

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
ZONING ADMINISTRATOR
STAFF REPORT**



Agenda of: December 6, 2017
Item No: 6.a.
Staff: Evan Mattes

CONDITIONAL USE PERMIT

FILE NUMBER: S17-0006/Cal.Net MUP North

APPLICANT: Cal.Net, Mark Herr

REQUEST: Conditional Use Permit to allow the construction of two wireless telecommunication facilities on existing buildings consisting of two point to point radio two foot diameter dish antennas, and three point to multipoint radio antennas.

LOCATION: Two separate locations in the Buckeye and Pilot Hill areas, Supervisor District 4. (Exhibit A)

APNs: 062-071-25 (Site 1), and 074-050-28 (Site 2) (Exhibit B)

ACREAGE: 18.28 acres (Site 1) and 320 acres (Site 2)

GENERAL PLAN: Rural Residential (RR) (Site 1) and Agricultural Lands (AL) (Site 2) (Exhibit C)

ZONING: Rural Lands 40-Acres (RL-40) (Site 1) and Agricultural Grazing 40-Acres (AG-40) (Site2) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Categorically Exempt pursuant to CEQA Guidelines Section 15301(b)

RECOMMENDATION: Staff recommends the Zoning Administrator take the following actions:

1. Find the project is exempt from CEQA pursuant to Section 15301(b) of the CEQA Guidelines (Existing Facilities); and
2. Approve Conditional Use Permit S17-0006 based on the Findings and subject to the Conditions of Approval as presented.

EXECUTIVE SUMMARY

Conditional Use Permit to allow for the colocation of two wireless communication facilities each consisting of two point to point radio two foot diameter dish antennas, and three point to multipoint radio antennas. The equipment will be mounted on existing structures ranging in size from 15 feet high to 45 feet high (Exhibit F). Each site would include the construction of a new equipment cabinet mounted in existing equipment shelters. The project antennas are for broadband connection only, and do not provide cellular coverage. No equipment shelter, HVAC units, or portable generator is proposed.

PROJECT INFORMATION

Site Description: Site 1 is located on the south side of Balderston Road at the intersection with Grey Eagle Road in the Buckeye area. The 18.28 acre parcel consists of a single family residence and an existing 50 foot tall tower. The nearest residence is approximately 300 feet away from the proposed communication facility. Surrounding land uses are rural residential and are characterized by pine woodland.

Site 2 is located on the north side of Highway 49 approximately one mile east of the intersection with Lilyama Road in the Pilot Hill area. The 320 acre parcel is primarily undeveloped with another communication facility located approximately 500 feet east of the proposed project. The project site is situated atop Mount Ararat with surrounding land uses consisting of agricultural grazing and rural residences.

Project Description: The project antennas at Site 1 would be attached to the tower at a height of 45 feet, with an equipment panel being placed within an existing shelter located on the west side of the tower base. The project site is located on a hill surrounded by pine woodland.

The project antennas at Site 2 would be located on an existing 15 foot pole structure, which would be reinforced with additional support poles. Project antennas would be placed at heights of 15, 14, 12 and 10 feet. The project is located near the summit of Mount Ararat surrounded by annual grasses and shrub land.

STAFF ANALYSIS

Environmental Review: This project has been found to be Categorically Exempt from the requirements of CEQA pursuant to Section 15301(b) of the CEQA Guidelines stating that Class 1 exemptions consist “of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” As antennas are being attached to existing towers and a small equipment cabinet to be constructed near the towers, the installation of the communication facility is consistent with this exemption classification under CEQA.

Pursuant to Resolution No. 240-93, a \$50.⁰⁰ processing fee is required by the County Recorder to file the Notice of Exemption. The filing of the Notice of Exemption is optional; however, not

filing the Notice extends the statute of limitations for legal challenges to the project from 35 days to 180 days.

General Plan Consistency: Staff has determined that the proposed project is consistent with the applicable policies and requirements in the El Dorado County General Plan, as discussed below in Section 2.0, General Plan Findings.

Zoning Ordinance Consistency: Staff has determined that the proposed project is consistent with the applicable regulations and requirements in Title 130 of the El Dorado County Code, as discussed below in Sections 4.0 through 5.0, Zoning and Conditional Use Permit Findings.

SUPPORT INFORMATION

Attachments to Staff Report:

Findings

Conditions of Approval

Exhibit A.....Location Map
Exhibit B.....Assessor's Parcel Map
Exhibit C.....Land Use Designation Map
Exhibit D.....Zoning Designation Map
Exhibit E.....Aerial Map
Exhibit F.....Elevation Plan
Exhibit G.....Antenna Specifications
Exhibit H.....Visual Simulations
Exhibit I.....RF Report

FINDINGS

Conditional Use Permit S17-0006 / Cal.Net MUP North Zoning Administrator / December 6, 2017

Based on the review and analysis of this project by staff and affected agencies, and supported by discussion in the staff report and evidence in the record, the following findings can be made:

1.0 CEQA FINDINGS

- 1.1 The proposed communication facilities are Categorical Exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines. Class 1 exemptions consist “of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” As antennas are being attached to existing structures, the installation of the communication facility is consistent with this exemption classification under CEQA.
- 1.2 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department - Planning Services at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 GENERAL PLAN FINDINGS

- 2.1 Policy 2.2.1.2 establishes the appropriate range of land use types and densities within the County:

The Rural Residential (RR) designation establishes areas for residential and agricultural development. These lands typically have limited infrastructure and public services and will remain for the most part in their natural state.

Rational: Project Site 1 identified by Assessor’s Parcel Number (APN) 062-071-25, has a RR General Plan Land Use Designation. The project is surrounded by rural residential development. Although the project will result in a commercial use, it has been designed to visually blend with the existing structures, will require vehicle trips only for construction and monthly facility maintenance. The project will be compatible with surrounding uses and will provide wireless broadband coverage and capacity, which the area currently lacks.

The Agricultural Lands (AL) designation applies to lands described in policy 8.1.1.8. A maximum of two residential used to support the agricultural use are allowed. The AL designation may be applied in Rural Regions.

Rational: Project Site 2 identified by APN 062-071-25, has an AL General Plan Land Use Designation, and is identified as being grazing land within a Rural Region. Although the project will result in a commercial use, it has been designed to visually blend with the existing structures, will require vehicle trips only for construction and monthly facility maintenance. The project will be compatible with surrounding uses and will provide wireless broadband coverage and capacity, which the area currently lacks.

- 2.3 Policy 6.2.3.2 requires new development, to demonstrate that adequate access exists, or can be provided to ensure that emergency vehicles can access the site and private vehicles can evacuate the area.

Rational: All sites currently have access through either existing public county maintained roads, private roads or private driveways.

3.0 ZONING FINDINGS

- 3.1 Section 130.40.130(A) minimizes the number of communication facilities through encouraging the joint use of towers, service providers are encouraged to employ all reasonable measures to site their antenna equipment on existing structures, to co-locate where feasible, and develop new sites that are multi-carrier.

Rationale: No alternative sites were considered for this project. The applicant has identified the proposed site as the most optimum in providing additional services and capacity to the area.

3.2 The project is consistent with Section 130.40.130(B)(4)(a-d).

In all zones, the co-location of antennas on signs, water tanks, utility poles and towers, light standards, and similar structures may be allowed subject to zoning administrator approval of a minor use permit in compliance with Section 130.52.020 (Conditional and Minor Use Permits). Those facilities not meeting the requirements below are subject to a Conditional Use Permit:

- a. Antennas shall not exceed the maximum height for the zone or 15 feet above the height of the existing structure, whichever is less.

Rationale: Site 1 will install antennas on 50 foot high tower within the RL-40 zoning designation. The highest proposed antenna will be located at a height of 45 feet. Site 2 will install antennas on an existing 15 foot high tower within the AG-40 zoning designation. The proposed antenna will be located at a height of 15 feet. Both the RL-40 and AG-40 zoning designations have a maximum structure height of 45 feet. Both of these proposed colocations are at or below the 45 foot structure height restriction.

- b. Antennas and mounting brackets shall be constructed and mounted to blend with the design and color of the existing structure.

Rationale: The antennas and mounting brackets have been designed to be constructed and mounted to blend with the current design and color of the existing structures.

- c. All equipment shelters, cabinets, or other ancillary structures shall be located within the structure being utilized for the communication facility, or on the ground screened from public view.

Rationale: No new equipment shelters or other ancillary structures are being proposed with this project. New cabinets will be located within existing equipment shelters.

- d. If proposed to be attached to a structure, utility pole, or tower located within a public utility easement, both the utility and the property owner must authorize submittal of an application for such use.

Rationale: Neither of the proposed colocations is located within a public utility easement.

3.3 The project is consistent with Section 130.40.130(C-H).

Section 130.40.130(C-H) of the Zoning Ordinance requires that in all wireless communication facilities meet certain criteria. Below is an analysis of these standards:

- C. *Visual simulations of the wireless communications facility (including all support facilities) shall be submitted. A visual simulation can consist of either a physical mock-up of the facility, balloon simulation, computer simulation or other means.*

Rationale: Photo-simulations of the facility are provided in Exhibit H of the Staff Report. These photos demonstrate how the facility will blend with the surrounding area thereby minimizing its visual impacts.

- D. *Development Standards: The following provisions shall apply in all zone districts. All facilities shall be conditioned, where applicable, to meet the following criteria:*

1. *Screening. All facilities shall be screened with vegetation or landscaping. Where screening with vegetation is not feasible, the facilities shall be disguised to blend with the surrounding area (trees, barns, etc.) The facility shall be painted to blend with the prevalent architecture, natural features or vegetation of the site.*

Rationale: The project sites are located in previously disturbed areas. The surrounding areas are dominated by rolling hills interspersed with pine and

oak canopy. The project has been designed such that trees and topography will screen the towers. The towers have a manufacturer-applied non-reflective coating to prevent glare.

2. *Setbacks. As set forth in each applicable zoning district, except where locating the facility inside those setbacks is the most practical and unobtrusive location possible on the proposed site. Setback waivers shall be approved through the minor use permit process.*

Rationale: The sites are located within the RL-40 and AG-40 zone, which identifies 30-foot setbacks for non-agricultural structures. The project demonstrates compliance with the minimum setback to property lines and adjacent residential uses and is therefore consistent with the setback standards of the RL-40 and AG-40 zone.

3. *Maintenance. All improvements associated with the communication facility, including equipment shelters, towers, antenna, fencing, and landscaping shall be properly maintained at all times. Colors of towers and other improvements shall be maintained to ensure the appearance remains consistent with approved conditions relating to color.*

Rationale: The project proposes bi-annual inspections for routine maintenance and to replace any cables or batteries if necessary. Additional urgent visits will occur if the site equipment is not functioning. Conditions are recommended to ensure that the colors and materials of the equipment building, tower, and ground support equipment will be maintained at all times and will be consistent with the features depicted in the visual simulations and elevations (Exhibits F and H).

- E. *Radio Frequency (RF) Requirements: Section 130.40.130.E of the County Code requires that the applicant submit a report or summary of the estimates of non-ionizing radiation generated by the facility and maximum electric and magnetic field strengths at the edge of the facility site, as regulated by the Federal Communication Commission (FCC).*

Rationale: A submitted RF analysis report confirms compliance with the applicable FCC Regulations under 47 C.F.R Section 1.1307(b) (3) and 1.1310 (Radio Frequency Radiation Exposure Limits) (Exhibit J).

- F. *Availability. Section 130.40.130.F requires that all communication facilities be available to other carriers as long as structural or technological obstacles do not exist.*

Rationale: Both sites are colocation projects. Due to structural considerations both project sites would have limited colocation capabilities. Any separate future collocation would require a revision to this conditional use permit and/or building permit, subject to review by the County.

- G. *Section 130.40.130.G of the Zoning Ordinance requires that all obsolete or unused communication facilities be removed within six months after the use of that facility has ceased or the facility has been abandoned.*

Rationale: The project has been conditioned to comply with this requirement.

- H. *Section 130.40.130.H of the Zoning Ordinance states certain notification requirements for projects located within 1,000 feet of a school or on residentially zoned lands governed by CC&Rs.*

Rationale: The proposed project is not located on land within 1,000 feet of a school, nor is it located on residentially zoned lands. The project complies with the notification requirements.

4.0 CONDITIONAL USE PERMIT FINDINGS

4.1 The issuance of the permit is consistent with the General Plan.

The proposed use is consistent with the policies and requirements in the General Plan as discussed in the General Plan section of the Staff Report. The proposed use is consistent with all applicable policies as set forth in Finding 2.0 above.

4.2 The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood.

The use will not significantly conflict with the adjacent uses as the ground-support equipment and towers are buffered from view by existing trees. As conditioned, the project is anticipated to result in insignificant environmental impacts to neighboring residents. The proposed use is not anticipated to create hazards that would be considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood based on the data and conclusions contained in the staff report. At one percent or less of the public safety standard established by the FCC at the project site, the risk of RF emissions to the surrounding public is remote.

4.3 The proposed use is specifically permitted by Conditional Use Permit.

Because the proposed use complies with the requirements of Zoning Ordinance Section 130.40.130.C through H (development standards/conditions), the communication tower facility is a specifically permitted use with an approved Conditional Use Permit.

CONDITIONS OF APPROVAL

Conditional Use Permit S17-0006 / Cal.Net MUP North Zoning Administrator / December 6, 2017

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.....Elevation Plans
Exhibit H.....Visual Simulations

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.

Approval of the Conditional Use Permit allows the colocation of a wireless communication facility to support broadband internet transmission within each of the 18.28 acre parcel identified by Assessor’s Parcel Number (APN) 062-071-25 and the 320 acre parcel identified by APN 062-071-25, and consisting of three Ubiquiti point to point radio antenna, four Telrad Breeze30000 point to multipoint radios and one DragonWave Horizon Compact point to point radii.

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.

Planning Division

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 archeological resource”, contingency funding, and a time allotment sufficient to allow recovering an archeological 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 archeological 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.

Air Quality Management District (AQMD)

12. **Asbestos Dust:** Current county records indicate this subject property is located within the Asbestos Review Area. An Asbestos Dust Mitigation Plan (ADMP) application with appropriate fees shall be submitted to and approved by the AQMD prior to project construction if a grading permit is required by the County or if the project moves more than 20 cubic yards of soil (Rules 223 and 223.2). The project shall adhere to the regulations and mitigation measures for fugitive dust emissions asbestos hazard mitigation during the construction process. Mitigation measures for the control of fugitive dust shall comply with the requirements of Rule 223 and 223.2.
13. **Fugitive Dust:** The project construction will involve grading and excavation operations, which will result in a temporary negative impact on air quality with regard to the release of particulate matter (PM₁₀) in the form of dust. The project shall adhere to the regulations and mitigation measures for fugitive dust emissions during the construction process. In addition, a Fugitive Dust Mitigation Plan (DMP) Application with appropriate fees shall be submitted to and approved by the AQMD prior to start of project construction if a Grading Permit is required from the Building Dept. (Rules 223 and 223.1)
14. **Paving:** Project construction may involve road development and shall adhere to AQMD Rule 224 Cutback and Emulsified Asphalt Paving Materials (Rule 224).
15. **Painting/Coating:** The project construction may involve the application of architectural coating, which shall adhere to AQMD Rule 215 Architectural Coatings.
16. **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).
17. **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 here: 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. ARB is responsible for enforcement of this regulation.

18. **New Point Source:** Prior to construction/installation of any new point source emissions units (i.e., emergency standby engine greater than 50hp, 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)
19. **Portable Equipment:** All portable combustion engine equipment with a rating of 50 horsepower or greater shall be under permit from the California Air Resources Board (CARB). A copy of the current portable equipment permit 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.

Environmental Management

20. Under the CUPA program, if the operation will involve the storage of reportable quantities of hazardous materials (55 gallons, 500 lbs, 200 cubic feet) for backup power generation, a hazardous materials business plan for the site must be submitted to the Community Development Agency / Environmental Management Division and applicable fees paid.