

Agenda of: February 24, 2005
Item No.: 9.b.
Staff: Roger D. Evans

STAFF REPORT - SPECIAL USE PERMIT

FILE NUMBER: S04-0037 (Nextel Pollock Pines Site - CA1327-B)

PROPERTY OWNER: Craig Rosentahl

APPLICANT: Tetra Tech Communications

AGENT: Shawna DesBois

REQUEST: Special use permit to allow the placement of a new 114-foot tall mono pine structure with 12 panel antennas on 3 arms at the 100-foot elevation of the mono-pine. The proposed mono-pine and the 12-foot by 20-foot pre fabricated equipment shelter will be located on a 30-foot by 30-foot lease area that will be enclosed by an 8-foot tall chain link fence with brown colored vinyl slats.

LOCATION: North side of Sly Park Road, approximately 0.3 of a mile southwest from the intersection with Starkes Grade Road, in the Pollock Pines area. (Exhibit A)

APN: 042-700-20 (Exhibit B)

ACREAGE: 3.25 acres.

GENERAL PLAN: Medium Density Residential (MDR) (Exhibit C)

ZONING: Single-family Three-acre Residential (R3A) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Negative Declaration

SUMMARY RECOMMENDATION: Conditional Approval

BACKGROUND: The Telecommunications Act of 1996 preserves the authority of a state or local government over decisions regarding the placement, construction, and modification of personal wireless services, with the following pertinent limitations:

SEC.704. (7) B (iii)

Any decision by a state or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

SEC.704. (7) B (iv)

No state or local government or instrumentality 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 Commissions regulations concerning such emissions.

The Federal Communications Commission (FCC) Guidelines for human exposure to Radio Frequency (RF) radiation are derived from recommendations developed by the National Council on Radiation Protection and Measurement (NCRP) and the Institute of Electrical and Electronic Engineers (IEEE). The FCC's Maximum Permissible Exposure (MPE) guidelines are based on a wide range of frequencies and both occupational and general public exposure limits promulgated by the IEEE and NCRP. The radio frequency emissions associated with wireless telephone transmissions result in exposure levels that are generally considerably lower than the established safety limits. The table below identifies the established Maximum Permissible Exposure limits for a wide range of radio frequencies. The FCC rules categorically exclude certain transmitting facilities from routine evaluations for compliance with the RF emission guidelines if it can be determined that it is unlikely to cause workers or the general public to become exposed to emissions that exceed the guidelines. PCS facilities, such as the proposed project, are categorically excluded from the FCC evaluation process if they are located ten meters or more off the ground (other than on a rooftop), or if the total power of all channels is 2,000 watts (Effective Radio Power [ERP]) or less.

Based on the submitted RF Exposure Analysis the proposed Nextel facility will have a maximum power density of 0.00350 mW/cm² (6 foot Above Ground Level (AGL) and 0.00472. mW/cm² (16 foot AGL) The Effective Radio Power (ERP) for the proposed cellular facility is expressed in milliwatts per squared centimeter which is substantially less than the 2000 watts figure identified above, therefore, the maximum permissible exposure for the general population at this site is equivalent to 0.58283 percent @ 6 foot AGL and 0.766225 percent at 16 foot AGL of the recommended limit. Based on the RF exposure and risk analysis, the risk of release of hazardous materials or unhealthy RF emissions to the public is remote.

STAFF ANALYSIS

Staff has reviewed the project for compliance with the County's regulations and requirements. An analysis of the permit request and issues for Planning Commission consideration are provided in the following analysis.

Project Description: Request for a special use permit to allow the placement of a new 114-foot tall mono pine structure with 12 panel antennas on three arms at the 100-foot elevation of the mono-pine.

The proposed mono-pine and the 12-foot by 20-foot pre fabricated equipment shelter will be located on a 30-foot by 30-foot lease area that will be enclosed by an 8-foot tall chain link fence with brown colored vinyl slats. The lease area is located on privately owned property.

Project plans are included as Exhibit E.

Proposed Access: Access to the lease area, the proposed prefabricated equipment shelter, and the monopine will be via a gravel based roadway branching off of the private driveway encroaching onto Sly Park Road. The access road will be developed on an existing dirt road which already accesses the proposed lease area, will be approximately 80 feet in length, and will include a turnaround area in front of the lease area.

Site Description: The project site is a privately owned parcel which is developed with a single-family residence, detached garage, and detached shop building. The parcel has relative gentle topography with slopes of five percent or less. Vegetation consists of a well developed stand of Incense cedars and pine trees with a mix of under story shrubs. The proposed lease area is a cleared relatively flat area accessed by an existing dirt road.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	R3A	MDR	Single Family Residence, garage, and shop building.
North	R3A	MDR	Single Family Residence
South	R1	HDR	Single Family Residence
East	R3A	MDR	Single Family Residence
West	R3A	MDR	Single Family Residence

Discussion: The proposed monopine is located in an area characterized as residential in nature with the parcels of three acres or larger. The area to the south of Sly Park Road is characterized as high density residential in nature with parcels ranging from 9,000 square feet to 12,000 square feet in size. The majority of the surrounding parcels are developed with single-family residences.

General Plan: The General Plan designation of the subject site is Medium Density Residential (MDR). The MDR land use designation establishes areas suitable for detached single-family residences with larger lot sizes which will enable limited agricultural land management activities. This designation shall be applied where the character of an area is single-family residences; where the absence or reduced level of infrastructure including roads, water lines, and sewer lines does not justify higher densities; where the topography poses a constraint to higher densities; and as a transitional land use between the more highly developed and the more rural areas of the County. The maximum allowable density shall be one dwelling unit per 1.0 acre. Parcel sizes shall range from 1.00 to 5.00 acres.

The following General Plan policies apply to the project:

Policy 5.6.1.4 establishes that “*Special Use Permits shall be required for the installation of community telecommunications facilities (e.g. microwave towers) in residential areas to ensure that siting, aesthetics, environmental issues, surrounding land uses, and health and safety concerns are considered.*”

Discussion: The applicant has designed the wireless facility in compliance with County regulations, addressing aesthetics, environmental issues and health and safety concerns. All project-related environmental issues have been evaluated in the Initial Study. Therefore, staff finds that the project, as conditioned, conforms to the General Plan.

General Plan Lawsuit: On February 5, 1999, Judge Cecily Bond of the Sacramento Superior Court acted to invalidate the Environmental Impact Report adopted for the 1996 General Plan. This invalidation restricted the County from acting on any discretionary project pending issuance of a Writ from the Court. On July 19, 1999, Judge Bond issued the Final Writ of Mandate. Paragraph 5; subparagraph 1 of the Final Writ permits the County to issue permits for non-residential development, subject to the findings in subparagraph (8).

Subparagraph (8) establishes that the County cannot approve or undertake any such project unless it finds, based on substantial evidence, that:

- (a) *The approval or project will not significantly impair the County’s ability to adopt and implement a new General Plan after complying with CEQA.*

Discussion: The project was reviewed and it has been determined that none of the environmental issues identified in the February 5, 1999, Court ruling will be affected by this project. Zoning regulations and the General Plan allow for cellular facilities with the issuance of special use permit.

- (b) *The approval or project complies with all other requirements of law.*

Discussion: The project will comply in all instances with the provisions of the County Code and State regulations regarding cell tower facilities, including Chapter 17.20 and Section 17.14.200 (Wireless Communications Facilities Ordinance).

- (c) *The approval of the project is consistent with the text and maps of the 1996 General Plan as amended through February 4, 1999.*

Discussion: A review of the text and maps of the 1996 General Plan, as amended through February 4, 1999, determined the consistency of the proposed project. General Plan Policy 5.6.1.4 states that special use permits shall be required for the installation of community telecommunications facilities within areas of residential zoning. The project area is zoned for residential uses; therefore, the applicant has submitted a special use permit application, in accordance with County regulations.

Zoning: The proposed use is permitted in the Single-family Three-acre Residential (R3A) Zone District, through the approval of a special use permit pursuant to Section 17.14.299(D)(5)(a-b), which states the following:

- “5. New Towers or monopoles: The construction or placement of communication facilities on new towers or monopoles or an increase in height of existing towers or monopoles, may be permitted as set forth below:
- a. In the industrial, commercial and research and development zone districts a new tower or monopole may be permitted subject to approval of a minor use permit by the zoning administrator, pursuant to Section 17.22.400, except where located adjacent to a state highway or designated scenic highway or within 500 feet of any residential zone district.
 - b. In all other zone districts, new towers or monopoles shall be subject to approval of a special use permit by the planning commission pursuant to Section 17.22.500 et seq.”

Discussion: Because the project proposes the construction of a new monopine cellular facility in a residential zone district, a special use permit is required as specified above. The special use permit has been reviewed for conformance with the standards and requirements contained in Section 17.14.20 (A through J).

Development Standards: Section 17.14.200(E) and (F) of the County Code require that all wireless communication facilities meet certain criteria. Below is an analysis of these standards.

1. **Screening:** The applicant is proposing to place the equipment shelter and steel monopine within a 30-foot by 30-foot lease area surrounded by an 8-foot-tall chain link fence with brown colored slats to provide visual screening. Additionally, the proposed monopine is located in an area with a mix of Ponderosa Pine and Incense Cedar allowing the proposed monopine to blend in with the surrounding trees. Visual simulations of the wireless facility have been submitted (see Exhibit F).
2. **Setbacks:** The monopine and equipment shelter is proposed to be within in a fenced lease area within the property. The side setbacks to the lease area are between 4 feet to 6 ½ feet on the east side and 230 feet on the west. The setback to the lease area from the north property line will be approximately 390 feet, and to the south property line adjacent to Sly Park Road the setback to the lease area will be between 27 feet to 40 feet.

The monopine itself will be located 16 feet from the eastern side property line and 60 feet from the southern (front) property line adjacent to Sly Park Road. The monopine will be over 300 feet from the northern and western property lines of the subject property.

The pre-fabricated equipment shelter will be located 20 feet from the eastern (side) property line and between 40 feet to 44 feet from the southern (front) property line adjacent to Sly Park Road. The equipment shelter will be over 300 feet from the northern and western

property lines. The required setbacks within the R3A Zone District are 30 feet from all property lines. In this instance, the monopine structure and the equipment shelter will be less than 30 feet from the eastern (side) property line.

Section 17.14.200 (F) (2) establishes that the setbacks shall be “*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.*” In this case, the proposed monopine is within a grove on Incense cedars and Ponderosa pines. This location is the most practical and unobtrusive location for the proposed monopine and equipment shelter without having to remove existing trees or complete extensive grading.

3. Maintenance: Maintenance personnel would visit the site approximately once a month, at which time the facilities would be inspected to ensure proper operation. The project has been conditioned to require that the colors and materials of the monopine and equipment shelter be maintained at all times and consistent with the features depicted in the visual simulations.
4. Radiofrequency Radiation (RF) Requirement: Section 17.14.200(G) 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. Nextel has submitted a report indicating that the maximum power density at this location will be 0.03461 milliwatts per square centimeter (mW/cm²). Therefore, the maximum permissible exposure for the general population at this site is equivalent to 5.76876 percent of the recommended limit. This is well within the allowable limitations established in ANSI standard C95.1-1992, the prevailing standard for RF exposure levels.
5. Availability: Section 17.14.200 (H) requires that all existing communication facilities be available to other carriers as long as structural or technological obstacles do not exist. The project has been conditioned to allow for co-location, with no further review by the Planning Commission required provided that all ground-mounted equipment is located within the proposed leased area and provided that no more than four additional antenna groupings are placed on the tree pole at any one time (Condition 6).
6. Unused Facilities: Section 17.14.200 (I) requires all obsolete or unused communication facilities be removed within six (6) months after the use of that facility has ceased or the facility has been abandoned. The project has been conditioned to comply with this requirement (Condition 7).
7. Other Permit Requirements: Section 17.14.200(J) states certain notification requirements for projects located within 1,000 feet of a school or in subdivisions governed by CC&R's. There are no schools within 1,000 feet of the site or subdivisions governed by CC&R's.

After review of the submitted site plan(s), visual simulations, and an on-site reconnaissance, it has been determined that the proposed project meets the standards contained in Section 17.14.200 E and F of the County Code.

Agency and Public Comments: The following agencies provided comments on this application:

Department of Transportation: The Department of Transportation completed a site visit and provided recommended conditions of approval which have been incorporated into the conditions of approval for the project

Resource Conservation District (RCD): The RCD stated it had no comments on the proposed activity.

Copies of their written comments are available at the Planning Department office.

ENVIRONMENTAL REVIEW

Staff has prepared an Initial Study (Environmental Checklist with Discussion attached) to determine if the project has a significant effect on the environment. Based on the Initial Study staff has determined that there is no substantial evidence that the proposed project will have a significant effect on the environment, and a Negative Declaration has been prepared.

This project is found to be de minimis (having no effect on fish and game resources). Per Resolution No. 240-93, a \$35.⁰⁰ processing fee is required by the County Recorder to file the Notice of Determination and Certificate of Fee Exemption with the State in accordance with State Legislation (California Fish and Game Code Section 711.4).

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. Adopt the Negative Declaration, based on the Initial Study prepared by staff.
2. Approve Special Use Permit S04-37, subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1Conditions of Approval

Attachment 2Findings

Exhibit AVicinity Map

Exhibit BAssessor Parcel Map page

Exhibit CGeneral Plan Land Use Map

Exhibit DZoning Map

Exhibit ETopography

Exhibit FSite Plan (Sheet T-1, Sheet A-1, and Sheet A-2)

Exhibit GMonopine and Equipment Shelter Elevation

Exhibit HVisual Simulations

Exhibit IEnvironmental Checklist Form and Discussion of
Impacts (Initial Study)

ATTACHMENT 1
CONDITIONS OF APPROVAL

FILE NUMBER S04-0037

Conditions of Approval

1. This special use permit approval is based upon and limited to compliance with the project description, dated September 30, 2004, and Conditions of Approval set forth below. 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 project description is as follows:

- a. Issuance of a special use permit (S04-0037) for a 114-foot steel monopine with up to twelve (12) panel antennas mounted at a centerline of 100 feet on Assessor's Parcel Number 042-700-20. Twelve panel antennas in three groups of fours (sectors) may be mounted on an antenna array mount, to avoid horizontal expansion of the overall structure beyond the proposed foliage. The antenna panels would be approximately 7 inches wide, 96 inches long and 8 inches deep. All antennas will be made of non-reflective materials.
 - b. This special use permit authorizes Nextel to place the monopine and a 12-foot by 20-foot prefabricated ground equipment shelter within a 30-foot by 30-foot lease area to be enclosed by an 8-foot-high chain link fence. Two global positioning system (GPS) antennas will be attached to the roof of the shelter to provide for communication between the wireless facility and low-orbiting satellites. The facility will be connected to land-based electrical and telecommunications utilities located on a nearby joint-utility pole. There will be a 12-foot-wide gate on the south side of the enclosure facing Sly Park Road.
 - c. Access to the proposed leased area will be via a driveway extension off of the existing driveway encroaching onto Sly Park Road.
 - d. This special use permit authorizes maintenance personnel to visit the site approximately once a month, at which time the facilities will be inspected to ensure proper operation.
2. All site improvements shall conform to the site plan(s) attached as Exhibit E.

3. The applicant shall ensure that the monopine pole is surfaced with material that is non-reflective and resembles the bark of a pine tree and that the branches on the proposed monopine extend to level above ground consistent with surrounding trees. Final plans submitted for the building permit shall include this information and shall be reviewed and approved by the Planning Department prior to issuance of the building permit for the monopine structure.
4. For co-location purposes, no further review by the Planning Commission shall be required provided that all ground mounted equipment is located within the existing leased area and provided that no more than four (4) additional antenna groupings are placed on the pole at any one time.
5. All equipment shelters, cabinets or other auxiliary structures shall be painted in a matching color.
6. All improvements associated with the communication facility, including equipment shelters, antennae, and fencing shall be properly maintained at all times. The Planning Department requires that that all colors of the equipment enclosure and other improvements visible to the public shall be maintained to ensure the appearance remains consistent.
7. All obsolete or unused communication facilities shall be removed within six (6) months after the use of that facility has ceased or the facility has been abandoned. The applicant shall notify the Planning Department at the time of abandonment and all disturbance related to the communication facility shall be restored to pre-project condition.
8. Due to the ever-changing technology of wireless communication systems, this special 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. The Planning Commission shall review the status report and, based on an assessment of the information provided, current wireless communications technology, and possible local or cumulative impacts, determine whether to: (1) Modify the conditions of approval in order to reduce identified adverse impacts; and (2) Initiate proceedings to revoke the special use permit, requiring the facility's removal, if it is no longer an integral part of the wireless communication system. By operation of this condition, it is the intent of the Planning Commission to reserve the right to modify existing or add new conditions, consistent with the language specified above. The failure of the Planning Commission to conduct or complete a five-year review in a timely fashion shall not invalidate this Special Use Permit. The applicant shall pay a fee as determined by the Planning Director to cover the cost of processing a five-year review.
9. All project facilities shall be subject to issuance of a building permit from the El Dorado County Building Department prior to any construction activities on the site.

10. The applicant shall comply with all County requirements related to the Department of Transportation, including but not limited to the County of El Dorado “*Design and Improvement Standards Manual*”, the “*Grading, Erosion and Sediment Control Ordinance*”, the “*Drainage Manual*”, the “*Off-Street Parking and Loading Ordinance*”, and the *State of California Handicapped Accessibility Standards*.
11. The applicant shall be required to apply for and receive approval of a commercial grading permit from the Department of Transportation prior to commencement of any site work associated with the project. The applicant shall be subject to a grading permit fee commensurate with the scope of the proposed project prior to commencement of any work performed. The grading permit fees shall be due prior to issuance of a grading permit.
12. No direct access from Sly Park Road to the cell facility lease area shall be allowed at any time. All access to the cell facility lease area shall be from the existing driveway encroachment onto Sly Park Road.
13. The applicant shall place a minimum of 4 inch thickness of three-quarter inch Class II aggregate base along a 12-foot wide access road from the leased area to the existing driveway. The applicant shall provide road improvement details to the Department of Transportation for review and approval prior to issuance of a grading permit. The access road shall be adequate for a vehicle to exit the site in a forward direction. The applicant shall provide road improvement details to the Department of Transportation for review and approval prior to issuance of a grading permit.
14. The El Dorado County Fire Protection District shall review and approve the site and access road for accessibility and turnaround area requirements prior to issuance of a grading permit. A letter of approval from the Fire District shall be provided to the Department of Transportation prior to issuance of a grading permit.

ATTACHMENT 2 **FINDINGS**

FILE NUMBER S04-0037

1. *The proposed project will not have a significant effect on the environment, based on the analysis contained in the Initial Study, and a Negative Declaration has been filed. Further, the project will not affect wetlands, water courses, riparian lands, unique plant or animal life and habitats, or other terrestrial matters under the jurisdiction of the State Department of Fish and Game.*

The Planning Commission has considered the proposed Negative Declaration together with the comments received and considered during the public hearing process. The Negative Declaration reflects the independent judgment of the Planning Commission and has been completed in compliance with CEQA, and is adequate for this proposal. The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Planning Department at 2850 Fairlane Court, Placerville, CA.

The project will not affect wetlands, water courses, riparian lands, unique plant or animal life and habitats, or other terrestrial matters under the jurisdiction of the State Department of Fish and Game. Therefore, the project has a de minimis impact on the environment and a Certificate of Fee Exemption (DFG 753.5-5/91) is applicable.

2. *The use is found to comply with the requirements of County Code Section 17.14.200, Wireless Communication Facilities, and the proposed use is not considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood.*

This is a new wireless monopine designed as a multi-carrier facility, to allow for future co-location, which is encouraged by the County. To address maintenance issues, the applicant proposes to have a technician service the wireless facility and equipment approximately once a month to ensure proper performance of the facility. It is found that the use will not conflict with the adjacent uses, and will provide a benefit to the area by improving cellular service. After review of the submitted site plan(s) and a visual simulation it has been determined that the proposed project meets the standards contained in Section 17.14.200 F through J of the County Code. The aesthetic impacts associated with the project have been fully considered. There will be no discernable visual impact from the addition of the monopine in the Pollock Pines area.

3. *The proposed use is consistent with the policies in the El Dorado County General Plan, as amended through February 4, 1999, and the cellular facility has been designed in compliance with County regulations, addressing aesthetics, environmental issues and health and safety concerns, as required by the General Plan.*

The proposed site is privately owned property. Nextel proposes to lease area from the property owner for the proposed monopine.

Nextel proposes a monopine to provide enhanced cellular service in the area south of Pollock Pines. The main use of the site, although undeveloped at this time, is for commercial purposes. The cellular facility would be incidental to the main commercial use of the property when developed. The design of the monopine and location on the site has been carefully considered, and will blend with the surroundings. Therefore, it is found that the project is consistent with the specific, fundamental, and mandatory land use development goals, objectives, and policies of the General Plan, and is consistent with the development standards contained within the El Dorado County Zoning Ordinance. It can be found that the project, as conditioned, conforms to the General Plan.

4. *This project may be approved subject to the following findings established in Paragraph 5, Subparagraph 1, which permits the County to approve non-residential projects, and Subparagraph 8 in the Final Writ issued by the Court on July 19, 1999, as follows:*

a. *The approval or project will not significantly impair the County's ability to adopt and implement a new General Plan after complying with CEQA.*

The project was reviewed and it has been determined that none of the environmental issues identified in the February 5, 1999, Court ruling will be affected by this project. Zoning regulations and the General Plan allow for cellular facilities with the issuance of Special Use Permit.

b. *The approval or project complies with all other requirements of law.*

The project will comply in all instances with the provisions of the County Code and State regulations regarding cell tower facilities, including Section 17.14.200 (Wireless Communications Facilities Ordinance).

c. *The approval or project is consistent with the text and maps of the 1996 General Plan, as amended through February 4, 1999.*

A review of the text and maps of the 1996 General Plan, as amended through February 4, 1999, determined the consistency of the proposed project. The General Plan designation of the subject site is Medium Density Residential (MDR). The wireless facility will be incidental to the main residential use of the site. The development of the wireless facility does not prevent the use of the site for existing and future residential uses.