular Wireless, LLC/AT&T (applicant) filed an application with El Dorado County Planning Services for a Special Use Permit (SUP) to allow the construction of a wireless telecommunication facility consisting of a 113 foot monopine tower with nine panel antennas, FAA lighting, equipment shelter, related ground equipment, HVAC units, sound barrier walls, and solid wood fence on a 1/3 acre single family residential property on Skyline Drive in South Lake Tahoe.

The Commission held a public hearing on December 11, 2014, to discuss the project and hear public testimony before taking action to conceptually deny the project without prejudice. The Commission then directed staff to prepare written findings of fact supporting the conceptual action and continued final action to January 22, 2015.

A Staff Memo, dated January 8, 2015, provided the Commission with a document from the applicant requesting a continuance of their application to the February 26, 2015 hearing date as they had submitted a supplemental alternative site analysis and revised site plans.

A Staff Memo, dated January 16, 2015, provided the Commission with the original alternative site analysis submitted with the application in July of 2014 and an updated supplemental alternative site analysis submitted on January 14, 2015. The documents were provided for public disclosure.

At the January 22, 2015 Planning Commission meeting the Commission voted to continue the applicant's special use permit application to the February 26, 2015, meeting date to allow Staff time to review a detailed alternative site analysis and revised site plans. Public testimony was provided by property owners in the vicinity of the project site. The Commission asked that the applicant, or staff, respond to the testifiers questions. Responses to their questions are included in the Staff Analysis section of this staff report.

Original Project Description

Special Use Permit to allow the construction of a wireless telecommunication facility consisting of a 113 foot monopine tower with nine panel antennas at the 106 foot level, tower light at the top three feet of the pole, a 12 by 12 foot equipment shelter with two HVAC units on north side of shelter underneath a corrugated metal roof, and two 10 foot tall block sound barrier walls on either side of the HVAC units, all within a 30 by 30 foot wood fenced lease area. The fence will be six feet tall with an eight foot wide gate opening to the utility easement. The ten foot tall equipment shelter exterior will have a tan sand and pebble finishing with a taupe color trim. The

split-face CMU sound barrier wall will be painted to match the shelter. Three pine trees will be removed for the cell site and three pine trees within 35 feet of the tower on the subject property will be trimmed to 85 feet maximum height.

An analysis was provided with the original application submittal, date stamped August 1, 2014, providing a simple summary of the proposed Skyline site and two other sites; a Crown co-location site on the adjacent property and a new site at the fire station. The analysis summarized that the co-location site failed to provide indoor coverage to North Upper Truckee Road and Lake Tahoe Blvd and limit congestion relief. The fire station site would provide the worst coverage, failing to cover the houses on North Upper Truckee Road and Lake Tahoe Blvd and limit congestion relief. The analysis concluded that because of the limitations of these two optional sites, the preferred option would be the Skyline Drive location. See **Exhibit G**.

Revised Project Description

The pole height, FAA tower lighting, lease area size, and location and number of antennas are the same. The following lists the proposed revisions:

- Lease area has been relocated approximately 23 feet closer to the property owner's residence to avoid the cutting down or cropping of any trees. The lease area is still 15 feet from the side property line. The proposed lease area is now setback 35 feet 8 inches from the rear property line as opposed to 12 feet 4 inches before.
- The equipment shelter is proposed to be 12 by 24 feet, measuring 288 square feet in size, double the size of the original shelter, which was 12 by 12 feet. The CMU block wall equipment shelter would include a pitched roof with brown shingles to match the house. The wall and trim of the shelter would be painted to match the house as well. The shelter would be large enough to accommodate all future carriers' equipment. With the pitched roof, the shelter now measures 15 feet tall, although the walls still measure 10 feet tall as before.
- There are no HVAC units proposed on the revised equipment shelter. This removes any long-term noise issues from the previous proposal with HVAC units.
- From the relocated tower location, the nearest residence is now approximately 39 (was 35) feet to the west, with another residence 94 feet (was 105 feet) to the east and a third residence 149 feet (was 126 feet) to the south.

Revised photo simulations, date stamped January 14, 2015, show what the proposed monopine and equipment shelter would look like from two points along Skyline Drive. See **Exhibit F**.

Supplemental Detailed Site Analysis

A Supplemental Alternative Site Analysis (Analysis) was submitted to Staff on January 14, 2015 that provided more detailed information than the previous one page analysis. This Analysis analyzed the proposed site along with four other alternative sites and included two multi-site

alternatives to attempt to match the gap coverage offered by the preferred site using a number of new towers in the surrounding community. See **Exhibit G-1**.

The existing coverage map on page 5 shows four areas of significant gaps in AT&T coverage:

- Gap 1) The residential area surrounding the project site;
- Gap 2) A large area located along Lake Tahoe Blvd. at the Sawmill Road intersection;
- Gap 3) A small area located at the bottom of Highway 50 around Osgood Swamp, an uninhabited area; and
- Gap 4) A long narrow area on the west side of Highway 89, south of Meyers.

There are residences in gap areas 1, 2, and 4, and a small stretch of Highway 50 in area 3. For clarity, Gap area 1 will be referred to as “on-site gap” and gap areas 2, 3, and 4, will collectively be referred to as “off-site gaps”.

Primary Site Location: This location would place antennas at the 106 foot level above the existing trees and surrounding topography, making this site well suited for wireless coverage of the immediate and surrounding community. The primary site location map on page 7 shows that the coverage area would reach 2.5 miles, thus filling a large portion of the off-site gaps and almost the entire on-site gap.

Alternative Site Locations: The alternative site locations analyzed include the following and are detailed below:

- 1) Crown Co-location Site on adjacent property at 58 foot height level;
- 2) Lake Valley Fire District Location with a new 110 foot monopine tower;
- 3) Tahoe Paradise Golf with a new 110 foot monopine tower;
- 4) Lake Tahoe Golf with a new 110 foot monopine tower;
- 5) Multi-Site Alternative 1 combining alternative sites 2 and 4 above; and
- 6) Multi-Site Alternative 2 with four new towers in the surrounding community around the Skyline Drive area

1) Crown Co-location Site: This site contains a 99 foot tall monopole with two carrier’ antennas and FFA lighting at the top. AT&T would attach their antennas at the 58 foot level (highest available space on the existing pole), well below the 106 foot level of their primary site location. At this 58 foot level, trees would obscure the range of the wireless signal, and the coverage area would only reach 1.2 miles, thus providing very little coverage to the off-site gaps, but providing coverage to almost the entire on-site gap. See page 10. Also, with the antennas at 58 feet, snow loads in the nearby trees would reduce signal strength even further.

2) Lake Valley Fire District Location: This fire station location is at the end of Keetak Street on the east side of Highway 89, just south of the Highway 50 intersection. A new 110 foot tower was analyzed at this site. With the antennas above the surrounding trees, this site would fill some portions of the significant gaps, mainly south of Meyers along Highway 89. The coverage area could reach out 2.5 miles, although the outer 0.7 miles would have severely diminished coverage. Much of the on-site gap would not be covered, including the area around Skyline

Drive. All of the off-site gap area 4 would be covered while the other two off-site areas would receive no coverage. The mountains directly east of the fire station would block the wireless signal from reaching areas to the east and southeast.

3) Tahoe Paradise Golf: This golf course is located at 3021 Highway 50 in Meyers on the south side of Highway 50. A new 110 foot tower was analyzed at this site. With the antennas above the surrounding trees, the majority of the off-site gap area 4 would be covered while the other two off-site areas would receive no coverage. Only about half of the on-site gap area would be covered. The coverage area could reach out 2.5 miles, although the outer 0.7 miles would have severely diminished coverage. The mountains directly east of the golf course would block the wireless signal from reaching areas to the east.

4) Lake Tahoe Golf: This golf course is located at 2500 Highway 50, on the west side of Highway 50 between Country Club Drive and Sawmill Road. A new 110 foot tower was analyzed at this site. With the antennas above the surrounding trees, this site would fill less than half of off-site gap area 2, but none of the other off-site gap areas, and only about 1/3 of the on-site gap area. The coverage area could reach out 2.0 miles, although the outer 0.2 miles would have severely diminished coverage. The low elevation in the valley and the surrounding mountains limit the overall coverage to the surrounding area.

5) Multi-Site Alternative 1: As requested by Planning Services, the applicant analyzed two tower locations as shown on page 19 in an effort to match the coverage of the Primary Site Location. The two locations were Lake Valley Fire and Lake Tahoe Golf, alternatives 2 and 4 above. With these two new 110 foot towers, AT&T would get an overall 70 percent coverage match compared to the Skyline Drive tower, but would lack coverage in the vicinity of Skyline Drive and Crystal Air Drive, completely lack coverage in the off-site gap area 3, and cover less than half of gap area 1. All of off-site gap area 4 would be covered. This proposal has 30 percent less coverage than the primary location and would include one additional tower. This multi-site alternative does place cell towers in non-residential areas on public or commercial land.

6) Multi-Site Alternative 2: As mentioned by the Planning Commission, the applicant analyzed four tower locations as shown on page 19 in an effort to match the coverage of the Primary Site Location. The four locations chosen for this analysis were Lake Valley Fire at 110 feet (alternative 2), Lake Valley Fire Station #5 on Boulder Mountain Court at 75 feet, US Forest land off Fountain Place Road at 81 feet, and US Forest Service land at Winton Drive at 93 feet. With these four new towers, AT&T would get an 80 percent coverage match compared to the Skyline Drive tower, but would lack coverage in the vicinity of Skyline Drive and Crystal Air Drive, and a small portion of the southern part of on-site gap area 1. This proposal has 20 percent less coverage and three more towers, thus lending itself to be an infeasible alternative.

Based on the Analysis, AT&T states that the proposed site location on Skyline Drive remains the least intrusive means to close AT&T's significant service coverage gap and provides the most coverage in the surrounding area.

STAFF ANALYSIS

Revised Project Description

As to the monopine and the equipment shelter, the Planning Commission had the following design comments at the hearing on December 11, 2014: 1) they did not like the need for additional shelters when additional carriers collocated on the monopine; 2) thought the shelter should look more like a house or shed to blend with the residential neighborhood; 3) thought the facility should be shifted to avoid tree loss and cropping; and 4) wanted the facility moved further away from the residence to the west.

The applicant's revised site plans do respond to all of the above issues discussed by the Planning Commission. The larger equipment shelter, which is twice as long as the original proposed shelter, is built to house all proposed equipment and future carriers' equipment within the shelter, so there would not be a need to build another shelter in the future.

The shelter was revised to include a pitched roof atop CMU block walls. The walls and trim of the shelter would be painted two different colors to match the colors of the residence and the shingles atop the pitched roof would match those on the residence. The height of the new shelter with pitched roof is 15 feet compared to the original shelter with a flat roof at 10 feet. The block wall would be 10 feet with the pitched roof the additional five feet.

The lease area has been relocated approximately 23 feet closer to the residence, and now the facility could be constructed without cutting down or cropping any trees on the property. With this shift closer to the street, the rear setback is now 35 feet 8 inches as opposed to 12 feet 4 inches and the tower is now five feet further from the closest neighbor's house to the west.

One additional revision to the facility was the removal of the two HVAC units and the two CMU sound barrier walls proposed in the original plans. This would eliminate any long-term noise impacts at the site as there would be no air conditioning units and no backup generator. The applicant states that there would be no need for HVAC units in future co-location installations. If a future carrier wanted to install HVAC units or a backup generator at the facility, they would have to meet the requirements of General Plan Policy 6.5.1.6 for noise level standards.

Supplemental Detailed Site Analysis

The supplemental detailed site analysis supplied by the applicant is much more extensive than the original analysis and analyzes three additional alternative sites. It also includes the analysis of two multi-site alternatives. Coverage maps are included to visualize where coverage could be obtained by each individual site. Also included with this Analysis are the locations of significant gap areas in AT&T's wireless coverage.

After reviewing the various coverage maps, one can see that the applicant's preferred location atop Skyline Drive would provide AT&T with the most coverage in the surrounding areas and would also provide wireless service to all four significant gap areas identified on the existing coverage map (page 5).

The Multi-Site Alternative 1 (page 19) does match 70 percent of the coverage provided by the preferred location tower, but does require two 110 foot towers to provide less coverage than one 110 foot tower atop Skyline Drive. The sites analyzed in this multi-site alternative are located on public facility properties, not residential properties.

The Multi-Site Alternative 2 (page 20) does match 80 percent of the coverage provided by the preferred location tower, but does require four 110 foot towers to provide less coverage than one 110 foot tower atop Skyline Drive. The four sites analyzed in this multi-site alternative are located on public facility and US Forest properties, not residential properties. Note that two of the alternative sites are proposed on US Forest Service land and, because of a five-year moratorium on new cell tower sites in the Tahoe basin, would not be able to be constructed until the summer of 2019.

At the Crown Co-location site on the adjacent parcel, it is assumed that AT&T would get the same coverage and fill all the significant gap areas if they were able to place their antennas at the 106 foot level of the existing pole. Since the pole only stands 99 feet tall, additional pole height would be needed to allow AT&T to attach antennas at the 106 foot level. The applicant stated that adding more height to this pole would be infeasible as the pole would need to be replaced and built to a height of about 140 feet for AT&T to get lease space at 106 feet because the other two existing carrier's would get the higher locations on the pole. Also, TRPA lot coverage could be an issue for this property, so AT&T may not be able to add another equipment shelter in the back yard. It is unknown if a FAA permit would be issued for the additional height to the pole.

Telecommunications Act of 1996: The Telecommunications Act of 1996 amended the Communications Act of 1934. The Act's stated objective was to open up markets to competition by removing regulatory barriers to entry. Under this Act, Section 332(c)(7)(B) set forth limitations on local zoning authority. It states "The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

This Section goes on further to state "any decision by a State or local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." Further, "no State or local government may regulate 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 FCC's regulations concerning such emissions."

The courts have determined that a locality violates this Section of the Act if it prevents a wireless provider from closing a "significant gap in service coverage." (American Tower Corp. v. City of San Diego (9th Cir. 2014) 763 F.3d 1035, 1056.) This analysis requires (1) a showing of a significant gap in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations. (Ibid.)

It appears that a local government may not deny a wireless facility if the denial will have the effect of prohibiting the provision of personal wireless services to an area. It appears that denial of this cell facility would prohibit residences and travelers within the four significant gap areas from the provision of AT&T's personal wireless service.

Responses to Testimony: The following is a list of the questions raised by the testifiers at the January 22, 2015 meeting, and responses by either the applicant or staff.

- 1) Bring the denial findings to the meeting.
Staff has drafted findings for denial and would be able to present those to the Commission should the Commission choose to deny this application.
- 2) Deny the application and let applicant reapply.
If the Commission chooses to deny this application and does so without prejudice then the applicant would have that chance to reapply if they wanted to. They could appeal the denial decision to the Board of Supervisors, also.
- 3) Require a third party review of the alternative site analysis.
AT&T was unable to supply such an analysis before the Commission hearing, and does not see this necessary, as their application meets the stated requirements of the County of El Dorado for application/review and the data to support a wireless carrier's federal right to utilize the parcel has been provided by a qualified engineer.
- 4) Why not use the existing pole on neighboring property and replace it if not structurally sound.
A new pole cannot be placed in the same location as the existing pole, thus the reason the previous application included a tower located five feet from the eastern property line of the project parcel. It was determined at the time that significant tree cover and lack of access space around the existing water tank made the existing parcel unsuitable to sustain current or future upgrades of the facility. Coupled with TRPA requirements pertaining to lot coverage, this parcel, which includes much of the water tank, is at the limit of capacity for impervious surfaces. This negates the ability for AT&T or existing carriers to add equipment on the property.
- 5) Have the Planning Commission members seen the site.
There is no requirement for all Commission members to visit the site. They rely the application, staff report, and public comment. The Commissioner from District 5, Lake Tahoe, could visit the site.
- 6) City of South Lake Tahoe said no one contacted them about the use of the neighboring pole. Can you explain?
The applicant contacted the leasing agent posted on the side of the tower. Going around the leasing agent would not be required unless the leasing agent was unresponsive. It was determined from their initial contact that the available space on the tower and ground and structural capacity coupled with previous denials to upgrade this facility, would make it infeasible as a candidate for AT&T use. This was confirmed by AT&T's engineers.
- 7) Has the applicant got FAA approval yet for a new pole? When?
The FAA has approved AT&T's application for installation of a 120 foot tower (with 3 foot lighting beacon included making this 123 foot total in their eyes) with

no requirement for “candy striping” the tower. The FAA approval is included in Staff’s project file.

- 8) One alternative site was not studied. How about using the 150 foot tall radio tower at Pioneer Trail, north of Black Bart Avenue?

This site is in AT&T’s study as an existing AT&T facility called CNU6294 (see page 2 of Exhibit G-1). As this is an existing tower and beyond the reach of AT&T’s existing site CVU6295 (north of project site at Pioneer Trail and Washoan), upgrades to this facility will provide no improvement of coverage in the project area.

- 9) The RF Engineer on your alternative site analysis is not registered. Can you explain or provide his certification?

The Alternative Site Analysis was updated to include the engineer’s credentials (see page 23 of Exhibit G-1). Unlike a Civil or Structural engineer, the FCC does not require an RF engineer to stamp their work, thus there is no registration required. AT&T operates within and maintains its FCC licenses with their staff of well-educated and experienced engineers, James Temple is one of the more experienced in the local area. The applicant will have a copy of his Electrical and Electronics Degrees for reference during the hearing, otherwise his degree information is on file with the registrar at CSUS.

- 10) Let the Planning Commission deny the project and allow the applicant to appeal to the Board of Supervisors.

If the Commission chooses to deny this application, the applicant would have the opportunity to appeal the denial decision to the Board of Supervisors.

- 11) Children live and play close to the proposed tower. How does this impact them?

The FCC regulates emissions and according to the Telecommunications Act of 1996, Section 332(c)(7)(B), no State or local government may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions.

- 12) There is too much traffic to the area now with other pole and water tank workers. How much additional traffic will result from this proposal? How long would it take to construct the facility?

The applicant discussed this with a technician on site during one of their engineering walks and determined that the reason there is so much traffic is due to the old and inoperable equipment that is being patched and re-patched to allow newer FCC standards and equipment to operate on an outdated structure and antennas.

AT&T towers are built over the course of two months of eight hour week days (per the requirement of the Building Department which limits times and dates of construction), and once operational, will be monitored, not worked on, twice a month for the first few months. Monitoring tapers off to once a month or every other month for 10 months out of the year. Every year to two years, AT&T schedules upgrades to the equipment as a standard practice. This results in a man lift being brought to the tower once a year for 1 to 3 days. This is standard practice in the industry, whereas the tower facility to the west is well beyond standard practice due to the property/structure limitations.

- 13) This is a residential neighborhood, not commercial; cell towers should not be located in a residential area.
According to the Zoning Ordinance, cell towers are allowed in all zoning districts either as a permitted right or with a special use permit.
- 14) Neighboring property owners believe the tower will affect property values and require disclosure upon sale of property.
The courts have ruled that property devaluation as a result of cell towers is not grounds for denial of a cell tower application.

SUPPORT INFORMATION

Attachments to Staff Report:

Conditions of Approval
Findings

Exhibit A.....	Location Map
Exhibit B.....	Assessor's Parcel Number Map
Exhibit C.....	General Plan Map
Exhibit C-1.....	Plan Area Statement Map
Exhibit D.....	Zoning Map
Exhibit E-1.....	Overall Site Plan, Sheet A1; 12/12/14
Exhibit E-2.....	Detailed Overall Site Plan, Sheet A1.1; 12/12/14
Exhibit E-3.....	Enlarged Site Plan, Sheet A2; 12/12/14
Exhibit E-4.....	Equipment Enclosure Plan, Elevations and Antenna Plan, Sheet A3; 12/12/14
Exhibit E-5.....	West Elevation, Sheet A4; 12/12/14
Exhibit E-6.....	South Elevation, Sheet A5; 12/12/14
Exhibit E-7.....	East Elevation, Sheet A6; 12/12/14
Exhibit E-8.....	North Elevation, Sheet A7; 12/12/14
Exhibit F.....	Photo Simulations; 01/14/15
Exhibit G.....	Site Analysis with Coverage Maps; 08/01/14
Exhibit G-1.....	Supplemental Alternative Site Analysis; 02/05/15
Exhibit H.....	Proposed Negative Declaration and Initial Study