



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: SEPTEMBER 9, 2025

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, DIRECTOR
MATTHEW KIEDROWSKI, DEPUTY COUNTY COUNSEL

SUBJECT: APPEAL OF USE PERMIT U_2024-0004

BACKGROUND: Use Permit U_2024-0004 proposes the construction of a 65-foot tall cellular antenna tower in a monopine design and associated ground equipment within a 1,600 square-foot lease area at 28401 Timberline Road, Willits; APN 037-700-14. U_2024-0004 was first heard by the Mendocino County Planning Commission on June 5, 2025; however, the hearing was continued to June 19, 2025 due to delays in the posting of the Draft Negative Declaration associated with the project for the required 30-day State Agency review period.

On June 19, 2025, the Planning Commission adopted Resolution Number PC_2025-0007 adopting a Negative Declaration and approving U_2024-0004 subject to the conditions of approval contained in Exhibit A of the resolution. During the hearing on June 19, 2025, the Planning Commission added Condition #29 in response to concerns regarding potential violations that may exist on the property at 28401 Timberline Road, Willits. Condition #29 requires that *"Prior to issuance of the building permit, existing code violations on the property will be remediated."*

THE APPEAL: On June 30, 2025, the applicant submitted an Appeal to the Mendocino County Board of Supervisors stating:

"This decision is being appealed in order to amend Condition of Approval #29, which was issued by the Planning Commission at their regular meeting on June 19, 2025. As it stands, the Condition is overly broad as there is no nexus or rough proportionality between the project that was approved and the condition being attached, and as such, it is requested that the Condition be removed. Please see attached letter from Mackenzie & Albritton LLP for further details."

The letter from Mackenzie and Albritton LLP states the reasons why they believe that Condition #29 exceeds the Planning Commission's authority to impose conditions of approval on a use permit. The letter notes that neither Planning Division staff nor County Counsel's office recommended Condition #29, even though the topic was raised during public comment as part of the June 5, 2025 meeting. The letter goes on to state that the County had not identified any current code violations on the subject property and with no "existing" code violations, Condition #29 should be considered moot. The letter states that Verizon Wireless is concerned that the County may interpret Condition #29 to apply to any code violations alleged in the future that could delay issuance of a building permit. The letter alleges that any delay such as this could be considered an unreasonable delay in the issuance of the permit necessary to construct the wireless facility and would be in violation of the federal Telecommunications Act and Federal Communications Commission rules (47 U.S.C. § 332(c)(7)(B)(ii), 47 C.F.R. § 1.6003, respectively).

The letter also states that Condition #29 violates the United States Constitution, which requires that a local government establish both an "essential nexus" between a permit condition and project impacts (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825) and "rough proportionality" between the magnitude of the exaction and the effect of the proposed development (*Dolan v. City of Tigard* (1994) 512 U.S. 374). The reasoning provided in the letter is that the proposed equipment lease area will occupy less than 0.2 percent of the approximately 22-acre parcel and the condition of existing structures elsewhere on the property bears no relation to the impact of the proposed cell tower facility.

The appeal letter states that the Board of Supervisors must issue a decision on the appeal and take final action on the application by July 31, 2025 due to an executed tolling agreement; however, this tolling agreement has been extended to September 10, 2025 by mutual agreement.

The Appeal and related attachments are attached to this memorandum as Attachment A.

STAFF ANALYSIS:

During the public hearing on June 19, 2025, Planning and Building Services and County Counsel's Office expressed concerns regarding potential imposition of a condition of approval requiring remediation of unknown code violations on the entirety of the property, and did express concerns about the nexus between the project and the condition and the condition's proportionality to the project itself. Staff recommended during the meeting that if the Planning Commission desired to add such a condition that they limit the extent of the condition to the 1,600 square-foot lease area or alternatively make a referral to Code Enforcement and allowing the typical Code Enforcement process to occur outside of the Use Permit. The Planning Commission ultimately voted to adopt Condition #29 requiring that existing code violations on the entirety of the property be remediated and made a referral to Code Enforcement regarding potential violations that may exist on the property.

Staff provided the referral to Code Enforcement on behalf of the Planning Commission based upon the comments made by Commissioners during the June 19, 2025 meeting. Potential code violations discussed by the Planning Commission during the public hearing included:

- Smashed, inoperable, and/or abandoned vehicles on the property (including recreational vehicles)
- Unpermitted and/or substandard structures
- General refuse and garbage

Code Enforcement has conducted a site inspection of the property and has issued Inspection Report IR_2025-0077 identifying several violations on the property. This inspection report is attached to this memorandum as Attachment E, and shows that beyond general refuse and abandoned vehicles, the house and storage structure are not permitted.

Staff and counsel continue to have concerns regarding the Constitutional issues raised by the appeal. Recent case law (*Sheetz v. County of El Dorado* (2024) 601 U.S. 267) summarizes the issues as follows:

First, permit conditions must have an "essential nexus" to the government's land-use interest. *Nollan v. California Coastal Commission* (1987) 483 U. S. 825, at 837. The nexus requirement ensures that the government is acting to further its stated purpose, not leveraging its permitting monopoly to exact private property without paying for it. *Nollan*, at 841. Second, permit conditions must have "rough proportionality" to the development's impact on the land-use interest. *Dolan v. City of Tigard* (1994) 512 U. S. 374, at 391. A permit condition that requires a landowner to give up more than is necessary to mitigate harms resulting from new development has the same potential for abuse as a condition that is unrelated to that purpose. *Dolan*, at 393. This test applies regardless of whether the condition requires the landowner to relinquish property or requires her to pay a "monetary exactio[n]" instead of relinquishing the property. *Koontz v. St. Johns River Water Management District* (2013) 570 U. S. 595, at 612-615.

Condition #29 imposes a monetary exaction on the approval of the project, because it requires the property owner to undertake (pay for) remediation of code violations on the property before the project can move forward. The project is for the construction of a cellular antenna tower on a discrete portion of the subject property. As shown in the Inspection Report, the code violations elsewhere on the subject property include abandoned vehicles and unpermitted structures. Staff has concerns about the essential nexus between these violations and the project at issue, in that Condition #29 appears to be using the cellular antenna tower application, applied for by a lessee of property though with the landlord's permission, to obtain remediation of code violations unrelated to the project application. Condition #29 does not appear to relate to the harms caused by the project and it is not clear that the cost of remediating all violations would be roughly proportional to the impact of the project, if at all.

Given that a referral was made by the Planning Commission to Code Enforcement and Code Enforcement has already engaged with the property owner, conducted an inspection and issued an Inspection Report, Staff believes that Condition #29 is unnecessary. Code Enforcement will continue to work with the property owner on remediating the identified code violations on the property.

Staff and counsel further acknowledge that FCC statutes and regulations create an additional layer of concern. FCC regulations create presumptively reasonable periods of time to act on applications, the longest of which is 150 days for applications that deploy a new structure. Given the violations identified by Code Enforcement it is not clear that all violations could all be cleared in that time frame. There is also the potential that Condition #29 represents an "effective

prohibition” of the provision of personal wireless services, based on case law interpreting 47 U.S.C. 332. However, Staff believes the constitutional concerns outlined are a sufficient basis for removing Condition #29.

If the Board of Supervisors wishes to retain any portion of Condition #29, Staff recommends that it be modified to solely be applicable to the 1,600 square-foot lease area. This would revise Condition #29 to relate directly to the portion of the property controlled by the applicant and likely includes work the applicant would be doing in any event in order to clear and secure its leased area and prepare it for construction of the project. The Board could also consider modifying Condition #29 to revise the time frame in which violations may be cleared, so as not to be tied to the building permit necessary for the project.

Should the Board of Supervisors desire to retain Condition #29 in its entirety, staff would request a continuance in order to bolster the record regarding this condition, including tying the condition to the specific issues identified in the Inspection Report.

Other changes made to the Conditions of Approval as provided in the draft resolution for consideration of the Board are the renumbering of conditions to correct the numbering as there had been two conditions numbered 34 and Staff has also modified the expiration date within Condition #37 to provide the applicant a full 10 years from date of action by the Board.

RECOMMENDED ACTION: Adopt a resolution upholding the appeal and modifying the Planning Commission approval of Use Permit U_2024-0004 to construct a new cell tower; located at 28401 Timberline Road, Willits; APN 037-700-14; and authorize Chair to sign same.

ATTACHMENTS:

- A. Appeal Application
- B. U_2024-0004 Planning Commission Packet
- C. Planning Commission Resolution PC_2025-0007
- D. June 19, 2025 Planning Commission Minutes
- E. Inspection Report IR_2025-0077
- F. Draft Resolution of Board of Supervisors