



# COMMUNITY DEVELOPMENT AGENCY

## DEVELOPMENT SERVICES DIVISION

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TO: Board of Supervisors

FROM: Aaron Mount, Project Planner

DATE: May 13, 2016

RE: **Appeal - S15-0001-A/Swansboro Verizon Cellular Tower (Mono-Pine); Staff Analysis of Appeal**

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This is staff's analysis on the Upper One Eye Creek Road Community appealing the approval of Special Use Permit S15-0001/Swansboro Verizon Cellular Tower (Mono-Pine) by the Planning Commission on April 28, 2016. Below are the specific reasons for the appeal as stated by the appellant on their appeal form, followed by staff's response.

1. "Recorded deeded legal access. Land owner does not have a recorded deeded legal access to One Eye Creek Road. How can a permit for a cell tower be approved when a land owner has no authority to give permission to bring in all the equipment on One Eye Creek Road to build this proposed cell tower? Re: Planning commission hearing on April 28<sup>th</sup> 2016. We could not tell on the audio of the meeting if it was staff or legal counsel that stated they believe that proof of road access has been submitted. Where is the proof?"

**(Response:)** Building permits applied for on the project parcel may not be issued until such time as all conditions of approval from Conditional Certificate of Compliance COC04-0048 have been met. Condition of Approval A from COC04-0048 requires the following "An irrevocable offer of dedication, 25 feet from the centerline of One Eye Creek Road, for road and public utility purposes, including all slope easements, shall be offered to the County across the frontage of the subject parcel. The offer of dedication shall be made on a form approved by the Department of Transportation".

As One Eye Creek Road is a privately maintained road, access will be a civil matter between the property owners who utilize the private road on a daily basis and the cell tower carrier/applicant who may utilize it once or twice a month.

2. "Ordinance 5030.130.40.130.6B. In all other zones, or where located adjacent to a state highway or designated scenic corridor or within 500 feet of any residential zone, new towers or monopoles shall be subject to Commission approval of a Conditional Use Permit. Why was this

interpreted in favor of Verizon to be able to build a cell tower within 250 feet of a residential home?”

**(Response:)** Sections 130.40.130.B.6.a and 130.40.130.B.6.b of the Zoning Ordinance describe which reviewing authority and application type is appropriate for a new tower based on its proposed location and adjacent land uses. Section 130.40.130.B.6.a states that a new tower located in all commercial, industrial and research and development zones, not adjacent to a state highway or scenic corridor, nor located within 500 of any residential zones, would be subject to Zoning Administer approval of a Minor Use Permit. Section 130.40.130.B.6.b states that a new tower located within 500 feet of any residential zone shall be subject to Planning Commission approval of a Conditional Use Permit. As the subject project is located adjacent to residential zones, the project was processed as a Conditional Use Permit and was approved by the Planning Commission. The project is therefore consistent with Section 130.40.130.B.6.b of the Zoning Ordinance.

Section 130.40.130.D.2 requires compliance with the applicable zone setbacks. The project parcel is within the Rural Lands 40-Acre (RL-40) Zone District. The RL-40 Zone District requires a 30-foot structural setback measured from the property line. The location of the communications facility meets the required setbacks, with a front setback of 102-feet and a side setback of 32-feet, and is therefore consistent with Section 130.40.130.D.2 of the Zoning Ordinance.

3. “Danger/Safety to residents on upper part of One Eye Creek Rd. There is plenty of proof that cell towers fall over and collapse, explode and catch fire. They can collapse due to faulty bolts, faulty metal, and lightning (we have witnessed many many dry lightning storms in Mosquito on a regular basis). Towers are grounded, but a bolt of lightning can weaken the metal on the tower. Most fires start at the top of these cell towers and this tower is 109 feet tall. The homes of 2 residents homes are within 250 ft. of this tower. Mosquito has a part-time volunteer dept.

<http://www.electronicssilentpring.com/primers/cell-towers-cell-phones/cell-tower-fires-collapsing/>

In addition thieves steal batteries and copper from these towers. One Eye Creek Road is a perfect place for this to occur – it is a dark dead-end road far removed from civilization of Placerville. The location of all cell towers are listed on the internet. Some residents come home from work at 2:00 am and we take our dogs out at night.

<http://www.aglmediagroup.com/move-over-copper-cell-tower-batteries-are-the-hot-item-now-2/>”

**(Response:)** The proposed cellular communications facility will be reviewed at the building permit stage to ensure consistency with all applicable building and fire codes. The project was reviewed by the Mosquito Fire Protection District which stated that they had no concerns with the project. The generator and its associated 55-gallon diesel gas tank have been removed from the project description.

The facility is secured by a six-foot high chain link fence with barbed wire at the top. Additionally, the site would contain a shielded motion sensor light.

4. “Alternate site analysis. Verizon was asked by the planning commission to do an alternate site analysis. Please investigate the public comment letter on this. In example, Verizon picked a site near the airport. We think most everyone knows you can’t put a cell tower near an airport.

The planning commissioners suggested a site in the Eldorado National Forest as an alternative site. This site is about 200 ft. higher in elevation than original site. It is on top of a hill and there are no homes above this site. Verizon did not look at this site as an alternative site. Yet Verizon was not questioned about this at the second planning commission hearing.

The US Forest Service budget for 2016 allows monies for communication facilities on forest lands. This was not questioned by the planning commission. This makes no sense to put a tower near homes when forest land is so near and accessible. There many places this tower could go that would not trap families if a disaster should occur from this cell tower.”

**(Response:)** Section 130.40.130.A.1.a only requires applicants to provide evidence that their antennas cannot be sited on existing structures as façade mounts, roof mounts, or co-location on existing towers. The analysis provided by the agent showed that these available features do not exist or do not meet their requirements in order to provide the necessary wireless communication coverage.

El Dorado County cannot comment on siting of communication towers on property that is outside of our jurisdiction as the Zoning Ordinance is exempt from activities of the Federal Government on federally owned or leased land.

5. “Aesthetics. The photos presented by Verizon show that brush would hide this tower and mini-industrial-complex. How much of this brush cover will still be there after all the equipment works around this area. The planned Verizon utility access is right along the edge of One Eye Creek Rd. If you look at this closely you can see that the roots of the brush and manzanita will be disturbed if not destroyed. When you upset roots from manzanita the plant dies as with much of the other brush and vegetation around this tower. The land owner would have to widen the road to 18 ft. with 2 ft. shoulders on each side to make his land a legal parcel. This will would cut into the vegetation along the road. This tower is 109 ft. tall. It will tower over everything in the area. We do not believe moving the tower 20 ft. will make it look anything like the photo’s presented by Verizon. If this Board considers approval of this proposed tower we believe they should first have Verizon put balloons on a 109 ft. string and on a string the length of the Mini Industrial Complex and take photos.

In addition, referring to the hearing April 28, 2016, once the planning commission approved the proposed Verizon cell tower, the Verizon representative told the room, “These people have phone poles. This is just another pole.” We take exception that our phone poles are 40-50 feet high and 109 feet is “not just another pole.”

**(Response:)** The project site is located in a Rural Region surrounded by rural residential and vacant agricultural lands. No scenic vistas, as designated by the County General Plan, are located in the vicinity of the site (El Dorado County, 2003, p. 5.3-3 through 5.3-5). The project site is not visible from an officially designated State Scenic Highway or County-designated scenic highway, or any roadway that is part of a corridor protection program (CalTrans, 2013). There are no views of the site from public parks or scenic vistas. Though there are many trees in the project vicinity, there are no trees or historic buildings that have been identified by the County as contributing to exceptional aesthetic value at the project site.

The project is consistent with Section 130.40.130.D.1 which requires all facilities to be screened with vegetation and disguised to blend with the surrounding area. The tower has been approved as a mono-pine tower consistent with the requirement that stealth technology be used to blend the tower with the prevalent natural features or vegetation of the site. The visual simulation shows that the tower blends with the prevalent natural vegetation and that the equipment would not be visible from adjacent parcels.

Section 130.40.130.A of the Zoning Ordinance states, “The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare”.

6. “Real Estate Values. The evidence by our letters shows that real estate values drop by 21 percent after a cell tower is built close to a home. It appears to us after going through the planning commission hearings that this does not matter. Why does it not matter?”

**(Response:)** Under CEQA, direct social and economic effects, such as project effects on property values, are not considered significant impacts. CEQA only analyzes direct physical environmental impacts from projects. The Federal Telecommunications Act of 1996 does not allow local governments to make general prohibitions on cellular towers nor may they defend a denial with vague concerns of diminished property values. Additionally, Section 130.40.130.A of the Zoning Ordinance states, “The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare”.

7. “Health matters of the elders. One of our senior residents had to seek professional help due to stress from fear of this cell tower. Why would this not matter?”

**(Response:)** Under CEQA direct social effects are not considered significant impacts. CEQA only analyzes direct physical environmental impacts from projects. Additionally, Section 130.40.130.A of the Zoning Ordinance states, “The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare”.

Only the Federal Communications Commission (FCC) may regulate wireless communication facilities regarding radio frequency radiation. As long as the operators of those facilities comply with the applicable FCC regulations, state and local land use authorities are preempted from taking action based on radio frequency radiation.

8. “Asbestos study. Why is asbestos study not required? The property owner is going to have to tear up the road to widen it to make his property a legal parcel. One senior living across the road has COPD (Cronic Obstructive Pulmonary Disease) and is on oxygen part time.”

**(Response:)** According to County records, the project parcel is not within an area known to contain Naturally Occurring Asbestos (NOA). Road improvements are required by Conditional Certificate of Compliance COC04-0048 which conducted a separate CEQA review. All development associated with S15-0001 will take place on the project parcel. The project is required to submit for approval a Fugitive Dust Mitigation Plan prior to initiation of any grading.

9. “Biological Study. The Biological study is flawed. Bald Eagles fly over this area on a regular basis as do airplanes from the Swansboro Airport. There are Indian Grinding Rocks within ½ mile of the proposed cell tower site. Why do a biological study if it does not matter that it is flawed? The planning commission approved a proposed cell tower in the flight path of Bald Eagles on One Eye Creek Road Hill. Why is this allowed? Bald Eagles are protected. There are some regulations on cell towers for Bald Eagles. We hope you will look into these regulations.”

**(Response:)** The project site is not in an Important Biological Corridor. The project site does not contain riparian features, habitat, or federally protected wetlands; or gabbro soils. No fish and wildlife species listed as protected by the State or federal government pursuant to the 2004 General Plan EIR were found on site; however, the biological survey (Foothill Associates, 1/18/2016) indicated the potential for four special status plant species in the woodland habitat surrounding the cellular site (*Clarkia biloba* ssp. *brandegeae*, *Clarkia virgata*, *Horkelia parryi*, and *Chlorogalum grandiflorum*), potential for silver haired and Yuma myotis bats to roost on the site, and nesting of raptors to occur adjacent to the cellular site. If construction takes place between February 1 to September 1, the applicant will be required to conduct surveys for the presence of the concerned plant, bat, and avian species and if found, take necessary measures to protect the species in coordination with the state Department of Fish and Wildlife or the California Native Plant Society.

A cultural resource survey (EBI Consulting, 2/19/2016) concluded that the site’s sensitivities for historic resources and precontact are low. There are no known registered archaeological sites within a half-mile radius of the site. After consultation with tribes that historically occupied the area and a negative on-site survey, it was concluded that the site is not sensitive for archaeological resources and it is unlikely that the proposed project area is sensitive for significant below-grade cultural resources.

10. “The frontage road for this proposed tower cuts across a heavily used game trail for bear, deer, and cougars. This would be environmentally detrimental.”

**(Response:)** The site is within the winter range of the Pacific deer herd. No significant fencing is being proposed that would limit the migration of this herd. The project site would be located within an approximately 40-acre parcel and would only fence an 836 square foot area. There would be no significant effect on wildlife movement.