

**STAFF REPORT TO: AMADOR COUNTY PLANNING COMMISSION
FOR MEETING OF: SEPTEMBER 12, 2017**

Item 2 - PUBLIC HEARING - REQUEST FOR A USE PERMIT TO EXCEED THE 30' HEIGHT LIMIT IN THE "R1," (SINGLE FAMILY RESIDENTIAL DISTRICT) TO ALLOW FOR INSTALLATION OF A 21-FOOT-TALL AMATEUR RADIO ANTENNA ON TOP OF A 70-FOOT-TALL TREE.

APPLICANT: John B. Laurant

SUPERVISORIAL DISTRICT 3

LOCATION: 16481 Alpine Lane, Pioneer, CA, approximately 200 feet west of the intersection with Cedar Heights Drive (APN 033-240-005).

A. GENERAL PLAN DESIGNATION: R-R, Rural Residential

B. ZONING: "R1," Single Family Residential District

C. DESCRIPTION / BACKGROUND: This request is for a Use Permit to exceed the 30' height limit in the "R1," Single Family Residential District for installation of an amateur radio antenna on top of an existing 70-foot-tall tree. Per County Code Section 19.48.090B, "Gas holders, radio, microwave radio relay and T.V. transmission towers, monuments, water tanks and similar structures may be erected to a greater height than the limit established for the district in which they are located, subject to securing a use permit in each case." The antenna installed by the applicant has an overall height of 91 feet.

California Government Code Section 65850.3 (attached) limits local regulations governing amateur radio antennas. The Federal Communications Commission's Personal Radio Branch issued an order in 1984 (PRB-1, attached) which requires local governments to reasonably accommodate amateur radio communications, and local codes cannot establish heights and dimensions that are unnecessarily burdensome. These rules do not preclude establishing setback requirements or reasonable aesthetic conditions through a use permit process.

D. TAC REVIEW: The application was reviewed by the Technical Advisory Committee on May 2, 2016. The applicant was asked to provide evidence that the tower did not require review or clearance from the Federal Aviation Administration (FAA). The applicant presented evidence in the form of the attached FAA Notice Criteria Tool during the July 26, 2017 TAC meeting. TAC has no technical objection to the granting of this request subject to the Findings and Conditions attached to the staff report.

E. PLANNING COMMISSION ACTION: If the Planning Commission moves to grant the Use Permit the following conditions and findings, are recommended for adoption:

Findings:

1. The granting of this Use Permit as conditioned, complies with County Code Section 19.48.090B (Height Regulations) and is consistent with County Code Section 19.56 (Use Permits) in that the establishment of this structure will not under the circumstances of the particular case be detrimental to the health, safety, peace, morals, comfort and general welfare of persons

residing in the neighborhood of the proposed structure or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.

2. The granting of this Use Permit is categorically exempt from CEQA pursuant to Section 15303 Class 3 of the CEQA Guidelines (New Construction or Conversion of Small Structures) and a Notice of Exemption shall be filed with the County Recorder.

USE PERMIT

CONDITIONS OF APPROVAL

PROJECT: Use Permit to Exceed the 30' Height Limit for an Amateur Radio Tower; UP-16;4-3

APPLICANT: John B. Laurant

DESCRIPTION: Use Permit to allow the installation of a 21-foot-tall amateur radio antenna with in a 70-foot-tall tree in the "R1," Single-family Residential district. Located at 16481 Alpine Lane, Pioneer (APN 033-240-005).

ENVIRONMENTAL DOCUMENT: Categorical Exemption per Section 15303, Class 3 (New construction or conversion of small structures) of the CEQA Guidelines.

PLANNING COMMISSION APPROVAL DATE:

CONDITIONS OF APPROVAL

1. This Use Permit shall not become valid, nor shall any uses commence until such time as the Permittee is either found to be in compliance with or has agreed, in writing, to a program of compliance acceptable to the County. At that time the permit shall be signed by the Planning Department and the use shall commence. THE PLANNING DEPARTMENT SHALL MONITOR THIS CONDITION.
2. The issuance of this Use Permit is expressly conditioned upon the permittee's compliance with all of the provisions contained herein and if any of the provisions contained herein are violated, this Use Permit may be subject to revocation proceedings as set forth in Amador County Code. THE PLANNING DEPARTMENT SHALL MONITOR THIS CONDITION.
3. The project shall be substantially the same as approved. Any substantial changes must be submitted for approval by the Amador County Planning Commission. THE PLANNING DEPARTMENT SHALL MONITOR THIS CONDITION.
4. Prior to the issuance of this use permit, the permittee shall obtain all necessary permits from the Building Department, Environmental Health Department, and Public Works Agency associated with the construction of the tower. THE BUILDING DEPARTMENT, ENVIRONMENTAL HEALTH DEPARTMENT, AND PUBLIC WORKS AGENCY SHALL MONITOR THIS CONDITION IN CONJUNCTION WITH THE PLANNING DEPARTMENT.
5. The facilities shall not interfere with radio, television, or telephone transmissions, and will not interfere with the operation of household appliances or other machinery in the area. If public complaints occur, the burden of proof in fulfilling this condition shall be upon the Permittee. THE PLANNING DEPARTMENT SHALL MONITOR THIS CONDITION.



**PLANNING DEPARTMENT
LAND USE AGENCY**

County Administration Center
810 Court Street • Jackson, CA 95642-2132
Telephone: (209) 223-6380
Website: www.co.amador.ca.us
E-mail: planning@amadorgov.org

APPLICATION REFERRAL

TO: Mike Israel, Environmental Health Department
Jered Reinking, Department of Transportation and Public Works
Steve Stokes, Building Department
David Bellerive, Amador Fire Protection District
Jim McHargue, Waste Management/Air District
Steve Zanetta, Surveying Department
Greg Gillott, County Counsel
Jim Wegner, Undersheriff
Darin McFarlin, Cal Fire

DATE: July 19, 2017

FROM: Chuck Beatty, Planner III

PROJECT: Request from John Laurant for a Use Permit (UP-16;4-3) to allow a 21-foot tall amateur radio antennae to be attached to the top of a 70-foot tall tree (an overall height of 91 feet). Per Amador County Code, radio antennae may be installed with a greater height than the 35-foot height limit established for structures the R1A, Single-family Residential/Agricultural district subject to securing a Use Permit from the Amador County Planning Commission.

LOCATION: 16481 Alpine Lane, Pioneer, CA 95666 (APN 033-240-005)

REVIEW: As part of the preliminary review process, this project is being sent to local agencies for their review and comment. The Technical Advisory Committee (TAC) will review the project for completeness during its regular meeting on Wednesday, July 26, 2017 at 2:00 p.m. in Conference Room "A" at the County Administration Building, 810 Court Street, Jackson, California.

At this time, staff anticipates that a Notice of Exemption will be the appropriate CEQA document for this project. Additional TAC meetings may be scheduled for a later date to complete a CEQA Initial Study, prepare mitigation measures and/or conditions of approval, and make recommendations to the Planning Commission.



**PLANNING DEPARTMENT
LAND USE AGENCY**

County Administration Center
810 Court Street • Jackson, CA 95642-2132
Telephone: (209) 223-6380
Website: www.amadorgov.org
E-mail: planning @amadorgov.org

APPLICATION PROCEDURE FOR USE PERMIT

A Public Hearing before the Planning Commission will be scheduled after the following information has been completed and submitted to the Planning Department Office:

RECEIVED
Amador County

APR 19 2016

_____ 1. Complete the following:

Name of Applicant John B Laurent

Mailing Address 114181 ALPINE LN

PIONEER CT 95666

PLANNING DEPARTMENT

Phone Number _____

Assessor Parcel Number 033-240-005-000

Use Permit Applied For:

- Private Academic School
- Private Nonprofit Recreational Facility
- Public Building and Use(s)
- Airport, Heliport
- Cemetery
- Radio, Television Transmission Tower
- Club, Lodge, Fraternal Organization
- Dump, Garbage Disposal Site
- Church
- OTHER exceed 30' height limit for ham radio antennae.

_____ 2. Attach a letter explaining the purpose and need for the Use Permit. Include height of antennae.

_____ 3. Attach a copy of the deed of the property (can be obtained from the County Recorder's Office).

_____ 4. If Applicant is not the property owner, a consent letter must be attached.

_____ 5. Assessor Plat Map (can be obtained from the County Surveyor's Office).

_____ 6. Plot Plan (no larger than 11" X 17") of parcel showing location of request in relation to property lines, road easements, other structures, etc. (see Plot Plan Guidelines). Larger map(s) or plans may be submitted if a photo reduction is provided for notices, Staff Reports, etc. The need is for easy, mass reproduction.

_____ 7. Planning Department Filing Fee: \$ 575

_____ Environmental Health Review Fee: \$ 500

_____ Public Works Agency Review Fee: \$ 192

N/A _____ ~~8. Complete an Environmental Information Form.~~

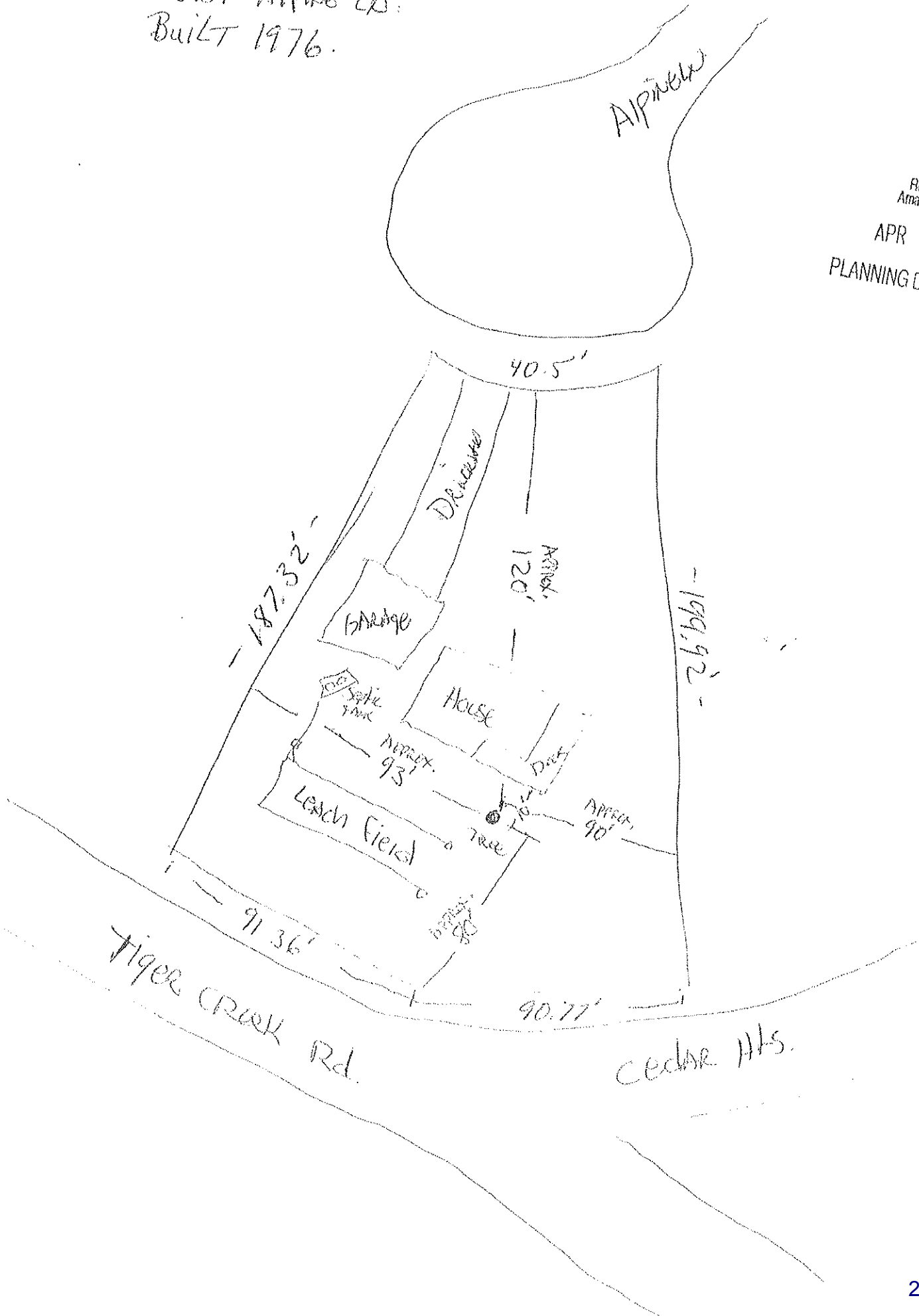
_____ 9. Sign Indemnification Form.

16481 ALPINE CR.
BUILT 1976.

RECEIVED
Amador County

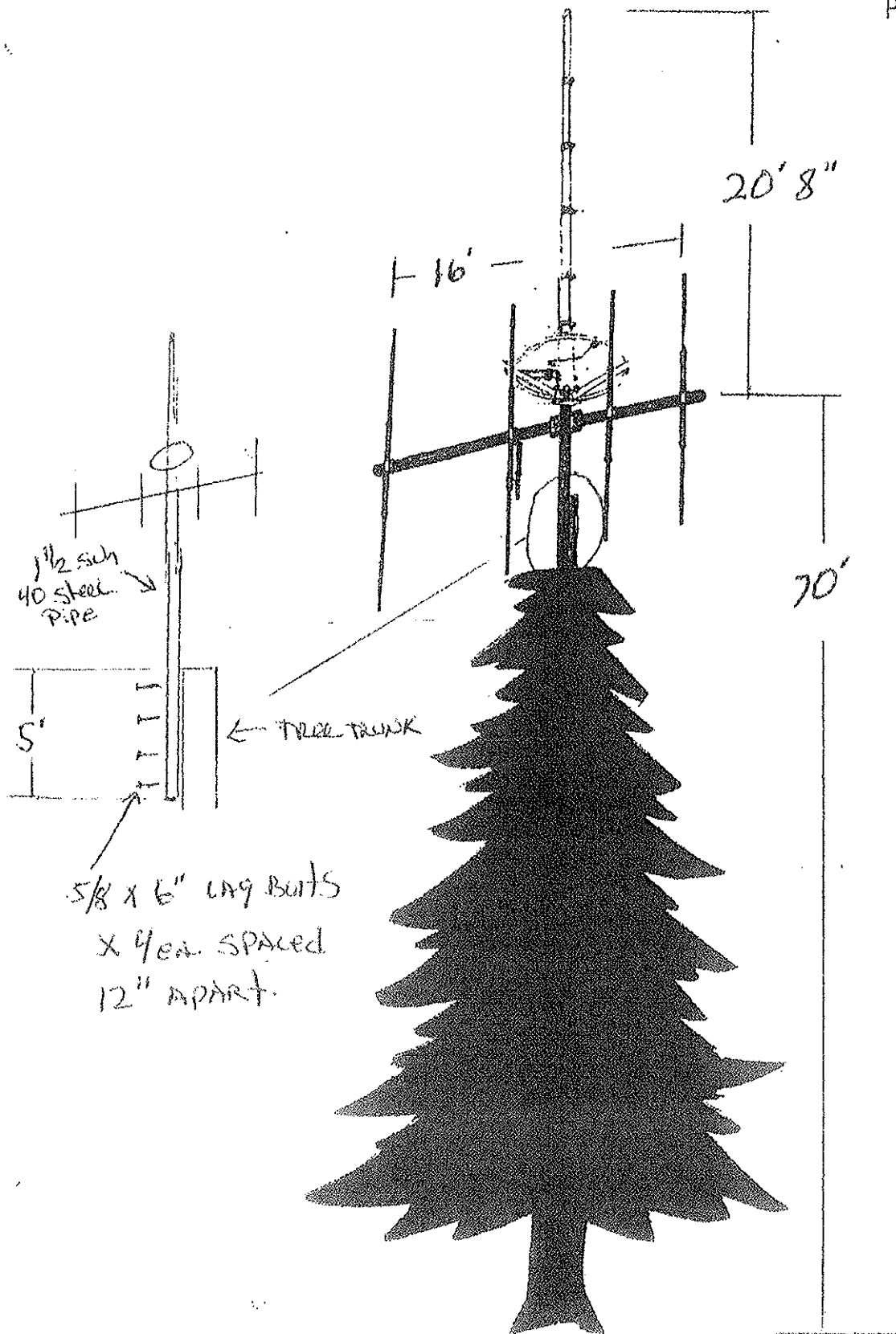
APR 19 2016

PLANNING DEPARTMENT

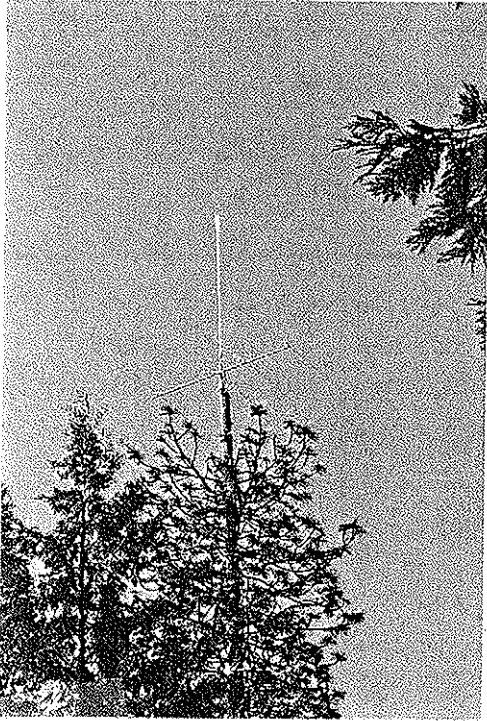


APR 19 2016

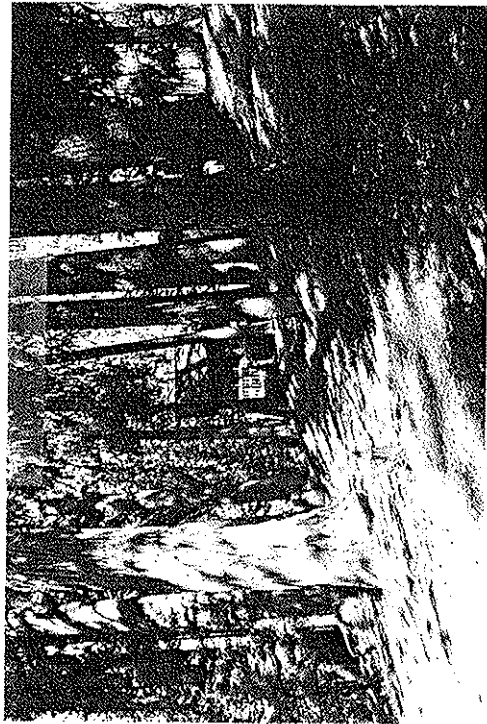
PLANNING DEPARTMENT



1



3



5

2



6



Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Aeronautical Study No.
2017-AWP-1464-OE

Issued Date: 06/02/2017

Airport
County of Amador
12200-B Airport Road
12380 Airport Road
Jackson, CA 95642

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Antenna - Side Mount John Laurent
Location:	Pioneer, CA
Latitude:	38-26-42.01N NAD 83
Longitude:	120-30-59.64W
Heights:	3100 feet site elevation (SE) 90 feet above ground level (AGL) 3190 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 L Change 1.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Frequency Data for ASN 2017-AWP-1464-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
26.815	28.045	MHz	200	W

Memorandum Opinion and Order in PRB-1

Before the
Federal Communications Commission
Washington, DC 20554

FCC 85-506
36149

In the Matter of)
)
Federal preemption of state and) **PRB-1**
local regulations pertaining)
to Amateur radio facilities.)

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985 ; Released: September 19, 1985

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter.¹ With extension, comments were due on or before December 26, 1984,² with reply comments due on or before January 25, 1985.³ Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur

antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois, wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted “structures” heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions—anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that “beauty is in the eye of the beholder.” They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive

covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California, included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (television, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws, restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS),⁴ Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas, are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.

We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the Issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur Radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of the regulation on Federal goals. Its position is that Federal preemption is warranted whenever local government regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California, has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied. A blanket to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to...legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a "national policy." However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as "liveable" neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced

with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of antennas. ...the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of view point as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support

groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that

...countervailing state interests inhere in the present situation...For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service.⁵ Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances,

such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.⁶

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico
Secretary

Footnotes

¹Public Notice, August 30, 1984, Mimeo. No. 6299, 49 F.R. 36113, September 14, 1984.

²Public Notice, December 19, 1984, Mimeo. No. 1498.

³Order, November 8, 1984, Mimeo, No. 770.

⁴MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.

⁵47 CFR Part 97.

⁶We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.



AMADOR COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

PHONE: (209) 223-6380
FAX: (209) 257-5002
WEBSITE: www.amadorgov.org
E-MAIL: planning@amadorgov.org

COUNTY ADMINISTRATION CENTER • 810 COURT STREET • JACKSON, CA 95642-2132

February 15, 2017

John Laurant
16481 Alpine Lane
Pioneer, CA 95666

RE: Use Permit Application #UP-16;4-3

Dear Mr. Laurant:

In April of 2016, you submitted an application for a Use Permit to exceed the height limit for structures in a residential zone. The purpose of the permit was to maintain a 21-foot amateur radio antenna on top of a 70-foot pine tree. A prerequisite for the Planning Department to process the permit application was to provide us with a clearance notice from the Federal Aviation Administration regarding the antenna's location and height. To date, the Planning Department has not received the request FAA clearance and the antenna remains in violation of Amador County Code.

The Planning Department requests that the FAA clearance notice be forwarded to us by February 28, 2017, so that we may further process the Use Permit application. After that time, a formal Notice of Violation will be issued providing a deadline for removal of the antenna.

If you have questions, please do not hesitate to contact us.

Sincerely,

Chuck Beatty
Amador County Planning Department

cc: Code Enforcement Department



AMADOR COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

PHONE: (209) 223-6380
FAX: (209) 257-5002
WEBSITE: www.amadorgov.org
E-MAIL: planning@amadorgov.org

COUNTY ADMINISTRATION CENTER • 810 COURT STREET • JACKSON, CA 95642-2132

NOTICE OF PUBLIC HEARING

Notice is hereby given the Planning Commission of the County of Amador, State of California, has received an application for the project described in this notice.

PROJECT NAME, DESCRIPTION AND LOCATION: Request from John Laurant for a Use Permit to allow the installation of an amateur radio antenna with a height of 21 feet on top of 70-foot-tall tree (91-foot overall height). Per Amador County Code Section 19.48.090(B), radio antennae may be installed to a greater height than the 30-foot height limit established for the "R1," Single Family Residential District subject to securing a Use Permit. **LOCATION:** 16481 Alpine Lane, Pioneer, CA, approximately 200 feet west of the intersection with Cedar Heights Drive (APN 033-240-005). SEE MAP ON BACK OF NOTICE.

Notice is hereby given said **Planning Commission** will hold a public hearing on this application at the **County Administration Center, 810 Court St., Jackson, California, on Tuesday, September 12, 2017 at 7:00 p.m.** or as soon thereafter as can be heard. **The Staff Report will be available online (typically the Friday prior to the meeting) for viewing at <http://www.co.amador.ca.us/> in the "Agendas and Minutes" section.**

Department staff is recommending the Planning Commission adopt a finding that this project is Categorically Exempt according to Section 15303, Class 3 (New construction or conversion of small structures) of the CEQA Guidelines. Anyone having comments may attend and be heard thereon.

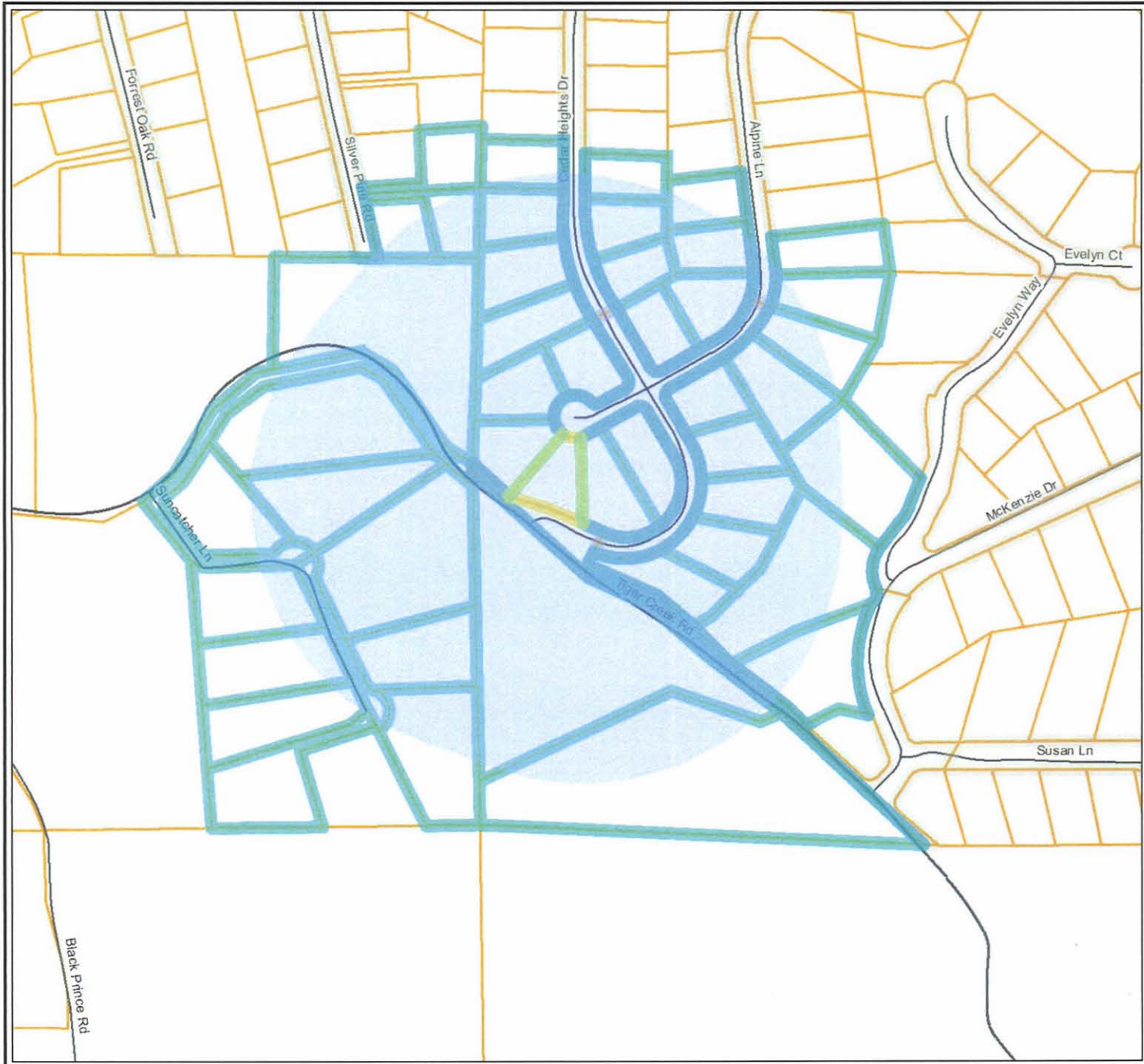
Letters of comment regarding this matter received by the County prior to the preparation of the Staff Report (generally the Tuesday prior to the meeting) will be mailed to each Planning Commissioner as part of the Staff Report. Letters received after the Staff Report has been mailed will be copied and circulated to each Commissioner just prior to the Public Hearing. However, be advised the Commissioners may not, due to time constraints, be able to give those letters submitted after the Staff Report is prepared, as detailed a review as those received earlier and it may be to your benefit to attend the hearing and summarize your concerns orally. Letters will not be read aloud at the Public Hearing.

AMADOR COUNTY PLANNING DEPARTMENT
Date of this Notice: August 22, 2017

NOTE: If you do not comment at the public hearing or send in written comments and later decide to challenge the nature of this proposed action in court, you may be limited to raising only those issues you raised at the public hearing or have given in written correspondence delivered to the public entity conducting the hearing at, or prior to, the Public Hearing.

THIS PARCEL





- Cities and Communities
- Transportation
 - ➔ One Way Road
 - Primary Road
 - Secondary Road
 - County Route
 - State Highway
 - Unimproved Road
- Administrative Boundaries
 - ▭ City Limits
 - ▭ Amador County Boundary
 - ▭ Parcels



1" = 325 ft

Aerial photography, if displayed,
© DigitalGlobe, Inc., All Rights Reserved

Notes



The County of Amador assumes no responsibility arising from use of this information. THE MAPS AND ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Do not make any business decisions based on this data before validating your decision with the appropriate County Office.

Amador County GIS Viewer

Amador County Information Technology Dept.
810 Court St, Jackson CA 95642

August 21, 2017