



AGENDA
BOARD OF SUPERVISORS, COUNTY OF MONO
STATE OF CALIFORNIA

Special Meeting

Crowley Lake Community
Center, Crowley Lake, CA
93546

July 19, 2011

NOTE: In compliance with the Americans with Disabilities Act if you need special assistance to participate in this meeting, please contact the Clerk of the Board at (760) 932-5534. Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting (See 42 USCS 12132, 28CFR 35.130).

Full agenda packets are available for the public to review in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517), and in the County Offices located in Minaret Mall, 2nd Floor (437 Old Mammoth Road, Mammoth Lakes CA 93546). Any writing distributed less than 72 hours prior to the meeting will be available for public inspection in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517). **ON THE WEB:** You can view the upcoming agenda at www.monocounty.ca.gov. If you would like to receive an automatic copy of this agenda by email, please send your request to Lynda Roberts, Clerk of the Board : lroberts@mono.ca.gov.

5:30 PM **Call meeting to Order**

Pledge of Allegiance

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

REGULAR AGENDA

COMMUNITY DEVELOPMENT - PLANNING DIVISION

1a) **APPEAL 11-002 USE PERMIT 10-008/Incline Partners LLC Project Site Visit** (Heather deBethizy, Scott Burns) - SITE VISIT. The Board of Supervisors will meet on site at 4052 Crowley Lake Drive in the community of Crowley Lake for a field trip. No action will be taken; the field trip is for informational purposes only and is open to the public.

5:30 p.m.
30 minutes

Recommended Action: None (informational only).

Fiscal Impact: None.

CLERK OF THE BOARD

2a) **Crowley Lake Community Center -**
Reconvene Special Meeting at the Crowley Lake Community Center at Crowley Lake, CA.

6:00 p.m.

Pledge of Allegiance

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

COMMUNITY DEVELOPMENT - PLANNING DIVISION

Additional Departments: County Counsel

3a)
3 hours

Appeal of Planning Commission denial of Use Permit 10-008 / Incline Partners, LLC Telecommunications Facility (Heather deBethizy, Scott Burns) - Public hearing regarding appeal filed by Incline Partners, LLC, project applicant, of the Mono County Planning Commission's denial of Conditional Use Permit 10-008 for the development, operation and maintenance of a wireless telecommunications facility in the community of Crowley Lake.

Note: there are multiple attachments to the staff report which may be viewed by clicking the link found on the Board of Supervisors' website (<http://www.monocounty.ca.gov/bos.html>). A copy of all the attachments are also filed with the Clerk of the Board and may be viewed during normal business hours.

Recommended Action:

- A. Conduct public hearing, and
- B. Take one of the following two actions:
 1. Affirm the Planning Commission's decision, thereby denying the project:
 - a. Find, based on substantial evidence in the record, that one or more of the required findings for approval of Use Permit 10-008 (as set forth in the staff report under the heading Required Use Permit Findings) cannot be made; and
 - b. Direct staff to prepare a written decision for adoption by the Board affirming the Planning Commission's denial of Use Permit 10-008 and setting forth the basis for the Board's determination; and
 - c. Direct the Clerk to schedule a special meeting of the Board of Supervisors on July 21, 2011, for consideration and adoption of the written decision; or
 2. Reverse the Planning Commission decision, thereby approving the project.
 - a. Find that the Board has considered the Negative Declaration adopted by the Planning Commission and the comments received during the public review process; and affirm and adopt the Planning Commission's findings that: on the basis of the whole record there is no substantial evidence that the project will have a significant effect on the environment; and the Negative Declaration reflects the lead agency's independent judgment and analysis. Adopt the Negative Declaration, specifying that the record of proceedings will be retained on file with the Planning Commission Secretary, Suite P, Minaret Village Mall, 437 Old Mammoth Road, Mammoth Lakes, California; and
 - b. Make the required findings for issuance of Use Permit 10-008 (as set forth in the staff report), and reverse the Planning Commission's denial of Use Permit 10-008; and
 - c. Direct staff to prepare a written decision for adoption by the Board reversing the Planning Commission's denial of Use Permit 10-008; and
 - d. Direct the Clerk to schedule a special meeting of the Board of Supervisors on July 21, 2011, or some other date as directed by the Board, for consideration and adoption of the written decision.

Fiscal Impact: The applicant has submitted the necessary fee deposit and will be required to reimburse the total staff costs incurred in appeal processing.

ADJOURNMENT

§§§§§



OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS

SPECIAL MEETING AGENDA REQUEST

Print

MEETING DATE July 19, 2011 **DEPARTMENT** Community Development - Planning Division

ADDITIONAL DEPARTMENTS

TIME REQUIRED 30 minutes **PERSONS APPEARING BEFORE THE BOARD** Heather deBethizy, Scott Burns

SUBJECT APPEAL 11-002 USE PERMIT 10-008/Incline Partners LLC Project Site Visit

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

SITE VISIT. The Board of Supervisors will meet on site at 4052 Crowley Lake Drive in the community of Crowley Lake for a field trip. No action will be taken; the field trip is for informational purposes only and is open to the public.

RECOMMENDED ACTION:

None (informational only).

FISCAL IMPACT:

None.

CONTACT NAME: Heather deBethizy

PHONE/EMAIL: 760-924-1812 / hdebethizy@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH ATTACHMENTS TO THE OFFICE OF THE COUNTY ADMINISTRATOR **PRIOR TO 5:00 P.M. ON THE FRIDAY 32 DAYS PRECEDING THE BOARD MEETING**

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

[Click to download](#)

No Attachments Available

History

Time	Who	Approval
7/7/2011 8:42 AM	County Administrative Office	Yes
7/13/2011 12:00 PM	County Counsel	Yes
7/7/2011 8:21 AM	Finance	Yes



OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS

SPECIAL MEETING AGENDA REQUEST

Print

MEETING DATE	July 19, 2011	DEPARTMENT	Clerk of the Board
ADDITIONAL DEPARTMENTS			
TIME REQUIRED		PERSONS APPEARING BEFORE THE BOARD	
SUBJECT	Crowley Lake Community Center		

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Reconvene Special Meeting at the Crowley Lake Community Center at Crowley Lake, CA.

Pledge of Allegiance

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

RECOMMENDED ACTION:

FISCAL IMPACT:

CONTACT NAME: Shannon Kendall

PHONE/EMAIL: x5533 / skendall@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH ATTACHMENTS TO THE OFFICE OF THE COUNTY ADMINISTRATOR
PRIOR TO 5:00 P.M. ON THE FRIDAY
32 DAYS PRECEDING THE BOARD MEETING

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download

No Attachments Available

History

Time	Who	Approval
7/8/2011 8:06 AM	County Administrative Office	Yes
7/8/2011 8:06 AM	County Counsel	Yes
7/8/2011 8:06 AM	Finance	Yes



OFFICE OF THE CLERK
OF THE BOARD OF SUPERVISORS

SPECIAL MEETING AGENDA REQUEST

Print

MEETING DATE	July 19, 2011	DEPARTMENT	Community Development - Planning Division
ADDITIONAL DEPARTMENTS	County Counsel		
TIME REQUIRED	3 hours	PERSONS APPEARING BEFORE THE BOARD	Heather deBethizy, Scott Burns
SUBJECT	Appeal of Planning Commission denial of Use Permit 10-008 / Incline Partners, LLC Telecommunications Facility		

AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Public hearing regarding appeal filed by Incline Partners, LLC, project applicant, of the Mono County Planning Commission's denial of Conditional Use Permit 10-008 for the development, operation and maintenance of a wireless telecommunications facility in the community of Crowley Lake.

Note: there are multiple attachments to the staff report which may be viewed by clicking the link found on the Board of Supervisors' website (<http://www.monocounty.ca.gov/bos.html>). A copy of all the attachments are also filed with the Clerk of the Board and may be viewed during normal business hours.

RECOMMENDED ACTION:

- A. Conduct public hearing, and
- B. Take one of the following two actions:
 1. Affirm the Planning Commission's decision, thereby denying the project:
 - a. Find, based on substantial evidence in the record, that one or more of the required findings for approval of Use Permit 10-008 (as set forth in the staff report under the heading Required Use Permit Findings) cannot be made; and
 - b. Direct staff to prepare a written decision for adoption by the Board affirming the Planning Commission's denial of Use Permit 10-008 and setting forth the basis for the Board's determination; and
 - c. Direct the Clerk to schedule a special meeting of the Board of Supervisors on July 21, 2011, for consideration and adoption of the written decision; or
 2. Reverse the Planning Commission decision, thereby approving the project.
 - a. Find that the Board has considered the Negative Declaration adopted by the Planning Commission and the comments received during the public review process; and affirm and adopt the Planning Commission's findings that: on the basis of the whole record there is no substantial evidence that the project will have a significant effect on the environment; and the Negative Declaration reflects the lead agency's independent judgment and analysis. Adopt the Negative Declaration, specifying that the record of proceedings will be retained on file with the Planning Commission

Secretary, Suite P, Minaret Village Mall, 437 Old Mammoth Road, Mammoth Lakes, California; and

b. Make the required findings for issuance of Use Permit 10-008 (as set forth in the staff report), and reverse the Planning Commission's denial of Use Permit 10-008; and

c. Direct staff to prepare a written decision for adoption by the Board reversing the Planning Commission's denial of Use Permit 10-008; and

d. Direct the Clerk to schedule a special meeting of the Board of Supervisors on July 21, 2011, or some other date as directed by the Board, for consideration and adoption of the written decision.

FISCAL IMPACT:

The applicant has submitted the necessary fee deposit and will be required to reimburse the total staff costs incurred in appeal processing.

CONTACT NAME: Heather deBethizy

PHONE/EMAIL: 760-924-1812 / hdebethizy@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH
ATTACHMENTS TO THE OFFICE OF
THE COUNTY ADMINISTRATOR
***PRIOR TO 5:00 P.M. ON THE FRIDAY
32 DAYS PRECEDING THE BOARD MEETING***

SEND COPIES TO:

MINUTE ORDER REQUESTED:

YES NO

ATTACHMENTS:

Click to download

[Staff p 1 -11](#)

[Notice](#)

[Letter](#)

History

Time	Who	Approval
7/5/2011 3:00 PM	County Administrative Office	Yes
7/13/2011 3:23 PM	County Counsel	Yes
7/5/2011 5:37 PM	Finance	Yes

Mono County Community Development Department

PO Box 347
Mammoth Lakes, CA 93546
760.924.1800, fax 924.1801
commdev@mono.ca.gov

Planning Division

PO Box 8
Bridgeport, CA 93517
760.932.5420, fax 932.5431
www.monocounty.ca.gov

July 19, 2011

To: Mono County Board of Supervisors
From: Heather deBethizy, Assistant Planner

SUBJECT

Appeal of Planning Commission denial of Use Permit 10-008 / Incline Partners, LLC
Telecommunications Facility.

RECOMMENDATION

- A. Conduct public hearing, and
- B. Take one of the following two actions:
1. Affirm the Planning Commission's decision, thereby denying the project:
 - a. Find, based on substantial evidence in the record, that one or more of the required findings for approval of Use Permit 10-008 (as set forth below under the heading Required Use Permit Findings) cannot be made; and
 - b. Direct staff to prepare a written decision for adoption by the Board affirming the Planning Commission's denial of Use Permit 10-008 and setting forth the basis for the Board's determination; and
 - c. Direct the Clerk to schedule a special meeting of the Board of Supervisors for consideration and adoption of the written decision; or
 2. Reverse the Planning Commission decision, thereby approving the project:
 - a. Find that the Board has considered the Negative Declaration adopted by the Planning Commission and the comments received during the public review process; and affirm and adopt the Planning Commission's findings that: on the basis of the whole record there is no substantial evidence that the project will have a significant effect on the environment; and the Negative Declaration reflects the lead agency's independent judgment and analysis. Adopt the Negative Declaration, specifying that the record of proceedings will be retained on file with the Planning Commission Secretary, Suite P, Minaret Village Mall, 437 Old Mammoth Road, Mammoth Lakes, California; and
 - b. Make the required findings for issuance of Use Permit 10-008 (as set forth below), and reverse the Planning Commission's denial of Use Permit 10-008; and
 - c. Direct staff to prepare a written decision for adoption by the Board reversing the Planning Commission's denial of Use Permit 10-008 and setting forth the basis for the Board's determination; and
 - d. Direct the Clerk to schedule a special meeting of the Board of Supervisors for consideration and adoption of the written decision.

DISCUSSION

On April 14, 2011, the Planning Commission moved to deny Use Permit 10-008/Incline Partners LLC for a telecommunications facility with a 3-2 vote (Pipersky/Lizza. Ayes: Pipersky, Lizza, Shipley. Noes: Bush, Roberts.). Subsequently, the Planning Commission adopted a written denial of Use Permit 10-008 at its May 12, 2011 meeting. The written reasons for denial were adopted at the Planning Commission meeting on the basis that the following three of the four Use Permit Findings could not be made: 1) All applicable provisions of the Land Use Designations and Land Use Regulations are complied with, and the site of the proposed use is adequate in size and shape to accommodate the use, all yards, walls and fences, parking, loading, landscaping and other required features; 2) The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located; and 3) The proposed use is consistent with the map and text of the Mono County General Plan. The written denial is included in your packet.

The project on appeal, and for consideration by your Board, is for Use Permit Application 10-008/Incline Partners, LLC to allow development, operation and maintenance of a wireless telecommunications facility in the community of Crowley Lake (APN 060-180-004). The site would provide cell phone coverage to the community and north and south along U.S. 395 (see coverage maps, attachment G). The wireless facility would be located on a 2,400-square foot lease area located in the southwest portion of the subject parcel. The 40' x 60' lease area would include two multi-carrier 60' wireless communications monopoles – designed as a collocation facility, engineered to hold up to four carriers' antenna arrays on the site. The monopoles would be engineered and constructed to resemble a pine tree or monopine. The project is located at 4052 Crowley Lake Drive in the community of Crowley Lake. The land use designation is Commercial (C).

On April 14, 2011, the Planning Commission adopted the Negative Declaration for the project. If the Board's determination is to reverse the Planning Commission's denial of Use Permit 10-008, thereby approving the project, then it must also adopt the Negative Declaration.

APPEAL PROCESS

Appeals of any decision of the Planning Commission may be made to the Board of Supervisors by filing a written notice of appeal with the Community Development Director within 15 calendar days following the Commission action. An appeal of the Planning Commission's decision was filed by Incline Partners, LLC on May 26, 2011 (see appeal application, Attachment D). The appeal is *de novo*, meaning the Board of Supervisors hears the matter over again (as if for the first time).

REQUIRED USE PERMIT FINDINGS

If the Board decides to reverse the Planning Commission denial, it must find the original use permit application complies with the following:

1. All applicable provisions of the Land Use Designations and Land Development Regulations are complied with, and the site of the proposed use is adequate in size and shape to accommodate the use and to accommodate all yards, walls and fences, parking, loading, landscaping and other required features.
2. The site for the proposed use relates to streets and highways adequate in width and type to carry the quantity and kind of traffic generated by the proposed use.
3. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located.
4. The proposed use is consistent with the map and text of this General Plan and any applicable area plan.

APPLICATION OF FEDERAL COMMUNICATIONS ACT

The Federal Telecommunications Act of 1996 (47 U.S.C. § 332) (the “Act”) applies to this project. While the Act generally preserves local zoning and land use authority over personal wireless facilities, including cellular towers, it specifically limits local authority in several areas, summarized below.

In particular, local agencies may not:

1. Regulate the placement, construction, or modification of personal wireless service facilities on the basis of the environmental/health effects of radio frequency (RF) emissions, to the extent that such facilities comply with emission standards established by the Federal Communications Commission (FCC);
2. Unreasonably discriminate among providers of functionally equivalent wireless communication services; or
3. Make a decision, or adopt a regulation, which has the effect of prohibiting the provision of personal wireless facilities.

Additionally, any denial of a request to place, construct, or modify a personal wireless facility (including cellular towers) must be in writing and supported by substantial evidence in the record. More detail regarding these requirements is found in the Planning Commission staff report provided in your packet.

APPEAL ISSUES

Incline Partners, LLC filed an appeal of the Planning Commission’s action to deny Use Permit 10-008. The appeal application included a detailed letter contending that the permit should be approved (see attachment D). The following is a summary of the appeal letter:

Part I:

- Incline Partners LLC argues that a Use Permit was not required for the project: “The project fits the definition of a “public utility...use” as a cell/communication tower under Section 02.950 and accordingly such use is permitted without requirement of Director Review or Use Permit...”

Part II:

- The Design Guidelines are not mandatory requirements.... “The review authority may interpret these design guidelines with some flexibility in their application to specific projects, as not all design criteria may be workable/appropriate for each project...”
- The Planning Commission erred in strictly interpreting the design guidelines in this case. A 2.5 times setback guideline is not workable/appropriate for this parcel or the general area. If the guidelines were enforced to the letter, virtually no site within the Crowley Lake area would be feasible due to the average lot size and topography.
- The intent behind the setback guideline can be interpreted to be either aesthetic or to ensure public safety. Incline Partners has mitigated the aesthetic issue using a “monopine” design, and by siting the monopines against the backdrop of the thick aspen grove on the property and in the immediate area, and by placing the site on a commercial lot which allows for the construction of 60-foot-high structures.... If the guideline’s intent is public safety, it is an extremely conservative standard to require a tower be 2.5 times its height from a public road. Towers and foundations for towers must meet stringent standards imposed by local building departments and adhere to federal safety standards.
- Virtually all land use projects will have some impact on other parties, which could be deemed “injurious” to some extent; in this case, the impact is minimal and should be weighed against the overall good of the community.
- Discussion at the hearing about a loss of property value was based on an informal and unscientific poll of real estate brokers... This information should not have been considered by the Planning Commission in its decision.

- The proposed towers will be located on an existing lot zoned commercial, which already houses a laundromat, apartment and firewood operation. The immediate neighborhood also has a telephone central office, mobile home park, fire station, and other commercial lots.
- The Incline Partners project is a viable project that meets the height, aesthetic and coverage requirements and therefore should be approved.

FISCAL IMPACTS:

The applicant has submitted the necessary fee deposit and will be required to reimburse the total staff costs incurred in appeal processing.

This report has been reviewed and approved by the Community Development Director Scott Burns. For further questions, please contact Heather deBethizy at 760-924-1812.

ATTACHMENTS

1. Appeal, May 23, 2011
2. Planning Commission Written Denial, May 12, 2011
3. Planning Commission Minutes, May 12, 2011
4. Planning Commission Agenda Packet, April 14, 2011
5. Letters received following preparation of Planning Commission agenda packet
6. PowerPoint presentation to Planning Commission, April 14, 2011

RECEIVED

MAY 26 2011

Mono County
Community Development Department
Planning Division

MONO COUNTY
COMMUNITY DEVELOPMENT
Bldg 9001 U.A. 93537
(760) 932-5420 Fax: 932-3431
www.monocounty.ca.gov

P.O. Box 347
Mammoth Lakes, CA 93546
(760) 934-1800, Fax 934-1891
commdev@mono.ca.gov

**APPEAL
APPLICATION**

In order to be valid,
appeal must be filed within 10 days
of action date for Parcel Maps or Tract Maps,
or 15 days for all other appeals

APPLICATION # _____	FEE \$ _____
DATE RECEIVED _____	RECEIVED BY _____
RECEIPT # _____	CHECK # _____ (NO CASH)

APPELLANT Incline Partners, LLC

ADDRESS PO Box 6509 CITY/STATE/ZIP La Quinta, CA 92248-6509
TELEPHONE (760) 564-0003 E-MAIL Mike@inclinepartners.com

APPLICATION # BEING APPEALED 10-008

DATE OF ACTION 5/12/11 **DATE OF APPEAL** 5/25/11

NATURE OF APPEAL: Describe what is being appealed. If it is a condition of approval, attach a copy of the project conditions and indicate which conditions are being appealed.

Appeal of denial of Use Permit 10-008.

REASON FOR APPEAL: Describe why the decision is being appealed.
See attached.

- APPLICATION SHALL INCLUDE:**
- A. Completed application form.
 - B. Deposit for project processing; See Development Fee Schedule

I CERTIFY UNDER PENALTY OF PERJURY THAT I am: legal owner(s) of the subject property,
 corporate officer(s) empowered to sign for the corporation or authorized legal agent, or
other interested party.

Michael E. Lopez
Signature

Signature

5/25/2011
Date

Incline Partners, LLC

Attachment to Appeal Application

Use Permit 10-008

Reasons for appeal:

Incline Partners LLC appeals the Planning Commission's decision on the following grounds:

Part I:

Incline Partners LLC respectfully submits that within the definitions of the Land Use Element of the Mono County General Plan its proposed 60 foot high tree poles are a permitted use and therefore it could be argued that a use permit was not required for its project. Section 02.950 of the Land Use Element states

"02.950 Public utility buildings, structures and uses. "Public utility buildings, structures and uses" means the use of land for public utility purposes by public, quasi-public and private energy and communication purposes and distributors except for conventional electrical distribution substations and facilities. Hydroelectric, geothermal power plant construction, and cell/communication towers are considered to fall within this definition."

Section 04.110 of the Land Use Element states:

"E. Exceptions to the Height Limitations: 1. Permitted: The following uses are permitted: a. Public utility exceptions. Poles for public utilities shall be allowed in all designations to a height greater than that permitted for buildings in the designation but shall not exceed 60 feet."

Incline Partners submits that its project fits the definition of a "public utility...use" as a cell/communication tower under Section 02.950 and accordingly such use is permitted without requirement of Director Review or Use Permit as Section 04.110 excepts from the height limitations in all zone designations any public utility pole not exceeding 60 feet.

Part II:

Incline Partners LLC respectfully submits that, if a use permit is properly required under the Mono County General Plan, the Planning Commission erred in its denial of a use permit for the following reasons:

- a. **The Planning Commission found that “The project is not adequate in size or shape to accommodate the proposed use, as the monopines would be closer to adjoining roads and properties than recommended in the Mono County Design Guidelines for telecommunications projects.”**

Section 1j of the Design Guidelines for Telecommunications Facilities provides that “no new tower should be constructed without a setback from the tower’s base of at least 1.5 times the tower height to a public or private road and at least 2.5 times the tower height to the nearest property line”. Incline Partners acknowledges that this provision of the Design Guidelines cannot be met at this site since the site is located on a parcel that only measures 190 feet at its widest. However, this guideline effectively prohibits towers which are 60-feet in height from being located on virtually any parcel which is smaller than 2 acres. (A 60 foot tower would need to be at least 150 feet from the nearest property line, which would preclude any property not measuring at least 300 by 300 feet in dimension, or 90,000 square feet, which is greater than 2 acres). Even in the case of a parcel large enough to meet this size requirement, this guideline requires the tower be located towards the middle of the parcel, which would require landowner approval to utilize the center of the property, and potentially lengthy access roads and utility runs which would further negatively impact the property. This guideline may be well meaning but in many instances it would preclude a tower from being located in an otherwise viable location.

The Design Guidelines are not mandatory requirements. Chapter One Introduction of the Design Guidelines states “The guidelines provide designers and developers with a flexible tool for quality creativity, and innovations. They do not prescribe specific solutions or make rigid requirements. Indeed, there will always be many ways of meeting a particular guideline. In addition, the Guidelines state the “The review authority may interpret these design guidelines with some flexibility in their application to specific projects, as not all design criteria may be workable/appropriate for each project. In some circumstances, one guideline may be relaxed to facilitate compliance with another guideline determined by the review authority to be more important in the particular case. The overall objective is to ensure that the intent and spirit of the design guidelines are followed.”

The Planning Commission erred in strictly interpreting the design guideline in this case. A 2.5 times setback requirement is not meant to be a rigid guideline and is not workable/appropriate for this parcel nor the general area. Over the past decade, there have been numerous attempts to provide wireless service to the community of Crowley Lake. If the guideline were enforced to the letter, virtually no site within the Crowley Lake area would be feasible due to the average lot size and topography. There are few commercial or industrial lots within Crowley Lake, particularly ones which have the high topography necessary for a wireless communications site.

The intent behind the setback guideline can be interpreted to be either aesthetic (to protect neighboring parcels from view obstruction), or to ensure public safety (risk of a pole falling over). Incline Partners has mitigated the aesthetic issue using a “monopine” design, and by siting the monopines against the backdrop of the thick aspen grove on the property and in the immediate area, and by placing the site on a commercial lot which allows for the construction of 60 foot high structures. In addition,

landscaping has been placed around the project to further shield the site from view. If the guideline's intent is public safety, it is an extremely conservative standard to require a tower be 2.5 times its height from a public road. Towers and foundations for towers must meet stringent standards imposed by local building department and adhere to federal safety standards. In addition, typically a wireless facility is not the primary nor highest and best use of a property; rather, it is an ancillary use, and for this reason landowners often seek locations, such as a property corner or near public roads or access, that minimize impact to the property. In addition, over the several months the applicant worked with staff and later with county counsel the guidelines were never given the weight suggested by the planning commission as a requirement for developing this project. If staff and county counsel felt the guidelines were designed to be strictly interpreted as necessary for approval, it would seem logical they would have required the applicant apply for a variance to the standard setbacks set forth in the code. Rather, it was concluded the project met the setback requirements for a commercially zoned parcel and the application was correctly deemed complete and forwarded for processing and approval. In fact the guidelines were only mentioned at the very end of staff's review of the project and only added to the staff report in the final week as supporting documentation. The setbacks stated in the guidelines should not be rigidly applied in this case.

At the hearing the Commission raised a concern that not adhering to the setback guidelines would set a precedent for all tower projects in the County. However, wouldn't strictly adhering to the non-mandatory setback guidelines set a worse precedent? The guidelines are just that, and clearly not meant to be rigidly applied. Incline Partners has addressed the issues represented by the guideline, aesthetics and public safety, through rigorous adherence to proper site planning, placement and design, and by proper tower engineering.

- b. The Planning Commission found that "The two monopines would be visible from three single-family residences along Juniper Drive to the south and west of the project site, and would be within the scenic viewshed of at least one of those residences. The placement of two 60' tall communication towers in a location that is visible from single-family residences creates an aesthetic impact to those properties, and associated economic impact in the form of reduced property values, that is inconsistent with a finding that the use would not be injurious to property or improvements in the area."**

Incline Partners will produce additional photo simulations prior to and at the Board of Supervisors hearing which will show the minimal viewshed impact of the site on neighbors. Virtually all land use projects will have some impact on third parties which could be deemed "injurious" to some extent; in this case, the impact is minimal and should be weighed against the overall good to the community. There are existing utility pole lines and light standards throughout this area which create visual impacts to varying extents. Completion of this facility will provide the community of Crowley Lake broadband wireless voice and data service for the first time, nearly 30 years after the introduction of cellular technology to many other areas. This will not only allow cellular phone calls to be made on the roads

and in homes and businesses in the area for the first time, but also provide broadband speed for internet access and vastly improve public safety.

Incline Partners has mitigated the visual impact to a level of non-significance by designing the poles as simulated trees, which will blend with the overall flora and fauna in the area and effectively disguise the facility. There are many Jeffrey Pine trees in the area and the monopines will effectively imitate them. Given only a very few residents who live near this commercial lot will be minimally affected, the denial based on aesthetics was improper. Development of commercial projects do have affects on neighboring residential but they must be weighed against the overall benefit to the community as a whole.

Discussion at the hearing about a loss of property value was based on an informal and unscientific poll of real estate brokers who were given two options: a cell tower can have an effect on home owner value, or the broker had no experience with cell towers in the area. The option that no diminished value would result was not provided. In addition, there was no actual analysis of particular properties and what distance these properties were and accordingly what actual affect on property values would occur. This information should not have been considered by the Planning Commission in its decision.

- c. The Planning Commission found that “The placement of two 60’ monopines within the community of Crowley Lake is inconsistent with the protection of the area’s rural residential character because the appearance of the monopines disrupts the residential character of the neighborhood.”**

The proposed towers will be located on an existing lot zoned commercial, which already has located thereon a laundramat, apartment and firewood operation. The immediate neighborhood also has a telephone central office, mobile home park, fire station, and other commercial lots. The site’s parcel is located on Crowley Lake Drive, which itself is the former primary highway in the region and accordingly has many commercial activities located thereon. The poles have been designed to appear as pine trees which will help retain the rural feel of the area. The towers are not in the viewshed of Highway 395 which is considered a scenic corridor. As stated by the Planning Director in the proposed Negative Declaration: “The project has been designed to ensure that the facility blends into the surrounding environment and backdrop of adjacent hills to the greatest extent possible (see Figure 5, Photo Simulations). Proposed landscaping will further blend the project site into the surrounding area and screen on-site uses. From a distance, the monopines will blend into the surrounding vegetation. The design of the project will reduce visual impacts to scenic vistas to a less than significant level.: This mitigation in the form of the tree pole design should have been found to be sufficient to make the finding that the site is not inconsistent with the area’s character.

The Incline Partners project is a viable project that meets the height, aesthetic and coverage requirements and therefore should be approved. The site will add virtually no noise, traffic, drainage, erosion or landslide hazards to the community. The slight visual impact on a few residents living near this commercial lot and project should not be the basis for denial. The Board of Supervisors should balance the competing and conflicting interests of cellular/broadband service for the hundreds of residents in Crowley Lake against the very few who are insignificantly impacted by a disguised tree pole.

- d. The Planning Commission found that “Given the size of the project site, there is no possibility that the monopines could be located within the facility in a manner which conforms to the provisions of section J of the Design Guidelines. This deviation from the Design Guidelines contributes to adverse aesthetic impacts and fails to address safety concerns from tower collapse or falling objects.”**

As discussed above, the Design Guidelines are not mandatory and are not to be rigidly applied. This case is clearly a situation where the Guideline should be modified.

- e. The Planning Commission stated that at least four alternative locations for the project were presented to the Planning Commission. Those are: the McGee Creek site; the Caltrans site; the Tomajko site; and the Long Valley Fire Station site. The applicant did not present any evidence indicating that these sites were unavailable or infeasible.”**

Cellular companies have attempted to provide cellular service for many years to Crowley Lake. The fact is that all the alternative sites have failed for various reasons. Incline Partners will present further information on alternative sites prior to or at the hearing.

Letter of Authorization

The below named representative, and its successors and assigns, are hereby appointed with the authority to act with all rights of the landowner, without further approval or consent of the landowner, in filing, obtaining and maintaining any and all required permits or other governmental authorizations necessary or appropriate for use of the leased premises located at the property listed below, in accordance with the terms and conditions of and as conveyed or transferred in the Communication Site Lease Agreement between Thomas E. and Windsor K. Czeschin, husband and wife, as joint tenants and Incline Partners, L.L.C., a Nevada limited liability company dated August 20, 2010. The authority set forth in this Letter of Authorization shall expire only upon the expiration or earlier termination of the agreement listed above, and shall bind any future purchaser or transferee of the property listed below, without further approval or consent of the current or any future landowner of the property.

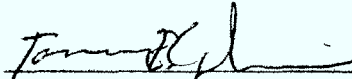
Property:

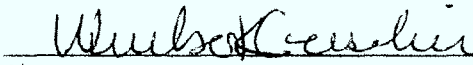
Site Address: 4052 Crowley Lake Drive, Crowley Lake, CA 93546

Assessor's Parcel Number: 060-180-004

Authorized Representative:

Incline Partners, L.L.C., a Nevada limited liability company or their assignee

Authorized By: 
Signature
THOMAS E. CZESCHIN
Name
8/20/2010
Date

Authorized By: 
Signature
WINDSOR K. CZESCHIN
Name
8/20/2010
Date

Mono County Community Development Department Planning Division

PO Box 347
Mammoth Lakes, CA 93546
(760) 924-1800, fax 924-1801
commdev@mono.ca.gov

PO Box 8
Bridgeport, CA 93517
(760) 932-5420, fax 932-5431
www.monocounty.ca.gov

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Mono County Board of Supervisors will conduct a Special Meeting on Tuesday, July 19, 2011, at the Crowley Lake Community Center, 58 Pearson Rd., Crowley Lake, CA, to consider an appeal filed by Incline Partners, LLC, project applicant, on the Mono County Planning Commission's denial of Conditional Use Permit 10-008 for the development, operation and maintenance of a wireless telecommunications facility in the community of Crowley Lake:

5:30 P.M. SITE VISIT. The Board of Supervisors will meet on site at 4052 Crowley Lake Drive in the community of Crowley Lake for a field trip. No action will be taken; the field trip is for informational purposes only.

6:00 P.M. APPEAL 11-002 USE PERMIT 10-008/Incline Partners LLC. The proposal is to allow development, operation and maintenance of a wireless telecommunications facility in the community of Crowley Lake (APN 060-180-004). The site would provide cell phone coverage to the community and north and south along U.S. 395. The wireless facility would be located on a 2,400-square foot lease area located in the southwest portion of the parcel. The 40' x 60' lease area would include two multi-carrier 60-foot wireless communications monopoles designed as a collocation facility, engineered to hold up to four carriers' antenna arrays on the site. The monopoles would be engineered and constructed to resemble a pine tree or monopine. Currently, the property is subject to Use Permit 37-88-07/Czeschin, which allows a car wash, restroom/shower facilities, laundromat, and apartment plus firewood storage. The land use designation is Commercial. In accordance with CEQA guidelines, a Negative Declaration has been prepared and determined that the above project will not have a significant effect on the environment.

DOCUMENTS for the above projects are available at the Community Development offices in Bridgeport and Mammoth Lakes.

INTERESTED PERSONS may appear before the Board of Supervisors to present testimony or, prior to or at the hearing, file written

correspondence with: Clerk of the Board, County of Mono, PO Box 237, Bridgeport, CA 93517. Interested persons may appear before the Board of Supervisors to present testimony for public hearings, or prior to or at the hearing file written correspondence with the board clerk. Future court challenges to this item may be limited to those issues raised at the public hearing or provided in writing to the Mono County Board of Supervisors prior to or at the public hearing.

Contact Information:
Mono County Planning Division
Heather deBethizy
PO Box 347
Mammoth Lakes, CA 93546
760- 924-1812

Project Location





**MICHELLE
MCMILLIAN**

646 Juniper Drive

(760) 920-3266
mcmillian@me.com

July 12, 2011
Lynda Roberts
Clerk of the Board
Mono County Board of Supervisors
PO BOX 715
Bridgeport CA 93517

Dear Ms. Roberts,

I am writing in regards to the Incline Partners' appeal to the Mono County Planning commission's denial of the Use Permit UP 10-008 for the siting of (2) 60' tall monopine cell towers in Crowley Lake. I would like to formally oppose the placement of the monopines at the proposed site. The Planning Commission denied the use permit based on a number of important factors including: aesthetics, visual impact, inconsistent protection of the area's rural residential character, defiance of setback requirements in Mono County's Design Guidelines and lack of comprehensive alternate site analysis. I feel that all of these reasons are vital, critical arguments not to place the towers at the proposed site. I have two other strong reasons not to approve the application: the health impacts on the residents living closest to the towers, and the recent finding of a viable alternative site on LADWP property.

My family recently purchased a home in very close proximity to the Wash All laundry mat and the proposed tower placement. I have been a local Mono County resident for nearly my entire life. I grew up in Mammoth, and after college and graduate school, I decided to move back to Mammoth in order to give back to the community which I love and to raise my family in Mono County's pristine mountain environment. We chose to purchase a home on Juniper Dr., and we love the natural beauty of the area. We considered pulling out of escrow when we first learned of the cell tower proposal, but were so relieved to know that the Planning Commission felt the same way that we did. Though most of the Crowley Lake residents would agree that cell service is needed in our area, this location is not the ideal site. The placement of the towers is not only aesthetically wrong for the area, but also contradicts the setback requirements in the Mono County's Design Guidelines. If the County starts to defy guidelines now, it truly sets a dangerous precedent for other proposals in our area in the future. The guidelines were set in place for a specific reason, and this proposal is not the best interest of our community.

Though the health impacts of cell towers are controversial, it is known that cell phones and other types of radiofrequency are now classified as class 2B carcinogens (http://en.wikipedia.org/wiki/List_of_IARC_Group_2B_carcinogens). This is concerning to me personally as children are even more susceptible to the negative effects of radiofrequency than adults. The American Academy of Pediatrics has determined that not enough research has been done on the harmful effects of cell phone use and radiofrequency on children. In one article they have cited that "investigation of the potential effects of RF fields on cognition and the development of childhood brain tumors was considered particularly urgent" (<http://pediatrics.aappublications.org/content/116/2/e303.full.html>). I have a serious concern that living so close to these towers will have a negative long term

health effect on my two year old son. We moved into the area to enjoy the benefits of living close to nature. We strive to provide our son the best, healthiest life possible. I feel that the approval of these towers would be a serious detriment to my son's health. Though I realize that you cannot deny the placement of the towers based solely on health concerns, I ask that you take this real concern into consideration when making your decision on the placement of the towers. In my life, my family's health and safety come first, and I want to be able to live in a home conducive to this lifestyle choice.

Furthermore, recently, there have been investigations into the possibility of alternate cell tower placement sites. Many agree that cell service is needed in our area, and the alternative site(s) is the answer to the problem. The Wash All laundry mat property is in a residential area and the visual, health and aesthetic impacts affect many residents. However, the alternative site on LADWP land would not affect residents of our community. This is a more viable solution, and I urge you to take this into consideration as well when making your decision on the placement of the towers.

As a new resident of Crowley Lake, but a long term member of the Mono County community, I urge you to deny the placement of the (2) monopine cell towers in our residential area. These towers are not the proper answer to our problem of lack of cell service at this time.

Sincerely yours,

Michelle McMillian