

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

2  
3 In the Matter of the Appeal  
4 of LINDA SHIELDS  
5 of the Approval of Use Permit 17-04  
6 [AB 18-02]

FINDINGS OF FACT AND DECISION

7  
8 This proceeding was commenced by virtue of an appeal by Linda Shields (the  
9 "Appellant") of the Planning Commission's determination on October 25, 2018 to approve  
10 the Applicant Verizon Wireless's<sup>1</sup> request for a Major Use Permit (UP 17-04) to allow the  
11 development of a seventy (70)-foot tall unmanned broad leaf mono-tree wireless  
12 telecommunications tower located at 25 and 55 Worley Drive in Lakeport, California.

13 A duly noticed public hearing before the Board of Supervisors occurred on  
14 December 18, 2018, at which time evidence, both testimonial and documentary, was  
15 presented. Based upon the evidence and applicable law, we find the following:

- 16 1. That the Lake County Planning Commission held a noticed public hearing on  
17 October 25, 2018 to consider the adoption of a mitigated negative declaration and  
18 use permit approval (UP 17-04) to allow the Applicant Verizon Wireless to construct  
19 seventy (70)-foot tall unmanned broad leaf mono-tree wireless telecommunications  
20 tower located at 25 and 55 Worley Drive in Lakeport, California (hereinafter, the  
21 "Project").
- 22 2. That the Planning Commission approved the use permit on October 25, 2018,  
23 making the required findings for approval of Major Use Permit UP 17-04 (Article  
24 51, Section 51.4a); Variance (Article 52, Section 52.5), and Wireless  
25 Communication Facility Approval (Article 71, Section 71.13). The Planning  
26 Commission found that Initial Study, IS 17-12 for the project parcel would not have

27  
28 <sup>1</sup>C/O Epic Wireless

1 significant impact on the environment and adopted a Mitigated Negative  
2 Declaration.

3 3. That the Board of Supervisors has conducted a de novo hearing in this matter as  
4 required by Section 58.34 of the Lake County Zoning Ordinance.

5 4. That the Appellant is Linda Shields. The grounds for the appeal in summary  
6 include:

7 a. The Project will cause a negative Impact to surrounding property values which  
8 will result in neighborhood prices dropping.

9 b. Fire risks may be increased if the cell tower and supporting equipment of the  
10 proposed Project are installed.

11 c. There was not ample time provided to review and/or study the potential impacts  
12 of the proposed communication tower before the end of the commenting period on  
13 August 1, 2018 because of the mandatory evacuations in Lake County which  
14 occurred from July 28 through August 1, 2018.

15 d. There is the potential for negative effects on area water supplies caused by  
16 micro-wave emissions from the Project. (Appellant cites to the "Bio Initiative Report  
17 2012-2017" in support.)

18 It is noted here that the appeal did not raise any issues regarding the approval of  
19 the variance for this Project.

20 5. Staff of the Community Development Department presented evidence both  
21 documentary and testimonial. Staff submitted a staff report, dated December 18,  
22 2018, and accompanying exhibits. Said exhibits included: A Vicinity Map, Exhibit  
23 "A"; the Appeal Application Packet, Exhibit "B"; the Planning Commission Staff  
24 Report with Attachments dated October 12, 2018, Exhibit "C"; Planning  
25 Commission Green Sheets dated October 25, 2018 (which included statements of  
26 concerns of area residents), Exhibit "D"; an E-mail dated November 7, 2018 from  
27 the Fire Chief of the Lakeport Fire Protection District, Exhibit "E"; Letters in support  
28

1 of the Project from the Lake County Sheriff's Office, Exhibit "F"; Draft Planning  
2 Commission Minutes from October 25, 2018, Exhibit "G"; and Proposed modified  
3 conditions of approval, Exhibit "H". Testimony included:

4 a. Community Development Department Associate Planner Mark Roberts made a  
5 power point presentation and presented the staff report. Mr. Roberts testified that  
6 the proposed Project will be located at the same location as an existing  
7 development:, the North Lakeport Water Treatment Facility. Mr. Roberts described  
8 the Project, reviewed and responded to each of the bases for this appeal, and  
9 described the conditions required for approval of this Project.

10 6. The Appellant presented evidence, both documentary and testimonial. The  
11 Appellant, Ms. Shields, in concert with the Concerned Citizens of North Lakeport,  
12 testified that she did not believe the Planning Commission fully researched the  
13 issue of the Project location. Additionally, Ms. Shields testified that she did not  
14 believe the fire district was given the full picture of this Project and, if it had been, it  
15 would have raised concerns about the Project location. Should the Project and all  
16 its equipment should catch fire, the surrounding neighborhood area residents have  
17 only one road to escape the fire. More investigation needs to be done to assess  
18 the possible safety hazard that additional fire risk from this Project could create.  
19 The proposed location for this Project is next to residential homes. Locating this  
20 Project in a residential area affects the property values of the residential properties.  
21 Additionally, documentary evidence was submitted which included, but was not  
22 limited to, photographs of telecommunication towers that have caught fire,  
23 overgrown brush in the area in which the Project would be located, written  
24 statements from area residents, and a statement of impacts of the Project from the  
25 Lake County Association of Realtors.

26 7. Project Applicant, Verizon Wireless presented evidence in the form of its written  
27 response dated December 12, 2018, to the contentions raised on appeal, with  
28

1 accompanying exhibits. Paul Albritton, counsel for the Applicant, stated a  
2 significant gap in coverage was identified in the North Lakeport area. County Code  
3 has been followed to find the least intrusive means to provide service to address  
4 that gap. Eleven alternate sites were analyzed, but each of those alternative sites  
5 was determined to either be infeasible, unable to meet the requirements of local  
6 regulation, or unable to serve the significant gap in service. The Project was  
7 designed and located to minimize any impact on the adjacent community. The  
8 photosimulations submitted into evidence demonstrate the minimal visual impact of  
9 the Project. An independent engineering firm has evaluated the Project and  
10 concluded that it will operate well below Federal Communications Commission  
11 ("FCC") limits on radio-frequency ("RF") emissions. The Project complies with all  
12 applicable requirements of the Lake County Code. It is consistent with the General  
13 Plan and meets all findings for issuance of a major use permit and a variance. The  
14 Project complies with the County's wireless regulations, and is consistent with the  
15 Lakeport Area Plan, which encourages telecommunications infrastructure,  
16 provided all impacts are minimized.

- 17 8. Testimony in opposition to the Project location was received from several  
18 members of the community group of which the Appellant stated she was a part, the  
19 Concerned Citizens of North Lakeport. These members included, but were not  
20 limited to, Peter Silfi, Duke Pilcher, and Janice Pilcher.
- 21 9. That this Board finds, based on substantial evidence in the record of these  
22 proceedings as to this Project:
- 23 a. That as to the contention that the Project will cause a negative Impact to  
24 surrounding property values and neighborhood prices will drop, this Board finds that  
25 no substantial evidence was presented by Appellant in support of this contention.  
26 The Board agrees with the response of staff that the California Environmental  
27 Quality Act (CEQA) does not require economic analysis as part of the Initial Study  
28

1 (IS).

2 b. That as to the contention fire risks to the neighboring properties may be  
3 increased if a cell tower and supporting equipment are installed at the proposed  
4 location, this Board finds that no substantial evidence was presented by Appellant  
5 in support of this contention. Further, no evidence was presented to this Board that  
6 the existing access will not provide adequate access for fire trucks and other  
7 emergency responders. Evidence presented to the Board shows that it is the usual  
8 practice of the Community Development Department as part of its review process  
9 that, when it receives an application, to send out a Request for Review for  
10 Sufficiency to various federal, state and local agencies for comments. That practice  
11 was followed here. Both the Major Use Permit, UP 17-04 and the Variance  
12 Application, VR 18-03 were sent to various federal, state and local agencies for  
13 comments. The local fire protection district was included in this process and the  
14 Community Development Department did not receive any comments from the  
15 Lakeport Fire Protection District during the commenting periods.

16 Further, as noted by the Project Applicant, this Project, like any other major  
17 construction project, will be reviewed by the fire department before issuance of a  
18 building permit to ensure compliance with all fire-safety requirements. That is a  
19 condition of Use Permit 17-04.

20 c. That as to the contention that there was not ample time provided to review  
21 and/or study the potential impacts of the proposed communication towers before  
22 the end of the commenting period on August 1, 2018, this Board finds that no  
23 substantial evidence was presented by the Appellant in support of this contention.  
24 The evidence presented to the Board shows that there was adequate time for  
25 review and comment on the Project. The Notice of Intent to Adopt a Mitigated  
26 Negative Declaration was sent out to the surrounding property owners in  
27 accordance with Article 57 of the Lake County Zoning Ordinance. On July 3, 2018,  
28

1 the Community Development Department sent the Notice of Intent to Adopt a  
2 Mitigated Negative Declaration to all parcels within 725 feet of the project parcel  
3 (exceeding the minimum requirement of 700 feet). The commenting period began  
4 on July 6, 2018 and ended on August 1, 2018. The commenting period began  
5 approximately 23 days prior to the Mendocino Complex Fire of 2018. Even though  
6 the commenting period ended on August 1, 2018, comments on the Project could  
7 continue to be submitted up to the time of the public hearing before the Planning  
8 Commission. The Notice of Public hearing for the October 25, 2018 Planning  
9 Commission was sent out on October 10, 2018 to the surrounding property owners  
10 within 725 feet of the project parcel and published in the Lake County Record Bee  
11 on October 12, 2018.

12 d. That in response to the contention that the Project should be denied due to the  
13 proposed location and the potential effects on the drinking water caused by  
14 micro-waves, the Board finds that no substantial evidence was presented in support  
15 of this contention. Moreover, the issue of the environmental effects of radio  
16 frequency emissions are not within this Board's consideration, having been pre-  
17 empted by federal law. No state or local government may regulate the placement,  
18 construction and modification of personnel wireless service facilities on the basis of  
19 the environmental effects of radio frequency emissions to the extent that such  
20 facilities comply with federal regulations concerning such emissions.

21 10. That this Board has considered and incorporates by reference the Community  
22 Development staff memoranda and exhibits thereto submitted to this Board for the  
23 hearings on this matter as well as the written submissions by the Appellant, the  
24 Project Applicant, and members of the public for the public hearing of this matter.

25 11. That this Board finds, based upon substantial evidence in the record of these  
26 proceedings, that all the findings of Section 51.4 of the Lake County Zoning  
27

Ordinance can be made as follows:

a. The establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County. The Project is consistent with uses in the Open Space Zoning District because wireless facilities are permitted in that zone with a major use permit. The subject parcel is designated as Public Facilities in the General plan and is already developed with water treatment infrastructure. Photosimulations of the Project show that the Project is either fully or partially screened from public view by topography, existing trees, and distance.

b. The site for the Project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed. The Project site is approximately 8.169 acres. The parcel has a slope of less than 10%. It is located in close proximity to existing infrastructure and services and is in an area developed with single and multi family residences.

c. The streets, highways, and pedestrian facilities are reasonably adequate to safely accommodate the specified proposed use. The Project is accessible from Worley Drive, which is located off Lakeshore Boulevard, a County-maintained roadway.

d. There are adequate public or private services, including but not limited to, fire protection, water supply, sewage disposal, and police protection to serve the project. The Project site is served by Lake County Special Districts, the Lake County Sheriff's Office, and by the Lakeport Fire Protection District.

e. The Project is compatible with surrounding land uses and will be in conformance

1 with the applicable provisions and policies of the Lake County Code, the General  
2 Plan, the Lakeport Area Plan, and the Lake County Zoning Ordinance upon the  
3 issuance of the Major Use Permit 17-04 and Variance 18-03

4 f. That no violation of Chapters 5, 17, 21, 23, or 26 of the Lake County Code  
5 currently exists on the property. No evidence has been presented nor records  
6 located by County staff to indicate there are any existing violations of Lake County  
7 Code.

8 12. That this Board finds that the findings for approval of wireless facilities described in  
9 Section 71.13 of the Zoning Ordinance can be made as follows:

10 a. That the development of the proposed wireless communications facility will not  
11 significantly affect any public viewshed, scenic corridor or any identified  
12 environmentally sensitive area or resource as defined in the Lake County General  
13 Plan. For reasons shown in the photosimulations submitted by the Project  
14 Applicant and described in Section 12 hereinabove, and those provided by staff in  
15 the staff report to the Planning Commission dated October 25, 2018, the proposed  
16 Project will not substantially degrade the visual quality of the area or degrade views  
17 of a scenic area. Potential environmental impacts have been reduced to less than  
18 significant with the mitigation measures and conditions of approval required for  
19 Project approval.

20 b. That the site is adequate for the development of the proposed wireless  
21 communications facility and that the applicant has demonstrated that is the least  
22 intrusive for the provision of services as required by the Federal Communications  
23 Commission ("FCC"). The Project site will be located on a parcel of  
24 approximately 8.169 acres and, although it will be developed on property already  
25 containing a County sanitation facility, the site is adequate for the development of  
26 the Project. The Project Applicant has considered eleven alternate sites. The  
27



1 proposed Project constitutes the least intrusive alternative to fill the identified  
2 significant gap in cell coverage.

3 c. That the Proposed wireless communication facility complies with all of the  
4 applicable requirements of Article 71 of the Lake County Zoning Ordinance.

5 As shown by the substantial evidence presented by the Project Applicant regarding  
6 the size and description of the Project, the location of the Project, and the analysis  
7 of alternate sizes, the proposed facility does comply with the applicable  
8 requirements of Article 71.

9 d. That the subject property upon which the wireless communications facility is to  
10 be built is in compliance with all rules and regulations pertaining to zoning uses,  
11 subdivisions, and any other applicable provisions of this Title and that all zoning  
12 violation abatement costs, if any, have been paid.

13 As indicated hereinabove, there is substantial evidence to show that the Project,  
14 subject to the approval of Major Use Permit 17-04 and Variance 18-03, will built in  
15 compliance with all rules and regulations pertaining to County zoning uses, wireless  
16 communications facilities provisions, and all other applicable provisions of the  
17 County Zoning Ordinance. There is no evidence that any zoning violation  
18 abatement costs have ever been assessed against the subject property or, if they  
19 have, that such costs remain unpaid.

20 13. That this Board finds that the Project Applicant has demonstrated that a significant  
21 gap in cell coverage exists in the North Lakeport area and that the construction of  
22 the Project at the location specified is the least intrusive means of closing that gap.

23 14. That this Board finds that this Project is consistent with land uses in the vicinity, the  
24 Project is consistent with the Lakeport Area Plan and the Zoning Ordinance, and,  
25 as mitigated, this Project will not result in any significant adverse environmental  
26 impacts. On the basis of those findings, Initial Study IS 17-12, and the mitigation  
27

measures added to the Project, this Board further finds the use permit applied for by the Project Applicant will not have a significant effect on the environment and this Board hereby adopts the mitigated negative declaration.

15. That this Board, having made the findings described in Section 51.4 of the Zoning Ordinance, hereby grants Use Permit 17-04 subject to the conditions described therein.

16. Based upon the foregoing and for the reasons set forth hereinabove, this Board denies Appeal AB 18-02.

NOTICE TO APPELLANT: You are hereby given notice that the time within which any judicial review of the decision herein may be sought is governed by the provisions of the Code of Civil Procedure Section 1094.5.


Dated: \_\_\_\_\_

\_\_\_\_\_  
CHAIR, Board of Supervisors

ATTEST: CAROL J. HUCHINGSON  
Clerk to the Board  
of Supervisors

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy

  
ANITA L. GRANT  
County Counsel