

RESOLUTION NO. 20-158

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING THE APPEAL OF THE PLANNING COMMISSION APPROVAL OF A NEGATIVE DECLARATION AND MAJOR USE PERMIT FOR A WIRELESS COMMUNICATION FACILITY LOCATED NEAR WILLITS (U_2019-0011), AND ADOPTING A NEGATIVE DECLARATION AND GRANTING A MAJOR USE PERMIT FOR SAID FACILITY WITH A MODIFIED PROJECT DESCRIPTION AND CONDITIONS OF APPROVAL TO MAKE THE FACILITY A MONOPINE

WHEREAS, the applicant, AT&T Mobility, filed an application for a major use permit with the Mendocino County Department of Planning and Building Services to construct a 143-foot tall lattice wireless communication tower and associated equipment, $5.1\pm$ miles southeast of City of Willits center, lying on the east side of Manzanita Drive (CR 304C), $0.5\pm$ miles east of its intersection with Ridgewood Road (304A) located at 20201 Manzanita Dr., Willits (APN: 105-090-01); General Plan Remote Residential (RMR20); Zoning Upland Residential (UR:20); Supervisorial District 3; (U_2019-0011; the "Project"); and

WHEREAS, an Initial Study and Negative Declaration was prepared for the Project and noticed and made available for agency and public review on April 29, 2020 in accordance with the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines; and

WHEREAS, the Planning Commission held a public hearing on May 21, 2020, at which time all relevant testimony and evidence presented orally or in writing was heard and received regarding the Negative Declaration and the Project, and continued said Project to June 4, 2020, and directed Staff to prepare an alternate resolution for denial; and

WHEREAS, in accordance with applicable provisions of law, on June 4, 2020, the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Project and closed the continued public hearing. All interested persons were given an opportunity to hear and be heard regarding the Project; and

WHEREAS, the Planning Commission, at their June 4, 2020 meeting, adopted the Negative Declaration and approved the Project subject to the findings and conditions contained in the Planning Commission Resolution No. PC_2020-0007; and

WHEREAS, Mendocino County Code section 20.208.015 allows for an appeal of any decision, determination, or requirement made by the Planning Commission to be heard by the Board of Supervisors provided an appeal is filed within ten (10) days of the Planning Commission's action and the appropriate fees are paid; and

WHEREAS, pursuant to Mendocino County Code section 20.208.015, the Board of Supervisors may affirm, reverse or modify the decision of the Planning Commission as it deems just, equitable and in compliance with Division I of the Mendocino County Zoning Code and the General Plan; and

WHEREAS, On June 12, 2020, the Neighbors and Friends of Pine Mountain paid the appropriate fees and filed an appeal of the Project with the Mendocino County Board of Supervisors, challenging the approval by the Planning Commission "based upon the entire record, both written and oral, including but not limited to each and every issue raised in the written record and at the Public Hearings, including but also not limited to, procedural issues, claims and statements made in writing and/or at the Hearings, Findings of Fact, Conditions of Approval, CEQA issues including failure to mitigate significant impacts, and failure to provide an adequate venue for public participation at the Public Hearings" (the "Appeal"); and

WHEREAS, in accordance with applicable provisions of law, a public hearing regarding the Appeal was noticed for the September 22, 2020, meeting of the Board of Supervisors, at which time the Board of Supervisors continued the public hearing to October 20, 2020; and

WHEREAS, in accordance with applicable provisions of law, the Board of Supervisors held a public hearing on October 20, 2020, on the Appeal, at which time the Board of Supervisors heard and received all relevant testimony and evidence presented orally and in writing regarding the Appeal. All interested persons were given an opportunity to hear and be heard regarding the Appeal; and

WHEREAS, based on the testimony and evidence presented at the October 20, 2020, hearing, the Board of Supervisors took a tentative vote to deny the Appeal and approve the Project with modifications, specifically that the design of the proposed wireless communications tower be modified to that of a monopine, or a pole designed to resemble a pine tree, and directed staff to return to the Board of Supervisors with written findings and determinations regarding the tentative approval of the Project as modified; and

WHEREAS, the Board of Supervisors has had an opportunity to review this Resolution and finds that it accurately sets forth the intentions of the Board of Supervisors regarding the Project and the Appeal.

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors, based on the whole record before it, hereby denies the Appeal of the Planning Commission's action approving U_2019-0011, and makes the following findings and determinations:

1. The recitals set forth in the above resolution are true and correct and incorporated herein by this reference.
2. The Board of Supervisors intends to approve U_2019-0011 subject to the modification that the project design be changed from a 143-foot tall lattice tower to a 152-foot tall monopine (monopole designed to resemble a pine tree), with additional conditions of approval related to this change. As such, the Project Description of the Project is hereby amended to be as follows:

Major Use Permit to authorize construction and operation of a wireless communication facility consisting of a 152 ft. tall monopine (monopole designed to resemble a pine tree) with 12 antennas, various appurtenant equipment, ground equipment, generator, and equipment cabinet. Associated improvements include a gravel and paved access route to site. The proposed monopine will be located within a 1,800 sq. ft. fenced compound.

3. The Negative Declaration has been completed in compliance with CEQA and the CEQA Guidelines.
4. The Negative Declaration was presented to the Board of Supervisors, which independently reviewed and considered the Negative Declaration and the Board of Supervisors has exercised its independent judgment in making the findings and determinations set forth herein.
5. The modification of the Project from a lattice tower to a monopine is a condition of project approval that does not create new significant environmental effects and is not necessary to mitigate an avoidable significant effect, and so recirculation of the negative declaration is not required. The Initial Study did not identify any significant effects related to aesthetics, and any impact of the ten foot increase in the height of the tower is alleviated by the stealth features of the monopine design.
6. The parcel is classified as Remote Residential (RMR20) by the Mendocino County General Plan. The proposed development is an allowed conditional use within the district with the granting of a major use permit.

7. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of Division I of Title 20 of Mendocino County Code and preserves the integrity of the zoning district. The proposed development will not interfere with the continued use of the parcel and is an allowed conditional use within the district with the granting of a major use permit.
8. The proposed wireless communication facility is in conformance with the Wireless Communication Facilities Development Guidelines adopted by the Board of Supervisors on August 4, 2015.
9. The Board of Supervisors hereby finds that the modification of the approval of U_2019-0011 from a lattice tower design to a monopole design is a change that enhances the Project's conformance with the County's General Plan, the zoning district applicable to the property, as well as the Wireless Communication Facilities Development Guidelines, as this change will provide additional stealth capability by mimicking the appearance of nearby trees. The stealth design of the facility meets reduction findings contained in (C)(1)(m)(iii) of the Wireless Communication Facilities Development Guidelines related to setbacks from adjacent residences and parcel boundaries.

10. Use Permit Findings:

- a. That the establishment, maintenance or operation of a use or building applied for is in conformity to the General Plan as described in Finding 6; and
- b. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. The existing access to the parcel will be improved to private road access standards, internal access roads will be developed that meet fire district standards, utilities will be extended to the site, drainage has been considered and conditions of approval recommended to ensure no impacts will occur as a result of the project; and
- c. That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county if constructed in conformance with the recommended conditions of approval; and
- d. That such use preserves the integrity of the zoning district as described in Finding 7.

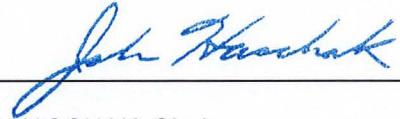
BE IT FURTHER RESOLVED that the Mendocino County Board of Supervisors hereby denies the Appeal, adopts the Negative Declaration for the Project, and approves the Project subject to the modifications made to the Project by this Resolution and to Conditions of Approval in Exhibit "A", attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board of Supervisors as the custodian of the documents and other materials which constitutes the record of proceedings upon which the Board of Supervisors' decision herein is based. These documents may be found at the Office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010, Ukiah, CA 95482.

The foregoing Resolution introduced by Supervisor McCowen, seconded by Supervisor Williams, and carried this 17th day of November, 2020, by the following vote:

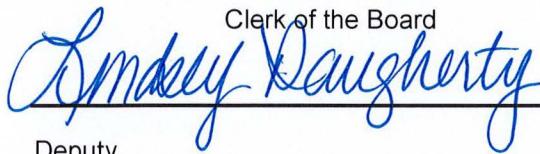
AYES: Supervisors Brown, McCowen, Haschak, Gjerde and Williams
NOES: None
ABSENT: None

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.



ATTEST: CARMEL J. ANGELO

Clerk of the Board



Deputy

JOHN HASCHAK, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS, County Counsel



BY: CARMEL J. ANGELO

Clerk of the Board

Deputy

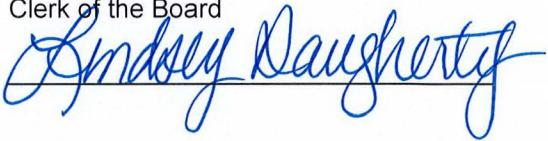


EXHIBIT A

CONDITIONS OF APPROVAL

NOVEMBER 17, 2020

U_2019-0011 - (AT&T MOBILITY)

Major Use Permit to authorize construction and operation of a wireless communication facility consisting of a 152 ft. tall monopine (monopole designed to resemble a pine tree) with 12 antennas, various appurtenant equipment, ground equipment, generator, and equipment cabinet. Associated improvements include a gravel and paved access route to site. The proposed monopine will be located within a 1,800 sq. ft. fenced compound.

APPROVED PROJECT DESCRIPTION: Major Use Permit to authorize construction and operation of a wireless communication facility consisting of a 152 ft. tall monopine (monopole designed to resemble a pine tree) with 12 antennas, various appurtenant equipment, ground equipment, generator, and equipment cabinet. Associated improvements include a gravel and paved access route to site. The proposed monopine will be located within a 1,800 sq. ft. fenced compound.

CONDITIONS OF APPROVAL:

Aesthetics

1. The total height of "monopine" tower including antennas and faux branches shall not exceed 152 feet in height above ground level. Within sixty (60) days of completion of the installation of the facility, the applicant shall confirm that the height is no greater than approved and shall submit a written certification to the County of the actual height.
2. "Trunk" of the "monopine" shall never be visible when not on the subject parcel. Should the canopy of the trees surrounding the "monopine" ever fall below 108 feet, the applicant shall install additional "branches" to conceal the "monopine tree trunk"
3. Branches of the "monopine" shall extend beyond the antennas and fully conceal the supporting structure and antennas. The branches must:
 - a. Be constructed to a density of 2.5 branches for each one vertical foot of pole, and
 - b. Be attached at such a height that ensures no part of the "monopine trunk" is visible to the public when not on the project site. The applicant shall attach branches from top of "trunk" downward, to a minimum of one hundred and eight (108) feet above finished grade.
 - c. Be a minimum of eight (8) feet long around the circumference of the lower level and shall taper appropriately as the branches progress upwards.
4. Unless amended, or a new Use Permit is granted for such an expansion, the antenna array shall not extend greater than 8 feet from the center of the "monopine" (16 foot diameter). Faux branches may extend up to 23 feet in order to conceal the antennas. Faux branches shall taper towards the top of the "monopine" in order to mimic the surrounding trees.
5. An evaluation of the facility's stealth capability shall be submitted for review and approval by the Department of Planning and Building Services after the initial construction, one year following

construction and every five years thereafter. The report shall assess surrounding vegetation growth, including height and density in the vicinity, and a color assessment to assess fading of material. Replacement or remediation of the wireless facility shall be performed by the applicant if required by the Department of Planning and Building Services.

6. No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility.
7. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
8. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
9. Exterior surfaces of structures and equipment shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
10. Exterior light fixtures shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site, and shall be turned off except when in use by facility personnel. No aircraft warning lighting shall be installed unless required by agencies with jurisdiction over such a determination.

Air Quality

11. Prior to the development phase of the project, the applicant shall contact the Mendocino County Air Quality Management District for a determination as to the need for a permit from the District for the proposed generator or any of the other proposed construction activities.
12. The access road leading to the project site shall be graveled at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
13. All grading activities must comply with District Regulation 1 Rule 430 regarding fugitive dust emissions.

Biological Resources

14. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Wildlife Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,456.75 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the action by the Planning Commission. Any waiver of the fee shall be on a form issued by the Department of Fish and Wildlife upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. The applicant has the sole responsibility to insure timely compliance with this condition.

Cultural Resources

15. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
16. As soon as practical following completion of any earth disturbance, vegetative ground cover, i.e., re-seeding, or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site. Project construction activities are limited to the project footprint. Trenches will need to be filled and resurfaced to match the original surface.
17. All grading and site preparation, at a minimum, shall adhere to the following "Best Management Practices": The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
 - a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
 - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
 - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
 - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year unless an Erosion and Sedimentation Prevention Plan, prepared by a registered civil engineer, has been submitted and approved by the Department of Planning and Building Services which outlines wet weather earthmoving and drainage control protocols. Such plan shall include all appropriate Best Management Practices that shall be installed in accordance with the approved Erosion and Sediment Prevention Plan prior to the start of construction during the rainy season.
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 - i. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
 - ii. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.

Hazardous Materials:

18. Should fuel storage at the site exceed thresholds established for when preparation of a Hazardous Materials Management Plan is required, a Hazardous Materials Management Plan (HMMP) shall

be submitted to the satisfaction of the Division of Environmental Health. Prior to the issuance of any building permits in reliance of this Use Permit, the applicant shall furnish evidence from the Division of Environmental Health that either a HMMP is not required or that one has been submitted to the satisfaction of the Division of Environmental Health.

19. The applicant shall comply with any requirements or recommendations of Cal-Fire and/or the Little Lake Fire District. Written verification shall be submitted from the office of both agencies to the Department of Planning and Building Services that this condition has been met to the satisfaction of each.

Noise

20. The Generator shall be equipped with mufflers and spark arresters, and shall not produce noise levels exceeding 50 dBA at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency use are not included in this limitation. If necessary the generator shall be enclosed by a noise barrier shelter designed by an acoustical engineer and remain oriented and screened to limit excessive noise to surrounding residences.

Public Services

21. The applicant shall complete Cal Fire standard fire safe requirements pursuant to Cal Fire #533-17. The applicant shall obtain written verification from Cal Fire stating that this condition has been met to the satisfaction of Cal Fire and submit it to the Department of Planning and Building Services.
22. The applicant shall cut in on existing access road a minimum of two (2) fire turnouts for fire and medical personnel emergency access.
23. The applicant shall maintain address and driveway standards, and shall also maintain defensible space and fuels modification standards as required by Cal Fire.
24. The facility shall provide if requested, space for any public emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.

Wireless Guidelines

25. Prior to the final inspection by the Building Division of the Department of Planning and Building Services, an identification sign for each company responsible for operation and maintenance of facilities at the site, not larger than two square feet, shall be posted at a location from which it can be easily read from outside the perimeter of the communications facility, and shall provide the name, address, and emergency telephone number of the responsible company. The address assigned to the site by the Planning and Building Services Department shall be posted.
26. Antennas and antenna towers shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the state of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department. Costs of the inspection and report shall be borne by the applicant.
27. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
28. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site and to require no more than a reasonable charge for collocation.

29. One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower. The Wireless Communications Facility shall comply in all respects with the current standards of the American National Standards Institute (ANSI)
30. Equipment buildings and enclosures shall be equipped with automatic fire extinguishing systems acceptable to the responsible fire agency.

Standard Conditions

31. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
32. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless the Planning Commission has approved a modification.
33. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
34. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
35. Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.
36. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
37. This permit is issued for a period of ten years, and shall expire on June 4th, 2030. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
38. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.208.015 of the Mendocino County Code. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
39. Prior to development of the site the applicant shall provide to PBS an assessment prepared by a registered civil engineer of the condition of the existing road serving the site to provide baseline data on the condition of the road. The assessment shall include photos and video as well as a written narrative to document the road's current condition. Promptly after the installation of the communication facility, any damage to the road associated with construction activity shall be

repaired to a condition that is equal to or better than the existing road condition prior to development of the site.