

(Related: S17-0016, Site #6)

File Number: CUP-A 18-0006

Receipt No.: 3465

Date Received: 8-9-2018

Amount: \$239

APPEAL FORM

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

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A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT _____

ADDRESS _____

DAYTIME TELEPHONE _____

APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

I/We appeal the Approval of Conditional Use Permit Application S17-0016 Site 6 by the Planning Commission on July 26, 2018 and request the Board of Supervisor Deny Application S17-0016 as Relief.

We do so for the following specific reasons:

See attached "Reasons for Appeal" (pages 1-3)

See attached "Memorandum in Opposition" (pages 1-22)

See attached "Exhibits in Opposition" (pages 1-65)

Thank you for your consideration of our Appeal.

DATE OF ACTION BEING APPEALED July 26, 2018

[Signature]
Signature

09 Aug 2018
Date

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Reasons for Appeal of the approval of Special Use Permit S17-0016/AT&T CAF4

1. The approval is inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021. C. 2.): "The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood;"

We believe it is Injurious to the neighborhood as it will be constantly visible from our Residential Parcels and is therefore an Aesthetic intrusion into our lives and for the rest of our lives, or until we sell our home. There are viable alternative locations.

2. The Approval is inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021. B.) that a project is OK with CEQA policy and requirements regarding "Alternative Analysis; (130.52.021. B.): "The approval of a Conditional Use Permit is a discretionary project and is subject to the requirements and procedures of CEQA".

We believe the CEQA analysis is severely flawed and there was considerable testimony at three hearings and staff did not respond to these concerns via any responses "suggested" by CEQA Process.

We believe the CEQA analysis of Alternatives was virtually non-existent and only (poorly) conducted by the applicant to point ONLY to their 'contracted' site. We believe that this lack of MEANINGFUL Alternative Location and Co-Location is inconsistent with the INTENT of CEQA to consider such analysis.

Similarly, we believe the current process is flawed and a COUNTY-WIDE approach to antenna location MUST be undertaken through an overlay mapping program to identify current and approved locations, their coverage via ALL PROVIDERS, including "Hardline Providers" (Comcast, ATT, etc) as well as other over the air providers to clearly identify "Coverage Needs" County-wide. A Program EIR is needed to achieve this goal, and then we can go about providing service to our rural community as envisioned by CAF technology and Federal desires (NOT MANDATES!) to provide such service.

3. The Approval is not consistent with the Wireless Ordinance: (130.40.130. A.): "The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare."

We believe the proposed location and the "System" proposed by ATT (and others) is not consistent with this "Finding" the BOS used to adopt the Wireless Ordinance.

4. The approval is not consistent with just plain common sense of who bears the price of these facilities without compensation. We will have to suffer all the impacts of these towers and if we are served by this or that provider, we might gain better internet connection. But at what cost? Is there an alternative? Yes, but that has not been clearly analyzed and illustrated to our satisfaction.

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5. Inadequate setbacks were considered in the first denial of the project, and on July 26, 2018 the Fire Chief from Diamond Springs spoke saying that current setbacks for these towers are not adequate, and should be reviewed and modified to protect the neighboring parcels. There should be a fall zone equal to the height of the tower. In the event of catastrophic failure, the tower would fall on property outside the leased area and/or Gate Lane. The fall zone of the proposed tower includes three properties and Gate Lane (a dead end) which could block residents egress.

6. The approval is inconsistent with established hearing procedure and "fair play" if you will. The Planning Commission advertised and heard this Project as "One Application" originally on the February 8, 2018 Agenda and decided to separate them into seven (7) projects for approval as it appeared some sites were generating more comments and opposition than others. As the hearing progressed, each item was voted on for approval, but it was a 2:2 "Split Vote" (as there was not a "Full Commission of 5, but a "Quorum" of at least 3) that by Rule is equal to a Denial.

The majority of those in the audience were confused by this process, but were thrilled by the explanation that such a vote functioned as a denial. Aesthetic, Access and Alternative Analysis issues were cited by the Commissioners as primary reasons for Denial. The Planning Commission then directed staff to "Craft" Findings for Denial that were consistent with El Dorado County Policies and Procedures, CEQA and Planning Law, and return February 22 with these "Crafted" Findings.

The majority of the Public in attendance February 8 did not foresee the possible results of the February 22 hearing as they were under the impression that the Project was to be denied with the "Crafted Findings" and therefore did not attend as they have jobs and other obligations. To the surprise of many, ATT submitted a letter on February 21, 2018 to staff proposing some modifications to the project and asking for a continuance of the project for one stated purpose: "Public outreach" to answer questions from concerned neighbors. Two meetings occurred on July 11 & 12 and then Staff scheduled a hearing for July 26, 2018. Indeed it was "advertised" per County policy and State Law, but some, given the actions of February 8, were confused and may have not attended.

The point here is the "Project" was "modified" by lowering the towers 20-30 feet (presented in a July 24, 2018 Memo from Planner Evan Mattes to the Commission entitled: "S17-0016/AT&T CAF 4; Revised Project Description and New Conditions). During the hearing there were "Visual Simulations" that were at first claimed to be representing "Reduced Height" but were in fact the same as before. Additionally, the memo didn't allow the Public (or the Commission or Fire and other reviewers) much time to consider the "Revisions" to the project. Again, it felt as if the "Project" was now this 'moving target' that was a guess to all involved, including the Commissioners. The Vote on Site #1 was 2-1 for Approval that once again meant "Denial" due to procedural Rules.

To most in attendance, It just felt a little disingenuous, and while not a 'violation' of Law or Ordinance, it appeared dishonest.

As the Commission considered additional sites, there was a mention by the Chairman that there were 36 comments supporting "the project" and many were "Form Letter"

comments (perhaps 10) and some other 'more original' e-mails; but all praised the overall concept of "Wireless Internet" to El Dorado County IN GENERAL with NO reference to S17-0016. Lofty, but not applicable to the project in question. The "10 in Support" were focused on one or more of the specific locations under consideration. Another disingenuous situation that swayed one Commissioner to vote to Approve the rest of the 6 locations. Pretty thin reason to support such a project that would impact and be "injurious" to the neighborhood.

We understand that we all want "better internet connection" but when it comes to putting it in YOUR backyard, with no compensation, it feels wrong and may amount to a "takings" especially regarding setbacks that do not protect neighbors from "Tower Failure" damage.

Therefore, the Relief requested is: The El Dorado County Board of Supervisors DENY S17-0016 in total and direct Staff to address the above issues and suggestions to develop a systematic approach to providing "Wireless Internet" from all providers (and other sources) to the residents of El Dorado County. A Program (or some other) EIR should be the tool to provide a firm base for our decision makers. Then re-evaluate a modified ATT Application for better locations.

COUNTY OF EL DORADO
STATE OF CALIFORNIA

-----X

In the Matter of the Application of

AT & T Mobility **Site # 2 – Newtown**
Project S 17 –0016 AT&T CAF4 **Site # 6 – Zee Estates**

Conditional Use
Permit Application

**MEMORANDUM
IN OPPOSITION**

Premises: Site #2
 3921 Snows Road
 Placerville, CA 95667
Parcel ID# 077-091-06-100

Premises Site #6
 Gate Lane
 Pilot Hill, CA 95667
Parcel ID# 104-370-24-100

-----X

MEMORANDUM IN OPPOSITION

Respectfully Submitted,

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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.

This memorandum is being submitted by, and on behalf of, multiple homeowners whose homes are situated in close proximity to Sites # 2 and # 6 of such proposed application, which are respectively identified as the Newtown parcel, situated at 3921 Snows Road, in Placerville, CA, and the Zee Estates parcel, situated at Gate Lane, in Pilot Hill, CA.

At these two Sites, *AT&T* seeks to construct two large cell towers which would respectively stand not less than twelve (12) and sixteen (16) stories in height,¹ in close proximity to multiple homes, in two residential areas where no existing structures currently stand taller than two (2) stories in height.

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 each of the two Sites, the Commission's findings were that: (a) the proposed towers would "unavoidably impact the aesthetics of the surrounding neighborhoods," (b) the proposed towers were an incompatible use with the surrounding residential land uses and zones, and (c) adequate access does not exist for the sites. A true copy of the Planning Staff's Statement of Findings for the Commission's denial is annexed hereto as Exhibit "A."

¹ While *AT&T's* application states that the height of the proposed towers at these two Sites will be 120 and 160 feet in height, the Middle Class Tax Relief and Job Creation Act of 2012 would allow *AT&T*, once the towers are built, to increase the height of each tower by an additional 28 feet and the federal Act would prohibit the County from preventing same. See 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.40001(b)(7).

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 two towers that are the subject of this memorandum are 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 towers are the least intrusive means of remedying any such non-existent gap, (c) the two proposed installations would unnecessarily inflict dramatic adverse aesthetic impacts upon the nearby homes, and (d) would reduce the values of the nearby homes, (e) the proposed installations lack sufficient fall zones and (f) the proposed installations do not comply with the requirements of the El Dorado Zoning Ordinance.

Simply stated, the installation of twelve (12) and sixteen (16) story towers in residential areas at Sites # 2 and # 6 would not merely “*stick out like sore thumbs,*” they would inflict upon the nearby homes and communities the precise adverse impacts which the relevant provisions of the El Dorado Zoning Ordinance were specifically enacted to prevent. As such, the residential homeowners, on whose behalf this memorandum is submitted, respectfully submit that the application should be denied, which can be done in a manner which does not violate the Telecommunications Act of 1996.

Also, the commission should not be swayed by threats of litigation from *AT&T*. Even

assuming, for the sake of argument, that denial was a violation of the Telecommunications Act of 1996, the act **does not** enable applicants, such as *AT&T*, to recover any money damages or attorney's fees against municipalities. If the County were to deny *AT&T's* application *in a manner* which violated the TCA, *AT&T* only remedy would be pursuit of a truncated petition to seek a Court order directing the County to grant an approval for the Conditional Use Permit it seeks.²

² 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 122 and 160 Foot Cell Towers Which AT&T Seeks to Construct at Sites # 2 and # 6 are 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 122 foot and 160 foot towers it has proposed at Site #2 and Site #6, respectively, to provide wireless services within the areas of Newtown or Zee Estates. 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.³ 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).⁴ A review of *AT&T's* application reveals that *AT&T* does not claim that it suffers from any specific

³ See 47 U.S.C.A. §332(c)(7)(B)(i)(II).

⁴ *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 receive 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."

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 towers at Sites # 2 and # 6 for *enhanced* cellular coverage and *future capacity* needs. See Exhibit “C” annexed hereto - a true copy of Attachment 3 for Site 2 Newtown, wherein *AT&T* states that the purpose of the proposed 122 foot tower at Site #2 is to provide “enhanced cellular coverage and capacity to the Newtown area,” and Exhibit “D” annexed hereto- a true copy of Attachment 3 for Site 6 Zee Estates, wherein *AT&T* states that the purpose of the proposed 160 foot tower at Site #6 is to provide “enhanced cellular coverage and capacity to the Pilot Hill area.”

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 massive 122 foot and 160 foot towers at the Newtown and Zee Estate Sites, *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.

What is rather remarkable about this claim is that, according to *AT&T’s* own online coverage maps, *AT&T* has absolutely no gaps in its 4G LTE coverage in the precise areas where it seeks to install these two extremely large towers. Annexed hereto as Exhibit “E” is *AT&T’s* 4G LTE coverage map for 3921 Snows Road, Placerville, CA (a/k/a Newtown Site #2), published on *AT&T’s* own website, att.com, which was current as of July 19, 2018, and which shows that *AT&T* has no gaps in 4G LTE coverage at, or anywhere around, that specific geographic location.

Annexed hereto as Exhibit “F” is *AT&T’s* 4G LTE coverage map for Gate Lane, Pilot Hill CA 95664, CA (a/k/a Zee Estates Site #6), published on *AT&T’s* own website, att.com, which was

current as of July 19, 2018, and which shows that *AT&T* has no gaps in 4G LTE coverage at, or anywhere around, that specific geographic location.

Contemporaneously, *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 desire⁵ 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 exists. Since the recording device records the signal strength every few milliseconds or so, on a one hour drive

⁵ *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.

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.

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 which 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. In essence, it's "garbage in, garbage out."

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 two towers at Sites #2 and #6, as the “least intrusive means” of remedying the problem (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 below, the proposed towers for Site #2 and Site #6 would inflict substantial adverse impacts on the homes nearby, and would, in fact, irresponsibly place those properties well within the fall zones of the respective towers.

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 Towers
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 twelve (12) and sixteen (16) story towers in residential neighborhoods would inflict upon the nearby homes 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 Areas

As logic would dictate, the construction of twelve (12) and sixteen (16) story cell towers in two residential areas 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 neighborhoods 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 each of the sites that are the subject of this Memorandum. (Newtown Site #2 and the Zee Estates Site #6). Each set of photo-simulations includes four (4) photographic images of each 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 the *AT&T's* "photo-simulations" for Newtown Site # 2 are annexed hereto as Exhibit "G." True copies of the *AT&T's* "photo-simulations" for Zee Estates Site # 6 are annexed hereto as Exhibit "H."

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 which a proposed installation is likely to inflict upon the nearby homes and residential community. Not surprisingly, applicants often seek to 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 the nearby homes which will sustain the most severe adverse aesthetic impact from installation of twelve and sixteen story towers so close to their homes.

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.*

In this case, the images presented by *AT&T* do not include any images taken from vantage points showing the most severe adverse aesthetic impacts on the properties of nearby homeowners. 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 Installations 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 which an irresponsibly placed cell tower would inflict upon homes in close proximity to the tower, are the homeowners and their families. To this end, 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 Exhibits "I" and "J" are letters from homeowners whose homes are in close proximity to sites upon which *AT&T* proposes to install its twelve (12) and sixteen (16) story cell towers. Within each of those letters, the homeowners, and others who are intimately acquainted with their homes, personally detail the adverse aesthetic impacts that the proposed installations 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 installations are permitted to proceed. Such installations 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.

Detailed descriptions of the adverse aesthetic impacts which *AT&T's* proposed one hundred sixty (160) foot tower at Zee Estates (Site # 6) would inflict upon the Crawford property which would be adjacent to, and within the fall zone of, such tower, include the following letters, which are collectively submitted herewith as Exhibit "I", from: Bruce A. Crawford, Marjorie Crawford, Nancy Fitton, Claire Bui, Edward Chan, Larry Hillhouse, Alexander M. Cone and Jeffrey L. Good. *See* Exhibit "I."

Detailed descriptions of the adverse aesthetic impacts which *AT&T's* proposed one hundred twenty-two (122) foot tower at Newtown (Site # 2) would inflict upon the nearby homes and properties which would be adjacent to, and/or within the fall zone of, such tower, include the following letters, which are collectively submitted herewith as Exhibit "J", from Randy Hellesvig, Linda Rye, Chris Wookey, Mark Montgomery, Bruce Crawford and a petition containing nine signatures objecting to the placement of the tower on the historic sight known as Snow Ridge. *See* Exhibit "J."

Moreover, as further set forth herein, all of the adverse aesthetic impacts which the proposed cell tower would inflict upon their respective homes is entirely unnecessary because *AT&T* does not need the respective one hundred twenty-two (122) foot and one hundred sixty (160) foot cell towers to provide wireless services within the County.

B. The Proposed Installations 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 also inflict an adverse impact upon the actual value of the residential properties situated in close proximity to the proposed tower. Across the entire United States, both real estate appraisers⁶ 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%.⁷

In the worst cases, towers built near existing homes have caused the homes to be rendered wholly unsaleable.⁸

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 placed tower would inflict upon nearby homes, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who could provide their professional

⁶ 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>

⁷ 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 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%.

⁸ 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-home-172366931.html>.

opinions as to the adverse impact upon property values which 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 property value of the Crawford home, which would be in close proximity to the tower at the Zee Estates parcel, Site #6, annexed hereto as Exhibit "K" are letters setting forth the professional opinions of licensed real estate professionals. Within each of these letters, the real estate professionals set out their professional credentials and personally submit their professional opinions that the installation of the proposed tower would cause severe reductions in the Crawford's property value and make their home more difficult to sell, even at a reduced purchase price.

Such detailed descriptions of the reduction in property value that the Crawford's home would suffer, and which the County should properly consider, are collectively submitted herewith as Exhibit "K" and include the following: (1) a professional opinion letter from Robert Doucet, who has been a Licensed Real Estate professional in California for approximately 24 years, who submits his professional opinion that the proposed installation will reduce the value of the Crawford home by at least 20 to 25%; (2) a professional opinion letter from Larry Hillhouse, who has been a Licensed Real Estate professional in California for 35 years, who submits his professional opinion that the proposed installation will reduce the value of the Crawford home by at least 20 to 30%; and (3) a professional opinion letter from Bob Candler a Licensed Real Estate professional in California who submits his professional opinion that the proposed installation will negatively affect the value of the Crawford home. *See* Exhibit "K."

Given the reduction in property values which the nearby homes would sustain, the

granting of *AT&T's* application would inflict upon the residential neighborhood 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 Installations at Sites #2 and Site #6 Do Not Provide a Sufficient Fall Zone

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, 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.⁹

⁹ 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 122 foot and 160 cell towers are built where AT&T has proposed, the nearby property owners' properties would be well within the fall zone and danger zone of these massive towers. The Hellesvig property would be a mere 27 feet from the 122 foot tower proposed for Site #2, and the Crawford property would be 90 feet from, and well within the fall zone of, the massive 160 foot tower proposed for Site #6.

There are four (4) physical dangers that have induced local governments to adopt specific setback and/or safe-zone 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 "L" 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.¹⁰

Some of the most common elements and areas of failure which result in the collapse of

¹⁰ 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."

cell towers are baseplates,¹¹ flanges, joints, bolts and guy wires.¹²

With respect to monopoles and fires, 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.¹³

AT&T ignores these standards and proposes to place its towers at Sites #2 and #6 so that both a public road, and the Crawford and Hellesvig properties, would all be well within the fall zone of the Towers, as well as the danger zones for fire, ice fall, and debris fall.

A structural failure of the massive 160 foot tower proposed for Site #6 would not merely place the Crawford property at least 90 feet within its fall zone, it would also place Gate Lane, a public road, *entirely* within its fall zone. As such a structural failure at such site (like the Oswego monopole failure – *See* Exhibit “L”) would result in the tower falling entirely across Gate Lane, cutting off all public traffic, any access for fire trucks, and the Crawford’s only means of ingress and egress to their home. And the area on the Crawfords’ property impacted by this threat is frequented by the Crawfords, their guests, and their children.

Annexed hereto as Exhibit “M” is a letter from Bruce Crawford wherein Mr. Crawford attests to the proximity of the proposed tower to both his property and Gate Lane.

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

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

¹² 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.

¹³ 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=yNKVWrazg>, or simply go to *Google*, and search for “cell tower burns.”

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.¹⁴ Annexed hereto as Exhibit "N" 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 speed at distances as great as 100 feet from the tower.

AT&T's proposed towers for Site #2 and Site #6 would place the Crawford and Hellesvig properties well within the ice fall zone of the towers, especially for the Hellesvig property which would be located a mere 27 feet from the tower at Site #2. Ice chunks falling from a height of 122 or 160 feet, 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.¹⁵

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

¹⁴ 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 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).

¹⁵ Annexed hereto as Exhibit "O" is a page from a study completed by a consultant hired by the City of Brookfield Wisconsin, - which depicts a lump hammer, which had been dropped from a cell tower during routine maintenance, and crashed through the roof of a nearby structure.

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. Many jurisdictions have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower. For example, in Amador County the setback for all property lines and roads is the height of the tower. (Amador County Code §19.48.150.) The Nevada County setback is 100% of the tower's height. (Nevada County Code §L-II 3.8.) A 30' setback that ignores these issues is inadequate and ignores public safety.

Aside from the fact that the installation proposed for Site #2 does not meet the setback requirements under the Zoning Ordinance (the proposed tower would be only 27 feet from the Hellesvig property), given the fact that, as proposed by *AT&T*, the towers proposed for Site #2 and Site #6 would place the Hellesvig and Crawford properties squarely within the danger zones for structural failures, fire, ice fall and debris fall.

As such, *AT&T's* application for reconsideration of the previous denial of its application for 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 Towers Without Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities will be if the towers were built at twelve and sixteen stories, the fact is that once the tower is built, *AT&T*

would thereafter be permitted to increase the height of each of these towers by an additional twenty eight (28) feet, and the County 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). The FCCs has interpreted this to mean 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.

In short, under the FCC's regulation, if these towers 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 the homes and communities nearby, *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 which 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

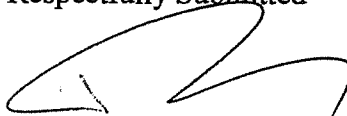
To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." Review under 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 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



Douglas R. Roeca, Attorney for Randy
Hellesvig, Bruce Crawford, and
Marjorie Crawford

Exhibits

- A Planning Staff Statement of Factual Findings
- B Applicant's letter requesting reconsideration dated February 21, 2018
- C *AT&T* Attachment 3, Site 2 Newtown, Placerville
- D *AT&T* Attachment 3, Site 6 Zee Estates, Gate Lane
- E *AT&T* Coverage map for Site #2 New Town, Placerville
- F *AT&T* Coverage map for Site #6 Zee Estates Gate Lane
- G *AT&T* Photo-Simulations Site 2 Newtown
- H *AT&T* Photo-Simulations Site 6 Zee Estates
- I Aesthetic Impact Letters Site 6
- J Aesthetic Impact Letters Site 2
- K Broker Letters
- L Oswego Cell Tower Images
- M Crawford Letter re blocking Gate Lane
- N Engineering Ice Fall Analysis
- O Hammer Fall Image

EXHIBIT A



COMMUNITY DEVELOPMENT SERVICES

PLANNING AND BUILDING DEPARTMENT

<https://www.edcgov.us/devservices>

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DATE: February 21, 2018
TO: Planning Commission
FROM: Evan Mattes, Assistant Planner
SUBJECT: S17-0016/AT&T CAF 4; Findings for Denial

Agenda of: February 22, 2018

The AT&T CAF 4 Sites 1-7 (S17-0016) ("Project") was considered by the El Dorado County Planning Commission at a duly noticed public hearing on February 8, 2018. The Conditional Use Permit would allow for seven new wireless facilities, including new towers, to be constructed and operated at seven individual parcels located in the rural regions of El Dorado County. The proposed towers would range in height from 120 to 160 feet. Upon conclusion of the public hearing, the Planning Commission rendered seven separate motions with each site receiving a 2-2 vote to approve the project subject to findings and conditions of approval. As the project did not receive a majority votes for approval, the project was considered to be denied. A motion was made to continue each of the sites to the February 22, 2018 Planning Commission meeting to allow staff to prepare appropriate Findings of Denial based on aesthetics, compatibility with neighboring land uses, co-location possibilities, alternative site analysis, and access. Staff recommends that the Planning Commission make the following Findings in support of its action to deny the Project:

SITE 1 COOL (PILOT HILL 2) ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a half mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 1 COOL (PREVIOUSLY PILOT HILL 2) CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 122-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Triple Seven Road, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had been previously reviewed by the El Dorado County Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.
3. The project site is surrounded by residential uses to the south, east and west with State Highway 193 to the north. The surrounding residential parcels are zoned Residential Two-Acres (R2A) and Residential Estate Five-Acres (RE-5) and range in size from two to 154 acres in size. Communication Facilities, including communication towers, are allowed within Residential zones with the approval of a conditional use permit. Some written and verbal testimony was provided in opposition of the project. The Planning Commission has determined that the proposed

communication tower is an incompatible use with the surrounding residential land uses and zones.

SITE 2 NEWTOWN ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a quarter-mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 2 NEWTOWN CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 120-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Snows Road, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had been previously reviewed by the El Dorado County Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.
3. The project is surrounded by residential uses to the north, east and west with industrial uses to the south. The surrounding residential parcels are zoned Residential Estate Five-Acres (RE-5) and range in size from 1.5 to 14 acres in size. The 16 acre parcel to the south is zoned Light Industrial (IL). Communication Facilities, including communication towers, are allowed within Residential and Industrial zones with the approval of a conditional use permit. Considerable written and verbal testimony was received in opposition of the project site. The Planning Commission has determined that the proposed communication tower is an incompatible use with the surrounding residential land uses and zones.

SITE 3 PLEASANT VALLEY ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a quarter mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 3 PLEASANT VALLEY CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 160-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Stein Road, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had been previously reviewed by the El Dorado County Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.
3. The project is surrounded by residential uses to the north, east and west with commercial uses to the south. The surrounding residential parcels are zoned Residential Two-Acres (R2A) and range in size from 1.4 to 6.7 acres in size. The 1.3 acre parcel to the south is zoned Community Commercial (CC). Communication Facilities, including communication towers, are allowed

within Residential zones with the approval of a conditional use permit. Considerable written and verbal testimony was received in opposition of the project site. The Planning Commission has determined that the proposed communication tower is an incompatible use with the surrounding residential land uses and zones.

SITE 4 SOAPWEED ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a one mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 4 SOAPWEED CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 160-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Stope Road, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had previously been reviewed by El Dorado Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.
3. The project is surrounded by forest resource uses to the north, east and west with residential uses to the south. The surrounding forest resource parcels are zoned Forest Resource 40-Acres (FR-40) and range in size from 9.5 to 40.5 acres in size. The 6 acre parcel to the south is zoned Residential Estate Five-Acres (RE-5). Communication Facilities, including communication towers, are allowed within Residential and Forest Resource zones with the approval of a conditional use permit. One member of the public provided verbal testimony in opposition of the project. The Planning Commission has determined that the proposed communication tower is an incompatible use with the surrounding residential land uses and zones.

SITE 5 LATROBE ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a quarter mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 5 LATROBE CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 160-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Dragon Point Road, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had previously been reviewed by El Dorado Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.
3. The project is surrounded by rural residential uses on all sides. The surrounding rural residential parcels are zoned Rural Lands 20-Acres (RL-20) and Rural Lands 40-Acres (RL-40) and range in

size from 20 to 60.25 acres in size. Communication Facilities, including communication towers, are allowed within rural zones with the approval of a conditional use permit. Considerable written and verbal testimony. The Planning Commission has determined that the proposed communication tower is an incompatible use with the surrounding rural residential land uses and zones.

SITE 6 ZEE ESTATES ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a half mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 6 ZEE ESTATES CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 160-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Gate Lane, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had previously been reviewed by El Dorado Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.
3. The project is surrounded by agricultural uses to the north, south and east with residential uses to the south and west. The surrounding agricultural parcels are zoned Limited Agriculture Ten-Acres, Limited Agriculture 20-Acres and Limited Agriculture 40-Acres and range in size from 25 to 145 acres in size. The surrounding residential parcels are zoned Residential Estate Five-Acres (RE-5) and range in size from five to 26 acres in size. Communication Facilities, including communication towers, are allowed within Residential and Agricultural zones with the approval of a conditional use permit. Some written and verbal testimony was received in opposition and in support of the project site. The Planning Commission has determined that the proposed communication tower is an incompatible use with the surrounding residential land uses and zones.

SITE 7 GOLD HILL ZONING FINDINGS

1. The Planning Commission finds that the alternative site analysis, in accordance with Section 130.40.130.A, did not adequately analyze potential co-locations within the project vicinity. Moreover, as a result of the applicant's narrowly-defined project objectives, the project alternative site analysis examined only potential sites within a three-quarter mile search radius. Accordingly, the applicant failed to provide prima facie evidence to support its claim that there are no feasible alternate sites.

SITE 7 GOLD HILL CONDITIONAL USE PERMIT FINDINGS

1. The Planning Commission finds that the proposed 160-foot tall stealth monopine tower would unavoidably impact the aesthetics of the surrounding neighborhood.
2. Gods Way, an existing private road, currently provides access to the parcel, which the project would be located on. While there is an existing access, which had previously been reviewed by El Dorado Department of Transportation, the Planning Commission determined that adequate access does not exist for the project site.

3. The project is surrounded by residential uses to the north and east with rural residential uses to the west and open space to the south. The surrounding residential parcels are zoned Residential Estate Ten-Acres (RE-10) and are five acres in size. The 10 acre parcel to the west is zoned Rural Lands Ten-Acres (RL-10). The 80 acre open space parcel to the south is zoned Open Space (OS). Communication Facilities, including communication towers, are allowed within Rural Residential and Open Space zones with the approval of a conditional use permit. Two members of the public provided verbal testimony in opposition of the project site. The Planning Commission has determined that the proposed communication tower is an incompatible use with the surrounding residential land uses and zones.

CONCLUSION

The Planning Commission made the above Findings in support of its actions to Deny S17-0016/AT&T CAF 4.

EXHIBIT B



JOHN DI BENE
General Attorney
Legal Department

AT&T Services, Inc.
2600 Camino Ramon
Room 2W901
San Ramon, CA 94583

925.543.1548 Phone
925.867.3869 Fax
jdb@att.com

February 21, 2018

Via Email (charlene.tim@edcgov.us, jvegna@edcgov.us, gary.miller@edcgov.us, jeff.hansen@edcgov.us, james.williams@edcgov.us, brian.shinault@edcgov.us)

El Dorado Planning Commission
Clerk of the Planning Commission
2850 Fairlane Court
Placerville, CA 95667

*Re: AT&T's Applications for Conditional Use Permits on February 22, 2018 Agenda
File No. 18-0295*

Dear Clerk Tim and Commissioners Miller, Williams, Vegna, Hansen, and Shinault,

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) asks the Planning Commission to reconsider its conceptual denial of seven conditional use permits ("Applications") to allow it to construct wireless telecommunications facilities in El Dorado County including: (1) Site 1-Cool: Assessor's Parcel Number 071-032-15; (2) Site 2-Newtown: Assessor's Parcel Number 077-091-06; (3) Site 3-Pleasant Valley: Assessor's Parcel Number 078-180-38; (4) Site 4-Soapweed: Assessor's Parcel Number 085-010-13; (5) Site 5-Latrobe: Assessor's Parcel Number 087-181-10; (6) Site 6-Zee Estates: Assessor's Parcel Number 104-370-24; and (7) Site 7-Gold Hill: Assessor's Parcel Number 105-110-81.

AT&T's proposed facilities would bring wireless services, including 4G LTE telecommunications and high-speed broadband services to as many people as possible in this rural portion of El Dorado County. AT&T's applications are part of its multi-million dollar commitment to the Federal Communications Commission's Connect America initiative, an important program that subsidizes the cost of building new infrastructure and network upgrades to provide voice and broadband services in places where it is lacking.

Specifically, by harnessing this unique, economically feasible opportunity to serve rural communities, AT&T proposes to deploy the necessary network infrastructure to bring these services to hundreds of households in this portion of the county.

The Planning Commission previously voted to conceptually deny these permits but we ask the Commission to reconsider that conceptual denial in light of the information below. Such

action would be consistent with the February 8, 2018 Staff recommendations of approval and the findings they prepared, as well as federal law.

Concerns raised at the February 8, 2018 hearing included concern that other collocation opportunities exist that could be used instead of the sites selected and at issue in the conditional use permits. This is untrue because the only sites within collocation opportunities are Site 1 – Cool, Site 2 – Newtown and Site 3 – Pleasant Valley. The Colocation sites were considered. Site 1 – Cool’s Colocation was rejected because 55% of the targeted LUs would be lost when locating at the available height of 40 feet, furthermore 45% of the targeted LUs would be lost if the tower was modified to allow an 85-foot antenna height. Regarding Sites 2 and 3, one tower exists between the two targeted areas located on Rainbow Ridge Road. By utilizing only one tower to cover both site’s objectives, the tower fails to meet the targeted LUs for both sites by 37% in addition to not filling both area’s LTE coverage gaps. As such there are no other collocation sites available.

Concerns were also raised regarding the adequacy of the alternatives analysis. On a site-by-site basis, alternative sites were looked at during the feasibility stage, however, sites where we encountered uninterested landlords and/or lacked legal real estate rights were not included in the alternative site analysis.

In addition, questions were raised regarding how many more living units will be served by this alternative. In fact, all alternative sites analyzed yielded between a 10% to 55% loss in LUs, amongst other factors being considered. As part of this inquiry, some questioned why the number of units is exactly the qualifying number but that number was just provided to show the site meets the minimum federal standard.

Concerns were raised regarding noise, but as the staff properly found, the equipment will generate noise that is well below the acceptable noise levels under the County Code.

Lastly, some comments were made that the area where the Site-2 Newtown facility is proposed may be significant to Native American tribes. Consultant with tribes was conducted and no tribes responded that any of these areas contain cultural resources for their tribes.

Applicable Federal Law – Telecommunications Act of 1996

The federal Telecommunications Act of 1996, 47 U.S.C. § 332 (“Act”) provides rights to wireless service providers and establishes limitations upon state and local zoning authorities with respect to applications for permits to construct personal wireless service facilities. This important law was enacted in part to prioritize and streamline proliferation of wireless technologies on a national basis.¹ Thus, the Act fosters increased infrastructure deployments, such as the proposed facilities, and programs like the FCC’s Connect American initiative.

¹ See *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115-16 (2005) (explaining that Congress intended to promote rapid deployment of wireless technologies by removing impediments to construction imposed by local governments).

The Act provides that the county must consider AT&T's applications based on "substantial evidence."² The "substantial evidence" requirement means that a local government's decision must be "authorized by applicable local regulations and supported by a reasonable amount of evidence."³ In other words, the County must have specific reasons that are both consistent with its municipal code or other published regulations and supported by substantial evidence in the record to deny a permit. Here, however, the objections that have been raised by a few residents do not qualify as substantial evidence. Accordingly, the Planning Commission should approve AT&T's applications.

In addition, under the Act, local authorities are not permitted to consider complaints or concerns about potential health effects in deciding siting applications.⁴ Likewise, allegations of property value loss based on fears over radio frequency emissions are not substantial evidence that can support a decision on a wireless siting applications.⁵

Specifically, most of the comments raised by nearby residents have objected to the proposed facilities based on fears about environmental effects of radio frequency emissions. Several letters have submitted articles from the internet and urged the County to deny the permits on the basis of radio frequency emissions. One comment also raised concerns regarding the effect of radio frequency on birds and other animals. As discussed below, the site is well below federal levels and that is not a permissible reason to deny the permits.

Similarly, several property owners have stated fears negative impact on property values. This also is not an appropriate basis to deny the permits under federal law.

One additional issue that was raised related to the feasibility of access for Site 5 – Latrobe. Under AT&T's lease with the owner of the site, AT&T has express access rights to the site. That owner has a recorded appurtenant easement to the site for access and other purposes as set forth therein.⁶ Under established California law, appurtenant easements can never be interpreted as personal to the Grantee.⁷ Indeed, the easement expressly contemplates access by others. Specifically, the easement is to "Grantee, its successors and assigns" and the indemnity

² 47 U.S.C. § 332(c)(7)(B)(iii).

³ *Metro PCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 725 (9th Cir. 2005), *abrogated on other grounds, T-Mobile S. LLC v. City of Roswell*, 135 S. Ct. 808 (2015).

⁴ 47 U.S.C. § 332(c)(7)(B)(iv) provides "No State or local government 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 [Federal Communications] Commission's regulations concerning such emissions."

⁵ See, e.g., *AT&T Wireless Svcs. of Cal. LLC v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1159-62 (S.D. Cal. 2003) (property value claims based on radio frequency emissions fears not substantial evidence); see also H.R. Conference Report No. 104-458, 201 (1996) (intent of Act is to prohibit local governments from basing wireless siting decisions "directly or indirectly on the environmental effects of radio frequency emissions").

⁶ The recorded appurtenant easement is entitled "Grant of Easement" and recorded on June 27, 1992 in the Official Records of the County of El Dorado Recorder's Office at Document No. 2002-0046499.

⁷ See, e.g., *St. Louis v. Debon* (1962) 204 Cal.App.2d 464, *Leggio v. Haggerty* (1965) 231 Cal.App.2d 873

expressly requires Grantee to indemnify for a range of users of the easement, including Grantee's "invitees." AT&T will be both the Grantee's assign and invitee. Moreover, AT&T's anticipated use of the appurtenant easement will be limited to AT&T's access during initial construction and then for periodic maintenance and repair which is estimated to be once or twice a month or less. Lastly, while AT&T has secured this access, the scope of the easement is an issue beyond the land use jurisdiction of this Commission.

Another issue that was raised is radio frequency emissions. AT&T's proposed facilities will comply with applicable environmental regulations, including the FCC's regulations of radio frequency emissions. Pursuant to FCC regulations, the proposed facilities are categorically exempt from analysis of radio frequency emissions. Even so, AT&T commissioned a study of emissions. According to the engineering analysis report by EBI Consulting that AT&T submitted in connection with the Applications, the proposed facilities will operate well within (and actually far below) all applicable FCC public and occupational exposure limits. Thus, AT&T's applications cannot be rejected whether health concerns are raised explicitly or indirectly through some proxy such as speculative fears about property values.

Moreover, there is no substantial evidence to support speculation that property values might decrease after the proposed facilities are constructed. Courts within the Ninth Circuit and elsewhere have long agreed that a "generalized fear of decline in property values" does not constitute substantial evidence supporting the denial of a permit to install telecommunications facilities.⁸ Indeed, despite the assumption that people do not want to live near wireless telecommunications facilities, wireless connectivity is increasingly important to property owners and prospective purchasers. As demand for wireless connectivity continues to grow at exponential rates, more and more Americans are relying exclusively or primarily on wireless communications. The FCC estimates that 70% of 911 calls are placed by people using wireless phones. And the Center for Disease Control and Prevention (CDC) tracks "wireless substitution" rates as part of its National Health Interview Survey, and the CDC publishes the statistics every six months in its Wireless Substitution reports. The most recent report, issued in December 2017, finds that 52.5% of American homes have only wireless telephones, and another 15.1% receive all or almost all calls on wireless telephones despite also having a landline.⁹ With approximately two-thirds of households relying exclusively or primarily on mobile communication devices at home, access to wireless services may actually drive up property values.

Finally, consistent with the Act, AT&T seeks to locate the proposed facilities by the least intrusive means from among available and feasible locations identified in a good-faith review of

⁸ See *California RSA No. 4 v. Madera County*, 332 F.Supp.2d 1291, 1308-09 (E.D. Cal. 2003) (collecting cases and holding "generalized expressions of concern regarding aesthetics or the effect on property values" fail to meet the substantial evidence threshold); *T-Mobile USA, Inc. v. The City of Anacortes*, No. C07-1644RAJ, 2008 WL 3412382, *5 (W.D. Wash. July 18, 2008) (held citizen comments regarding a proposed facility's effect on property values did not constitute substantial evidence upon which to deny a permit), affirmed 572 F.3d 987 (9th Cir. 2009).

⁹ CDC's December 2017 *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2017* is available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf>.

properties in the area that can address the coverage objectives.¹⁰ Here, as part of an important federal program, AT&T's Proposed Facilities will provide high-speed broadband service to many hundreds of county residents. In addition, AT&T submitted with its Applications propagation maps depicting its significant gaps in 4G LTE service coverage and how the proposed facilities will close those gaps. As part of its Applications, AT&T also submitted its Project Support Statement, which shows that the proposed facilities are the least intrusive means to address the gaps from among candidate sites analyzed. Thus, approving AT&T's appeal and application will also satisfy this provision of the Act.

Conclusion

AT&T is diligently trying to upgrade its network to meet the growing wireless telecommunications demands within this portion of El Dorado County. It is doing so in a manner that takes prudent and careful consideration of the values the county seeks to promote. Moreover, the proposed facilities are the least intrusive means by which AT&T can fill its significant wireless service coverage gaps and bring much needed high-speed broadband services to this area.

Very truly yours,

/s/ John di Bene

John di Bene

cc:

Evan Mattes, Community Development Services, Planning and Building Department

David Livingston, Deputy County Counsel

¹⁰ See 47 U.S.C. §332(c)(7)(B)(i)(II); *Metro PCS, Inc.*, 400 F.3d at 734-35 (local government prohibited from denying wireless siting application where provider investigated alternatives and identified the least intrusive means to address its significant service coverage gap); *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 726 (9th Cir. 2009).

EXHIBIT C

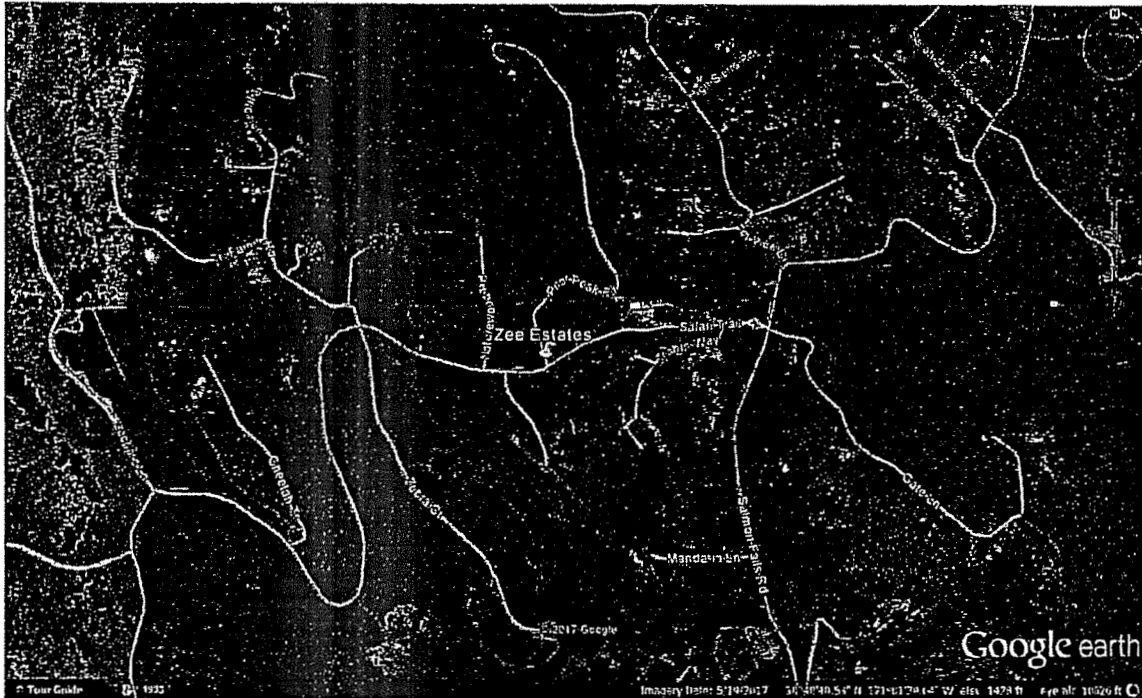
EXHIBIT D



on Behalf of



Search Ring's Description and Objectives:



AT&T Mobility is proposing to build and maintain an unmanned wireless telecommunication facility consisting of a 30' x 45' (1350) square foot enclosed compound (lease area). The compound will include a 160 foot Stealth Monopine tower, one equipment shelter, one 35kw standby propane generator, and one 500 gallon propane tank. This facility will be located right off of Gate Lane, within El Dorado County's jurisdiction in a 60 acre LA-10 zone. The site is approximately 1.3 miles east of Acorn Creek and the area consists of evergreen trees, and rolling hills with rocky terrain.

AT&T's objective for the Zee Estates site is to provide wireless hi-speed broadband internet to a minimum of 255 LU's and cellular services to the nearby residences. This site is to provide hi-speed internet and enhanced cellular coverage & capacity to the Pilot Hill area, in all directions of the search ring which is a relatively dense underserved area. The site location's elevation is approximately 1,560 feet while the surrounding community's elevation averages around 1,450 feet, giving the homes within the community great potential for line of site to the tower. After running a coverage simulation at the site location, AT&T is anticipating meeting their FCC objective for this search ring by covering approximately 255 homes.

Attachment 3
Site 6 Zee Estates

EXHIBIT E



Print

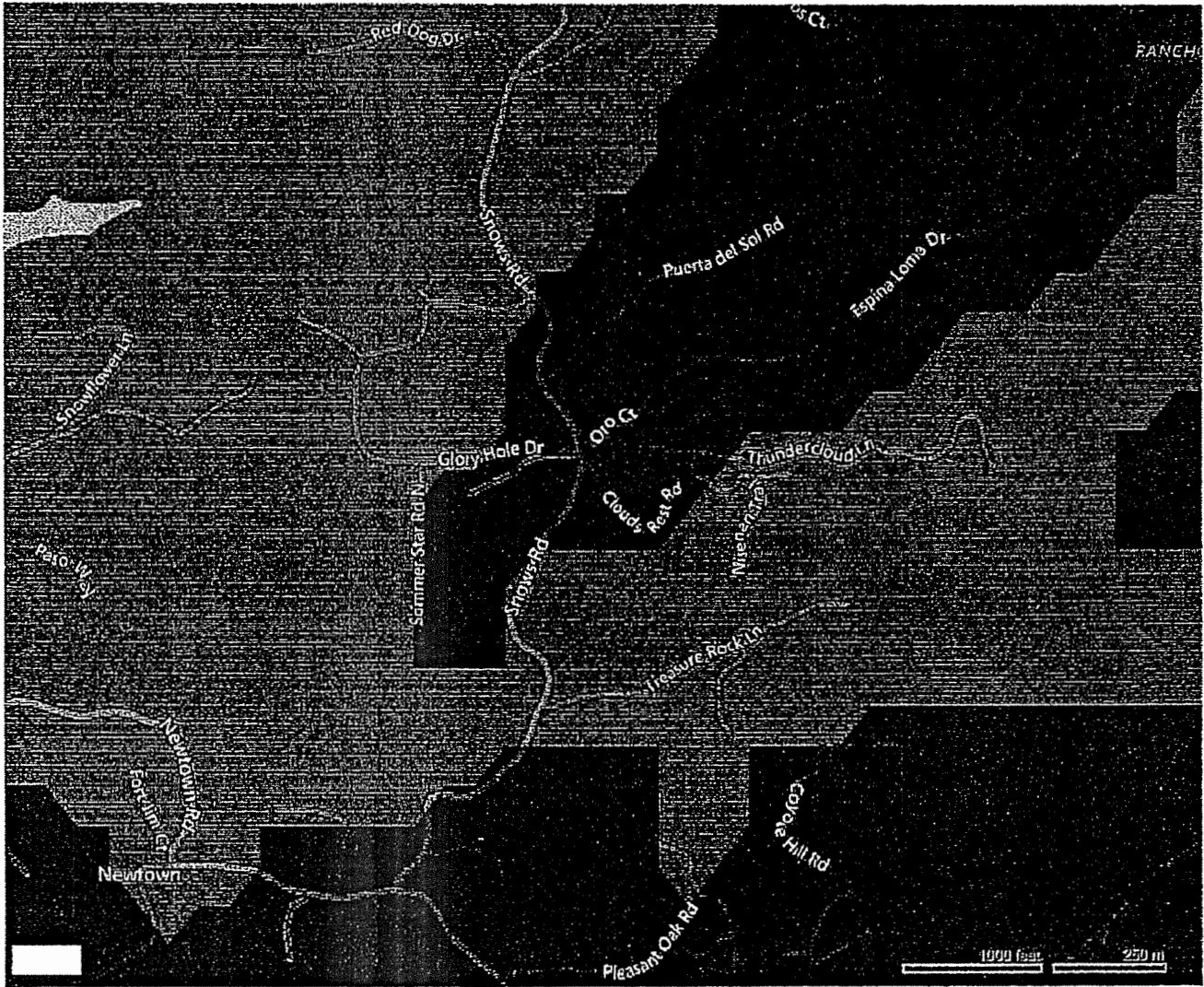
Map of 3921 Snows Road Placerville CA 95667

[< Back to search results](#)

Coverage by Device Type: 4G LTE*

Domestic Wireless Data Coverage

This map shows an approximation of wireless data coverage in the United States, Puerto Rico, and the U.S. Virgin Islands.



- Legend
- Your search
 - 4G LTE*
 - 4G*
 - 3G*
 - 3rd Party Coverage
- 3rd Party Coverage May Be 2G Speed

[Important Information About This Coverage Map](#)

EXHIBIT F



Print

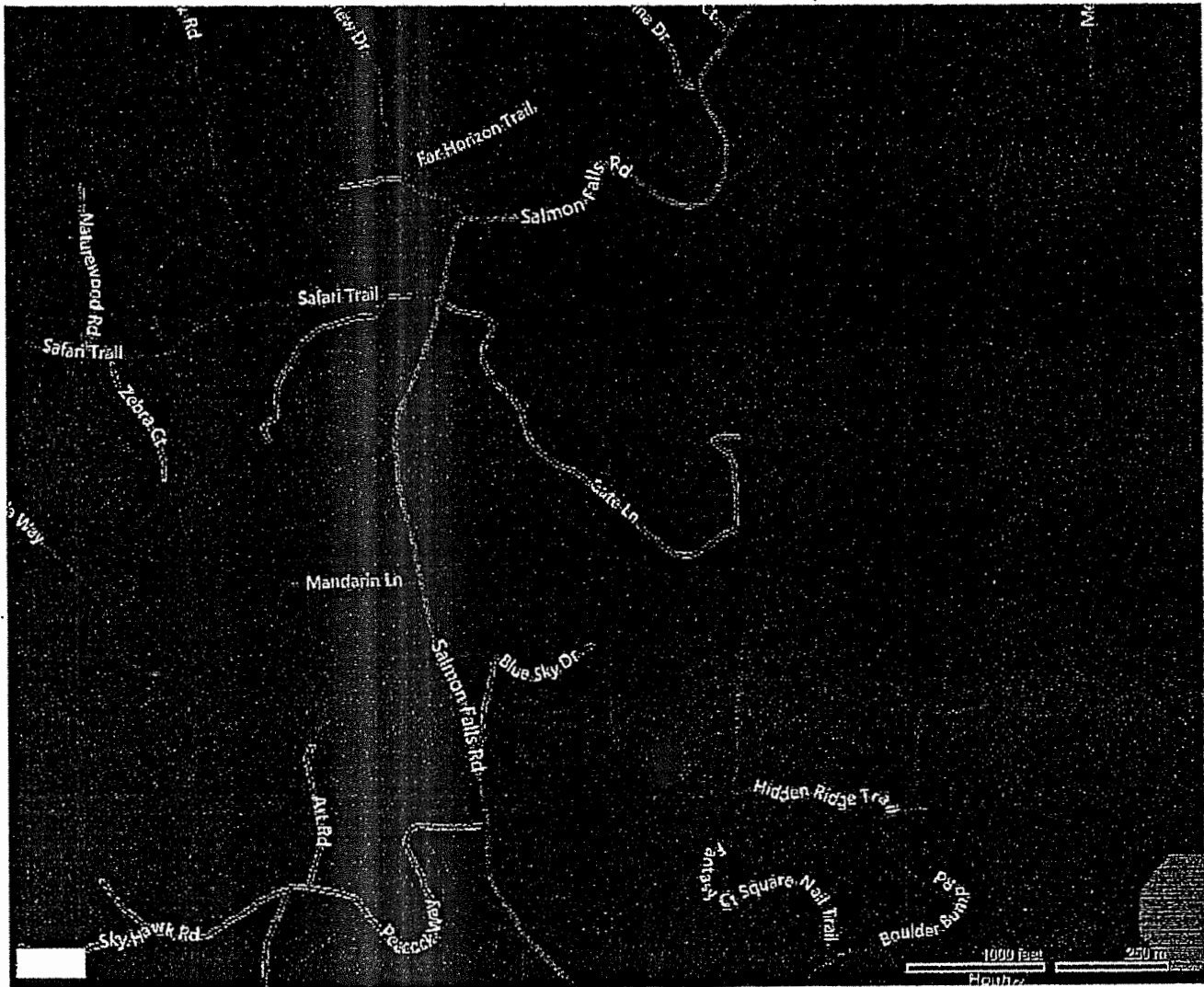
Map of Gate Lane, Pilot Hill CA 95664

[< Back to search results](#)

Coverage by Device Type: 4G LTE*

Domestic Wireless Data Coverage

This map shows an approximation of wireless data coverage in the United States, Puerto Rico, and the U.S. Virgin Islands.



Legend Your search

4G LTE*

4G*

3G*

3rd Party Coverage

3rd Party Coverage May Be 2G Speed

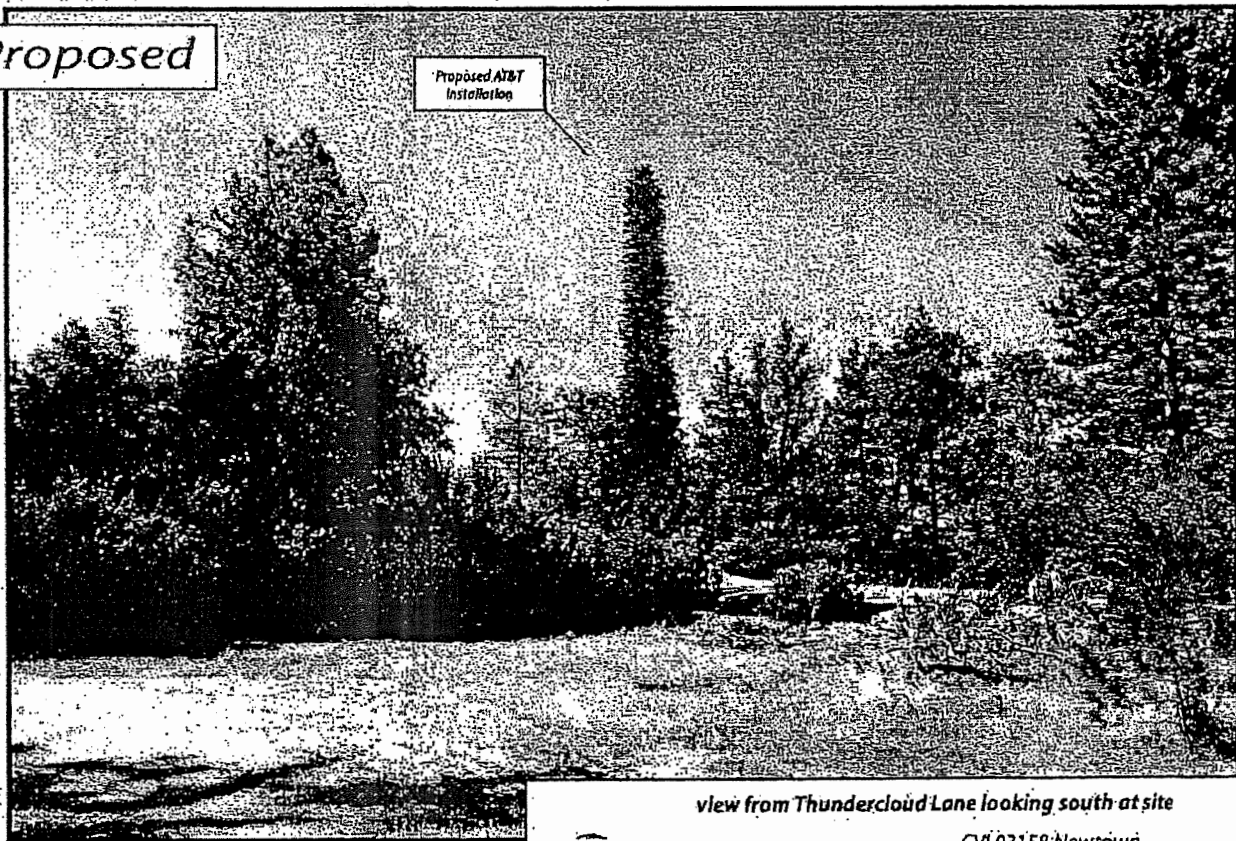
Important Information About This Coverage Map

EXHIBIT G

Existing

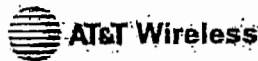


Proposed



Proposed AT&T
Installation

view from Thundercloud Lane looking south at site



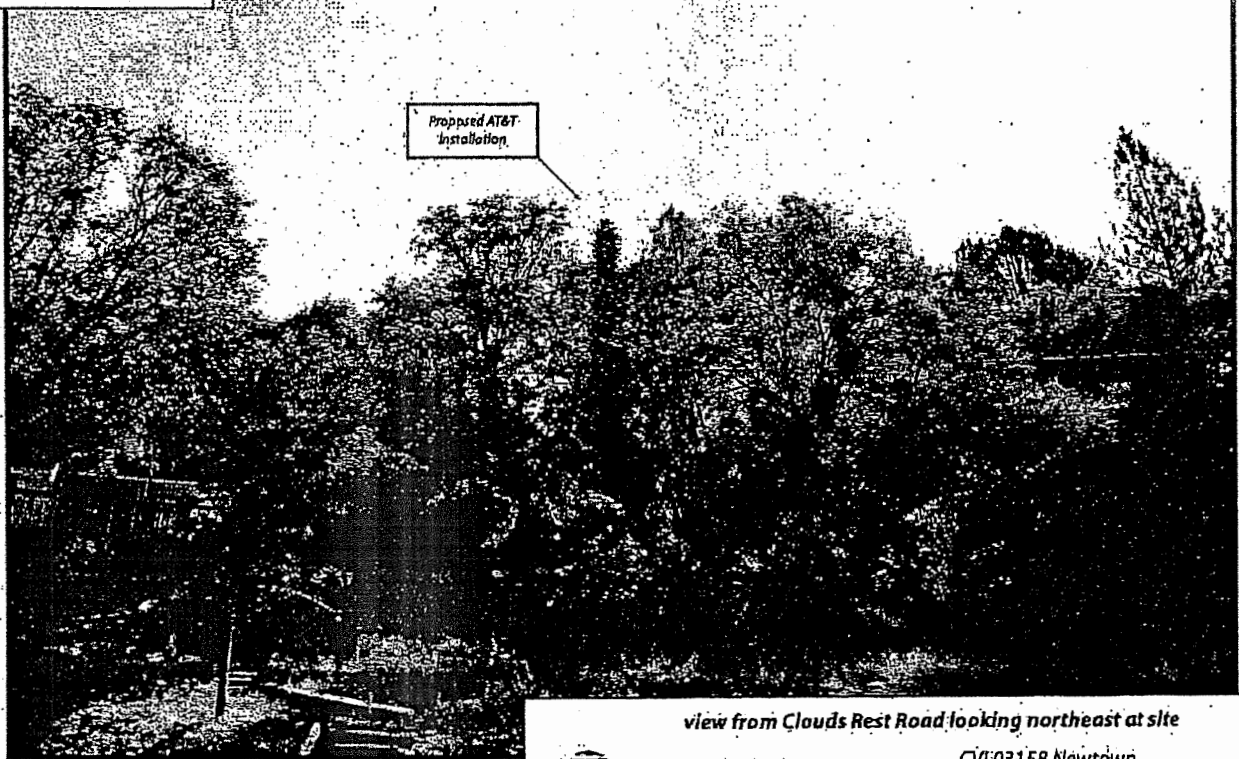
CVL03158 Newtown
3821 Snows Road, Placerville, CA
Photosims Produced on 6-23-2017

AdvanceSim
PHOTO SIMULATION SOFTWARE
Contact (925) 202-8507

Existing



Proposed



view from Clouds Rest Road looking northeast at site

AdvanceSim
Photo Simulation Solutions
Contact (925) 202-8507

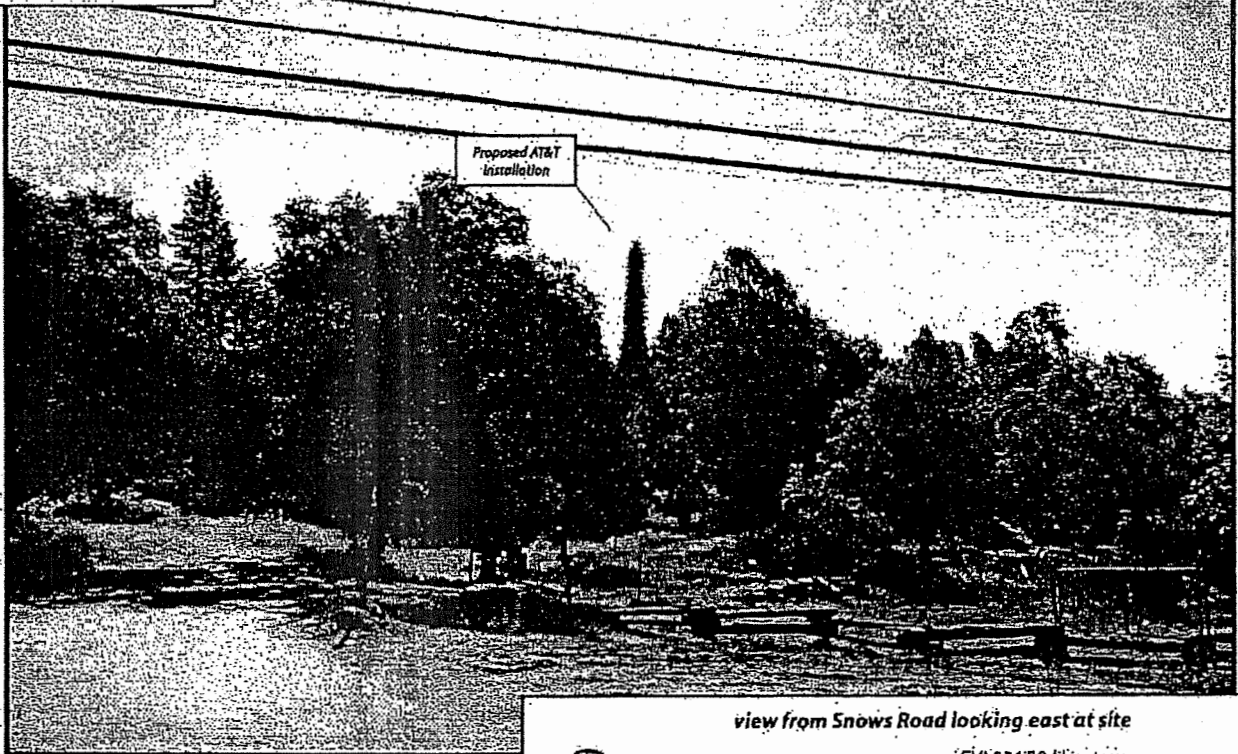
 **AT&T Wireless**

CVL03158 Newtown
3821 Snows Road, Placerville, CA
Photosims Produced on 6-23-2017

Existing



Proposed



view from Snows Road looking east at site



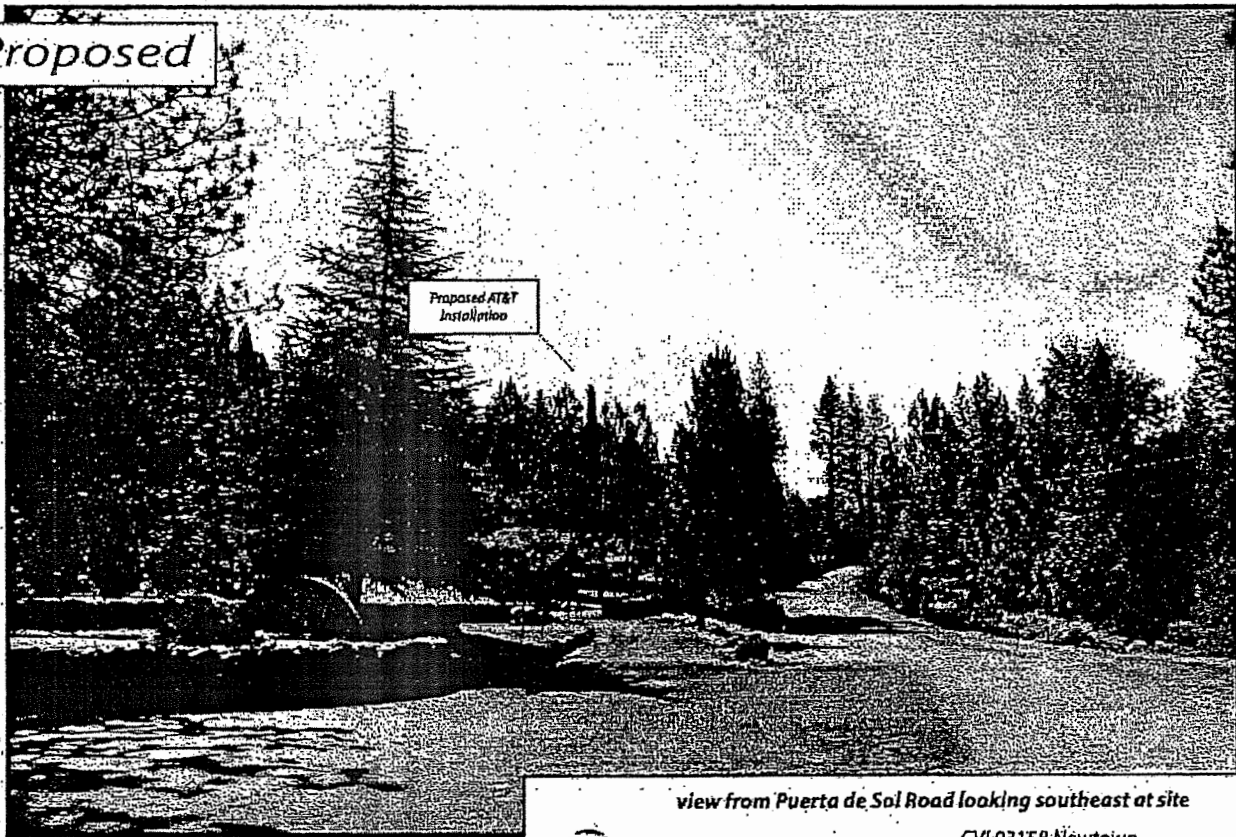
CVL03158 Newtown
3821 Snows Road, Placerville, CA
Photosims Produced on 6-23-2017

AdvanceSim 
Photo Simulation Solutions
Contact: (925) 202-8507

Existing



Proposed



view from Puerta de Sol Road looking southeast at site



CVL03158 Newtown
3821 Snows Road, Placerville, CA
Photosims Produced on 6-23-2017

AdvanceSim
Photo Simulation Solutions
Contact (925) 202-8507

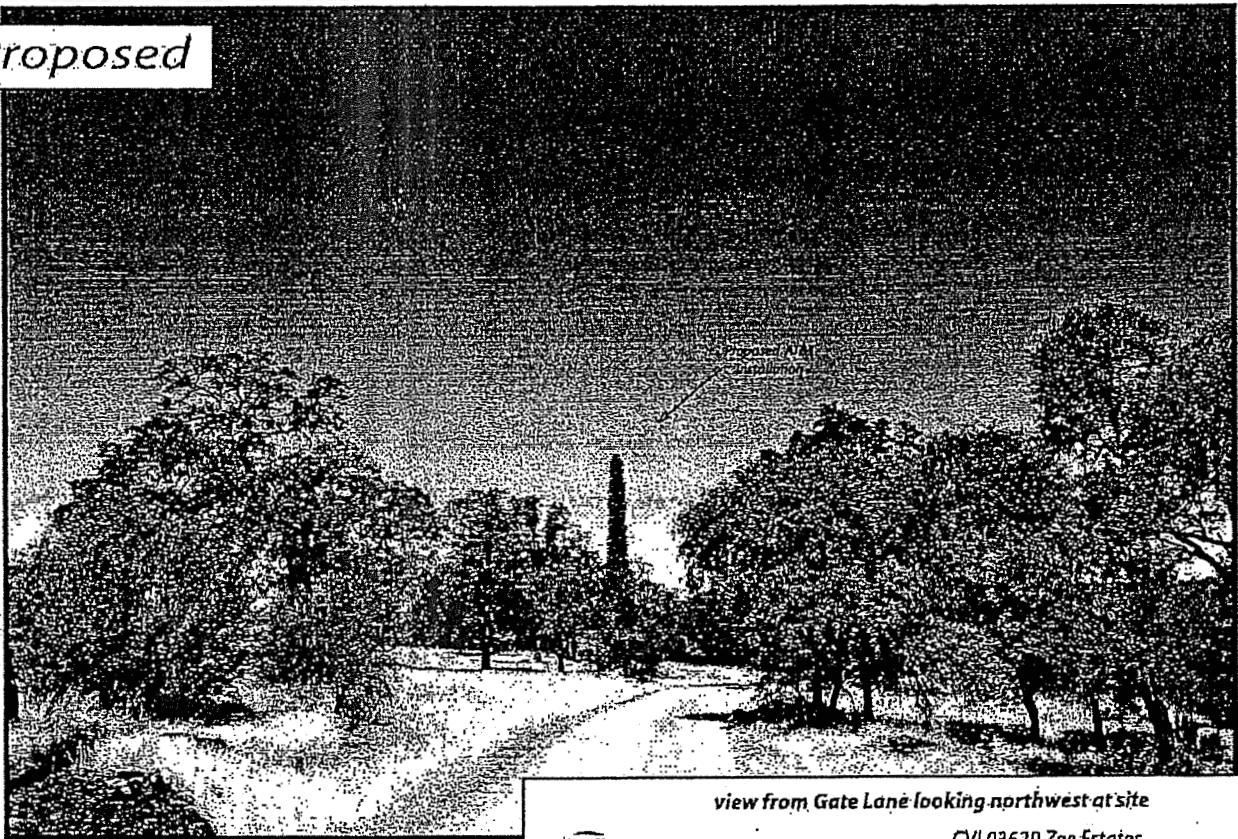
EXHIBIT H

Attachment 4
Site 6 Zee Estates

Existing



Proposed



view from Gate Lane looking northwest at site



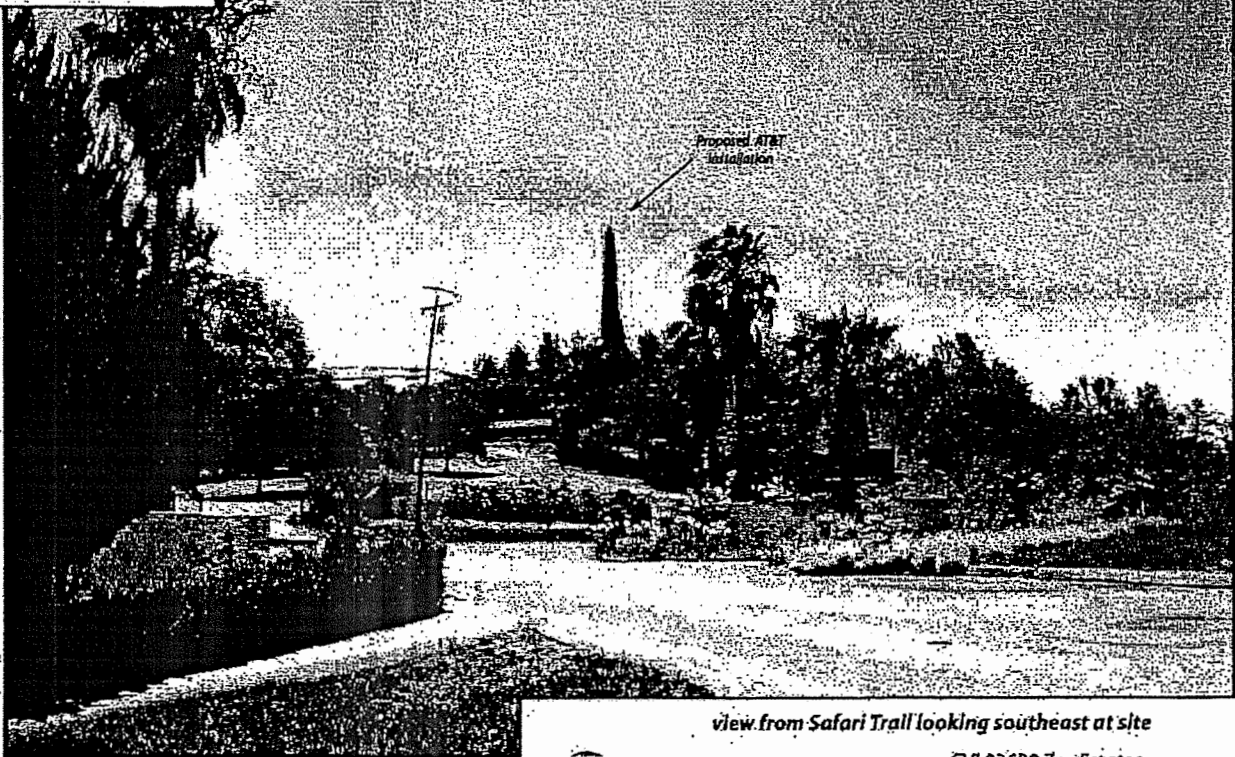
CVL03629 Zee Estates
850 Gate Lane, Pilot Hill, CA
Photosims Produced on 7-21-2017

AdvanceSim
Photo Simulation Solutions
Contact | 925 | 202-4307

Existing




Proposed



view from Safari Trail looking southeast at site

AdvanceSim
Photo Simulation Solutions
Contact (925) 202-8507

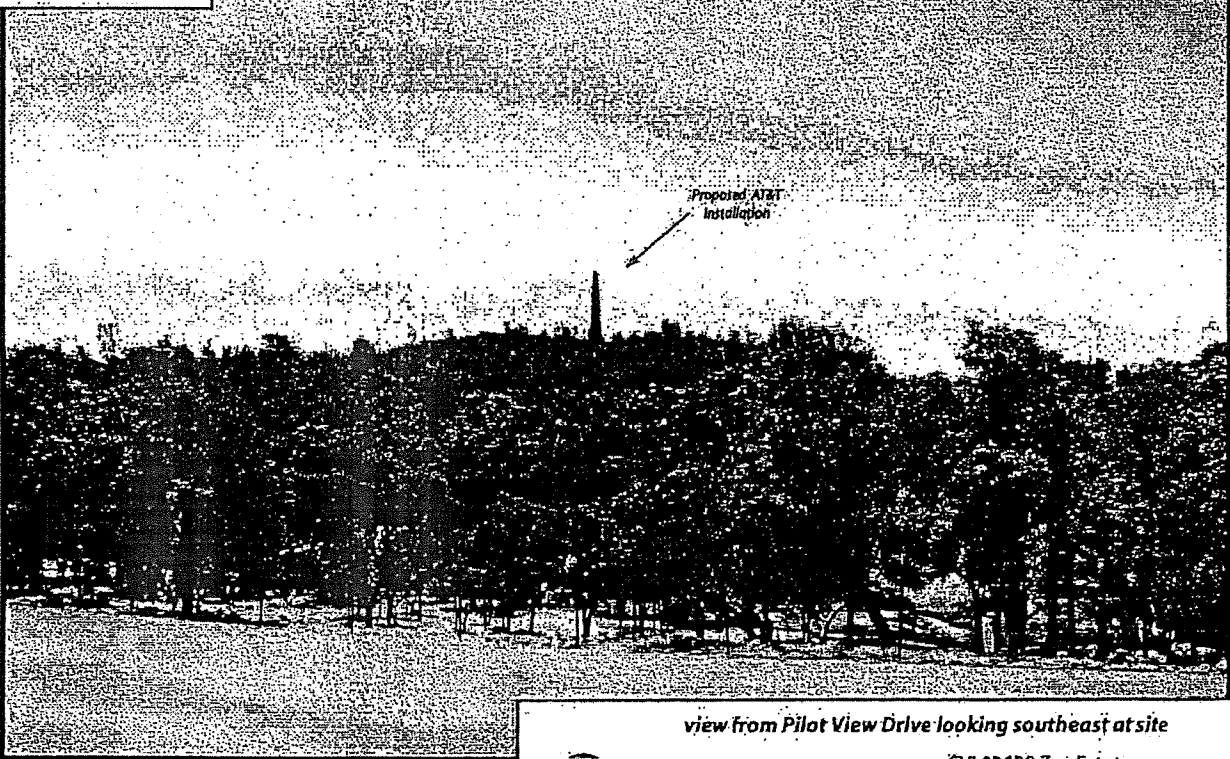
 **AT&T Wireless**

CVL03629 Zee Estates
850 Gate Lane, Pilot Hill, CA
Photosims Produced on 7-21-2017

Existing




Proposed



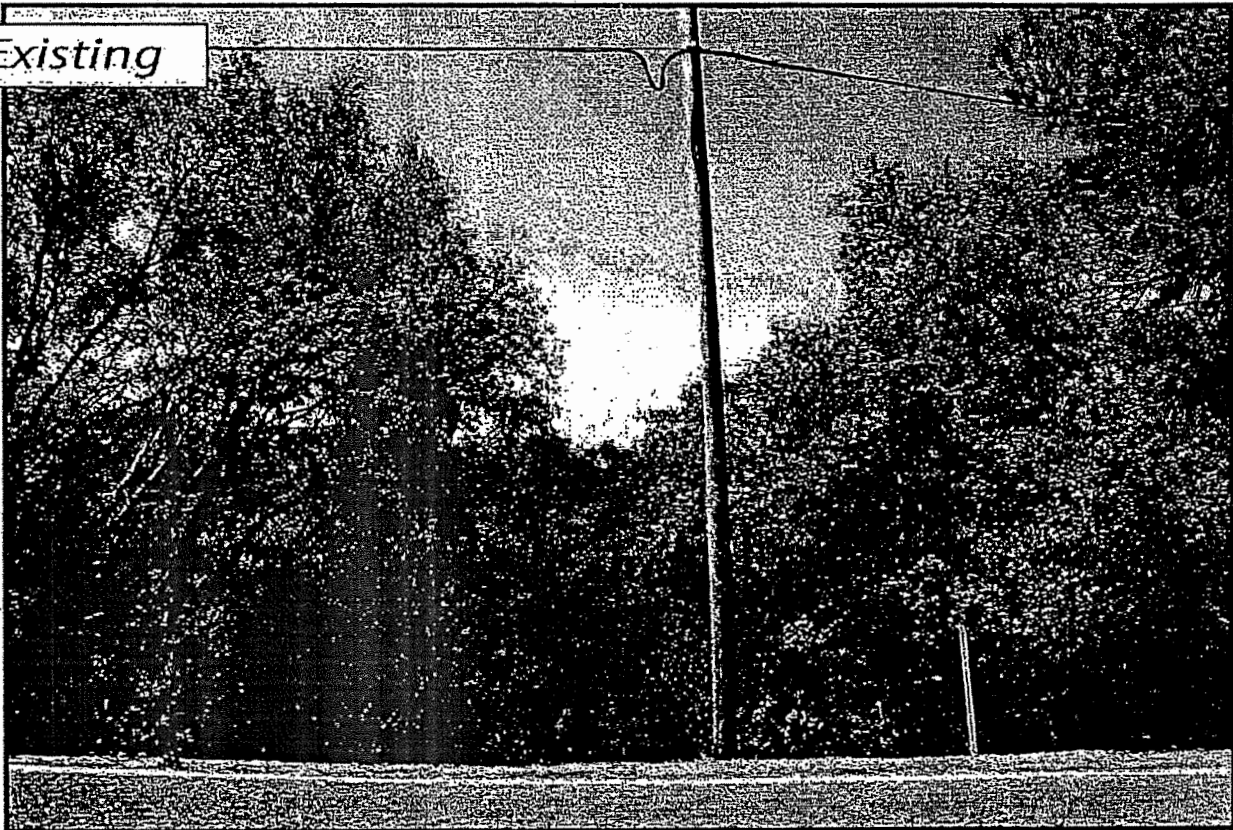
view from Pilot View Drive looking southeast at site

AdvanceSim
Photo Simulation Solutions
Contact (925) 202-8507

 **AT&T Wireless**

CVL03629 Zee Estates
850 Gate Lane, Pilot Hill, CA
Photosims Produced on 7-21-2017

Existing



Proposed



view from Salmon Falls Road looking southwest at site



CVL03629 Zee Estates
850 Gate Lane, Pilot Hill, CA
Photosims Produced on 7-21-2017

AdvanceSim
Photo Simulation Solutions
Contact (925) 202-8507

EXHIBIT I

July 17, 2018

County of El Dorado Planning Commission
2850 Fairlane Court, Placerville, CA 95667

Reference: Conditional Use Permit S17-0016/AT&T CAF4 Site 6 - Zee Estates (Gate Lane Pilot Hill)

Dear El Dorado County Planning Commission,

I am writing regarding my concerns for the construction and operation of the wireless telecommunication facility consisting of a new monopine tower and ground equipment at Site 6-Zee Estates - Assessor's parcel Number 104-370-24.

This proposed cell tower is planned to be built 30 feet off our western property line. I oppose the construction of this cell tower at this specific location: On the west side of Gate Lane, approximately 925 feet southeast of the intersection with Salmon Falls Rd.

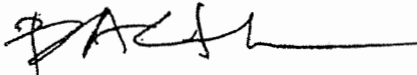
In May 2017 we moved to the property located at 860 Gate Lane, Pilot Hill, CA. my wife and I chose this property largely because of the 360 degree unobstructed views of the natural skyline, the mountains surrounding Tahoe, and Folsom Lake. We watch and take photos of the gorgeous sunsets that will be obstructed by the proposed tower.

We moved from the congested, noisy, and viewless Bay Area to a beautiful, peaceful place and we want it to stay that way. This cell tower will dominate by soaring 100 feet above the surrounding trees that are about 60 feet high at max. Even though the tower will be disguised as a "tree" this camouflage does not even come close to looking like the surrounding vegetation. It will stick out like a sore thumb. This tower is going to be in "direct line of sight" from my home. I will see it from my office. I will see it when approaching our home, from our driveway, and every time I enter or exit through our front door or garage.

This tower is going to be 500 feet away and in "direct line of sound" to our home. There will be nothing muting the noises emitted from the tower. The constant drone from the electronic equipment will be very intrusive. There will be considerable construction noise although lasting perhaps only a couple of months; this will be a daily stressor for those months in our lives. Maintenance of the tower will be frequent and will create noise, again adding stress to our lives.

The property owner of the proposed site has no home on this 60 acre property. He/she does not have to live with the obstructed view or the noise of this tower, and yet the tower is put right next to my home and my neighbors Joe and Nancy Contreras' and Frank and Mandolin Schaffer's homes'.

I ask that a new location be found for this cell tower.



Bruce A. Crawford
860 Gate Lane
Pilot Hill, CA 95664-9250
Email: brucecrawford@protonmail.com

July 16, 2018

Dear El Dorado County Planning Commissioners,

My name is Marjorie Crawford. I oppose the building of the proposed site 6 Zee Estate cell tower on Gate Lane in Pilot Hill, which is planned to be built 30 feet from my property, a few hundred feet from my house.

A year ago my husband and I purchased 860 Gate Lane. We bought it for the awesome one hundred mile, 360 degree views and the incredible quiet, far from any industry.

Imagine this, we're having a party in our patio. We have a great meal, enjoying the awesome views and then the sun starts to set. A fabulous sunset ensues but no matter where we stand, a cell tower dominates our view and our pictures! We love taking pictures of the sunset and this will ruin our hobby.

Please don't let this tower be built in my backyard and ruin my sunset views!

Thank you,



Marjorie Crawford
860 Gate Ln.
Pilot Hill, CA 95664
marjicrawford@att.net
408 718-4720

April 25, 2018

Dear El Dorado County Planning Commissioners,

I am writing to state my concern with the proposed cell tower. While I understand and appreciate the need for cell towers, I believe that placement of these towers should be carefully planned and include input from those affected.

I have just spent time with my sister and brother-in-law at their home on Gate Lane in Pilot Hill. They have a beautiful view and the surrounding area is delightful. There is a sense of serenity and peacefulness that would be ruined by an intrusive cell tower.

Also, devices that cause a high level of constant or even intermittent noise will be detrimental to owners' and visitors' enjoyment. It seems that this would affect property values negatively.

The area is known for its quiet setting, wooded hills with beautiful views and having a cell tower so close would be extremely repellant and ruin the enjoyment of the property. I am requesting consideration of the detrimental impact the cell tower would have on surrounding properties.

Sincerely,



Nancy Fitton
13363 Old Oak Way
Saratoga, CA
408 867-7861

May 7th, 2018

Claire Bui

1343 Marcello Drive

San Jose, CA 95131

Dear El Dorado County Planning Commissioners,

I am a longtime friend and ex-coworker with Bruce Crawford, who retired with his wife at 860 Gate Lane in Pilot Hill. I am writing to request that you deny the application by AT&T to install cell tower next to his property on Gate Lane. I've had the opportunity to visit his home a couple months ago and I strongly believe the installation of a cell tower is against the aesthetic and serenity of the property.

Bruce and his wife Marji travelled extensively after their retirement in search of a place to retire. They told me they have looked at many different locations and communities and finally choose El Dorado County as a place to call home. When my husband and I visited their home in March 2018, I understood why they picked Gate Lane hill as the place to retire.

Their Gate Lane property is located on a 25-acre hill with expansive view of the Sierra Nevada mountain range in the front and Lake Folsom in the backyard. The house sits on the hill alone with no next door neighbors. Living there is like being in the middle of nature but with the comfort of a home. There is complete quietness and serenity. You can hear a mosquito fly by. I watched sunrise or sunset in the complete stillness, like I have climbed up Yosemite's El Capitan and be alone among nature. The only noise are the winds and occasionally the visiting of a flock of turkey or couple of deer in search for water or food. Bruce also took me hiking around the property, passing through many four hundred-year-old oak trees and moss-covered-rocks and volcanic soil. The land has such amazing beauty and history attached.

I came back to Bay Area after that weekend feeling so refreshed and recharged, like I just have gone to a spiritual retreat. It is that calm and beautiful up there.

With all that said, a cell tower with artificial tree branches and attached equipment would be detrimental to the beauty and serenity of their Gate Lane property. Bruce and Marji's outdoor time, especially watching the sunsets, one of their favorite activities of the day, would be disturbed by the noise generated by the equipment on the cell tower. Besides the noise, the artificial awkward looking tree branches of the cell tower would not blend into the charm and grace of the four hundred-year-old oak trees and other plants in the area.

I am strongly against installing a cell tower on Gate Lane and I hope the El Dorado Planning Commission will agree with me.

Thank you for your time and your consideration.



Claire Bui

May 8th, 2018

Edward Chan

1343 Marcello Drive

San Jose, CA 95131

Dear El Dorado County Planning Commissioners,

I am writing in response to the AT&T proposal of installing a cell tower on Gate Lane in Pilot Hill. I had the opportunity to visit Bruce and Marji Crawford's property on Gate Lane a couple of months ago and experienced the tranquility and beauty of the property, and therefore am strongly against this installation and hope you would agree too.

Pilot Hill is an incredible location that is highly valued for its pristine natural beauty as much as for its serenity. This area is surrounded by many trees, flowers, and plants, making anyone feel at one with nature. At any moment, one can be greeted by a lovely deer or the beautiful chirping of birds behind a backdrop of silence. Living among the natural wilderness creates the most harmonious environment. Adding a large unsightly cellphone tower not only detracts from this area's beauty, but it also creates noise that takes away from the peacefulness and disturbs the wildlife there.

Thank you for your time.



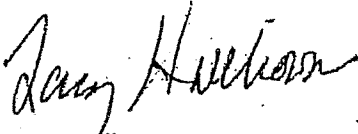
Edward Chan

April 18, 2018

Dear El Dorado County Planning Commission,

As Mr. and Mrs. Crawford's realtor and friend, I find it very disturbing that cell towers and associated equipment would be installed near their property. The main purpose they chose this property was for its serenity, peacefulness and aesthetics. This tower will deter from all those facts. They probably would never have picked this property as their lifelong retirement home if they had known about this impending development. It not only disturbs the enjoyment of living there but will have a significant affect on the property values when they sell. Hopefully this tower can be located in a less visible area.

Sincerely



Larry Hillhouse

P.O Box 10004

Pleasanton, CA 94566

Ph. 510-329-7090

July 18, 2018

El Dorado County Planning Commissioners,

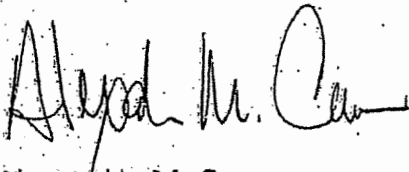
I am writing to protest the proposed cell tower next to my Sister and Brother-in-law's home which is located on Gate Lane in Pilot Hill. I have spent a great deal of time with them at their home enjoying the beautiful view and the peacefulness of their property.

I understand and appreciate the need for cell towers, but believe that they should not be placed next to any home! Please do not allow this tower to be placed next to my Sister and Brother-in-law's home.

This tower would negatively affect the beauty of the area thus negatively affecting their property value.

Again, I ask that you please reject this proposed site.

Sincerely

A handwritten signature in black ink that reads "Alexander M. Cone". The signature is written in a cursive style with a large, looped initial "A".

Alexander M. Cone

260 Flower Dr.

Folsom, CA 95630

559.281.0120 cell



JEFFREY L. GOOD
ARCHITECT

14208 SW Lisaboula Road
Vashon Island, Washington
98070

T 214-802-8921
email: jeffgood54@gmail.com

May 19, 2018

El Dorado County Planning Commission
Planning and Building Department
County of El Dorado
2850 Fairlane Court
Placerville CA 95667

RE: 860 Gate Lane, Pilot Hill, CA

Dear members of the El Dorado Planning Commission:

I am writing on behalf of Bruce and Marji Crawford with regards to the proposed cell tower to be located immediately adjacent to their property and home. I strongly urge you to deny approval of the proposed tower and associated road and service equipment necessary to operate the tower. Earlier this year I had the privilege to be a house guest of the Crawford's and experienced the natural beauty, serenity and peacefulness of the mountaintop they now call home. Its really quite extraordinary. The magic of the place has to do with the sensitive way the surrounding countryside has been developed, primarily emphasizing unobstructed views and the preserving of the natural setting. It reminds me of Italian countrysides I have experienced. I know each of you take great pride in your community and the natural beauty that attracts so many to your locale. We all have a responsibility to be **good stewards of the resources** within our control. This includes being cautious about allowing development such as the proposed tower. I have been a practicing architect for 40 years, focused on the aesthetics of merging the built environment with nature. Recently I walked the Crawford's property and observed the location of the proposed tower, equipment and access road. The tower design and location will most certainly adversely affect the Crawford's as well as other nearby residents. Much of the feel and atmosphere that makes this location so special will be compromised if the installation is allowed to move forward.

Your commission has an important and strategic role in influencing the future aesthetics of your county. We ask that you preserve the special beauty of this place and request that alternate sites be considered.

Respectfully yours,

Jeffrey L. Good

EXHIBIT J

Andrew Campanelli

From: butterfly fly <telrandy@gmail.com>
Sent: Wednesday, July 18, 2018 11:50 PM
To: Andrew Campanelli
Subject: site 2 newtown

Dear Planning commissioners

I bought my land with the intent to build my dream home, as it is a perfect site to enjoy the sunrise, sunset, and local beautiful views. The front of the house and deck will be facing south, overlooking the pristine natural pond and southern views. Instead I am faced with the prospect of a 120 foot tower 27 foot from my property right beyond the pond. The front of the house and every window there will have a tower obliterating the view. Entertaining on my deck will be comprised. This would have an unquestionable dramatic impact on my views

Hellesvig

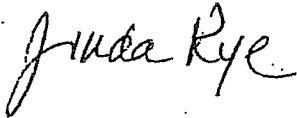
Randy

Jul 18, 2018

To whom it may concern,

The proposed cell tower installation on Oro Court will be a HUGE eyesore that will destroy and dominate the beautiful untouched view from the area that our family has cherished and enjoyed over many years. In particular, the tower will loom over the area that the area that our children and grandchildren love and gravitate to with each visit. How can one pretend to not see a 10+ story tower less than 50 feet away from somewhere you and your family have enjoyed being for so many years?

Thank you for your consideration,

A handwritten signature in cursive script that reads "Linda Rye".

Linda Rye

To whom it may concern,

As a long time employee of Randy's, I've been notified that there will possibly be a 10+ story tower being installed only 27 feet away from where I work. Not only is it a huge eyesore to a very special and sacred place, I am now fearful of something happening to me or the area I work if the tower was to possibly fall. There are plenty other places to put your tower that won't affect the way people live.

Thanks,
Chris Wookey

Andrew Campanelli

From: butterfly fly <telrandy@gmail.com>
Sent: Tuesday, July 17, 2018 9:04 PM
To: Andrew Campanelli
Subject: Fwd: Site 2 , Newtown

site 2 newtown

----- Forwarded message -----

From: Mark Montgomery <markmont2002@yahoo.com>
Date: Tue, Jul 17, 2018 at 4:53 PM
Subject: Site 2 , Newtown
To: telrandy@gmail.com

Dear Planning Commission,

My name is Mark Montgomery and I routinely work on Randy Hellesvig's property. I have heard that cell towers are planned for that area. I would ask the Commission to reconsider this as I would have a real concern for my safety (falling towers or objects from the towers, etc.) Not to mention the towers ruining the scenic beauty of the land and impacting the Land's value. Thank you for your time!

Sincerely

Mark Montgomery

Sent from my iPhone

July 17, 2018

County of El Dorado Planning Commission
2850 Fairlane Court
Placerville, CA 95667

Reference: Conditional Use Permit S17-0016/AT&T CAF4 Site 2 – Newtown

Dear El Dorado County Planning Commission,

I met Randy Helesvig when I learned that he too, was getting a cell tower proposed to be erected just 27 ft from his property.

My wife and I met up with him in Placerville and went to visit his proposed Site on Clouds Rest in Newtown.

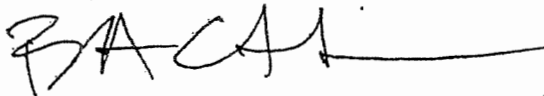
Randy's place is much different from our place, with mostly conifer forests and very deep canyons. We are in oak woodlands. This site is on a steep hill, with spectacular views. Randy's view will definitely be adversely affected.

He showed us his frog pond that is clearly within the fall zone. It is a steep sided pond, with many frogs, manzanita, oak trees, and pine trees providing beautiful shade. I can see that it would be quite attractive to the children as well as the adults in the area. Randy has groomed the trail leading to, and around the pond. Randy likes to share this with his friends and neighbors. The tower would pose a threat of falling, and in winter, the threat of falling ice that could blow several hundred feet, causing injury or death to the children and adults that frequent this pond.

The unsightly fake tree tower proposed will be an eyesore, in this pristine environment. This will not only ruin the views, but will surely reduce the salability of this property, and reduce its value.

This proposed tower does not belong here. Please deny the application to build it here.

Sincerely,



Bruce A. Crawford
860 Gate Lane
Pilot Hill, CA 95664-9250
Email: brucecrawford@protonmail.com

EXHIBIT K

04/24/2018

Bruce Crawford
860 Gate Lane
Pilot Hill Ca 95664

Re: Cell Tower

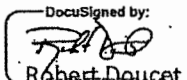
Dear Bruce,

As an introduction, my name is Robert Doucet. I have been a Realtor for approximately 24 years in California. My experience is in sales, real estate management, board of directors for the Sacramento and Santa Clara county association of realtors and served as a member of the Metro List MLS advisory committee. Thus, I am very current on the needs of the current market and the buyers within.

You have asked my opinion of a cell tower in the Pilot Hill area near your home. I think the value of your home could be adversely affected as it could be a devaluation of at least 20 to 25%.

I am sure any buyer would have a lot of questions about the tower. It could very well reduce the number of buyers willing to have a cell tower within close proximity. And, of course, because of all the notice about the cell sited it would have to be disclosed to any future buyer. Thus, it would limit the buyers willing to purchase your home.

I am quite sure the county can find a location that does not inconvenience a homeowner.

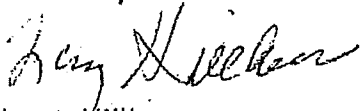
DocuSigned by:

Robert Doucet
Dre# 01185577

April 21, 2018

Dear Bruce and Marji,

Based on my 35 years' experience in residential real estate it is my professional opinion that an eyesore and potential health hazard such as the proposed cell tower would have a significant effect on the property value of your home. The detracting from the peacefulness, and serenity and "million-dollar view" would probably decrease the property value by 20-30%.

Sincerely

A handwritten signature in cursive script, appearing to read "Larry Hillhouse".

Larry Hillhouse

BRE# 00950045



April 26, 2018

Dear Bruce,

I can understand your concerns about the proposed cell tower on property close to your home. It will definitely affect your beautiful views and subsequently affect your property value negatively.

Appraisers take into account views when determining the value of a property in comparison to the comparable home in an area when doing an appraisal, having an eyesore will cost in terms of perceived value.

Sincerely,

Bob Candler
Realtor Broker-Associate
DRE# 01352055



Better Homes and Gardens Real Estate - Reliance Partners
900 High Street, Suite 120 Auburn, CA 95603



EXHIBIT L





EXHIBIT M

July 16, 2018

County of El Dorado Planning Commission
2850 Fairlane Court
Placerville, CA 95667

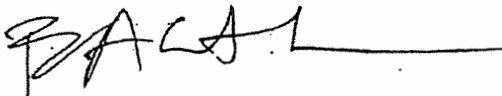
Reference: Conditional Use Permit S17-0016/AT&T CAF4 - Site 6 - Zee Estates (Gate Lane Pilot Hill)

Dear El Dorado County Planning Commission,

I am extremely concerned with the fall zone of the proposed cell tower. At least 90 feet of the tower will fall onto my property, possibly crushing me, my guests, any structures, and any trees on my property.

This towers fall zone would also block off my only egress, Gate Lane. All the neighbors would also have blocked egress. This is grave safety issue, especially in an extreme wildfire zone.

Even if the tower was initially erected to 120ft, as verbally proposed, this would still fall on my property and across Gate Lane blocking all egress. I also understand that the tower may, at a later date be increased to 160ft, without any notification to me or the county.



Bruce A. Crawford
860 Gate Lane
Pilot Hill, CA 95664-9250
Email: brucecrawford@protonmail.com
Cell: 408.718.2582

EXHIBIT N

An Analysis of Cell Tower Ice Falls

(www.symdesign.us/icefall)

Dr. Dennis L. Rogers*

April 16, 2013

Abstract: The following is an estimate of the effects of ice falling from cell towers. The velocity of impact and distance of impact from the tower are calculated for the type of ice fragments expected due to freezing rain on the flat surfaces of the tower and antenna structures. These calculations are not intended to be comprehensive but do show the magnitude of effects to be expected.

Introduction: Freezing rain can cause ice to build up on the flat surfaces of the antenna elements arrayed around a cell phone tower and also on the tower itself. The photo to the right shows such an antenna array. Since these surfaces are oriented vertically one would expect the ice to form primarily in almost flat sheets oriented vertically to the ground. The thickness of these sheets could be up to 6 cm thick due to freezing rain. In what follows I will consider the fate of such a sheet of ice that has detached from the cell tower surface. This could be due to heat from the antenna currents melting a thin layer next to the tower or antenna element. Indeed such ice falls have been observed.



Cell Phone Tower Antenna array in Kent NY.

The Physics: The sheet of ice will be subject to two forces: the downward force of gravity and the force exerted by wind resistance. The force of gravity is constant and equal to:

$$\text{Eq 1 } F_{\text{grav}} = Mg$$

where $g = 9.8 \text{ m/s}^2$ is the acceleration of gravity, and M is the mass of the ice sheet in kg. In what follows I will assume the use of MKS units in the calculations.

The force due to wind resistance depends on the actual geometry of the piece of ice but is roughly proportional to the area exposed to the wind, A , the square of the velocity, v , at which it falls and the drag coefficient, C_d , which depends on the exact shape of the ice fragment. Using the EIA-222-C standard for calculating wind forces on antenna structures, the wind force can be written :

$$\text{Eq. 2 } F_{\text{wind}} = F_0 A v^2 C_d$$

$$\text{where } F_0 = 0.26 \frac{\text{nt} \cdot \text{s}^2}{\text{m}^4}$$

No Wind: The simplest case is where there is no wind blowing. The wind resistance is then only due to the velocity at which the object is falling. The downward acceleration, a , is then given by:

$$\text{Eq. 3 } a = \frac{dv}{dt} = \frac{F_{total}}{M} = \frac{-Mg + F_0 A v^2 C_d}{M} = -g + \frac{F_0 A v^2 C_d}{M}$$

For the thin sheets oriented vertically, the second term, the wind resistance force, will be negligible and the ice will fall primarily due to the force of gravity. The cases in which the ice sheet is not oriented vertically will not be considered. Assuming a tower height of 50 meters (about 150 ft) and only gravitational forces, the ice sheet would reach a velocity of 31 m/s or about 67 mph before hitting the ground. Assuming the flat surfaces of the antenna structures are 1 meter sq in size and that the ice is 6 cm thick this would result in a piece of ice weighing approximately 54 kg (119 lbs) striking into the ground with a speed of 67 miles per hour. Since the wind resistance is negligible for vertically oriented sheets, this speed will be independent of the size of the ice sheet.

With Wind: With wind, of course, the ice can move in the direction of the wind before reaching the ground. A sheet of ice can experience considerable force from the wind, especially if the flat side of the sheet is perpendicular to the wind. In this case there is an equation of motion for both the vertical direction and the direction in which the wind is blowing. Vertically the equation is the same as in the no wind case:

$$\text{Eq 4. } a_z = \frac{dv_z}{dt} = -g + \frac{F_0 A v_z^2 C_d}{M}$$

while in the direction of the wind:

$$\text{Eq 5. } a_x = \frac{dv_x}{dt} = \frac{F_0 A (v_w - v_x)^2 C_d}{M} - \frac{F_0 A v_x^2 C_d}{M}$$

where a_x is the acceleration in the direction of the wind, v_w is the velocity of the wind and v_x is the velocity of the ice in the direction of the wind. The first term is the force on the windward side of the sheet and the second term is the force on the opposite side of the sheet due to normal wind resistance. The amount the ice travels in the direction of the wind depends on the thickness of the sheet, with thinner sheets traveling further. These equations have been solved to determine the amount of travel in the direction of the wind that the ice sheet would travel before impacting the ground. Again assuming a 1 meter-sq sheet, the figure below shows the distance from the tower the ice sheet would fall for four different thicknesses and weights:

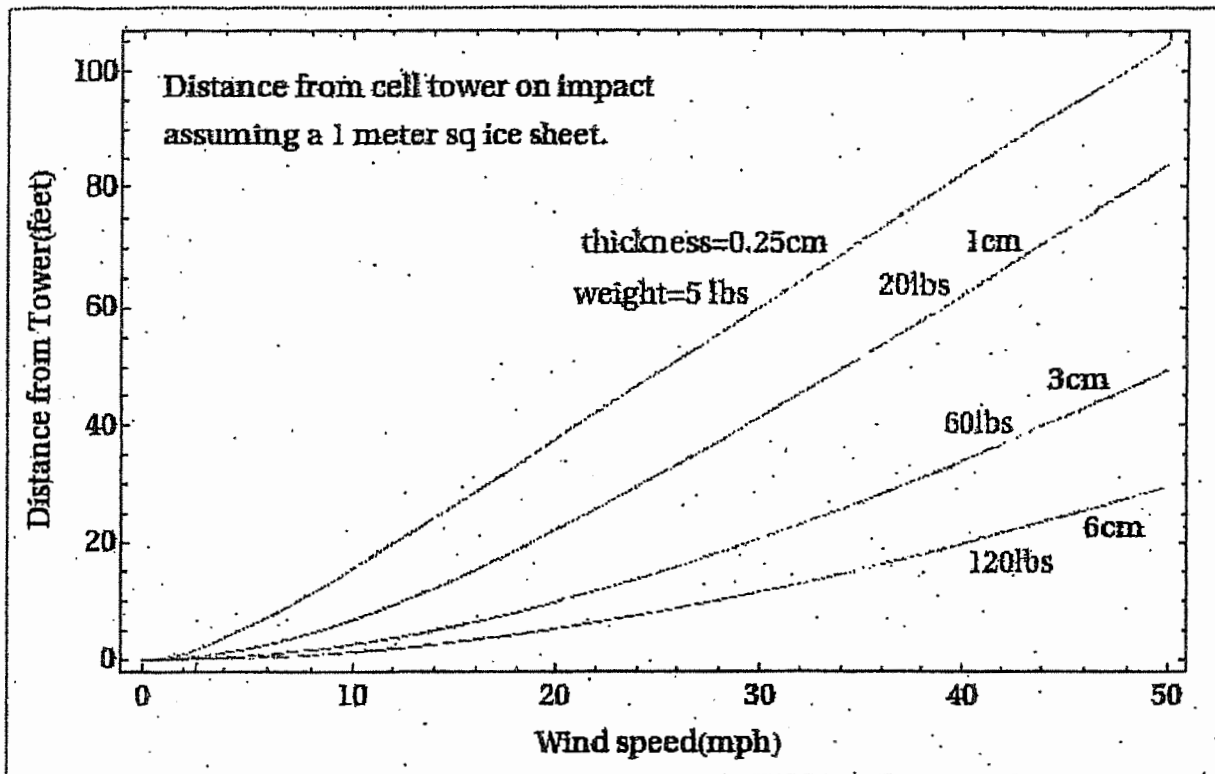


Figure 1. Distance of ice fall from tower vs wind-speed for four different sheet thicknesses

As in the no wind case, the ice sheet would be traveling at approximately 67 mph on impact. Obviously, thinner sheets can travel further from the tower. Note also that, since the weight of the sheet is proportional to its area, the distance it falls from the tower will be approximately independent of its cross sectional area.

Summary: This analysis has shown that for one case, that of thin sheets of ice falling from the vertical part of the antenna structures, the ice fall can be a dangerous problem with the ice fragments weighing over a hundred of pounds impacting the ground at almost 70 mph. It also shows that wind conditions can cause these fragments to fall as much as 100 feet from a 150 foot tower with smaller, thinner sheets falling the furthest distances. Of course, as the photo to the right illustrates, in reality the problem can be more complex with the ice fragments being composed of a combination of both snow and ice and the ice build up being more extensive than envisioned in this analysis with possibly even more severe consequences. Therefore care must be taken in positioning these towers to place them sufficiently distant from other structures and places where people may live and work.



* Dr. Rogers received his Phd in theoretical solid stated physics from the University of California at Davis in 1977. Since then he has worked at IBM Research in Yorktown Heights NY for 27 until 2005. Since then he has formed the company Symbiotic Designs and is developing cell phone applications and energy saving devices.

EXHIBIT O

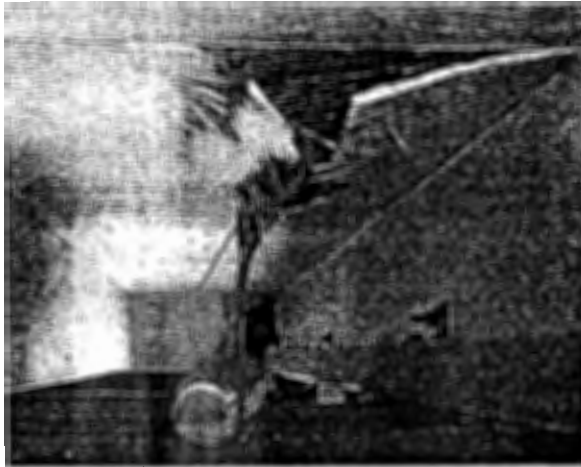


Figure 2 - Hammer Fall from Tower

In order to protect the public, a radial "fall distance" is generally specified from the tower with respect to public access areas. This radius should be flexible based upon circumstances (e.g. the nature of the land and the likelihood of public egress), but it should be certified by a competent engineering study.

Tower structures are specified by the industry-developed TIA/EIA 222-F standard; this is the only "complete" standard with respect to towers in that it deals with all manner of load, ice and wind conditions. The EIA-222 standard, which is periodically updated (the current revision is "F", the next revision, due next year, will be "G"), should be utilized by engineering personnel to ensure the safety of the public, since they are more rigorous than the corresponding BOCA or Civil Engineering standards which do not specifically refer to tower structures.

Specifying other standards in addition to EIA can create conflicts. For instance, the EIA standard calls for a two hundred percent safety margin for some tower components. The corresponding structural standard permits a safety factor of one hundred sixty percent, and in some cases, only one hundred twenty-five percent. The single exception to this rule are the standards promulgated by Wisconsin DILHR, which are designed to work in tandem with EIA-222, and result in a new structure which is approximately 30% stronger than would otherwise be the case. This is good for a new structure, but the DILHR rules also conspire to reduce the number of additional co-located carriers which can be placed on *existing* structures, thereby aggravating the site shortage referred to in Section 1.2.

An important issue with respect to tower safety is ice loading. Typically, cell towers are designed to survive winds of 73 miles per hour with 1/2" of radial ice. While this specification does not violate the EIA standard, it represents a set of conditions which has been realized more than once within the last 20 years. However, it is precisely these types of overstress conditions which are contained within the 200% EIA and 30% DILHR safety margins. For properly