

TOWN COUNCIL STAFF REPORT

Title: Public hearing for consideration of an appeal of the February 14, 2024 Planning and Economic Development Commission decision to approve Use Permit Application 23-002 for the construction of an 80-foot tall “stealth monopine” cell tower located at 1574 Old Mammoth Road.

Meeting Date: April 3, 2024

Prepared by: Michael Peterka, Associate Planner
Nolan Bobroff, Community and Economic Development Director

RECOMMENDATION:

Staff recommends the Town Council deny the appeal of the Planning and Economic Development Commission decision and affirm the approval of Use Permit Application 23-002.

SUMMARY:

Proposal: The proposed project is an 80-foot tall “stealth monopine” cell tower located at 1574 Old Mammoth Road at Mammoth Lakes Fire Protection District Station #2. The parcel is within the Resort (R) Zoning District (Snowcreek Master Plan Area) and the project is subject to the Town’s Telecommunication Facilities standards specified in the Municipal Code. The tower will be located in the rear northeast corner of the property owned by the Mammoth Lakes Fire Protection District.

Applicant / Property Owner: Eukon Group on behalf of AT&T / Mammoth Lakes Fire Protection District

Project Name: AT&T Cell Tower at Fire Station #2

Location: 1574 Old Mammoth Road (APN: [040-040-021-000](#))

Size of Property: 0.91 acres (39,640 sq. ft.)

Zoning: Resort (R) – Snowcreek Master Plan

General Plan: Resort (R)

Environmental Review: Categorically Exempt (CEQA Guidelines Section 15303)

BACKGROUND:

An application for a Use Permit was submitted to the Town on July 20, 2023, for the proposed 80-foot tall “stealth monopine” cell tower located at 1574 Old Mammoth Road on a 0.91-acre parcel in the Resort (R) zoning district that is also occupied by Mammoth Lakes Fire Protection District Station #2. The proposed cell tower is intended to improve cellular service in an area that currently has poor service and also improve emergency communications for the Fire District and other first responders. The tower will initially be used by AT&T and there is a potential that another service provider may collocate their equipment on the tower through approval of a subsequent permit, but no such plan exists at this time.

November 8, 2023 PEDC Meeting

This item was originally scheduled for a public hearing at the November 8, 2023 Planning and Economic Development Commission (PEDC) meeting; however, due to an error in the public noticing that inadvertently resulted in a number of property owners not receiving the public hearing notice, the item was continued to a future PEDC meeting.

February 14, 2024, PEDC Meeting

The PEDC held a noticed public hearing for the AT&T Cell Tower at Fire Station #2 Use Permit application on February 14, 2024. Public comments were made during the public hearing which included objections to the project based on visual impacts and impacts to property values. Public comments were also made in support of the project due to its improvements to public safety. The PEDC closed the hearing and approved the project by a 5-0 vote.

Project Appeal:

On February 29, 2023, the Snowcreek VII Condominium Owner’s Association (“Appellant”) submitted an appeal of the decision of the PEDC. The appeal was timely filed within the 15-day appeal period following the project approval. The appeal can be found in **Attachment B**.

LEGAL BACKGROUND:

Federal Limits on the Town’s Authority. 47 U.S.C. § 332(c)(7) (“Section 332”) is the principal federal law limiting the Town’s authority over placement of wireless facilities.¹ Section 332 recognizes and preserves local zoning authority over the placement, construction and modification of wireless communications facilities, provided the locality complies with the following five requirements.

- a. The Town Must Act on a Wireless Application Within A Reasonable Time

¹ Another federal law, 47 USC 1455, and related FCC rules, also preempt local authority to deny certain insubstantial modifications to existing wireless facilities. This law is known as the Spectrum Act and the modifications it allows are known as eligible facilities requests or EFRs.

Section 332(c)(7)(ii) provides that local authorities must make a final decision regarding whether to approve or deny an application within a “reasonable period of time” after the request is filed, taking into account the nature and scope of the request. In 2009, the FCC established “presumptively reasonable periods” for local action on a wireless communications facility siting application—typically referred to as the “shot clocks.” Applications that propose a “collocation” must be approved or denied within 90 days; applications for all other facilities must be approved or denied within 150 days.² The FCC has since adopted three other “shot clocks” for other types of wireless applications.

Also worth noting, a California state law, Gov. Code Section 65964.1, provides that if a local government fails to act within the time required by the applicable FCC shot clock, the applicant may pursue a “deemed approval” of its application by providing notice to the local government, and the local government would have to go to court within 30 days to try to challenge the deemed granted assertion. However, this remedy is not available to applications for a wireless telecommunications facility where the project is proposed for placement on fire department facilities.

b. Town Cannot Regulate Based on RF Emissions Exposure Concerns, But Can Require Compliance with FCC Standards

The Federal Communications Commission (“FCC”) has exclusive responsibility and authority to set safety standards for public and worker exposure to radio frequency (RF) emissions. Section 332(c)(7)(B)(iv) prohibits the Town from denying a wireless facility application based on concerns about RF emissions so long as the applicant has demonstrated that its facilities will comply with FCC standards.³ The FCC issued OET Bulletin 65, which provides technical guidelines for evaluating compliance with the FCC RF safety requirements.⁴

Consistent with these limitations, localities can require wireless facility applicants to demonstrate that the maximum exposure levels established by the FCC would not be exceeded. Typically the applicant is required to prepare an RF/EME technical study demonstrating that the proposed facility will comply with the FCC’s standards.

² *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, WT Docket No. 08-165 (2009).

³ 47 U.S.C. Section 332(c)(7)(B)(iv); see *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, Report and Order, ET Docket No. 93-62, FCC 96-326, para. 166 (F.C.C. 1996), https://transition.fcc.gov/Bureaus/Engineering_Technology/Orders/1996/fcc96326.pdf. On August 1, 1996, the FCC adopted the National Council on Radiation Protection and Measurements’ recommended Maximum Permissible Exposure limits for field strength and power density for those transmitters operating at frequencies of 300 kHz to 100 GHz. The FCC adopted the specific absorption rate (SAR) limits for devices operating within close proximity to the body as specified within the ANSI/IEEE C95.1-1992 guidelines. *Id.*

⁴ <https://www.fcc.gov/general/oet-bulletins-line#65>.

c. Town Cannot Effectively Prohibit the Provision of Personal Wireless Services

While federal law preserves local authority to establish wireless regulations, Section 332(c)(7)(B)(i)(II) restricts the Town from applying its local regulations to deny an application to the extent that the denial of the proposed facility would result in the prohibition or effective prohibition of the provision of personal wireless services. The Ninth Circuit has held that applying local regulations to deny a wireless facility application can improperly “prohibit” a wireless provider’s provision of personal wireless services if it prevents the wireless provider from closing a “significant gap” in its own service using the least intrusive means, having considered feasible alternatives. When making an effective prohibition claim, the applicant has the initial burden of proof. There is no bright-line rule for determining when a gap is “significant;” instead, the conclusion is based on a fact-specific analysis of coverage and demand. To satisfy the least intrusive means standard, the applicant must show that it made a good faith effort to identify and evaluate alternatives, such as considering less sensitive sites, alternative system designs, alternative tower designs, and the use of existing structures for antenna placement, and proposes the least intrusive alternative. The applicant must analyze the specific factors in the locality’s code rather than solely relying upon generalized observations. Once the applicant has done that, the burden shifts to the locality to rebut the applicant’s least intrusive means analysis. That is, a municipality is not compelled to accept and may reject the provider’s least intrusive means analysis, so long as the locality is able to show that there are some potentially available and technologically feasible alternatives. The provider must be given an opportunity to dispute the availability and feasibility of the alternatives favored by the locality.

d. Any Denial Must Be Supported By Substantial Evidence

Section 332(c)(7)(B)(iii) requires that any decision under local regulations to deny a request to construct personal wireless facilities “shall be in writing and supported by substantial evidence contained in a written record.” The reasons for application denial must be provided contemporaneously with the denial decision.⁵ To determine whether a local government’s decision under its local wireless regulations is supported by substantial evidence within the meaning of the statute, a reviewing court “must be able to identify the reason or reasons why the locality denied the application.”⁶ The rationale behind such a denial need not be “elaborate or even sophisticated”—rather, a local authority must provide a rationale clear enough to “enable judicial review.”⁷

e. Town Cannot Discriminate Among Providers of Functionally Equivalent Services

Section 332(c)(7)(B)(i)(I) prohibits the Town from “unreasonably discriminat[ing] among providers of functionally equivalent services.” This limitation is intended to prevent

⁵ 47 U.S.C. § 332(c)(7)(B)(iii); see *T-Mobile S., LLC v. City of Roswell, Ga.*, 135 S. Ct. 808, 815 (2015).

⁶ *Id.* at 814.

⁷ *Id.* at 815.

the Town from dictating a preference for certain wireless technologies over others. For example, a local government cannot prohibit 5G wireless facilities.

APPEAL ANALYSIS:

The appeal includes seven topic areas: 1) CEQA and Environmental Impacts; 2) Public Safety; 3) Aesthetic Impacts to the Community; 4) Visual Assessment; 5) Decrease in Property Values; 6) Gaps in Service; and 7) Alternative Site Considerations.

- **Topic 1:** The appeal states that the Class 3 CEQA exemption does not apply to the project because of its height and potential for its materials to be hazardous to the local grounds, flora, and fauna.

Staff Response:

The project was determined to be categorically exempt from CEQA since the project met all of the criteria to qualify for the exemption. In order to qualify for a Class 3 CEQA categorical exemption, a commercial project must not exceed 2,500 square feet in floor area to be considered a small structure and not meet any of the criteria outlined in the exceptions to the exemptions. The area of the proposed monopine and equipment has a total floor area of approximately 640 square feet and therefore does not exceed the 2,500 square foot limit. Additionally, none of the exceptions to the exemptions are applicable, as outlined in the PEDC Staff Report and Resolution and in the Key Issue #2 section, below. Therefore, the project qualifies for use of the Class 3 exemption. The criteria to qualify for the exemption does not take into account the height of a structure, only its total floor area if the project height is consistent with the zoning regulations.

Additionally, the argument that the monopine may be hazardous to local grounds, flora, and fauna is not supported by legal authority and there is no evidence to support the argument that the fake monopine would be hazardous to the environment.

- **Topic 2:** The appeal argues that the proposed cell tower will have a limited improvement on public safety because it will only benefit AT&T customers.

Staff Response:

This appeal topic is not germane to any requirement for telecommunications facilities in the Municipal Code, and it does not relate to any required findings of approval for the use permit sought. Solely for the Council's information, the FCC requires all wireless carriers to transmit 911 calls regardless of whether the caller subscribes to the wireless carrier's service or not, thus non-AT&T subscribers may utilize the proposed site for 911 calls if their respective wireless carrier does not maintain adequate coverage in the area served by the proposed tower. The cell tower will improve the ability of the Fire District and other emergency service providers to transmit critical health and safety messaging through the Integrated Public Alert and Warning System (IPAWS). Additionally, the cell tower will allow the Fire District to utilize FirstNet, which provides first responders with priority on the tower when the system is at high use. This will allow first responders to communicate when the cell tower is "jammed" by a large number of people using the system, which often takes place during emergencies. The Fire District has indicated that

it would like to add an additional wireless carrier, but no such plan has been finalized at this time. The Wireless Alert System cellular phone integration capabilities of the IPAWS system has proven to be the most efficient way to reach the public during emergencies, especially with regards to the large tourist population since they are not aware of any other messaging systems that might be used locally. In addition, the proposed cell tower is designed at a height that could allow for co-location of a second service provider. Verizon has shown interest in the site, but an agreement with them has not been finalized at this time. It is unknown at this time whether Verizon or any other wireless carrier will move forward at this site at this time, but as noted earlier, that issue is not relevant.

- **Topic 3:** The appeal argues that the proposed cell tower will have a negative impact on the aesthetics of the community.

Staff Response:

The project is subject to the development standards found in Zoning Code Section 17.52.280 (Telecommunication Facilities). The purpose of these wireless development standards according to Section 17.52.280(a) is “to preserve the unique visual character of the Town, promote the aesthetic appearance of the Town, and to ensure public safety and welfare.” The project meets all of the applicable standards. These include locating the facility in the rear of the property (not visible from public right-of-way) and screening (i.e., faux pine tree design) to blend the structure into the surroundings. The proposed faux pine tree design is intended to minimize the visual impacts of providing coverage in the area and that design was chosen to blend in with the surrounding pine trees on the site. The surrounding pine trees have an approximate average height of 55-65 feet. Furthermore, the Town’s Zoning Code does not protect views from private property, including the views from the entirety of the Snowcreek VII development and the private streets within the development.

- **Topic 4:** The appeal argues that the visual assessment prepared by the applicant is defective and misleading for failing to utilize images taken from the nearby private residences that may be impacted by the proposed facility.

Staff Response:

The Code requirement for the visual assessment does not require a wireless applicant to generate photosimulations of a proposed facility from the perspective of the private properties which would be impacted, but rather from the public perspective. Furthermore, a statement confirming the accuracy of the photo-simulations is included in **Attachment D-2**. The statement is from the independent contractor that was tasked with producing the photo-simulations on behalf of Eukon Group.

- **Topic 5:** The appeal argues that the cell tower will have a negative impact on the property values of nearby homes.

Staff Response:

As noted above, the purpose of the Code’s wireless standards according to Section 17.52.280(a) is “to preserve the unique visual character of the Town, promote the

aesthetic appearance of the Town, and to ensure public safety and welfare.” The Town’s standards and requirements do not include an evaluation of the effect of any particular development on property values. Instead, the Code requires as a necessary finding of approval “that the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health and safety nor materially injurious to properties or improvements in the vicinity.” The Code sets applicable design requirements for wireless facilities to address aesthetics. The proposed faux tree design and other screening was intended to avoid unreasonable interference with views and to address the minimal requirements of the Code for telecommunication facilities (i.e., that they are located near existing utility poles, trees, or similar objects, and consist of colors and materials that best blend with the background).

Additionally, any claims that a proposed wireless facility will result in diminished property values that are rooted in a concern about the perceived effects of RF emissions exposure cannot constitute substantial evidence supporting a denial of a wireless facility application.⁸

- **Topic 6:** The appeal argues that the applicant is required to prove there are significant gaps in wireless service and that the proposed location will remedy those gaps.

Staff Response:

The Appellant incorrectly attempts to convert the Town’s application requirement into a required finding. Section 17.52.280(F)(1)(a) requires applicants to provide “[a] map showing planned and/or anticipated future needs of wireless communication services and facilities within and throughout the town, including a discussion of existing local network facilities and service gaps.” The applicant has met this application requirement through the submission of their Site Justification Coverage Maps dated January 12, 2024, and their Technical Siting Analysis dated February 8, 2024. The maps display the existing coverage in the area as well as other AT&T cell towers in Town and the surrounding area. The maps show that a large portion of the area around the proposed cell tower currently does not have adequate coverage indoors or in vehicles. The provided map showing coverage with the proposed tower indicates a large improvement in indoor coverage in the area surrounding the tower. The Municipal Code does not require the applicant to demonstrate that there is a significant gap and that the proposed facility will remedy this gap. The Town is limited to making the required findings for a Use Permit listed in Section 17.68.050.

- **Topic 7:** The appeal argues that the applicant did not in good faith consider alternative sites.

Staff Response:

The Appellant misstates this alternative site analysis requirement in its appeal memorandum. Section 17.52.280(F) instead requires wireless applicants to submit “An

⁸ California RSA No. 4 v. Madera County, 332 F.Supp.2d 1291, 1309 (E.D. Cal. 2003); AT&T Wireless Services of California LLC v. City of Carlsbad, 308 F.Supp.2d 1148, 1161(S.D. Cal. 2003).

alternative site analysis detailing the specific steps undertaken to determine the applicant's selection of a particular site consistent with Subsection 17.52.280F.2.” Subsection 17.52.280(F)(2) sets forth a list of preferences for sites.⁹ The applicant did this in their application, a supplemental Technical Siting Analysis, dated February 8, 2024 and at the February 14th meeting by describing in detail their thought process and site selection, which lead them to the currently proposed location.

The submitted documents and the applicant’s statements at the February 14th meeting demonstrate that AT&T and their consultant, Eukon Group, performed a thorough site analysis and determined Fire Station #2 to be the best site for the monopine cell tower. Other sites that were considered include the St. Joseph’s Catholic Church located at 58 Ranch Road and the Snowcreek Athletic Club located at 51 Club Drive. The church site is not a viable location because it is zoned Residential Multi-Family 2, and telecommunication facilities are not permitted in residential zones. The Snowcreek Athletic Club was not pursued due to lack of landlord interest at the time AT&T was conducting their alternative site analysis. The technical siting analysis (**Attachment D-5**) provides additional information on the thought process related to the site selection for the proposed wireless facility. The Municipal Code does not require the applicant to demonstrate that it considered alternative sites in good faith, though the alternatives analysis submitted suggests that it did do so. The Town is limited to making the required findings for a Use Permit listed in Section 17.68.050.

APPLICANT RESPONSE TO APPEAL:

In response to the appeal, the Applicant, through its attorney Porter Wright Morris & Arthur LLP, submitted a response to the Appellant’s appeal memorandum (“Applicant Response”).

The Applicant Response generally addresses topics related to: 1) AT&T’s need for the facility and apparent gap in service coverage; 2) AT&T’s alternative site analysis; and 3) Responses to various claims outlined in the Appellant’s appeal memorandum including, public safety, aesthetic impact, coverage goals and method to meet such needs, and aesthetic and property value concerns, as more specifically outlined in the Applicant Response which is included as **Attachment C**. It is important to note that the Applicant has claimed that it has met the Town’s Code requirements and is entitled to approval under the Town’s Code, a conclusion also reached by the Planning and Economic Development Commission in its decision. If Council agrees, there is no need to consider any arguments about effective prohibition claims made by the Appellants or the Applicant. Applicant further argues that even if Council has a basis to deny the application under its Code, it cannot do so because a denial would be an illegal prohibition of wireless service in violation of federal law. To support an effective prohibition claim (if necessary), Applicant has provided documentation

⁹ Subsection 17.52.280F.2 provides in full: “Sites for cellular wireless communications facilities shall be selected according to the following order of preference: a. On or within existing structures (e.g., church steeple, roof top stairwell or equipment enclosures, etc.). b. Co-location facilities (i.e., locating equipment from more than one provider on a single facility). c. In locations where existing topography, vegetation, or other structures provide the greatest amount of screening. d. On parcels which will not require significant visual mitigation.”

identifying what it claims is a significant gap in service and alleging the proposed facility is the least intrusive, feasible means of filling that gap.

PROJECT PROPOSAL:

Project Summary

The proposed project is an 80-foot tall “stealth monopine” cell tower located at 1574 Old Mammoth Road on a 0.91-acre parcel in the Resort (R) zoning district that is also occupied by Mammoth Lakes Fire Protection District Station #2. The proposed cell tower is intended to improve cellular service in an area that currently has poor service and also improve emergency communications for the Fire District and other first responders. The tower will initially be used by AT&T and based on size, there is a potential for another service provider to collocate their equipment on the tower through approval of a sequential use permit at some time in the future. A rendering of the proposed monopine can be seen in **Figure 1**. See **Attachment D-1** for the project plans.

The applicant’s site selection process focused on the Old Mammoth area due to an apparent gap in the acceptable level of cell service in that area of the community. Through a review of the existing AT&T network of towers, the applicant determined that modifications to those existing towers (e.g., increase in height, equipment upgrades, additional antennas) would not provide the necessary coverage for the area, and that the best solution to providing adequate coverage in the area was the installation of a new tower in the Old Mammoth area. According to the applicant, the topography and development pattern (i.e., primarily residentially zoned) of the Old Mammoth area presents challenging circumstances to finding a suitable location for a tower and the applicant analyzed other potential sites in the area (i.e., those with suitable zoning or land uses). Along with the proposed cell tower location at 1574 Old Mammoth Road, two other sites in the vicinity were considered by the applicant. Per the ‘Technical Siting Analysis’ (see **Attachment D-5**) included in the application, the other sites considered were adjacent to the proposed site to the west and south and included the Snowcreek Athletic Club (51 Club Drive) and the St. Joseph’s Catholic Church (58 Ranch Road). Those two sites were not further pursued or analyzed due to a lack of interest from the property owner (the athletic club owner was not previously interested in hosting a cell tower) or non-compatible zoning designation (the church site is zoned Residential Multi-Family 2 and telecommunication facilities are not a permitted use in that zone), among other reasons as outlined in the Technical Siting Analysis. The proposed location allows for the coverage objectives to be met (i.e., provide dependable connectivity for stationary and in-building coverage), as shown in the propagation maps included in **Attachment D-3**.

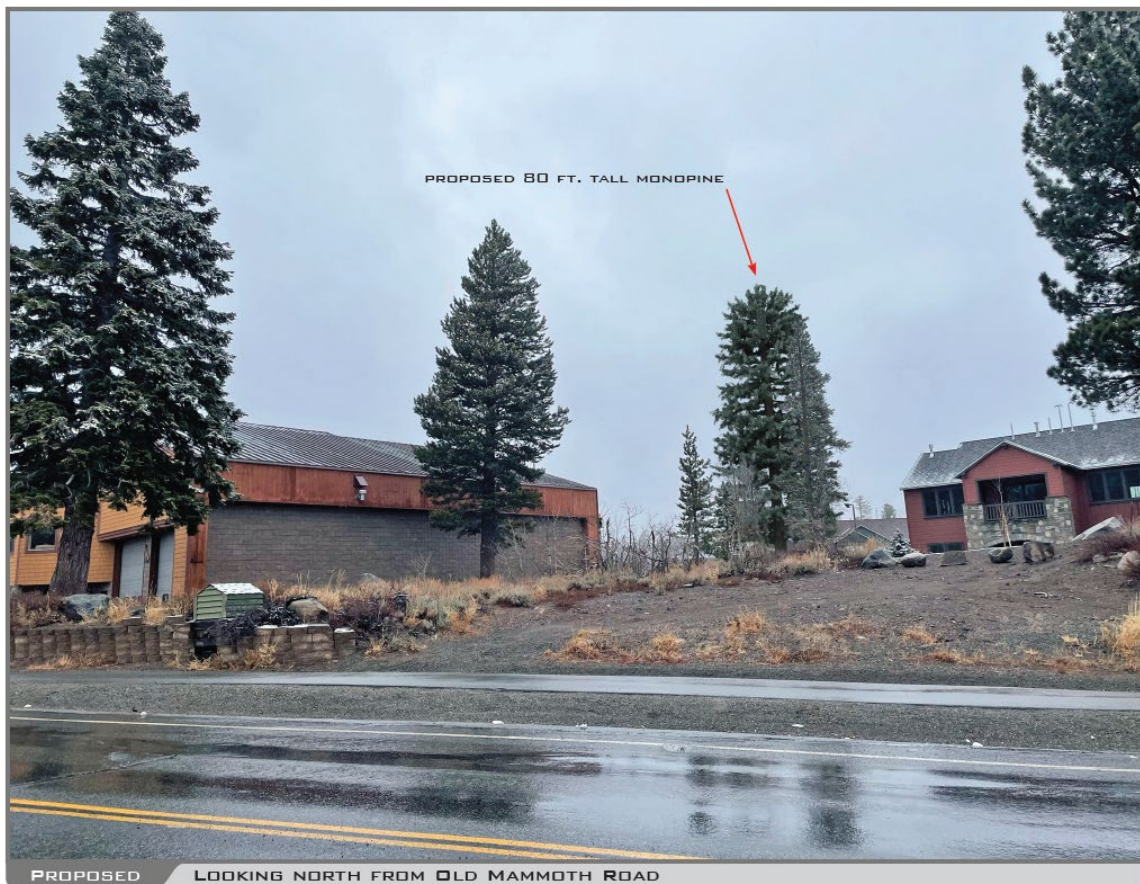
The tower height of 80 feet was determined to be the minimum height necessary to achieve the desired coverage objectives, whereas per the attached propagation maps in **Attachment D-3**, a tower height of 65 feet or 35 feet would decrease the coverage area, especially for in-building coverage. The proposed antennas will be located at 74 feet, but a total tower height of 80 feet is needed in order to create the cone shaped treetop that is intended to mimic a pine tree. Per the applicant, the proposed faux pine tree design is intended to be the least intrusive means of providing coverage in the area and that design was chosen to

blend in with the surrounding pine trees on the site. The surrounding pine trees have an approximate average height of 55-65 feet.

As described in this report, staff finds the project consistent with the Town’s General Plan and Municipal Code. Additionally, staff determined the project to be categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15303, New Construction or Conversion of Small Structures.

Based on analysis, staff has determined that the required findings to support the requested approval can be made under the Code without the need to consider the Applicant’s effective prohibition claim and recommends approval of the Use Permit with the conditions of approval noted in the attached resolution, **Attachment A**.

**FIGURE 1: PUBLIC VIEW OF PROPOSED MONOPINE FROM OLD MAMMOTH ROAD
(ADDITIONAL VIEW RENDERINGS ARE INCLUDED IN ATTACHMENT D-2)**



Existing Site and Surrounding Land Uses

The project is located at 1574 Old Mammoth Road, which is the location of Mammoth Lakes Fire Protection District Station #2. The 0.91-acre site is in the Resort (R) Zoning District (Snowcreek Master Plan Area). The surrounding land uses consist of Resort Zoned multi-family residential properties to the north, east, and west; Snowcreek Athletic Club to

the west; and St. Joseph’s Catholic Church and a single-family residence to the south. See **Figure 2** below for a map showing the site location and surrounding context. **Table 1** describes the surrounding land uses and zoning.

FIGURE 2: PROJECT LOCATION MAP

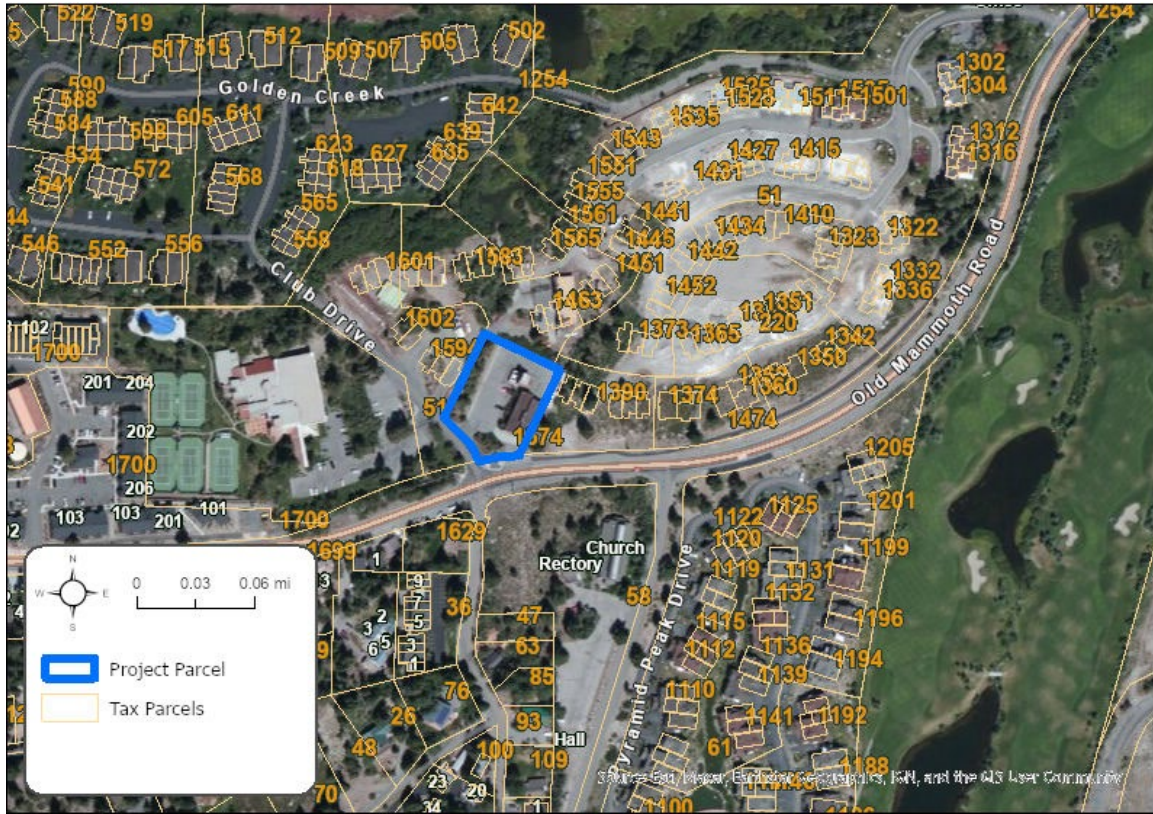


Table 1: Surrounding Land Uses and Zoning.

Location	Zoning*	Land Use	Special Considerations
North	R	Multi-family: 3-unit building	Snowceek VII
East	R	Multi-family: 3-unit building	Snowcreek VII
West	R	Multi-family: 3-unit building and Snowcreek Athletic Club	Snowcreek VII
South	RMF-2	Religious Institution and a Single-Family Residence	St. Joseph’s Catholic Church

*R = Resort and RMF-2 = Residential Multi-Family 2

Site Zoning

The project site is zoned R (Resort) and is part of the Snowcreek Master Plan Area. The R zone classification allows for various types of land uses such as: residential, professional, and administrative office uses, hotels, recreational facilities, public or quasi-public uses, or combinations of such uses. The R Zoning District lists utilities as a permitted use within

the zoning district (Section 17.32.110(B)(4)) and the Master Plan includes an Infrastructure Plan addressing roads, public transportation, water, sewer, and other utilities within the Master Plan Area. The Master Plan does not contain other detailed development standards for telecommunications facilities, and instead relies on the standards specified in the municipal code. Per Section 2.1.1 of the Master Plan, “where the Master Plan is silent on development standards or other regulations, other provisions of the Town’s Municipal Code apply.”

The proposed project is classified as a Telecommunication Facility use and the facility type is considered a Cellular Wireless Communications Facility. This use type is considered a Utility, which is a permitted use type in the R zone. A use permit is required for the proposed facility as a qualifying cellular wireless communications facility in a nonresidential zone per MC Table 17.52.280(C).

Development within the R zone is subject to the development standards found in the applicable master plan (i.e., Snowcreek Master Plan), with additional standards applying to cellular wireless communications facilities found in MC §17.52.280. The proposed project complies with all relevant development standards.

General Plan

The General Plan land use designation for the site is Resort.

ANALYSIS OF KEY ISSUES:

KEY ISSUE #1: Does the proposed project meet the Use Permit criteria and required findings pursuant to Municipal Code (MC) Sections 17.68.050 and 17.52.280?

A Use Permit is required for cellular wireless communication facilities. Staff has determined that the required findings can be made for approval of a Use Permit pursuant to MC §17.68.050 (Use Permit Findings) and MC §17.52.280 (Telecommunication Facilities).

The proposed site layout and project design ensure that the cellular wireless communications facility is consistent with all applicable sections of the General Plan and Title 17 (Zoning Code). The proposed use and the conditions under which it will be operated and maintained will not be detrimental to public health and safety nor materially injurious to the properties or improvements in the vicinity.

Table 2: Zoning Consistency

General Information			
General Plan: Resort (R)		Specific Plan: N/A	
Zoning: Resort (R)		Master Plan: Snowcreek Master Plan	
Existing Land Use: Mammoth Lakes Fire Protection District Station #2		Permit(s) Required for Use: UPA	
Development Standards			
Standard	Required	Proposed	Complies?
Setbacks ¹⁰			
East side yard (feet)	20 feet	20 feet	Yes
North Rear yard (feet)	20 feet	20 feet	Yes
Cellular Wireless Communication Facilities (MC §17.52.280)			Complies?
Site Selection: Sites shall be selected based on the following order: (1) on or within an existing structure; (2) co-location facilities; (3) in locations where existing topography, vegetation, or other structure provide screening; or (4) on parcels that will not require significant visual mitigation.			Yes (see below)
Location: Facilities shall be located either within a structure, underground, in the rear portion of the property (not visible from the public right-of-way), or on a screened roof top area.			Yes (see below)
Location: Facilities shall not be located in a required parking, maneuvering, or vehicular or pedestrian circulation area.			Yes
Screening: If a new freestanding tower or monopole is necessary for the support of the antennas, it shall be located near existing utility poles, trees, or other similar objects, and consist of colors and materials that best blend with the background.			Yes (see below)
Height: Maximum height is not provided by the zoning code and is to be determined by the Use Permit.			Yes; Determined by the Use Permit

Height

MC Section 17.52.280 does not establish a maximum height for cellular wireless communications facilities, and instead specifies that the maximum height is to be determined by the use permit. Therefore, the maximum height of the proposed monopine

¹⁰ The R zone does not establish setbacks for cellular facilities and the imposed setback standards were instead based off the Public and Quasi-Public (P-QP) zone since that is the zone that most closely matches the use on the site. Per Section 2.1.1 of the Master Plan, “where the Master Plan is silent on development standards or other regulations, other provisions of the Town’s Municipal Code apply.”

cell tower is determined by the Use Permit and what is necessary to provide adequate coverage. The height of 80' was determined to be necessary to provide adequate coverage. The antennas are located at 74', but a total height of 80' is needed in order to create the cone shaped treetop that is aesthetically appropriate. The applicant provided analysis of different heights for the cell tower, which shows that the 80-foot tower is needed to provide the necessary coverage. The analysis is included in **Attachment D-3**.

Radio Frequency Emissions Exposure

As noted above in Legal Background section above, the Telecommunications Act of 1996 prohibits local agencies from regulating the placement, construction, and modification of cellular wireless communication facilities on the basis of the environmental/health effects of radio frequency (RF) emissions, to the extent that such facilities comply with Federal Communications Commission (FCC) emission standards. The FCC has established maximum permitted exposure (MPE) thresholds to radio frequency emissions, and if the analysis demonstrates that the MPE levels for general population areas are below those thresholds, then local agencies cannot consider those potential effects. For this site, it was determined that the MPE for the adjacent building level at an above ground level (AGL) of 25 feet would be 9.70% of the FCC's allowable limit for General Population exposure and the MPE for the adjacent building at 45 feet AGL would be 40.30% of the FCC's allowable limit for General Population exposure. In addition, the report found that the MPE for the ground area immediately beneath the proposed monopine (0' AGL) would be 4.01% of the FCC's allowable limit for General Population exposure. Additional information on the radio frequency analysis that was done for the project can be found in the Radio Frequency Safety Survey Report Prediction document, which is included in **Attachment D-4**.

Site Selection, Location, and Screening

As discussed in Section I above, the site selection process focused on the Old Mammoth area due to an apparent gap in the acceptable level of cell service in that area of the community and the determination that a new tower in the Old Mammoth area was necessary to address this gap in service. When considering potential sites for a cell tower, MC Section 17.52.280(F)(2) specifies the following order of preference for the potential site.

- a. On or within existing structures (e.g., church steeple, roof top stairwell or equipment enclosures, etc.);
- b. Co-location facilities (i.e., locating equipment from more than one provider on a single facility);
- c. In locations where existing topography, vegetation, or other structures provide the greatest amount of screening; or
- d. On parcels which will not require significant visual mitigation.

For the Old Mammoth area, criteria (a) and (b) are not feasible since there are no existing structures that could accommodate a cell tower within the Old Mammoth area and there is not an existing cell tower in the area where a new facility could be co-located. Instead, the applicant worked to find a site and design a tower that adhered to criteria (c) and (d). The proposed location on the site is in the rear of the property screened from the public right-

of-way to the maximum extent possible and will rely on the faux pine tree design to be the least intrusive for the area. That design was chosen to blend in with the surrounding pine trees on the site, which have an approximate average height of 55-65 feet.

General Plan Consistency:

The project is consistent with the following General Plan Vision Statements as described in **Table 3:**

Table 3: General Plan Vision Statement Conformance

General Plan Vision Statement	Explanation of Project Conformance
<i>“being a great place to live and work”</i>	The project will improve cell reception in an area of Town that is currently lacking, which will improve livability and safety in Old Mammoth.

The project is consistent with the following General Plan goals, policies, and actions as described in **Table 4:**

Table 4: General Plan Conformance with Goals, Policies, and Actions

Goal, Policy, or Action	Explanation of Project Conformance with Goal, Policy, or Action
E.3.H: Encourage expansion of a progressive telecommunication and internet communication infrastructure in the community.	The project will expand and improve telecommunication infrastructure by expanding service in an area that has insufficient service.
S.10.C: Coordinate with California Public Utilities Commission, telecommunication, and internet service providers to improve resilience and redundancy of telecommunication and broadband infrastructure.	Through coordination with telecommunication service providers, service will be enhanced, which will allow for emergency use by the Mammoth Lakes Fire Protection District and other first responders.

KEY ISSUE #2: Is the proposed project consistent with the California Environmental Quality Act (CEQA)?

Staff has determined that the Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) of Title 14 of the California Code of Regulations. CEQA Guidelines Section 15303 applies to projects that consist of the installation of small new equipment and facilities in small structures, which the State has determined to be a class of projects that will not have a significant effect on the environment. CEQA Guidelines Section 15303 applies to projects that consist of (1) a limited number of new, small facilities or structures; and (2) the installation of small new equipment and facilities in small structures, both of which the State has determined to be a class of projects that will not have a significant effect on the environment. For non-residential uses, this exemption is generally limited to structures that do not exceed 2500 square feet in floor area. The project involves the construction of a new 80-foot tall “stealth monopine” cell tower located in the rear northeast corner of the Old Mammoth

Road Fire Station site at 1574 Old Mammoth Road. The proposed tower and associated equipment enclosures are structures that do not involve significant amounts of hazardous substances and do not exceed a combined 2,500 square feet in floor area, as the project only includes approximately 640 square feet of floor area (cell tower and lease area combined). Additionally, none of the exceptions set forth in CEQA Guidelines Section 15300.2, which would preclude a project from using a categorical exemption, are applicable, as described below:

- a. The project is not located in a sensitive environment. The project parcel is located on a fully developed and previously disturbed site that contains existing buildings and paving. Furthermore, the site is not located in an area that would be considered environmentally sensitive, as the site and surrounding parcels are fully developed.
- b. There are no designated scenic highways adjacent to or near the project site. There are no designated farmland areas within the Town boundaries, thus the site is not identified as farmland by the California Resources Agency as part of the Farmland Mapping and Monitoring Program, is not located on or near Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, and is not subject to any Williamson Act Contracts. Furthermore, no portion of the site is zoned for or developed as forest land or timberland as defined in Public Resources Code §12220(g) and Government Code §4526. There are no known sensitive biological resources in the project vicinity, and the project site is not located within the boundaries of a Habitat Conservation Plan or Natural Community Conservation Plan. The project site is currently developed as a public safety use. No classified or designated mineral deposits of statewide or regional significance are known to occur on the project site. The site is not located within a very high fire hazard severity zone, is not located within a state-designated Alquist-Priolo Fault Hazard Zone, does not have any known active faults crossing the site, and the nearest fault to the project site is approximately 1.5 miles to the northwest. There are no hazardous material sites listed within or near the project site per any of the State and Federal databases. There are no known historical or cultural resources on the site.
- c. The cumulative impact from successive projects of the same type in the same place over time will not be significant because at this time, there are no applications or proposals submitted to the Town for additional cell towers to be constructed on the site, and the nearest existing tower is located approximately one mile away.
- d. Given the location, scope, and purpose of the proposed project, there would be no significant impacts or effects on environmental resources during construction of operation, as the site has been previously developed. It is not anticipated that any unusual circumstances exist on the site that would result in significant impacts or increase the severity of any existing less than significant impacts.
- e. As stated above in response (a), the project site is not located adjacent to or near a scenic highway. The project location is not identified as a Major View Corridor in the Town's General Plan and views of the project site are not considered scenic.

Therefore, the proposed project would not have a substantial adverse effect on a scenic vista or damage scenic resources within a state scenic highway.

- f. As stated above in response (a), there are no hazardous materials listed within or near the project site. The project site is not listed on the Hazardous Waste and Substances list maintained by the Town; or the State Water Resources Control Board GeoTracker system which includes leaking underground fuel tank sites and spills, leaks, investigations, and cleanup sites; or the Department of Toxic Substances Control EnviroStar Data Management System which includes CORTESTE sites; or the Environmental Protection Agency's database of regulated facilities.
- g. As stated above in response (a), there are no known historical or cultural resources areas on the site, and therefore, there will not be a substantial adverse change in the significance of an established historical resource as a result of the project.

Therefore, the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(2) since the project meets the criteria for use of the 'New Construction or Conversion of Small Structures' categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

Public Comments and Outreach

A notice of the public hearing including a project description was sent to property owners within 400 feet of the subject property; . A total of 376 property owners were notified. A Public Notice was also published in The Sheet on February 3rd and February 10th.

Staff has received a number of written comments on this project as well as in person comments during the November 8 PEDC meeting. Public comments received prior to publishing the staff report are included in Attachment F, and any additional public comments received will be distributed to the Commission separately. The comments have been reviewed and grouped into general categories as described below.

- ***Comments were received expressing concerns of visual impacts.***
The project meets the standards found in Zoning Code Section 17.52.280 (Telecommunication Facilities). These include locating the facility in the rear of the property (not visible from public right-of-way) and screening (i.e., faux pine tree design) to blend the structure into the surroundings. The proposed faux pine tree design is intended to be the least intrusive means of providing coverage in the area and that design was chosen to blend in with the surrounding pine trees on the site. The surrounding pine trees have an approximate average height of 55-65 feet.
- ***Comments were received expressing concerns of health and safety related radio frequency emissions.***
As stated previously in this report, pursuant to the Telecommunications Act of 1996, the Town is not able to consider the environmental effects of radio frequency, including health, when regulating the placement of a cell tower provided that the FCC Guidelines for maximum permitted exposure (MPE) to radio frequency emissions are adhered to. For this site, it was determined that the MPE for the adjacent building level at an above ground level (AGL) of 25 feet would be 9.70% of the FCC's allowable limit for General

Population exposure and the MPE for the adjacent building at 45 feet AGL would be 40.30% of the FCC's allowable limit for General Population exposure. In addition, the report found that the MPE for the ground area immediately beneath the proposed monopine (0' AGL) would be 4.01% of the FCC's allowable limit for General Population exposure. Additional information on the radio frequency analysis that was done for the project can be found in the Radio Frequency Safety Survey Report Prediction document, which is included in Attachment D-4.

- ***Comments were received that other locations should be considered.***

AT&T and their consultant, Eukon Group, performed a thorough site analysis and determined Fire Station #2 to be the best site for the monopine cell tower. Other sites that were considered include St. Joseph's Catholic Church located at 58 Ranch Road and the Snowcreek Athletic Club located at 51 Club Drive. The church site is not a viable location because it is zoned Residential Multi-Family 2, and telecommunication facilities are not permitted in residential zones. The Snowcreek Athletic Club was not pursued due to lack of landlord interest at the time AT&T was conducting their alternative site analysis among other considerations as outlined by the applicant in their technical siting analysis. See Attachment D-5 for additional information on the technical siting analysis.

- ***Comments were received that the proposed telecommunication facility will impact airplanes and the Mammoth Airport.***

In the "Technical Siting Analysis" prepared by AT&T and the Eukon group, AT&T acknowledges that the facility will operate in full compliance with the regulations and licensing requirements of the FCC and Federal Aviation Administration (FAA).

- ***Comments were received that the photo-simulations prepared by the applicant are inaccurate and do not accurately portray the proposed telecommunication facility.***

A statement confirming the accuracy of the photo-simulations is included in Attachment D-2. The statement is from the independent contractor that was tasked with producing the photo-simulations on behalf of Eukon Group.

Separately from the public noticing, the Mammoth Lakes Fire Protection District discussed the project at their June 27, 2023, Board of Commissioners meeting. The Fire District made an announcement at the June 7, 2023, Town Council meeting during public comment regarding the upcoming Board meeting on the proposed cell tower project at Fire Station 2. At the meeting, three members of the public were in attendance to ask questions about the project.

Additional outreach was done between the November 8, 2023, PEDC meeting and the February 14, 2024 meeting with the neighboring Creekhous HOA (Snowcreek VII) to review the proposed project and consider alternatives. At the request of the HOA group, Eukon Group had additional photo-simulations prepared that show the proposed tower from within the Creekhous development looking to the southeast. Ultimately, no resolution on alternative sites was achieved through the outreach, and the Town proceeded with the rescheduled public hearing in order to meet the applicable FCC shot clock deadline as extended to April 19, 2024 by the tolling agreement executed between the Town and the applicant (see Attachment F)

FINANCIAL CONSIDERATIONS:

The appeal application was submitted along with the applicable fee of \$1,942.00. Pursuant to M.C. § 17.104.030.F – *Refund of Appeal Fees*, Appeal fees may be refunded only in the following situations:

1. Upon the conclusion of any appeal, where the Council upholds the appeal and overturns the decision of the review authority, the Council may also authorize the return of all, or a portion of the appeal fees; or
2. Upon the conclusion of any appeal, where the Council denies the appeal but finds that the appellant(s) raised issues of substantial merit, the Council may authorize the return of any portion of the appeal fees deemed just.

ATTACHMENTS:

Attachment A: Town Council Resolution

Attachment B: Appeal

Attachment C: AT&T's Response

Attachment D - 1: Project Plans

Attachment D – 2: Photo-Simulations

Attachment D – 3: Site Justification Maps

Attachment D – 4: RF Safety Report

Attachment D – 5: Technical Siting Analysis

Attachment E: February 14, 2024 PEDC Resolution

Attachment F: February 14, 2024 PEDC Staff Report and All Attachments