

CONDITIONS OF APPROVAL

Conditional Use Permit CUP18-0012/Horizon Tower Bavarian Hills Planning Commission/January 9, 2020

Planning Services

1. This Conditional Use Permit is based upon and limited to compliance with the project description, the following hearing exhibits, and conditions of approval set forth below:

Exhibit F.....Horizon Project Plan Set (7 pages)
Exhibit G.....Coverage Maps
Exhibit H.....Visual Simulations
Exhibit IRadio Frequency Report
Exhibit K.....Proposed Mitigated Negative Declaration and Initial Study

Approval of the Conditional Use Permit allows the construction of an unmanned wireless telecommunication facility consisting of a 40-foot by 40-foot, 1600-square foot enclosed compound (lease area) on Assessor’s Parcel Number (APN) 048-090-004. The compound will include a 125-foot monopine tower and premanufactured equipment cabinets.

Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans must be submitted for review and approval and shall be implemented as approved by the County.

2. **Expiration:** Pursuant to Zoning Ordinance Section 130.54.060.A, implementation of the project shall occur within 24 months of approval of this permit, otherwise the permit becomes null and void. It is the responsibility of the applicant to monitor the time limit and make diligent progress toward implementation of the project and compliance with Conditions of Approval.
3. **Responsibility for Interference:** The applicant shall assume full responsibility for resolving television reception interference or other electrical interference caused by the operation of this facility. The applicant shall take corrective action within 30 days of the receipt of any written complaint.

4. **Facility Maintenance:** All improvements associated with the communication facility, including equipment shelters, antennae, and fencing shall be properly maintained at all times. Colors of the panels, equipment enclosure, and other improvements visible to the public shall be maintained to ensure the appearance remains consistent.
5. **Conditions Compliance:** Prior to issuance of a building permit or commencement of any use authorized by this permit, the applicant shall provide a written description, together with appropriate documentation, showing conformance of the project with each condition imposed as part of the project approval. The applicant shall also schedule an inspection by Planning Services prior to Building Permit final for any Building Permit for verification of compliance with applicable Conditions of Approval.
6. **Obsolete Equipment:** All obsolete or unused communication facilities shall be removed within six months after the use of that facility has ceased or the facility has been abandoned. The applicant shall notify Planning Services at the time of abandonment and all disturbance related to the communication facility shall be restored to pre-project conditions.
7. **Compliance Responsibility:** The operator (lessee) and property owner (lessor) are responsible for complying with all conditions of approval contained in this Conditional Use Permit. Any zoning violations concerning the installation, operation, and/or abandonment of the facility are the responsibility of the owner and the operator.
8. **Payment of Processing Fees-Development Services:** The applicant shall make the actual and full payment of Planning and Building Services processing fees for the conditional use permit and building permit prior to issuance of a building permit.
9. **Archeological Resources:** The following shall be incorporated as a note on the grading/improvement plans:

In the event archeological resources are discovered during grading and construction activities, the applicant shall ensure that all such activities cease within 50 feet of the discovery until an archaeologist can examine the find in place. If the find is determined to be a “unique archaeological resource”, contingency funding, and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in Section 21083.2 of the Public Resources Code. Construction work could continue on other parts of the project site while archaeological mitigation takes place.

If the find is determined to be a “unique archeological resource”, the archaeologist shall determine the proper method(s) for handling the resource or item in accordance with Section 21083.2(b-k). Any additional costs as a result of complying with this section shall be borne by the project applicant. Grading and construction activities may resume after appropriate measures are taken or the site is determined a “nonunique archeological resource”.

Planning Services shall verify the inclusion of this notation on the grading plans prior to the issuance of a grading permit.

10. **Human Remains:** The following shall be incorporated as a note on the grading/improvement plans:

In the event of the discovery of human remains, all work shall cease and the County coroner shall be immediately notified pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code. The Coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the Coroner of the discovery or recognition of the human remains. If the Coroner determines that the remains are not subject to his or her authority and if the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

Upon the discovery of the Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in Section 5097.98 of the Public Resources Code, with the most likely descendants regarding their recommendations. The descendants shall complete their inspection and make their recommendation within 48 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials or other proper method(s) for handling the remains in accordance with Section 5097.98(b-h). Any additional costs as a result of complying with this section shall be borne by the project applicant. Grading and construction activities may resume after appropriate measures are taken.

Planning Services shall verify the inclusion of this notation on the grading plans prior to the issuance of a grading permit.

11. **Hold Harmless Agreement:** In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action. The developer and land owner shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval of El Dorado County concerning a conditional use permit.

The County shall notify the applicant of any claim, action, or proceeding, and the County shall cooperate fully in the defense.

12. **Five-Year Review Requirement:** Due to the ever-changing technology of wireless communication systems, this Conditional Use Permit shall be reviewed by the Planning Commission every five years. At each five-year review, the permit holder shall provide the Planning Commission with a status report on the then current use of the subject site and related equipment to include dated photos of the tower and equipment. Planning Commission shall review the status and determine whether to:
- a. Allow the facility to continue to operate under all applicable conditions; or
 - b. Hold a public hearing to determine whether to modify the conditions of approval in order to reduce identified adverse impacts; or initiate proceedings to revoke the conditional use permit, requiring the facility's removal if it is no longer an integral part of the wireless communications system.

By operation of this condition, it is the intent of County to reserve the right to modify or add new conditions, consistent with the language specified above. The failure of the County to conduct or complete a five-year review in a timely fashion shall not invalidate the Conditional Use Permit. The applicant shall pay a fee determined by the Planning and Building Department Director to cover the cost of processing a five-year review on a time and materials basis.

13. **Fire Protection:** The following language shall be incorporated as a note on grading and building permit plans: "During all phases of construction and operation, the facility shall comply with applicable provisions of Public Resources Code (PRC) Section 4291 (defensible space)."
14. **Fire Code:** All applicable El Dorado County fire requirements involving access, fuel management, and construction shall be reviewed and verified prior to issuance of building permit.
15. **Fire Safe Plan:** A fire safe plan shall be approved by El Dorado County Fire Protection District and CalFire prior to issuance of building permits.
16. **Road Repair:** The applicant shall provide to Planning Services, evidence of the condition of High Hill Road prior to issuance of Building and Grading Permits. Prior to finaling of Building and Grading Permits, the applicant shall provide evidence to Planning Services of the post-construction condition of High Hill Road. Any damage sustained to High Hill Road by construction activities shall be repaired by the project applicant.
17. **Generator:** If a generator is placed at the site, any routine maintenance that requires running the generators or automatic recycling of the generator shall be performed between the hours of 9:00 a.m to 5:00 p.m Monday through Friday.

Mitigation Measures

18. Mitigation Measure BIO-1:

If any grading or construction activities occur during the nesting season (February 15 to August 31), a preconstruction survey for the presence of special-status bird species or any nesting bird species shall be conducted by a qualified biologist within 500 feet of proposed construction areas, no more than three days prior to construction activities. The survey shall be submitted to Planning Services for review. If active nests are identified in these areas, CDFW and/or USFWS shall be consulted to develop measures to avoid “take” of active nests prior to the initiation of any construction activities. Avoidance measures may include establishment of a 40-foot, fenced buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site.

Monitoring Requirement: The applicant shall conduct all construction activities outside the nesting season or perform a pre-construction survey and the necessary avoidance measures prior to initiation of construction activities. This mitigation measure shall be noted on grading and construction plans. If a pre-construction survey is required, the applicant shall provide evidence of the survey with the Development Services Division to verify prior to issuance of grading and building permits.

Monitoring Responsibility: El Dorado County Development Services Division.

Air Quality Management District

19. **Paving:** Project construction will involve road development and shall adhere to AQMD Cutback and Emulsified Asphalt Paving Materials (Rule 224).
20. **Painting/Coating:** The project construction may involve the application of architectural coating, which shall adhere to AQMD Rule 215 Architectural Coatings.
21. **Open Burning:** Burning of wastes that result from "Land Development Clearing" must be permitted through the AQMD. Only dry vegetative waste materials originating from the property may be disposed of using an open outdoor fire (Rule 300 Open Burning).
22. **Construction Emissions:** During construction, all self-propelled diesel-fueled engines greater than 25 horsepower shall be in compliance with the California Air Resources Board (ARB) Regulation for In-Use Off-Road Diesel Fueled Fleets (§ 2449 et al, title 13, article 4.8, chapter 9, California Code of Regulations (CCR)). The full text of the regulation can be found at ARB's website here: <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm> An applicability flow chart can be found: http://www.arb.ca.gov/msprog/ordiesel/faq/applicability_flow_chart.pdf Questions on applicability should be directed to ARB at [1-866-634-3735](tel:1-866-634-3735). ARB is responsible for enforcement of this regulation.

23. **New Point Source:** Prior to construction/installation of any new point source emissions units (e.g., emergency standby engine, etc.), Authority to Construct applications shall be submitted to the AQMD. Submittal of applications shall include facility diagram(s), equipment specifications and emission factors. (Rule 501 and 523)
24. **Portable Equipment:** All portable combustion engine equipment with a rating of 50 horsepower or greater shall be registered with the California Air Resources Board (CARB). A copy of the current portable equipment registration shall be with said equipment. The applicant shall provide a complete list of heavy-duty diesel-fueled equipment to be used on this project, which includes the make, model, year of equipment, daily hours of operations of each piece of equipment.