

**Agenda of:** October 13, 2005

**Item No.:** 7.a.

**Staff:** Michael C. Baron

**STAFF REPORT - SPECIAL USE PERMIT**

**FILE NUMBER:** S04-0041

**APPLICANT:** Nextel Communications/James Louie

**PROPERTY OWNER:** Julia Ellis

**REQUEST:** Special use permit to construct and operate a new wireless telecommunications facility consisting of a 55-foot stealth antenna, disguised as a flagpole. The facility will consist of a metal cylinder with three enclosed panel-type antennas and ground equipment within a 550 square foot lease area.

**LOCATION:** On the west side of Oro Loma Drive, 2,700 feet north of the intersection with Gold Hill Drive, in the Placerville area (Exhibit A).

**APN:** 089-110-31

**ACREAGE:** 1.43 acres

**GENERAL PLAN:** Medium Density Residential (MDR) (Exhibit B)

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

**ENVIRONMENTAL DOCUMENT:** Negative Declaration

**SUMMARY RECOMMENDATION:** Conditional Approval

**BACKGROUND:**

The Telecommunications Act of 1996 became effective on February 8, 1996. This act preserves the authority of the State or local government over decisions regarding the placement, construction, and modifications of personal wireless services, subject to two limitations. Section 704.(7)B(iii) requires any denials to be in writing and supported by “substantial evidence”. Section 704.(7)B(iv) prohibits denial on the basis of radio frequency emissions if those emissions are compliant with Federal regulations.

On August 28, 2001, the El Dorado County Board of Supervisors adopted Sections 17.22.500 and 17.14.200 of the Zoning Ordinance to regulate special use permits and wireless communication facilities. By adopting these ordinances, the Board of Supervisors acted to maintain the County's authority over decisions regarding wireless facilities.

Nextel Communications submitted S 04-0041 on October 28, 2004.

The American National Standards Institute and the Institute of Electrical and Electronics Engineers (IEEE) have published a standard called ANSI/IRRR C95.1-1992, which until recently set recommended maximum power density levels for radio frequency (RF) energy originating from communications sites and other sources. The Federal Communications Commission (FCC) has also produced its own guidelines, which are more stringent and supersede the ANSI standard. 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 emission that exceed the guidelines. The following table represents the FCC limits for both occupational and general population exposures to different radio frequencies:

<b>Frequency Range (F) (MHz)</b>	<b>Occupational Exposure (mW/cm<sup>2</sup>)</b>	<b>General Public Exposure (mW/cm<sup>2</sup>)</b>
0.3-1.34	100	100
1.34-3.0	100	180/F <sup>2</sup>
3.0—30	900/F <sup>2</sup>	180/F <sup>2</sup>
30-300	1.0	0.2
300-1,500	F/300	F/1500
1,500-100,000	5.0	1.0

Based on the proposed Nextel facility analysis and computation, the maximum power density at this location is 0.0039 mW/cm<sup>2</sup>. Therefore, the maximum permissible exposure for the general population at this site is equivalent to 0.66 percent of the recommended limit. Therefore, the risk of release of hazardous materials or 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 below:

### **PROJECT DESCRIPTION**

Nextel proposes to construct a new wireless communication facility including a 55 foot "stealth flagpole" style monopole and a 12 foot by 20 foot equipment shelter located inside a 30 foot by 18 foot leased area. The monopole will consist of a metal cylinder with three (3) enclosed panel-type antennas located at a 51 foot centerline elevation entirely inside the cylinder. The flagpole will measure 20 inches in diameter and the enclosed antennas will measure 7 inches wide, 96 inches long and 8 inches deep. The equipment shelter will be partially surrounded by a retaining wall.

**Project Access:**

Access to the project site is provided on the west side of Oro Loma Drive, 2,700 feet north of the intersection with Gold Hill Drive in the Placerville area.

**Site Description:**

The site consists of 1.43 acres and is located approximately 2.2 miles north/northwest of the western boundary of the Placerville Community Region. The subject parcel is located at the peak of Thompson Hill, at an elevation of approximately 2,025 feet. A view shed from the site down to the Lotus area runs parallel with the Granite Canyon/Lotus Road north-south alignment. The site soils are in the Auburn Series class, which consist of well-drained soils that are underlain by hard metamorphic rocks at a depth of 12 to 26 inches. The site is located in the Foothill Woodland plant community. Some of the dominant plants include Valley Oak, Blue Oak, Coast Live Oak, Interior Live Oak and Gray Pine. There are also a variety of shrubs including Gray Manzanita, Coffeeberry, Redberry, Currant, Gooseberry and Toyon.

**Adjacent Land Uses:**

	<b>Zoning</b>	<b>General Plan</b>	<b>Land Use/Improvements</b>
<b>Site</b>	R3A	MDR	Single-family residence
<b>North</b>	R3A	MDR	Single-family residence
<b>South</b>	R3A	MDR	Single-family residence
<b>East</b>	RE-5	RR	Single-family residence
<b>West</b>	RA-20	LDR	Unimproved

**General Plan:**

The General Plan designation of the subject site is Medium-Density Residential (MDR). This land use designation establishes areas suitable for detached single-family residences with larger lot sizes, between 1 to 5 acres, which will enable limited agricultural land management activities. This designation is considered appropriate only within Community Regions and Rural Centers. The following General Plan policy applies to this project:

Policy 5.6.1.4 Special use permits shall be required for the installation of community telecommunication facilities (e.g., microwave towers) in residential areas to ensure that siting, aesthetics, environmental issues, surrounding land uses, and health and safety are considered.

The cellular facility would be incidental to the main residential use of the property when developed. The design of the stealth flagpole and location on the site has been carefully considered for compliance with General Plan policies. The proposed tower and equipment

shelter have been designed to blend with the surroundings as well as possible by being disguised as a flagpole.

Findings can be made by the Planning Commission through the discretionary Special Use Permit process that the project is consistent with the specific, fundamental, and mandatory land use development goals, objectives, and policies of the General Plan with either choice, and is consistent with the development standards contained within the El Dorado County Zoning Ordinance. Staff finds that the project, as conditioned, conforms to the General Plan.

### **Zoning:**

The County permits wireless communication facilities in all districts, provided that they follow standards and permitting requirements defined in Section 17.14.200 of the County Code. These standards include screening, compliance with setbacks and proper maintenance. The applicant has provided a justification statement explaining the project site selection process (Exhibit E).

### **Special Use Permit Request**

The proposed use is permitted in the Single-Family Residential, Three Acre Minimum (R3A) Zone District, pursuant to Section 17.28.420 (I), and 17.14.200 (D) (5) (a-b), which requires new towers to be subject to a special use permit and then approval by the Planning Commission.

After review of the submitted site plan and visual simulations, it has been determined that the proposed project meets the standards contained in Section 17.14.200 E and F of the County Code. It can be found that the use will not conflict with the adjacent uses, and will provide a benefit to the area by improving cellular service.

### **Design and Development Standards**

Section 17.14.200(E) through (J) of the County Code requires that all wireless communication facilities meet certain criteria. Below is an analysis of these standards.

- a. Screening: The applicant is not proposing any fencing for the equipment shelter or monopole. The top of the pole will be visible at certain locations in the neighborhood and surrounding view sheds. Visual simulations of the wireless facility have been submitted (Exhibit F). As illustrated in the simulations, the monopole, as proposed, blends as well as can be expected into the surrounding area.
- b. Setbacks: The monopole and equipment shelter would comply within the required 30 foot minimum setbacks. The setback to the south is 36 feet and to the west it is 36 feet. No setbacks would be affected with the proposed project.
- c. Maintenance: Maintenance personnel would visit the site approximately once or twice 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 monopole and equipment shelter be maintained at all times consistent with the features depicted in the visual simulations.

- d. 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. Cingular Wireless has submitted a report indicating that the maximum power density at this location will be 0.0039 milliwatts per square centimeter (mW/cm<sup>2</sup>). Therefore, the maximum permissible exposure for the general population at this site is equivalent to 0.66% 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.
- e. 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.
- f. Unused Facilities: Section 17.14.200 (I) requires that 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 No. 7).
- g. Other Permit Requirements: Section 17.14.200(J) states certain notification requirements for projects located within 1000 feet of a school or in subdivisions governed by CC&Rs. There are no schools within 1,000 feet of the site or subdivisions governed by CC&Rs.

After review of the submitted site plan and a visual simulations 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.

### **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.

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 of the 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 future residential uses.

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

Department of Transportation  
El Dorado County Fire Protection District

**Discussion:** Both the Department of Transportation and El Dorado County Fire Protection District provided conditions of approval. All other agencies contacted had no specific concerns regarding the proposed special use permit.

### **ENVIRONMENTAL REVIEW**

Staff has prepared an Initial Study (Exhibit H) 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 Mitigated Negative Declaration has been prepared.

This project is found to be de minimis (having no effect on fish and game resources). Pursuant to Resolution No. 240-93, a \$35.<sup>00</sup> 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 S04-0041, subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

**SUPPORT INFORMATION**

**Attachments to Staff Report:**

Attachment 1 .....	Conditions of Approval
Attachment 2 .....	Findings
Exhibit A .....	Vicinity Maps
Exhibit B .....	General Plan Land Use Map
Exhibit C .....	Zoning Map
Exhibit D .....	Site Plan and Elevations
Exhibit E .....	Proposal Justification Statement
Exhibit F .....	Visual Simulations

## ATTACHMENT 1

### CONDITIONS OF APPROVAL AND MITIGATION MEASURES

#### Special Use Permit S04-0041

##### Planning Services

1. The authorization for the cellular communication facilities allowed by this permit is based upon and limited to compliance with the project descriptions and conditions of approval set forth below. Further, any deviations from the project(s) descriptions, 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 described approval will constitute a violation of the permit approval and may subject the authorized activities to revocation hearings.

##### **The project description is as follows:**

Construction of a new wireless communication facility consisting of a 55-foot stealth antenna, disguised as a flagpole. The facility will consist of a metal cylinder with (3) enclosed panel type antennas and ground equipment stored within a 550 square foot lease area. This Special Use Permit authorizes Nextel Communications to place the monopole and one equipment cabinets within a 15.5-foot by 35-foot lease area. The facility would be connected to land-based electrical and telecommunications utilities located on a nearby joint-utility pole. Access to the site is provided from the west side of Oro Loma Drive, 2700 feet north of the intersection with Gold Hill Drive in the Placerville area. This Special Use Permit authorizes maintenance personnel to visit the site approximately once or twice a month, at which time the facilities would be inspected to ensure proper operation and ongoing maintenance.

2. All site improvements shall conform to the site plan and elevations attached as Exhibit D.
3. All equipment shelters, cabinets or other auxiliary structures shall be painted in a matching color. Planning Services shall verify the painting of the structures prior to final inspection of the facility.
4. For collocation purposes, no further review by the Planning Commission shall be required provided that all ground-mounted equipment is located within the proposed leased area and provided that there is no increase in overall height.
5. All improvements associated with the communication facility, including equipment shelters, antennae, and fencing shall be properly maintained at all times. Planning Services 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.



6. The applicant shall assume full responsibility for resolving television reception interference, if any, caused by operation of this facility. The applicant shall take corrective action within 30 days of receipt by Planning Services of any written television interference complaint.
7. All obsolete or unused communication facilities shall be removed by the applicant within six (6) 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 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 (5) 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.

#### **El Dorado County Fire Protection District**

9. The applicant shall be subject to a site plan review fee of \$50.00 payable to El Dorado County Fire Protection District. The site plan review fee shall be due to the District prior to commencement of any work performed.
10. The applicant shall construct a minimum 12-foot wide all weather access road with a vertical clearance of 13 feet 6 inches and any turn in the road shall have a minimum inside turning radius of 40 feet. The road shall be capable of supporting a 40,000 pound load and shall not exceed a road grade of 16 percent. Road Grades shall not exceed 16%. El Dorado County Fire Protection District shall review and approve the location and design of the access road prior to issuance of a grading permit.
11. The applicant shall provide a Fire District approved turn-a-round within 50 feet of the project site.
12. Applicant shall provide high priority "Knox" Box with key to equipment shelter.

**El Dorado County Department of Transportation**

13. The applicant shall submit a site improvement/grading plan prepared by a professional civil engineer to the Department of Transportation for review and approval. The plan shall be in conformance with the County of El Dorado *Design and Improvement Standards Manual*, the *Grading, Erosion and Sediment Control Ordinance*, the *Drainage Manual*, the *Storm Water Management Plan*, the *Off-Street Parking and Loading Ordinance*, and the State of California Handicapped Accessibility Standards. A commercial permit is required.
14. 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.
15. The applicant shall place a minimum of four-inch thickness of three-quarter inch Class II aggregate base along a 12 foot wide access easement from the leased area to the existing driveway.
16. The applicant shall provide adequate area at the leased area site for a vehicle to exit the site in a forward direction. If existing access way is determined to be adequate by the Fire District, this condition shall be deemed fulfilled.

**ATTACHMENT 2**  
**FINDINGS**

**CINGULAR WIRELESS COMMUNICATIONS**

**FILE NUMBER S04-0041**

**1.0 CEQA FINDING**

- 1.1 The Planning Commission has considered the 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.
- 1.2 The Planning Commission finds that through feasible conditions and mitigation placed upon the project, impacts on the environment have been eliminated or substantially mitigated.
- 1.3 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of Planning Services at 2850 Fairlane Court, Placerville, CA.
- 1.4 Public Resources Code Section 21081.6 requires the County to adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of approval in order to mitigate or avoid significant effects on the environment. The approved project description and conditions of approval, with their corresponding permit monitoring requirements, are hereby adopted as the monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation.
- 1.5 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).

**2.0 ADMINISTRATIVE FINDINGS**

**2.1 Special Use Permit 04-0041 Findings**

Special Use Permit S04-0041 has been requested by Nextel Communications for the purpose of installing a 55-foot stealth monopole. This special use permit authorizes Nextel Communications to place the monopole and equipment shelter within a 40-foot by 30-foot lease area. The special use permit shall only be approved or conditionally approved if all of the following findings are made:

**2.1.1 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 proposal 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 or twice 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 and visual simulations 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 monopole in the Gold Hill/Placerville area.

**2.1.2 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 ground equipment and lease area within the project site will not be readily visible from an off-site public view, however, the top of the pole will be visible. Furthermore, Due to the design and brown non-reflective paint of the proposed tower, and stealth design of disguising the tower as a flagpole the project will not significantly intrude on the surrounding landscape. 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.

**2.1.3. 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 in the event that the site is developed for residential purposes. The development of the wireless facility does not prevent the use of the site for future residential use.