

County of Mendocino
Ukiah, California

JUNE 16, 2022

U_2017-0036 - AT&T CORPORATION

RESOLUTION OF THE PLANNING COMMISSION, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND GRANTING A COASTAL DEVELOPMENT USE PERMIT FOR A 76-FOOT TALL WIRELESS COMMUNICATIONS TOWER

WHEREAS, the applicant, AT&T Mobility, filed an application for a Coastal Development Use Permit with the Mendocino County Department of Planning and Building Services to construct a 76-foot tall faux water tank wireless communication facility and associated improvements, in the Coastal Zone, 1± miles north of the community of Manchester, on the north side of Kinney Road (CR 512), 1± miles west of its intersection with Highway 1, at 44601 Kinney Road (APN 133-010-04); General Plan PF; Zoning PF; Supervisorial District 5; (the "Project"); and

WHEREAS, an Initial Study and draft Mitigated Negative Declaration (SCH No. 2022040364) was prepared for the Project and noticed and made available for agency and public review on April 18, 2022 in accordance with the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines; and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public hearing on May 19, 2022, at which time the Planning Commission continued said hearing to June 16, 2022; and

WHEREAS, in accordance with applicable provisions of law, the Planning Commission held a public hearing on June 16, 2022, at which time the Planning Commission heard and received all relevant testimony and evidence presented orally or in writing regarding the Mitigated Negative Declaration and the Project. All interested persons were given an opportunity to hear and be heard regarding the Mitigated Negative Declaration and the Project; and

WHEREAS, the Planning Commission has had an opportunity to review this Resolution and finds that it accurately sets forth the intentions of the Planning Commission regarding the Mitigated Negative Declaration and the Project.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission, based upon the evidence in the record before it, makes the following findings;

1. The proposed development is in conformity with the certified local coastal program. Visual resources are protected by the use of a stealth design for the tower. There are no sensitive habitats documented on the parcel, though there is existing habitat for endangered species within vicinity of the project and appropriate mitigations have been placed on the project to ensure potential impacts are less than significant. The proposed development is in conformity with all other provisions of the local coastal program including public access, circulation, groundwater resources, archaeological resources and grading; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. Internal access roads will be developed that meet fire district standards, utilities will be extended to the site and drainage has been considered and conditions of approval included to ensure no impacts will occur as a result of the project; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district. The property is zoned Public and Semipublic Facilities Zoning District (PF), which is intended to be used to designate existing major public and community serving uses that should not be converted to other uses unless a plan amendment is approved. The site is already

developed with an existing facility that is the landing station for the trans-pacific cable. The proposed wireless communication facility is permissible in the zoning district with the granting of a Coastal Development Use Permit. The proposed development is in conformance with development standards, yard setbacks, etc. for the zoning district; and

4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. An Initial Study has been prepared which identified potentially significant impacts, which can be reduced to less than significant levels with the incorporation of several mitigation measures. As a result, a Mitigated Negative Declaration (SCH No. 2022040364) has been prepared. Section IX.d of the Initial Study shall be revised to state "No Impact: The project site is located on a hazardous materials site pursuant to Government Code Section 65962.5; however, the State Water Resources Control Board clean-up action has been closed and no further action recommended. In addition, the proposed Project is not located within the area of the property that was subject to the State Water Resources Control Board clean-up action." Pursuant to CEQA Guidelines section 15073.5(c)(4), recirculation of the Mitigated Negative Declaration is not required as the new information is added merely to clarify the Mitigated Negative Declaration and make insignificant modifications; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. The Mendocino County Archaeological Commission accepted the submitted Cultural Resources Investigation prepared by Archaeological Resources Technology dated September 2018 at its October 10, 2018 meeting and recommended that only the standard discovery clause condition be applied to the proposed project as no sites were identified in the Investigation; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. After construction is complete, maintenance workers are anticipated to visit the site approximately once per month, resulting in few additional vehicle trips per day than what presently exists from existing uses on the parcel. Adequate access for fire and emergency personnel are provided.
7. The site of the proposed project is located west of State Route 1 and is therefore subject to the public access findings of the Local Coastal Program. There is existing public access along Kinney Road leading out to the Manchester State Park. Access is sufficient in the area and the Coastal Element and Local Coastal Program Map #24 does not suggest any additional access as necessary across the subject parcel. The proposed development will not impact existing public access.

BE IT FURTHER RESOLVED that the Planning Commission hereby adopts the Mitigated Negative Declaration. The Planning Commission certifies that the Mitigated Negative Declaration has been completed, reviewed, and considered, together with the comments received during the public review process, in compliance with CEQA and State and County CEQA Guidelines, and finds that the Mitigated Negative Declaration reflects the independent judgment and analysis of the Planning Commission.

BE IT FURTHER RESOLVED that the Planning Commission hereby grants the requested Coastal Development Use Permit, subject to the Conditions of Approval and Mitigation Measures in Exhibit "A", attached hereto.

BE IT FURTHER RESOLVED that the Planning Commission designates the Secretary as the custodian of the document and other material which constitutes the record of proceedings upon which the Planning Commission decision herein is based. These documents may be found at the office of the County of Mendocino Planning and Building Services, 860 North Bush Street, Ukiah, CA 95482.

BE IT FURTHER RESOLVED that the Planning Commission action shall be final on the 11th day after the date of the Resolution unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission.

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

ATTEST: BROOKE LARSEN
Commission Services Supervisor

By: _____

BY: JULIA KROG
Director

ALISON PERNELL, Chair
Mendocino County Planning Commission

EXHIBIT A

CONDITIONS OF APPROVAL AND MITIGATION MEASURES

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Coastal Development Use Permit to authorize construction and operation of a wireless communication facility consisting of a 76 foot tall faux water tank with various appurtenant equipment and ground equipment including a generator and equipment cabinet. Associated improvements include establishment of access to the site via a gravel road and trenching of power and fiber to the site location. The proposed faux water tank will be located within a 1,050 square-foot fenced compound. Fencing is proposed to be 6 foot tall redwood fencing.

APPROVED PROJECT DESCRIPTION: Coastal Development Use Permit to authorize construction and operation of a wireless communication facility consisting of a 76 foot tall faux water tank with various appurtenant equipment and ground equipment including a generator and equipment cabinet. Associated improvements include establishment of access to the site via a gravel road and trenching of power and fiber to the site location. The proposed faux water tank will be located within a 1,050 square-foot fenced compound. Fencing is proposed to be 6 foot tall redwood fencing.

CONDITIONS OF APPROVAL AND MITIGATION MEASURES (as indicated by “”):**

Aesthetics

1. ** Mitigation Measure AES-1: The total height of faux water tank tower including antennas shall not exceed 76 feet in height above ground level. Within sixty (60) days of completion of the installation of the facility, the applicant shall confirm that the height is no greater than approved, and shall submit a written certification to the County of the actual height.
2. ** Mitigation Measure AES-2: No antennas shall be mounted outside of the faux water tank. All antennas shall be adequately shielded and placed within the interior of the faux water tank.
3. ** Mitigation Measure AES-3: If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
4. ** Mitigation Measure AES-4: Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
5. ** Mitigation Measure AES-5: Exterior surfaces of structures and equipment shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
6. ** Mitigation Measure AES-6: An evaluation of the facility's stealth capability shall be submitted for review and approval by the Department of Planning and Building Services after the initial construction, one year following construction and every five years thereafter. The report shall assess surrounding vegetation growth, including height and density in the vicinity, and a color

assessment to assess fading of material. Replacement or remediation of the wireless facility shall be performed by the applicant if required by the Department of Planning and Building Services.

Air Quality

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

Biological Resources

10. **Mitigation Measure BIO-1: Compliance with the Updated Tower Avian Avoidance Plan prepared by Geist Engineering and Environmental Group, Inc. dated August 31, 2021 shall be required at all times. AT&T shall retain a qualified consultant to visually document the condition of the anti-predator control devices each year by February 15. The consultant shall prepare a report of findings on the condition of the anti-predator control devices and if required make appropriate recommendation for repairs, additions, or replacement. AT&T shall provide a copy of this report to Mendocino County Planning and Building Services and US Fish and Wildlife Service as well as keep the yearly inspection reports on-file.
11. **Mitigation Measure BIO-2: Lighting Restrictions per the Tower Avian Avoidance Plan are as follows:
 - a. No lights are permitted on the Tower. Per the Federal Aviation Administration (FAA) lighting on the upper portions of the tower is not required. If lighting on the tower is required in the future, an amendment to this permit shall be required.
 - b. The at-grade facility compound shall have a manual light switch with a timer set for 15 minutes maximum or less.
 - c. Motion activated lights are not permissible.
 - d. AT&T shall direct any ground equipment lighting away from Manchester Beach.
12. **Mitigation Measure BIO-3: If ground disturbing activities occur during the breeding season of migratory avian or raptor species (February through mid-September), surveys for active nests will be conducted by a qualified biologist no more than 10 days prior to start of activities. Pre-construction nesting surveys shall be conducted for nesting migratory avian and raptor species in the project site and buffer area. Pre-construction biological surveys shall occur prior to the proposed project implementation, and during the appropriate survey periods for nesting activities for individual avian species. Surveys will follow required CDFW and USFWS protocols, where applicable. A qualified biologist will survey suitable habitat for the presence of these species. If a migratory avian or raptor species is observed and suspected to be nesting, a buffer area will be established to avoid impacts to the active nest site. Identified nests should be continuously surveyed for the first 24 hours prior to any construction-related activities to establish a behavioral baseline. If no nesting avian species are found, project activities may proceed and no further Standard Construction Conditions measures will be required. If active nesting sites are found, the following exclusion buffers will be established, and no project activities will occur within these buffer zones until young birds have fledged and are no longer reliant upon the nest or parental care for survival.

- Minimum no disturbance of 250 feet around active nest of non-listed bird species and 250 foot no disturbance buffer around migratory birds;
 - Minimum no disturbance of 500 feet around active nest of non-listed raptor species;
 - 0.5-mile no disturbance buffer from listed species and fully protected species until breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.
 - Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of project activities. If behavioral changes are observed, the work causing that change should cease and the appropriate regulatory agencies (i.e. CDFW, USFWS, etc.) shall be consulted for additional avoidance and minimization measures.
13. ****Mitigation Measure BIO-4:** A pre-construction Point Arena Mountain Beaver survey will be conducted for the proposed project. If any populations or burrow/tunnel systems for this species are discovered, these burrow/tunnel systems and populations will be protected by establishing at a minimum a 100-foot buffer to them. If these populations or burrow/tunnel systems are located less than 100 feet of or within the project construction zone, proposed project components will be adjusted if feasible. In the case that this is not possible, then AT&T will enter into consultations with the USFWS and CDFW to determine next actions prior to construction of the proposed project.
 14. ****Mitigation Measure BIO-5:** Vegetation removal shall be limited to the footprint of the proposed tower and associated structures. High-visibility construction fencing shall be erected and maintained delineating the boundary between selected vegetation removal/ground disturbance and non-removal areas throughout the construction period. Removal of vegetation at the site shall be avoided and minimized to the maximum extent feasible.
 15. ****Mitigation Measure BIO-6:** Construction areas shall not extend beyond the area necessary to complete the project and shall not encroach into ESHA buffer beyond that described in the biological assessment report. During construction, construction materials shall be stored in non-ESHA areas, and shall be clearly designated by high-visibility construction fencing or other signage. Spill prevention devices shall be utilized for all toxic liquids, including but not limited to gasoline, diesel, motor oil, solvents, paints, and herbicides. All spills of toxic liquids shall be immediately cleaned up.
 16. ****Mitigation Measure BIO-7:** Temporarily impacted areas shall be restored to pre-construction contours and shall be revegetated upon completion of the project. In order to stabilize areas of loosened soil and establish temporary erosion controls, impacted areas shall be reseeded and/or replanted with fast-growing, locally native herbaceous species.
 17. ****Mitigation Measure BIO-8:** Standard erosion control Best Management Practices (BMPs) shall be implemented to prevent erosion, such as straw wattles, silt fencing, coir mats, etc. No monofilament netting, which may entrap sensitive herpetoflora, shall be utilized.
 18. ****Mitigation Measure BIO-9:** A qualified botanist will conduct pre-construction field surveys to identify any populations of special-status plant species within the proposed project site that will be disturbed during project activities. These surveys shall be conducted prior to the initiation of any construction activities and coincide with the appropriate flowering period of the special-status plant species with the potential to occur in the project area. If any special-status plant species populations are identified within or adjacent to the proposed disturbance areas, the project proponent shall implement the following measures to avoid impacts to these species:
 - a. If any population(s) of special-status plant species is identified directly adjacent to the proposed project site, a qualified biologist retained by project proponent will clearly delineate the location of the plant population, and install protective fencing between the

disturbance zone and the plant population to ensure that the plant population is adequately protected.

- b. If a special-status plant population is identified within the proposed disturbance zone, the project proponent will consult with CDFW and USFWS to determine the appropriate measures to avoid or mitigate for impacts to the species or population. The project proponent will adjust the boundaries of the disturbance zone, where feasible, to avoid impacts to the plant species/population. Where avoidance is not feasible, the project proponent will implement one or more of the following measures: (1) transplant potentially affected plants to areas not planned for disturbance. If a plant is transplanted, two more plants shall be planted. Plantings shall be managed and monitored by the applicant and shall survive to 5 years after planting; (2) seed or purchase plants and place them in an area adjacent to the disturbance zone; (3) purchase credits at an approved mitigation bank at a ratio approved by CDFW, USFWS, and the project proponent.
 - c. The biologist will install protective fencing and install signage around the two (2) populations to protect them. As a part of the environmental training program for the project, the biologist will discuss the C.p. saxicola populations and methods to protect them during the construction process.
19. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Wildlife Code are submitted to the Mendocino County Department of Planning and Building Services. **Said fee of \$2,598.00 (fee will change after January 1st, 2023), shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the end of any appeal period.** Any waiver of the fee shall be on a form issued by the Department of Fish and Wildlife upon their finding that the project has “*no effect*” on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

Cultural Resources

20. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.

Geology and Soils

21. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site. Project construction activities are limited to the project footprint. Trenches will need to be filled and resurfaced to match the original surface.
22. All grading and site preparation, at a minimum, shall adhere to the following “Best Management Practices”: The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
- e. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - f. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.

- g. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
- h. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
- i. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
- j. All earth-moving activities shall be conducted between May 15th and October 15th of any given calendar year unless an Erosion and Sedimentation Prevention Plan, prepared by a registered civil engineer, has been submitted and approved by the Department of Planning and Building Services which outlines wet weather earthmoving and drainage control protocols. Such plan shall include all appropriate Best Management Practices that shall be installed in accordance with the approved Erosion and Sediment Prevention Plan prior to the start of construction during the rainy season.
- k. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 - i. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
 - ii. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.

Hazardous Materials:

- 23. Should fuel storage at the site exceed thresholds established for when preparation of a Hazardous Materials Management Plan is required, a Hazardous Materials Management Plan (HMMP) shall be submitted to the satisfaction of the Division of Environmental Health. Prior to the issuance of any building permits in reliance of this Use Permit, the applicant shall furnish evidence from the Division of Environmental Health that either a HMMP is not required or that one has been submitted to the satisfaction of the Division of Environmental Health.

Noise

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

Public Services

- 25. The applicant shall complete CalFire standard fire safe requirements pursuant to CalFire #536-17. The applicant shall obtain written verification from CalFire stating that this condition has been met to the satisfaction of CalFire and submit it to the Department of Planning and Building Services.

26. The facility shall provide if requested, space for any public emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.

Wireless Guidelines

27. Prior to the final inspection by the Building Division of the Department of Planning and Building Services, an identification sign for each company responsible for operation and maintenance of facilities at the site, not larger than two square feet, shall be posted at a location from which it can be easily read from outside the perimeter of the communications facility, and shall provide the name, address, and emergency telephone number of the responsible company. The address assigned to the site by the Planning and Building Services Department shall be posted.
28. Antennas and antenna towers shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the state of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department. Costs of the inspection and report shall be borne by the applicant.
29. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
30. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site and to require no more than a reasonable charge for collocation.
31. One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower. The Wireless Communications Facility shall comply in all respects with the current standards of the American National Standards Institute (ANSI)
32. Equipment buildings and enclosures shall be equipped with automatic fire extinguishing systems acceptable to the responsible fire agency.

Standard Conditions

33. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
34. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless the Planning Commission has approved a modification.
35. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
36. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

37. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
38. This permit is issued for a period of ten years, and shall expire on **June 16, 2032**. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
39. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
40. All Conditions of Approval and Mitigation Measures shall be printed on any building permit plans submitted to the Department of Planning and Building Services.