PC 7-26-18 #3 2 pages
(Distributed at hearing)

Planning Department <planning@edcgov.us>

More Correspondence in Opposition to Application of AT&T Mobility

1 message

Colleen Bullock <cnbullock@droecalaw.com> Wed, Jul 25, 2018 at 3:03 PM
To: planning@edcgov.us

Please see the attached correspondence from Ms. Julie Clark. Please add to the file referenced below.

Colleen Bullock

Law Offices of Douglas R. Roeca

From: Colleen Bullock <cnbullock@droecalaw.com>
Sent: Thursday, July 19, 2018 2:39 PM
To: 'planning@edcgov.us' <planning@edcgov.us>
Subject: Opposition to Application of AT&T Mobility

Please see attached Memo of Opposition and Exhibits to Memo. This is opposition to the Application of AT&T Mobility; Project S 17-0016 AT&T CAF4 for a Conditional Use Permit. The Planning Commission Hearing is set for Thursday, July 26, 2018.

Please call or email me if you have any questions or problems opening these documents.

Thank you

Colleen Bullock
Legal Assistant
Douglas R. Roeca
3062 Cedar Ravine
Placerville, CA 95667
Telephone: (530) 626-2511
Facsimile: (530) 626-2514

07. Julie Clark Ltr.pdf
18K

CENTURY 21 SELECT REAL ESTATE

To whom it may concern,

July 25, 2018

It is my opinion that having cell towers or high voltage wires affect the desirability of neighboring properties. Some buyers will not even get out of the car to look at property if they see either. This may have a negative effect on property value.

Sincerely,

Julie Clark

BRE # 01246556

 PC 7-26-18 #3 (Distributed at hearing)

Planning Department <planning@edcgov.us>

Help expand internet access in El Dorado County!

1 message

Wesley Mosure <Wesley.Mosure.124210712@p2a.co> Wed, Jul 25, 2018 at 4:05 PM
Reply-To: wesmosure@gmail.com
To: Planning Commission <planning@edcgov.us>

Dear El Dorado County Planning Commission,

I am writing in support of the construction of new wireless communications facilities in El Dorado County.

The proposed facilities will bring high speed internet to our communities and will also improve wireless coverage for rural homes and businesses in El Dorado County.

The new broadband internet technology that will open up new possibilities for tech businesses and consumers in El Dorado County's rural communities.

The improved wireless coverage will provide an extremely valuable service to those who live, travel, and do business in El Dorado County. It will give people the ability to call for emergency services in the event of an accident, the ability to communicate with employees or clients outside of the office, and the ability to communicate with family members.

Regards,

Wesley Mosure
5701 Silver Lode Dr
Placerville, CA 95667

PC 7-26-18 #3
(Distributed at hearing)

Planning Department <planning@edcgov.us>

Help expand internet access in El Dorado County!

1 message

Kristen Hansen <Kristen.Hansen.124211469@p2a.co> Wed, Jul 25, 2018 at 4:31 PM
Reply-To: kris.hansen@sbcglobal.net
To: Planning Commission <planning@edcgov.us>

Dear El Dorado County Planning Commission,

I am writing in support of the construction of new wireless communications facilities in El Dorado County.

The proposed facilities will bring high speed internet to our communities and will also improve wireless coverage for rural homes and businesses in El Dorado County.

The new broadband internet technology that will open up new possibilities for tech businesses and consumers in El Dorado County's rural communities.

The improved wireless coverage will provide an extremely valuable service to those who live, travel, and do business in El Dorado County. It will give people the ability to call for emergency services in the event of an accident, the ability to communicate with employees or clients outside of the office, and the ability to communicate with family members.

Regards,

Kristen Hansen
2411 Countryside Dr
Placerville, CA 95667

PC 7-26-18 #3
(Distributed at hearing)

Planning Department <planning@edcgov.us>

Help expand internet access in El Dorado County!

1 message

Melanie Rossi <Melanie.Rossi.124218985@p2a.co> Wed, Jul 25, 2018 at 10:16 PM
Reply-To: mrossi@ymail.com
To: Planning Commission <planning@edcgov.us>

Dear El Dorado County Planning Commission,

I am writing in support of the construction of new wireless communications facilities in El Dorado County.

The proposed facilities will bring high speed internet to our communities and will also improve wireless coverage for rural homes and businesses in El Dorado County.

The new broadband internet technology that will open up new possibilities for tech businesses and consumers in El Dorado County's rural communities.

The improved wireless coverage will provide an extremely valuable service to those who live, travel, and do business in El Dorado County. It will give people the ability to call for emergency services in the event of an accident, the ability to communicate with employees or clients outside of the office, and the ability to communicate with family members.

Regards,

Melanie Rossi
1650 Smith Flat Rd
Placerville, CA 95667

PC 7-26-18
#3
(Distributed at hearing)

Planning Department <planning@edcgov.us>

Help expand internet access in El Dorado County!

1 message

George Paptzun <George.Paptzun.124219821@p2a.co> Wed, Jul 25, 2018 at 11:57 PM
Reply-To: quickbarn.george@yahoo.com
To: Planning Commission <planning@edcgov.us>

Dear El Dorado County Planning Commission,

I am writing in support of the construction of new wireless communications facilities in El Dorado County.

Wireless and high speed broadband has many positive benefits for vital institutions like schools, hospitals and police and fire departments, and residents. New infrastructure delivers community benefits including enhanced public safety, educational access, health care and more.

The approval of this wireless communications facility will help increase network coverage and improve call quality, including emergency response services to improve public safety.

I ask for your support of the proposed new wireless communications facility in El Dorado County.

Sincerely,

George Paptzun
2130 Ranch Creek Rd
Cool, CA 95614

PC 7-26-18
#3
(Distributed at hearing)

Planning Department <planning@edcgov.us>

Help expand internet access in El Dorado County!

1 message

Fred Jones <Fred.Jones.124219902@p2a.co> Thu, Jul 26, 2018 at 12:05 AM
Reply-To: coolglo@jps.net
To: Planning Commission <planning@edcgov.us>

Dear El Dorado County Planning Commission,

I am writing in support of the construction of new wireless communications facilities in El Dorado County.

The proposed facilities will bring high speed internet to our communities and will also improve wireless coverage for rural homes and businesses in El Dorado County.

The new broadband internet technology that will open up new possibilities for tech businesses and consumers in El Dorado County's rural communities.

The improved wireless coverage will provide an extremely valuable service to those who live, travel, and do business in El Dorado County. It will give people the ability to call for emergency services in the event of an accident, the ability to communicate with employees or clients outside of the office, and the ability to communicate with family members.

Regards,

Fred Jones
1721 Grouse Ridge Trail
Cool, CA 95614

PC 7-26-18
#3
(Distributed at hearing)

Planning Department <planning@edcgov.us>

Help expand internet access in El Dorado County!

1 message

Gloria Jones <Gloria.Jones.124219902@p2a.co> Thu, Jul 26, 2018 at 12:10 AM
Reply-To: coolglo@jps.net
To: Planning Commission <planning@edcgov.us>

Dear El Dorado County Planning Commission,

I am writing in support of the construction of new wireless communications facilities in El Dorado County.

Wireless and high speed broadband has many positive benefits for vital institutions like schools, hospitals and police and fire departments, and residents. New infrastructure delivers community benefits including enhanced public safety, educational access, health care and more.

The approval of this wireless communications facility will help increase network coverage and improve call quality, including emergency response services to improve public safety.

I ask for your support of the proposed new wireless communications facility in El Dorado County.

Sincerely,

Gloria Jones
1721 Grouse Ridge Trail
Cool, CA 95614

PC 7-26-18
#3
52 Pages
(Distributed at hearing)

Planning Department <planning@edcgov.us>

Fwd: FW: Revised Memo in Opp

1 message

Evan Mattes <evan.mattes@edcgov.us> Thu, Jul 26, 2018 at 7:34 AM
To: Planning Department <planning@edcgov.us>

---------- Forwarded message ----------
From: **Bob Craft** <bob@scorpionridgeranch.com>
Date: Wed, Jul 25, 2018 at 5:43 PM
Subject: FW: Revised Memo in Opp
To: "evan.mattes@edcgov.us" <evan.mattes@edcgov.us>

I hope this works.

Sent from Mail for Windows 10

From: Carole O'Shea
Sent: Wednesday, July 25, 2018 8:30 AM
To: bob@scorpionridgeranch.com
Subject: Revised Memo in Opp

Mr. Craft:

We received two letters from the Nicholsons and Sandells regarding the aesthetic impact of the proposed cell tower to your neighborhood, which we have added to the Memo and Exhibits.

I am resending to you the Revised Memo, in Word and PDF format, and the Exhibits (under separate email) for your review and submission to the Planning Commission.

Carole-Ann O'Shea

Office Manager

Campanelli & Associates, P.C.

1757 Merrick Avenue, Suite 204

Merrick, New York 11566

(516) 746-1600

--

Evan Mattes
Assistant Planner

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667
Office: (530) 621-5994 Fax: (530) 642-0508
evan.mattes@edcgov.com

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4 attachments

A cover page.docx
15K

B Table of Contents.docx
17K

C Body of Memo.docx
60K

Site 5 Memo.pdf
2991K

COUNTY OF EL DORADO
STATE OF CALIFORNIA
----------X

In the Matter of the Application of

AT & T Mobility **Site # 5 – Latrobe**
Project S 17 –0016 AT&T CAF4

Conditional Use
Permit Application

MEMORANDUM
IN OPPOSITION

Premises: Site #5
7160 Dragon Point Road
Shingle Springs, CA 95682
Parcel ID# 087-181-10-100

----------X

MEMORANDUM IN OPPOSITION

Respectfully Submitted,

Robert L. Craft
8600 Lost Horizon Road
Shingle Springs, CA 95682

Table of Contents

Preliminary Statement

Under Project S 17 0017 CAF4, AT&T Mobility (hereinafter *"AT&T"*) seeks a reconsideration of the denial of an application for a Conditional Use Permit to install seven (7) large "mono pine" cell towers throughout El Dorado County.

One of the cell towers being proposed within that application is a one hundred forty (140) foot tower being proposed for real property situated at 7160 Dragon Point Road, Shingle Springs, CA 95682, which is identified in *AT&T*'s application as "Site # 5," the "Latrobe" parcel.

This memorandum is being submitted by Robert L. Craft, a homeowner whose property is situated only **thirty (30) feet** from where the base of a fourteen (14) story tower would stand if *AT&T's* application were to be approved.

After a public hearing was conducted on February 22, 2018, the Planning Commission effectively denied *AT&T's* application by rendering a 2-2 vote upon same.

Thereafter, the Planning Staff completed a statement of findings of the Planning Commission, wherein the Staff recorded the Commission's findings.

With respect to Site #5, the Commission's findings were that: (a) *AT&T* did not adequately analyze potential co-locations within the vicinity, and failed to establish a prima facie case to support its claim that there are no feasible alternative sites, (b) the proposed tower would "unavoidably impact" the aesthetics of the surrounding neighborhood", and (c) adequate access does not exist for the site.

A true copy of the Planning Staff's Statement of Findings for the Commission's denial is submitted herewith as Exhibit "A."

By e-mail and letter dated February 21, 2018, the applicant requested that the Commission "reconsider" its denial, citing the provisions of the Federal Telecommunications Act of 1996 (herein after referred to as the "TCA"). A copy of the applicant's e-mail and accompanying letter are collectively annexed hereto as Exhibit "B."

Within such letter, the applicant essentially suggests that the TCA all but *requires* that the Commission grant *AT&T's* application to "satisfy" the TCA. *See* Exhibit "B" at page 5.

Consistent with the Planning Commission's previous determinations, and as further supported by the evidence submitted herewith, *AT&T's* application for reconsideration of its previous application should be denied because: (a) the proposed tower, which is the subject of this memorandum, is not necessary for *AT&T* to provide wireless services within the County, (b) *AT&T* has wholly failed to established that it suffers from a "significant gap" in its 4G LTE personal wireless services, or that the proposed tower is the least intrusive means of remedying any such non-existent gap, (c) the proposed installation would unnecessarily inflict dramatic adverse aesthetic impacts upon the nearby homes, and (d) would reduce the values of the nearby homes, (e) the proposed installation lacks a sufficient fall zone and (f) the proposed installation does not comply with the requirements of the El Dorado Zoning Ordinance.

Simply stated, the installation of a fourteen (14) story tower in a residential area at Site # 5 would not merely "*stick out like sore a thumb*," it would inflict upon my home, the other homes nearby, and the community, the precise adverse impacts which the relevant provisions of the El Dorado Zoning Ordinance were specifically enacted to prevent.

As such, I respectfully submit that *AT&T*'s application for reconsideration should be denied while ensuring that such denial is performed in a manner that does not violate the Telecommunications Act of 1996.

While violations of the Telecommunications Act of 1996 **do not** enable applicants, such as *AT&T,* to recover any money damages or attorneys fees against municipalities who violate the TCA, if the County were to deny *AT&T's* application *in a manner* which violated the TCA, *AT&T* would be able to seek a Court order directing the County to grant an approval for the Conditional Use Permit it seeks.[1]

[1] The United States Supreme Court has explicitly ruled that applicants filing lawsuits claiming violations of the Telecommunications Act of 1996, cannot recover damages under 42 U.S.C. §1983, nor attorneys fees under 42 U.S.C. §1988. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005), *See also* Sprint Telephony PCS LP v. County of San Diego, 543 F3d.571 (9th Circuit 2008).

POINT I

It is Beyond Dispute That the 140 Foot Cell Tower Which *AT&T* Seeks to Construct at Site # 5 is Not Necessary For *AT&T* to Provide Personal Wireless Services Within the County

As is reflected within *AT&T's* own submissions, *AT&T* does not "need" the 140 foot tower it has proposed at Site #5 to provide wireless services within the areas in and surrounding the site.

As such, contrary to what *AT&T* suggests within its February 21, 2018 letter requesting "reconsideration" of the previous denial of its Conditional Use Permit application, the TCA does *not compel* the County to reconsider or grant its application.

Under the Telecommunications Act of 1996, a local government cannot deny an application for the installation of a cell tower, if the denial of such an application would "***prohibit***" the applicant from providing personal wireless service in the area where it proposes to install the new tower.[2]

To establish that a denial would "prohibit" it from providing wireless services, an applicant, such as *AT&T*, must prove both parts of a two (2) part test.

First, it must prove that it suffers from "a significant gap" in its personal wireless services. Second, it must establish that the proposed installation is the "least intrusive means" of remedying such gap, meaning that there are no less intrusive alternative locations. *See* T-Mobile Central LLC v. Charter Township of West Bloomfield, 691 F3d 794 (6th Cir 2012).[3]

---

[2] *See* 47 U.S.C.A. §332(c)(7)(B)(i)(II).

[3] New York SMSA Limited Partnership v. Town of Oyster Bay Zoning Board of Appeal, 2010 WL 3937277 (E.D.N.Y. 2010) provides that "a coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists, customers cannot receiv[e] and send [ ] signals, and when customers pass through a coverage gap their calls are disconnected. [A] 'coverage gap' exists or a 'need' for a proposed site is found to be substantial by the Courts where, *inter alia,* the coverage needed by a carrier is not limited to a small number of houses in a rural area or merely the interior of buildings in a sparsely populated area."

A review of *AT&T*'s application reveals that *AT&T* does not claim that it suffers from any specific significant gap in its personal wireless services.

To the contrary, as is clearly disclosed within its supporting documentation, *AT&T* seeks to install its proposed tower at Site # 5 for *enhanced* cellular coverage and *future capacity* needs. *See* Exhibit "C" annexed hereto - a true copy of Attachment 3 for Site #5 Latrobe, wherein *AT&T* states that the purpose of the proposed 140 foot tower at Site #5 is to provide "*enhanced* cellular coverage and *capacity* to the Latrobe community." [italics added]

While failing to claim, much less *prove,* that *AT&T* suffers from any specific geographic gaps in its personal wireless services which would be "remedied" by constructing a massive 140 foot tower at the Latrobe Site, *AT&T* submits within its February 21, 2018 letter that:

> *"AT&T's proposed facilities would bring wireless services, including 4G LTE . . . . to as many people as possible in this rural portion of El Dorado County.*
>
> *See* Exhibit "B" at page 1.

AT&T has wholly failed to proffer to the Commission a modicum of evidence to establish that it currently suffers from any actual gap in its wireless services in these areas.

Instead, as is typically done in those cases where an applicant's desire to build a new large

cell tower is driven by financial desire[4] as opposed to any actual "*need*" for such a tower, *AT&T* submits unsupported "propagation maps" that are not merely hollow, but do not, and cannot, satisfy *AT&T's* burden of establishing that, in reality, there is a significant gap in coverage. *AT&T* is required to establish the presence of this significant gap in coverage before it can argue that the TCA requires the County to grant its current application for a Conditional Use Permit.

When a wireless provider suffers from *an actual* gap in its wireless service, providing evidence of such gap is both simple, and inexpensive.

Typically, the wireless provider will produce evidence of its gap by either performing a simple drive test or by simply providing a dropped call log.

A drive test is remarkably simple.

The tester takes an ordinary cell phone and attaches a recording device that records the wireless signal strength that the phone is receiving.

The paired devices are then temporarily attached to the dashboard of a car, which then drives through the area within which the provider believes a gap to exist. Since the recording device records the signal strength every few milliseconds or so, on a one hour drive the device can record as many as several hundred thousand readings, which provides a crystal clear picture of whether or not a gap in service exists, as well as the actual location of any such gap.

There is nothing estimated, surmised, or projected in this test.

Only the actual, real, existing signal strengths are recorded, and only ***actual gaps*** in wireless service are shown.

---

[4] *AT&T's* financial motivation to build new towers derives from its desire to take advantage of the federal "Connect America Fund" (CAF) through which the federal government is virtually "throwing money at *AT&T*" to build as many towers as possible. Notwithstanding same, *AT&T's* "financial desire" to reap the benefit of those monies offered by the federal government does not create a gap in *AT&T's* wireless services. Nor does it constitute a "*need*" for the towers which would trigger any requirement by the TCA that local governments grant approvals for these currently superfluous towers.

Even less burdensome, is the printing-out of a dropped call log.

Modern wireless carriers' computer systems maintain continuous records of dropped calls on their systems. With the input of a few keystrokes, providers can print out actual call logs which show the exact number of dropped calls in any location or area, for any chosen period of time.

Not surprisingly, given the ease and lack of expense involved in producing such proof to local zoning authorities, applicants seeking permission to install a new tower to alleviate an actual gap in their wireless service, these are the two types of evidence they will typically provide.

As the record clearly reflects, *AT&T* has produced no such proof in connection with its current application and proffers no excuse for having failed to do so.

By contrast, where an applicant does *not* suffer from any *actual gap* in service, but seeks construction of a new facility to meet *future capacity needs*, or to derive the financial benefit from leasing space upon such facility to its competitors, it will create the specter of a non-existent gap by engaging in a charade called "computer modeling."

In conducting computer modeling, the provider employs computer modeling software, and "introduces variables" to obtain a pre-desired resultant report.

"Introducing variables," means that the provider enters wholly arbitrary numbers and/or data into the software, to cause the software to print out a "coverage map" depicting anything the provider wants it to depict, irrespective of what the provider's *actual* coverage is, in the area depicted in the map.

Despite its submission of such "computer modeling" in support of its current application, *AT&T* has not established that it suffers from any actual gaps in its coverage which mandates that it

construct the proposed tower at Site #5, as the "least intrusive means" of remedying (i.e., closing such non-existent gaps in wireless service)

The Applicant has Wholly Failed to Establish That
There Are No Less Intrusive Alternative Sites Available

As set forth herein below, the proposed tower for Site #5 would inflict substantial adverse impacts on the homes nearby, and would, in fact, irresponsibly place my real property well within the fall zone of the proposed tower.

As such, *AT&T's* application for reconsideration should be denied because it would violate both the letter and the spirit of Ordinance Sections 130.40.130 and 130.52.021(C)(2).

Point II

AT&T's Application Must be Denied, Because the Proposed Tower Would Inflict Adverse Impacts Which the Relevant Provisions of the El Dorado Zoning Ordinance Were Specifically Enacted to Prevent

As the El Dorado County Zoning Ordinance makes quite clear, the intent behind the provision pertaining to Communication Facilities, and the reason why the County implemented a Conditional Use Permit requirement for same, was to protect the County against the adverse impacts which irresponsibly placed cell towers would inflict upon its communities and homes.

Consistent with such intent, Section 130.52.021(C)(2) of the Ordinance explicitly provides that a Conditional Use Permit Application cannot be granted unless, and until, the reviewing authority affirmatively determines that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood."

As set forth below, *AT&T's* application should be denied, because the construction of a fourteen (14) story tower in a residential neighborhood would inflict upon my home the specific types of adverse impacts which the Ordinance and Conditional Use Permit requirements were specifically enacted to prevent.

A. The Proposed Installation Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Area

As logic would dictate, the construction of a fourteen (14) story cell tower in a residential area where no other structures exceed two (2) stories in height would not merely *"stick out like a sore thumb,"* but would dominate the skyline, be wholly inconsistent with the residential character of the neighborhood and would inflict severe adverse aesthetic impacts upon virtually all of the homes in close proximity.

Recognizing the likely negative impact which an irresponsibly placed cell tower would inflict upon homes and residential communities, the County of El Dorado enacted Ordinance Section 130.40.130 which provides that "the county will seek to minimize the visual impacts of wireless facilities" and/or will consider smaller facilities that are "less visually obtrusive or otherwise in the public interest" 130.40.130(A)(2).

Of even greater import, to enable the reviewing authority to accurately assess the extent of the adverse aesthetic impacts that a proposed cell tower would inflict upon nearby homes, the County enacted Section 130.40.130(C), which requires applicants seeking Conditional Use Permits for wireless communications facilities to provide visual simulations of the proposed wireless communication facilities, which can consist of "either a physical mock-up of the facility, balloon simulation, computer simulation or other means" of providing a visual image of the proposed installation. *See* Ordinance Section 130.40.130(C).

AT&T's Photo-Simulations are Inherently
Defective and Should be Disregarded Entirely

In an entirely hollow effort to comply with Section 130.40.130(C), *AT&T* has submitted photo-simulations pertaining to the site that are the subject of this Memorandum. (Latrobe Site #5).

AT&T's set of photo-simulations includes four (4) photographic images of the site taken from four (4) different perspectives, along with duplicate copies of those same four (4) images, except that the duplicates are depicted below the original images, and the duplicates contain an image of a monopine cell tower, which has been super-imposed on each of the four (4) images.

True copies of *AT&T's* "photo-simulations" for the Latrobe Site # 2 are annexed hereto as Exhibit "D."

As set forth herein below, the photographic images submitted by *AT&T* are wholly defective and should be rejected in their entirety because, as *AT&T* is undoubtedly aware, they do not fulfill the function for which Ordinance Section 130.40.130 was enacted.

As common sense would dictate, the whole purpose for which local governments require photo-simulations such as those required under Section 130.40.130(C), is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation is likely to inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by ***deliberately omitting*** from the photo-simulations, any images taken from the perspective of those nearby homes which would sustain the most severe adverse aesthetic impacts.

Such is precisely the case here.

Not a single one of the photo-simulations submitted by *AT&T* depict images taken from the perspective of my home, which will sustain the most severe adverse aesthetic impact from the installation of a fourteen (14) story cell tower only thirty (30) feet from my property.

In Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), a federal court explicitly ruled that where, as here, a proponent of a cell tower presents visual impact depictions or studies wherein they "omit" any images from the perspectives of homeowners whose homes are in close proximity to the proposed installation, such presentations are inherently defective, and should be properly disregarded by the respective government entity that received it.

As was explicitly stated by the federal court, "the Board was free to discount Omnipoint's study because it was conducted in a defective manner. . . the observation points were limited to locations accessible to the public roads, and no observations were made from the residents' backyards much less from their second story windows" *Id.*

The images presented by *AT&T* do not include ***any*** images taken from vantage points showing the most severe adverse aesthetic impacts on my home.

As such, in accord with the federal court's holding in Omnipoint, *AT&T's* photo-simulations should be disregarded in its entirety.

Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Installation Would Inflict Upon the Residential Areas

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts that an irresponsibly placed cell tower would inflict upon homes in close proximity to the tower, are the homeowners and their families.

Consistent with same, federal Courts have ruled that when a local government is entertaining a cell tower application, it should accept, as direct evidence of the adverse aesthetic impacts which a proposed cell tower would inflict upon nearby homes, statements and letters from the actual homeowners, because they are in the best position to know and understand the actual extent of the impact they stand to suffer *See e.g.* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005). Moreover, Federal Courts have consistently held that adverse aesthetic impacts are a valid basis on which to deny applications for proposed telecommunications towers. *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005).

Annexed hereto as Exhibit "E" is a letter wherein I explain the severe adverse aesthetic impact which the proposed fourteen (14) story cell tower would inflict upon my home.

As my letter states, I will have a full, unobstructed view, of the fourteen (14) story tower which will completely dominate my view from my home.

Also included in Exhibit "E" are two (2) letters from other homeowners whose homes are in close proximity to Site #5. These letters are from Brad and Shanel Nicholson and Paul and Jodi Sandell.

Within each of these letters, the homeowners, and others who are intimately acquainted with their homes, personally detail the adverse aesthetic impacts that the proposed installation would inflict upon their respective homes. They have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installation is permitted to proceed. Such an installation would dominate the skyline, tower over their homes and destroy the views from all areas of their properties and from both inside and outside of their homes.

Moreover, as further set forth herein below, the severe adverse aesthetic impacts that the proposed cell tower would inflict upon our respective homes is entirely unnecessary, because *AT&T* does not need the respective one hundred forty (140) foot tower to provide wireless services within the County.

B. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the area at issue, the construction of such a massive tower at the proposed location would contemporaneously inflict an adverse impact upon the actual value of my home.

Across the entire United States, both real estate appraisers[5] and real estate brokers have rendered professional opinions which simply support what common sense dictates.

When large cell towers are installed unnecessarily close to residential homes, such homes suffer material losses in value which typically range anywhere from 5% to 20%.[6]

In the worst cases, towers built near existing homes have caused the homes to be rendered wholly unsaleable.[7]

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[5] *See e.g.* a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a tower in close proximity to a home had reduced the value of the home by more than 10%, go to http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values

[6] In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a cell tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced the price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*
The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*
The Bond and Beamish study involved surveying whether people who lived within 100' of a tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

[7] Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a cell tower. *See* HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a cell tower was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. *See, e.g.* October 2, 2012 Article ". . .Cell Tower is Real Estate Roadblock" at http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-ho me--172366931.html.

As has been recognized by federal Courts, it is perfectly proper for a local zoning authority to consider, as direct evidence of the reduction of property values which an irresponsibly tower would inflict upon nearby homes, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who could provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed cell tower *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), and this is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed tower would have upon the value of my home and property, which would be a mere thirty (30) feet from the base of the tower at the Latrobe parcel, Site #5, annexed hereto as Exhibit "F" is a letter setting forth the professional opinion of licensed real estate professional, Gary McErney.

Within such letter, Mr. McErney, who has been a Licensed Real Estate professional in California for nearly thirty (30) years, submits his professional opinion that the proposed installation will reduce the value of my home by anywhere from 25% to 50%; *See* Exhibit "F."

Given the severe reduction in the property value which my home would sustain, the granting of *AT&T's* application would inflict upon my home the very type of injurious impacts which the Zoning Ordinance was specifically intended to prevent. Accordingly, *AT&T's* application should be denied.

Point III

AT&T's Application Should be Denied, Because
Its Proposed Installation at Site #5
Does Not Provide a Sufficient Fallzone

As local governments across the entire United States have recognized, it is critical to maintain sufficient setbacks and safe zones around large cell towers, in order to protect the public from the potential dangers that irresponsibly placed cell towers present.

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.[8]

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[8] *See e.g. City of Murray, KY* Ordinance 2005-1375 Section 156 "Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower."; *City of Harrah, OK* Ordinance 2010-10 - "For cell towers ranging in height from one hundred thirty-one (131) feet up to one hundred eighty (180) feet, including antenna, the cell tower, buildings and power equipment, including the perimeter fence, must be located a distance of five hundred (500) feet minimum from any abutting property line and no closer than three hundred (300) feet to a residence or structure."

Orlando, FL Ordinance 58.840 Setbacks, Required "All uses in R-1AA, R-1A, R-1, R-1N, R-2A, R-2B and H, and single-family uses in R-3A. 200 feet or 300% height of tower, whichever is greater."

Town of Limington, ME Zoning Ordinance 8.19 "New Personal wireless service facilities shall be set back: 1. at least one (1) times the height, plus 50 feet from all boundaries of the site on which the facility is located and 2. at least 750 feet horizontally from any existing dwelling units."

Caldwell County, NC Section 90G.20 "Fall zones, setback and buffers" "The minimum setback measured from the property line shall be equal to 100% of the telecommunication tower height."

Town of Edgewood, NM Ordinance 2003-11 "All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater."

As set forth below, *AT&T's* application for reconsideration should be denied because, if the 140 foot cell tower is built where *AT&T* has proposed, my property would be well within the fall zone and danger zone of this massive tower.

There are four (4) physical dangers that have induced local governments to adopt specific setback and/or safezone requirements for cell towers, and which serve as the reason why the required setback distances for cell towers are invariably tied directly to the height of respective towers.

These well-known dangers are structural failures, fire, ice fall, and debris fall.

Structural Failures & Fires

The multiple dangers of structural failures of all types of cell towers, from lattice structures to monopoles, are well-documented. A component of an installation fails, causing an element or part of the structure to hurdle to the ground, or in some cases, the entire tower to collapse or to burst into flames and fall over.

Annexed hereto as Exhibit "G" are images depicting a typical cell tower failure, wherein a virtually "brand new" monopole collapsed in a matter of seconds, crushing a Fire Chief's vehicle in the process.[9]

Some of the most common elements and areas of failure which result in the collapse of cell towers are baseplates,[10] flanges, joints, bolts and guy wires.[11]

With respect to monopoles and fires, while a layperson might fight it hard to believe, roughly once per month a cell tower somewhere in the United States bursts into flames, and

[9] To obtain details about the monopole cell tower which collapsed at the Oswego fire house, crushing the Fire Chief's vehicle, go to www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle, or go to *Google* and search for "Oswego cell tower collapse."

[10] To see images of monopole baseplate failures, go to http://residentsact.blogspot.com/2007/11/just-how-safe-are-monopole-cell-towers.html.

[11] To see multiple images of telecommunications towers which have collapsed, go to *Google*, type in a search for "radio tower collapse", and then choose "images" from the search results.

occasionally collapses in a flaming heap that can ignite anything within a broad area surrounding the base upon which it had been erected.[12]

Remarkably, as proposed by *AT&T*, its tower at Site #5 would be irresponsibly placed so that my property would all be well within the fall zone of the Tower, as well as the danger zones for fire, ice fall, and debris fall.

Ice Fall

A natural, but well-known danger associated with communications towers is ice, and the very real risk that can come during the winter-early spring when ice, which has formed upon an installation, begins to melt, comes loose and hurdles to the ground. In this case, such ice chunks, which would fall from a height as high as 160 feet, would reach speeds well over 60 mph by the time they hit the ground.[13]

Annexed hereto as Exhibit "H" is an engineering analysis which establishes that ice falling from a 150 foot tower would reach a speed of 67 mph by the time it reached the ground and that the ice chunks could easily reach the ground at such a speed at distances as great as 100 feet from the tower.

As proposed by *AT&T*, the proposed tower for Site #5 would place my property well within the ice fall zone of the tower.

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[12] To see videos of modern towers bursting into flames and/or burning to the ground, go to http://www.youtube.com/watch?v=0cT5cXuyiYY&NR=1 or http://www.youtube.com/watch?v=y NKVWrazg, or simply go to *Google*, and search for "cell tower burns."

[13] To see dramatic video footage of chunks of ice falling from a communications tower causing severe damage to automobiles in a parking lot below, go to www.youtube.com/watch?v=pfBp2QYOIbc www.youtube.com/watch?v=YWqiSHRwmk8 or search on YouTube for "ice falls from tower". While such video depicts ice falling from a tower higher than that being proposed, experts have calculated that ice falling from a 150-foot tower would reach the speed of 67-70 mph by the time it hit the ground (*See e.g.* Exhibit "N" - a true copy of a physicist's report dated April 16, 2013 which calculates the speed of ice falling from a 150-foot cell tower).

As logic would dictate, if chunks of ice fell from a height of 140 feet, they could easily seriously injure or kill anyone struck by them. Worst of all, chunks of ice falling from cell towers generate no noise, and as such, any person under it would receive no warning before being struck by same.

Debris Fall

Finally, there is the danger of falling debris, and more specifically, items dropped or caused to fall during routine maintenance activities that must be performed upon such towers on a regular basis.[14]

To afford adequate protections against these very real dangers, local governments have imposed setback requirements to afford sufficiently sized buffer/safety areas to ensure the safety of both their citizens and the public at large.

These buffer or safety zones consist of an area surrounding a tower which is restricted from public or personal access, and which is large enough to ensure that if a tower were to fail or collapse, or ice were to hurdle downward from the top of it, nobody would be close enough to be injured or killed by same.

A sample of a typical local government zoning regulation that actually describes such concerns is the Town of Huntington, NY Code Section §113, which provides as follows:

[14] Annexed hereto as Exhibit "I" is a page from a study completed by a consultant hired by the City of Brookfield, Wisconsin, which depicts a lump hammer that had been dropped from a cell tower during routine maintenance and crashed through the roof of a nearby structure.

> "It shall be demonstrated to the satisfaction of the Town Board that the proposed facility is set back adequately to prevent damage or injury resulting from ice fall or debris resulting from the failure of a wireless telecommunications facility, or any part thereof and to avoid and minimize all other impacts upon adjoining properties."
>
> Huntington Town Code §113-58.1(F)

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.

As such, *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit cannot be granted, because the Commission cannot reasonably make an affirmative finding that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood" as is explicitly required under Section 130.52.021(C)(2) of the El Dorado Zoning Ordinance.

POINT IV

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 Would Allow *AT&T* to Increase the Size of the Proposed Cell Tower Without Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities will be if the tower were built at fourteen (14) stories, the fact is that once the tower is built, *AT&T* would thereafter be permitted to increase the height of the tower by an additional twenty-eight (28) feet, and the City would be legally prohibited from stopping *AT&T*, due to the constraints of the Middle Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 provides that "notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." *See* 47 U.S.C. § 1455(a).

Under the FCCs reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to cell towers unless the modification will "substantially change" the physical dimensions of the tower.

The FCC defines "substantial change" to include any modification that would increase the height of the tower by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater."

Typical telecommunication antennas are usually eight (8) feet tall, so this provision would allow an increase in the proposed cell tower's height by approximately twenty-eight (28) feet, and this height increase could not be challenged or prevented by the City.

Simply stated, under the FCC's regulation, if the tower proposed for Site #5 were to be built, *AT&T,* at any time thereafter, could unilaterally increase the height of the tower by as much as an additional twenty-eight (28) feet, and there would be no way for the County to prevent such an occurrence.

Considering the even more extreme adverse impacts which increasing the height of the tower would inflict upon my home and the surrounding community, *AT&T's* application should be denied, especially since, as set forth above, *AT&T* doesn't actually *need* the proposed tower in the first place.

Point V

To Comply With the TCA, *AT&T*'s Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a cell tower: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

(i) The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial that is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See e.g.* MetroPCS v. City and County of San Francisco, 400 F.3d 715(2005).

(ii) The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board's reasonable determinations. *See e.g.* American Towers, Inc. v. Wilson County, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196].

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *AT&T's* application in a separate written decision, wherein the Board cites the evidence based upon which it made its determination.

Conclusion

In view of the forgoing, it is respectfully submitted that *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit should be denied in its entirety.

Respectfully Submitted,

Robert L. Craft

COUNTY OF EL DORADO
STATE OF CALIFORNIA
----------X

In the Matter of the Application of

AT & T Mobility **Site # 5 – Latrobe**
Project S 17 –0016 AT&T CAF4

Conditional Use
Permit Application

MEMORANDUM
IN OPPOSITION

Premises: Site #5
7160 Dragon Point Road
Shingle Springs, CA 95682
Parcel ID# 087-181-10-100

----------X

MEMORANDUM IN OPPOSITION

Respectfully Submitted,

Robert L. Craft
8600 Lost Horizon Road
Shingle Springs, CA 95682

Table of Contents

Preliminary Statement

Under Project S 17 0017 CAF4, AT&T Mobility (hereinafter *"AT&T"*) seeks a reconsideration of the denial of an application for a Conditional Use Permit to install seven (7) large "mono pine" cell towers throughout El Dorado County.

One of the cell towers being proposed within that application is a one hundred forty (140) foot tower being proposed for real property situated at 7160 Dragon Point Road, Shingle Springs, CA 95682, which is identified in *AT&T*'s application as "Site # 5," the "Latrobe" parcel.

This memorandum is being submitted by Robert L. Craft, a homeowner whose property is situated only **thirty (30) feet** from where the base of a fourteen (14) story tower would stand if *AT&T's* application were to be approved.

After a public hearing was conducted on February 22, 2018, the Planning Commission effectively denied *AT&T's* application by rendering a 2-2 vote upon same.

Thereafter, the Planning Staff completed a statement of findings of the Planning Commission, wherein the Staff recorded the Commission's findings.

With respect to Site #5, the Commission's findings were that: (a) *AT&T* did not adequately analyze potential co-locations within the vicinity, and failed to establish a prima facie case to support its claim that there are no feasible alternative sites, (b) the proposed tower would "unavoidably impact" the aesthetics of the surrounding neighborhood", and (c) adequate access does not exist for the site.

A true copy of the Planning Staff's Statement of Findings for the Commission's denial is submitted herewith as Exhibit "A."

By e-mail and letter dated February 21, 2018, the applicant requested that the Commission "reconsider" its denial, citing the provisions of the Federal Telecommunications Act of 1996 (herein after referred to as the "TCA"). A copy of the applicant's e-mail and accompanying letter are collectively annexed hereto as Exhibit "B."

Within such letter, the applicant essentially suggests that the TCA all but *requires* that the Commission grant *AT&T's* application to "satisfy" the TCA. *See* Exhibit "B" at page 5.

Consistent with the Planning Commission's previous determinations, and as further supported by the evidence submitted herewith, *AT&T's* application for reconsideration of its previous application should be denied because: (a) the proposed tower, which is the subject of this memorandum, is not necessary for *AT&T* to provide wireless services within the County, (b) *AT&T* has wholly failed to established that it suffers from a "significant gap" in its 4G LTE personal wireless services, or that the proposed tower is the least intrusive means of remedying any such non-existent gap, (c) the proposed installation would unnecessarily inflict dramatic adverse aesthetic impacts upon the nearby homes, and (d) would reduce the values of the nearby homes, (e) the proposed installation lacks a sufficient fall zone and (f) the proposed installation does not comply with the requirements of the El Dorado Zoning Ordinance.

Simply stated, the installation of a fourteen (14) story tower in a residential area at Site # 5 would not merely "*stick out like sore a thumb*," it would inflict upon my home, the other homes nearby, and the community, the precise adverse impacts which the relevant provisions of the El Dorado Zoning Ordinance were specifically enacted to prevent.

As such, I respectfully submit that *AT&T*'s application for reconsideration should be denied while ensuring that such denial is performed in a manner that does not violate the Telecommunications Act of 1996.

While violations of the Telecommunications Act of 1996 **do not** enable applicants, such as *AT&T,* to recover any money damages or attorneys fees against municipalities who violate the TCA, if the County were to deny *AT&T's* application *in a manner* which violated the TCA, *AT&T* would be able to seek a Court order directing the County to grant an approval for the Conditional Use Permit it seeks.[1]

[1] The United States Supreme Court has explicitly ruled that applicants filing lawsuits claiming violations of the Telecommunications Act of 1996, cannot recover damages under 42 U.S.C. §1983, nor attorneys fees under 42 U.S.C. §1988. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005), *See also* Sprint Telephony PCS LP v. County of San Diego, 543 F3d.571 (9th Circuit 2008).

POINT I

It is Beyond Dispute That the 140 Foot Cell Tower Which *AT&T* Seeks to Construct at Site # 5 is Not Necessary For *AT&T* to Provide Personal Wireless Services Within the County

As is reflected within *AT&T's* own submissions, *AT&T* does not "need" the 140 foot tower it has proposed at Site #5 to provide wireless services within the areas in and surrounding the site.

As such, contrary to what *AT&T* suggests within its February 21, 2018 letter requesting "reconsideration" of the previous denial of its Conditional Use Permit application, the TCA does *not compel* the County to reconsider or grant its application.

Under the Telecommunications Act of 1996, a local government cannot deny an application for the installation of a cell tower, if the denial of such an application would "***prohibit***" the applicant from providing personal wireless service in the area where it proposes to install the new tower.[2]

To establish that a denial would "prohibit" it from providing wireless services, an applicant, such as *AT&T*, must prove both parts of a two (2) part test.

First, it must prove that it suffers from "a significant gap" in its personal wireless services. Second, it must establish that the proposed installation is the "least intrusive means" of remedying such gap, meaning that there are no less intrusive alternative locations. *See* T-Mobile Central LLC v. Charter Township of West Bloomfield, 691 F3d 794 (6th Cir 2012).[3]

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[2] *See* 47 U.S.C.A. §332(c)(7)(B)(i)(II).

[3] New York SMSA Limited Partnership v. Town of Oyster Bay Zoning Board of Appeal, 2010 WL 3937277 (E.D.N.Y. 2010) provides that "a coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists, customers cannot receiv[e] and send [ ] signals, and when customers pass through a coverage gap their calls are disconnected. [A] 'coverage gap' exists or a 'need' for a proposed site is found to be substantial by the Courts where, *inter alia,* the coverage needed by a carrier is not limited to a small number of houses in a rural area or merely the interior of buildings in a sparsely populated area."

A review of *AT&T*'s application reveals that *AT&T* does not claim that it suffers from any specific significant gap in its personal wireless services.

To the contrary, as is clearly disclosed within its supporting documentation, *AT&T* seeks to install its proposed tower at Site # 5 for *enhanced* cellular coverage and *future capacity* needs. *See* Exhibit "C" annexed hereto - a true copy of Attachment 3 for Site #5 Latrobe, wherein *AT&T* states that the purpose of the proposed 140 foot tower at Site #5 is to provide "*enhanced* cellular coverage and *capacity* to the Latrobe community." [italics added]

While failing to claim, much less *prove,* that *AT&T* suffers from any specific geographic gaps in its personal wireless services which would be "remedied" by constructing a massive 140 foot tower at the Latrobe Site, *AT&T* submits within its February 21, 2018 letter that:

> *"AT&T's proposed facilities would bring wireless services, including 4G LTE . . . . to as many people as possible in this rural portion of El Dorado County.*
>
> *See* Exhibit "B" at page 1.

AT&T has wholly failed to proffer to the Commission a modicum of evidence to establish that it currently suffers from any actual gap in its wireless services in these areas.

Instead, as is typically done in those cases where an applicant's desire to build a new large cell tower is driven by financial desire[4] as opposed to any actual "*need*" for such a tower, *AT&T* submits unsupported "propagation maps" that are not merely hollow, but do not, and cannot, satisfy *AT&T's* burden of establishing that, in reality, there is a significant gap in coverage. *AT&T* is required to establish the presence of this significant gap in coverage before it can argue that the TCA requires the County to grant its current application for a Conditional Use Permit.

When a wireless provider suffers from *an actual* gap in its wireless service, providing evidence of such gap is both simple, and inexpensive.

Typically, the wireless provider will produce evidence of its gap by either performing a simple drive test or by simply providing a dropped call log.

A drive test is remarkably simple.

The tester takes an ordinary cell phone and attaches a recording device that records the wireless signal strength that the phone is receiving.

The paired devices are then temporarily attached to the dashboard of a car, which then drives through the area within which the provider believes a gap to exist. Since the recording device records the signal strength every few milliseconds or so, on a one hour drive the device can record as many as several hundred thousand readings, which provides a crystal clear picture of whether or not a gap in service exists, as well as the actual location of any such gap.

There is nothing estimated, surmised, or projected in this test.

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[4] *AT&T's* financial motivation to build new towers derives from its desire to take advantage of the federal "Connect America Fund" (CAF) through which the federal government is virtually "throwing money at *AT&T*" to build as many towers as possible. Notwithstanding same, *AT&T's* "financial desire" to reap the benefit of those monies offered by the federal government does not create a gap in *AT&T's* wireless services. Nor does it constitute a "*need*" for the towers which would trigger any requirement by the TCA that local governments grant approvals for these currently superfluous towers.

Only the actual, real, existing signal strengths are recorded, and only ***actual gaps*** in wireless service are shown.

Even less burdensome, is the printing-out of a dropped call log.

Modern wireless carriers' computer systems maintain continuous records of dropped calls on their systems. With the input of a few keystrokes, providers can print out actual call logs which show the exact number of dropped calls in any location or area, for any chosen period of time.

Not surprisingly, given the ease and lack of expense involved in producing such proof to local zoning authorities, applicants seeking permission to install a new tower to alleviate an actual gap in their wireless service, these are the two types of evidence they will typically provide.

As the record clearly reflects, *AT&T* has produced no such proof in connection with its current application and proffers no excuse for having failed to do so.

By contrast, where an applicant does *not* suffer from any *actual gap* in service, but seeks construction of a new facility to meet *future capacity needs*, or to derive the financial benefit from leasing space upon such facility to its competitors, it will create the specter of a non-existent gap by engaging in a charade called "computer modeling."

In conducting computer modeling, the provider employs computer modeling software, and "introduces variables" to obtain a pre-desired resultant report.

"Introducing variables," means that the provider enters wholly arbitrary numbers and/or data into the software, to cause the software to print out a "coverage map" depicting anything the provider wants it to depict, irrespective of what the provider's *actual* coverage is, in the area depicted in the map.

Despite its submission of such "computer modeling" in support of its current application, *AT&T* has not established that it suffers from any actual gaps in its coverage which mandates that it construct the proposed tower at Site #5, as the "least intrusive means" of remedying (i.e., closing such non-existent gaps in wireless service)

The Applicant has Wholly Failed to Establish That
There Are No Less Intrusive Alternative Sites Available

As set forth herein below, the proposed tower for Site #5 would inflict substantial adverse impacts on the homes nearby, and would, in fact, irresponsibly place my real property well within the fall zone of the proposed tower.

As such, *AT&T's* application for reconsideration should be denied because it would violate both the letter and the spirit of Ordinance Sections 130.40.130 and 130.52.021(C)(2).

Point II

AT&T's Application Must be Denied, Because the Proposed Tower Would Inflict Adverse Impacts Which the Relevant Provisions of the El Dorado Zoning Ordinance Were Specifically Enacted to Prevent

As the El Dorado County Zoning Ordinance makes quite clear, the intent behind the provision pertaining to Communication Facilities, and the reason why the County implemented a Conditional Use Permit requirement for same, was to protect the County against the adverse impacts which irresponsibly placed cell towers would inflict upon its communities and homes.

Consistent with such intent, Section 130.52.021(C)(2) of the Ordinance explicitly provides that a Conditional Use Permit Application cannot be granted unless, and until, the reviewing authority affirmatively determines that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood."

As set forth below, *AT&T's* application should be denied, because the construction of a fourteen (14) story tower in a residential neighborhood would inflict upon my home the specific types of adverse impacts which the Ordinance and Conditional Use Permit requirements were specifically enacted to prevent.

A. The Proposed Installation Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Area

As logic would dictate, the construction of a fourteen (14) story cell tower in a residential area where no other structures exceed two (2) stories in height would not merely *"stick out like a sore thumb,"* but would dominate the skyline, be wholly inconsistent with the residential character of the neighborhood and would inflict severe adverse aesthetic impacts upon virtually all of the homes in close proximity.

Recognizing the likely negative impact which an irresponsibly placed cell tower would inflict upon homes and residential communities, the County of El Dorado enacted Ordinance Section 130.40.130 which provides that "the county will seek to minimize the visual impacts of wireless facilities" and/or will consider smaller facilities that are "less visually obtrusive or otherwise in the public interest" 130.40.130(A)(2).

Of even greater import, to enable the reviewing authority to accurately assess the extent of the adverse aesthetic impacts that a proposed cell tower would inflict upon nearby homes, the County enacted Section 130.40.130(C), which requires applicants seeking Conditional Use Permits for wireless communications facilities to provide visual simulations of the proposed wireless communication facilities, which can consist of "either a physical mock-up of the facility, balloon simulation, computer simulation or other means" of providing a visual image of the proposed installation. *See* Ordinance Section 130.40.130(C).

AT&T's Photo-Simulations are Inherently
Defective and Should be Disregarded Entirely

In an entirely hollow effort to comply with Section 130.40.130(C), *AT&T* has submitted photo-simulations pertaining to the site that are the subject of this Memorandum. (Latrobe Site #5).

AT&T's set of photo-simulations includes four (4) photographic images of the site taken from four (4) different perspectives, along with duplicate copies of those same four (4) images, except that the duplicates are depicted below the original images, and the duplicates contain an image of a monopine cell tower, which has been super-imposed on each of the four (4) images.

True copies of *AT&T's* "photo-simulations" for the Latrobe Site # 2 are annexed hereto as Exhibit "D."

As set forth herein below, the photographic images submitted by *AT&T* are wholly defective and should be rejected in their entirety because, as *AT&T* is undoubtedly aware, they do not fulfill the function for which Ordinance Section 130.40.130 was enacted.

As common sense would dictate, the whole purpose for which local governments require photo-simulations such as those required under Section 130.40.130(C), is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation is likely to inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by ***deliberately omitting*** from the photo-simulations, any images taken from the perspective of those nearby homes which would sustain the most severe adverse aesthetic impacts.

Such is precisely the case here.

Not a single one of the photo-simulations submitted by *AT&T* depict images taken from the perspective of my home, which will sustain the most severe adverse aesthetic impact from the installation of a fourteen (14) story cell tower only thirty (30) feet from my property.

In Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), a federal court explicitly ruled that where, as here, a proponent of a cell tower presents visual impact depictions or studies wherein they "omit" any images from the perspectives of homeowners whose homes are in close proximity to the proposed installation, such presentations are inherently defective, and should be properly disregarded by the respective government entity that received it.

As was explicitly stated by the federal court, "the Board was free to discount Omnipoint's study because it was conducted in a defective manner. . . the observation points were limited to locations accessible to the public roads, and no observations were made from the residents' backyards much less from their second story windows" *Id.*

The images presented by *AT&T* do not include ***any*** images taken from vantage points showing the most severe adverse aesthetic impacts on my home.

As such, in accord with the federal court's holding in Omnipoint, *AT&T's* photo-simulations should be disregarded in its entirety.

Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Installation Would Inflict Upon the Residential Areas

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts that an irresponsibly placed cell tower would inflict upon homes in close proximity to the tower, are the homeowners and their families.

Consistent with same, federal Courts have ruled that when a local government is entertaining a cell tower application, it should accept, as direct evidence of the adverse aesthetic impacts which a proposed cell tower would inflict upon nearby homes, statements and letters from the actual homeowners, because they are in the best position to know and understand the actual extent of the impact they stand to suffer *See e.g.* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005). Moreover, Federal Courts have consistently held that adverse aesthetic impacts are a valid basis on which to deny applications for proposed telecommunications towers. *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005).

Annexed hereto as Exhibit "E" is a letter wherein I explain the severe adverse aesthetic impact which the proposed fourteen (14) story cell tower would inflict upon my home.

As my letter states, I will have a full, unobstructed view, of the fourteen (14) story tower which will completely dominate my view from my home.

Also included in Exhibit "E" are two (2) letters from other homeowners whose homes are in close proximity to Site #5. These letters are from Brad and Shanel Nicholson and Paul and Jodi Sandell.

Within each of these letters, the homeowners, and others who are intimately acquainted with their homes, personally detail the adverse aesthetic impacts that the proposed installation would inflict upon their respective homes. They have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installation is permitted to proceed. Such an installation would dominate the skyline, tower over their homes and destroy the views from all areas of their properties and from both inside and outside of their homes.

Moreover, as further set forth herein below, the severe adverse aesthetic impacts that the proposed cell tower would inflict upon our respective homes is entirely unnecessary, because *AT&T* does not need the respective one hundred forty (140) foot tower to provide wireless services within the County.

B. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the area at issue, the construction of such a massive tower at the proposed location would contemporaneously inflict an adverse impact upon the actual value of my home.

Across the entire United States, both real estate appraisers[5] and real estate brokers have rendered professional opinions which simply support what common sense dictates.

When large cell towers are installed unnecessarily close to residential homes, such homes suffer material losses in value which typically range anywhere from 5% to 20%.[6]

In the worst cases, towers built near existing homes have caused the homes to be rendered wholly unsaleable.[7]

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[5] *See e.g.* a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a tower in close proximity to a home had reduced the value of the home by more than 10%, go to http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values

[6] In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a cell tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced the price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

[7] Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a cell tower. *See* HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a cell tower was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. *See, e.g.* October 2, 2012 Article ". . .Cell Tower is Real Estate Roadblock" at http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-ho me--172366931.html.

As has been recognized by federal Courts, it is perfectly proper for a local zoning authority to consider, as direct evidence of the reduction of property values which an irresponsibly tower would inflict upon nearby homes, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who could provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed cell tower *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), and this is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed tower would have upon the value of my home and property, which would be a mere thirty (30) feet from the base of the tower at the Latrobe parcel, Site #5, annexed hereto as Exhibit "F" is a letter setting forth the professional opinion of licensed real estate professional, Gary McErney.

Within such letter, Mr. McErney, who has been a Licensed Real Estate professional in California for nearly thirty (30) years, submits his professional opinion that the proposed installation will reduce the value of my home by anywhere from 25% to 50%; *See* Exhibit "F."

Given the severe reduction in the property value which my home would sustain, the granting of *AT&T's* application would inflict upon my home the very type of injurious impacts which the Zoning Ordinance was specifically intended to prevent. Accordingly, *AT&T's* application should be denied.

Point III

AT&T's Application Should be Denied, Because
Its Proposed Installation at Site #5
Does Not Provide a Sufficient Fallzone

As local governments across the entire United States have recognized, it is critical to maintain sufficient setbacks and safe zones around large cell towers, in order to protect the public from the potential dangers that irresponsibly placed cell towers present.

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.[8]

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[8] *See e.g. City of Murray, KY* Ordinance 2005-1375 Section 156 "Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower."; *City of Harrah, OK* Ordinance 2010-10 - "For cell towers ranging in height from one hundred thirty-one (131) feet up to one hundred eighty (180) feet, including antenna, the cell tower, buildings and power equipment, including the perimeter fence, must be located a distance of five hundred (500) feet minimum from any abutting property line and no closer than three hundred (300) feet to a residence or structure."

Orlando, FL Ordinance 58.840 Setbacks, Required "All uses in R-1AA, R-1A, R-1, R-1N, R-2A, R-2B and H, and single-family uses in R-3A. 200 feet or 300% height of tower, whichever is greater."

Town of Limington, ME Zoning Ordinance 8.19 "New Personal wireless service facilities shall be set back: 1. at least one (1) times the height, plus 50 feet from all boundaries of the site on which the facility is located and 2. at least 750 feet horizontally from any existing dwelling units."

Caldwell County, NC Section 90G.20 "Fall zones, setback and buffers" "The minimum setback measured from the property line shall be equal to 100% of the telecommunication tower height."

Town of Edgewood, NM Ordinance 2003-11 "All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater."

As set forth below, *AT&T's* application for reconsideration should be denied because, if the 140 foot cell tower is built where *AT&T* has proposed, my property would be well within the fall zone and danger zone of this massive tower.

There are four (4) physical dangers that have induced local governments to adopt specific setback and/or safezone requirements for cell towers, and which serve as the reason why the required setback distances for cell towers are invariably tied directly to the height of respective towers.

These well-known dangers are structural failures, fire, ice fall, and debris fall.

Structural Failures & Fires

The multiple dangers of structural failures of all types of cell towers, from lattice structures to monopoles, are well-documented. A component of an installation fails, causing an element or part of the structure to hurdle to the ground, or in some cases, the entire tower to collapse or to burst into flames and fall over.

Annexed hereto as Exhibit "G" are images depicting a typical cell tower failure, wherein a virtually "brand new" monopole collapsed in a matter of seconds, crushing a Fire Chief's vehicle in the process.[9]

Some of the most common elements and areas of failure which result in the collapse of cell towers are baseplates,[10] flanges, joints, bolts and guy wires.[11]

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[9] To obtain details about the monopole cell tower which collapsed at the Oswego fire house, crushing the Fire Chief's vehicle, go to www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle, or go to *Google* and search for "Oswego cell tower collapse."

[10] To see images of monopole baseplate failures, go to http://residentsact.blogspot.com/2007/11/just-how-safe-are-monopole-cell-towers.html.

[11] To see multiple images of telecommunications towers which have collapsed, go to *Google*, type in a search for "radio tower collapse", and then choose "images" from the search results.

With respect to monopoles and fires, while a layperson might fight it hard to believe, roughly once per month a cell tower somewhere in the United States bursts into flames, and occasionally collapses in a flaming heap that can ignite anything within a broad area surrounding the base upon which it had been erected.[12]

Remarkably, as proposed by *AT&T*, its tower at Site #5 would be irresponsibly placed so that my property would all be well within the fall zone of the Tower, as well as the danger zones for fire, ice fall, and debris fall.

Ice Fall

A natural, but well-known danger associated with communications towers is ice, and the very real risk that can come during the winter-early spring when ice, which has formed upon an installation, begins to melt, comes loose and hurdles to the ground. In this case, such ice chunks, which would fall from a height as high as 160 feet, would reach speeds well over 60 mph by the time they hit the ground.[13]

Annexed hereto as Exhibit "H" is an engineering analysis which establishes that ice falling from a 150 foot tower would reach a speed of 67 mph by the time it reached the ground and that the ice chunks could easily reach the ground at such a speed at distances as great as 100 feet from the tower.

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[12] To see videos of modern towers bursting into flames and/or burning to the ground, go to http://www.youtube.com/watch?v=0cT5cXuyiYY&NR=1 or http://www.youtube.com/watch?v=y NKVWrazg, or simply go to *Google*, and search for "cell tower burns."

[13] To see dramatic video footage of chunks of ice falling from a communications tower causing severe damage to automobiles in a parking lot below, go to www.youtube.com/watch?v=pfBp2QYOIbc www.youtube.com/watch?v=YWqiSHRwmk8 or search on YouTube for "ice falls from tower". While such video depicts ice falling from a tower higher than that being proposed, experts have calculated that ice falling from a 150-foot tower would reach the speed of 67-70 mph by the time it hit the ground (*See e.g.* Exhibit "N" - a true copy of a physicist's report dated April 16, 2013 which calculates the speed of ice falling from a 150-foot cell tower).

As proposed by *AT&T*, the proposed tower for Site #5 would place my property well within the ice fall zone of the tower.

As logic would dictate, if chunks of ice fell from a height of 140 feet, they could easily seriously injure or kill anyone struck by them. Worst of all, chunks of ice falling from cell towers generate no noise, and as such, any person under it would receive no warning before being struck by same.

Debris Fall

Finally, there is the danger of falling debris, and more specifically, items dropped or caused to fall during routine maintenance activities that must be performed upon such towers on a regular basis.[14]

To afford adequate protections against these very real dangers, local governments have imposed setback requirements to afford sufficiently sized buffer/safety areas to ensure the safety of both their citizens and the public at large.

These buffer or safety zones consist of an area surrounding a tower which is restricted from public or personal access, and which is large enough to ensure that if a tower were to fail or collapse, or ice were to hurdle downward from the top of it, nobody would be close enough to be injured or killed by same.

[14] Annexed hereto as Exhibit "I" is a page from a study completed by a consultant hired by the City of Brookfield, Wisconsin, which depicts a lump hammer that had been dropped from a cell tower during routine maintenance and crashed through the roof of a nearby structure.

A sample of a typical local government zoning regulation that actually describes such concerns is the Town of Huntington, NY Code Section §113, which provides as follows:

> "It shall be demonstrated to the satisfaction of the Town Board that the proposed facility is set back adequately to prevent damage or injury resulting from ice fall or debris resulting from the failure of a wireless telecommunications facility, or any part thereof and to avoid and minimize all other impacts upon adjoining properties."
>
> Huntington Town Code §113-58.1(F)

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.

As such, *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit cannot be granted, because the Commission cannot reasonably make an affirmative finding that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood" as is explicitly required under Section 130.52.021(C)(2) of the El Dorado Zoning Ordinance.

POINT IV

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 Would Allow *AT&T* to Increase the Size of the Proposed Cell Tower Without Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities will be if the tower were built at fourteen (14) stories, the fact is that once the tower is built, *AT&T* would thereafter be permitted to increase the height of the tower by an additional twenty-eight (28) feet, and the City would be legally prohibited from stopping *AT&T*, due to the constraints of the Middle Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 provides that "notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." *See* 47 U.S.C. § 1455(a).

Under the FCCs reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to cell towers unless the modification will "substantially change" the physical dimensions of the tower.

The FCC defines "substantial change" to include any modification that would increase the height of the tower by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater."

Typical telecommunication antennas are usually eight (8) feet tall, so this provision would allow an increase in the proposed cell tower's height by approximately twenty-eight (28) feet, and this height increase could not be challenged or prevented by the City.

Simply stated, under the FCC's regulation, if the tower proposed for Site #5 were to be built, *AT&T*, at any time thereafter, could unilaterally increase the height of the tower by as much as an additional twenty-eight (28) feet, and there would be no way for the County to prevent such an occurrence.

Considering the even more extreme adverse impacts which increasing the height of the tower would inflict upon my home and the surrounding community, *AT&T's* application should be denied, especially since, as set forth above, *AT&T* doesn't actually *need* the proposed tower in the first place.

Point V

To Comply With the TCA, *AT&T*'s Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a cell tower: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

(i) The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial that is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See e.g.* MetroPCS v. City and County of San Francisco, 400 F.3d 715(2005).

(ii) The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board's reasonable determinations. *See e.g.* American Towers, Inc. v. Wilson County, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196].

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *AT&T's* application in a separate written decision, wherein the Board cites the evidence based upon which it made its determination.

Conclusion

In view of the forgoing, it is respectfully submitted that *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit should be denied in its entirety.

Respectfully Submitted,

Robert L. Craft

(Provided at hearing by Ann Gualtieri)

PC 7/26/18
#3
3 pages

Community Development Services
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667

To Whom This Concerns:

First, thank you for this opportunity to express my opinion on your decision to allow the Conditional Use Permits for AT&T Mobility's cell towers in El Dorado County on these seven specified sites. I do not agree that there are "no significant environmental effects resulting from the project". Some of these sites are located in residential neighborhoods; when the practice has been to install cell towers in either commercial or industrial areas. Yet, you have agreed to allow AT&T Mobility to install cell towers in our County's residential neighborhoods. I am assuming your decision was influenced by the fact that there is no viable and current research available according to AT&T, to indicate that placement of cell towers in residential neighborhoods will negatively impact the property values or the physical health of the residents. Your decision is upsetting and made without consideration for El Dorado County residents who live near these proposed cell towers. Furthermore, it is amazing that you turn a blind eye to the international and national research, other than

AT&T's research; indicating the cell towers can negatively impact physical health and property values. You continuously cite the Federal Communication Commission policies, instead of making you own decision for your County residents. Your inability to make your own decision regarding these seven cell tower sites is a cowardly acquiescence to the Federal Communications Commission and AT&T.

By allowing AT&T Mobility to install over 100 cell towers in El Dorado County, I believe you have negatively impacted your legacy with this County. It is not apparent at this time, but it will be in the future.

With regards to Site 1-Cool and the proposed cell tower in my immediate residential neighborhood, there will be a definite negative impact, apparently over-looked in your recent mitigated negative declaration, on the road and bridge that AT&T will use to install this site's cell tower. This is a one lane road and bridge that I must maintain in order to come and go from my property. This bridge and road were not built to accomodate AT&T's heavy trucks, equipment and cell tower components. As AT&T is using the bridge beyond it's original purpose, I want AT&T to pay for repairs to the bridge. A local engineering firm is currently assessing the current state of this bridge. I will use this documentation to prove the bridge has been negatively impacted by AT&T's heavy trucks, equipment and cell tower components. I want AT&T to respond.

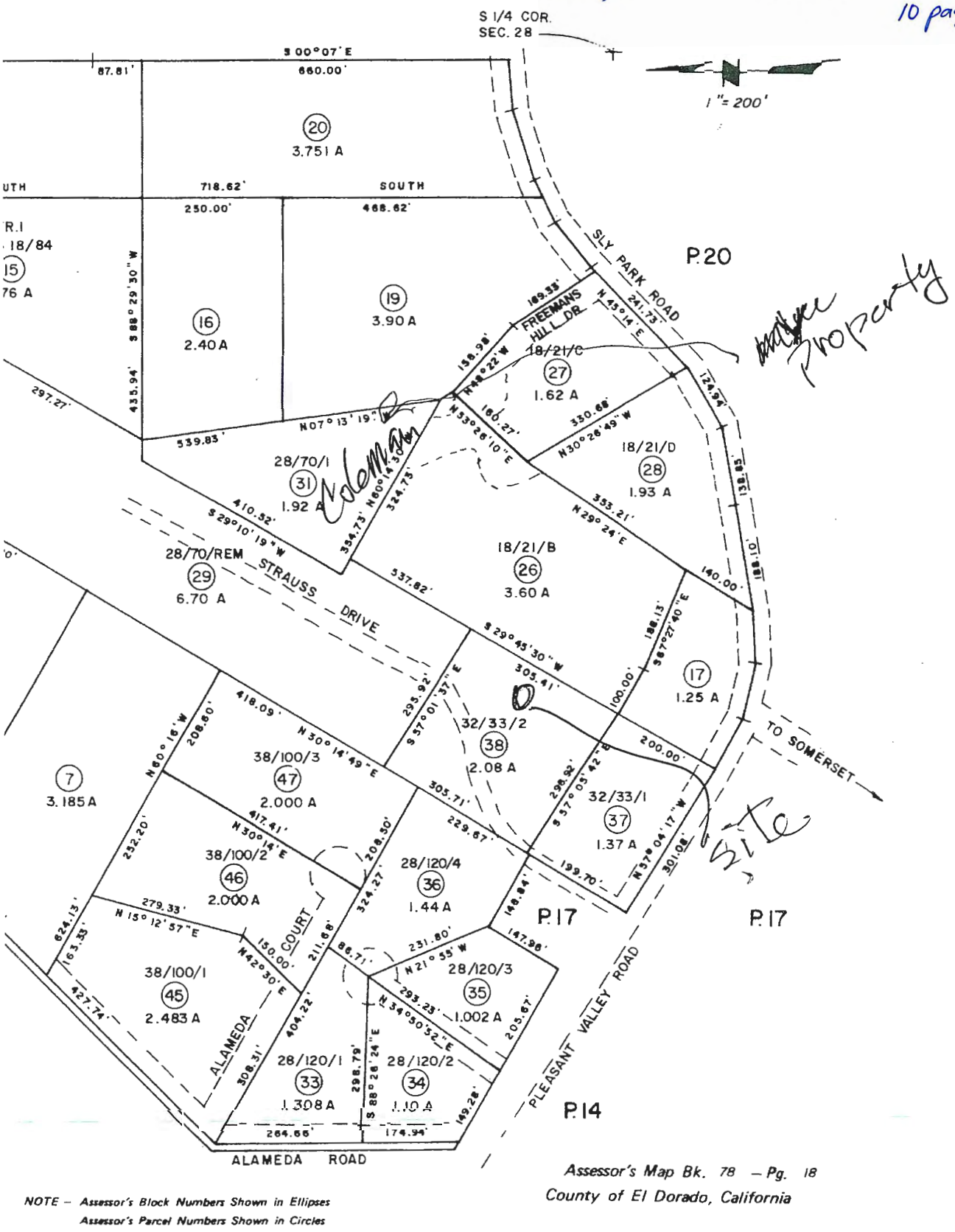
Thank you for your time.

Ann Gualtieri
Site 1-Cool

(Provided at hearing by Claudia Coleman) PC 7/26/18 #3 10 pages

2E., M.D.M.

Tax Area Code 78:18



Assessor's Map Bk. 78 — Pg. 18
County of El Dorado, California

NOTE — Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

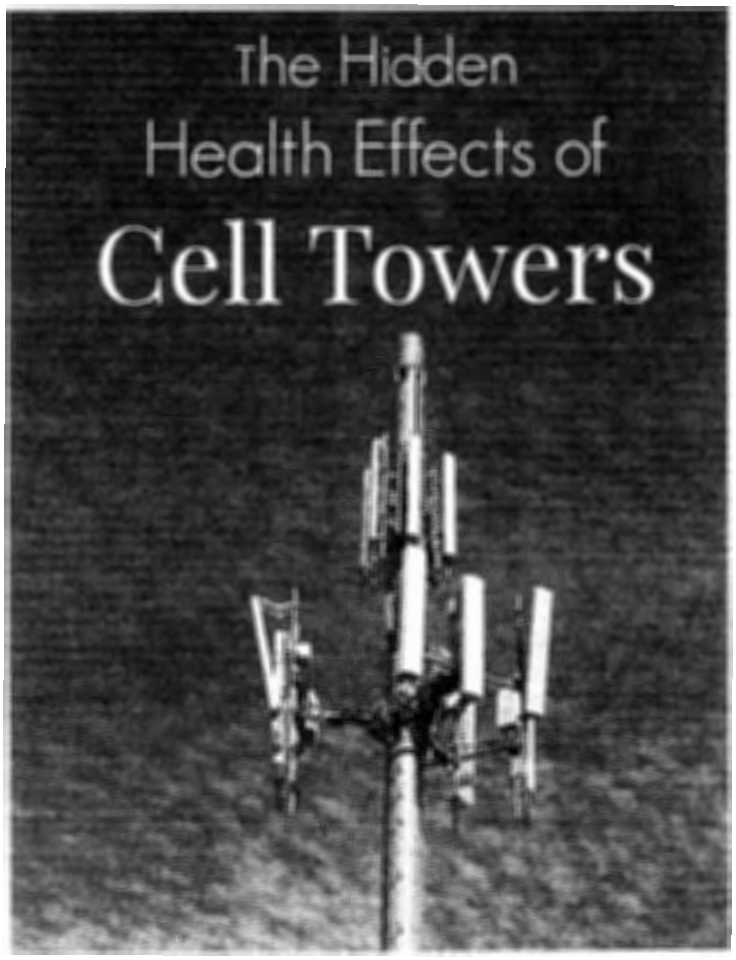
IT TAKES TIME

NATURAL LIVING, ONE STEP AT A TIME

THE HIDDEN HEALTH EFFECTS OF CELL TOWERS

BY ANDREA FABRY — 45 COMMENTS

Cell towers blanket the globe. The United States is home to more than 300,00 cell sites. They appear innocent. But are they?



MEET ANDREA

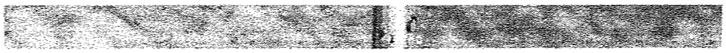
I am a certified Building Biology Advocate, a former journalist, mother of nine, and avid CrossFitter who likes to think outside the box. After our family's health crisis in 2008, I learned to ask questions about what's in our food, our water, and our air. I hope to empower you as you seek to live safely in a complex world. Thankfully, small steps lead to big changes. Let's travel this road together, one step at a time.

FOLLOW

NOW AVAILABLE ON AMAZON

10 THINGS I'VE LEARNED (THE HARD WAY)

1. The answer may be right in front of you.
2. Time is often the best medicine.
3. Speak kindly to yourself.
4. The air we breathe matters.
5. It's better to know than not know.
6. Relinquishment is a balm for the soul.



Cell towers are the base stations that control mobile phone communication. They may or may not be clearly visible in your neighborhood. Sometimes they are disguised as cacti, trees, or even flags.

A GOOGLE SEARCH SHOWS AN ARRAY OF CELL TOWER DISGUISES

Because we can't see, feel or smell the electromagnetic radiation coming from a cell tower (or cell site which includes towers, antenna masts and other base station forms), it's hard to believe there is any potential for harm.

In fact, the Federal Communications Commission, our government's regulating agency, has made sure health concerns *aren't addressed* when cell tower applications are considered. According to the Telecommunications Act of 1996,

"No State or local government or instrumentality thereof 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 Commission's regulations concerning such emissions."

(Localities *are* permitted to reject a cell tower if the tower is deemed unsightly, which is one reason for the disguises.)

The wireless industry has relied on this legal favoritism, banking on consumer trust in government oversight. After all, wouldn't we know if cell towers (or cell phones) are unsafe?

THE HIDDEN HEALTH EFFECTS OF CELL TOWERS

THE FCC AND A CONGRESSIONAL CHALLENGE

The FCC already agrees that cell tower *workers* may be injured by these fields because of the proximity. While the FCC position is solely based on thermal effects of non-ionizing radiation, it is clear the agency agrees that cell tower workers may be at risk of adverse health effects (emphasis mine):

> Studies have shown that environmental levels of RF energy routinely encountered by the general public are far below levels necessary to produce significant heating and increased body temperature (References 32, 37, 45, 46, 48 and 54). **However, there may be situations, particularly workplace environments near high-powered RF sources, where recommended limits for safe exposure of human beings to RF energy could be exceeded. In such cases, restrictive measures or actions may be necessary to ensure the safe use of RF energy.**

How well is the FCC monitoring these levels? Sen. Richard Blumenthal of Connecticut and Rep. Anna Eshoo of California believe the FCC has dropped the ball when it comes to monitoring and regulating

7. Symptoms will instruct if we listen.
8. Sometimes you're the expert.
9. Allow hindsight to move you forward.
10. The next step is enough.

THE CONNECTING PLACE LATEST EPISODE

Behind the Scenes: Mold Questions

6 3

00:00 18:05

POPULAR POSTS

HOW TO MAKE YOUR OWN LIQUID STEVIA

STRAWBERRY FRAPPUCCINO RECIPE

LOOKING FOR SAFE PRODUCTS?

the safety of cell towers, especially when it comes to cell site workers. The lawmakers issued a challenge to the FCC on September 17, 2015.

> Excessive exposure to RF radiation leads to well-documented potential harms, especially to workers who spend time near the antenna and in the line of the antenna's beam. At sufficient power levels and exposure durations, RF radiation has the ability to heat biological tissue. Thermal effects can include eye damage, sterility, and cognitive impairments.
>
> We urge the FCC and the Occupational Safety and Health Administration (OSHA) to work together to enforce exposure limits and ensure wireless carriers are taking the required precautions to **protect the safety of all persons who may be exposed to dangerous levels of RF radiation near wireless towers.**

If the FCC agrees that cell tower workers are at risk, and two members of Congress are concerned enough to issue a reprimand, what does this say about the overall safety of cell sites?

STUDIES THAT DEMONSTRATE A HEALTH RISK

The World Health Organization officially classifies electromagnetic radiation a possible 2B carcinogen. (The same category as lead, DDT, and styrene.)

The following studies suggest short-term and long-term health risks within 300-400 meters of a cell tower. (Less than three-tenths of a mile)

- Santini Study

This is a compelling survey of 270 men and 260 women showing changes in symptoms in relation to cell tower proximity. Note the decrease in reported headaches the further from the cell site.

Table I. Percentages of complaints reported compared to responses of a level of « 0 », by persons living in the vicinity of base stations as a function of their distance away from a base station.

Symptoms	Distances from base stations in meters (m)											
	< 10 m		10 to 50 m		50 to 100 m		100 to 200 m		200 to 300 m		> 300 m ...	
	2	3	2	3	2	3	2	3	2	3	2	3
Fatigue	76 *	72 *	63.5*	50.9*	60.6	56.6*	64.2	41.1	66.6*	43.7	40.7	27.2
Irritability	32.8	23.2*	41.7*	25.7*	47.2*	44.1*	25.8	4.1	25	9	18	3.3
Headaches	51 *	47.8*	40 *	26.1*	40.6*	36.7*	60.7*	31.2*	19.3	0	15.6	1.8
Nausea	14.5*	6.9	8.4	3	5.7	3.8	2.4	4.6	0	2.3	2.1	1.1
Loss of Appetite	20.4*	8.3	8	5.5	5	5	6.9	0	4.2	0	3.3	3.3
Sleep Disruption	41.3*	57.1*	41.4*	57.5*	46.9*	58.5*	45.8*	50*	33.3	35.5	13.8	21.1
Depression	16,9	26.8*	21.6	19.7*	11.6	24 *	16.2	3.1	13.6	2.5	10.3	3.7
Feeling of Discomfort	28 *	45.4*	25.2*	18.9	30.6*	12.8	15.7*	0	9.7	5.1	2.4	8.1
Difficulty in concentration	39.3	28.8*	37.5	16.6	34.2	26.4*	25	12.5	43.3	5.5	26.7	7.1
Memory Loss	27.8	25.4*	29.4	26.6*	37.1*	29 *	25	15.6	17.2	11.1	17.9	5.8
Skin Problems	18.1*	17.1*	6.6	10.8	11.1*	11.1	13.9*	7.5	8.7	0	1.2	4.6
Visual Disruptions	14.5	24.3*	23	13.5	22	7.1	2.5	4.9	15	2.8	13.6	4.1
Hearing Disruptions	33.3*	17.4	17.7*	12	8.3	15.5	7.7	7.7	11.6	9.5	5.6	8.7
Dizziness	10	12.5*	17.3*	7.5*	9.6	9.6*	12.2	2.7	7.7	5.2	6.2	0
Movement Difficulties	5.6	7.7*	8.2	1.7	3	3	0	0	2	0	2.9	1
Cardio-vascular Problems	10.1*	13 *	15.3*	9.6	12.3*	7.4	8.7	0	8.5	6.5	1	3

* Significant difference ($p < 0.05$) in comparison to reference subjects found at > 300 m or not exposed, for the responses 2 = « often » and 3 = « very often ».

- Kempton West Study (2007)

Researchers measured blood levels of serotonin and melatonin in 25 participants before and after the activation of a new cell site. There were unfavorable changes in almost all participants.

- Naila Study (2004)

Researchers discovered a threefold increase in cancers after five years exposure to microwave radiation from a nearby mobile phone mast transmitter compared to those patients living further away.

We have concernes about the health issues that come with these towers

Our property Line from the tower is less than 250 feet.

All the other companies that well connect to this tower as well.

Our neighborhood is built up so close together it seems there is no space for this tower

We moved to the country for the beauty of it not towers in our front yards.

Thank-you.

Claudia Coleman
4633 Freemans Hill Dr.

PC 7/26/18
#3
8 pages
(Provided at hearing by Bonnie Way)

PETITION

WE, THE RESIDENTS LIVING ON OR NEAR GODS WAY, IN LOTUS, CALIFORNIA, DO NOT WANT A TELECOMMUNICATIONS TOWER BUILT / ERECTED ON SITE 7 - GOLD HILL

NAME	ADDRESS	PHONE NUMBER	SIGNATURE
LYNDA ADEE	5920 CLARK MT Rd LOTUS, CA	530-635-1957	
GREG Adee	5920 Clark mt. RD LOTUS CA 9564	530-635 1958	

PETITION

WE, THE RESIDENTS LIVING ON OR NEAR GODS WAY, IN LOTUS, CALIFORNIA, DO NOT WANT A TELECOMMUNICATIONS TOWER BUILT / ERECTED ON SITE 7 - GOLD HILL

NAME	ADDRESS	PHONE NUMBER	SIGNATURE
Bonnie Way	6790 Gods Way Lotus, CA 95651	916-204-6209	Bonnie Way
CHRISTOPHER AWDLE	6000 CLARK RANCH RD LOTUS, CA 95651	5309192992	
JESSICA & Steve STAGGERS	6800 GODS WAY, LOTUS CA. 95651	530.613-3398	J. Staggers

State of California
Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Biogeographic Data Branch
California Natural Diversity Database

STATE AND FEDERALLY LISTED ENDANGERED AND THREATENED ANIMALS OF CALIFORNIA

May 2018

This is a list of animals found within California or off the coast of the State that have been classified as Endangered or Threatened by the California Fish & Game Commission (state list) or by the U.S. Secretary of the Interior or the U.S. Secretary of Commerce (federal list). The federal agencies responsible for listing are the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

All species with a federal list date of March 11, 1967 were listed under the federal Endangered Species Preservation Act of 1966. Subsequent federal laws include the Endangered Species Conservation Act of 1969, and the Endangered Species Act of 1973. The official federal listing of Endangered and Threatened animals is published in the Federal Register, 50 CFR 17.11.

The California Endangered Species Act of 1970 created the categories of "Endangered" and "Rare," and taxa with a state list date of June 27, 1971 were protected under this statute. The California Endangered Species Act was amended in 1984, at which time the "Rare" status was changed to "Threatened," and on January 1, 1985, all animal species previously designated as "Rare" were reclassified as "Threatened." The official California listing of Endangered and Threatened animals is contained in the California Code of Regulations, Title 14, Section 670.5.

Also included on this list are animal "candidates" for state listing and animals "proposed" for federal listing. A state candidate species is one that the California Fish and Game Commission (FGC) has formally declared a candidate species. A species designated as "federally proposed" is one that was found by the governing agency to warrant listing, and was officially proposed as such with a published "Proposed Rule to List" in the Federal Register. Federal *candidate* species are not included herein.

Abbreviation	Designation	Totals as of May 2018
SE	State listed – Endangered	48
ST	State listed – Threatened	39
SC	State candidate – T or E	4
SCD	State candidate – Delisting	0
SDR	State delisted – Recovered	2
SDE	State delisted – Extinct	2
FE	*Federally listed – Endangered*	87
FT	Federally listed – Threatened	42
FPE	Federally proposed – Endangered	0
FPT	Federally proposed – Threatened	1
FPD	Federally proposed – Delisting	2
FDR	Federally delisted – Recovered	12
FDE	*Federally delisted – Extinct*	2
	Number of candidate/proposed animals for listing	5
	Number of animals State-listed only	42
	Number of animals Federally-listed only	78
	Number of animals listed under both State & Federal Acts	51
	Total number of animals listed (total includes subspecies, distinct population segments, and ecologically significant units when listed separately)	171

State and Federally Listed Endangered and Threatened Animals of California
Last updated May 2018

Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
INVERTEBRATES						
GASTROPODA	**Snails, slugs, & abalone**					
Haliotis cracherodii	Black abalone			FE FE	20110413 20090213	Listed by NMFS in 2009 and by USFWS in 2011.
Haliotis sorenseni	White abalone			FE FE	20051116 20010628	Listed by NMFS in 2001 and by USFWS in 2005.
Helminthoglypta walkeriana	Morro shoulderband (=banded dune) snail			FE	19950117	The 2006 five year review should be consulted to better understand the status of this species.
Monadenia infumata setosa	Trinity bristle snail	ST	19801002			Listed by the State of California as *Monadenia setosa* .
CRUSTACEA - ANOSTRACA	**Fairy Shrimp**					
Branchinecto conservatio	Conservancy fairy shrimp			FE	19940919	
Branchinecta longiantenna	Longhorn fairy shrimp			FE	19940919	
Branchinecta lynchi	Vernal pool fairy shrimp			FT	19940919	
Branchinecta sandiegonensis	San Diego fairy shrimp			FE	19970203	
Streptocephalus woottoni	Riverside fairy shrimp			FE	19930803	
CRUSTACEA - NOTOSTRACA	**Tadpole shrimp**					
Lepidurus packardi	Vernal pool tadpole shrimp			FE	19940919	
CRUSTACEA - DECAPODA	**Crayfish & shrimp**					
Pacifastacus fortis	Shasta crayfish	SE ST	19880226 19801002	FE	19880930	
Syncaris pacifica	California freshwater shrimp	SE	19801002	FE	19881031	
INSECTA - ORTHOPTERA	**Grasshoppers, katydids, & crickets**					
Trimerotropis infantilis	Zayante band-winged grasshopper			FE	19970224	
INSECTA - COLEOPTERA	**Beetles**					
Cicindela ohlone	Ohlone tiger beetle			FE	20011003	
Desmocerus californicus dimorphus	Valley elderberry longhorn beetle			FT	19800915	
Dinacoma caseyi	Casey's June beetle			FE	20111024	
Elaphrus viridis	Delta green ground beetle			FT	19800915	
Polyphylla barbata	Mount Hermon June beetle			FE	19970224	

Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
GEKKONIDAE	**Geckos**					
Coleonyx switaki	Barefoot gecko	ST	19801002			Alternate common names: Switak's banded gecko, barefoot banded gecko.
CROTAPHYTIDAE	**Collared & leopard lizards**					
Gambelia sila	Blunt-nosed leopard lizard	SE	19710627	FE	19670311	Synonymous with *Gambelia silus* . Originally listed under the ESA as *Crotaphytus wislizenii silus* .
PHRYNOSOMATIDAE	**Spiny lizards**					
Uma inornata	Coachella Valley fringe-toed lizard	SE	19801002	FT	19801027	
XANTUSIIDAE	**Night lizards**					
Xantusia riversiana	Island night lizard			FDR FT	20140501 19770811	Recovered
BOIDAE	**Boas**					
Charina umbratica	Southern rubber boa	ST	19710627			Synonymous with *Charina bottae umbratica* .
COLUBRIDAE	**Egg-laying snakes**					
Masticophis lateralis euryxanthus	Alameda whipsnake	ST	19710627	FT	19971205	Synonymous with *Coluber lateralis euryxanthus* .
NATRICIDAE	**Live-bearing snakes**					
Thamnophis gigas	Giant garter snake	ST	19710627	FT	19931119	Listed by State of California as *Thamnophis couchi gigas* .
Thamnophis sirtalis tetrataenia	San Francisco garter snake	SE	19710627	FE	19670311	
			BIRDS			
ANATIDAE	**Ducks, geese, & swans**					
Branta hutchinsii leucopareia	Cackling (=Aleutian			FDR FT FE	20010320 19910111 19670311	Recovered At time of federal listing, known as *Branta canadensis leucopareia* .
DIOMEDEIDAE	**Albatross**					
Phoebastria albatrus	Short-tailed albatross			**FE** FE	20000830 19700602	Synonymous with *Diomedea albatrus* . Listed as Endangered in one of the original species lists, but "due to an inadvertent oversight" when the 1973 ESA repealed the 1969 Act, short-tailed albatross was effectively delisted. Proposed listing to fix this error in 1980, with final rule in 2000.
PELECANIIDAE	**Pelicans**					
Pelecanus occidentalis californicus	California brown pelican	SDR SE	20090603 19710627	FDR FE	20091217 19701013	Recovered Federal nomenclature: Brown pelican (*Pelecanus occidentalis*)
CATHARTIDAE	**New World vultures**					
Gymnogyps californianus	California condor	SE	19710627	FE	19670311	
ACCIPITRIDAE	**Hawks, kites, harriers, & eagles**					
Buteo swainsoni	Swainson's hawk	ST	19830417			
Haliaeetus leucocephalus	Bald eagle	**SE** (rev) SE	19801002 19710627	**FDR** FT FE (rev) FE	20070808 19950811 19780316 19670311	The Post-delisting Monitoring Plan will monitor the status of the bald eagle over a 20 year period with sampling events held once every 5 years.

Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
FALCONIDAE	**Falcons**					
Falco peregrinus anatum	American peregrine falcon	SDR SE	20091104 19710627	FDR FE	19990825 19700602	Recovered
Falco peregrinus tundrius	Arctic peregrine falcon			FDR FT FE	19941005 19840419 19700602	Recovered
RALLIDAE	**Rails, coots, & gallinules**					
Laterallus jamaicensis coturniculus	California black rail	ST	19710627			
Rallus obsoletus levipes	Light-footed Ridgway's rail	SE	19710627	FE	19701013	Formerly light-footed clapper rail, *Rallus longirostris levipes*
Rallus obsoletus obsoletus	California Ridgway's rail	SE	19710627	FE	19701013	Formerly California clapper rail, *Rallus longirostris obsoletus*
Rallus obsoletus yumanensis	Yuma Ridgway's rail	**ST** SE	19780222 19710627	FE	19670311	Formerly Yuma clapper rail, *Rallus longirostris yumanensis*
GRUIDAE	**Cranes**					
Grus canadensis tabida	Greater sandhill crane	ST	19830417			
CHARADRIIDAE	**Plovers & relatives**					
Charadrius nivosus nivosus	Western snowy plover			FT	19930405	Synonymous with *Charadrius alexandrinus nivosus* . Federal status applies only to the Pacific coastal population.
LARIDAE	**Gulls & terns**					
Sternula antillarum browni	California least tern	SE	19710627	FE	19700602	Listed by the State of California and federal government as *Sterna antillarum browni* .
ALCIDAE	**Auklets, puffins, & relatives**					
Brachyramphus marmoratus	Marbled murrelet	SE	19920312	FT	19920928	
Synthliboramphus scrippsi	Scripps's murrelet (=Xantus's murrelet)	ST	20041222			At the time of listing, this species was known as the Xantus's Murrelet (*Synthliboramphus hypoleucus* , with California breeding populations ascribed to *Synthliboramphus hypoleucus subsp. scrippsi*).
Synthliboramphus hypoleucus	Guadalupe murrelet (=Xantus's murrelet)	ST	20041222			At the time of listing, this species was known as the Xantus's Murrelet (*Synthliboramphus hypoleucus* , with breeding populations from Baja California ascribed to *Synthliboramphus hypoleucus subsp. hypoleucus*).
CUCULIDAE	**Cuckoos & relatives**					
Coccyzus americanus occidentalis	Western yellow-billed cuckoo	**SE** ST	19880326 19710627	FT	20141103	Federal listing is for the Western DPS of *Coccyzus americanus* .
STRIGIDAE	**Owls**					
Micrathene whitneyi	Elf owl	SE	19801002			
Strix nebulosa	Great gray owl	SE	19801002			
Strix occidentalis caurina	Northern spotted owl	ST	20170621	FT	19900723	On 20160825 the FGC voted to list the Northern spotted owl as threatened; findings were adopted 20170621.

Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
PICIDAE	**Woodpeckers**					
Colaptes chrysoides	Gilded (=Gilded northern) flicker	SE	19880317			Listed by the State of California as *Colaptes auratus chrysoides* .
Melanerpes uropygialis	Gila woodpecker		19880317			
TYRANNIDAE	**Tyrant flycatchers**					
Empidonax traillii	Willow flycatcher	SE	19910102			State listing includes all subspecies.
Empidonax traillii extimus	Southwestern willow flycatcher	(SE)		FE	19950329	
LANIIDAE	**Shrikes**					
Lanius ludovicianus mearnsi	San Clemente loggerhead shrike			FE	19770912	
VIREONIDAE	**Vireos**					
Vireo bellii arizonae	Arizona Bell's vireo	SE	19880317			
Vireo bellii pusillus	Least Bell's vireo	SE	19801002	FE	19860602	
HIRUNDINIDAE	**Swallows**					
Riparia riparia	Bank swallow	ST	19890611			
POLIOPTILIDAE	**Gnatcatchers**					
Polioptila californica californica	Coastal California gnatcatcher			FT	19930330	
EMBERIZIDAE	**Sparrows, buntings,**					
Artemisiospiza belli clementeae	San Clemente sage sparrow			FT	19770912	Federal nomenclature at time of listing: *Amphispiza belli clementeae* .
Melospiza melodia graminea	Santa Barbara song sparrow			FDE FE	19831012 19730604	Extinct. This status refers specifically to the Santa Barbara song sparrow, which was later reclassified as a subspecies (Channel Islands song sparrow) with the same scientific name but which also combined two additional groups formerly classified as their own subspecies.
Melozone crissalis eremophilus	Inyo California towhee	SE	19801002	FPD FT	20131104 19870902	Listed by the State of California and federal government as *Pipilo crissalis eremophilus* .
Passerculus sandwichensis beldingi	Belding's savannah sparrow	SE	19740110			Listed by the State of California as *Passerculus sandwichensis beldingii*
ICTERIDAE	**Blackbirds**					
Agelaius tricolor	Tricolored blackbird	SC	20151210			FGC voted to advance to candidacy 20151210. Notice date pending.
			MAMMALS			
SORICIDAE	**Shrews**					
Sorex ornatus relictus	Buena Vista Lake ornate shrew			FE	20020405	
PHYLLOSTOMIDAE	**Leaf-nosed bats**					
Leptonycteris yerbabuenae	Lesser long-nosed bat			FE	19881031	
LEPORIDAE	**Rabbits & hares**					
Sylvilagus bachmani riparius	Riparian brush rabbit	SE	19940529	FE	20000324	
APLODONTIDAE	**Mountain beavers**					
Aplodontia rufa nigra	Point Arena mountain beaver			FE	19911212	

Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
SCIURIDAE	**Squirrels & relatives**					
Ammospermophilus nelsoni	Nelson's (=San Joaquin) antelope squirrel	ST	19801002			
Xerospermophilus mohavensis	Mohave ground squirrel	ST	19710627			Listed by the State of California as *Spermophilus mohavensis* .
HETEROMYIDAE	**Kangaroo rats, pocket mice, & kangaroo mice**					
Dipodomys heermanni morroensis	Morro Bay kangaroo rat	SE	19710627	FE	19701013	
Dipodomys ingens	Giant kangaroo rat	SE	19801002	FE	19870105	
Dipodomys merriami parvus	San Bernardino kangaroo rat			FE	19980924	Federal nomenclature: San Bernardino Merriam's kangaroo rat.
Dipodomys nitratoides exilis	Fresno kangaroo rat	**SE** ST	19801002 19710627	FE	19850301	
Dipodomys nitratoides nitratoides	Tipton kangaroo rat	SE	19890611	FE	19880808	
Dipodomys stephensi	Stephens' kangaroo rat	ST	19710627	FE	19881031	
Perognathus longimembris pacificus	Pacific pocket mouse			FE	19940926	
MURIDAE	**Mice, rats, & voles**					
Microtus californicus scirpensis	Amargosa vole	SE	19801002	FE	19841217	
Neotoma fuscipes riparia	Riparian woodrat			FE	20000324	
Reithrodontomys raviventris	Salt-marsh harvest mouse	SE	19710627	FE	19701013	
CANIDAE	**Foxes, wolves, & coyotes**					
Canis lupus	Gray wolf	SE	20170101	FPD **FE**	20130613 19780410	
Urocyon littoralis	Island fox	ST	19710627	(FE)		State listing includes all 6 subspecies on all 6 islands. Federal listing is for only 4 subspecies on 4 islands.
Urocyon littoralis catalinae	Santa Catalina Island Fox	(ST)		**FT** FE	20160912 20040405	
Urocyon littoralis littoralis	San Miguel Island Fox	(ST)		**FDR** FE	20160912 20040405	
Urocyon littoralis santacruzae	Santa Cruz Island Fox	(ST)		**FDR** FE	20160216 20040405	
Urocyon littoralis santarosae	Santa Rosa Island Fox	(ST)		**FDR** FE	20160216 20040405	
Vulpes macrotis	San Joaquin kit fox	ST	19710627	FE	19670311	
Vulpes vulpes necator	Sierra Nevada red fox	ST	19801002			
MUSTELIDAE	**Weasels & relatives**					
Enhydra lutris nereis	Southern sea otter			FT	19770114	