

TOWN OF MAMMOTH LAKES
STATE OF CALIFORNIA

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In the Matter of the Application of:

AT&T

For Use Permit

Premises: 1574 Old Mammoth Road
Mammoth Lakes, CA 92780

APN: 040-040-021-000

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MEMORANDUM IN OPPOSITION

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Table of Contents

Preliminary Statement	1
POINT I	
Granting AT&T's Application for Its Proposed Wireless Telecommunication Facility Would Violate Applicable Laws and the Legislative Intent Upon Which They Were Enacted	2
A. <u>Local Municipalities Are Authorized by the TCA to Regulate Telecommunications Facilities</u>	2
B. <u>Applicable Local Law</u>	4
POINT II	
The Proposed Tower Will Have a Severe Detrimental Impact on the Aesthetics and Character of the Area, As Well As Cause a Significant Decrease in Property Value	10
A. <u>AT&T's Irresponsible Placement of Its Proposed Wireless Facility Will Inflict Substantial Adverse Impacts Upon the Aesthetics and Character of the Area</u>	10
B. <u>Evidence of the Actual Adverse Aesthetic Impacts Which the Proposed Facility Would Inflict Upon the Nearby Homes</u>	12
C. <u>AT&T's Visual Assessment is Inherently Defective and Should Be Disregarded Entirely</u>	14
D. <u>The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties</u>	16
POINT III	
§6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow AT&T to Increase the Height of the Proposed Facility Without Further Zoning Approval	19
POINT IV	
AT&T Has Failed to Proffer Probative Evidence Sufficient to Establish a Need for the Proposed Wireless Facility at the Location Proposed, or That the Granting of Its Application Would Be Consistent With the Smart Planning Requirements of the Town's Zoning Code	20

A. <u>The Applicable Evidentiary Standard</u>	22
B. <u>AT&T Failed to Submit Any Probative Evidence to Establish the Need For the Proposed Facility at the Height and Location Proposed</u>	25
(i) <u>FCC and California Public Utilities Commission</u>	26
(ii) <u>Hard Data and Lack Thereof</u>	29
C. <u>AT&T's Analysis Regarding Its Wireless Coverage Is Contradicted By Their Own Actual Coverage Data</u>	31
D. <u>ExteNet Systems, Inc. v. Village of Flower Hill and Flower Hill Board of Trustees</u>	33
POINT V <u>To Comply With the TCA, AT&T's Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith</u>	34
A. <u>The Written Decision Requirement</u>	34
B. <u>The Substantial Evidence Requirement</u>	35
C. <u>The Non-Risks of Litigation</u>	35
Conclusion	36

Preliminary Statement

This memorandum is submitted in opposition to the application of AT&T for a use permit to erect an 80 foot (8 story) monopine cell tower at 1574 Old Mammoth Road, Mammoth Lakes, California. It is submitted on behalf of multiple homeowners whose homes are situated adjacent to or in close proximity to the site for the proposed cell tower.

This 8 story tower will purportedly use stealth technology to be disguised as a “monopine,” but no one will be fooled. This “tree” will be 15 to 20 feet (or more) taller than the few nearby trees, will clearly be artificial, and will not blend in with the other vegetation. It’s impossible to camouflage such an eyesore, no matter how vigorously AT&T claims it will blend into the neighborhood. Instead, it will loom over the nearby homes, sticking out “like a sore thumb,” and will forever change the unique character of the community. The proposed tower will *not* be compatible with the community resulting in a severe negative aesthetic impact together with a substantial decrease in property values.

As set forth below, AT&T’s application should be denied because:

- (a) AT&T has failed to establish that granting the application would be consistent with applicable provisions of the Town Zoning Code, including the Telecommunications Facilities provisions, and the Town’s General Plan.
- (b) granting the application would violate not only these applicable provisions, but the legislative intent upon which they are based;
- (c) the applicant has failed to establish that the proposed facility: (i) is actually necessary for the provision of personal wireless services within Mammoth Lakes or (ii) that it is necessary that the facility be built at the proposed site;
- (d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the applicable provisions of

the Zoning Code, Telecommunications Facilities provisions and General Plan were enacted to prevent.

It is respectfully submitted that AT&T's application should be denied, and that the denial be written in compliance with the Telecommunications Act of 1996.

POINT I

Granting AT&T's Application for Its Proposed Wireless Telecommunication Facility Would Violate Applicable Laws and the Legislative Intent Upon Which They Were Enacted

As set forth below, AT&T's application should be denied because granting the application would violate the requirements of the Town's Zoning Code, the Telecommunications Facilities provisions and the Town's General Plan.

A. Local Municipalities Are Authorized by the TCA to Regulate Telecommunications Facilities

The proliferation of wireless communications facilities has resulted in the need for municipalities to pass legislation to regulate their construction. Although many site developers and cellular service providers will argue that the Telecommunications Act of 1996 (TCA) prohibits local governments from regulating telecommunications facilities, this is simply untrue. The TCA, 47 U.S.C. §332(c)(7) specifically *preserves local zoning authority*. Subsection (A) provides for general authority as follows:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions

regarding the placement, construction, and modification of personal wireless service facilities.

While subsection (B) forbids a municipality from “unreasonably discriminat[ing] among providers” and from completely “prohibiting the provision of personal wireless services” the fact remains that a municipality may restrict the placement, location, construction, and modification of wireless facilities in their community through zoning regulations. *See, T-Mobile South, LLC v. Roswell*, 135 S.Ct. 808 (2015); *GTE Mobilnet of California Ltd. P’ship v City of Berkley*, 2023 WL 2648197 (D. N.D. CA 2023); *Colfaxnet LLC v City of Colfax*, 2020 WL 6544494 (D. E.D. CA 2020).

“The TCA seeks to strike a balance between its goal of ‘encourage[ing] the rapid deployment of new telecommunications technologies’ without unduly encroaching on traditional local zoning authority.” *New Cingular Wireless PCS LLC d/b/a AT&T Mobility v. Zoning Board of Adjustment of the Borough of North Haledon*, 469 F.Supp.3d 262 (D. N.J. 2020) *citing, T Mobile Ne. LLC v. City of Wilmington, Del.*, 913 F.3d 311 (3d Cir. 2019). “To this end, it ‘expressly preserves the traditional authority enjoyed by state and local government to regulate land use’” *Id.*, *citing, APT Pittsburgh Ltd. P’ship v. Penn Twp. Butler Cty. of Pa.*, 196 F.3d 469 (3d Cir. 1999); *Extenet Systems, Inc. v. Township of North Bergen, New Jersey*, 2022 WL 1591398 (D.N.J. 2022).

Simply stated, the TCA provides that an application to erect a cell tower can – and should – be treated as a land use issue, to be decided by a municipality in its ordinary course of business, using the same considerations normally employed in a land use case.

Consistent with the intent of this federal law, informed local governments have enacted “Smart Planning Provisions,” which are local land use regulations designed to:

- (a) prevent an *unnecessary proliferation* of wireless facilities while
- (b) preventing, to the greatest extent possible, unnecessary adverse impacts upon residential homes and communities due to the irresponsible placement of wireless facilities.

As set forth below, AT&T’s application should be denied because granting the application violates not only the *requirements* of the applicable Town laws and regulations, but their *legislative intent*.

B. Applicable Local Law

Generally, the overarching principle of legislation is for the benefit and protection of the municipality’s citizens. This protection includes preservation of the citizens’ property rights and property value, as well as protection of the character of the community and quality of life.

The Town’s Zoning Code “carries out the policies of the Mammoth Lakes General Plan” and “is adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents....” (§17.04.020).

In addition, the Code is intended to:

- C. Require high quality planning and design for development, that enhances the visual character of the Town, avoids conflicts between land uses, enhances functionality and safety, and preserves the scenic qualities of the Town by maintaining adequate open space;
- D. Conserve and protect the natural resources of the Town, its natural beauty and significant environmental amenities...

(*Id.*)

Construction of a wireless telecommunications facility is further regulated by Chapter 17.68 (Use Permits) and Chapter 17.52 (Standards for Specific Land Uses) of the Code.

Pursuant to §17.68.050 of Chapter 17.68, a use permit may be granted *only* “if all of the following findings can be made:

- A. That the proposed use is consistent with all applicable sections of the General Plan and Title 17 and is consistent with any applicable specific plan or master plan;
- B. 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 Mammoth Lakes General Plan is the foundation of the zoning plan. It begins with an Introduction and Community Vision. A common thread throughout the Plan is an emphasis on quality of life – including maintaining a small town community character as well as preserving the natural environment. In fact, the first few sentences of the Plan state that “The community takes seriously our responsibility as stewards of the environment, protectors of the residents’ quality of life...”

The Community Vision begins “Surrounded by uniquely spectacular scenery and diverse four-season recreational opportunities, the community of Mammoth Lakes is committed to providing the very highest quality of life for our residents....” It notes the Mammoth Lakes places a high value on:

- 1. Sustainability and continuity of our unique relationship with the natural environment...
- 2. Being a great place to live and work....
- 5. Protecting the surrounding natural environment and supporting our small town atmosphere by limiting the urbanized area.

6. Exceptional standards for design and development that complement and are appropriate to the Eastern Sierra Nevada mountain setting and our sense of a “village in the trees” with small town charm.

The following are further examples of the importance placed on a sense of community and the preservation of the stunning environment.

Community Design

- C.1. Improve and enhance the community’s unique character by requiring a high standard of design in all development in Mammoth Lakes.
- C.2. Design the man-made environment to complement, not dominate, the natural environment...
- C.4. Be stewards of natural and scenic resources essential to community image and character.

Neighborhood And District Character

- L.1. Be stewards of the community’s small town character and charm, compact form, spectacular natural surroundings and access to public lands by planning for and managing growth.

Stated Goals and Policies include:

- C.1. Goal: Improve and enhance the community’s unique character by requiring a high standard of design in al development in Mammoth Lakes.
- C.2. Design the man-made environment to complement, not dominate, the natural environment.
 - C.2.I. Policy: Achieve highest quality development that complements the natural surroundings...
 - C/2.J. Policy: Be stewards in preserving public views of surrounding mountains, ridgelines and knolls.

C.4. Goal: Be stewards of natural and scenic resources essential to community image and character....

L.1. Goal: Be stewards of the community's small town character and charm... Spectacular natural surroundings...

The examples and quotes could go on for several pages in order to convey the importance the Town and its residents place on Mammoth Lakes' unique character, charm and small town feel as well as the stunning vistas and magnificent landscape.

In order to comply with the General Plan and the applicable zoning provisions, AT&T's proposed tower must fit in with its surroundings and the neighborhood's unique charm and beautiful views. It does not comply with the letter of the law, nor the intent behind these provisions. It cannot be said that the proposed fake tree is in harmony with the adjacent neighborhood.

The more specific telecommunications regulations outlined in Zoning Code Chapter 17.52 §17.52.280 *et seq.* echo the intent of the General Plan and preliminary Code provisions.

The stated purpose of the telecommunications facilities sections is as follows:

A. **Purpose.** This Section provides development standards consistent with Federal law to regulate the placement and design of telecommunications facilities *so as to preserve the unique visual character of the Town, promote the aesthetic appearance of the Town, and to ensure public safety and welfare....*
(emphasis supplied)

Subsection (F) mandates that wireless facilities "*shall* comply with the following requirements.

1. **Application requirements.** In addition to the information required for a use permit by Chapter 17.68 (Use Permits), the application for a cellular wireless communications facility shall include:

- a. 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;
 - b. An 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; and
2. **Site selection.** 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.
3. **Design standards.** Facilities shall be designed, installed, modified, and maintained in compliance with the following standards; except that any standard may be modified or waived by the Commission upon a determination that effective signal reception and transmission will not occur if the facility complies with these standards.
- a. *Location.*
 - i. 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.

Examining each of these provisions in turn, AT&T's application is fatally deficient. They did not provide an adequate map showing future planned or anticipated needs, particularly with respect to a discussion of existing local network facilities and service gaps. In light of the site selection preference for existing structures, AT&T has failed to properly denote existing facilities of *other providers*. AT&T has only listed their own existing towers and concluded that

no existing AT&T tower could offer a location sufficient for their needs. This coincides with their inadequate alternative site analysis, which will be discussed further below.

Again, the site selection process does not meet the requirements of the Code. The proposed location does not fit any of the sites listed in §17.52.280 (F)(2)(a) through (d). The proposed facility will not be located within an existing structure (although a church steeple is an alternate site); is certainly not planned to be collocated in an existing facility (it doesn't appear that any other carrier's existing towers were ever considered); the proposed location doesn't have the topography, vegetation, or structures to hide this fake tree monopine; nor is the proposed parcel one which will not require significant visual mitigation.

With respect to a location at the rear of the property, not visible from a public right-of-way, while the proposed wireless facility may *technically* be at the rear of the property, the rear also faces a roadway and the monopine is highly visible even from the "rear" of the property.

In addition to the goals of maintaining the unique character of the surrounding community and preserving the environment with its magnificent views, the Town, through its General Plan and zoning laws, seeks to safeguard and "promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents." "[T]he concept of the public welfare is broad and inclusive." *Voice Stream PCS v. City of Hillsboro*, 301 F.Supp.2d 1271 (D. Ore. 2004), (quoting *Berman v. Parker*, 348 U.S. 26, (1954). *Vertical Bridge Development, LLD v. Brawley City Council*, 2023 WL 3568069 (S.D. Calif. 2023). A municipality is within its authority to weigh the benefit of merely improving the existing coverage against the negative aesthetic impact the tower would cause. *Id.*

The values represented by the concept of the "public welfare" are spiritual as well as

physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy *Voice Stream, supra*.

A careful examination of the applicable Code provisions, together with the goals and policies of the General Plan, can lead to only one conclusion – that AT&T's proposed tower cannot possibly comply with either the letter of the law, nor its spirit, and their application should be denied.

POINT II

The Proposed Tower Will Have a Severe Detrimental
Impact on the Aesthetics and Character of the Area,
As Well As Cause a Significant Decrease in Property Value

A. AT&T's Irresponsible Placement of Its Proposed
Wireless Facility Will Inflict Substantial Adverse
Impacts Upon the Aesthetics and Character of the Area

The proposed wireless facility will inflict dramatic and wholly unnecessary adverse impacts upon the area's aesthetics and character. As noted above, the applicable provisions of the Code not only recognize the importance of the visual "feel" of a neighborhood, they codify its significance, requiring wireless facilities to be compatible with the community. In this instance, AT&T's proposed tower at 1574 Old Mammoth Road will have a clear negative impact on the surrounding area. Despite the weak attempt to camouflage the tower, it will be easily recognizable and readily visible all over the neighborhood, creating an extremely displeasing aesthetic.

Moreover, AT&T hasn't presented any relevant data demonstrating that the proposed facility is even necessary, let alone that the proposed location is the best possible location to

remedy any purported significant gap in coverage AT&T claims exists.

Federal courts around the country, including the United States Court of Appeals for the Ninth Circuit, have held that significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for the construction of a wireless telecommunication facility. For example, the United States Court of Appeals for the Ninth Circuit determined that there is nothing to “prohibit local governments from taking into account aesthetic considerations in deciding whether to permit the development of wireless telecommunications facilities (WCFs) within their jurisdictions.” *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Ests.*, 583 F.3d 716 (9th Cir. 2009), *see also* *GTE Mobilnet of Calif. Ltd. P’ship v. City of Berkley*, *supra* (“Even under a substantial evidence review, zoning decisions based on aesthetic concerns can be valid,” and “under the TCA, [a zoning board] is entitled to make an aesthetic judgment as long as the judgment is ‘grounded in the specifics of the case,’ and does not evince merely an aesthetic opposition to cell-phone towers in general.” *citations omitted*); and *New Cingular Wireless PCS, LLC v. County of Marin, Calif.*, 2021 WL 5407509, (N.D. Calif. 2021).

“[T]he City may consider a number of factors including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that these are legitimate concerns for a locality.” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009). *See also*, *Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008) (stating that the zoning board may consider “other valid public goals such as safety and aesthetics”); *T-Mobile Cent., LLC v. Unified Gov’t*

of *Wyandotte County, Kan.*, 546 F.3d 1299, 1312 (10th Cir.2008) (noting that “aesthetics can be a valid ground for local zoning decisions”); and *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) (recognizing that “aesthetic concerns can be a valid basis for zoning decisions”).

Additionally, as is set forth below, AT&T has failed to provide a shred of probative evidence to establish that the wireless communications facility is not injurious to the neighborhood and is *actually necessary* to provide personal wireless coverage in the area.

B. Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Facility Would Inflict Upon the Nearby Homes

As logic would dictate, the people who are best suited to assess the nature and extent of the adverse aesthetic impacts, which an irresponsibly placed wireless telecommunication facility would inflict upon homes in close proximity to the proposed facility, are the homeowners themselves.

Consistent with this logic, the United States Court of Appeals for the Second Circuit has recognized that when a local government is considering a wireless facility application, it should accept, as direct evidence of the adverse aesthetic impacts that a proposed facility would inflict upon nearby homes, statements and letters from the actual homeowners, since they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005).

Annexed collectively hereto as **Exhibit “A”** are letters from homeowners whose homes are situated adjacent to, or in close proximity to the site upon which AT&T seeks to install its proposed wireless telecommunications facility.

Each of these letters contains specific, personal details from the homeowners regarding the adverse aesthetic impacts that the proposed facility would inflict upon their homes. They have provided detailed and compelling descriptions of the dramatic adverse impacts their properties would suffer if the proposed installation of a wireless telecommunication facility were permitted to proceed. They describe the reasons the homeowners came to Mammoth Creek, including the beautiful scenery, the natural setting, the small town feel of the community, the views from their windows and backyards, and the unique character of their community.

Many of these homeowners have also expressed their concerns about the decrease in property value their homes will suffer as a result of the proposed wireless facility. Having made a substantial investment in their homes, having labored to maintain and beautify their homes, they are concerned about the decrease in the value of their properties.

These letters convey all the ways the proposed tower will negatively affect the nearby residents, their views, their enjoyment of their homes and the loss of property values.

Significantly, as is set forth above, all of the adverse aesthetic impacts the proposed wireless facilities would inflict upon these homes are entirely unnecessary because AT&T has not demonstrated a significant gap which needs to be filled within the Town.

The specific and detailed impacts described by the adjacent and nearby property owners constitute “*substantial evidence*” of the adverse aesthetic impacts they stand to suffer because they are not limited to “generalized concerns.” These letters contain specific, detailed descriptions of how the proposed facility would dominate the views from their bedroom windows, living rooms, kitchens, front yards and backyards. *See GTE Mobilnet, supra; Voice Stream PCS I, LLC v. City of Hillsboro, 301 F.Supp. 2d 1251 (D. Or. 2004).*

The severe adverse aesthetic impacts which would be caused by the proposed wireless facility's irresponsible placement which are detailed in these letters, are the precise type of damaging impacts that the Zoning Code was specifically enacted to prevent. Accordingly, AT&T's application should be denied.

C. AT&T's Visual Assessment is Inherently
Defective and Should Be Disregarded Entirely

In a hollow effort to induce the Town to believe that the installation of the proposed wireless facility would not inflict a severe adverse aesthetic impact upon the adjacent homes, AT&T has submitted what purports to be photo simulations of what the neighborhood would look like if the tower were to be built. However, these photo simulations are faulty and ultimately meaningless.

As is undoubtedly known to AT&T, the visual impact analysis presented is inherently defective because it does not serve the purpose for which it has been offered. The reason local governments require photo simulations, or other visual impact studies, of a proposed wireless facility is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation will inflict upon the nearby homes and community.

Not surprisingly, applicants often disingenuously seek to minimize the visual impact of these depictions by *deliberately omitting* from their photo simulations any images actually taken from the nearby homes that would sustain the most severe adverse aesthetic impacts.

In a widely cited case, *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d 529 (2nd Cir. 2005), the United States Court of Appeals for the Second Circuit explicitly

ruled that where a proponent of a wireless facility presents visual impact depictions where they “omit” any images from the perspectives of the homes which are in closest proximity to the proposed installation, such presentations are inherently defective, and should be disregarded.

As was explicitly stated by the federal court: “the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . *the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows*” *Id.*

A simple review of the records shows that AT&T has failed to submit a meaningful visual impact analysis. AT&T has not included a single image taken from the vantage point of *any* of the nearby homes that will sustain the most severe adverse aesthetic impacts from the installation of the wireless facility which AT&T seeks to construct in such close proximity to those homes. This, of course, includes a complete absence of any photographic images taken from any of the homes belonging to the homeowners whose adverse aesthetic impact letters are annexed hereto as **Exhibit “A.”**

Instead, the photo simulations only consist of photos taken from public roads, and from angles and perspectives designed to minimize the appearance of the adverse aesthetic impact. They in no way accurately depict the view the affected homeowners will see, each and every time they look out their bedroom, kitchen, or living room window, or sit in their backyard. This is the exact type of “presentation” which the federal court explicitly ruled to be defective in *Omnipoint*. As such, in accord with the federal court’s holding in *Omnipoint*, AT&T’s visual impact analysis should be recognized as inherently defective and disregarded in its entirety.

In an effort to present a truer picture of the impact the proposed tower would have, we

have attached photo simulations taken from positions representing what adjacent property owners would be forced to look at. These are attached as **Exhibit "B."** It's clear that the proposed monopine presents a far greater intrusion in the community than AT&T would have the Board believe. This mutant pine tree stands out from the few other trees nearby and even towers over the fire department building. As much as it's a "sore thumb" now, it will be an even bigger eyesore when AT&T decides to raise it another 15 or 20 feet. See the discussion in Point III below regarding AT&T's unilateral ability to increase the tower's height at any time.

D. The Proposed Installation Will Inflict Substantial
and Wholly Unnecessary Losses in the Values
of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the neighborhood at issue, such an irresponsibly placed wireless facility would inflict upon nearby homes a severe adverse impact on the property values of those residences.

As established by the evidence submitted herein, if AT&T is permitted to install the proposed wireless facility in such close proximity to nearby homes, it would inflict upon those homes dramatic losses in property value, to the extent that the homeowners would suffer significant losses in the values of their residential properties.

It is a common misconception that a municipality, like the Town of Mammoth Lakes, may not consider property values when making its determination on wireless telecommunications facility applications. This is not true and is contrary to established precedent in the federal courts. *See Omnipoint, supra*. In addition, it would directly contradict the purpose and intent of the Town's Zoning Code, including the Telecommunication Facilities

provisions which surely contemplate preventing material detriment to property value.

Across the entire United States, both real estate appraisers¹ and real estate brokers have rendered professional opinions that simply support what common sense dictates. When wireless facilities are installed unnecessarily close to residential homes, such homes suffer material losses in value, typically ranging from 15% to 20%, but up to 30% in some cases.² In the worst cases, facilities built near existing homes have caused the homes to be rendered wholly unsaleable.³

Federal courts recognize that it is perfectly proper for a local zoning authority to consider as direct evidence of the reduction in property values that an irresponsibly placed wireless facility would inflict upon nearby homes, the professional opinions of licensed real estate

¹ See e.g. a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a Wireless Facility in close proximity to a home had reduced the value of the home by more than 10%, go to <http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values>

² In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Wireless Facility in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Wireless Facility reduced price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Wireless Facility reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a Wireless Facility would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

³ Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a Wireless Facility. See HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a Wireless Facility was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. See, e.g., October 2, 2012 Article "...Cell Tower is Real Estate Roadblock" at <http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-home--172366931.html>.

brokers (as opposed to appraisers) who provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed wireless facility. *See Omnipoint supra*. This is especially true when they possess years of real estate sales experience within the community and the specific geographic area at issue.

As evidence of the adverse impact that the proposed facility would have upon the property values of the homes that would be adjacent or in close proximity to it, annexed hereto as **Exhibit "C"** are letters setting forth the professional opinions of licensed real estate professionals, who are familiar with the specific real estate market at issue, and who submit their professional opinions regarding specific residences, that the installation of the proposed facility would cause property values of the affected homes to be reduced by up to 20% - 30% and would make those homes more difficult to sell, even at reduced purchase prices. In fact, the letters of Julie Wright and Jodi Melton show that recently two sales were lost due to the prospect of the proposed tower being constructed nearby.

This devaluation of properties is one of the very things the Zoning Code specifically seeks to prevent. As noted above, a use permit may only be granted if all of the conditions listed in §17.68.050 (B) are met, including not being materially injurious to properties or improvements in the vicinity. Given the significant reductions in property values that the proposed installation would inflict upon the nearby homes, AT&T's application should be denied.

POINT III

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow AT&T to Increase the Height of the Proposed Facility Without Further Zoning Approval

As severe as the adverse impacts upon the nearby homes and community would be if the 80 foot facility were constructed as proposed by AT&T, if such a facility were to be built, AT&T could unilaterally choose to increase the height of the facility by as much as twenty (20) feet. The Town would be legally prohibited from stopping them from doing so due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012.

§6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding Section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government *may not deny, and shall approve*, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. §1455(a).

Under the FCC's reading and interpretation of §6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower.

The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, *whichever is greater*." (Emphasis added.) This height increase could not be challenged or prevented by the Town.

Simply stated, under the FCC's regulation, if this facility were to be built, AT&T, at any time thereafter, could unilaterally increase the height of any such facility by as much as an additional twenty (20) feet, and there would be no way for the Town to prevent such an occurrence, regardless of how many zoning regulations it would violate.

Considering the even more extreme adverse impacts which an increase in the height of the facility would inflict upon the homes and community nearby, AT&T's application should be denied, especially since, as set forth below, AT&T doesn't actually *need* the proposed facility.

POINT IV

AT&T Has Failed to Proffer Probative Evidence
Sufficient to Establish a Need for the Proposed Wireless
Facility at the Location Proposed, or That the Granting of Its
Application Would Be Consistent With the Smart Planning
Requirements of the Town's Zoning Code

The intent behind the provisions of the Town's Zoning Code, including the provisions regulating wireless telecommunications facilities, is to promote "smart planning" of wireless infrastructure within the Town.

Smart planning involves the adoption and enforcement of zoning provisions that require wireless telecommunication facilities be strategically placed so that they minimize the number of facilities needed while saturating the Town with complete wireless coverage (*i.e.*, they leave no gaps in wireless service) and avoiding any unnecessary adverse aesthetic or other impacts upon homes and communities situated in close proximity to such facilities.

To determine if a proposed wireless telecommunications facility would be consistent

with smart planning requirements, sophisticated planning boards require wireless carriers and/or site developers to provide direct evidentiary proof of:

- (a) the *precise locations, size, and extent of any geographic gaps in personal wireless services* that are being provided by a specifically identified wireless carrier, which provides personal wireless services within the respective jurisdiction, *and*
- (b) the *precise locations, size, and extent of any geographic areas* within which that identified wireless carrier suffers from a capacity deficiency in its coverage.

The reason that local zoning boards invariably require such information is that without it, the boards are incapable of knowing:

- (a) if, and to what extent a proposed facility will remedy any actual gaps or deficiencies which may exist, and
- (b) if the proposed placement is in such a poor location that it would all but require that more facilities be built because the proposed facility did not actually cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in wireless facilities within the Town.

In the present case, AT&T has wholly failed to provide any hard data to establish that the proposed placement of its facility would, in any way, be consistent with the smart planning provisions. Thus, it has failed to provide actual probative evidence to establish:

- (a) the *actual location of gaps* (or deficient capacity locations) in personal wireless services within the Town, and
- (b) why or how their proposed facility would be the best and/or least intrusive means of remedying those gaps.

Moreover, as will be further discussed below, AT&T failed to present any hard data and has failed to present any useful data at all.

A. The Applicable Evidentiary Standard

Within the context of zoning applications such as the current one filed by AT&T, an applicant is required to prove that there are *significant* gaps⁴ in its wireless service, that the location of the proposed facility will remedy those gaps, and that the facility is the least intrusive means of remedying that gap.

The Ninth Circuit has set forth the following requirements, which all applicants seeking to install wireless facilities must prove. The test articulated by the Ninth Circuit requires AT&T to demonstrate that:

- (1) the proposed facility is required in order to close a significant gap in service coverage;
- (2) that the proposed facility is the least intrusive means of remedying the significant gap in service coverage, and
- (3) a meaningful inquiry has been made as to why the proposed facility is the only feasible alternative.

See Am. Tower Corp. v. City of San Diego, 763 F.3d 1035 (9th Cir. 2014); *GTE Mobilnet, supra*; *T-Mobile USA, Inc. v. City of Anacortes, supra* 572 F.3d 987 (9th Cir. 2009).

“The TCA does not assure every wireless carrier a right to seamless coverage in every

⁴ It should be noted that establishing a gap in wireless services is *not* enough to prove the need for a wireless facility; rather, the applicant must prove that “a significant gap” in wireless service coverage exists at the proposed location. *See, e.g., Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 50 (1st Cir. 2009); *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 731 (9th Cir.2005). Here, Vertical Bridge failed to proffer substantial evidence that a gap in wireless services exists—let alone that this purported gap is “significant” within the meaning of the TCA and established federal jurisprudence.

area it serves, and the relevant service gap must be truly ‘significant’ and ‘not merely individual ‘dead spots’ within a greater service area.” *Los Angeles SMSA Limited Partnership v. City of Los Angeles* 2021 WL 4706999 (C.D. Calif. 2021) quoting *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715 (9th Cir. 2005).

With respect to a “gap in service,” “where the holes in coverage are very limited in number or size... the lack of coverage likely will be *de minimis* so that denying applications to construct towers necessary to fill these holes will not amount to a prohibition of service.” *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999); *T-Mobile v Town of Islip*, *supra*.

Further, the *T-Mobile* Court, citing *Willoth*, held that “the fact that T-Mobile may have a need for the Proposed Facility does not ‘trump all other important considerations, including the preservation of the autonomy of states and municipalities.’”

More specifically, the United States Court of Appeals for the Ninth Circuit stated in *Am. Tower Corp. v. City of San Diego*, *supra*, “[w]hen determining whether a locality has effectively prevented a wireless services provider from closing a significant gap in service coverage, as would violate the federal Telecommunications Act (TCA), some inquiry is required regarding the feasibility of alternative facilities or site locations, and a least intrusive means standard is applied, which requires that the provider show that the manner in which it proposes to fill the significant gap in services is the least intrusive on the values that the denial sought to serve.” *Id.* See also *Anacortes*, *supra*. That is, is the proposed tower the least intrusive means in light of the municipality’s zoning regulations and the legislative intent behind them?

There doesn’t even appear to be any good faith effort by AT&T to place the facility in a

location where the adverse aesthetic impact on the community is minimal. Despite potential interest from the Snowcreek Athletic Club, it does not appear that AT&T adequately investigated this location.

Furthermore, there is no satisfactory explanation why the two (2) sites put forth by AT&T are not feasible. Simply stating that there was no interest from the owner does not explain what efforts were made to investigate these two sites. Was there direct contact with the owner or did they simply not reply to a written inquiry? Was there a serious discussion regarding a lease agreement and rental payments to the owner?

Further, it appears that only existing AT&T sites were considered. Was collocation on another carrier's tower investigated? Were small cell facilities considered instead of the huge monopine? Were micro cells or cellular arrays mounted on buildings considered? What, exactly, is the extent of AT&T's analysis of alternative sites?

Investigation of 2 sites is not sufficient to constitute a good faith investigation. Caselaw indicates that only three (3) sites is not sufficient. *See Up State Tower Co., LLC v Kiantone*, 2019 WL 1117220 (W.D.N.Y. 2019) where applicant investigated 19 properties; and *Town of Oyster Bay, supra* where applicant investigated 8 alternate sites; *contrast Town of Southport, supra* in which applicant initially investigated only 3 alternate sites. In *Anacortes* 18 alternative sites investigated. Although there is no "magic" number, it should be obvious that AT&T has not performed its due diligence if it has only looked at 2 alternate sites.

An applicant is required to perform their due diligence and conduct a good faith, meaningful investigation into alternative sites. *Up State Tower Co. v Town of Southport, NY* 412

F.Supp.3d 270 (W.D.N.Y. 2019). Interestingly, the *Omnipoint* Court found that where “other cell companies serve the area...the Board could infer that other towers erected by other companies are in the vicinity, and that Omnipoint had the burden of showing either that those towers lacked capacity for an Omnipoint facility or that (for some other reason) those towers were unavailable to bridge Omnipoint’s coverage gap.”

Moreover, a local government may reject an application for construction of a wireless service facility in an under-served area without thereby prohibiting wireless services if the service gap can be closed by less intrusive means. *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999) citing *Town of Amherst v Omnipoint Communications*, 173 F.3d 9 (1st Cir 2 1999). And a denial is merited where the applicant has identified other potential sites, but stated in conclusory fashion that they were unfeasible and stated...that it was unable to build a less intrusive structure.... *Omnipoint, supra*.

B. AT&T Failed To Submit Any Probative
Evidence to Establish the Need For the Proposed
Facility at the Height and Location Proposed

AT&T failed to meet its burden of proving that: (1) a significant gap in service exists; (2) its facility would remedy that gap; (3) the proposed tower is compatible with the surrounding community; (4) its proposed placement would minimize the aesthetic impact within the meaning of the applicable sections of the Zoning Code; and (5) a denial of its application would constitute a “prohibition of personal wireless services” within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

Glaringly absent from AT&T’s application is any “*hard data*,” which could easily be submitted by the applicant, as *probative evidence* to establish that: (a) there is an actual gap in

service which (b) necessitates the construction of a *new* facility, (c) and which requires it to be built at the specifically proposed location, and (d) on the specifically chosen site (as opposed to being built upon any alternative, less-intrusive locations).

AT&T has failed to prove that the proposed location is the best possible location to remedy a significant gap in personal wireless service because no significant gap in service even exists.

Without any meaningful data whatsoever, it is impossible for the Town to comply with the smart planning requirements set forth in its own Zoning Code. Furthermore, without any data, the Town cannot ascertain whether the proposed location is the least intrusive means of providing personal wireless service to the community because they have no idea where any possible significant gaps may or may not exist. It would be entirely irresponsible and illogical for the Town to grant applications for the installation of wireless telecommunications facilities without even knowing where such facilities are actually needed.

(i) FCC and California Public Utilities Commission

Recently, both the FCC and the California Public Utilities Commission have recognized the *absolute need* for hard data rather than the commonly submitted propagation maps, which can easily be manipulated to exaggerate need and significant gaps.

As is discussed within the FCC's July 17, 2020, proposed order, FCC-20-94, "[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (*i.e.*, both mobile and stationary drive-test data) as an additional method to verify

mobile providers' coverage maps."⁵ The FCC defines drive tests as "tests analyzing network coverage for mobile services in a given area, i.e., measurements taken from vehicles traveling on roads in the area."⁶ Further within the FCC's proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) "City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers' coverage data...;"⁷ (ii) California PUC asserted that 'drive tests [are] the most effective measure of actual mobile broadband service speeds';"⁸ and (iii) "CTIA, which opposed the mandatory submission of on-the-ground data, nonetheless acknowledged that their data 'may be a useful resource to help validate propagation data...'"⁹

California PUC has additionally stated that "the data and mapping outputs of propagation-based models will not result in accurate representation of actual wireless coverage" and that based on its experience, "drive tests are required to capture fully accurate data for mobile wireless service areas."¹⁰

Moreover, proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data. Specifically, the FCC states:

"The Mobility Fund Phase II Investigation Staff Report, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The Mobility Fund Phase II Investigation

⁵ See page 44 paragraph 104 of proposed order FCC-20-94.

⁶ See page 44 fn. 298 of proposed order FCC-20-94.

⁷ See page 45 fn. 306 of proposed order FCC-20-94.

⁸ *Id.*

⁹ *Id.*

¹⁰ <https://arstechnica.com/tech-policy/2020/08/att-t-mobile-fight-fcc-plan-to-test-whether-they-lie-about-cell-coverage/>

Staff Report recommended that the Commission require providers to “submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. *Actual speed test data is critical to validating the models used to generate the maps.*”

(Emphasis added)

Most importantly, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires “[a]ffirmation that the coverage model has been validated and calibrated at least one time using on-the-ground testing and/or other real-world measurements completed by the provider or its vendor.”

The mandate requiring more accurate coverage maps has been set forth by Congress. “As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps.”¹¹ “The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to ‘establish a process to verify the accuracy of such data, and more.’”¹²

However, despite Congress’s clear intent to “improve the quality of the data,”¹³ several wireless carriers, have opposed the drive test/real-world data requirement as too costly.

“The project – required by Congress under the Broadband DATA Act – is an effort to

¹¹ <https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/>

¹² *Id.*

¹³ *Id.*

improve the FCC's current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate."¹⁴

If the FCC requires further validation and more accurate coverage models, there is no reason this Town should not do the same. For the foregoing reasons, dropped call records and drive test data are both relevant and necessary.

(ii) Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install wireless facilities provide local governments with *hard data*, as both: (a) actual evidence that the facility they seek to build is necessary and (b) actual evidence that granting their application would be consistent with smart planning requirements.

The most accurate and least expensive evidence used to establish the location, size, and extent of both *significant gaps* in personal wireless services, and areas suffering from *capacity deficiencies*, are two specific forms of *hard data*, which consist of: (a) dropped call records and (b) actual drive test data. Both local governments and federal courts in California consider hard data in order to ascertain whether or not a significant gap in wireless coverage exists at that exact location.

It must be remembered that a propagation study is only a predictive model of signal strength and coverage. The programs that create the studies use thousands, perhaps millions of calculations and are dependent on the program used and the input parameters defined by the person running the program. Accordingly, the result is only as good as the data input into the

¹⁴ <https://www.lightreading.com/test-and-measurement/verizon-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329>

program. Additionally, as here, propagation maps usually do not represent *all* frequencies available to the carrier. Lack of one frequency does not mean there is a lack of service in one or more other frequencies.

In fact, unlike “expert” reports, RF modeling, and propagation maps – all of which may be manipulated to reflect whatever the preparer wants them to show – *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy. Dropped call records are generated by a carrier’s computer systems. They are typically extremely accurate because they are generated by a computer that already possesses all of the data pertaining to dropped calls, including the number, date, time, and location of all dropped calls suffered by a wireless carrier at any geographic location and for any chronological period. With the ease of a few keystrokes, each carrier’s system can print out a precise record of all dropped calls for any period of time, at any geographic location. It is highly unlikely that someone could enter false data into a carrier’s computer system to materially alter that information.

In a similar vein, actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in “computer modeling,” the creation of hypothetical propagation maps, or “expert interpretations” of actual data, all of which are so subjective and easily manipulated that they are essentially rendered worthless as a form of probative evidence. Actual raw drive test data consists of actual records of a carrier’s wireless signal’s actual recorded strengths at precise geographic locations.

As reflected in the records, AT&T has not provided any type of *hard data* as probative

evidence, nor has it presented any form of data whatsoever, despite being in possession of such data. For example, AT&T could – and should – provide documentation regarding the number of residents who would benefit from the proposed tower, or information regarding the number and kinds of customer service complaints. “The substantial evidence analysis requires the Court to look for ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion’ that a significant gap in service exists. *New Cingular Wireless PCS v. City of West Covina*, 2023 WL 4422835 (C.D. Calif. 2023) *quoting* Metro PCS, *supra*. Clearly, the actual number of people who would benefit from the proposed tower as well as information regarding actual service complaints and/or dropped calls, would be the best indicators of a significant gap in service.

C. AT&T’s Analysis Regarding Its Wireless Coverage
Is Contradicted By Their Own Actual Coverage Data

As is a matter of public record, AT&T maintains an internet website at <https://www.att.com>. In conjunction with its ownership and operation of that website, AT&T maintains a database that contains geographic data points that cumulatively form a geographic inventory of their actual *current* coverage for wireless services.

As maintained and operated by AT&T, that database is linked to AT&T’s website, and is the data source for an interactive function, which enables users to access AT&T’s own data to ascertain both: (a) the existence of AT&T’s wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

AT&T’s interactive website translates their *actual coverage data* to provide imagery whereby areas that are covered by AT&T service are depicted in various shades of blue, and

areas where AT&T has a lack (or gap) in coverage, are depicted in white. The website further translates the data from AT&T's database to specify the actual *service level* at any specific geographic location.

A copy of AT&T's coverage map for the area around 1574 Old Mammoth Rd., Mammoth Lakes, CA can be viewed on AT&T's website and is also attached as **Exhibit "D."** This Exhibit was obtained and printed on February 12, 2024, from AT&T's website.

On its website, the coverage map shows, based on AT&T's *own* data, that there is no significant coverage gap in AT&T's service at 1574 Old Mammoth Road, or anywhere around or in close proximity to it. The coverage map indicates solid levels of service.

This is in stark contrast to the claims made by AT&T in its submission, allegedly supported by their propagation maps. This obvious contrast between the claims made on AT&T's website in order to sell its services to the public and the claims made by AT&T in order to sell its proposed tower to this Board is striking. If nothing else, these differences demonstrate the ease with which data can be manipulated to suit a particular purpose.

In addition, annexed as **Exhibit "E"** is a map maintained by the FCC, accessible on their website and based on data provided directly by AT&T. This Exhibit was obtained and printed on February 12, 2024, and shows that there are no coverage gaps at or near 1574 Old Mammoth Rd., Mammoth Lakes, CA.

Both **Exhibits "D"** and **"E"** are based on AT&T's own data and as such, at the very least should be treated as statements against interest.

D. *ExteNet Systems, Inc. v. Village of Flower Hill and Flower Hill Board of Trustees*

On July 29, 2022, the Federal District Court for the Eastern District of New York issued an informative and instructive decision that reiterates the holding in another authoritative and widely cited case, *Willloth, supra*. Although not binding on Courts in the state of California, the case is nonetheless persuasive. The Judge noted that while “improved capacity and speed are desirable (and, no doubt, profitable) goals in the age of smartphones, ... they are not protected by the [TCA].” *ExteNet Systems, Inc. v. Village of Flower Hill*, No. 19-CV-5588-FB-VMS (E.D.N.Y. July 29, 2022). In the *Flower Hill* case, the Board found significant adverse aesthetic and property values impact and, most importantly, no gap in wireless coverage and, therefore, no need even to justify the significant adverse impacts. Quoting *Omnipoint, supra*, the Court found that the lack of “public necessity” can justify a denial under New York law. “In the context of wireless facilities, public necessity requires the provider ‘to demonstrate that there was a gap in cell service, and that building the proposed [facility] was more feasible than other options.’” *Id.* Further, the Judge held that “as with the effective prohibition issue, the lack of a gap in coverage is relevant here and can constitute *substantial evidence* justifying denial...And, since one reason given by the Board for its decision was supported by substantial evidence, the Court need not evaluate its other reasons.” *Id.*, (*emphasis supplied*).

The applicant bears the burden of proof and must show that there is a significant gap in service – not just a lack of a *particular frequency* of service, *i.e.*, 5G service. A cell phone is able to “downshift” – that is, from 5G to 4G or from 4G to 3G, etc. – if necessary to maintain a

call throughout coverage areas. Unless there is an actual gap, the call will continue uninterrupted. Therefore, there's only a significant gap when there is *no service at all*. *Id.*

Similarly, in this instance, in addition to the clear adverse impact on the neighboring properties, AT&T has failed to produce any evidence of a truly significant gap in wireless service. Showing a gap in a particular frequency is not sufficient. *All* frequencies must be absent for a significant gap to exist. AT&T has failed to meet this burden, and thus their application should be denied.

POINT V

To Comply With the TCA, AT&T's Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a board must issue a written denial which is separate from the written record of the proceeding, and which contains a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715 (2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The most authoritative and widely quoted explanation of the TCA's "substantial evidence" requirement comes from *Cellular Tel. Co. v. Town of Oyster Bay*: "substantial evidence implies 'less than a preponderance, but more than a scintilla of evidence'." 166 F.3d 490 (2d Cir. 1999). *See also, GTE Mobilnet, supra*. Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id., quoting MetroPCS, Inc. v. City and Cty. of San Francisco*, 400 F.3d 715 (9th Cir. 2005). Thus, these interested homeowners have met their burden of proving that AT&T failed to offer sufficient evidence to warrant granting their application and it should be denied.

To ensure that the Town's decision to deny this application cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny AT&T's application in a written decision wherein the Board cites the substantial evidence upon which it based its determination.

C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers try to intimidate local zoning officials with either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, entirely hollow.

This is because, even if they file a federal action against the Town and win, the Telecommunications Act of 1996 does not entitle them to recover compensatory damages or

attorneys' fees, even if they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.¹⁵

This means that if they were to sue the Town and win, the Town would not be liable to pay them anything in damages or attorneys' fees under the TCA.

Typically, the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last a comparatively short time. As a result of the brevity and relative simplicity of such cases, the attorneys' fees incurred by a local government are typically quite small, compared to virtually any other type of litigation.

Conclusion

AT&T has not proven that a need even exists in the area where they propose to install their cell tower. No significant gap has been demonstrated. Nor has AT&T proven that the proposed facility is the least intrusive means of remedying the purported significant gap in service coverage, and they have not shown that a meaningful, good faith inquiry was made as to whether the proposed facility is the least intrusive alternative.

These facts together with the clear adverse impacts – both aesthetic and financial – which will befall the nearby residents, and which will affect the character of the of the entire community can result in only one thoughtful, considered decision. It is respectfully submitted that the decision must be a denial of AT&T's application.

¹⁵ See *City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

For the foregoing reasons, we respectfully request that AT&T's application be denied in its entirety.

Dated: Mammoth Lakes, CA
February 12, 2024

Respectfully Submitted,

William Larson
Joan Larson
Elisabeth Brown Trust
Ben Youngblood
Ann Youngblood
Thomas Kawakami
Ruth Kawakami
Ronald Soto
Janis Soto
Brian Sheehan
Shana Sheehan
J.C. Collins
Lorraine Welty
Robert Ragland
Sheryl Ragland
Marc Blythe
Michele Blythe
Sonja Bush
John Bush
Bret F. Gifford
Teresa Gifford
Todd Wolter
Stacy Wolter
Mark Nieman
Riki Nieman
Kevin Kershisnik
Rory Sheehan
Niva Tro
Ann Tro
Michael Stone
Jeanne Stone
Ken Stone

Julie Neuman
Victor Barreda
Michael Ramirez
Kimberly Ramirez
Dena Sellers
Joseph Bishop
Tony Li
Andrew McCombie
John Findley
Cindy Underwood
Brian Werdesheim
Janelle Werdsheim
Gordon Emi
Miwa Emi
Keith Marvin
Lesley Marvin
Kiumars Arfai
Pariznd Hooshi
Blake Rogers
Kallie Rogers
David Child
Diane Child
JC Macrae
Anne Macrae
Annrita Campbell
Gerald Jay Visconti Jr.
William Owen
Elizabeth Owen
Cameron St. Clair
Tom St. Clair
Jeffrey Reiner
Susan Reiner
Emily Schoen
Gary Morgan
Bruce Hamlin
Philip von Alvensleben
Isabell von Alvensleben
Jeremy S. Johnson
Alison K. Hurley
Mark Young
Allis Young
John Peterson

Elizabeth Peterson
Joshua Bradbury
Jennifer Bradbury
Denis Serenyi
Amanda Serenyi
Erik William Smith
Tom Bovich
Claudine Bovich
Paul Holzhauser
Helen Polkes
David Jordan
Melissa Apfelbaum
George Menard
David Bridgeman
Laura Bridgeman
Thomas Hwang
Kalena Hwang
Katherine Piliero
Sean Byun
Mary Byun
Ryan Gorostiza
Michele Gorostiza
Jason Lorber
Beth Cavanaugh
Bryan Keonig
Kathryn Keonig
Tod Robinson
Jacques Perrone
Lauren Perrone
Jeffrey Apregan
Nancy J. Apregan
Don Herman
Mary Sue O'Melia
Craig St. John
Jody St. John
Trevor Wright
Sami Wright
Ronald J. Homer
Suzanne Homer
Erik Hawley
Maria Hawley
Neil Desai
Anjini Desai

Craig Wilson
Jonathan Gast
Jennifer Gast
Todd Thedinga
Claire Martin
Sabin Lee
Peggy Luh
Jahanshah Jomehri
Bob Brister
Tina Borenstein
David Borenstein
Deidre Judge
Frank Family
Frederick Willert
Virginia Willert
Ellen Srerif
Wayne Walters
Christine Walters
Kevin Saks
Robert Mallory
Raymon Klerks
Stephanie Klerks
Howard Scheckter
Corey Fischer
Laurene Fischer
Brett Montgomery
Carey Montgomery
Greg Agee
Jon Conner
Theresa Conner
Jenny Umansky
John HeideIman
Diana HeideIman
Sabita Singh
David Park
Lori Park
Pete Carpino
Gevorg Mrktchian
Paulet Abedi
Christopher Caulfield
Monica Caulfield
Brian Blades

Wendy Blades
Stephen Dyner
Mandi Dyner
Diego Uchitel
David Melton
Jodi Melton
Patricia Johnson
David Johnson
Sean Jean
Jennifer Jean
Lauren Johanson
Eric Jones
Brooks Play
Paula Play
Ryan Wayne
Iris Zuleyka Farnes
Sandy Webb
Jeff Ruscigno
Broderick Family
Suzanna Ryan
Jeffrey Hall
Eric Larsen
Charles Davis
Kathy Hollenback

TOWN OF MAMMOTH LAKES
STATE OF CALIFORNIA

-----X
In the Matter of the Application of:

AT&T

For Use Permit

Premises: 1574 Old Mammoth Road
Mammoth Lakes, CA 92780

APN: 040-040-021-000

-----X

EXHIBITS IN OPPOSITION

Exhibit List

- A Adverse Aesthetic Impact Letters
- B Photo Simulations
- C Real Estate Professional Opinion Letters re: Adverse Impact on Property Values
- D AT&T Website Wireless Coverage Map
- E FCC Coverage Map for AT&T

EXHIBIT A

February 5, 2024

Town of Mammoth Lakes,

I am a resident in Creekhous, residing at 1533 Clear Creek Road. My whole family is very upset at the thought of a cell tower going up and impacting our views and neighborhood aesthetic.

Twenty-two years ago, we discovered Mammoth Lakes, fell in love and decided to spend every minute of our summer months there that we could. We always rented homes in Snowcreek. As the years unfolded, we watched the Creekhous neighborhood begin construction and knew that we wanted to finally buy in Mammoth and live in this most perfect location for us. We patiently waited for the right unit to start construction and be available for purchase. We picked the unit based on the size and the view that we love so much. Our view from the family room and bedrooms, as well as our front deck, are the reason we bought there. To have this view be obstructed with a cell tower is something I never imagined would happen. Family, friends and I should not have to look at a cell tower in this most beautiful town we have every lived in or been to. To know how long we were patient in buying in order to get the perfect unit for us, and now have that all be erased, is making me question the Town and the direction it's headed.

Regards,

Julie Neumann

Victor Barreda
1535 Clear Creek Rd
Mammoth Lakes CA

To whom it may concern:

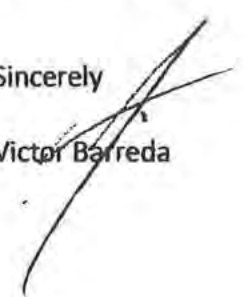
My family and I recently bought the 1535 clear creek property this last summer with the intention to relocate permanently to mammoth lakes CA. One of our main reasons we chose mammoth lakes was due to its natural beauty and the low development impact it has on such natural scenery and aesthetics. This was one of the particular reasons we chose the 1535 clear creek property due to its impeccable view from our living room to mammoth rock area and the adjacent mountain.

Although I understand the benefits of this new cell tower in our area, since we have first-hand have experienced the latency in cell internet speed and coverage specially when the town is full; I still feel strongly to oppose such cell tower to be built in the location proposed. First and foremost, it would impact the natural untouched beauty of many of the homeowners views specially the ones like us that have a direct view through the area of the proposed cell tower. Secondly because I believe that in a town like mammoth lakes aesthetics and the relationship between development and growth has to make sacrifices always favoring what is best to keep minimal impact our towns growth and needs have on the Natural beauty of its views and surroundings.

Cell towers although useful and necessary in our daily lives always have a negative impact on the aesthetics of a towns view. In a modern large city this is really not that much of a concern but in a town like Mammoth where you are surrounded by such majestic natural beauty, then it becomes a great concern. Since the Majority of us decide to move or by a vacation home in this area with much of our reasons stated above, we truly trust that our town council and representatives share this same feeling and vision for the future of our town not only for our time but for generations to come. I do feel that very few of us would trade faster cell coverage for a cell tower ruining our view and the aesthetics of our beloved town no matter where you view is to.

Sincerely

Victor Barreda



February 9, 2024

Dear Members:

I am one of the few full time residents of Creekhous. I have lived here for four and half years with my 12 year old son. We have a gorgeous view of Mammoth Mountain and Lincoln Mountain on one side of the property and a stunning view of the Sherwins, Mammoth Rock, and Mammoth Crest on the other side. If this tower is built, it will completely destroy our view of Mammoth Rock, Mammoth Crest and the Sherwins. I will have to look at it multiple times a day as I drive up to my home. This will greatly reduce our enjoyment of the property and certainly diminish our happiness. More recently, my son loves to look up at that view because he is getting into backcountry skiing and starting to hike up to Mammoth Rock, so he loves to look with binoculars up in that direction from our driveway to see the routes. If this tower is built he won't be able to see the routes any longer.

Furthermore, the reason why I moved here after my divorce was because I knew that I was eventually going to need to use the property as rental income. That time has come. I recently lost my job at a local restaurant because it had to close because of the difficulties in running a small business in the town of Mammoth Lakes. It could no longer afford to stay open. Jobs are scarce in this town and as a single mom I am working on getting my property on a rental program in order to survive. If this tower is built, I'm sure that vacationers will simply choose another location in town. Or, I would have to significantly lower my rate.

If plans to build this tower are approved, I will be forced to sell my property. My son and I do not want to look at a cell tower every day or be living in close proximity to one. The value of my property will surely be greatly diminished.

Overall, this tower would be a horrible addition to the community. It is ugly and menacing. There is no reason why the tower should be put in our beautiful residential community. Please do not allow this to go forward. This tower can be placed somewhere else.

Sincerely,
Emily Schoen

February 7, 2024

To Whom It May Concern:

My family has a home at 1371 Timber Creek Road. It is located across a small residential street from the Mammoth fire station and will be severely impacted by the proposed cell tower. We purchased this home two years ago with the goal of having a home in the beautiful natural setting of the Sierras. We have two children (ages 7 and 11) and we wanted them to see how living even part time in nature and far away from the city trappings of tall buildings and manmade structures could be a wonderful experience.

If we had known that there was even a remote possibility of an 80 foot cell tower being built in front of our home, we would never have considered buying a home in this neighborhood. I cannot even fathom the construction of such an enormous structure in our residential community! My understanding is that if it were to be built, it would be the tallest structure in the Sierras! We will have direct views of this monstrous fake tree from our master bedroom window. Our once cherished views of Lincoln Mountain will be forever obstructed by this enormous manmade structure that has no place in a residential community.

When we drive to our home, the predominant feature of our neighborhood will be this cell tower that will loom over everything except the mountains in the background. It is so tall, that the cell tower will be the primary landmark of the entire Snow Creek community.

We are devastated to consider what this will do to the property values of my home and our neighbors' homes that are this close to the cell tower. I suspect that a 50% drop in value would not be unrealistic as I know almost no one would choose to buy a home so close to the one 80 foot cell tower in the mountains. Anyone that wants to buy a home in the Mammoth area will be repelled by the presence of this tower and will look elsewhere or seek a lowball purchase price.

Given these aesthetic and likely financial impacts to my home and my neighbors in the Creekhouse neighborhood, I strongly urge the city council to find a different location that does not impact so many residential homes.

Suzanne Homer



February 5, 2024

Mammoth Planning & Economic Development Commission
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546

To Whom it May Concern:

We received a public notice several days ago about an upcoming meeting on February 14, 2024, and we are appalled that a cell tower in one of the most pristine areas with breathtaking views would even be considered.

We chose our specific condo at Creekhous because the view is breathtaking. We wanted our vacation home to be away from the city life with shopping centers, tall buildings and all of the industrial aesthetics found in our busy everyday lives. When we look out of our windows, we want our entire family to be present and take in the nature that surrounds us. Our Creekhous property is about creating everlasting memories with family and friends without the distraction of electronics. The cell tower is the exact opposite of what defines a mountain town and what we envisioned when we bought our property.

On another note, the local community in Mammoth rely on visitors who come to get away and enjoy the mountains, lakes and all of the outdoor activities. Adding a cell tower to one of the newest developments that bring in a lot of revenue to the Mammoth community would negatively impact them financially in the long-term. Today one cell tower is installed and tomorrow it is another tower that is authorized.

Our HOA has kindly provided us with information regarding the proposed cell phone tower installation. We were provided renderings of the proposed 75 'cell tower at the Fire Station both bare and as a monopine. The installation of the cell tower will destroy the view and appeal of the Creekhous development. In addition, it will also negatively impact the value of the development, particularly any units where the Cell Tower is visible. Had we known about the potential of the Cell Tower, we would never have considered purchasing a home at Creekhous. Surely, there is a more suitable location for the cell tower that would not affect the views of homeowners.

We urge the Planning Commission to reconsider the location of this project.

Thank you for your consideration,

Trevor and Sami Wright
1454 Boulder Creek
Mammoth Lakes, Ca 93546

JACQUES & LAUREN PERRONE
1440 BOULDER CREEK ROAD
MAMMOTH LAKES, CA 93546

February 5, 2024

Mammoth Planning & Economic Development Commission
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546

To Whom it May Concern:

I am a recent owner within the Creekhous development within Snowcreek at Mammoth Lakes. I am writing this letter to express my frustration and concern regarding the pending development of a cell tower at Fire Station #2 ("Cell Tower"). I was never made aware of this project through a public notice, but I only heard about it through a recent Creekhous HOA meeting. I received a public notice (the first one) a couple days ago about an upcoming meeting on February 14, 2024, which leads me to believe this project is at an advanced stage.

I have been visiting Mammoth Lakes for over 20 years during both the Winter and Summer seasons. What I love about Mammoth is it provides an abundance of outdoor activities and a lot of what we do not have in Los Angeles, including cell towers and other eye sores that are prevalent in major metropolitan areas. We thought about buying up in Mammoth for many years, but never found a location we loved enough to invest that substantial amount of money that was required to justify a second home. This changed during the Pandemic, when we fortuitously stumbled upon Creekhous.

We purchased our condo at Creekhous because the setting is spectacular in terms of location and mountain views. It checked so many of the boxes for family. I think the same is true for many other owners within Creekhous, as several have expressed and shared the same thoughts with us over the last two years. This is also why the development experienced strong demand for new units and attractive price appreciation over the last two years. It is a unique location and development, which is why the news of this cell tower potentially being built is awful.

Our HOA has quickly appointed several people to better understand the situation with the pending cell tower. As part of that process, they have created (to scale) renderings of the proposed 75' cell tower at the Fire Station both bare and as a monopine. Under no scenario will this not significantly destroy the views and appeal of the Creekhous development. In fact, I think the size of this tower will negatively impact the surrounding area. To that end, it will also impair the value of the development, particularly any units where the Cell Tower is visible. Had I known about the potential of the Cell Tower, I would not have purchased my unit in Creekhous, particularly one where the view would be impacted. I cannot imagine this is the only place where the Cell Tower can be located. There must be an industrial or commercial location where this would be more appropriate. At this point, with the public announcement, it's too late for us to sell our unit, as this would appear on the disclosure schedule and be a major negative with any sale process. I would kindly request that the Planning Commission reconsider the location of this project.

Regards,

Jacques & Lauren Perrone

Jahanshah John Jomehri
4176 Hayvenhurst Avenue
Encino, CA 91436

2/5/2024

City of Mammoth Lakes
Mammoth Lakes. CA 93546

Re: Cell Tower

Hello Mr. Jordan,

I am the owner of 1382 Timber Creek Rd. and I fully protest the Cell Tower that is planned to be installed. The city has taken the best view possible and wants to destroy it.

Unfortunately, I am unable to attend the city's meeting, but please sound my dismay, disappointment, and my objection to the location of the Cell Tower.

Thank you.

Best regards,

John Jahanshah Jomehri
626 617 2318

To: Mammoth Lakes Planning and Economic Development Commission,

From: Brian and Wendy Blades

Date: November 7, 2023

Subject: Proposed Cell Tower 'Stealth' Monopine at Fire station #2

Dear Planning Commission –

We strongly oppose the location of this proposed cell tower at fire station #2.

Some background. We are the owners of 1553 Clear Creek Road in the Creekhouse portion of Snowcreek. Both of our families have been camping, fishing, hiking, backpacking and skiing in the Eastern Sierras for over 100 years. My husband started skiing at Mammoth when lift tickets were \$6.25. I used to budget \$10. a day at Mammoth for food and lift tickets. My dad was part of the group that was involved in the prospective ski area further down 395. We have a picture of my Dad and his two best friends packing over Mono Pass on his last Sierras trip hanging in our Creekhouse downstairs hall. When looking to purchase a mountain home again, we drove the Eastern Sierras from Lone Pine to Lassen. My husband will tell you that we drove EVERY single street in Mammoth. Our Creekhouse home is VERY special to us.

The proposed cell tower is a blatantly obvious eyesore of industrial blight that will significantly alter the skyline of Mammoth and do much to harm the small mountain town appearance and atmosphere that has brought all of us to here.

The tower structure also encroaches into the property easement and must be moved back out of the easement areas. The permit to construct this monstrosity must be denied.

Respectfully Yours,

Brian and Wendy Blades

1553 Clear Creek Road

Dear Mr. Jordan,

This email is intended to express our strong objection to the construction of a cell-signal tower on the property of Mammoth Firehouse located at 1574 Old Mammoth Road, Mammoth Lakes. We are owners of #1321 Timber Creek Road in the Snowcreek VII complex, within approximately a quarter mile of the intended construction site.

This construction site is directly in our view of the Sherwin Range looking West/Southwest from our unit, and will be visible both from our upstairs bedroom and from Timber Creek Road as we enter and exit the garage. Moreover, we regularly walk the circuit between Snowcreek VII and Snowcreek IV which passes directly behind the fire station on Timber Creek Rd and onto Club Drive.

We purchased our property 3 years ago because of the expansive views of the Sherwins to the south and west, and because of the open views of the Sierra Meadows area across Old Mammoth Road. The proposed tower will drastically impact the natural views we currently experience and will only detract from what Snowcreek VII has provided its residents.

We strongly object to the construction of a tower on designated site. Thank you for your efforts on behalf of all the local residents.

With regards,
Mark and Allis Young
1321 Timber Creek Road
Mammoth Lakes

From: Helen Polkes hpolkes@gmail.com
Subject: Objections to cell tower planned for 1574 Old Mammoth Road
Date: February 10, 2024 at 3:01 PM
To: nbobroff@townofmammothlakes.ca.gov



Hi Mr. Bobroff,

As Community and Economic Development Director of Mammoth Lakes, we want to make sure you are aware we have serious concerns about the cell tower proposed location at 1574 Old Mammoth Road.

The location, in a beautiful residential area, is no place for an 80 foot cell tower (even one disguised as a tree) especially when there are a number of other, less conspicuous, areas to locate the tower.

We moved to Mammoth several years ago and specifically chose our neighborhood for its peaceful location surrounded by amazing landscapes including Sherwin Meadows and Mammoth Rock. The tower will be visible from our back patio and every time we return home. It will be an inescapable blight in our community. The tower in the location proposed will forever mar the beautiful views we and all of our neighbors see.

It is not an understatement to say we are heartbroken the tower is being considered in its current location.

We strongly object to the placement of the tower at 1574 Old Mammoth Road. Please help us and the community find a more appropriate location for the cell tower to ensure the enjoyment of all the people that live and vacation in the area.

Thank you,

Helen Polkes and Paul Holzhauser
1432 Boulder Creek Rd, Mammoth Lakes

Dear Nolan and Jamie and relevant departments within the Town of Mammoth Lakes,

I am a homeowner in Creekhous/Snowcreek VII, and oppose the plans to install an 80' cell tower by the Old Mammoth fire station. I sincerely hope the town, the Fire Department, and the cell tower manager can come up with an amenable solution that is more subtle and better located. I understand the potential upside to the town with respect to lease earnings and benefits to emergency responders with increased AT&T cell coverage, but I feel the placement of an 80' tall "tree" towering over adjacent communities, dwarfing nearby trees, and looming over Old Mammoth Road will be not only unsightly, but financially detrimental to the well-being of my neighborhood.

Mammoth Lakes is a vista-driven community—it's what drives people here from all over. From town, and especially from our neighborhood, we have gorgeous views of the Sherwins, Mammoth Rock, Mammoth Crest, and, of course, Mammoth Mountain. Interruptions by a few structures are inevitable, but an 80' tall tower, twice the height of anything around it, will mar such vistas. It will be an eyesore from any perspective. It will be obvious from even the top of Mammoth Mountain. As someone who splits her time between Mammoth and San Francisco, where the Salesforce tower rose to become visible from all points in the city like a middle finger sticking up, perhaps I'm particularly sensitive to eyesores changing a landscape I love.

From a financial perspective, I have already heard anecdotally from real estate agents that property values have been affected and sales are stalling, and I fear the resale opportunities for me and my neighbors will be negatively impacted. While I don't currently rent my home now, I have seen rental rates in our neighborhood slashed and can only imagine how much worse the situation will be when the views we cherish are dominated by an unavoidable structure.

Further, the proposed height and location feels unwise given the wind tunnel it would sit in. Our neighborhood is regularly buffeted by unmitigated winds coming through Mammoth Pass. While I trust engineers to anchor the tower to the best of their ability, the wind speeds that can come down may compromise "branches" on the tower, if not the tower itself. The damage potential seems too great in that location to sustain such a plan.

I realize this is a big decision for the town, not to be entered into lightly, and I hope my concerns can help sway you to be as conservative as possible and not approve the project. I will attend Wednesday's meeting, as well, but wanted to make sure my voice was heard now.

Thank you,
Amanda Serenyi
1410 Boulder Creek Road
PO Box 787
408-391-1614

JEFF AND NANCY APREGAN
1442 BOULDER CREEK ROAD
MAMMOTH LAKES, CA 93546

February 6, 2024

Mammoth Planning & Economic Development Commission
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546

To Whom It May Concern:

We have been coming to Mammoth Lakes for over 40 years and have enjoyed everything that the area has to offer. A couple of years ago, we purchased our townhome in the Creekhous development which is part of Snowcreek. We visit Mammoth Lakes throughout the year and enjoy every season, often hosting family and friends.

The investment we have made in our home in Creekhous was a considerable one for us. Our decision to purchase in the Creekhous development was largely based on its location and its views. The unencumbered views of Mammoth Rock from our deck and from our home, and the views from the front of our street, were key factors in our decision to purchase our specific unit.

We are extremely concerned about the proposed cell tower and are strongly opposed to its installation. An 80-foot fake tree in such close proximity to our homes will not only destroy the views that we and our neighbors enjoy, but will have a considerably negative impact on our property values.

We love this place. We've been coming here for so many years. It was our dream to purchase a home here and spend even more time in Mammoth. Had we known about the cell tower two years ago, it would have affected our decision to purchase in Creekhous.

There must be other commercial, industrial or less populated locations which are less obtrusive and impact fewer residents. The income generated from this proposed cell tower is negligible when compared to the millions of dollars in lost property values for the affected homeowners.

Please reconsider the location of this project.

Thank you for your time and consideration.

Regards,

Jeff and Nancy Apregan

February 6, 2024

Mammoth Planning & Economic Development Commission
437 Old Mammoth Road, Suite 230
Mammoth Lakes, CA 93546

I am an owner in Creekhous. I am writing this letter to express my opposition to the application for a cell tower at the fire station. This cell tower promises to overwhelm Creekhous view corridors given its height, location and size. It is already negatively impacting real estate values. The public hearing process has been faulty from the start, and needs to start over.

1. **Faulty Public Process** - The public process for the proposed cell tower has been a mess from the start. The Town and the Fire Dept held "workshops" during the summer of 2023, and it appears the cell tower had been in the works even earlier. Literally no one was aware of what was being proposed during this entire period and virtually no one attended the workshops as a result. This is due entirely to poor notification, not a lack of interest or concern. (The Fire Department actually signed a license agreement with ATT/Eukon after virtually zero public input.)

In late fall of 2023, once the broader community became aware of this proposed tower, we immediately provided our collective concerns. We asked for a delay to better understand what was being proposed. After reviewing the plans, and the lack of effort from the developer/applicant to engage in any meaningful way, we have no choice but to oppose the cell tower in its current form. The Creekhous community would have voiced concerns earlier and maybe stopped this process or been part of a process to find a better solution, if we had been given proper notice.

2. **Aesthetic and View Destruction** - I have been coming to Mammoth Lakes for over 40 years. Mammoth is simply my favorite place to be. I do not rent our home and I spend approx 50% of my time here. One of the key reasons is the incredible beauty in all cardinal directions. It is not surprising that John Muir and Ansel Adams (among many others) loved the Eastern Sierra and its beauty.

The proposed cell tower will significantly, negatively impact these incredible aesthetics and views. I do believe that given the size of this tower it will also negatively impact surrounding residential areas beyond Creekhous. The cell tower location is inappropriate. While the cell tower is technically in the back of the fire station, this doesn't mean it is in the "back." It is in the "front" for almost all of Creekhous and will be visible from kitchens, bedrooms, living rooms, decks, etc.

3. **Value Diminution** - Had I known about the potential of the cell tower, I would not have purchased my unit in Creekhous. At this point, it's too late to sell, as this would appear on the disclosure schedule and be a major negative. Real estate agents are noting problems with selling remaining units and have stated value drops are likely 20-30%.

Please deny the cell tower. It is in the wrong location, the wrong size, and should not move forward. We all want good cell phone coverage, and a better solution needs to be found and can be to achieve this goal.

Sincerely,

David Jordon and Kathy Runnells

To Whom It May Concern:

November 7, 2023

We absolutely object to the cell tower that is proposed to be built by the fire station adjacent to Creekhous. We purchased our property in October of 2022 based on many things we love about Creekhous (the beautiful, unobstructed views and its amazing location). Most importantly, building this monstrosity will decrease our home value which is completely unacceptable. We definitely would not have purchased our unit if that tower had already been constructed. Our unit is uncomfortably close to where you are proposing to build this monstrosity, which would be directly in our line of sight, and we are 100% opposed to its construction. Please reconsider.

Thank you,

Paula and Brooks Paley
702-809-8806 or 323-363-1013
1451 Boulder Creek Road
Mammoth Lakes, CA 93546



J. C. MACRAE

1411 BOULDER CREEK ROAD - MAMMOTH LAKES, CALIFORNIA 93546

November 5, 2023

Town of Mammoth Lakes Executive Secretary.

Re: Use Permit request (UPA) 23-002: New cell tower proposal by AT&T

Dear Planning Commission members:

For the record, we have owned a home in Mammoth Lakes for the past 20+ years and have recently become the owners of a Creek House home at 1411 Boulder Creek Road.

Candidly, and with no prior notice from the town of Mammoth Lakes, we were shocked to receive a notification on October 31st from the general manager of Snowcreek of the pending Planning Commission hearing to be held on November 8th to review a proposal to place a cell tower near our property.

Now that I have had an opportunity to review the construction elements of the "proposal" from AT&T, we want to state our strong and unequivocal **OPPOSITION** to the placement of such a cell tower where currently proposed. Our reasons include:

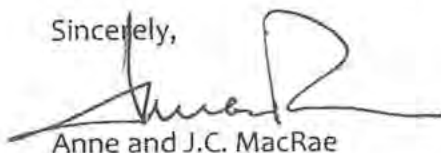
Such a tower is simply not in keeping with the beautiful Mammoth environment we all cherish. At 80 feet tall, it would be a tremendous eyesore for not only nearby residents, but also all who pass it on Old Mammoth Road. It will negatively impact views by nearby neighbors. No matter how cleverly described by AT&T in their construction materials, these cell towers are always easily identifiable and never fit in with the local environment. This one will not either.

We understand that the Mammoth Lakes Fire Protection Board of Commissioners rejected a cell tower proposal for this exact site approximately 10 years ago. And that proposed tower (at 45ft) was approximately half the size of the one now proposed. And most importantly, 10 years ago the Creek House development did not even exist. **Which begs the overarching question:**

Why is a cell tower of twice the size of one rejected on this exact location before, that will now directly impact an entire new development of homeowners, even be under consideration?

We urge your swift rejection of this cell tower proposal.

Sincerely,



Anne and J.C. MacRae

February 5, 2024

Dear Sirs/Madam

I am writing to express my objection to the proposed cell tower at Fire Station #2 Mammoth Lakes.

I closed on my new Mammoth Lakes home, 1360 Timber Creek Road, in October 2023. I bought the home in Mammoth to be able to enjoy the beautiful surrounding with family and friends. I had no prior knowledge to the plan for an 80 Foot Cell Tower approximately 400 feet down the road at the fire station. I don't think anyone would find that aesthetically pleasing to drive up to their home in the beautiful mountains and be staring at a 80 ft tower.

Why put a cell tower in the middle of a residential community? Who thinks that's a good idea? There must be other locations that are not the middle of a residential community- no matter how it is zoned. Has AT&T done a recent study on other possible locations where the cell tower might not ruin the views of so many? Given its location in the middle of a residential community, how will safety be maintained so there are no children climbing the very accessible tower and jumping off.

I have been enjoying Mammoth for years and finally decided to buy, paying double the average home in Mammoth for a new build annual property taxes to Mono County that correspond to purchase price and are in the 90 percentile of taxes in the area. This tower has a huge negative impact on the natural beauty of Mammoth, my view, character of the neighborhood, and noise control. Not to mention and immediate significant loss of value on me and my neighbors' homes.

Sincerely
Deirdre Judge

To Michael Peterka and additional Mammoth Lakes city planners,

We have recently become aware of the proposed AT&T cell tower at Fire Station #2 within the newly developed Creekhous community in Mammoth Lakes. We are current residents of this community and, as homeowners, we strongly oppose the construction and installation of this cell tower and any other wireless facilities, including but not limited to antennas, smart cells, satellites, and mini cell towers in our neighborhood. This site is nested within our home radius as it is directly across the street from our home which is located at 1461 Boulder Creek Road.

Our opposition to the proposed AT&T cell tower site is based on the following concerns:

1. BASED ON THE PROXIMITY OF THE CELL TOWER TO RESIDENTIAL HOUSING AND OUR HOME IN PARTICULAR, WE DON'T AGREE WITH THE CONCLUSIONS RELATED TO SITE SELECTION IN THE STAFF REPORT FROM THE MEETING HELD ON NOVEMBER 8, 2023

We do not agree that the location of the tower is in a location that provides the greatest amount of screening as there are residential homes located directly behind it that will now have a taller structure impairing views. This tower would be much less intrusive in a location that is not so close to existing residential homes.

In addition, this parcel would require significant visual mitigation. Stealth Monopine cell phone towers shaped as trees clearly do not look like natural trees and stand out which cannot be mitigated unless it blends in or is blocked by other structures. This will be the first structure that I see out of my front window as I am located at 1461 Boulder Creek Road. I strongly disagree that existing topography and vegetation will shield or hide this structure from the view from my home or other homes in close proximity to the fire station (there are numerous homes being directly impacted). That is clearly not a correct assumption.

2. NEGATIVE IMPACT ON PROPERTY VALUES

The unsightliness of these installations will have a negative impact on property values. The perceived threat alone would lower property values. The U.S. Department of Housing and Urban Development (HUD) guidelines categorize cell towers with "hazards and nuisances," and HUD requires its certified appraisers to take the presence of nearby cell towers into consideration when determining the

value of single-family residential properties. Studies have shown that proximity to a cell tower can lower property values from 5 to 20%.

3. ADDITIONAL NEGATIVE IMPACT ON SAFETY

There are non-radiation safety hazards posed by wireless installations on utility poles in residential neighborhoods, which current city regulations do not address. These include pole overloading and resulting fire and electrocution hazards when poles topple due to earthquakes, vehicular accidents or high winds; and explosive and toxic chemical hazards from backup batteries.

4. NEGATIVE IMPACT ON THE RESIDENTS

The close proximity to homes in neighborhoods, specifically the Creekhous community, would be an intrusion into the privacy of the residents. Workers performing routine maintenance would have direct views into homes.

Wireless companies require access for maintenance 24 hours a day, 365 days a year. That maintenance (often done at night) brings work crews, trucks with lifts, radios, lights and noise that will affect many neighbors.

We ask you to support us in preventing this cell tower installation and any future wireless installations in this area. Thank you for your consideration and attention to this important matter.

Sincerely,

Phillip and Nicole Broderick

1461 Boulder Creek Road (directly across the street from the proposed cell tower)

To Whom It May Concern:

We the owners, Don Herman & Mary Sue O'Melia, of 1450 Boulder Creek Road, Creek House, Snowcreek Resort, Mammoth Lakes, CA 93546 hereby oppose the installation of the subject cell tower and associated equipment.

We have been coming to Mammoth since 1963. We have owned four properties in the town since 1969. We have watched and experienced the town's development over these years and have always appreciated how that development has kept in sync with the natural beauty of the surrounding Sierra Nevada environment. Unfortunately, with this proposed project it appears the town has given up on that by putting this tower in the middle of everyone's beautiful view in our complex.

Views in Mammoth are at a premium and the installation of the subject cell tower will negatively impact views from our property as well as property value. We purchased the property at a premium for the unencumbered view of Mammoth Rock, Red Mountain, the Crest, and more. We did not purchase in a forested area as the views are very important to us and our guests. The fire department's equipment height as currently configured was acceptable when we purchased the property. Any equipment higher than the current "Smoke House" and/or "Lift Tower Prop" will not be acceptable.

We have experienced these types of towers previously and although they attempt to imitate the look of a tree, they appear far from it and are actually quite phony & hideous in appearance. For this and the resulting encumbered view we object to this project.

We and others in this resort rely on our properties having attractive value to both potential vacation renters and permanent owners. This installation will lower that value when compared to other options.

Please consider the installation of this facility at a less impactful site to the beautiful views of Mammoth or not at all.

Thank you in advance for denying this project.

Sincerely,

Don Herman & Mary Sue O'Melia

Dear Members of the Mammoth Lakes Planning Committee:

I am writing to express my strong opposition to the Cell Tower at Fire Station #2.

First and foremost, a structure of this size and impact is not exempt from environmental review under CEQA pursuant to the Class 3 categorical exemption and proceeding with the current proposed plan would almost certainly invite a costly lawsuit. My concern is that the town could become embroiled in lengthy litigation that could result in having to pay damages and plaintiff's attorney fees. Given the town's track record of losing litigation and filing bankruptcy, I am particularly concerned.

Second, note that the tower does not comply with the applicable requirements for a Use Permit.

Third, I never received the requisite notice from the project's applicant, despite the proposed site located within 100 meters proximity from my condo unit.

Fourth, I am concerned about the safety risk of locating a cell tower in a fire zone and adjacent to dense housing.

Finally, Mammoth Lakes is one of the world's most beautiful places; with more creative thinking and public input, surely there is a way to accomplish your goal without sacrificing the natural surroundings.

Regards,
Todd Thedinga
1394 Timber Creek Rd

Dear Mr. Bobroff

I am writing to express my strong opposition to the proposed installation of a cell tower at 1574 Old Mammoth Rd. I am a resident of Creek House which is located within .3 of a mile from the proposed site. I have several reasons to object to this cell tower, which I will explain below.

First, the cell tower would have a negative impact on the aesthetic and character of our neighborhood, which is valued for its natural features landmarks, and residential atmosphere. How can you possibly entertain obstructing views of Mammoth Rock??? This cell tower would be an eyesore that would ruin the scenic views and degrade the quality of life for the residents and visitors. The cell tower would also be incompatible with the zoning and land use regulations of our neighborhood, which are designed to preserve its residential integrity. The cell tower would violate the spirit and intent of these regulations, as well as the comprehensive plan and vision of our community.

Second, the cell tower would pose a potential health and safety risk to the residents and wildlife in the vicinity. Although federal law prohibits local authorities from denying cell towers based on the environmental effects of radio frequency emissions, there is still scientific uncertainty and public concern about the long-term effects of exposure to these emissions. Moreover, there are other possible hazards associated with cell towers, such as structural failure like wind, fire, lightning, ice, vandalism, and interference with other devices. The cell tower would create an unnecessary and unacceptable risk for the people and animals living near it.

Third, the cell tower is not necessary to provide adequate wireless service in our area. According to the information available on the AT&T's website, there is already sufficient coverage and capacity in our neighborhood. Plus, there are other service providers with great coverage. There are also alternative sites that could be used for wireless facilities, such as existing structures or non-residential areas that are farther away from homes and schools. The wireless carrier has not demonstrated that there is a significant gap in service or that there are no feasible alternatives to the proposed site.

For these reasons, I urge you to deny the application for the cell tower. The cell tower would have a detrimental effect on our neighborhood's appearance, health, safety, and property values. It would not serve any public interest or need that outweighs the harm it would cause to our community.

Thank you for your attention and consideration.

Sincerely,

Rita & Larry Campbell

1413 Boulder Creek Rd, Mammoth Lakes

Dear Mammoth Planning Commission,

We were made aware of an AT&T cell tower plan on the property at the fire station at 1574 Old Mammoth Road. We have many concerns about such tower because we have a Creek House property very close to this site. On top of the fact that all the plans show the site to not have much around it those pics are from several years ago and now there are homes literally right next door on all sides of the fire station. An 80 foot "tree" would not only be very out of place but we have many concerns about the views and property values in the neighborhood! We do think Mammoth needs more cell towers but it seems there should be other places to put it then right where many people live. We understand that there are several other area that have expressed interest in having the cell tower where it would not be right outside someone's front door. We live down Boulder Creek, the road the that ends at the fire station. As we drive up to our home instead of seeing Mammoth Rock & Crest, as we can now, we will be looking at a very out of place 80-85 foot FAKE tree! We have seen many of these trees in So Cal and once they are installed, usually in a commercial area, they are never maintained to look like a beautiful tree and with the winds we get in Snowcreek there will be issues. I have attached several pictures, one of the potential view from our street and several of these "trees" in So Cal that is not being maintained. For the record we very much object to this placement of the tower at 1574 Old Mammoth Road for the views, property values and beauty for all the people that live or vacation in the Creek House community and surrounding communities.

Thank You,
Claudine & Tom Bovich
1430 Boulder Creek
Mammoth Lakes, Ca 92673

View of tree as looking up Boulder Creek. No tree or building anywhere near is that tall.

Below are many Mono Pines in So Cal that are not maintained and no longer look like trees especially as they add more antennas as they most like will!
I would be very sad to have one of the monstrosities in our neighborhood.













November 5, 2023

Mammoth Lakes Planning & Economic Development Commission

Re: Use Permit request (UPA) 23-002 Public Comments

My wife and I own 1340 Timber Creek Road, a triplex unit in the Creek House development. We are long term residents of Mammoth Lakes, having owned 2 homes on Ridgecrest then Crawford for 30 years before moving to Creek House. We have been regular financial supporters of the Junior College, Hospital and various other community agencies and projects over the years. Our views are not directly impacted by AT&T's proposed cell tower on the Fire Station #2 property, but we believe the Town would be short sighted and economically unwise to approve the lease and construction of anything close to an 80' cell tower.

While it presents a challenge to wisely develop a popular mountain resort community, the decision here is relatively easy. There is no significant need for an additional cell tower, as actual users will generally attest; the tower will look commercial and ugly juxtaposed against the existing landscape; the tower will present an unnecessary fire hazard; and the economic benefits to the town from this tower are exceedingly low. Mammoth Lakes must resist unnecessary commercialization to maintain its edge against competing resort communities, and this is an easy opportunity to do so. An obvious and ugly cell tower rising out of an area characterized by low-rise and naturally landscaped condominiums and homes will be forever referred to as a poor decision by our Town managers.

We strongly urge the Commission to reject construction of this proposed cell tower.

Sincerely, Bob and Sue Mallory
1340 Timber Creek Road
(310) 720-3456

February 10, 2024

John & Diana HeideIman

Owners: 1585 Clearcreek Road, Mammoth Lakes

John.heideIman@gmail.com

Regarding proposed 80-foot "stealth monopine" Cell Tower at Fire Station #2, 1574 Old Mammoth Road, Mammoth Lakes

We are writing this letter to strongly oppose approval of the proposed 80' cell tower designed by the Applicant, Ekon Group for AT&T (hereafter Applicant). In addition, we request changes to the Planning Commissions Exhibit A, Use Permit, to mitigate impacts on our adjacent residential property. We are outraged by the complete disregard and lack of consideration for surrounding homeowners by Applicant in their proposed design. We have studied the design documents including renderings materials presented to the Town Planning & Economic Development Commission for their consideration and review.

A cell tower and supporting facility project was already reviewed and then rejected by the Mammoth Lakes Fire Protection District Board (hereafter MLFD). In September 2013 the Applicant requested 45' cell tower to be located at Fire Station #2. The MLFD Fire Chief expressed concerns about the tower and the application was rejected. Over 10 years later, the applicant is again requesting a much taller 80' cell tower at the Fire Station. This 80' cell tower will negatively impact views from adjacent residential property that was permitted by the Town and constructed during the past 6 years. These residential units will be forced to contend with a massive and ugly 80' tall Monopine tower that will not be screened by adjacent vegetation and instead be visible from our property. If constructed as in the proposed design the monopine tower will obstruct our views of the scenic Mammoth Lakes mountains and forest that we enjoy from our home today.

We have reviewed the Applicants' materials provided to the Town of Mammoth Lakes and see no reason that an 80' tower is necessary today when a 45-foot tower was adequate in 2013. There are no structures in the area surrounding the proposed location taller than 45 feet. Applicant has moved the location of the tower on the Fire Station property since their 2013 application. The new application places their proposed 80' tower 100' closer to our development and about 30' from the closest Townhome. The Applicant is exhibiting total disregard for our continued enjoyment of our homes.

The characterization of the tower as a "stealth monopine" in the application request is completely deceptive and misleading. We request the Planning Commissioners to disregard the Applicants attempts to distort the impact of their design on our views and their failure to provide any screening. There is nothing stealthy about this design.

We note the deception reflected in renderings in Eukon's design document CSL04615 in the materials presented to the Commission on 7-20-2023:

- Applicant's "Proposed & Existing Views" deliberately distort our actual views and do not accurately reflect the intrusion of our views of the Sherwin Mountains.
- There are no renderings that show how the proposed tower will obstruct views of Mammoth Mountain and the surrounding forest from homes in our development.
- The photos of the proposed "South Views" distort the screening of the 80' stealth monopine by two existing trees on the Fire Station site that the Applicant states mitigates the new tower's visual impact for drivers using Old Mammoth Road (the Scenic Roadway). This is completely untrue.
- Both of the renderings include incorrect Site Location views that do not include the homes built adjacent to the proposed cell tower location on the Fire Station site. The submitted renderings instead shows a view of the land before our

homes were constructed in the past two years. These homes were built or under construction by 7-23-2023 date these renderings were received by the Planning Commission.

- The mountain features we homeowners value and enjoy today have been eliminated from the background of the photos shown in Applicant's existing and proposed renderings.

The Commissioners should drive up to the site and see the level of distortion in the Applicant's renderings. This will allow them to see the added intrusion of the 80' tall cell tower when it was moved over 100 feet closer to the homeowners properties from the 2013 location on the Fire Station site. This move was to hide the view of the tower from Old Mammoth Road, a Scenic Highway. The proposed 6 story cell tower will be now visible from most of the adjacent housing on both sides of Old Mammoth Road as well as any drivers on the highway.

The Fire District's process for approval of the Cell Tower was flawed. In reviewing the online minutes of the Fire District Board meetings, the Board made a decision to "hire" the Applicant to prepare required Town permits needed to build the 80' tower on the Fire Station #2 site. This action was six months prior to the Fire District's public hearing and their approval of the cell tower. In addition, we did not receive notice of this public hearing. Our neighbors told us they did not receive the notice of the Fire District's Public hearing. Our property is within 250' of the Fire Station property. We are outraged that we were not informed of the hearing, and that the Fire District was acting 6 months before their hearings to legally contract the Applicant to plan construction and prepare permits without benefit of public input.

The Applicant's instance that only an 80' tall tower will provide needed cell service improvements is another deception. AT&T is operating 5 other cell towers in Mammoth Lakes today. AT&T does not use 80' towers located in or within 50 feet of residential property for their other towers. The 4th generation LTE & 5th

Generation (5G) technology for the cell antennas being proposed for the new tower are more powerful and cover a much broader array of RF frequency than what was available in 2013. The geography of the Old Mammoth area has not materially changed since 2013. Anything taller than the 45' tower requested on the same site in 2013 is illogical and should be rejected by the Planning Commission.

We also strongly object to allowing lighting to be installed on the tower that will further negatively impact on our enjoyment of our nighttime views. There should be no exterior lighting needed other than at times when maintenance of the tower is being conducted at night. ITEM #17 of Exhibit A should be amended and not allow AT&T or other Cell Tower operators or service vendors to illuminate the lighting that may be installed on the tower in item 17 other than during emergency situations. There is no FAA requirement for lighting to warn aircraft in the tower as proposed. So please restrict the lighting usage to support minimal use, not continuous lighting on an ongoing basis creating another nuisance for homeowners in the area. Please amend item 17 to restrict usage.

We object to any terms in the Town's permit that will encourage future expansion of any antennas on the 80' design below the 55' level of the AT&T Microwave antenna as shown on Eukon's drawing A-6. This is due to the intrusion of the Monopine design in our views and increasing the emission of additional RF radiation by increasing the number of antennas on the tower below the AT&T antennas. Eukon's proposed tower specifications call for the upper 25 feet of the tower to be used by AT&T for their array of 52 Antennas and power supply fixtures and a 4' Microwave "RAD Center" mounted at 55' below the LTE and 5G equipment. Their study of emissions does not include impacts from adding additional antennas and cell providers to their tower, The Planning Commissions' Exhibit A, Use Permit, should include a clause that will not allow any future mounting of antennas below the 55' height. Ther language should also exclude AT&T and any other providers to add more antennas to the tower below the 55' level

in the future. Leaving this possibility open to a future proposal is unwise as it will likely result in an even uglier design and more activity at the site. Consider the proximity of our homes, and our concerns stated above caused by this ugly cell tower and please eliminate any further expansion of cell antennas at the site in the Use Permit.

We are also very concerned that the Applicant and the Planning Commission have not included any language about maintaining the quality of the plastic and metal Monopine. We have visited sites in California where these Monopines were installed and are operating. We are appalled by the lack of maintenance and deteriorating conditions for the fake foliage and fake tree trunks. There are no conditions in either the Applicants documentation or the draft use permit that address the potential deterioration of the appearance of the plastic and painted surfaces that will be exposed to the extreme weather conditions in Mammoth Lakes. There is no schedule for inspection and replacement of the fake foliage required in these documents. This is a big concern for us. Would you want one of these ugly monstrosities deteriorating in your home neighborhood. We need more assurances that this 80 footer monster will be maintained to look as good and stealthy as the day it is installed on an annual basis at the expense of the operating entity.

Other concerns include the lack of any plans in the MLFD's written fire protection plan to protect homeowners from many cell tower fires that have occurred on these Monopines. These fires have proven difficult to extinguish and will no doubt imperil our homes and property. Where is the fire suppression plan?

There is also no protection for homeowners and our HOA for potential increases in or insurance premiums from having an unusually tall and dangerous electronic cell tower adjacent to our property. We note that the Commission, MLFD and the Town have demanded the Applicants Indemnify these organizations. There is no indemnification of protection for homeowners.

We also have determined that Applicant did not approach either the Snow Creek Athletic Club or St. Joseph's Catholic Church to discuss their interest in providing an alternative site within the past three years. Locating the new tower at one of these two locations would mitigate many of the problems we have from the Applicant installing their new tower at Fire Station #2, adjacent to the residential units in Snow Creek #7. We understand from recent communication from the Planning Commission staff that AT&T will not consider these locations at this time and instead is pressuring the Town to approve the current plan.

The Applicant's submitted documentation is misleading for both the Planning Commissioners and the impacted homeowners. We feel we needed to document these distortions and consider the Applicant's motives for making so many material distortions in their application. Please reject the current application for the ugly and decidedly not stealthy monopine 80' cell tower located at the Fire Station.

Sincerely:

John & Diana Heidelbergman

February 9, 2024

Dear Members:

Thankyou for addressing the concerns of residents of Creekhous.

My 12 year old son lives in the townhome and all of my concerns are for him and his future. This clearly controversial cell tower does not need to be placed in this location in the middle of one of the prettiest neighborhoods.

Placement here not only ruins views, property values and the general lifestyle fear of this technology, but it goes against why many locals bought in the development. We love Mammoth Lakes and the fact views from our places are some of the best and accentuates natural environment living. It's why we paid good money to move here.

Mammoth's Airbnb moratorium is already causing hardship for over 300 locals with property prices plunging up to 21% because of a bad decision made by town council.

Now yet another bad decision. that will affect locals and visitors alike, threatens a neighborhood that people choose to live and rent to be as close to nature in the middle of town.

If plans to build this tower are approved, I may be forced to sell my property before it affects property values.

Overall, this tower would be a horrible addition to the community. There is no reason why the tower should be put in our beautiful residential community. Please do not allow this to go forward. This tower can be placed somewhere else.

Sincerely,
Gary Morgan

February 11, 2024

nbobroff@townofmammothlakes.ca.gov

clerk@townofmammothlakes.ca.gov

Dear Nolan:

We are writing to voice our opposition to the proposed 80' Wireless Transmission Facility (WTF) to be placed at Fire Station #2 off Old Mammoth Road. This letter supplements our previous letter submitted prior to the November 8, 2023 Planning and Economic Development Commission meeting, and now takes into consideration the additional information made available, including on the Town of Mammoth Lakes website.

Our home is at 1380 Timber Creek Road, which is in the second building to the east of Fire Station #2 on Timber Creek Road. The proposed placement of the 80' tower is in direct view of our home, and the photo simulations provided by AT&T of the 80' tower deceptively minimize the visual impact of the 80' tower on our home and on the other homes in our neighborhood. The photo simulations make it appear that the proposed 80' tower will be closely situated among similarly sized or even shorter trees. These photos are completely misleading, as the Planning & Economic Development Commission's own Staff Report admits that "[t]he surrounding pine trees have an approximate average height of 55-65 feet."

Instead, the 80' tower will dominate the visual landscape as seen from our home and from other homes in the neighborhood. When approaching our home from the east along Timber Creek Road, the 80' tower will be the only structure in view rising over the buildings, directly obscuring the mountains to the west. The same will be true of the view from the west-facing window in our primary bedroom, which is the window facing our bed and provides the view that we see waking up in the morning. Instead of having a view of the mountains to the west, we would wake up to a view of an 80' monstrosity, standing alone without any surrounding trees.

Contrary to the findings in the Staff Report, the proposed tower does **not** comply with Municipal Code (MC) Section 17.52.280. MC § 17.52.280(F)(3)(a)(i) requires that "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." (emphasis added). Without conceding the accuracy of the photo simulations, the photo simulations provided by AT&T, reproduced below, demonstrate that the proposed 80' tower will clearly be visible from Old Mammoth Road, in violation of the Municipal Code.



The Staff Report suggests that the proposed 80' tower complies with MC § 17.52.280(F)(3)(a)(i) because the proposed location is "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." However, the Staff Report is confusing the requirements of MC § 17.52.280(F)(3)(a)(i) with the requirements of MC § 17.52.280(F)(2). MC § 17.52.280(F)(3)(a)(i) says nothing of screening, and plainly states that the facilities shall not be visible from the public right-of-way.

The Staff Report is also incorrect in its application of MC § 17.52.280(F)(2), which states:

2. **Site selection.** 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.
 (emphasis added)

Even assuming that sub-sections (a) and (b) are not viable, sub-section (c) requires that the site selection be dictated by selecting a location where **existing** topography, vegetation, or other structures provide **the greatest amount of screening**. The photo simulations above demonstrate minimal screening by existing topography, vegetation or other structures, and AT&T's own photo simulations from Timber Creek Road reproduced below show no screening whatsoever. Screening with a "faux pine tree design" is not screening with **existing** topography, vegetation, or other structures.



Moreover, the purpose of MC § 17.52.280(F)(2)(c) is not to specify how to maximize screening *after* a site is selected. Screening standards after a site is selected are specified by MC § 17.52.280(F)(3)(b)). Rather, MC § 17.52.280(F)(2)(c) imposes requirements on site selection, and requires that preference be given to a location where “existing topography, vegetation, or other structures provides the greatest amount of screening” when compared to other possible locations.

We recognize that AT&T has considered other sites, such as the Snowcreek Athletic Club, and provided a Technical Siting Analysis (Attachment B-5) with its alternative sites analysis. However, “lack of landlord interest at the time AT&T was conducting their alternative site analysis,” and AT&T’s preferences as described in Attachment B-5, do not override the site selection requirements of MC § 17.52.280(F)(2)(c). AT&T’s Technical Siting Analysis never addresses whether the alternative sites provide greater screening than Fire Station #2. If there is another location where existing topography, vegetation, or other structures provide a greater amount of screening than Fire Station #2, preference must be given to that location.

We refer to additional points already made in our earlier letter and do not reiterate all the details again here. We continue to question whether proper notice has been provided, not just for the November 8, 2023 meeting but over the last many years when it appears that the proposed WTF has been discussed. We also continue to believe that the proposed WTF is not categorically exempt from CEQA analysis because an 80’ tower that is significantly taller than any other structure in the neighborhood cannot be considered a “small” structure under California case law. Given the high winds and fire dangers that the

area faces, a monopole of such a significant height could break and land on a residence, initiate a wildfire, or directly obstruct access to buildings in an emergency.

Sincerely,

Sabing Lee & Peggy Luh

1380 Timber Creek Road

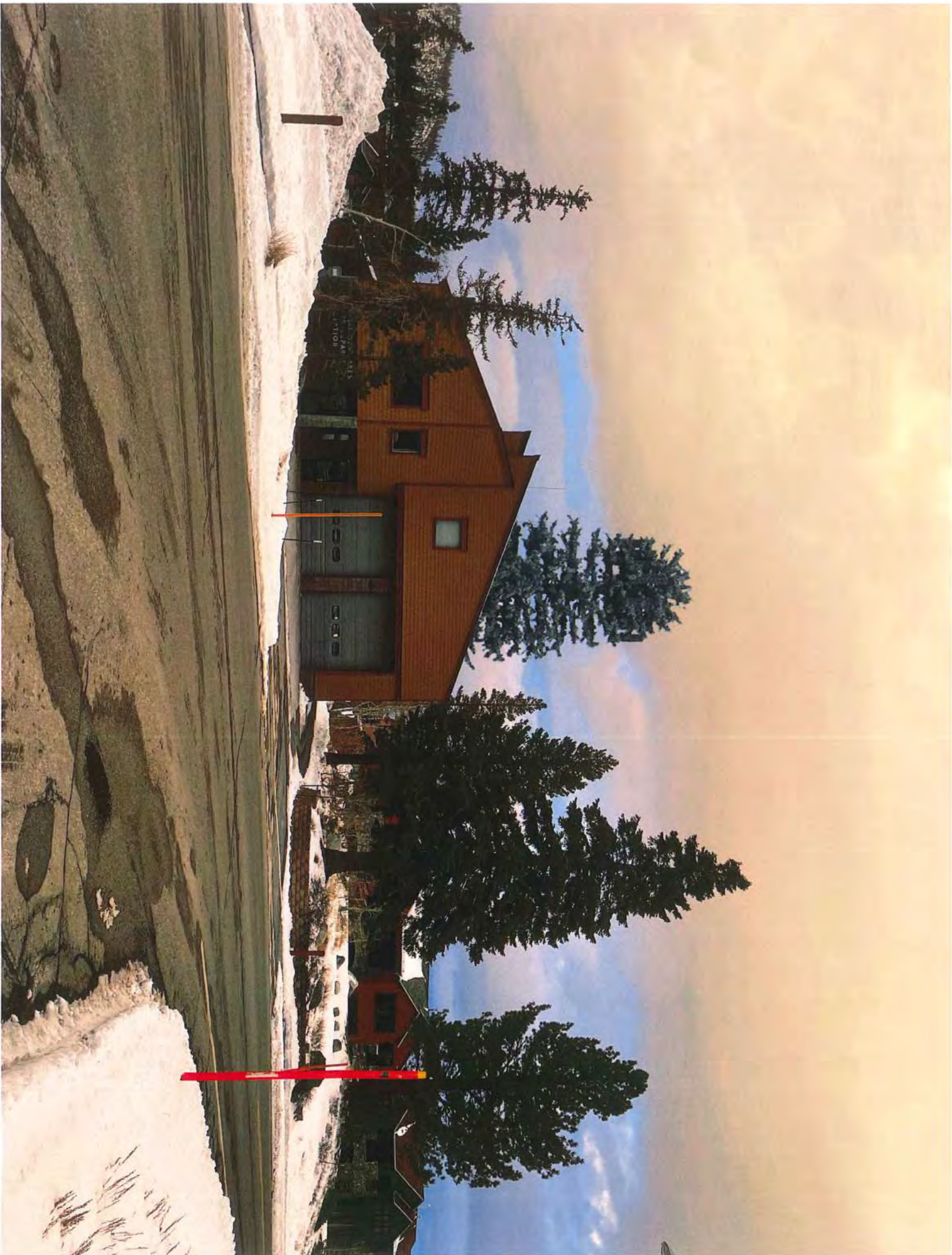
EXHIBIT B











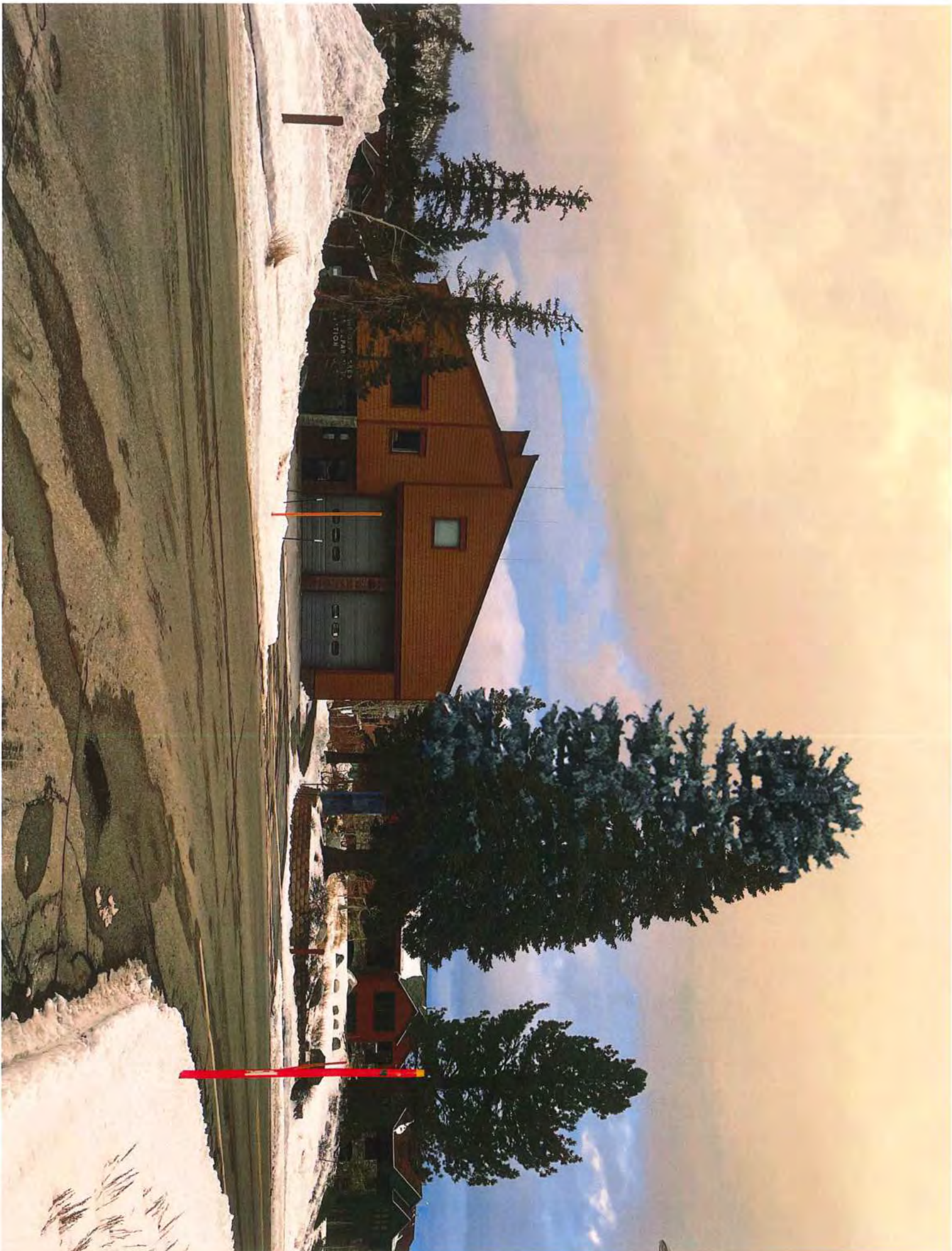




EXHIBIT C

February 11, 2024

To Whom it May Concern;

My name is Sherry Wishney and I am a California Broker Associate with The Snowcreek Property Company, located in Mammoth Lakes, CA. I have been with the company for 28 years. I am also a CRS and GRI designee.

The positioning of a cell phone tower at the police station on Old Mammoth Road would be a travesty for nearby residents for several reasons.

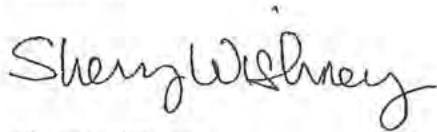
First, it would negatively impact the panoramic views in this area. Second, it will likely emit noise nuisance and potentially cause health problems. Third, it will have a devastating impact on the value of surrounding homes, possibly upwards of 25% in some cases. Lastly, I would guess that it could likely evoke a lawsuit.

I have clients, M/M Paley, who purchased just over a year ago, unit 1594 Clear Creek in Creekhous. They are extremely upset about the proposal and told me had they known, they NEVER would have purchased the unit. They bought in this neighborhood to enjoy the quiet beauty of the Sierras and now that is being taken from them.

I have had several other sales in Creekhous and at The Lodges. My clients are very disturbed and frustrated about the proposed location of the tower and worried about the financial devaluing of their investment that will ensue.

Please consider alternative locations for the cell tower that will not have such dire impact on surrounding residents.

Sincerely,

A handwritten signature in cursive script that reads "Sherry Wishney".

Sherry Wishney
Broker Associate, CRS, GRI

Dear Chair Michael Vanderhurst and Commissioners,

As a Creekhouse homeowner, Creekhouse HOA board member, and Mammoth REALTOR®, I am writing to express my deep concerns regarding the proposed cell tower at 1574 Old Mammoth Road. This issue holds significant visual implications not only for our immediate community and also for the property values of the surrounding area.

While I recognize the necessity of improved cellular coverage for the Old Mammoth community and Lakes Basin, I urge you to explore alternative solutions that do not compromise our scenic vistas and property values. As much as I would personally benefit from improved cell coverage, the drawbacks far outweigh the benefits. Moreover, the proposed location of an 80 foot cell tower raises significant concerns. Have you seen the simulated photos (one example attached)? An 80 foot structure is MASSIVE! A structure of this size, regardless of it looking like a "tree," will be an eyesore for the entire community - not just Creekhouse. Placing it at the corner of Old Mammoth Road and Club House Drive not only disrupts the natural flow of our surroundings but also detracts from the visual grandeur of Mammoth Rock, Mammoth Crest and the scenic Sierra Mountains. The towering structure will inevitably mar the picturesque landscape, undermining the very essence of our community's allure and potentially diminishing property values. I have two clients who were planning on purchasing at the end of Clear Creek Drive (next to Fire Station #2) and they decided not to proceed because of the cell tower.

According to the National Association for REALTORS®, there is a direct correlation between the installation of cell towers and the negative impact and property values (<https://www.nar.realtor/cell-phone-towers>). A simple Google search will lead to dozens of other studies showing the negative impact on property values.

As stewards of this beautiful corner of the world (or what I refer to as "heaven on earth"), it is incumbent upon us to uphold the highest standards of design and preservation. I implore you to explore alternative locations and design options that fulfill the Old Mammoth community's needs without compromising its inherent beauty. I have personally spoken with Fr. Jorge of St. Joseph's Church and he welcomes the opportunity to explore the church property as an option - the revenue opportunity would be a blessing to the Church.

Let us strive for a solution that honors our natural environment and sustains the property values that define our community.

Thank you for your attention to this matter and your dedication to preserving the integrity of our cherished town.

Sincerely,

Sonja Bush Creekhouse Homeowner, HOA Board Member, REALTOR®

February 5, 2024

To Whom it May Concern,

I have been a licensed real estate agent selling properties within Snowcreek Resort and Mammoth Lakes since 1993 and am the current broker representing the developer in the sale of the CreekHouse/Snowcreek VII project.

Purchasing a home is a huge investment. In addition to the structure, all aspects of the surrounding area must be considered before undertaking a purchase.

Perched on a knoll with 360 views of the surrounding mountains, CreekHouse is the epitome of a serene mountain neighborhood where families come to relax within nature and enjoy the surrounding views. This constitutes much of the appeal of the project. The installation of an 80ft monopine cell tower at a location where very few tall trees even exist would block existing views and take away from the serenity and beauty of the neighborhood.

Homebuyers have options and with CreekHouse's higher price points our buyers could purchase in many other areas without the price constraints some buyers experience. In my professional opinion, property values would be reduced in CreekHouse by 20-30%, maybe more. Additionally, CreekHouse is a condominium project. Two low sale prices of properties highly affected by the location of the tower could bring down the appraised values for all units in the project. This would be of great concern for buyers who are obtaining a loan.

Thus far, since learning about the cell tower I have experienced the following:

- 1374 Timber Creek Road is one building from the proposed cell tower site and is one of my higher priced properties at \$2,299,000. I had a buyer who was doing an exchange and wanted to close before the end of 2023. He was ready to go to contract until I told him about the cell tower, then he was no longer interested.
- 1605 Clear Creek Road – This buyer had been in escrow for a unit under construction for months but cancelled the contract upon notification of the cell tower.
- 1590 Clear Creek Ct. I have not been able to sell this unit directly adjacent to the proposed tower.
- 1594 Clear Creek Road will be putting his unit on the market if the cell tower is approved. I'm sure he is not the only one. Increased inventory + cell tower = lower sales prices.
- Multiple buyers have cancelled showings upon learning of the cell tower.

Please reconsider the proposed location for this cell tower as it would assuredly negatively impact property values and quality of life for the families in the area.

Sincerely,

Julie Wright

Broker Lic#01129198

Snowcreek Property company

julie@snowcreekproperty.com

February 4, 2024

To whom it May Concern,

I have been a licensed Realtor in Mammoth since 2002. I have sold and marketed properties in Mammoth Lakes and in Snowcreek Resort for 22 years.

I recently had a client back out of purchasing a property at 1605 Clear Creek Road due to the location of the proposed cell tower.

The Buyer is sensitive to electronic noises and the reason they wanted to purchase a second home in Mammoth is for the quiet and beauty of our area. They chose Snowcreek Resort & CreekHouse for these reasons. When they found out there is a possibility of having an 80-foot cell tower looming over their property and the neighborhood they cancelled the contract.

The tallest trees in the area are between 60 and 65 feet, this tower will far exceed this height and will stick out regardless of it being concealed as a pine tree, making the proposed tower a complete eyesore.

In my professional opinion, if the proposed facility is installed, it will reduce the value of the surrounding homes/townhomes by approximately 20% or more. In addition, many of these townhomes near the proposed tower location were purchased within the last year and Buyers were NOT aware of this proposed location when escrow was closed.

The fire station is located within a Resort Zone and there are residential properties within 20 feet of the proposed Tower location!

Please reconsider the proposed location for this Cell Tower. It negatively impacts the property values and views for the surrounding homes and neighborhoods.

Sincerely,

Jodi Melton

The Snowcreek Property Company
and homeowner in CreekHouse.

To whom it may concern:

My name is Barbara Taylor and I have been a licensed Realtor in California with The Snowcreek Property Company since June of 2012.

The cell tower proposal for the Mammoth Lakes Fire Station #2 is a terrible location for the residents of Creekhous. I have many clients who will be directly affected by it.

They reside in units 1461,1371,1334,1581,1543 and 1602 (which should hopefully be closing in a few weeks).

The 85 ft tall monopine and the equipment that goes along with it will directly affect the view and peace. My clients all bought their properties with a view and peace and quiet in mind. They are all escaping their cities only to be blindsided by this cell tower which will never blend in with our beautiful surroundings. The monopine will dwarf the fire station and existing trees. The site map provided by AT&T which shows the scale of the area is not at all accurate.

My clients will obviously be losing up to 30% of their property value and it will be more difficult to sell.

I urge you to reconsider the location of this monopine. There are so many other places to put this tower where it won't affect the view or residents. It would easily be hidden if it were put in the Valentine reserve or even closer to the lakes basin where the bandwidth is needed. Fire Station #2 is possibly the worst location.

Thank you for taking the time to read all of the letters you are getting from Realtors who really care about our clients and our town.

Regards,

Barbara Taylor, Realtor
The Snowcreek Property Company
License #01933840
barbara@snowcreekproperty.com
760-914-3163
LIFEINMAMMOTH.COM

February 12, 2024

RE: Cell Tower at Old Mammoth Fire Station (station #2)

To Whom It May Concern:

My name is Tara Peterson and I have lived here in Mammoth for 31 years now. I've been a realtor here since 1999. It has been brought to my attention by a client of mine who purchased in Creekhous that the Town is considering allowing a cell tower to be placed at the fire station in Old Mammoth. My client is concerned about the potential placement of a cell tower near his home for many reasons.

First of all, when he decided to purchase in Creekhous he basically fell in love with the beauty of that area and the wonderful views this property offered. We looked in a number of areas but he decided Creekhous was the perfect fit for him. He also felt that this property would hold its value well due to the design of the development but mostly because of the unique and pristine setting offered at Creekhous.

As a realtor and also a long time Mammoth local, I know that the placement of a cell tower at the fire station would definitely have a negative impact on this and other surrounding properties both aesthetically and financially. I am writing in hopes that you will reconsider the placement of a cell tower in this location.

Please feel free to contact me with any questions.

Warmest Regards,

Tara Calvin-Peterson
Mammoth Realty Group
760-408-9611
SierraTLC68@gmail.com

EXHIBIT D

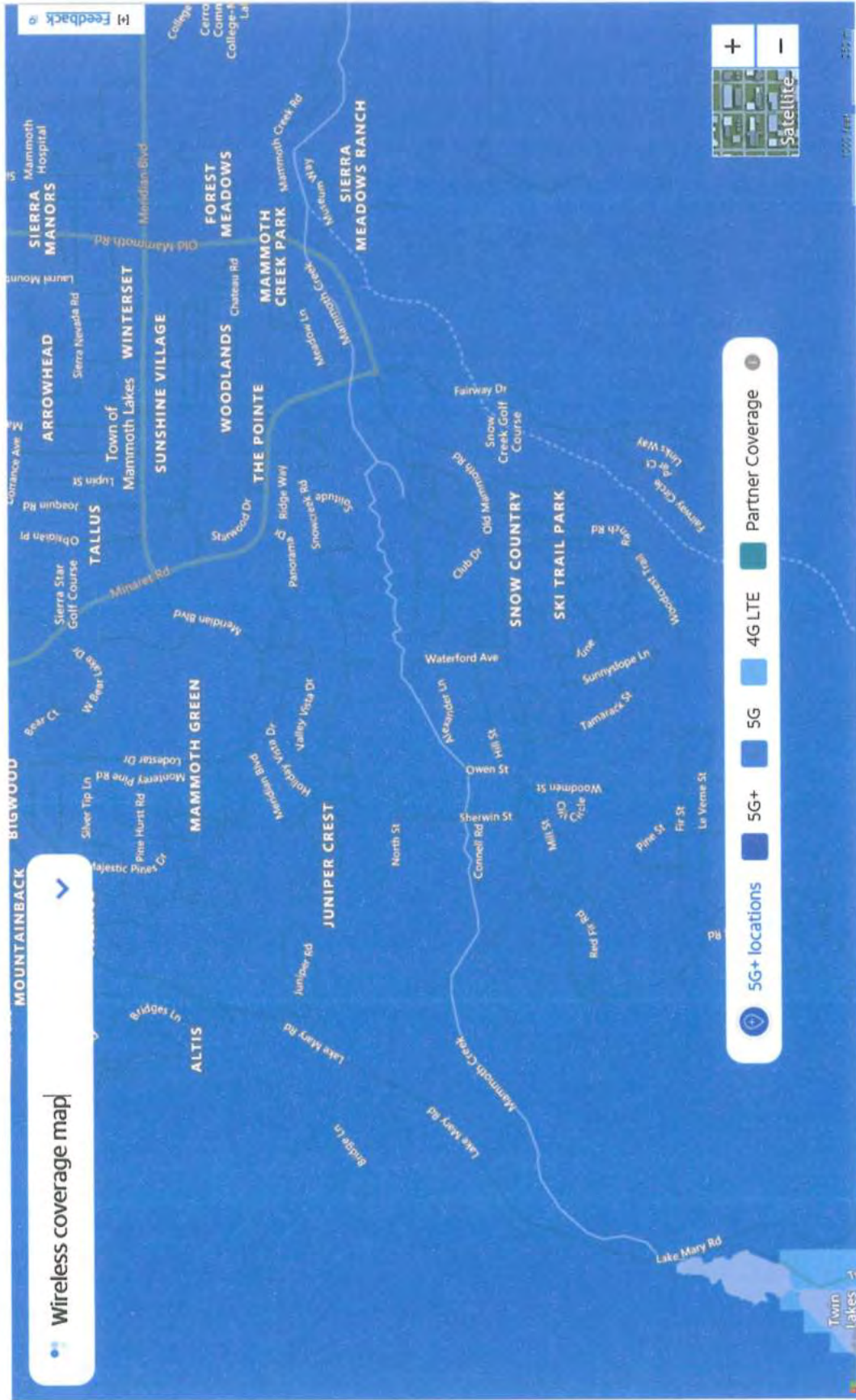


EXHIBIT E

1574 Old Mammoth Rd, Mammoth X

Show search results for 1574 Old M...

+

-

Home

Full Screen

Layers

Search

Layers

AT&T Mobility LTE Data

AT&T Mobility LTE Voice

T-Mobile LTE Data

T-Mobile LTE Voice

US Cellular LTE Data

US Cellular LTE Voice

Verizon LTE Data

Verizon LTE Voice

AT&T Mobility LTE Data

AT&T Mobility LTE Voice

Download Broadband Mapping Files (Shapefiles)

1574 Old Mammoth Rd, Mammoth Lakes, CA 93546, USA

Zoom to

Powered by

esri











































From: [David Jordon](#)
To: [Nolan Bobroff](#); [Michael Peterka](#)
Subject: FW: Cell Tower
Date: Monday, February 12, 2024 3:09:37 PM

Some people who received this message don't often get email from davidj@ssvprop.com. [Learn why this is important](#)

[EXTERNAL EMAIL]

David L Jordon
President/CEO
SSV Properties
310 415 2334

From: Chuck Lande <CLande@chadmar.com>
Date: Thursday, February 1, 2024 at 3:13 PM
To: "nbobroff@townofmammothlakes.ca.gov" <nbobroff@townofmammothlakes.ca.gov>, Haislip Hayes <hhayes@townofmammothlakes.ca.gov>, Michael Peterka <mpeterka@townofmammothlakes.ca.gov>
Cc: "Dan Holler - Town of Mammoth Lakes (dholler@ci.mammoth-lakes.ca.us)" <dholler@ci.mammoth-lakes.ca.us>, David Jordon <davidj@ssvprop.com>
Subject: Cell Tower

Please see the email below illustrating interest for the cell tower from the Snowcreek Athletic Club.
Look forward to our call in the morning,
Chuck

From: John Morris <jmorris@snowcreekresort.com>
Sent: Thursday, February 1, 2024 2:51 PM
To: Chuck Lande <CLande@chadmar.com>
Subject: Fwd: Cell Tower

----- Forwarded message -----

From: **Ralph Lockhart** <rlockhart@doubleeagle.com>
Date: Thu, Feb 1, 2024, 2:41 PM
Subject: Re: Cell Tower
To: John Morris <jmorris@snowcreekresort.com>

I am open to having the proposed cell tower placed on the Snowcreek Athletic Club property given the right parameters and financial incentives. I have not been approached by anyone regarding this possibility for the past 5 years or so.

From: [David Jordon](#)
To: [Nolan Bobroff](#); [Michael Peterka](#)
Subject: FW: Cell Tower
Date: Monday, February 12, 2024 3:09:56 PM

Some people who received this message don't often get email from davidj@ssvprop.com. [Learn why this is important](#)

[EXTERNAL EMAIL]

David L Jordon
President/CEO
SSV Properties
310 415 2334

From: Chuck Lande <CLande@chadmar.com>
Date: Friday, February 2, 2024 at 7:57 AM
To: "nbobroff@townofmammothlakes.ca.gov" <nbobroff@townofmammothlakes.ca.gov>, Haislip Hayes <hhayes@townofmammothlakes.ca.gov>, Michael Peterka <mpeterka@townofmammothlakes.ca.gov>, Ales Tomaier <Ales@mlfd.ca.gov>
Cc: 'Dan Holler' <dholler@townofmammothlakes.ca.gov>, David Jordon <davidj@ssvprop.com>, Chad Lande <chadlande@chadmar.com>
Subject: FW: Cell Tower

Please see interest on behalf of the Catholic Church to pursue the opportunity of accommodating the cell tower.

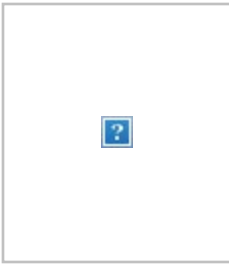
From: Sonja Bush <sonja@destinationmammoth.com>
Sent: Thursday, February 1, 2024 9:21 PM
To: Chuck Lande <CLande@chadmar.com>; Chad Lande <chadlande@chadmar.com>
Subject: Fwd: Cell Tower

Chuck and Chad -
See the email below from Fr. Jorge. Hopefully this will suffice even with the personal content.

When I spoke with Fr. Jorge on the phone, he said contact would need to be made with the Stockton Diocese:
Doug Abdel
209-546-7613

Please confirm receipt of this email. THANKS!

Sonja Bush



Founder | Broker
Lic. # 01904399
Office: (760) 914-4664
Cell: (661) 979-9000
sonja@destinationmammoth.com
www.destinationmammoth.com



I have not verified any of the information contained in those documents that were prepared by other people. You will never receive wire instructions or changes to previously provided wire instructions from myself or my team.

----- Forwarded message -----

From: **JORGE JORGE** <jardisney@yahoo.com>
Date: Thu, Feb 1, 2024 at 9:10 PM
Subject: Re: Cell Tower
To: Sonja Bush <sonja@destinationmammoth.com>

Yes, my dear Sonja. I support the idea and I keep your mother Anna in my prayers.

Fr. Jorge

El miércoles, 31 de enero de 2024, 03:23:31 p. m. PST, Sonja Bush <sonja@destinationmammoth.com> escribió:

Thanks for your call yesterday Fr Jorge. I appreciate the co tact information for the Diocese.

You support the idea as long as you have the blessing of the diocese. Is that correct?

Just reply to this email with a yes or no since I cannot answer the phone today since I'm at the hospital with my mom (thanks for your prayers).

Sonja



Sonja Bush
Founder | Broker
Lic. # 01904399
Office: (760) 914-4664
Cell: (661) 979-9000
sonja@destinationmammoth.com
www.destinationmammoth.com



I have not verified any of the information contained in those documents that were prepared by other people. You will never receive wire instructions or changes to previously provided wire instructions from myself or my team.

On Tue, Jan 30, 2024 at 3:47 PM Sonja Bush <sonja@destinationmammoth.com> wrote:

Hi Fr. Jorge.

I have a quick question for you. When we spoke a few months ago, I believe you said that while the church was not interested in the cell tower several years ago (Helen), you are actually willing to discuss the option of having a tower on the church property and of course, the related income for the church.

Is this correct?



Sonja Bush

Founder | Broker

Lic. # 01904399

Office: (760) 914-4664

Cell: (661) 979-9000

sonja@destinationmammoth.com

www.destinationmammoth.com



I have not verified any of the information contained in those documents that were prepared by other people. You will never receive wire instructions or changes to previously provided wire instructions from myself or my team.