

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Fr 10b

Addendum

August 4, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Fr 10b**, Coastal Commission Permit Application
#A-6-ENC-08-35 (ATT Cingular Wireless), for the Commission Meeting
of August 8, 2008.

Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 1 of the staff report, the project location shall be revised as follows:

PROJECT LOCATION: 3637 Manchester Avenue (trenching) and 36631
Manchester Avenue (wireless facility). APN 262-062-28 and 38.

2. On Page 2 of the staff report, the first paragraph under Section II shall be revised as follows:

The project was denied by the Planning Commission on ~~November 15, 2006~~
November 2, 2006. The coastal development permit was subsequently appealed by the
applicants to the City Council on February ~~27~~21, 20067. At that hearing the City Council
set aside the Planning Commission decision and directed the Planning Commission to
review the project again ~~approved the applicant's appeal~~. On January 17, 2008, the
Planning Commission denied the application. On January 28, 2007, the applicant
appealed to Planning Commission decision to the City Council. On March 12, 2008, the
City Council approved the proposed development for a wireless communication facility
with conditions.

Fiob

WORLEY SCHWARTZ GARFIELD & PRAIRIE

A LIMITED LIABILITY PARTNERSHIP

LAWYERS

401 "B" STREET, SUITE 2400
SAN DIEGO, CALIFORNIA 92101-4200

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WRITER'S DIRECT DIAL (619) 238-3849

August 4, 2008

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Gary Cannon
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: **Appeal No. A-6-ENC-08-35; AT&T Mobility wireless telecommunications facility at 3637 Manchester Avenue (trenching) and 3661 Manchester Avenue (wireless facility), Encinitas.**

Dear Mr. Cannon:

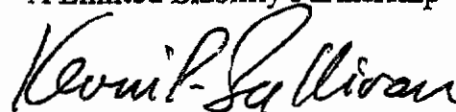
Our firm represents AT&T Mobility (AT&T) regarding the above-referred to appeal.

Although the subject wireless antenna facility is not located within the California Coastal Commission's appellate jurisdiction, AT&T wants to clarify that the wireless facility described at page 5 of the July 17, 2008 Staff Report on this matter is fully "stealthed," and is not visible. The wireless facility antennas will be installed within the walls of an extended existing balcony. Further, the equipment cabinets that support the facility will be installed entirely within an extension of the existing garage at the property. No antennas or equipment for the facility will be seen from the exterior of the buildings or from any off-site property.


AT&T respectfully requests that the Commission Chair and Commission Members be provided with a copy of this letter. Thank you.

WORLEY SCHWARTZ GARFIELD &
PRAIRIE

A Limited Liability Partnership



Kevin P. Sullivan
Partner

Letter from Applicant 

Fr 106

Wendy Moldow, APPELLANT
A-6-ENC-08-053
Hearing 8/08/08 Item #108

7/29/08

TO ALL THE MEMBERS OF OUR CALIFORNIA COASTAL COMMISSION & STAFF

THIS MATTER IS BEFORE THE COASTAL COMMISSION BECAUSE A PORTION OF MY DRIVEWAY IS WITHIN THE COASTAL COMMISSION JURISDICTION. IT IS WITHIN FEET OF LUX CREEK. THIS PORTION OF THE DRIVEWAY IS TO BE DUG UP INITIALLY AND FROM TIME TO TIME OVER THE YEARS TO INSTALL SPECIALLY DEDICATED ELECTRICAL AND SPECIALLY DEDICATED LINES FOR TELEPHONE AND WIRELESS COMMUNICATION LINES. LUX CREEK AND ITS SURROUNDING VEGETATION ARE ENVIRONMENTALLY SENSITIVE AND FLOWS WITHIN FEET OF THE PROPOSED TRENCH ON MY PROPERTY (ACROSS MANCHESTER AVE) TO ANOTHER ENVIRONMENTALLY SENSITIVE AREA, SAN ELIJO LAGOON.

THE COASTAL COMMISSION IS CHARGED BY LAW TO PROTECT THE ENVIRONMENT. THESE SERIOUS ISSUES MUST BE ADDRESSED AND NO TECHNICALITY SHOULD BE USED WHEN THERE ARE ENVIRONMENTAL ISSUES.

THERE ARE SUBSTANTIAL ISSUES.

THE STAFF REPORT IS WRONG. It draws erroneous conclusions.

The STAFF Report states on Page 6:

"Based on a review of the appellant's application, only two issues have been identified which related to the proposed trenching and utility line installation which is the only portion of the development subject to this appeal. One is whether the City considered the trenching and utility line installation as part of the coastal development permit for the offsite wireless facility. The second issue is whether the trenching/utility installation is consistent with the environmentally sensitive habitat protection and water quality protection policies of the LCP."

As stated....**"ONE IS WHETHER THE CITY CONSIDERED THE TRENCHING AND UTILITY LINE INSTALLATION AS PART OF THE COASTAL" THEY DID NOT...AS SHOWN BELOW:**

TAKEN FROM TRANSCRIPT of Planning Commission Meeting 10/5/06

Kelly Morgan, Staff Planner stated, and I quote:

"A small portion of the corner of the site is located within the Coastal Commission Appeal jurisdiction. No aspect of the proposed project encroaches into that area."

COMMISSION DISCUSSION

Commissioner: *"I have a question for the attorney. This easement issue—that's not a land use issue, a city issue—isn't it a private issue?"*

City Attorney responds: *"No. It's between the two landowners that we do have a standard condition that the city would be held harmless from any dispute that would arise from the property owners."*

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

1 of 3

Letters of Response

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Commissioner: "but in terms of land use, but if that easement is there to grant utilities to single family residence and stuff like that, does it then become a land use issue if additional for additional uses?"

City Attorney responds: "It's really a civil matter."

PLEASE NOTE THIS WAS THE ONLY DISCUSSION REGARDING ANY TRENCHING
DURING THE FIRST PLANNING COMMISSION HEARING.
WHEN THE SUBJECT WAS BROUGHT UP THE COMMISSIONERS WERE SHUT DOWN!
THE SECOND PLANNING COMMISSION HEARING ADDRESSED ONLY ALTERNATE SITES
AND DID NOT ADDRESS EASEMENT.

TAKEN FROM TRANSCRIPT of First Appeal to City Council 2/21/07

Councilperson Teresa Barth asks for clarification from staff as to ownership of easement.

Kelly Morgan, Staff Planner states and I quote,
*"private easement and we cannot get involved in private road easements.
It is a civil matter."*

Councilperson Barth continues to pursue stating she is confused regarding this easement and is **SHUT DOWN**. No more discussion. They move on.

The Coastal Commission Staff Report states that both the City and I were aware of this trenching. As you can see from the transcript, this was **NOT** the case. The Staff Report states I submitted information as to the trenching. The **ONLY** information I was ever provided in their application stated they intended to dig **"on or beside the easement."** I thought it followed the edge of the driveway in a straight path down to Manchester, an area completely outside the Coastal zone and then was told at a meeting with the City on 4/3/08 that it was inside and thus appealable. The first time I was shown the actual **TRENCH MAP** was April 3, 2008, **AFTER** the City Council Appeal Approval 2/28/08. Even at the City Council Appeal Final Hearing 3/12/08, I was still **UNAWARE** of their intention to come down the center of this snake-like driveway. I too, was **SHUT DOWN**.

The City has NEVER addressed this TRENCH PLAN.
The Applicant responded NO to Environmental issues.

THIS RAISES SUBSTANTIAL ISSUE FOR THE COASTAL COMMISSION.

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Page 6 Staff Report

"The second issue is whether the trenching/utility installation is consistent with the environmentally sensitive habitat protection and water quality protection policies of the LCP."

THE TRENCHING UTILITY INSTALLMENT IS NOT CONSISTANT WITH THE ENVIORNMENTALLY SENSITIVE HABITAT PROTECTION AND WATER QUALITY PROTECTION POLICIES OF THE LCP, AS NOTED BELOW:

The site is being built on a 38% SLOPE. All land 25% or greater was deed restricted at the time grading permits were issued in 1999 for the buildings on this site. SCA RESOLUTION No.PC 99-11 Consistent with the Hillside/Inland Bluff Overlay standards (M.C.SEC 30-34 030.B.6), prior to issuance of a grading permit for the project, the remainder of the areas on the property having 25% slope and greater, which are not impacted by grading, shall be placed within an open space conservation easement, or shall be deed restricted, to preclude any future development or grading of the slopes.

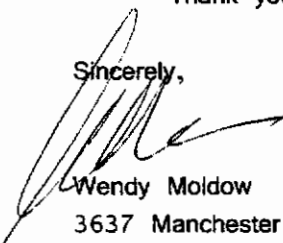
THIS OPEN SPACE HABITAT EASEMENT IS A STEEP SLOPE WHICH RUNS DOWN TOWARDS LUX CREEK THUS PRESENTING A WATER SHED PROBLEM FOR THE COASTAL COMMISSION ENDANGERING BOTH SENSITIVE HABITAT BELOW ACTUAL SITE AND LUX CREEK.

THIS RAISES SUBSTANTIAL ISSUE FOR THE COASTAL COMMISSION AS WELL.

Also I would like to point out on Page 1 of the Report that the site address is incorrect. The Public Notice for this hearing was also incorrect as to the site address, but after I contacted Gary Cannon, he corrected that. In addition Page 2 shows Council approved the Appeal in 2006. This is also incorrect. I would hope he will take the time to correct this other information so as not to present erroneous or misleading information to all of the Commissioners.

Thank you and I look forward to our Appeal hearing on the 8th of August,

Sincerely,



Wendy Moldow
3637 Manchester Avenue
Encinitas, CA 92024
619-339-3339

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FR 10b RECEIVED

TO: Gary Cannon
California Coastal Commission
Fax #619-767-2384

JUL 28 2008

FROM: Wendy Moldow
3637 Manchester Avenue
Encinitas, CA 92024
wendymoldow@hotmail.com

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

DATE: July 18, 2008

RE: Appeal #A-6-ENC-08-35 (Cingular Wireless)

Dear Gary,

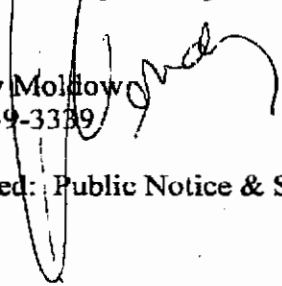
As per the Brown Act requiring a written demand to correct, and a box on the Agenda indicating that the Commission does not want emails unless expressly set out, I have sent off this attached letter to your office by mail today.

You may remember that it was you who brought to my attention the City's mistake using the wrong APN for their noticing the City Council hearing. You actually thought the site was on my property when you researched it and contacted me.

If this matter goes to court for Writ of Mandate, the last thing anyone would want is to have this bounce back to Coastal so as to have to go through the whole procedure again. It is much easier to correct this now. I suggest the errors be cured and the matter re-listed.

Thank you for you time.

Wendy Moldow
619-339-3339



Attached: Public Notice & Staff Report cover sheet.

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Sent certified + then ^{FAX'D} ~~emailed~~ copy to Jerry Cannon

WENDY MOLDOW
3637 MANCHESTER AVE.
ENCINITAS, CA 92024
July 28, 2008

California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Appeal No. A-6-ENC-08-35 (Cingular Wireless, Encinitas)

Dear People:

This constitutes a written demand to cure and correct the following Brown Act violation.

The document dated July 18, 2008, designated "IMPORTANT PUBLIC HEARING NOTICE/NEW APPEAL" erroneously states on the first page as to "PROJECT LOCATION": "...3661 Manchester Avenue (Wireless Facility)...".

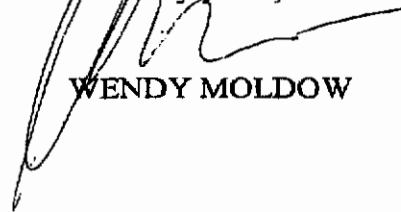
The correct address of the proposed wireless facility is 3631 Manchester Avenue.

Incorrect also is the Staff Report filed April 11, 2008 as to the address of the proposed wireless facility in its statement of "PROJECT LOCATION".

The proposed cure and correction is simple: remove this item from the Agenda set for August 8, 2008, and re-list it with the PROJECT LOCATION appropriately changed.

The Brown Act is designed to encourage public participation in government decision making by providing clear and unambiguous information. This law is strictly construed. An incorrect project address does not meet the Act's requirements.

Sincerely yours,



WENDY MOLDOW

M

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370 FAX (619) 767-2384
www.coastal.ca.gov

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Page: 1

Date: July 18,

**IMPORTANT PUBLIC HEARING NOTICE
NEW APPEAL**

PERMIT NUMBER: A-6-ENC-08-035

APPLICANT(S): Cingular Wireless, Attn: Mr. Ted Marioncelli

APPELLANT(S): Wendy Moldow

DECISION BEING APPEALED:

Trenching and installation of power/telecommunication lines within a paved private road. The utility lines are to provide services to an offsite wireless telecommunications facility that is not within the appeals jurisdiction.

PROJECT LOCATION:

3637 Manchester Avenue (trenching) and 3661 Manchester Avenue (wireless facility), Encinitas (San Diego County) (APN(s) 262-062-28, 262-062-38)

HEARING DATE AND LOCATION:

DATE: Friday, August 8, 2008
TIME: Meeting begins at 8:00 AM
PLACE: City of Oceanside Council Chambers
300 North Coast Hwy., Oceanside, CA
PHONE (760) 801-0718

HEARING PROCEDURES

People wishing to testify on this matter may appear at the hearing or may present their comments by letter to the Commission on or before the hearing date. The Coastal Commission is not to receive comments on any official business by electronic mail. Any information relating to a business should be sent to the appropriate Commission office using U.S. Mail or courier service.

AVAILABILITY OF STAFF REPORT

A copy of the staff report on this matter is available on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from Gary Cannon, Coastal Program Analyst, at the San Diego Coast District office.

SUBMISSION OF WRITTEN MATERIALS:

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three weeks before the hearing (staff will then distribute your materials to the Commission).
- Mark the agenda number of your item, the application number, your name and your position for or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER

CALIFORNIA COASTAL COMMISSION

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SAN DIEGO AREA
METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
767-2370

JUL 28 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Filed: April 11, 2008
49th Day: Waived
Staff: Gary Cannon-SD
Staff Report: July 17, 2008
Hearing Date: August 6-8, 2008

F 10b

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with conditions

APPEAL NO.: A-6-ENC-08-35

APPLICANT: ATT Cingular Wireless

Agent: Ted Marioncelli

PROJECT DESCRIPTION: Trenching and installation of power/telecommunication lines within a paved private road. The utility lines are to provide service to an offsite wireless telecommunications facility that is not within the appeals jurisdiction.

PROJECT LOCATION: 3637 Manchester Avenue (trenching) and 3661 Manchester Avenue (wireless facility). APN 262-062-28 and 38.

APPELLANT: Wendy Moldow

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Based on review of the City's file and information provided by the appellant, staff has concluded that the development, as approved by the City, is consistent with all applicable LCP provisions and will not result in any adverse impacts to environmentally sensitive habitat or on water quality.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program; City of Encinitas Case #06-001/MUP/CDP; Appeal Application by Wendy Moldow dated 4/11/08; Supplement to Appeal Application by Wendy Moldow dated 4/14/08; Letter from Wendy Moldow dated April 17, 2008; Letter from Wendy Moldow dated 7/14/08; Letter from Wendy Moldow dated July 15, 2008.

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Fr 10b

APPEAL #A-6-ENC-08-035
HEARING DATE 8/8/08
MOLDOW VS CINGULAR

As this hearing will be held during a business day, and many of the people who oppose this Permit Application cannot attend or speak, they have provided me with letters for the Coastal Commissioners.

Copies are being sent to all Commissioners, alternates and staff per mail to be received by Thursday, August 1, 2008.

They are attached herein.

Thank you.



Wendy Moldow

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Copies have been sent to staff

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July 26, 2008

RE: CELL SITE IN NEIGHBORHOOD

I OPPOSE IT

Commissioners:

It often reflects poorly in hindsight that corporations work the system of permits and right of way grants against the mostly quiet citizens of a community. Sometimes the last resort should have been part of the first step. Here I mean the Coastal Commission. So often we citizens learn they didn't disseminate the entire project until it's too late for a resident to object.

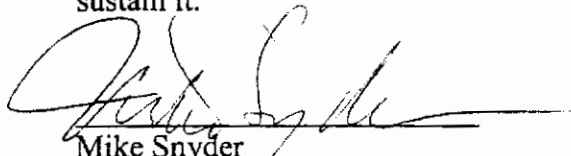
I have attended most of the meeting leading up to the permitting of this cell site. Never was it mentioned that the applicant would be encroaching, trenching and possibly altering the protected land under the protection of the Coastal Commission. Neither was it mentioned that the Applicant was in process of joining other technology in Rancho Santa Fe that would permit the service without the need to encroach on protected areas.

Once again it's the Corporate strategy to roll over the masses and working the city planners to keep the focus on the matters in which they can win a point, but avoid presenting the entire project until the primary permits are already won.

It's obvious that the trenching and encroachments are just now being revealed. Where was the protection and oversight from our elected and costly commissions in this process. ? If there are protected lands under Coastal Commission protection, when will someone in your organization ask for a review. ?

I live on a similar ridge in Encinitas, I would expect that before a company could take away restricted and protected land with just the permission of a city planner, the Coastal Commission would give the green flag.

I would hope that on further review, the coastal commission should act in this matter before any additional encroachment compromises the habitat and water shed necessary to sustain it.


Mike Snyder
960 Sidonia St
Encinitas, Ca 92024

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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PERMIT NUMBER : A-6-ENC-08-035

I OPPOSE THIS PROJECT

July 28, 2008

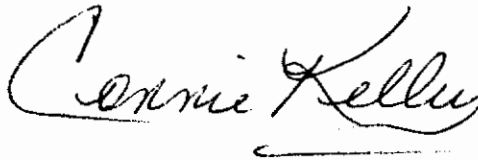
Coastal Commission Members:

I know you have too much to do – so here is the short version:

1. Problem – AT&T is destroying private property and sensitive habitat to put in 12 cell antennas on a residential property.
2. Alternative – AT&T is currently negotiating an alternative solution - using a fiber optic cable method. The decision is in the works and could be made in just a few weeks.
3. Action Requested – Please delay the project to install the 12 cell antennas on the residence at 3631 Manchester until the fiber optic connections are made on Manchester. This will save the sensitive habitat and private residence unnecessary destruction.

Thank you for your consideration in this matter.

Connie Kelley
975 Sidonia St.
EncinitaS, CA 92024
760-753-5539



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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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I OPPOSE THIS PROJECT PERMIT NUMBER: A-6-ENC-08-35

July 28, 2008

Coastal Commission Members:

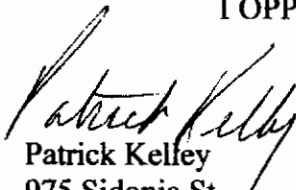
I have been made aware that AT&T is negotiating to place fiber optic cable in Rancho Santa Fe. This fiber optic cable will allow AT&T to get the cell phone coverage along Manchester. THIS IS GOOD!.

In case there may be problems, AT&T has decided to continue to pursue this application that would place 12 cell antennas on a residential property at 3631 Manchester (not 3661 as noted in the Important Public Hearing Notice I received.) They have made plans to trench private driveways down to Lux Creek. There will be impact to sensitive habitats; oil and debris will be released into this creek. THIS IS BAD!

I understand the need to plan for contingency but AT&T is proceeding with both plans. At a minimum, the plan to tear up private driveways and sensitive habitat should be put on hold until the negotiations for the fiber optic cable is complete.

Why destroy sensitive habitats and disturb residents when a commercial option may be available soon?

I OPPOSE THIS PROJECT PERMIT NUMBER: A-6-ENC-08-35


Patrick Kelley
975 Sidonia St.
Encinitas, Ca 92024
760-753-5539

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CALIFORNIA
STATEMENT COMMISSION
SAN DIEGO COAST DISTRICT

123

July 27, 2008

I OPPOSE THIS PROJECT

RE: Permit number: A-6-ENC-08-035

Esteemed Members of the Coastal Commission:

As a long time Encinitas resident, I am very concerned about the evolution of ATT-Cingular's proposal to establish a cell unit of 12 antennas on the home at 3631 Manchester Avenue. I attended several hearings of the Planning Commission and voiced my concerns over this proposed construction site. Unfortunately, the city commission allowed this construction to move forward despite the many local residents who described their concern over the devaluation of their real property and the inconvenience and possible safety issues surrounding this ATT-Cingular proposal.

Part of the construction includes digging up the only access driveway that impacts over 20 individuals by this proposed project. I do not recall ever having the opportunity to vent my opinion on the actual trenching. I am told this is because no trenching plan had ever been submitted for public comment prior to or during the four City meetings held regarding this application. Most importantly to the Coastal Commission is the fact that this destruction and upheaval of land is adjacent to the sanctioned Lux Creek where protected flora and fauna reside and flourish. As you know, Lux Creek flows into the protected San Elijo lagoon and eventually the sea.

Those of us who live in the coastal cities, love and respect the natural beauty and indigenous environment that the Coastal Committee controls and protects, this is a substantial issue and one that needs immediate attention by the Committee.

Please ensure that this corpulent organization does not barrel through our natural reserve and destroy all that we hold so dear. The precious wet lands of Encinitas can never be reclaimed once devastated by ATT-Cingular.

Thank you for your prompt attention to this very important issue.

Sincerely,

Tana Sanderson

Tana Sanderson 576 Leucadia Village Court Encinitas, CA 92024 760-753-4877

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JUL 30 2008

CALIFORNIA
STATE COMMISSION
SAN DIEGO COAST DISTRICT

124

RE: Permit #6, Enc-08-035

I OPPOSE THIS PROJECT

July 29, 2008

Victoria Mooney
1809 Sienna Canyon Drive
Encinitas, CA 92024
760-753-8546

TO THE COASTAL COMMISSIONERS:

It is my understanding The Planning Commission of Encinitas turned down this project twice and for good reason.

From my witness to the City Council meeting discussions on this issue, they folded under pressure of a "secret letter"- perhaps a law suit by ATT/Cingular.

In addition to Cingular violating the property right of the residents of house #3637 and #3635 Manchester Avenue, Encinitas by trenching of their private drive, they are violating Encinitas ordinances and now plan on violating Coastal Commission restrictions by trenching land that the Coastal Commission controls at the base of this private drive – Lux Creek.

If the Coastal Commission allows this, it would be the opening of the door for further businesses and corporations to "push the envelop" to get their projects approved.

From my understanding, Cingular/AT&T is also working on another alternative allowing them this same coverage by linking up to a system they will be using throughout Rancho Santa Fe. They are currently waiting for an amendment to this fiber optic contract. When that occurs, the cell sit at 3631 Manchester will not be necessary. I witnessed several other options at the City hearings for their needed coverage rather than have them enter this residential zone.

I ask that you please consider this other Rancho Santa Fe option currently before Cingular which will not affect the Coastal Commission. Our wildlife will remain undisturbed and private property will not be impacted.

I oppose this project. Thank you for your attention to this matter.

Sincerely
Victoria Mooney
Victoria Mooney

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JUL 30 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

125

**I OPPOSE THIS PERMIT
Appeal #A-6-ENC-08-035**

Don't do it!

I'm a property owner. If someone needlessly wanted to trench up my property, I'd be outraged.

This cell site is ridiculous! I sat thru these City meetings.

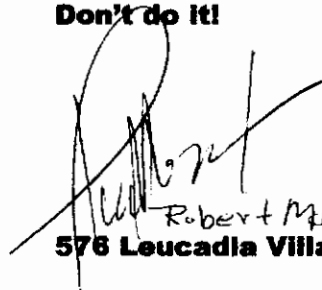
AT&T is now larger than the tobacco industry and they are unstoppable! Now they want to dig up someone else's property just so they can prove they can.

They don't care about people. They don't care about our sensitive habitat as long as they can make money and be number one. Even the addition they are adding is on non-buildable land - 38% slope! This is insane.

If they need these utilities so badly, let them find another way to connect. This property site has three other sides. Destroying a neighbors property value and digging up their driveway when our economy is spiraling downward is sinful.

Don't allow them permits to endanger people and habitat for NO reason.

Don't do it!


Robert McGrath

576 Leucadia Village Ct. Encinitas, CA 92024 760-753-4877

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JUL 30 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

126

I OPPOSE THIS PROJECT

CASE #6-Enc-08-053
MOLDOW APPEAL OF
CINGULAR/ATT CELL
SITE TRENCHING

To The Members of San Diego Coastal Commissioners

From: Donald P. Mooney
1809 Sienna Canyon Drive
Encinitas, CA 92024

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JUL 30 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Commissioners:

I try to be an aware, concerned citizen of Encinitas. In that regard, I have taken a real concern about the health of the San Elijo Lagoon which is situated directly across the street from my community, Sienna Canyon. Part of protecting the lagoon is protecting the streams that flow into it. Actually, there are few enough of these reverie situations, that staying on top of them for a citizen who works full time is not within the realm of possibility so I am thankful for the work you do.

I have become aware of a project that ATT/Cingular has proposed this is intended to handle their customer cell phone calls in the area of El Camino Real and Manchester Avenue. I am also aware that the technology for this is moribund, and that other, more efficient technology with less impact for the identical purpose is here today and being actively proposed by Cingular.

Now comes the reason for this letter. One of the waterways that flow into the San Elijo Lagoon is Lux Creek. When I learned that ATT/Cingular, not known for respecting the little guy, is bulldozing one of my neighbors with a 12 antenna cell site attached to house with occupants only feet away and intend to lay their conduit through 2 other neighbors driveways without respect to these neighbors and impacting Lux Creek and thus San Elijo Lagoon, I felt the need to raise my voice.

The construction of the Encinitas Country Day School immediately adjacent to our primary biological jewel (San Elijo Lagoon) caused me consternation. Now we are talking about additional incremental encroachment of the health of

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the lagoon. The fact that the construction, taking a day, a month or longer will adversely affects the residents of the properties over which they intend to pass their conduit. No alternation ingress or egress exists nor is there parking anywhere in the vicinity for these residents. Unnecessary construction by AT&T will place these residents in harms way. There are no walkways paved or unpaved along this very busy stretch of street with heavy, fast-moving automobiles. In addition this is a long, windy driveway up a very steep hill that would be impossible for most of these residents to negotiate. The safety of our Encinitas residents as well as the impact on our nearly sacred lagoon rests in your hands. I hope you will take the time to thoroughly look into this matter as to its validity.

Thank you for your consideration.

DPM
Donald P. Mooney
760-753-8546

AUG 26 2008

July 09, 2008

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

The purpose of this letter is to formally object to the construction of a cellular phone base station on San Julio Road nearest 620 San Julio Road in Solana Beach, Home owners, Robert and Andrea George.

As owners of the homes at the top of Flower Hill, we pay a tremendous amount in property taxes. There is a great amount of information available regarding cell towers such as this one T-Mobile is considering. Ultimately, this will cause a dramatic decrease in property values for our neighborhood. If this cell tower is constructed on San Julio Road it would be in full view of all homes and will block the ocean view of property owner's Robert and Andrea George. Research suggests there is a considerable risk that electro-magnetic fields or high frequency radiation can be emitted from these towers that can result in severe health problems. We are severely opposed to this cell tower on San Julio Road for these reasons along with the obvious eyesore, obstruction of ocean views, and detrimental effect on property values.

I feel an excellent alternative location would be on San Andreas Street and Highland Drive near the San Diego Gas & Electric power lines which are equal if not higher than the San Julio Road location. Another preferred area would be where the existing cellular tower is located at the corner of Lomas Santa Fe and Highland Drive on the Lomas Santa Fe Golf Course.

I intend to send this letter to Congressman, Brian Bilbray, to address this issue and to determine if he can assist in blocking this decision, which we fully believe would be a detriment to our neighborhood and ultimately to our health.

On behalf of all of us, we would appreciate it if you would do everything in your power to prevent the construction of the cellular phone tower on San Julio Road and help persuade T-Mobile to locate their tower at a preferred and less obtrusive location.

Thank you.

Respectfully submitted,

Robert and Andrea George
Dr + Mrs David + Polly Chou

Cc: Congressman Brian Bilbray
462 Stevens Avenue, Suite 107
Solana Beach, CA 92075

City of Solana Beach City
635 South Hwy 101
Solana Beach, CA 92075

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CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



F 10b

Filed: April 11, 2008
49th Day: Waived
Staff: Gary Cannon-SD
Staff Report: July 17, 2008
Hearing Date: August 6-8, 2008

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with conditions

APPEAL NO.: A-6-ENC-08-35

APPLICANT: ATT Cingular Wireless

Agent: Ted Marioncelli

PROJECT DESCRIPTION: Trenching and installation of power/telecommunication lines within a paved private road. The utility lines are to provide service to an offsite wireless telecommunications facility that is not within the appeals jurisdiction.

PROJECT LOCATION: 3637 Manchester Avenue (trenching) and 3661 Manchester Avenue (wireless facility). APN 262-062-28 and 38.

APPELLANT: Wendy Moldow

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Based on review of the City's file and information provided by the appellant, staff has concluded that the development, as approved by the City, is consistent with all applicable LCP provisions and will not result in any adverse impacts to environmentally sensitive habitat or on water quality.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program; City of Encinitas Case #06-001/MUP/CDP; Appeal Application by Wendy Moldow dated 4/11/08; Supplement to Appeal Application by Wendy Moldow dated 4/14/08; Letter from Wendy Moldow dated April 17, 2008; Letter from Wendy Moldow dated 7/14/08; Letter from Wendy Moldow dated July 15, 2008.

I. Appellant Contends That:

The proposed development is inconsistent with the policies of the certified LCP which pertain to the protection of environmentally sensitive habitat and water quality of Lux Creek, a tributary to San Elijo Lagoon. The appellant also contends: the information provided by the applicant at the local level was inaccurate; the proposed trenching was not reviewed as part of the local Coastal Development Permit (CDP); emergency access to residences will be prevented during construction; the property owner of the wireless facility site failed to comply with a City CDP in 1999 for the construction of the existing residence; the owner of the wireless antenna facility property refuses to allow EDCO, the local waste disposal company, to use the private access road and; alternatives to the offsite wireless facility project are available which would have less impact on the environment.

II. Local Government Action:

The project was denied by the Planning Commission on November 15, 2006. The coastal development permit was subsequently appealed by the applicants to the City Council on February 27, 2006. At that hearing the City Council set aside the Planning Commission decision and approved the applicant's appeal. On March 12, 2008, the City Council approved the proposed development for a wireless communication facility with conditions.

Most of the Specific conditions relate to the portion of the development that is not within the Commission's appeals jurisdiction, i.e., the wireless telecommunications facility itself. These include requirements that the facility be actively and continuously maintained; be available for use by other telecommunication providers and; that routine maintenance only occur during the hours of 8:00 a.m. to 5:00 p.m. weekdays. In terms of conditions that relate to the proposed trenching that lies within the appellate jurisdiction, two specific conditions apply. The first condition requires that the applicant be responsible for any damage caused to the private access roadway. The second condition requires the approval of a grading permit and/or the use of appropriate erosion and pollution control measures.

III. Appeal Procedures/Substantial Issue Analysis:

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30604(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the

certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-08-035 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. *A-6-ENC-08-35* does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description. The appealed project involves the trenching and installation of electric power and telecommunications lines within a paved private road. The trenching will occur within 100 ft. of Lux Creek, a stream which may contain environmentally sensitive habitat. The Certified Appellate Jurisdiction Map for the City of Encinitas LCP identifies that a portion of the trenching/installation is located within the appeals jurisdiction based on its proximity to Lux Creek (i.e., within 100 feet of the creek).

The utility lines are necessary to serve a wireless antenna facility that is proposed on an accessory living unit located 2 lots north of the subject site. The local coastal development permit appealed by the appellant is for the installation of the wireless antenna facility, but the wireless antenna facility itself is not located within the Commission's appellate jurisdiction. A very small corner of the lot where the wireless facility will be located lies within the appellate jurisdiction, but the existing accessory unit, the proposed wireless facility and the existing single-family residence on the lot do not lie within the appellate jurisdiction (Ref. Exhibit 2). However, a portion of the required utility connections for the offsite wireless facility will be installed on the appellant's property within a private roadway easement that is located within 100 ft. of Lux Creek such that the trenching and installation of utility cables are within the appellate jurisdiction (Ref. Exhibit 2).

The coastal development permit approved by the City is for the mounting of twelve antennas on the side of an existing balcony of an accessory unit and the installation of four indoor equipment cabinets located within the existing accessory unit located in the Residential 3 (R-3) zone. Under the City's LCP, wireless facilities are permitted within residential zones with the approval of a Major Use Permit. As such, the City approved a Major Use Permit and Coastal Development Permit for the wireless facility (Ref. #06-001 MUP/CDP). Although this portion of the development is not subject to appeal or review by the Commission, the Commission has reviewed the City's action and concluded its approval of the wireless facility in the R-3 zone is consistent with the requirements of the LCP.

The wireless facility is proposed on a site that is 3 lots north of Manchester Avenue which at this location represents the first coastal roadway north of the sea (San Elijo Lagoon). The trenching and installation of utility lines will occur along the north side of Manchester Avenue within a private road easement that is held by the appellant and two other property owners.

The subject site is located on the north side of Manchester Avenue east of El Camino Real in the community of Cardiff in the City of Encinitas. Surrounding development includes residential uses to the north, west and east, and a private school, Encinitas Country Day School, to the south. San Elijo Lagoon Ecological Park and Reserve are located to the south of Encinitas Country Day School.

2. Appellant Contentions. The appellant has appealed the local government decision because she objects to the wireless facility that is proposed on the site that is located 2 lots north of her own property and objects to the trenching for the utility extensions that will occur on her property within a private road that is subject to a road maintenance agreement among the affected property owners. The appellant's appeal cites a number of issues and concerns, some of which do not relate to the trenching or which do not relate to the LCP. These include the contention that the applicant submitted false information to the City in their application for the wireless facility site which is not subject to appeal; that emergency access to residences will be prevented during construction, that the property owner of the wireless facility site failed to comply with the City CDP in 1999 for the construction of the existing residence, and that alternatives to the offsite wireless facility project are available which would have less impact on the environment. Also, the appellant contends that the owner of the wireless antenna facility property refuses to allow EDCO, the local waste disposal company, to use the private access road.

Based on a review of the appellant's application, only two issues have been identified which relate to the proposed trenching and utility line installation which is the only portion of the development subject to this appeal. One is whether the City considered the trenching and utility line installation as part of the coastal development permit for the offsite wireless facility. The second issue is whether the trenching/utility installation is consistent with the environmentally sensitive habitat protection and water quality protection policies of the LCP.

1) The appellant's first contention is that the City failed to specifically consider the trenching and utility line installation when it approved the off-site wireless communication facility. The appellant asserts that:

No environmental impact study was provided by the Applicant as they avoided even the mention of the trenching so close to Lux Creek. Hence the problems outlined were not before the City of Encinitas to consider.

[. . .]

As stated above, the trenching map was never submitted to the City by AT&T Cingular or made part of the public record. The neighbors have not been given an opportunity to vent or have an engineer assess the ramifications of such trenching.

[. . .]

The City Council did not consider the effect to the trench construction. [The Council's decision was based on a secret "attorney-client" privileged letter not known to the public.]

(Ref. Appeal Application, Exhibit 5)

The proposed trenching for power and telecommunications lines will occur within a private paved road that lies on the appellant's property at 3637 Manchester Avenue. The private road which the appellant describes as being 15 feet, 8 inches in width, provides physical access to and private easements for utility extensions to three properties including the lot containing the proposed wireless communication facility. While the

appellant asserts that the proposed trenching and utility improvements were unknown to her until recently, she identified the need for these utility connections to cross her property prior to the City action. In a “Memorandum” to the City dated January 5, 2006, the Appellant wrote:

1. In order for Cingular to access the property on which it seeks to place 12 cellular panels and electronics related to its operation, it must cross two properties located to the south of the site in reaching it from Manchester Avenue. In order for Cingular to operate its commercial venture on the property at the top of the hill, it must install additional electrical, and perhaps telephone lines below two properties to the south of the site.

2. As an owner of one of the two properties that Cingular must use to accomplish its commercial venture, I do not and will not permit Cingular to use my land for this purpose. The easements of record for the use of my property for access to the residences above and behind me and for utility lines to be placed under the road to the other properties contemplate in all instances that the other properties are for residential purposes.

(Ref. Memorandum on Eminent Domain from Wendy Moldow to Staff, Encinitas City Council dated January 5, 2006.)

Based on the applicant’s Memorandum from 2006, it is clear that she anticipated the location of the utility improvements within the private roadway if the wireless communication facility were approved off-site because that is where the other utility improvements for the existing residences are located. In addition, her 2006 Memorandum identified this potential to the City and was part of the documents considered in its review of the coastal development. In addition, in approving the offsite wireless facility, the City included two conditions of approval that relate to the trenching for utility connections. The first condition, Specific Condition #N requires that the applicant be responsible for any damage caused to the private access roadway. The second condition Engineering Condition #EG14 requires the approval of a grading permit and/or the use of appropriate erosion and pollution control measures. City planning staff have informed Commission staff that these two conditions relate to the trenching work for the utilities. In addition, the appellant has submitted a copy of an email discussing the trenching plan and the trenching plan itself that was provided to the City the day of the final City Council hearing. Based on the conditions imposed on the applicant by the City and the submission of specific trenching plans prior to the City’s approval, the City did consider the need for electrical and telecommunications lines for the offsite wireless facility and the need to trench within the private access road in order to install the utility lines.

2) The appellant’s second contention is that trenching for the utility lines is inconsistent with the ESHA and water quality protection policies of the LCP. The following LCP policies relate to the appellant’s contention:

Resource Management (RM) Goal 10 of the certified LUP states, in part:

The City will preserve the integrity, function, productivity, and long term viability of the environmentally sensitive habitats throughout the City, including . . . riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

Resource Management Policy 2.1 of the certified LUP states:

In that ocean water quality conditions are of utmost importance, the City shall aggressively pursue elimination of all forms of potential unacceptable pollution that threatens marine or human health.

In addition, Resource Management Policy 2.3 of the certified LUP states:

To minimize the harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways; pursue measures to monitor the quality of such contaminated waterways, and pursue prosecution of intentional and grossly negligent polluters of such waterways.

Resource Management Policy 14.1 of the certified LUP is applicable and states, in part:

. . . It is the policy of the City that, in any land use and development, grading and vegetation removal shall be limited to the minimum necessary.

In addition, Resource Management Policy 14.3 of the certified LUP states, in part:

The City will reduce the rate of sedimentation of the lagoons by requiring procedures for controlling runoff and erosion associated with upland grading and development

The appellant contends that trenching activity may result in adverse impacts to Lux Creek, which is directly adjacent to the private access road where the utilities will be installed:

Implementation of the proposed trenching could result in potentially significant impacts if any of the following would: Result in inadequate emergency access during infrastructure trenching; cause property damage to private driveways, landscaping, lighting, mailboxes, or other private property from construction traffic or create significant safety hazards for pedestrians; prohibit access to existing residences for a significant period of time during construction; **endanger or disturb the wildlife habitat; or even inadvertently spill hazardous substances into the Creek bed.**

[. . .]

Excavating as to the width, depth, amount of cubic yards needs to be examined. Excavation spoils will be trucked out and new fill trucked in. There will be backfilling and paving of the trench. The creek must be protected from the trucking

out of trench debris, asphalt and fill material. The Coastal Commission need be made aware of the numerous misrepresentations and intentional omissions that are part of record during this Cingular application submission period beginning with the original Application and extending throughout all 4 City hearings. The lack of integrity which has been repeatedly displayed throughout this application process may quite possibly transfer into their construction behavior **endangering that of any sensitive wildlife in the area.**

(Ref. Appeal Application, Exhibit 5)

The proposed trenching for utility line installation will occur within a paved private road and will occur as close as approximately 25 ft. from Lux Creek. While a biological assessment has not been performed, it is likely that some portions of Lux Creek may contain ESHA particularly riparian wetlands. In addition, runoff within Lux Creek flows to nearby San Elijo Lagoon which does contain ESHA.

However, Lux Creek at the subject location is not a completely open and natural stream because Lux Creek is diverted into a storm drain that runs under Manchester Avenue adjacent to the proposed trenching site. Lux Creek at the subject location is surrounded by Manchester Avenue on its south side and residential development on its east and west sides.

The concern raised by the appellant is that the excavation resulting from the proposed trenching could have adverse impacts to the sensitive habitat and water quality of Lux Creek. However, in this case, there are no direct impacts proposed within Lux Creek or other ESHA. In addition, following installation of the utility connections, the site will be restored to its pre-paved condition. The temporary trenching activity will also be monitored by the City to assure no adverse impacts to Lux Creek will occur through the required building permit process. The City permit has been conditioned to require review and approval of a grading permit, or if determined to be exempt from a grading permit requirement, it must include measures addressing erosion control and storm water pollution control:

Grading Conditions:

EG15 A grading permit shall be obtained for this project unless the proposed grading is exempt under Section 23.24.090 of the Municipal Code. If the proposed grading is exempt from permit requirement, the Owner shall provide a precise site plan prior to approval of a building permit. The building site plan shall provide design for drainage improvements, erosion control, storm water pollution control, and on-site pavement.

(Ref. Resolution 2008-21 for Case No. 6-001 MUP/CDP)

Based on the City approval, no adverse impacts are proposed or will likely occur because the City will require Best Management Practices consisting of storm water and erosion control measures. Therefore, as conditioned, the City approval is consistent with ESHA

and water quality protection policies and, therefore, the appellant has not raised a substantial issue relating to this issue.

By comparison, it should be noted that the location of the proposed trenching and installation of utility lines will occur within a private roadway that currently contains utility connections for the existing residences. If any of the existing residences were required to repair or install new utilities lines for service to the existing residences, it is very likely those utility lines would require trenching within the private roadway in an almost identical way to that proposed. In addition, those repairs may not require a coastal development permit and may qualify as exempt development under the City's certified LCP. The reason the proposed trenching can be considered as appealable development is because it involves the installation of utilities to serve new development.

Based on the above, the Commission finds that the appeal does not raise a substantial issue regarding the proposed development's consistency with the ESHA and water quality protection policies of the certified LCP.

4. Conclusion. In summary, the development as approved by the City, is consistent with all applicable LCP land use policies and the certified LCP Implementation Plan. The project, as approved by the City will not result in any adverse impacts on the environmentally sensitive habitat or to other coastal resources. Therefore, the Commission finds that the appeal does not raise a substantial issue with regard to the project's consistency with the certified LCP.

5. Substantial Issue Factors. As discussed above, there is factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The objections to the project suggested by the appellant do not raise any substantial issues of regional or statewide significance.

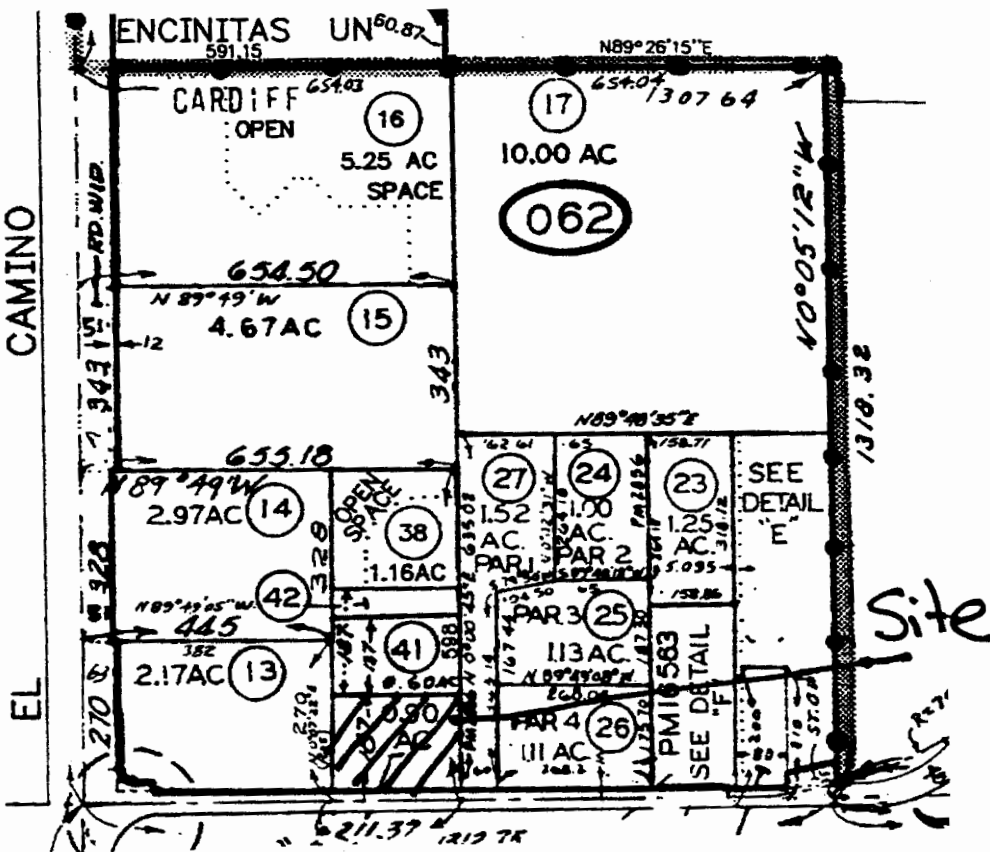
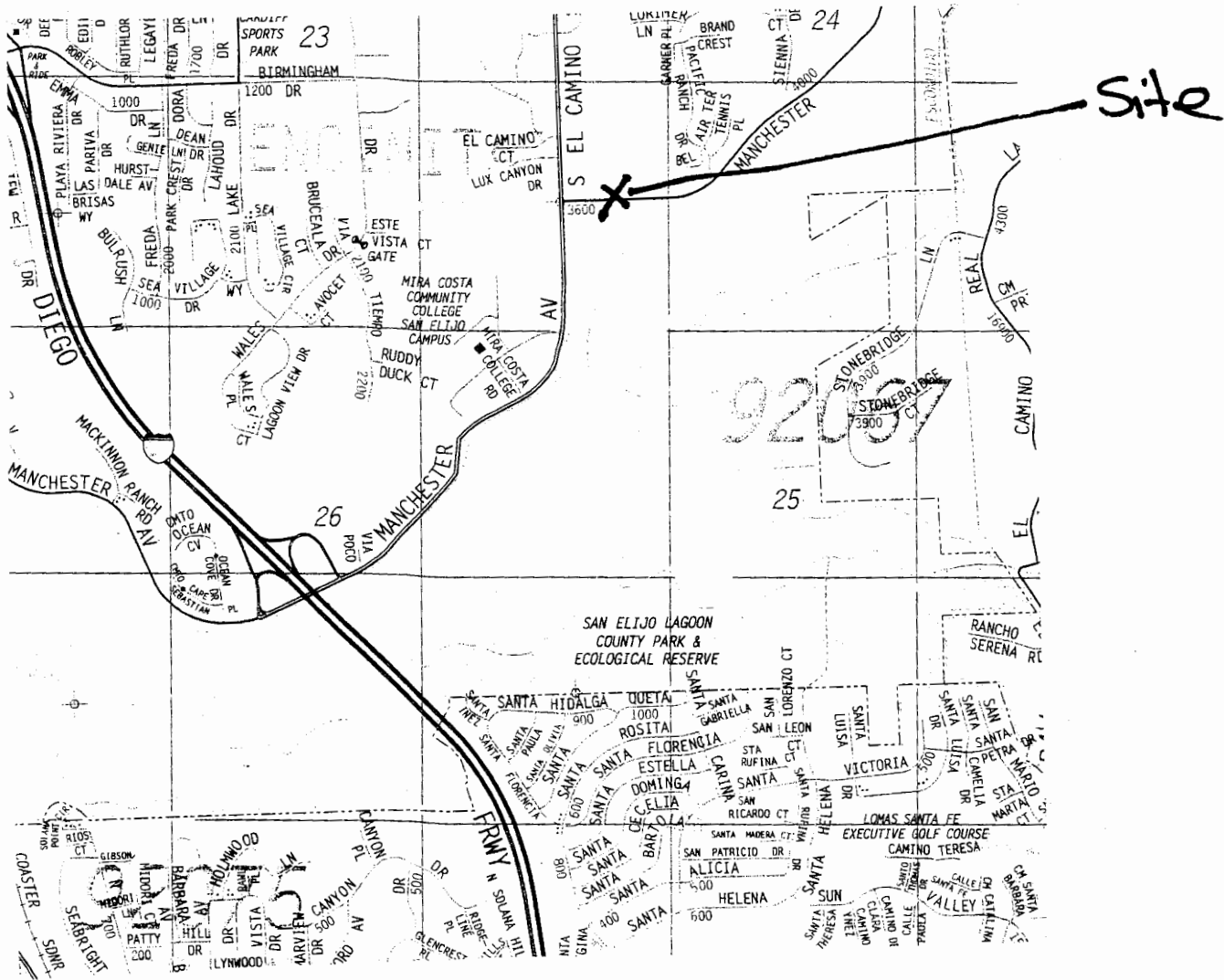


EXHIBIT NO. 1
 APPLICATION NO.
A-6-ENC-08-35
 Location Map
 California Coastal Commission

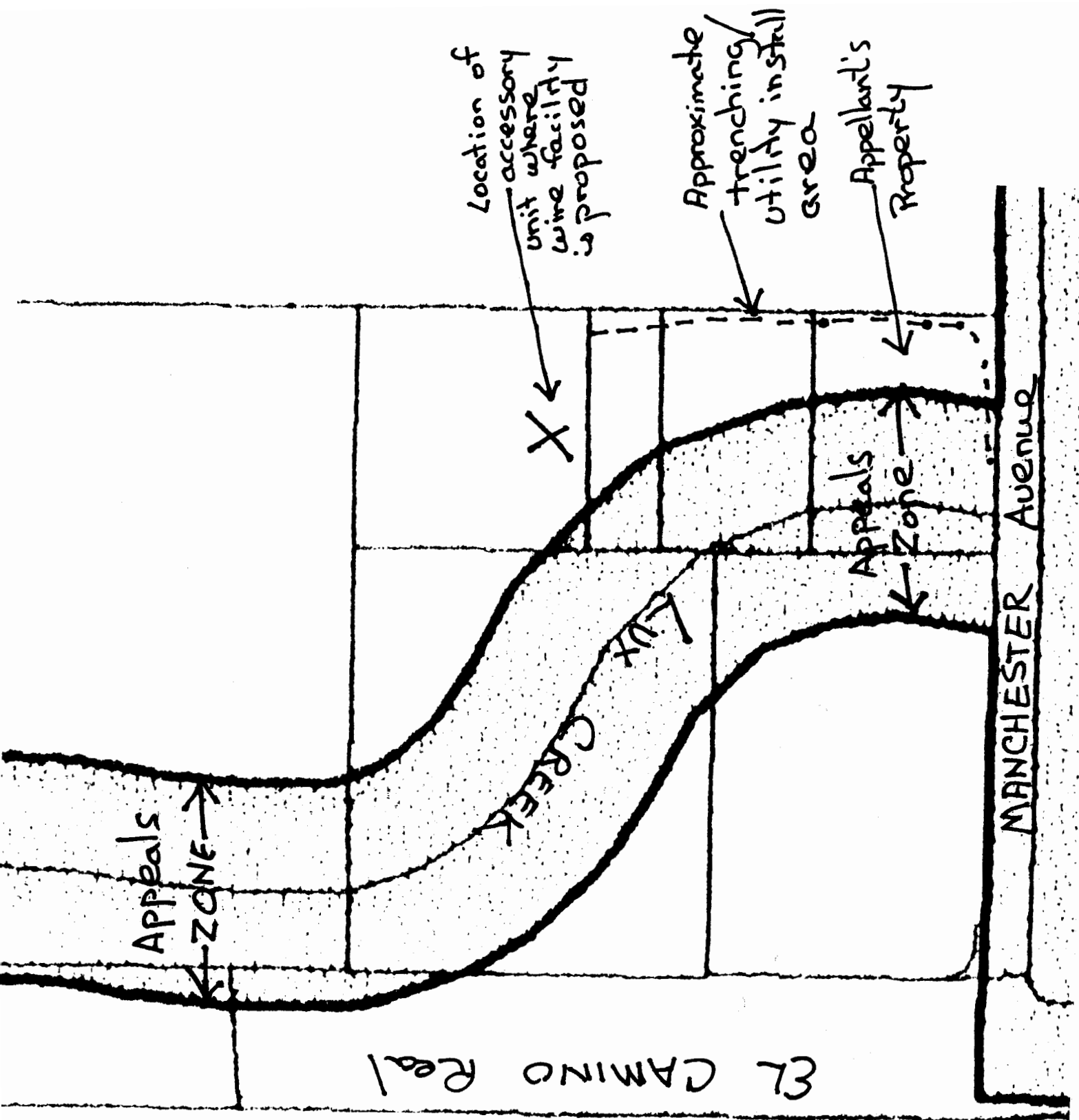


EXHIBIT NO. 2
 APPLICATION NO.
A-6-ENC-08-35
 Section from
 Certified Appeals
 Map

6925 LUSK BOULEVARD
 SAN DIEGO, CA 92121

APPROVALS

#	DATE

PROJECT NAME

LUKACZ

PROJECT NUMBER

NS0033-03-B1

3651 MANCHESTER AVE
 ENCINITAS, CA 92024
 SAN DIEGO COUNTY

DRAWING DATES

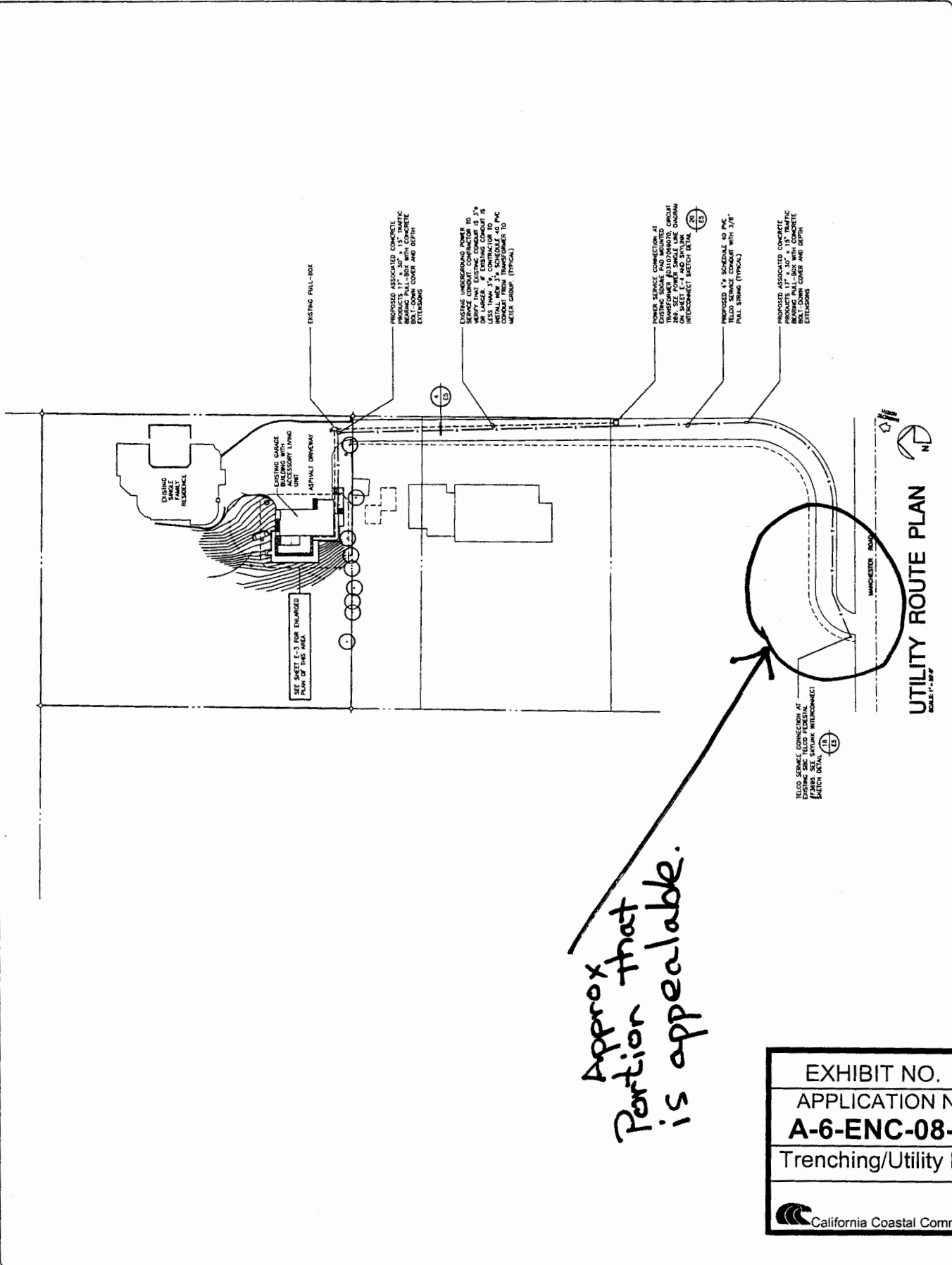
08/28/04	PRELIM CD REVIEW (dps)
08/27/04	FINAL CD REVIEW (dps)
01/22/04	FINAL CD REVIEW (dps)

SHEET TITLE

UTILITY ROUTE
 PLAN

PROJECT: cingular\031804\031804-03-B1.dwg

E-2



Approx Portion that is appealable.

EXHIBIT NO. 3
 APPLICATION NO.
A-6-ENC-08-35
 Trenching/Utility Plan

California Coastal Commission

RECEIVED

MAR 28 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RESOLUTION 2008-21

**A RESOLUTION OF THE CITY OF ENCINITAS CITY COUNCIL
APPROVING A MAJOR USE PERMIT AND COASTAL DEVELOPMENT PERMIT TO
ALLOW THE INSTALLATION OF A WIRELESS TELECOMMUNICATIONS
FACILITY CONSISTING OF TWELVE ANTENNAS FAÇADE MOUNTED ON THE
SIDE OF AN EXISTING BALCONY ON AN EXISTING ACCESSORY UNIT TO BE
EXTENDED TO ACCOMMODATE THE ANTENNAS AND THE INSTALLATION OF
FOUR INDOOR EQUIPMENT CABINETS LOCATED INSIDE THE BUILDING
BELOW THE BALCONY FOR THE PROPERTY LOCATED AT 3631 MANCHESTER
AVENUE.**

(CASE NO. 06-001 MUP/CDP, APN 262-062-38)

WHEREAS, a request for consideration of a Major Use Permit and Coastal Development Permit was filed by Cingular Wireless to allow for the proposed installation of a Personal Communications Service (PCS) wireless telecommunications facility, consisting of twelve (12) antennas to be mounted on the side of an existing balcony to be extended to accommodate the antennas and the installation of four equipment cabinets in accordance with Chapter 30.74 (Use Permits), Chapter 9.70 (Wireless Communication Facilities), Section 30.34.030 (Hillside/Inland Bluff Overlay Zone) Section 30.34.080 (Scenic/Visual Corridor Overlay Zone) and Chapter 30.80 (Coastal Development Permit) of the Encinitas Municipal Code, for the property located in the Residential 3 (R-3) zone within the Coastal Appeal Zone, legally described as:

(SEE ATTACHMENT "A")

WHEREAS, the City Council conducted noticed public hearings on the application on February 21, 2007 and February 27, 2008 at which time all those desiring to be heard were heard; and

WHEREAS, the City Council considered, without limitation:

1. The February 21, 2007 and February 27, 2008 agenda reports to the City Council with attachments and the September 21, 2006, October 5, 2006 and December 20, 2007 agenda reports to the Planning Commission with attachments;
2. The General Plan, Local Coastal Program, Municipal Code and associated Land Use Maps;
3. Any oral evidence submitted at the hearing;
4. Written evidence submitted at the hearing;
5. Project drawings consisting of nine (9) sheets total, including Title Sheet (Sheet T-1), Site Plan (Sheet A-0), Slope Study (Sheet A-0.1), Equipment Plan and Antennas Plan (Sheet A-1), Exterior Elevations (Sheet A-2), Exterior Elevations (Sheet A-3), Building Section (A-4), Topographic Survey (C-1), Topographic Survey (C-2); all stamped received by the City of Encinitas on September 1, 2006; and

WHEREAS, the City Council made the following findings pursuant to Chapter 30.74 (Use Permit) and Chapter 30.80 (Coastal Development Permit) of the Encinitas Municipal Code:

EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-08-35
City Resolution of Approval
Page 1 of 12

(SEE ATTACHMENT "B")

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Encinitas hereby approves application Case No. 06-001 MUP/CDP subject to the following conditions:

(SEE ATTACHMENT "C")

BE IT FURTHER RESOLVED that the project has been determined to be exempt from environmental review pursuant to Section 15303 of the California Environmental Quality Act (CEQA) Guidelines.

PASSED AND ADOPTED this 12th day of March, 2008, by the following vote, to wit:

AYES: Dalager, Houlihan, and Stocks
NAYS: Barth
ABSENT: Bond
ABSTAIN: None

Signature on File


Jerome Stocks, Mayor

ATTEST:

Signature on File


Deborah Cervone
City Clerk

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

ATTACHMENT "A"
Resolution 2008-21
Case No. 06-001 MUP/CDP

LEGAL DESCRIPTION

DESCRIPTION

THE LAND REFERRED TO IN THIS DESCRIPTION SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, CITY OF ENCINITAS AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA. ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 19, 1881, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE WESTERLY LINE OF SAID SECTION 24, DISTANT THEREON NORTH 00 DEGREES 08 MINUTES, 23 SECONDS EAST, 598.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 24, BEING POINT "A" OF THIS DESCRIPTION; THENCE ALONG SAID WESTERLY LINE SOUTH 00 DEGREES 08 MINUTES 23 SECONDS WEST 328.00 FEET; THENCE PARALLEL WITH THE SOUTHERLY LINE OF SAID SECTION 24, SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST, 445.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE PARALLEL WITH THE WESTERLY LINE OF SAID SECTION 24, SOUTH 00 DEGREES 08 MINUTES 23 SECONDS WEST, 270.00 FEET TO THE INTERSECTION WITH THE SOUTHERLY LINE OF SAID SECTION 24; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST, 211.37 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE ALONG SAID EASTERLY LINE NORTH 00 DEGREES 01 MINUTES 3 SECONDS EAST, 598.00 FEET TO AN INTERSECTION WITH A LINE WHICH BEARS SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST FROM POINT "A" ABOVE DESCRIBED; THENCE NORTH 89 DEGREES 49 MINUTES 00 SECONDS WEST TO A LINE WHICH BEARS NORTH 00 DEGREES 08 MINUTES 23 SECONDS EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 08 MINUTES 23 SECONDS WEST 328.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE SOUTHERLY 374.00 FEET.

PARCEL 2:

AN EASEMENT AND RIGHT OF WAY FOR ROAD, SEWERS, WATER, GAS, POWER AND TELEPHONE LINES APPURTENANCES THERETO OVER, UNDER ALONG AND ACROSS THE SOUTHERLY 50.00 FEET AND THE EASTERLY 20.00 FEET OF THE EXCEPTED PORTION OF THE ABOVE DESCRIBED PARCEL 1, EXCEPTING THEREFROM THE NOTHERLY 50 FEET OF SAID EASTERLY 20 FEET.

PARCEL 3:

AN EASEMENT AND RIGHT OF WAY FOR ROAD, SEWERS, WATER, GAS, POWER AND TELEPHONE LINES AND APPURTENANCES THERETO OVER, UNDER, ALONG AND ACROSS THE EASTERLY 20.00 FEET OF THE SOUTHERLY 50.00 FEET OF THAT PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE, AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 19, 1881, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE WESTERLY LINE OF SAID SECTION 24, DISTANT THEREON NORTH 00 DEGREES 08 MINUTES 23 SECONDS EAST, 598.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 24, BEING POINT "A" OF THIS DESCRIPTION; THENCE ALONG SAID WESTERLY LINE SOUTH 00 DEGREES 08 MINUTES 23 SECONDS WEST, 328.00 FEET; THENCE PARALLEL WITH THE SOUTHERLY LINE OF SAID SECTION 24, SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST, 445.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE PARALLEL WITH THE WESTERLY LINE OF SAID SECTION 24, SOUTH 00 DEGREES 08 MINUTES 23 SECONDS WEST, 270.00 FEET TO THE INTERSECTION WITH THE SOUTHERLY LINE OF SAID SECTION 24; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST, 211.37 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE ALONG SAID EASTERLY LINE NORTH 00 DEGREES 01 MINUTES 3 SECONDS EAST, 598.00 FEET TO AN INTERSECTION WITH A LINE WHICH BEARS SOUTH 89 DEGREES 49 MINUTES 00 SECONDS EAST FROM A POINT "A" ABOVE DESCRIBED; THENCE NORTH 89 DEGREES 49 MINUTES 00 SECONDS WEST TO A LINE WHICH BEARS NORTH 00 DEGREES 08 MINUTES 23 SECONDS EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 08 MINUTES 23 SECONDS WEST 328.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE SOUTHERLY 324.00 FEET.

ATTACHMENT "B"
Resolution 2008-21
Case No. 06-001 MUP/CDP

FINDINGS FOR USE PERMIT

STANDARD: In accordance with Section 30.74.070 of the Municipal Code, a use permit application shall be approved unless findings of fact are made, based upon the information presented in the application or during the hearing, which support one or more of the following conclusions:

1. The location, size, design or operating characteristics of the proposed project will be incompatible with or will adversely affect or will be materially detrimental to adjacent uses, residences, buildings, structures or natural resources, with consideration given to, but not limited to:
 - a. The inadequacy of public facilities, services and utilities to serve the proposed project; and
 - b. The unsuitability of the site for the type and intensity of use or development which is proposed; and
 - c. The harmful effect, if any, upon environmental quality and natural resources of the city;

Facts: The property is accessed off of a private easement from Manchester Avenue. The site is developed with a single-family residence and accessory unit. The applicant proposes to install a telecommunications facility consisting of twelve (12) antennas. The antennas would be mounted on the side of an existing balcony to be extended to accommodate the antennas. The antennas would be shielded behind an RF transparent wall which would be painted and textured to match the existing structure. The installation of four equipment cabinets located within the building below the balcony is also being proposed.

The project is located within the Scenic/Visual Corridor Overlay (S/VCO) zone. Chapter 30.34.080 of the Municipal Code provides that within the S/VCO zone, consideration will be given to the overall visual impact of the project and conditions or limitations pertaining thereto may be applied to the project.

Discussion: All required public facilities, services and utilities are in place to serve the proposed wireless communication facility. The project as proposed complies with all requirements of the Wireless Telecommunications Facilities Ordinance, Chapter 9.70. No harmful effect on the environmental quality or natural resources of the City is anticipated and the project has been determined to be exempt from environmental review pursuant to Section 15303 of the California Environmental Quality Act (CEQA) Guidelines, which exempts the location and installation of small new equipment or facilities. The overall design of the proposed wireless telecommunications facility will blend in with the existing building design and meet the provisions of Section 30.34.080 (S/VCO zone).

Conclusion: The City Council finds that the wireless telecommunications facility as proposed will be compatible with and will not adversely affect or be materially detrimental to adjacent uses, residences, buildings, structures or natural resources.

2. The impacts of the proposed project will adversely affect the policies of the Encinitas General Plan or the provisions of the Municipal Code; and
3. The project fails to comply with any other regulations, conditions, or policies imposed by the Municipal Code.

Facts: The City retained a Third Party Wireless Consultant, Kramer Firm Inc., to review and assess the technical data of the proposed wireless facility. The consultant reviewed the radio frequency components of the application, including the present and proposed coverage maps, the physical elements related to the transmission equipment, and the detailed RF analysis prepared by Dr. Bushberg.

Discussion: Kramer Firm, Inc. through the analysis contained in the applicant's Radio Frequency Emission study about power, antenna, height and other elements, confirmed the proposed telecommunications facility is in compliance with the FCC OET 65 requirements with the addition of specific conditions which would require that should the homeowners lease the property during the life of the wireless facility, the homeowner shall disclose in writing to the lessee the existence of the antennas, and the location and extent of the controlled RF zone and that the applicant/owner place signage at five to six feet above the ground level on each of the three sides of the building supporting the sector antennas, which contain a permanent RF warning in English and Spanish compliant with ANSI C95.2 color, symbol, and content conventions.

With the approval of the Major Use Permit requested by the subject application, the proposed cellular facility will comply with all applicable Sections of the Municipal Code, including the requirements of Chapter 9.70, Wireless Communication Facilities. The materials submitted and explanations given by the applicant are sufficient documentation of effort to consider reasonable alternative sites as per EMC Section 9.70.080.1. Regarding EMC Chapter 9.70.080.2 (Design), the applicant has proposed a superior design concept that utilizes stealth design technology. Regarding EMC Section 9.70.080.3 (Operational Plan), the project is subject to a series of conditions that assures compliance with this Code Section and the applicant has supplied an operational plan for the proposed installation with the project application. Regarding EMC Chapter 30.34.080, the project as proposed effectively conceals the proposed wireless telecommunications facility in a manner that would have little or no visual impact.

Conclusion: The City Council finds that the impacts of the proposed wireless telecommunications facility will not adversely affect the policies of the Encinitas General Plan or the provisions of the Municipal Code and that the proposed wireless telecommunications facility complies with all regulations, conditions, and policies imposed by the Municipal Code. No additional conditions regarding visual impact need be applied.

FINDINGS FOR A COASTAL DEVELOPMENT PERMIT

STANDARD: Section 30.80.090 of the Municipal Code provides that the authorized agency must make the following findings of fact, based upon the information presented in the application and during the Public Hearing, in order to approve a coastal development permit:

1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.

Facts: The applicant proposes to construct, operate, and maintain a Personal Communications Services (PCS) wireless telecommunications facility for Cingular Wireless located on an addition to an existing accessory unit within the City of Encinitas, Community of Olivenhain.

Discussion: Related to finding No. 1, with the approval of the Major Use Permit and Coastal Development Permit request, the proposed project will comply with all applicable Sections of the City's Municipal Code, General Plan, and certified Local Coastal Program. Related to finding No. 2, no adverse impacts to the environment are associated with the project and the project is exempt from the requirements of CEQA. The subject site is located on the north side of Manchester Avenue, therefore finding No. 3 is not applicable since the project is not located between the sea or other body of water and the nearest public road.

Conclusion: The City Council finds that 1) the project is consistent with the certified Local Coastal program of the City of Encinitas; 2) no potentially significant adverse impacts to the environment will result and the project is exempt from the requirements of CEQA as per Section 15303 of the CEQA Guidelines, and 3) finding No. 3 is not applicable to the project since it is not located between the sea or other body of water and the nearest public road.

ATTACHMENT "C"
Resolution 2008-21
Case No. 06-001 MUP/CDP

Applicant: Cingular Wireless

Location: 3631 Manchester Avenue (APN 262-062-38)

SC1 SPECIFIC CONDITIONS:

SC5 This project is conditionally approved as set forth on the application and Project drawings stamped received by the City on September 1, 2006, consisting of nine (9) sheets total, including Title Sheet (Sheet T-1), Site Plan (Sheet A-0), Slope Study (Sheet A-0.1), Equipment Plan and Antennas Plan (Sheet A-1), Exterior Elevations (Sheet A-2), Exterior Elevations (Sheet A-3), Building Section (A-4), Topographic Survey (C-1), Topographic Survey (C-2), all designated as approved by the City Council on March 12, 2008, and shall not be altered without express authorization by the Planning and Building Department.

SCA At any time after two years from the date of this approval, on March 12, 2010, at 5:00 p.m., or the expiration date of any extension granted in accordance with the Municipal Code, the City may require a noticed public hearing to be scheduled before the authorized agency to determine if there has been demonstrated a good faith intent to proceed in reliance on this approval. If the authorized agency finds that a good faith intent to proceed has not been demonstrated, the application shall be deemed expired as of the above date (or the expiration date of any extension).

SCB The antenna, radio equipment, and other associated equipment shall be actively and continuously maintained. The overall condition of the radio equipment and antenna must be maintained such that any visible areas do not become unsightly.

SCC The applicant shall not enter into any special arrangements or take any actions precluding any other telecommunications providers from utilizing the site as a base of operations unless it is demonstrated to the satisfaction of the Planning and Building Department that any such preclusion was predicated upon verifiable technical considerations, such as potential radio interference.

SCD All facilities and related equipment shall be maintained in good working order and free from trash, debris, graffiti, and designed to discourage vandalism. Any damaged equipment shall be repaired or replaced within 30 calendar days. Damaged, dead or decaying plant materials shall be removed and replaced within 30 calendar days.

SCE Routine maintenance shall be conducted only during the hours of 8 a.m. to 5 p.m. on weekdays, not including holidays. Emergency repairs and maintenance shall be conducted only in the cases of power outages and equipment failure or malfunction. The applicant shall notify the owner of any emergency repairs at the time of the maintenance when feasible or soon thereafter. Equipment "change out" and overhaul can occur any time with 30 days notice to the Planning and Building Director to allow notice to property owners and residents within 300 feet of the facility.

- SCF Once the wireless communications facility is operating, the City may require the Applicant/Permittee to submit documentation that the facility is operating within the technical standards as described in the application and the Federal Communications Commission permit. Independent field strength or power density measurements shall be provided to the Planning and Building Director within 30 days of written request to the Applicant/Permittee.
- SCG Within thirty days before or after the first annual anniversary of when the City issues any permit authorized by Chapter 9.70 of the Municipal Code, and thereafter at five-year intervals, the Applicant/Permittee shall submit the following information, in writing, to the Planning and Building Director:
- I. Confirmation that the facility continues to operate in compliance with all terms and conditions of approval by the City.
 - II. Independent field strength or power density measurements taken within the past 30 days that verify that the facility continues to operate in compliance with all terms and conditions and emissions standards imposed by the Federal Communications Commission.
 - III. Confirmation that there is no equipment available that would enhance the safety, efficiency or visibility of the facility or reduce the size of the facility.
 - IV. Confirmation that there are not more appropriate locations available for the facility.
 - V. Confirmation that the facility continues to function as an essential element of the Applicant/Permittee's network.
 - VI. Documentation of any complaints received by the Applicant/Permittee since the inception of operations regarding the operation and maintenance of the facility, including the Applicant's/Permittee's actions to address the complaints.
- SCH All wireless communications facilities which receive a permit under Chapter 9.70 of the Municipal Code shall be completed and operational within 180 calendar days of the issuance of the permit and all related permits or licenses. The construction time may be extended for an additional 180 calendar days upon a showing of good faith efforts to complete the facility, which shall take into account complications beyond the control of Applicant/Permittee. If the facility is not completed and operational by the end of the extension period, then the permit shall expire, and the Applicant/Permittee must reapply for the permit; however, this provision shall not apply when the Applicant/Permittee demonstrates to the satisfaction of the Planning and Building Director that the operational delay is due entirely to factors beyond the control of the Applicant/Permittee, in which event the Director may extend the construction time in his or her discretion.
- SCI Any facility that ceases operating for more than 90 consecutive days shall be considered abandoned. In such an event the Applicant/Permittee must either 1) apply for all permits required at the time of expiration to reactivate the operation, or 2) remove all elements of the facility and restore the site. In the event the Applicant/Permittee fails to apply for permits or perform the removal and restoration within these 90 days, the property owner shall have the facility removed.
- SCJ Prior to issuing a final inspection on the required building permit, the applicant shall provide a survey from a licensed surveyor or a registered civil engineer verifying that the facility's height is in compliance with the approved plans.

- SCK Should the homeowners lease the property during the life of the wireless telecommunications facility, the homeowner shall disclose in writing to the lessee the existence of the antennas, and the location and extent of the controlled RF zone.
- SCL Applicant/Owner shall place signage at five to six feet above the ground level on each of the three sides of the building supporting the sector antennas. The signage shall contain a permanent RF warning in English and Spanish compliant with ANSI C95.2 color, symbol, and content conventions.
- SCM The equipment enclosures shall be labeled to indicate "Telecommunications Equipment" or equivalent to the satisfaction of the Fire Department.
- SCN With consideration given to concerns expressed by adjacent neighbors, the applicant has agreed to be responsible for any damage to the private roadway resulting from the construction of the telecommunications facility.

G1 **STANDARD CONDITIONS:**

CONTACT THE PLANNING AND BUILDING DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- G3 This project is located within the Coastal Appeal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the City Council's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.
- G4 Prior to **building permit issuance**, the owner shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Planning and Building Director. The Owner(s) agree, in acceptance of the conditions of this approval, to waive any claims of liability against the City and agrees to indemnify, hold harmless and defend the City and City's employees relative to the action to approve the project.
- G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.
- G12 Prior to any use of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Planning and Building Department.
- G13 The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to building permit issuance to the satisfaction of the Planning and Building and Engineering Services Departments. The applicant is advised to contact the Planning and Building Department regarding Park Mitigation

Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.

- U1 At all times during the effective period of this permit, the responsible party shall obtain and maintain in valid force and effect, each and every license and permit required by a governmental agency for the operation of the authorized activity.
- U2 In the event that any of the conditions of this permit are not satisfied, the Planning and Building Department shall cause a noticed hearing to be set before the authorized agency to determine whether the City of Encinitas should revoke this permit.
- U3 Upon a showing of compelling public necessity demonstrated at a noticed hearing, the City of Encinitas, acting through the authorized agency, may add, amend, or delete conditions and regulations contained in this permit.
- U4 Nothing in this permit shall relieve the applicant from complying with conditions and regulations generally imposed upon activities similar in nature to the activity authorized by this permit.
- U5 Nothing in this permit shall authorize the applicant to intensify the authorized activity beyond that which is specifically described in this permit.
- U7 Any future modifications to the approved project will be reviewed relative to the findings for substantial conformance with a use permit contained in Section 30.74.105 of the Municipal Code. Modifications beyond the scope described therein will require submittal of an amendment to the use permit and approval by the authorized agency.

B1 BUILDING CONDITION(S):

CONTACT THE ENCINITAS BUILDING DIVISION REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- B2R The applicant shall submit a complete set of construction plans to the Building Division for plancheck processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plan(s), section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The Uniform Building Code with California Amendments, the California Mechanical, Electrical and Plumbing Codes). These comments are preliminary only. A comprehensive plancheck will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

F1 **FIRE CONDITIONS:**

CONTACT THE ENCINITAS FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

F15 **AUTOMATIC FIRE SPRINKLER SYSTEM:** Structures shall be protected by an automatic fire sprinkler system designed and installed to the satisfaction of the Fire Department.

E1 **ENGINEERING CONDITIONS:**

CONTACT THE ENGINEERING SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

E2 All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.

EG1 **Grading Conditions**

EG14 A grading permit shall be obtained for this project unless the proposed grading is exempt under section 23.24.090 of the Municipal Code. If the proposed grading is exempt from permit requirement, the Owner shall provide a precise site plan prior to approval of a building permit. The building site plan shall provide design for drainage improvements, erosion control, storm water pollution control, and on-site pavement.

RECEIVED

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384

APR 11 2008



CALIFORNIA COASTAL COMMISSION SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: WENDY MOLDOW
Mailing Address: 3637 MANCHESTER AVE
City: ENCINITAS Zip Code: 92024 Phone: 619.339.3339

SECTION II. Decision Being Appealed

- 1. Name of local/port government: City of Encinitas
2. Brief description of development being appealed: MUP/CDP TRENCHING/PLACING UTILITIES FOR INSTALLATION OF A WIRELESS TELECOMMUNICATIONS FACILITY CONSISTING OF 12 ANTENNAS MOUNTED ON THE BALCONY OF AN OCCUPIED RESIDENTIAL LIVING UNIT.
3. Development's location (street address, assessor's parcel no., cross street, etc.): -3631 Manchester Ave, Enc. 92024 -APN: 262-062-38 -EL CAMINO REAL
4. Description of decision being appealed (check one.):
[] Approval; no special conditions
[] Approval with special conditions:
[] Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-6-ENC-08-35
DATE FILED: 4-11-08
DISTRICT: San Diego

EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-08-35
Application for Appeal

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: _____

7. Local government's file number (if any): (6-ENC-08-053)

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

CINGULAR WIRELESS PLANCOM, INC. ATTN: TED MARIONCELLI

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) RAENETTE ANGUIANO
P.O. BOX 2435
RANCHO SANTA FE, CA 92067

(5) SCOTT MEISTERLIN
213 19th St.
DEL MAR, CA 92014

(2) WENDY MOLDOLO
PO BOX 941
DEL MAR, CA 92014

(6) CONNIE KELLY
975 SIDONIA ST.
ENCINITAS, CA 92024

(3) COLBY ARRINGTON
809 SAN ANTONIO PLACE
SAN DIEGO, CA 92106

(7) PAT KELLY
975 SIDONIA ST
ENCINITAS, CA 92024

(4) MICHAEL SNYDER
960 SIDONIA Ct.
ENCINITAS, CA 92024

(8) DR. TANA SANDERSON
ENCINITAS, CA 92024

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

PAGES ONE through SEVEN, reasons for this appeal are attached.

Supporting documents, photos + attachments, as noted, will be delivered to Coastal Commission office 4-14-08.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on File

Signature of Appellant(s) or Authorized Agent

Date:

4-11-08

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date:

Section IV. Reasons Supporting This Appeal

Environmental Setting

The project site is located in Encinitas in an Olivenhain residential neighborhood across from the **San Elijo Lagoon**. There are no other homes between mine (3637 Manchester Avenue) and the ocean. Access to the project site is via a private driveway which was deeded to the two properties above it for their residential access.

Currently, this private hillside driveway is 15'8" wide at my (Moldow) portion and only 11" wide at the Olvera property above. It is unstripped with partial curbs and no gutters. It is windy and difficult to maneuver when there is more than one vehicle. *(see attached photos)*

Jurisdiction is with the Coastal Commission due to Lux Creek running through my parcel APN# 262-062-28.

The Lux Creek runs under Manchester Avenue and into **San Elijo Lagoon** which is a very sensitive native habitat and watershed, and which is an important part of the coastal area. More than probably is that some endangered species found in **San Elijo Lagoon** *(see attached exhibits)* are also found in the brush growing near the creek on my property. I, personally, have seen what appeared to be a Gnatcatcher in March 2008. Watching this small bluish grey sparrow-like bird hopping around my front yard, my thought was that it had been injured, especially when I heard its strange kitten-like cries, not chirps. There have been many sightings of these Gnatcatchers at the Lagoon. *(see attached)*

The San Elijo Lagoon Conservatory has been in recent contact with me in an attempt to control an unwanted breed of grass, *Cortaderia selloana*, growing in the **Lux Creek bed** *(see attached)*. They have agreed to send an avian biologist monitor to the site to check for any sensitive bird species. *(see attached)*

AT&T/CINGULAR in its application gave false account. *(see attached)*

In its application, #1 Project description asks, "Are there any slopes of a 25% or greater gradient or bluffs on the site?" Applicant responds **NO**. In fact, the slope of the site is **38%**.

The Applicant goes on to describe the site with "gently rolling topography slopes to the south west." One must question their verbiage here.

On the Disclosure Statement, #3 was left blank and according to record has not been amended to indicate the **owner of the property is a trust**.

Project Site #11 asks percent of site previously graded or cleared. Applicant writes approx **75%**. Please note 43% of this site is in an OPEN SPACE HABITAT EASEMENT and this does not include another sizeable portion of the slope which has never been cleared or graded.

Applicant then **AVOIDS** responding to Project Site #12, *Any Slopes between 25-40%*.

Again Applicant under PROJECT DESCRIPTION A. "*Land Use No. of Acres % of Site, Residential lots streets*" writes **75%** Applicant **AVOIDS** filling in Item **B** altogether which addresses the breakdown "*If it is a commercial, institutional or industrial project, please answer the following: Breakdown of land use:*"

Applicant **writes NO** under "*Will the project generate noise which could be heard outside the project (other than traffic noise)?*"

Applicant fails to include information regarding equipment cabinets and air cooling systems. NOTE: This same Cingular 12 antenna site application when submitted to the County requires Cingular to install noise walls. (*see attached*)

#19. Proposed grading. The Applicant responds in writing **NA**

Please note the proposed site has less than 4 feet behind existing building where it continues to drop into the **38%** slope area. (*see attached photos*)

All additional questions regarding grading or fill has been **marked with a dash to avoid response**.

Under Slope Analysis: Applicant responds **NA**

Does the project propose to cut or fill, or alter in any way, a creek channel or lagoon?

Applicant writes **NO**

AT&T/CINGULAR DID NOT ADDRESS THE ROAD CONSTRUCTION AND THE ABUTMENT TO THE LUX CREEK AREA AT ALL.

In fact, the plan for the driveway construction was never submitted to the City. No interested parties such as those who own the property that Cingular wishes to trench were given this plan or opportunity to evaluate prior to the Council approval.

Although I am not an expert, it is my belief that as in the **Coastal Commission's** mandate in their handouts, that this construction and the abutment to the **Lux Creek** area on my property sensitive to endangered bird species, that there will be an **environmental impact of the construction of the "trench"** and the periodic maintenance thereafter required.

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Understanding the Approval Process

The Encinitas City Council overruled the unanimous vote of its Planning Commission which on **two separate occasions** **denied** the AT&T/Cingular application finding that there were other feasible locations available for the applicant's use and confirmed questionable statements and misrepresentations made by the Applicant (*see attached*).

The City Council did not consider the effect of the trench construction. [*The Council's decision to allow the project was based on a secret "attorney-client" privileged letter not known to the public.*]

The Coastal Commission is here asked to deny the application in that its passage can affect the areas charged by law to the **Commission** to protect, and in so deciding, the **Coastal Commission** is asked to look at the record made before the **Encinitas Planning Commission (the only basis under the Encinitas Ordinance for City Council review)** as well as all other relevant material.

Thank you.

Wendy Moldow, 3637 Manchester Avenue, Encinitas, CA 92024

Please note I also speak for Raenette Anguiano, Trustee for the Olvera Property.

Appellant reserves the right to add additional information as noted in the Appeal Application.

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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2. SENSITIVE HABITAT & SAN ELIJO LAGOON
3. ENDANGERED SPECIES & TELECOMMUNICATIONS
4. GNATCATCHERS
5. SAN ELIJO LAGOON CONSERVATORY LETTER
6. CONSERVATORY TO SEND AVIAN BIOLOGIST MONITOR
7. FALSE DATA FROM CINGULAR

A. Exhibit #1 DISCRETIONARY PERMIT APPLICATION

1. Applicant responds to slopes as being less than 25%

Exhibit (a) Cingular site plan noting **38%** slope

Exhibit (b) SCA for Grading to build Lukacz site 1999 precluding any future development or grading of slopes over 25%

Exhibit (c) Planning staff notes all areas 25% & greater in open space. **Subject property IS in steep slope area as previously graded area at accessory unit exterior wall extends less than 4 feet.**

Exhibit (d) Photo of steep slope drop, **38%**, behind access unit

Exhibit (e) Photo of area behind accessory unit - project site.

Exhibit (f) Cingular deceptive photo showing area flat. **FALSE**

2. Applicant responds 75% when asks % of site previously graded.

Exhibit (a) Lukacz parcel is 1.16 AC

Exhibit (b) Open Space Habitat covers 4.83 AC

Note that with additional steep slope area between habitat & structure there is NO way 75% was ever graded.

See Exhibits #7.A.1 (a) thru (f)

3. Applicant responds NO to NOISE & submits no noise study.

Exhibit (a) Cingular submits to County w/identical equip. County req **8 ft noise walls** for Bonita Tele Facility.

Exhibit (b) Cingular submits to County w/identical equip. County requires **10 ft concrete walls** for San Marcos Deer Spring Rd Tele Facility.

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Exhibit (c) Water tanks w/identical equip req. walls. Ramona
NOTE: Cingular's late submission of Noise Study is questionable,
yet NO opportunity was given to public or myself to address.

4. **Applicant responds NA to Proposed Grading.**
See exhibits #7.A.1. (a) thru (f)

B. DRIVEWAY CONSTRUCTION

1. Plans were **NOT SUBMITTED** to the City and public was **NOT** given opportunity to review.
Exhibit (a) March 12, 2008 Email to K.Kusiak from Cingular.
Exhibit (b) Trench Plan
2. NOTE: Kerry Kusiak and Coastal Commission informed me there was to be NO appeal to the Coastal Commission after the City Council hearing 2/28/08. It was at a meeting I called with the Planning Staff 4/27/08 with questions as to building plans that the subject of the **trenching** and the **Coastal Appeal** process came about and I was told.
Shouldn't the public be given an opportunity to review such a plan, especially when it is on their property?

C. ACCESSORY UNIT ORDINANCE 30.48.040V Reg #7

D. ADDITIONAL MISREPRESENTATIONS AND OMISSIONS

1. **Cingular stated the Wireless Ordinance 9.70.010 as their basis for Appeal.**
Exhibit (a) Ordinance as stated,
" The purpose of this Chapter are to assure that wireless communications networks are completed with the fewest possible facilities, in the least visible fashion, and with the least disruptive impact on the neighborhoods and the communities within the City of Encinitas."

The Council was told this **ONE** Lukacz site would be the **fewest possible** and less than Cingular's own submitted alternatives which included a two site alternate for their submitted needed coverage.

Exhibit (b) Cingular Letter

What was **not** brought to the attention of the Council was the letter **on record** submitted by Cingular's own RF consultant who states this **Lukacz site will NOT cover their specified needs** and an **additional site will be required**. In addition it was determined only by Cingular's RF consultant, and was confirmed by City Council independent RF consultant (Jonathan Kramer) that the necessary coverage originally submitted could not be covered by this **ONE** site due to topography of Manchester to the East and the road curve of Manchester to the West.

Exhibit (c) Cingular Attorney & Commissioner

2. Further and omitted in the Application package and at the first planning commission hearing, as well as the first Council Appeal was that another Cingular site, referred to as NS030, just up the road on El Camino Real was being sought for much of the same coverage need as the Lukacz.

This Church Steeple site has since been built and it is noted in Cingular's refined alternate site package which was prepared for the second planning commission hearing. **Exhibit D.2**

Cingular's original needed coverage area has changed and the reality is that this **ONE Lukacz site** is not enough to meet their required needs.

8. ALTERNATE and FEASIBLE SITES

Exhibit A Submitted List

Exhibit B Cingular Coverage Map using TWO sites.

Exhibit C Belmont Village Photo + Letter states they want cell site

Exhibit D Mira Costa & Right of Way (zoned for such use)

Exhibit E DAS

Exhibit F Planning Commissioner Statements from transcript.

9. APRIL 12, 2008 LETTER TO THE CITY, LUKACZ & AT&T

10. ROAD MAINTENANCE AGREEMENT

Why is this relevant to the Coastal Commission?

The duty of the Coastal Commission is to base their decision on accurate information. Information provided in the Application and throughout the record is inaccurate and skewed. The Planning Commission who has approved more than 80 of these similar sites throughout Encinitas denied this application twice. (*see attached Commissioner statements*)

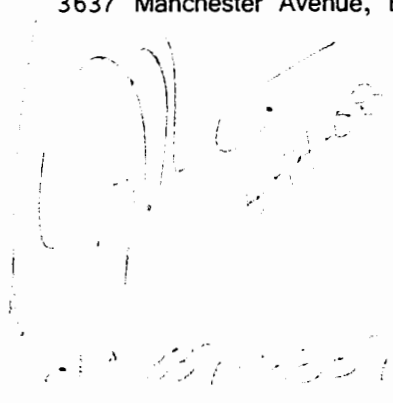
Alternate and feasible sites are available.

Had the trenching plan which you are now considering been submitted, which it was not, the Council may have reconsidered these alternate sites. (*see attached alt sites*) Until last week I never saw or had the opportunity to question their trenching. Will there be bulldozers? How deep will these trenches be? Will this equipment be in the natural terrain? How many non-residents will be on my private road, my private land, or using my private parking area? Just several of many questions that myself or the public should have been given the opportunity to ask.

The Coastal Commission should deny this permit; demand this project be returned for an environmental impact report; or at least ask the Applicant to resubmit their application with more accurate information.

Thank you and I appreciate your consideration. Please call me with any questions.

Wendy Moldow
3637 Manchester Avenue, Encinitas, 92024

A handwritten signature, likely "Wendy Moldow", is written in dark ink. The signature is somewhat stylized and includes some additional scribbles and lines around it. It is positioned to the left of the typed name and address.

Section IV. Reasons Supporting This Appeal

Environmental Setting

The project site is located in Encinitas in an Olivenhain residential neighborhood across from the **San Elijo Lagoon**. There are no other homes between mine (*3637 Manchester Avenue*) and the ocean. Access to the project site is via a private driveway which was deeded to the two properties above it for their residential access.

Currently, this private hillside driveway is 15'8" wide at my (Moldow) portion and only 11" wide at the Olvera property above. It is unstripped with partial curbs and no gutters. It is windy and difficult to maneuver when there is more than one vehicle. (*see attached photos*)

Jurisdiction is with the Coastal Commission due to Lux Creek running through my parcel APN# 262-062-28.

The Lux Creek runs under Manchester Avenue and into **San Elijo Lagoon** which is a very sensitive native habitat and watershed, and which is an important part of the coastal area. More than probably is that some endangered species found in **San Elijo Lagoon** (*see attached exhibits*) are also found in the brush growing near the creek on my property. I, personally, have seen what appeared to be a Gnatcatcher in March 2008. Watching this small bluish grey sparrow-like bird hopping around my front yard, my thought was that it had been injured, especially when I heard its strange kitten-like cries, not chirps. There have been many sightings of these Gnatcatchers at the Lagoon. (*see attached*)

The San Elijo Lagoon Conservatory has been in recent contact with me in an attempt to control an unwanted breed of grass, *Cortaderia selloana*, growing in the **Lux Creek bed** (*see attached*). They have agreed to send an avian biologist monitor to the site to check for any sensitive bird species. (*see attached*)

AT&T/CINGULAR in its application gave false account. (*see attached*)

In its application, #1 Project description asks, "Are there any slopes of a 25% or greater gradient or bluffs on the site?" Applicant responds **NO**. In fact, the slope of the site is 38%.

The Applicant goes on to describe the site with "gently rolling topography slopes to the south west." One must question their verbiage here.

On the Disclosure Statement, #3 ~~was~~ left blank and according to record ~~has not been amended to indicate the~~ **owner of the property is a trust.**

Project Site #11 asks percent of site previously graded or cleared. Applicant writes approx 75%. Please note 43% of this site is in an OPEN SPACE HABITAT EASEMENT and this does not include another sizeable portion of the slope which has never been cleared or graded.

Applicant then **AVOIDS** responding to Project Site #12, *Any Slopes between 25-40%*.

Again Applicant under PROJECT DESCRIPTION A. "*Land Use No. of Acres % of Site, Residential lots streets*" writes 75%. Applicant **AVOIDS** filling in Item **B** altogether which addresses the breakdown "*If it is a commercial, institutional or industrial project, please answer the following: Breakdown of land use:*"

Applicant **writes NO** under "*Will the project generate noise which could be heard outside the project (other than traffic noise)?*"

Applicant fails to include information regarding equipment cabinets and air cooling systems. NOTE: This same Cingular 12 antenna site application when submitted to the County requires Cingular to install noise walls. (*see attached*)

#19. Proposed grading. The Applicant responds in writing **NA**

Please note the proposed site has less than 4 feet behind existing building where it continues to drop into the **38%** slope area. (*see attached photos*)

All additional questions regarding grading or fill has been **marked with a dash to avoid response.**

Under Slope Analysis: Applicant responds **NA**

Does the project propose to cut or fill, or alter in any way, a creek channel or lagoon?

Applicant writes **NO**

AT&T/CINGULAR DID NOT ADDRESS THE ROAD CONSTRUCTION AND THE ABUTMENT TO THE LUX CREEK AREA AT ALL.

In fact, the plan for the driveway construction was never submitted to the City. No interested parties such as those who own the property that Cingular wishes to trench were given this plan or opportunity to evaluate prior to the Council approval.

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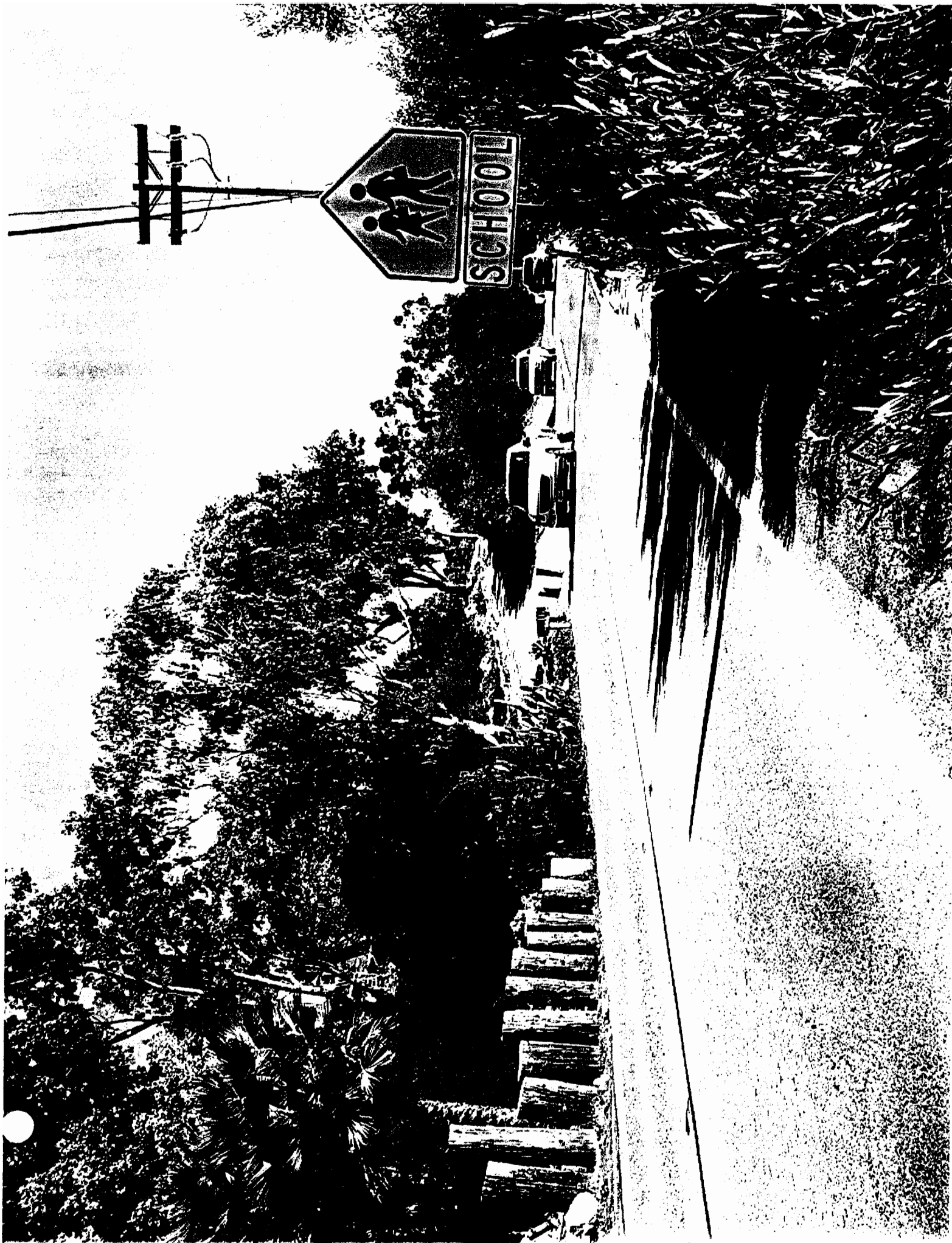
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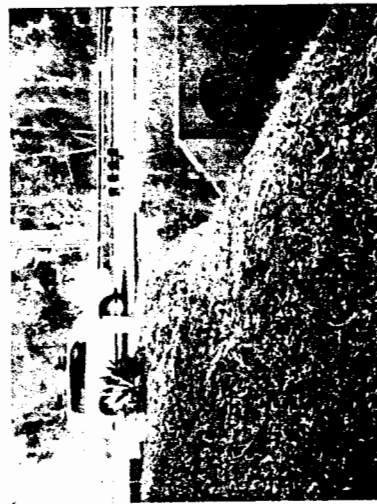
TOP HALF OF MY PROPERTY'S PRIVATE ROAD



TRENCH SITE ↑



↑ TRENCH SITE



LUX CREEK



LUX CREEK ↑ TRENCH SITE



↑ TRENCH SITE CREEK



↑ TRENCH SITE



LUX CREEK BED AT SITE AREA



↑ TRENCH SITE

DRIVEWAY AT MOLDOW PROPERTY 15'8" WIDE
DRIVEWAY AT OLVERA PROPERTY 11 FEET WIDE



TRENCH SITE



LUX CREEK BED & SURROUNDING SCRUBS



LOOKING DOWN FROM HOUSE (3637) TO CREEK



VIEW FROM MAILBOX AREA



↑

ACROSS MANCHESTER - CREEK CONTINUES WEST.



↑



VIEW FROM MAILBOX OVER CREEK

CREEK BED



ENVIRONMENT SENSITIVE AREA
INCLUDING SITHINGS OF
GNATCATCHER



↑
38%
SLOPE

↑
Graded Area Behind

↑
Accessory Unit

Project Site

Cingular Proposed
Site:

NS-033
Lukacz

Picture of North-West
Elevation from Church
Parking Lot
Using a

Strong Telephoto
Lens Setting*

(not representative of
normal public viewing)

* approximately 4½
times magnification of
"normal" lens setting

Original
Picture

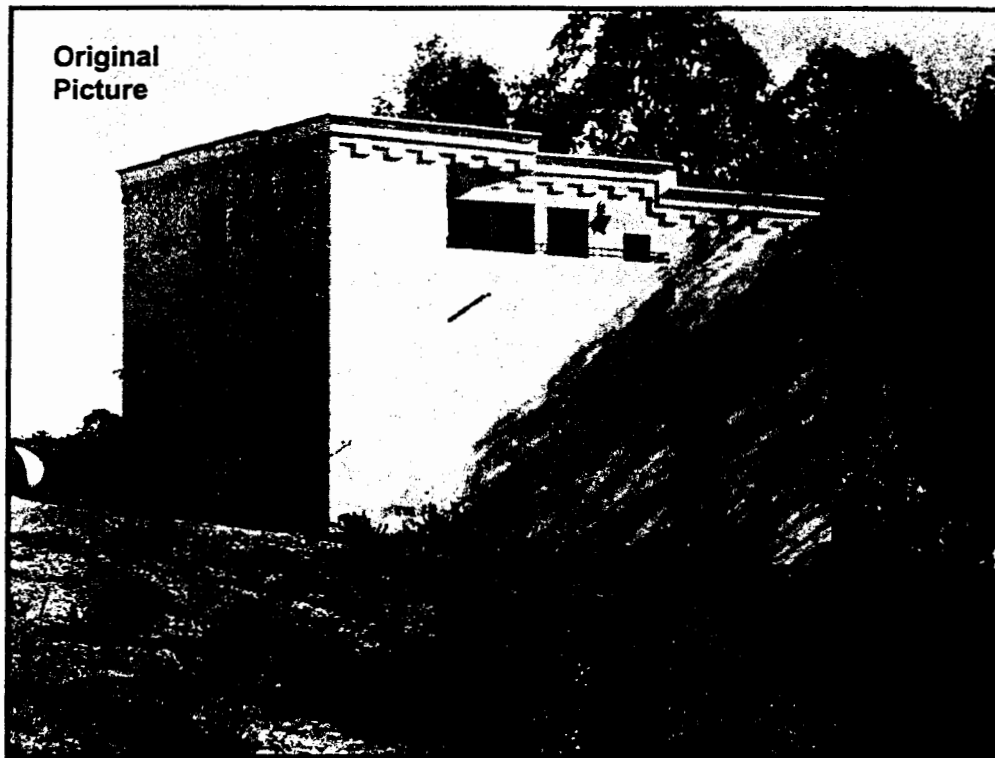
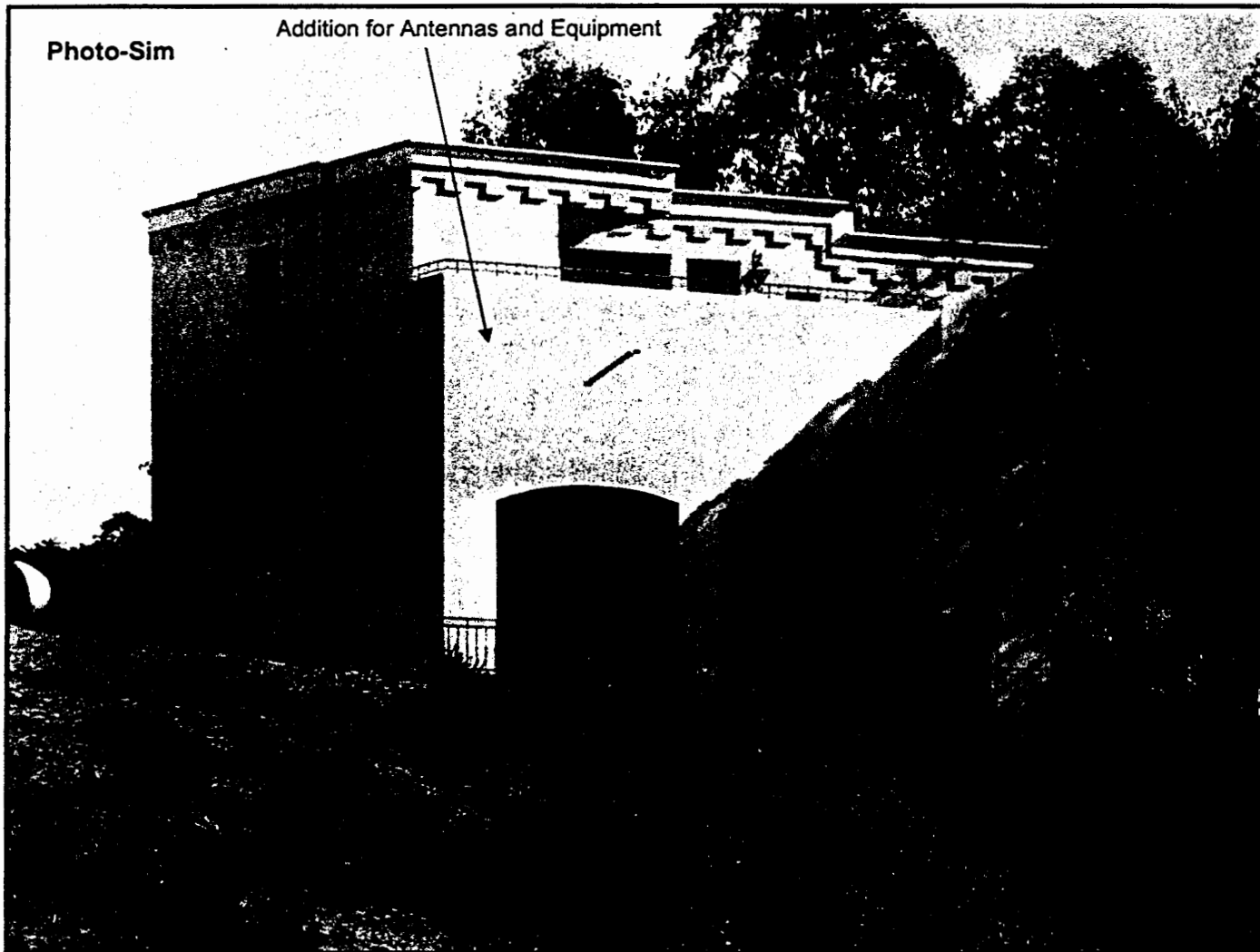


Photo-Sim

Addition for Antennas and Equipment



BLDG
INTO
SLOPE

BIRDS OF SAN ELIJO LAGOON

Bird use at San Elijo Lagoon has been one of the most studied biological elements of the lagoon and reserve and, due to abundance, variety, and high visibility, the component most noticed by the public. More than 319 species have been recorded at San Elijo Lagoon and Cardiff State Beach. Over 106 of these species are rare to uncommon migrants. Additional migrant species potentially occur, particularly offshore. Numbers of individual birds range into the thousands when considering migratory shorebirds and waterfowl, into the hundreds for pelicans and cormorants, coots, gulls, terns, swallows, warblers, and sparrows. Such numbers and diversity are attributable to geographic/physical factors of location, variety of habitats and ecotones, and variety and abundance of food items.

The mild climate of San Elijo accommodates large numbers and varieties of birds. Resident species, transient migrating species en route between lower latitude wintering grounds and higher latitude breeding grounds, wintering species migrating from elsewhere, and breeding species that winter elsewhere can be found during the year. The coastal location and maritime influence on weather, varied topography and soils, estuarine influence of both fresh and salt waters create a diverse assemblage of plant types and habitats. These habitats, in turn, provide a wide variety and abundance of food items such as submerged vegetation, seeds and flowers, benthic invertebrates, fish, aquatic and surface dwelling invertebrates, terrestrial invertebrates, amphibians, reptiles, small and large mammals, and the remains left thereof, allowing a vast array of niches to be exploited.

Urbanization of Southern California has resulted in loss of habitat and habitat degradation. Accumulation of toxins from past and current industrial and agricultural products, including continued use elsewhere of chemicals banned in the U.S., together with historic, and, in some cases, continued hunting and persecution, have produced endangered species. Several sensitive, threatened, and endangered species rely on San Elijo. More than 105 species of concern have been documented at San Elijo, including 33 of the 81 to 93 species that breed around the lagoon. The federally endangered brown pelican roosts and feeds regularly in the lagoon, the light-footed clapper rail is resident, and the least tern nests, forages, and roosts around the lagoon each summer. Least Bell's vireo presence has increased in recent years with nesting along Escondido Creek. The federally threatened snowy plover, California gnatcatcher, and state endangered Belding's savannah sparrow nest and are present throughout the year. The recently delisted peregrine falcon is a regular visitor. Bald eagles and willow flycatchers forage in the Reserve occasionally. In the past, wood stork, black rail, sandhill crane, and bank swallow have been documented in the lagoon, and cactus wrens were once abundant in adjacent sage scrub.

To better document current bird use of the lagoon, monthly bird counts are conducted by volunteers of the San Elijo Lagoon Conservancy

Bell's Vireo
(*Vireo bellii*)

AA SAN ELITO

A widespread breeder in the central and western U.S., this species inhabits shrubby and riparian areas. In the southwestern portion of its range, habitat degradation and cowbird parasitism are causing declines and range reduction. In California, the "Least" Bell's Vireo subspecies is Federally Endangered.

Identification

This small vireo is drab gray to green above and white to yellow below. It has a faint white eye-ring and two pale wingbars. The slightly larger subspecies, Least Bell's Vireo (*Vireo bellii pusillus*) has pale whitish cheeks and forehead and greenish wings and tail. Similar species include Hutton's Vireo (*Vireo huttoni*), which has broader wingbars and dull gray underparts, and Gray Vireo, which has a longer tail and subtle wingbars. The song is a varied sequence of sharp, slurred phrases that typically end with an ascending or descending note.

Distribution and Population Trends

The breeding range of this species extends, in the Midwest, from North Dakota to Indiana, south through Arkansas, and Texas continuing across the Southwest through southern New Mexico and Arizona into California and south into northern Mexico. Breeding Bird Survey data indicate that the species has shown an overall decline of 2.8% per year from 1966-2001 across its U.S. range. The Least Bell's Vireo subspecies is restricted to coastal California where it was once widespread, and is now Federally Endangered. A number of Important Bird Areas that support the species have been identified by Audubon California. These include the Santa Margarita River/Camp Pendleton IBA which holds the largest population in the state (300 pairs), the San Luis Rey River IBA (200 pairs), and the San Jacinto Valley IBA (150 pairs). Surprisingly little is known about the species wintering range, which extends along the Pacific coast from northern Mexico south to northern Nicaragua.

Ecology

This species prefers to nest in low, dense, scrubby vegetation in areas of early succession and is particularly dependent on corridors of habitat along rivers and streams. Research on the endangered Least Bell's Vireo suggests that it is most important to have a dense shrub layer between 0.6 and 3.0 meters from the ground. On the breeding grounds, this species feeds on insects and small spiders but its winter feeding habits are unknown. The nest is built by the male and female in a forked branch at a height of 0.5 to 1.5m from the ground. Between 3 to 5 eggs (usually 4) are laid and, depending on location, this species may raise one or two broods.

Threats

Loss and degradation of habitat, especially along stream and river corridors through development, flood control projects, firewood cutting, cattle grazing and agriculture are the greatest threats to the continued health of populations of the Bell's Vireo. Overgrazing has been estimated to reduce nesting sites by 50% in some areas and has contributed to an increase in non-native invasive plant species that do not provide suitable habitat for the species. Fragmentation of habitat increases Brown-headed Cowbird parasitism and isolates small fringe populations, which are very susceptible to localized extirpations contributing to large-scale range reductions. Domestic cats are also a significant predatory force in some areas.

Conservation

Conservation and restoration of riparian areas is critical to the long-term success of this species. Throughout much of the western U.S. there has been an increase in such activity. Following the listing of the Least Bell's Vireo subspecies as Federally Endangered in 1986, there has been much conservation, restoration, monitoring, and research that has taken place in its southern California range leading to increased populations in some areas. Cowbird trapping programs have also been undertaken in many of these same areas to increase productivity of vireo populations.

Status:

Population size: 1.5 million



Photo by Fish & Wildlife Service.

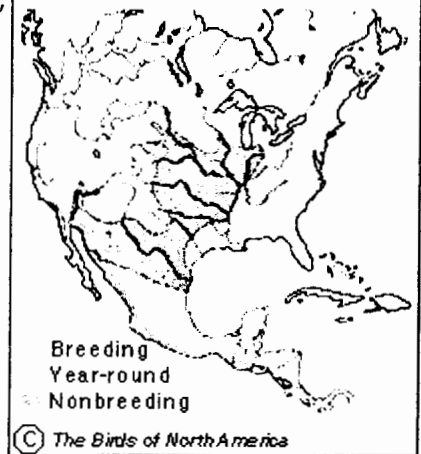


Exhibit 2

Endangered Species Act and Cellular Communication Tower Guidance in Arizona

Candidate Conservation

SAME IN CA ?

Partners for Fish and Wildlife

Environmental Contaminants

Federal Activities

Document Library

Cell Tower Guidance in AZ

Image Library

Links

The following comments are provided under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) with regard to the addition to, or construction of, cellular communication facilities (cell towers) for a wireless communications carrier that will be an applicant for Federal Communications Commission (FCC) licenses.

Consultation in accordance with FCC rules implementing the National Environmental Policy Act (NEPA) and section 7 of the Endangered Species Act may be required for cell tower projects. You may have questions on whether the proposed projects may affect listed species or their critical habitat. The following guidelines address these issues and may be applicable to projects in Arizona.

Background

The U.S. Fish and Wildlife Service's (FWS) Arizona Ecological Services Field Office (AESO) sent a letter to the FCC dated June 28, 2001, that summarizes the appropriate procedures necessary for the review of proposed cell tower sites. The FCC is required under law to review proposed cell tower projects to determine if construction or operation of such facilities "may affect" federally listed species or designated critical habitat. If the FCC determines that a "may affect" situation exists with respect to one or multiple projects, then the FCC must either initiate formal consultation or seek written concurrence from the FWS that the proposed action is "not likely to adversely affect" federally listed species.

In a letter dated April 10, 2002, from the FCC to the Director of the U.S. Fish and Wildlife Service, FCC designated "all FCC licensees, applicants, tower companies and their representatives" with non-Federal representative status (pursuant to 50 CFR §402.08) to represent them during informal consultation, but not formal consultation.

Guidance

Is your project in an urban or otherwise developed area?

Cell tower projects that occur well inside urbanized areas are unlikely to affect listed species or critical habitat and would therefore be determined to have “no effect” under section 7 of the Endangered Species Act. This conclusion does not require written concurrence from our office and is generally the most applicable determination for these types of projects.

What does your project entail?

For the purposes of this guidance, the word “project” refers to all aspects of the installation, construction, and maintenance required for the set-up and operation of a cell tower facility, including, but not limited to, the tower or pole, equipment cabinets, access road(s), trenching, and fencing.

What is your determination?

Projects which involve only the following actions qualify for a “no effect” determination for federally listed species and critical habitat pursuant to section 7 of the Endangered Species Act and do not require coordination or consultation with the AESO:

1. Projects that do not involve new construction activities.
2. Construction of new tower projects that are co-located with an existing structure of substantial size (e.g., tower, power substation, smokestack, large building, water tank) and do not require the removal of vegetation.
3. Construction of new tower projects within and immediately adjacent to urbanized or developed areas (i.e., areas that do not support habitat that may be occupied by endangered, threatened, or proposed species both within the footprint of the

construction and adjacent to the site).

4. Routine maintenance of existing tower sites, such as painting, antenna or panel replacement, upgrading of existing equipment, etc.

5. Repair or replacement of existing towers and/or equipment, provided such activities do not significantly increase the existing tower mass and height, or require the addition of guy wires.

Again, for projects that meet the above criteria, there is no need to contact this office for further project review. To document due diligence under section 7 of the Endangered Species Act with respect to such determinations, we recommend that you place a printed copy of this web page in the project file.

A “may affect, not likely to adversely affect” determination is appropriate when effects on federally listed species are expected to be discountable (i.e., unlikely to occur), insignificant (minimal in size), or completely beneficial. This conclusion requires written concurrence from the Fish and Wildlife Service.

For those proposed projects that do not meet the above criteria, particularly projects that involve clearing of vegetation, you should contact the FCC for further evaluation.

Additional Information

In an attempt to standardize the review of cell towers and other communication towers, please click [\(here\)](#) to view a document titled “Service Interim Guidelines for Recommendations on Communication Tower Siting, Construction, Operation, and Decommissioning” which includes a Tower Site Evaluation Form for your records. Please note that the evaluation form was developed from a Migratory Bird Treaty Act perspective, and although the evaluation form does not require the completion of items 5-18 if towers are not lighted or guy-wired, this information

is important from an Endangered Species Act perspective.

For efficiency and convenience purposes, we have placed the lists of endangered, threatened, proposed, and candidate species potentially occurring anywhere in the county, or counties, in Arizona where your projects occur on our web site ([hyperlink of species county lists](#)). Please note that your project areas may not necessarily include all or any of these species. The information provided includes general descriptions, habitat requirements, and other information for each species on the list. Also provided on this web page are the Federal Register (FR) citations for each listed species, which are available at the Federal Depository, libraries (university libraries), and online at <http://www.gpoaccess.gov/fr/index.html>. This information should assist you in determining which species may or may not occur within your project areas. Site-specific surveys could also be helpful and may be needed to verify the presence or reliably infer absence of a species or its habitat as required for the evaluation of proposed project-related impacts.

Lastly, the AESO encourages you to involve the Arizona Game and Fish Department at (602) 789-3600 in any consultation regarding these projects.

Environmental issues in telecommunications projects primarily include the following:

- Terrestrial habitat alteration
- Aquatic habitat alteration
- Visual impacts
- Hazardous materials and waste
- Electric and magnetic fields
- Emissions to air
- Noise

Terrestrial Habitat Alteration

Terrestrial and aquatic habitats may be altered primarily during the construction of communications infrastructure depending on the type of infrastructure component and proposed location. Potential impacts to habitat may be more significant during construction and installation of linear infrastructure, such as long distance fixed line cables, as well as access roads to other types of infrastructure along previously undeveloped land.

Recommended measures to prevent and control impacts to terrestrial habitats during construction of the right-of-way include:

- Site fixed line infrastructure (e.g. fiber optic cable) and other types of linear infrastructure rights-of-way, access

pose a potentially fatal risk to birds mainly through collisions.³ The likelihood of avian collisions is thought to increase with the height and design of the communications tower (e.g. guyed towers represent a higher potential for collisions), the presence of tower lighting (which attracts some species of birds at night or during low light conditions), and, most importantly, the tower location with regard to flyways or migration corridors.⁴

Recommended prevention and control measures to minimize avian collisions include⁵:

- Siting towers to avoid critical habitats (e.g. nesting grounds, heronries, rookeries, foraging corridors, and migration corridors);
- Avoiding the cumulative impact of towers by collocating antennae on existing towers or other fixed structures (especially cellular telephone communication antennae), designing new towers structurally and electrically to accommodate future users, and removing towers no longer in use;

³ Manville (2005) Bird Strikes and Electrocutions at Power Lines, Communication Towers, and Wind Turbines: State of the Art and State of the Science – Next Steps Toward Mitigation.

⁴ Ibid.

⁵ Further information is available from the United States (US) Department of Interior, Fish and Wildlife Service, Service Guidelines on the Siting, Construction, Operation and Decommissioning of Communications Towers (2000).

Exhibit 3 cont

- Substitution in use of chlorofluorocarbons (CFCs) in cooling and fire-suppression systems, using contractors who are properly trained or certified in the management of CFCs.

Noise

The principal source of noise in telecommunications facilities is associated with the operation of backup power generators. Recommended noise management action includes the use of noise suppression shields and mufflers, as well as the location of noise generating sources away from residential or other noise-sensitive receptors to meet the noise emission levels provided in the **General EHS Guidelines**.

1.2 Occupational Health and Safety

Occupational health and safety issues in telecommunications projects primarily include the following:

- Electrical safety
- Electromagnetic fields (occupational)
- Optical fiber safety
- Elevated and overhead work
- Fall protection
- Confined space entry
- Motor vehicle safety

- Evaluating potential exposure to the public against the reference levels developed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).^{10,11} Average and peak exposure levels should remain below the ICNIRP recommendation for General Public Exposure¹²;

- Limiting public access to antennae tower locations (see also 'Community Health and Safety' of this document, below);
- Following good engineering practice in the siting and installation of directional links (e.g. microwave links), to avoid building structures;
- Taking into account public perception about EMF issues by consulting with the local community during the siting process of antenna towers.

Emissions to Air

Emissions from telecommunications projects may be primarily associated with the operation of vehicle fleets, the use of backup power generators, and the use of cooling and fire suppression systems. Recommended management actions to minimize emissions include:

- Implementation of vehicle fleet and power generator emissions management strategies as described in the

Exhibit 3 cont

California Gnatcatchers in San Diego County



Nov '1996 "The Birdchaser"

If you Google California Gnatcatcher, you can find lots of information about this endangered species, including that there are about 2000 pairs of these birds left in the United States. What you can't find as easily online, are directions for how to find these birds in San Diego County. If you find yourself flying into San Diego, and want to know where to go find California Gnatcatchers, here's the post for you. After landing in San Diego, I got the rental car and cruised north on I-5. I had read that San Elijo Lagoon north of San Diego had lots of gnatcatchers, so that's where I headed first. Turned out to be the right call, as I was able to find several California Gnatcatchers within 20 minutes of arriving at the lagoon about lunch time.

Directions: Exit I-5 at Lomas Santa Fe Drive in Solana Beach. Head west towards the beach and turn right onto Rios Avenue. Drive just over half a mile to the end of the road and park. There is a trail heading down towards the lagoon (map [here](#)). After maybe a quarter mile, the trail splits. Stay straight (don't turn left). I had four California Gnatcatchers in the short coastal sage shrub between the trail split and the large dead-looking tree 100 yards down the trail.

Lots of other birds in the area, including Cassin's Kingbirds, Wrentit, Bushtits, California Quail, and Western Scrub-Jay. Had to whisk the Audubon's Warblers away with a stick. Same with House Finches. All in all, I was there for maybe 45 minutes and saw 50 species in the brush and on the lagoon. Looks like the gnatcatchers are pretty easy to find there, I just walked slowly until I heard a gnatcatcher like call and waited. Eventually at least four of them were busy feeding in the bushes near the trail. I had them in sight for maybe 15 minutes before they moved on. If you are looking for these guys, just walk slowly and enjoy the trail and the lagoon while you wait for them to appear.

I really enjoyed these little tail-wagging birds, and got great looks at the mostly dark under tail, as well as the dark slate gray plumage. These are amazing little birds, well worth the effort to go out and see. (photo: David Nelson)

Exhibit 4

Encinitas

Bailey noted a dispersing gnatcatcher on 14 June 1993 in a small fragment (less than 4 ha) of chaparral and riparian habitat (Figure 4). We assume it to have been a first-year bird since no gnatcatchers inhabited the site during the previous breeding season (1992). The gnatcatcher was not resighted during two subsequent visits in June. The nearest source population is around San Elijo Lagoon. To reach the fragmented site from San Elijo Lagoon, a gnatcatcher would have to traverse a high-density residential neighborhood for at least 0.55 km (Table 1). Many of the homes in this neighborhood are well vegetated with mature ornamental trees and shrubs.

CAPABILITY
OF THE CALIFORNIA
GNATCATCHER
LITERATURE
CITED
Accepted 7 July 1998

Posted by Dave on Dec 19, 2007, 10:11pm

Thanks, Murray. I will write a report online here when I return and will certainly give details if I am lucky enough to get the **gnatcatchers**. Last winter I had my life California **Gnatcatchers** at **San Elijo Lagoon**, just north of **San** Diego between the I5 and the ocean. I would not have found them if some locals with pretty fancy gear weren't nearby. I somehow tried to fit in and politely asked what they were looking at. Their response? "A Wrenitit, just behind those 4 California **Gnatcatchers**." Two Lifers, just like that 😊.

Exhibit 4



San Elijo Lagoon CONSERVANCY

501 c (3) organization, tax ID #33-0358600

January 9, 2008

Wendy Moldow
3637 Manchester Avenue
Encinitas, CA 92024

P. O. Box 23063+
Encinitas, California
92023-0634
T 760 436-3944
F 760 944-9606
www.sanelijo.org

Dear Ms. Moldow,

The San Elijo Lagoon Conservancy is administering a region-wide grant to control invasive plants like pampas grass (*Cortaderia selloana*) within the Carlsbad Hydrologic Unit. Your property is located within our project area, and has been identified as having this highly invasive plant on it. Our staff has noticed some pampas grass in Lux Creek, on the west side of your property. One of the reasons pampas grass is so invasive is because its seeds are distributed by the wind, causing new infestations of the plant on neighboring properties and eventually infesting natural areas like our creeks and native habitats. In order for us to control the spread of pampas grass in natural areas, we need individual property owners like you to eliminate the seed source.

We can help through our invasive species control program. With your permission, we will come to your property and treat the pampas grass with the herbicide Aquamaster, which is approved by the US EPA for use in and around wetlands. In order to effectively kill the plant, the plant must be left standing for 2-3 months so the herbicide can fully translocate to the roots. Once the plant is completely dead, our crews will return to your property to reduce the standing biomass and remove it from the creek channel. *Since this program is funded by state grants, we can offer this at no cost to you.*

In order for us to control the invasive plants on your property, we will need you to fill out and return the enclosed permission slip. If you have any questions about the program or permission slip, please feel free to call. I would be happy to meet with you at your property if you would like to discuss the program in person. Thank you for your participation and cooperation on this important project.

Signature on File

Amy Trujillo
Field Coordinator

Enclosures:
Invasive Species Program permission agreement
Biological pollution brochure

Exhibit 5

Pampas grass control
Amy Trujillo (ak@sanelijo.org)
Tue 4/08/08 11:09 AM
wendymoldow@hotmail.com

Hi Wendy,

Our crews will be returning to your property in the next few weeks to check on the pampas grass in the creek area. At that time we will have an avian biologist monitor the site to check for any sensitive bird species. I will give you a call when we have a date scheduled. If you have any questions, please feel free to call.

Thanks,

Amy Trujillo
San Elijo Lagoon Conservancy
P.O. Box 230534
Encinitas, CA 92023
Phone: 760-436-3244
Fax: 760-944-9606
www.sanelijo.org

Exhibit 6



CITY OF ENCINITAS
DISCRETIONARY PERMIT APPLICATION
 PLANNING AND BUILDING DEPARTMENT

A-1

505 South Vulcan Avenue
 Encinitas, California 92024
 (760) 633-2710

Application No. 06-001 MUP/CDP
 Date of Application: 1/3/06
 Community Area: Olivewood

**** Appointment Required Prior to Submittal ****

DEPARTMENT USE ONLY

APPLICATION TYPE (check all that apply)	Finance #	Code	Amount
<input type="checkbox"/> Annexation.....	_____	_____	_____
<input type="checkbox"/> Appeal	_____	_____	_____
<input checked="" type="checkbox"/> Coastal Development Permit	_____	_____	_____
___ Exempt.....	___ Regular permit	Appeal Zone? Y ___ N ___	
___ Cat. excluded	___ CCC permit		
<input checked="" type="checkbox"/> Conditional Use Permit (Major).....	<u>88641A</u>	<u>PD</u>	<u>2000⁰⁰</u>
<input type="checkbox"/> Design Review (Planning Commission).....	_____	_____	_____
<input type="checkbox"/> Environmental Submittal (EIA/Neg. Dec/EIR).....	_____	_____	_____
<input type="checkbox"/> General Plan Amendment.....	_____	_____	_____
<input type="checkbox"/> General Plan Interpretation.....	_____	_____	_____
<input type="checkbox"/> Specific Plan.....	_____	_____	_____
<input type="checkbox"/> Tentative Map.....	_____	_____	_____
<input type="checkbox"/> Variance (Major).....	_____	_____	_____
<input type="checkbox"/> Zoning Amendment.....	_____	_____	_____
<input type="checkbox"/> Zoning Code Interpretation	_____	_____	_____
Total Paid:			<u>2000⁰⁰</u>

Please complete the following:

Project Name: Lukacz
 Project Address: 3631 Manchester Ave. APN: 262-062-42 262-062-38
 Between El Camino Real And Pacific Ranch Drive
 (Street) (Street)

APPLICANT

Name: Cingular Wireless (Wireles Facillies Inc. as agent for)
 (Last, First, Middle Initial or Firm Name)
 Phone: 858-228-2636 Email: mike.sloop@wfinet.com Fax: 858-228-2010
 Address: 4 810 Eastgate Mall
 City: San Diego State: CA Zip: 92121

OWNER(S)

Name: Lukacz BM & ES 2003 Trust
 (Last, First, Middle Initial or Firm Name)
 Phone: 760-445-9907 Email: _____ Fax: _____
 Address: 3631 Manchester Ave.
 City: Encinitas State: CA Zip: 92924

#1 Exhibit 7A



CITY OF ENCINITAS
DISCRETIONARY PERMIT APPLICATION
 PLANNING AND BUILDING DEPARTMENT

A-1

505 South Vulcan Avenue
 Encinitas, California 92024
 (760) 633-2710

Application No. 06-001MWP/KAP
 Date of Application: 1/3/2006
 Community Area: OLIVENHALL

**** Appointment Required Prior to Submittal ****

PROJECT ADDRESS: 3631 Manchester Ave APN: 262-062-38

DEPARTMENT USE ONLY

FEE APPLICATION TYPE (check all that apply)	Code (PZ)	Amount
<input type="checkbox"/> Annexation (AN)	PZ	_____
<input type="checkbox"/> Coastal Development Permit (CO)	PZ	_____
___ Exempt..... ___ Regular permit Appeal Zone? Y ___ N ___		
___ Cat. excluded ___ CCC permit		
<input type="checkbox"/> Comprehensive Initial Study (in-house) (IS)	PZ	_____
<input type="checkbox"/> Conceptual Review – Planning Commission (CR)	PZ	_____
<input type="checkbox"/> Contract Admin: Comprehensive Initial Study (IC)	PZ	_____
<input type="checkbox"/> Contract Admin: EIR's (EC)	PZ	_____
<input type="checkbox"/> Contract Admin: Geotechnical Review (GC)	PZ	_____
<input type="checkbox"/> Contract Admin: Wireless Review (WC)	PZ	_____
<input type="checkbox"/> Design Review Planning Commission (<2500 Sq Ft) (D1)	PZ	_____
<input type="checkbox"/> Design Review Planning Commission (2501-10K Sq Ft) (D2)	PZ	_____
<input type="checkbox"/> Design Review Planning Commission (>10K Sq Ft) (D3)	PZ	_____
<input type="checkbox"/> Design Review Modification – Planning Commission (DP)	PZ	_____
<input type="checkbox"/> Final Subdivision Map Check (5+ lots) (FM)	PZ	_____
<input type="checkbox"/> Major Use Permit (MA)	PZ	_____
<input type="checkbox"/> Tentative Subdivision Map (TM)	PZ	_____
<input type="checkbox"/> Time Extension (XT)	PZ	_____
<input type="checkbox"/> Use Permit Modifications – Major (UA)	PZ	_____
<input type="checkbox"/> Variance – Planning Commission / SFR (VS)	PZ	_____
<input type="checkbox"/> Variance – Planning Commission / Other (VO)	PZ	_____
<input type="checkbox"/> Violation (VI)	PZ	_____

DEPOSIT TYPE (check all that apply)	Finance#	Code	Amount
<input type="checkbox"/> General Plan Amendment (no vote required)	_____	PD	_____
<input type="checkbox"/> General Plan Amendment (vote required)	_____	PD	_____
<input type="checkbox"/> Specific Plan	_____	PD	_____
<input type="checkbox"/> Zoning Code Amendment	_____	PD	_____
<input type="checkbox"/> EIR Consultant Deposit	_____	PD	_____
<input type="checkbox"/> Geotechnical Consultant Deposit	_____	PD	_____
<input checked="" type="checkbox"/> Wireless Consultant Deposit	<u>8900EN</u>	PD	<u>\$52000.00</u>

Total Paid: _____

ENGINEER / ARCHITECT

Name: Booth & Suarez
(Last, First, Middle Initial or Firm Name)

Phone: 760-434-8474 Email: _____ Fax: _____

Address: PO Box 6451

City: Carlsbad State: CA Zip: 92018

Of the Applicant, Owner, or Engineer, who is designated as the contact person? Applicant: c/o Michael Sloop, Wireless Facilities Inc.

****PLEASE ATTACH A DESCRIPTION OF THE PROPOSED USE / PROJECT TO THIS APPLICATION.**

Have you had a pre-application meeting? Yes No


If yes, name of planner:

I am able and intend to proceed with actual construction work and/or division of land in accordance with plans submitted herein within three months after approval. I acknowledge that an application for a tentative map or tentative parcel map is not deemed received pursuant to Government Code 65920 et seq. until environmental review is complete. All other application types are not deemed received until responses from interested agencies are received by the City.

I understand that if the project or any alternatives are located on a site which is included on any of the Hazardous Waste and Substances lists compiled by the Secretary for Environmental Protection pursuant to Section 65962.5 of the Government Code, then a Hazardous Waste and Substances Statement must be submitted with this application. (Information that must be included in this statement can be obtained from the Planning and Building Department.)

I further understand that all fees and deposits submitted with this application will be refunded only as provided for by the ordinances and regulations in effect at the time of the application submittal.

Signature on File


Signature, Owner or Authorized Agent (Attach letter of authorization)

12/29/2005
Date

Michael Sloop

Please Print or Type Signatory's Name

**APPLICATION SUPPLEMENT
CITY OF ENCINITAS
PLANNING AND BUILDING DEPARTMENT**



Design Review MUP/MIN
 TM/TPM Variance Other: _____

1. Project Description. (Describe proposed project. Describe what you are requesting).

_____ The proposed project would attach twelve (12) panel antennas (four (4) antennas per sector for three (3) sectors) to a balcony extension on an existing residential dwelling unit. The equipment area would be placed on the ground level directly below the balcony. The proposed extension would be a seamless wall covering both the antennas and the equipment. It would replicate the existing materials and color, and would blend with the style of the existing architecture.

- a. building sq. ft. 240 sq. ft. added garage sq. ft. none added
- b. exterior material/color no change
- c. window material/color no change
- d. door material/color no change
- e. roof material/color no change
- f. Landscaping Percentage no change
- g. Standards:

DENSITY	CODE REQUIREMENTS	PROJECT
Density Range Mid-Range	2.01 - 3.0 DU/Ac 2.5	no change
Net lot area	14,500	no change
Lot Width	80	no change
Cul-de-sac lot width		no change
Panhandle lot width		no change
Lot Depth	100	no change
Front Yard Setback	25	no change
Interior Side Yard Setback	10	no change
Exterior Side Yard Setback	10	no change
Rear Yard Setback	25	no change
Lot Coverage	35	no change
Building Height	22	no change
Off-Street Parking		no change
FAR		no change

Community Area _____ State Coastal Zone? Yes No

Number of Proposed Residential Units: Attached NA Detached NA

Number of Lots NA Acres: Gross 1.16 Net _____

Related Case?: Yes No If yes, provide previous Case No. _____

Are there any slopes of a 25% or greater gradient or bluffs on the site? Yes No

2. Existing Conditions. (Describe the existing conditions of the site: i.e., topography, road/alley conditions, access, vegetation, structures, fencing, lot size, drainage and the like).

_____The site contains one single family residence and one accessory dwelling unit on 1.16 acres. Assess to _____
the site is by private driveway from Manchester Ave. to the south. The property slopes gently to the west _____
and south-west and natural drainage follows the existing slope. Vegetation consists of primarily _____
ornamental landscaping with native vegetation on the westernmost portion of the property. There is no _____
fencing around the property. _____

3. Surrounding Conditions. (Describe the surrounding conditions: i.e., existing structures and relationship to project, # of units, lot sizes, vehicular access, topography, use type and the like).

_____This site has single family homes to the south, church parking to the west and vacant area with _____
single family homes beyond to the north and east. Access to the homes south of the site is from the _____
same driveway off of Manchester. The gently rolling topography slopes to the south west. General _____
lot sizes range from one half acre to several acres. _____

	General Plan Designation	Zoning Designation	Existing Use
Subject Parcel:	R3	R3	Single Family Residence
North:	R3	R3	Vacant
South:	R3	R3	Single Family Residence
East:	RR2	RR2	Vacant
West:	R3	R3	Church Parking

4. Project/parcel history. (Describe any past actions taken on this site or project or any other actions taken on development of the site.)

Previously built single family residence and accessory dwelling unit.

*5. Project Design. (Describe the design of the project and how it relates to the subject property and adjacent properties and uses).

The proposed project would add an extension onto the balcony of the existing accessory dwelling unit on this property. This extension would be seamless all of the distance to the ground. Two wooden doors would be placed at the bottom replicating the existing garage doors on the opposite side of the building. No equipment or antennas would be visible, and the addition would look the same as a standard residential add-on. Viewers from the west (primarily from a church parking lot) would see a very slightly enlarged building.

*6. View Preservation. (Describe what views are being maintained on adjacent properties and those that may be impacted by this project.)

No views would be "cut-off". Only those viewers from the west (primarily from the church parking lot) would see a very slightly enlarged building.

* NOTE: Items with an asterisk may not be appropriate for all applications. If you have questions regarding applicability to your project, please discuss with Planning Department staff.



PLANNING AND BUILDING DEPARTMENT

CITY OF ENCINITAS
505 South Vulcan Avenue
Encinitas, California 92024
(760) 633-2710

EVIDENCE OF LEGAL PARCEL

Applicant's Name Cingular Wireless (Wireless Facilities Inc as agent for) Telephone 858-228-2636

Mailing Address 4810 Eastgate Mall

City San Diego State CA Zip 92121

You are required to supply documentation that this property constitutes a legal parcel before the City can accept for filing any discretionary permits.

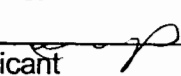
This form and associated evidence will be reviewed by the Planning and Building Department upon submittal of your application. A request for a Certificate of Compliance must be filed concurrently with or in advance of this application if the evidence presented is insufficient to determine this parcel as being a legal lot or determination will require substantial time to research.

If determined that the property is not a legal lot, no permit or other approval may be granted until corrective action has been completed.

Fees and deposits submitted with this application will be refunded only as provided for by the ordinances and regulations in effect at the time of the request.

Book 262 Page 062 Parcel 42

Signature on File

Signature of Applicant  Date 12/29/2005

(Please Print or Type Signatory's Name)

Michael Sloop for Wirelless Facilities Inc.



**CITY OF ENCINITAS
DISCLOSURE STATEMENT**

APPLICANT'S STATEMENT OF DISCLOSURE OF CERTAIN OWNERSHIP INTERESTS ON ALL APPLICATIONS WHICH WILL REQUIRE DISCRETIONARY ACTION ON THE PART OF THE CITY COUNCIL, PLANNING COMMISSION, AND ALL OTHER OFFICIAL BODIES.

The following information must be disclosed:

1. List the names of all persons having a financial interest in the application.

Brian & Emily Lukacz _____
Cingular Wireless _____

List the names of all persons having any ownership interest in the property involved.

Brian & Emily Kukacz _____

2. If any person identified pursuant to (1) above is a corporation or partnership, list the names of all individuals owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.

3. If any person identified pursuant to (1) above is a non-profit organization or a trust, list the names of any person serving as director of the non-profit organization as trustee or beneficiary or trustor of the trust.

4. Have you had more that \$250 worth of business transacted with any member of City staff, Boards, Commissions, Committees, and Council within the past twelve months? Yes No If yes, please indicate person(s).

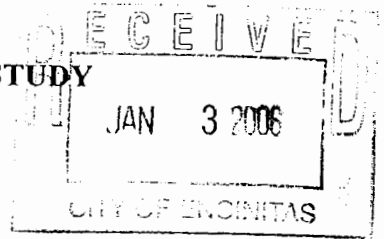
PERSON is defined as: "Any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, this and any other county, city and county, city, municipality, district or other political subdivision, or any group or combination acting as a unit."

(NOTE: Attach additional

Signature on File

Signature of Applicant 12/29/2005
Date
Michael Sloop
Print or type name of applicant

CITY OF ENCINITAS
APPLICATION FOR ENVIRONMENTAL INITIAL STUDY
AEIS



Date Filed _____ (to be completed by City)

Case Number _____ Fee Paid \$ _____

GENERAL INFORMATION

1. Name of project Lukacz
2. Name of applicant Cingular Wireless
Address 6925 Lusk Blvd, San Diego, CA
Zip Code ~~619-92924~~ 92121
Phone Number _____
3. Person to be contacted concerning this project:
Name Michael Sloop, Wireless Facilities Inc.
Address 4810 Eastgate Mall
City, State, Zip Code San Diego, CA 92121
Phone 858-228-~~1111~~ 2636
4. Address of the project 3631 Manchester Ave.
5. List all approvals and permits required for the project, including those required by city, regional, state and federal agencies.
Conditional Use Permit

PROJECT SITE

6. Existing land use (s) Residential
7. Are there any structures on the property? If answer is yes, what type of structures are they
Two: Single Family Dwelling, Accessory Dwelling Unit
Will they be demolished? No
8. Existing zoning R-3
9. Land use designation _____
10. Number of acres 1.16 or number of square feet _____
11. Percent of site previously graded or cleared approx 75%
12. Does the project site contain any of the following features:
Rock Outcroppings _____ Creeks/Creekbeds _____ Scrub Growth X
Oak Trees _____ Torrey pines _____ Other Significant Trees _____
Any Slopes between 25-40% _____ Any Slopes over 40% _____

13. Is the site being used for agriculture? If yes, what is being grown? No
14. What have been the previous uses of the site (if any)? Residential
15. What type of vegetation is on the project site? Ornamental + Native

PROJECT DESCRIPTION

15. Proposed zoning NA
17. Proposed land use designation NA
18. Proposed use of site Add on fully enclosed wireless telecommunication site

No. of buildings 2 Height ~ 22' stories 2

Please answer the questions for either section A or section or Section B below.

A. If it is a residential project, please answer the following:

Number of units 2

Type of units -circle one single-family detached, single-family attached, multi-family, mobile home park.

Breakdown of proposed land use:

Land Use	No. of Acres	% of Site
<u>Residential lots streets</u>		<u>75%</u>
<u>Open Space/Recreation Other (specify what)</u>	<u>Open Space</u>	

B. If it is a commercial, institutional or industrial project, please answer the following:

Breakdown of land use:

<u>Land Use</u>	<u>No. of Acres</u>	<u>% of site Buildings</u>
Streets	_____	_____
Open Space/Recreation .	_____	_____
Other (specIfy what)	_____	_____

Total floor area _____ square feet

Facilities will be open from NA a.m. to _____ p.m. on weekdays

Facilities will be open from NA a.m. to _____ p.m. on weekends

Total number of employees 0 Each shift NA

Number of clients, customers or users each weekday _____ Unmanned Facility

Types of uses anticipated Wireless Telecommunication Site

Will industrial waste be discharged? If yes, attach a discussion of the provisions for disposal.

Will the project generate noise which could be heard outside the project (other than traffic noise)? No

During what hours will deliveries be made? NA ~~Real~~ No

Will the project result in the use or discharge of hazardous materials (including chemicals, paints, gasoline, etc.)? No If yes, attach a discussion of the pollutants mandated for control and any special permits required.

Will the project uses generate smoke or dust? No
If yes, discuss which uses and quantities _____

Could the project result in the emission of any substances, odors, glare or electrical energy? Radio Signal
If yes, attach a discussion of how these emissions will be controlled.

19. Proposed grading

When is grading proposed to occur? NA

What measures will be taken to reduce dust during grading? NA

Cubic yards of cut - Cubic yards of fill -

Volume of fill to be: imported - exported -

What is the source of the fill or the location where the earthen material will be taken? (be specific)

Area to be graded? - Acres % of site -

Proposed cut slope ration: - Fill slope ration: -

Maximum height of: cut slope - feet; fill slope - feet

Retaining wall (s): length - feet

Height - feet

Slope Analysis: Please include a slope analysis for proposed grading in graphic form, using the slope categories shown in the table below, and fill in the table:

Slope Category	No. of Acres		Percent of Site	
	Pre-Project	Post-Project	Pre-Project	Post-Project
0-25%	NA			
25-40%				
>40%				

Does the project propose to cut or fill, or alter in any way, a creek channel or lagoon? No Give the name of the water body (if it has one) and describe any proposed channelization.

20. Geology – please attach 2 copies of the preliminary geologic report to your application.

Are there any faults onsite? NA

Where is the nearest fault? —

Are there ancient landslides onsite? No

Are there unstable soils onsite? No

21. Hydrology/Water Quality

Does runoff from the site drain toward a lagoon or beach? Yes

If yes, specify area San Elijo

Will the existing drainage pattern be altered? No

Is a storm drain system included as part of the project? If not, where will drainage go? No change

What drainage control facilities are included in the project (if any)? None

What erosion/sedimentation control measures (if any) have been included in the project? None necessary

If there are erosion/siltation control structures included in the project, who will maintain them after the project is constructed? NO

22. Traffic Circulation/Parking

Is the project within 500 feet of an existing or planned future major roadway? NO

Is the project within 500 feet of a railroad track? NO

What street and parking improvements are proposed as part of the project? None

Number of off-street parking spaces to be provided NA

Number of average daily automobile trips expected to be generated by the project 1 per month

23. Offsite Improvements

Discuss any offsite improvements that will be part of the project.

Wireless Telecommunication site

24. Recreation

Describe any recreation facilities or areas that are part of the project NA

If the project includes trails, will they be paved? NA

Who will maintain the trails? NA

Certification

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial information presented are true and correct to the best of my knowledge and belief.

12/29/2005
Date

Signature on File

Signature
For Wireless Facilities Inc.
rep. Cingular Wireless

VACANT LAND

10'-0" SIDE YARD SETBACK

10'-0" SIDE YARD SETBACK

N89°48'40"W 210.34'

25'-0" REAR YARD SETBACK

EXISTING OPEN SPACE EASEMENT WITH NATIVE VEGETATION DOCUMENT #2020-0677694 RECORDED FEB. 15, 2020

38% SLOPE

OPEN COURTYARD

VACANT LAND

VACANT LAND

WOODRIDGE 224.01'

WOODRIDGE 224.13'

SECTOR 6 AZIMUTH 270°

EXISTING SINGLE FAMILY RESIDENCE

110'-0"

35% SLOPE

SECTOR 8 AZIMUTH 270°

EXISTING GARAGE BUILDING WITH ACCESSORY LIVING UNIT

C. CIRCULAR WIRELESS ANTENNAS MOUNTED ON TRANSPARENT SCREENS INSIDE PROPOSED UNIT MOUNTED DIRECTLY BEHIND ANTENNAS G. OR EQUIPMENT ROOM. RT. TRANSPARENT MATERIAL SHALL BE DETAILED, TEXTURED AND TO MATCH EXISTING BUILDING. SEE SHEET A-2 OR EXTERIOR ELEVATIONS

10'-0" SIDE YARD SETBACK

25'-0" FRONT YARD SETBACK

ASPHALT CONCRETE

N85°48'02"W 210.77'

SECTOR 4 AZIMUTH 180°

EXISTING SHED WITH TILE ROOF

30'-0"

15'-0" TO 16'-0" PAVED ACCESS ROAD (WIDTH VARIES)

D. CIRCULAR WIRELESS TELECOMMUNICATIONS ANTENNA ROOM AT GRADE WITH OUTDOOR BALCONY SEE SHEET A-1 FOR EQUIPMENT & ANTENNA

EXISTING COVERED TRELLIS AREA

EXISTING SINGLE FAMILY RESIDENCE & GARAGE ON ADJACENT PARCEL

ACCESS ROAD

ADJACENT PROPERTY LINES

20'-0" FASMENT

CINGUL PROCL

SITE PLAN



SCALE 1" = 20'

BOUNDARY AND NOT CASE NUMBER RESE TO F

Exhibit 7
A.1.(a)

6 R 15005 Prop 1

accessory structure an illegal commercial use, the project cannot be approved as contemplated.

3. The Proposed Project Violates Property Deed Restrictions

On August 18, 2000, the City approved a Design Review Permit and Coastal Development Permit (project 98-156 ADR/CDP) authorizing development encroachment into steep slope areas on the subject property. As a condition of approval, the owner caused to be recorded a deed restriction (Document #2000 - 0440375) requiring compliance with the terms and conditions of the development permits. A Specific Condition of approval states:

SCA Consistent with the Hillside / Inland Bluff Overlay standards (M.C. Sec. 30.34.030.B.6), prior to the issuance of a grading permit for the project, the remainder of the areas on the property having 25% slope and greater, which are not impacted by grading, shall be placed within an open space conservation easement, or shall be deed restricted, **to preclude any future development or grading of the slopes.**

(Emphasis added) The photograph below shows the side of the accessory structure that would have to be expanded to accommodate equipment necessary to run the wireless facility.



As is clearly evident, any expansion of the accessory structure will require additional grading into the open space, resulting in a violation of the prior conditions of approval and deed restriction. Hence, the project cannot be approved as contemplated.

Sincerely,

Coast Law Group LLP

Signature on File

Exhibit 7
A. 1. (b)

ITEM - 3

P.C. Agenda Report
9/21/06

TO: Planning Commission
VIA: Bill Weedman, City Planner
FROM: Planning and Building Department
Diane Langager, Senior Planner
Kelly Morgan, Assistant Planner

SUBJECT: Public hearing to consider a Major Use Permit and Coastal Development Permit for the installation of a telecommunications facility consisting of twelve (12) antennas. The antennas would be mounted on the side of an existing balcony which would be extended to accommodate the antennas. The antennas would be shielded behind an RF transparent wall which would be painted and textured to match the existing structure. The installation of four equipment cabinets located within a building below the balcony is also being proposed. The subject property is located in the Residential 3 (R-3) Zone, the Hillside/Inland Bluff Overlay Zone, the Scenic Visual Corridor and within the Coastal Appeal Zone. **CASE NUMBER:** 06-001 MUP/CDP; **APPLICANT:** Cingular Wireless, Wireless Facilities, Inc; **LOCATION:** 3631 Manchester Avenue (APN 262-062-38).

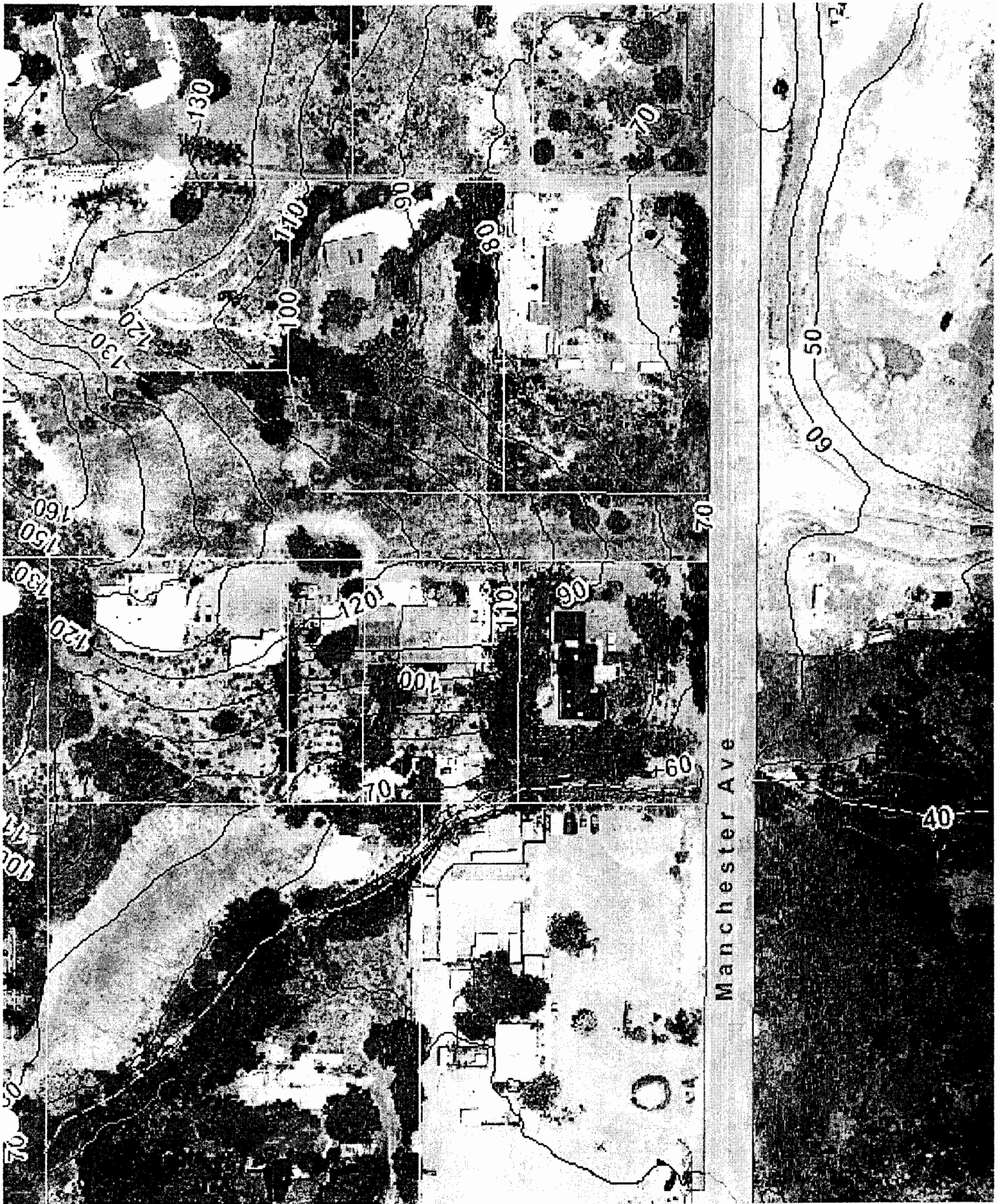
BACKGROUND: The project site is located at 3631 Manchester Avenue. The property is accessed off of a private easement from Manchester Avenue. The site is developed with a single-family residence and an accessory unit. The Planning Commission approved a Design Review Permit and Coastal Development Permit on February 25, 1999 (Case No. 98-156 ADR/CDP), which authorized the encroachment into steep slope areas for the single-family residence, accessory unit and associated grading. Areas of 25% and greater were placed within an open space easement. The subject project does not propose further encroachment into steep slope areas, nor does it encroach into the open space easement. The proposed addition would be located in a previously graded area as approved by Case No. 98-156 ADR/CDP. A small portion of the northwest corner of the site is located in the Coastal Commission Appeal Jurisdiction. No aspect of the proposed project encroaches into that area. The surrounding area consists of the Kingdom Hall Church (zoned R-3) to the north, single-family residential (zoned R-3) to the west and south; and single-family residential (zoned RR-2) to the east.

REQUIRED PERMITS AND FINDINGS: The proposed wireless telecommunications facility as described in the attached project description (Exhibit PC-B) is allowed in the R-3 zone with approval of a Major Use Permit. The application is subject to Section 30.34.030 (Hillside/Inland Bluff Overlay Zone), 30.34.080 (Scenic Visual Corridor Overlay), Chapter 30.74 (Use Permits), Chapter 30.80 (Coastal Development Permit), and Chapter 9.70 (Wireless Communications Facilities) of the Encinitas Municipal Code. The required findings to approve a Major Use Permit and Coastal Development Permit application may be found in Sections 30.74.070 and 30.80.090 respectively, of the Municipal Code. Staff suggests to the Planning Commission that the findings to approve the subject application can be made as discussed in the attached draft Resolution of Approval (Exhibit PC-A) in Attachment "B". Additional discussion and evidence in support of approval can be found in the Wireless Communication Facilities Discussion (Exhibit PC-C) and the Third Party Wireless Reports from Kramer Firm Inc. and Dr. Bushberg (Exhibit PC-H).

Site is built on
38% slope



EXHIBIT
7
A.I. (d)



A. 1. (d)

ACCESSORY UNIT
EXTERIOR WALL
AT 38% SLOPE

GRADING LESS
THAN 4 FEET
BEFORE STEEP SLOPE

PROJECT
SITE

Exhibit
(e)



Cingular Proposed Site:

**NS-033
Lukacz**

RECEIVED

JAN 3 2006

06-001 MUP/CDP
Picture of South-West
Elevation from
Manchester Ave
Using a
"Telephoto" Camera
Lens Setting

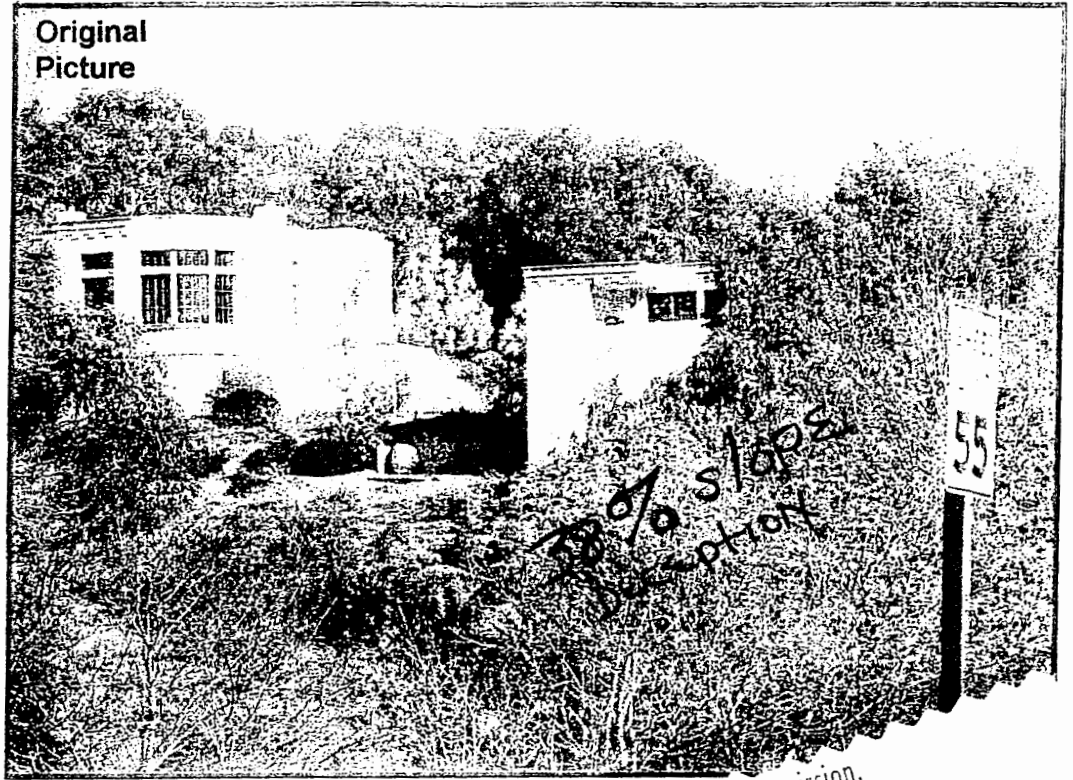


Photo-Sim

Addition for Antennas and Equipment

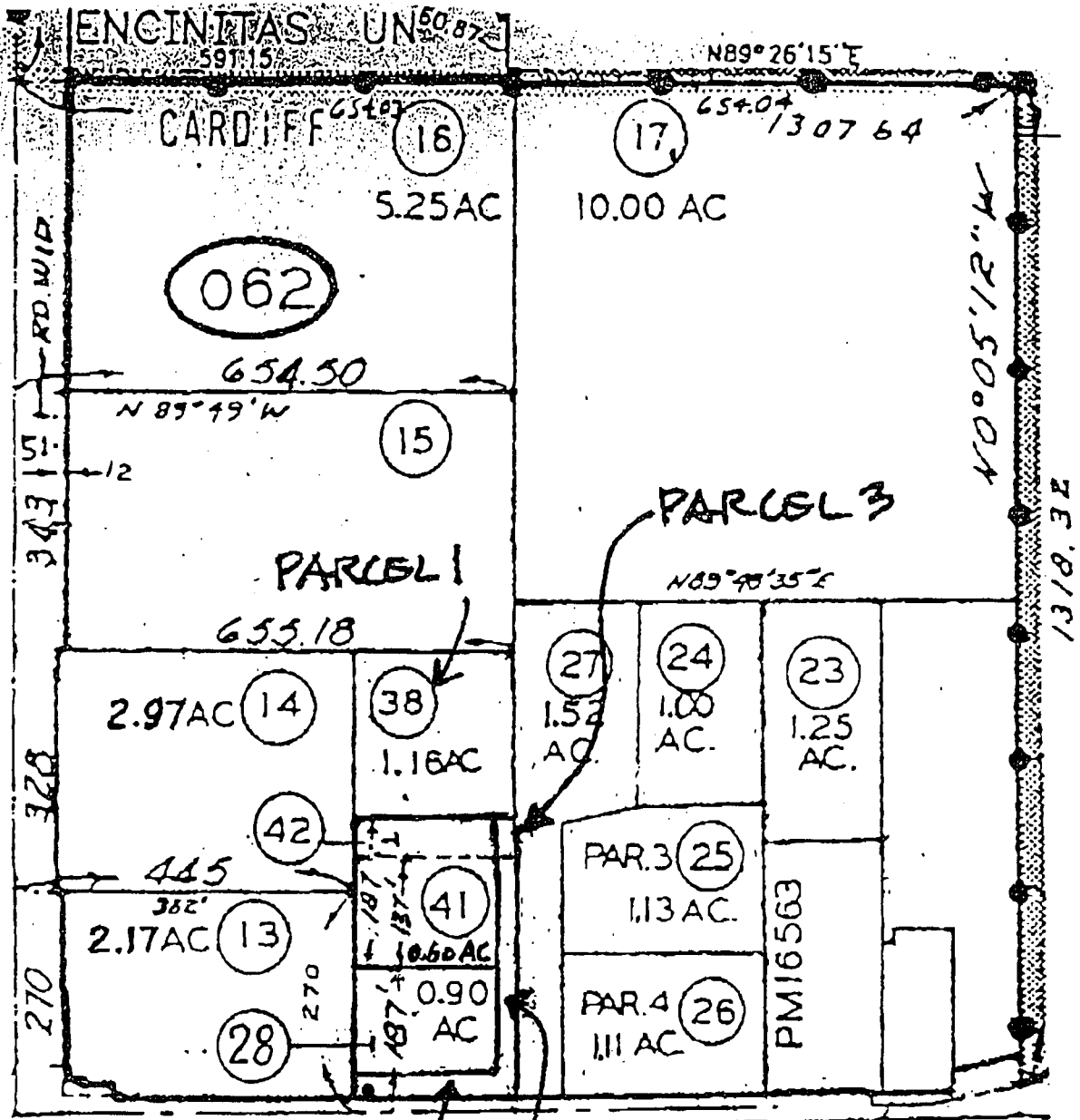


*Client's Submission.
I have shown above you believe
the area behind the Accessory Unit
slope on which the unit was built.
this property is not a highway
sign is NOT as provided on the land
between!*

so you may believe site is close to Highway 2005
Exhibit 7

2788 EXHIBIT "A" PAGE 3

REAL
CAMINO
EL



MANCHESTER AVE

NORTH

LUKACZ OPEN SPACE EASEMENT

2544

EXHIBIT "A"

LEGAL DESCRIPTION

THAT PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 13 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 19, 1881, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE WESTERLY LINE OF SAID SECTION 24, DISTANT THEREON NORTH 0°08'23" EAST, 598.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 24, BEING POINT "A" OF THIS DESCRIPTION; THENCE ALONG SAID WESTERLY LINE SOUTH 0°08'23" WEST, 328.00 FEET; THENCE PARALLEL WITH THE SOUTHERLY LINE OF SAID SECTION 24, SOUTH 89°49'00" EAST, 445.00 FEET; THENCE PARALLEL WITH THE WESTERLY LINE OF SAID SECTION 24, NORTH 0°08'23" EAST, 104.00 FEET, MORE OR LESS, TO THE NORTHERLY LINE OF THE SOUTHERLY 374.00 FEET OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24 AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°08'23" EAST, 224.00 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE WHICH BEARS SOUTH 89°49'00" EAST FROM POINT "A" ABOVE DESCRIBED; THENCE SOUTH 89°49'00" EAST, 210.36 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24; THENCE ALONG SAID EASTERLY LINE, SOUTH 0°01'03" WEST, 48.00 FEET; THENCE NORTH 89°49'00" WEST, 60.39 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 100.00 FEET; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°02'37", 157.16 FEET; THENCE SOUTH 0°08'23" WEST, 75.92 FEET TO THE NORTHERLY LINE OF THE SOUTHERLY 374.00 FEET OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE ALONG SAID NORTHERLY LINE, NORTH 89°49'00" WEST, 50.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 0.483 ACRES, MORE OR LESS.



Signature on File

A handwritten signature in black ink, appearing to be "P.C. Golding", written over a horizontal line.

PETER C. GOLDING

LS 4768

Exhibit 7
A. 2. (b)



GARY L. PRYOR
DIRECTOR

SAN MARCOS OFFICE
151 E. CARMEL STREET
SAN MARCOS, CA 92078-4309
(760) 471-0730

EL CAJON OFFICE
200 EAST MAIN ST. - SIXTH FLOOR
EL CAJON, CA 92020-3912
(619) 441-4030

County of San Diego

DEPARTMENT OF PLANNING AND LAND USE

5201 RUFFIN ROAD, SUITE B, SAN DIEGO, CALIFORNIA 92123-1666
INFORMATION (858) 694-2960
TOLL FREE (800) 411-0017

CERTIFICATE OF FEE EXEMPTION CALIFORNIA DEPARTMENT OF FISH AND GAME (De Minimis Impact Finding)

**Project Name
and Number(s):**

Cingular Wireless – Bonita Highlands Telecommunications Facility; P77-099W⁶

Location:

The project site is located at 4570 Paseo de la Vista in the Sweetwater Community Planning area in the unincorporated portion of San Diego County.

Description:

This is a request for Major Use Permit Modification (P77-099W⁶) to authorize the construction of a wireless telecommunications facility for Cingular Wireless at 4570 Paseo de la Vista in the Sweetwater Community Planning area. The project consists of 12 panel antennas, four antennas each in three antenna arrays. The antennas will be façade mounted on the south and east exterior of the larger existing water tank and on the north side of the smaller water tank. The supporting equipment will consist of eight equipment cabinets with an eight-foot high concrete masonry unit (CMU) noise wall. Surrounding land uses consist of variable residential to the north, south, east, and west. The proposed project is subject to the Regional Land Use Element Policy 1.1 Current Urban Development Area (CUDA) and General Plan Land Use Designation (1) Residential.

Exemption Findings:

1. The San Diego County Department of Planning and Land Use has completed an Environmental Initial Study for the above referenced property, including evaluation of the proposed project's potential for adverse environmental impacts on fish and wildlife resources.
2. Based on the completed Environmental Initial Study, the Department of Planning and Land Use finds that the proposed project will not encroach upon wildlife habitat area, will have no potential adverse individual or cumulative effects on wildlife resources, and requires no mitigation measures to be incorporated into the proposed project which would affect fish or wildlife.

Certification:

I hereby certify that the public agency has made the above findings and that the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

Signature on File

(Chief Planning Official)

Title: Director of Planning
Lead Agency: County of San Diego
Date: 9-12-06

PC06\09-22\P77099-FEE;jcr

County Noise Study
FOR SAME CINGULAR
- - - - -

Exhibit 7
A.3.(a)

P05-004

3-60

RESIDENTIAL 5.16 ACRE PARCELS
SURROUNDED BY AGRICULTURAL

- 32 -

August 3, 2006

CEQA Initial Study,
P05-004, Log No. 05-08-006
634 DEER SPRINGS RD, SAN MARCOS
Discussion/Explanation:

Less Than Significant Impact: The project is a proposed Cingular Wireless facility with the installation of eight Ericsson RBS 2106 equipment cabinets which will be enclosed within a 10-foot high concrete wall enclosure. Based on a site visit completed by Eilar Associates on July 11, 2005, and as described in the Noise Analysis prepared by Eilar Associates and dated March 13, 2006, the surrounding area zoned A70 and is occupied by residential and agricultural use. The project will not expose people to potentially significant noise levels that exceed the allowable limits of the County of San Diego General Plan, County of San Diego Noise Ordinance, and other applicable standards for the following reasons:

General Plan – Noise Element

The County of San Diego General Plan, Noise Element, Policy 4b addresses noise sensitive areas and requires an acoustical study to be prepared for any use that may expose noise sensitive area to noise in excess of a Community Noise Equivalent Level (CNEL) of 60 decibels (dBA). Moreover, if the project is excess of CNEL 60 dB(A), modifications must be made to project to reduce noise levels. Noise sensitive areas include residences, hospitals, schools, libraries or similar facilities where quiet is an important attribute. Based on a Noise Analysis prepared by Eilar Associates and dated March 13, 2006, project implementation will not expose existing or planned noise sensitive areas to road, airport, heliport, railroad, industrial or other noise in excess of the CNEL 60 dB(A). Therefore, the project will not expose people to potentially significant noise levels that exceed the allowable limits of the County of San Diego General Plan, Noise Element.

Noise Ordinance – Section 36-404

Based on a Noise Analysis prepared by Eilar Associates and dated March 13, 2006, non-transportation noise generated by the project is not expected to exceed the standards of the County of San Diego Noise Ordinance (Section 36-404) at or beyond the project's property line. The project site and the adjacent surrounding areas are zoned A70 and is occupied by residential and agriculture use. The project will meet the more restrictive (nighttime 10:00 pm – 7:00 am) noise level of 45 dBA at all the property lines.

The proposed project consists of the installation of eight Ericsson RBS 2106 equipment cabinets which will be enclosed within a 10-foot high concrete wall enclosure. Ambient noise conditions from existing onsite (un-identified) cellular equipment will generate sound levels of 57.3 dBA at reference distance of 5 feet. Calculations show that ambient noise impacts on the eastern property line will be as high as 37.0 dBA resulting in sound levels 8 dBA below the County ordinance. Due to the proximity of the proposed Cingular (Ericsson) cabinets and eastern property line, existing on-site cellular equipment will be considered as having no significance the proposed project. The proposed Ericsson equipment cabinets are located approximately 70 feet north of an on-site existing residence and 97 feet from the eastern property line. Based on the Eilar noise analysis, sound levels generated from the proposed Ericsson equipment cabinets

COUNTY NOISE STUDY FOR CINGULAR EQUIPMENT



NG

12 ANTENNAS
EQUIPMENT
ON WATER TANK

SS-701-03
Ramona Water District
Country Estates Water Tank
23401 Calistoga Place
Ramona, CA 92065

cingular
WIRELESS

P.06-027
→ RBS-2106 CAB.
→ 12 ANENNAS
6FT CONCRETE
BLOCK RETAINING
WALL
DID NOISE STUD

Antenna site noise monitoring
was conducted on the water tank
at the existing water tank
- A noise study was conducted
on the site.

NOISE STUDY
+ WALLS FOR
SAME CINGULAR
EQUIPMENT

PROPOSED

Photosimulation of proposed telecommunications site

Kerry Kusiak

From: Ted Marioncelli [ted.plancom@sbcglobal.net]
Sent: Wednesday, March 12, 2008 8:04 AM
To: Kerry Kusiak
Subject: 06-001 Lukacz AT&T -- Trenching detail for your review
Attachments: E2 Sheet trenching detail.pdf

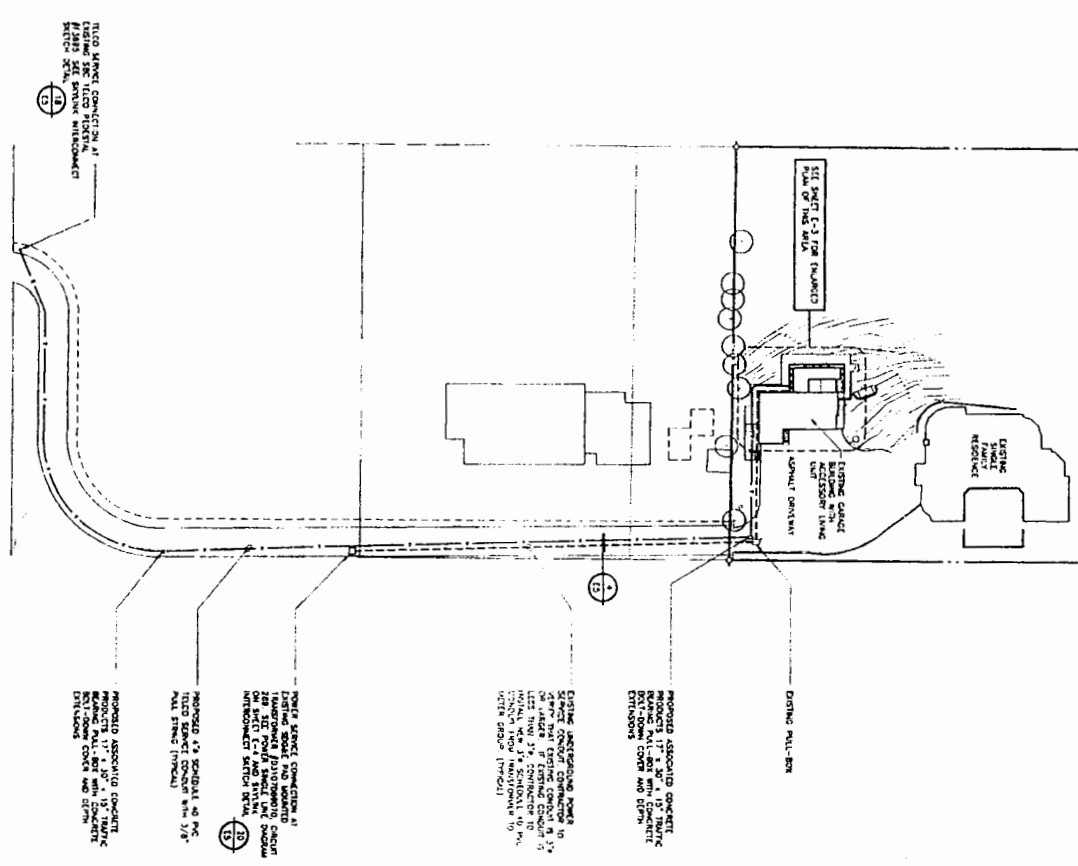
Kerry,

Attached is the trenching detail for the Lukacz property. If you have any questions, you should probably call Robert Suarez at Booth & Suarez Architects; phone number is 760-434-8474. This should clear things up. Thanks.

Ted Marioncelli
Plancom, Inc.
760-807-1850

WJ
(-) exhibit

Exhibit B(2)



UTILITY ROUTE PLAN



BOOTH & SHARF
 ARCHITECTURE & PLANNING
 1000 10TH AVENUE, SUITE 1000
 SAN DIEGO, CALIFORNIA 92161
 TEL: 619-594-1000
 FAX: 619-594-1001

PREPARED FOR
x cingula
 WIRELESS

6925 LISK BOULEVARD
 SAN DIEGO, CA 92121

APPROVALS

TITLE	DATE
DESIGN	DATE
CONSTRUCTION	DATE
SITE ACQUISITION	DATE
CONTRACT APPROVAL	DATE
LANDING APPROVAL	DATE

PROJECT NAME
 LUKACZ

PROJECT NUMBER
 NS0033-03-B1

3531 MANCHESTER AVE
 ENCINITAS, CA 92024
 SAN DIEGO COUNTY

DRAWING DATES

06/21/06	PRELIMINARY
06/27/06	FINAL CD REVIEW
08/23/06	FINAL CD REVIEW (1)

SHEET TITLE
 UTILITY ROUTE
 PLAN

PROJECT: P:\Engineering\031514\031514.dwg
 SHEET: 11

E-2



City of Encinitas
505 South Volean Avenue
Encinitas, California 92024-3633
Tel 760-633-2600 • Fax 760-913-2226
TDD 760-633-2700 • www.ci.encinitas.ca.us

PLANNING DEPARTMENT
CONTACT: 760-633-2710

Fire
Building
Planning
Engineering

ACCESSORY UNIT REGULATIONS

CHAPTER 30.48.040V

See 77

Exhibit 7c

ACCESSORY UNIT REGULATIONS

(Section 30.48.040V)

V. ACCESSORY UNITS. The City finds that there are many benefits associated with the creation of accessory residential units on existing single family lots, which include (Ord 93-07):

- Providing affordable housing for low and moderate income households without public subsidy while maintaining the general character of a single family neighborhood.
- Providing a cost effective means of serving development through the use of existing infrastructure.
- Providing a means for homeowners of new or existing homes to meet loan payments.
- Providing security for senior homeowners.

Accessory residential units are permitted subject to the following regulations (1-9):

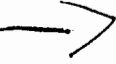
1. On parcels zoned for residential single family dwellings as a permitted use, one attached or detached accessory unit may be constructed. Attached and detached units shall be permitted by right.
2. Attached and detached accessory units must maintain the general character of a single family residential neighborhood, and maintain the character as a single family dwelling as determined by the Director. Architectural design, building materials, and exterior colors shall be compatible with the principal residence.
3. Maximum living area of an accessory unit shall not exceed 750 square feet or 30 percent of the living area of the principal residence, whichever is less. An accessory unit of 400 square feet is permitted regardless of the living area of the principal residence.
4. Accessory units shall be provided with full kitchen facilities, standard height limits, lot coverage, floor area ratio, and other requirements for residential zones (Ord 97-17).
5. One off-street parking space shall be provided for the second unit in addition to any off-street parking requirements for the principal unit. The primary unit may

4. Accessory units shall be provided with full kitchen facilities, standard height limits, lot coverage, floor area ratio, and other requirements for residential zones (Ord 97-17).
5. One off-street parking space shall be provided for the second unit in addition to any off-street parking requirements for the principal unit. The primary unit may utilize tandem parking, and the parking space for the accessory unit may be located in the required front yard.
6. Properties currently served by a septic system shall be required to connect into the sewer system provided a sewer line exists in the street or alley immediately adjacent to the property.
- ~~7. Accessory units shall be used as a dwelling unit only, and no businesses other than home occupations shall be conducted from or in the second unit.~~
8. Accessory units shall be permitted on a lot or parcel having a guest house or accessory living quarters. (Conversion of such quarters into an accessory unit is permitted provided all zoning and building code requirements are met.) However, only one detached accessory structure for residential occupancy is permitted.
9. Prior to issuance of a building permit for an accessory unit, a covenant shall be recorded between the Owner and the City of Encinitas agreeing to the terms stipulated in this ordinance.

HMM

CHAPTER 9.70WIRELESS COMMUNICATION FACILITIES

(Ordinance 2001-11)



9.70.010 Title and Purpose This Chapter shall be known as the Wireless Communications Facilities Ordinance. The purposes of this Chapter are to assure that wireless communications networks are completed with the fewest possible facilities, in the least visible fashion, and with the least disruptive impact on the neighborhoods and the communities within the City of Encinitas. The regulations set forth in this Chapter are adopted to serve, protect and promote the public health, safety and welfare, and to preserve and enhance the aesthetic qualities of the City of Encinitas, as set forth in the Goals, Objectives and Policies of the General Plan, while concurrently allowing for the orderly and efficient development of a wireless communications infrastructure in accordance with the Federal Telecommunications Act of 1996.

9.70.020 Applicability This chapter applies to all wireless communications facilities existing and proposed to be located within the corporate limits of the City of Encinitas California. Including personal wireless services as defined by the TCA and licensed by the Federal Communications Commission, including, but not limited to, the types commonly known as cellular, personal communications services ("PCS"), specialized mobile radio ("SMR"), enhanced specialized mobile radio ("ESMR"), paging, land based repeaters for satellite broadcast services, micro-cell antennae and similar systems which exist now or may be developed in the future and exhibit technological characteristics similar to them. This ordinance shall also apply to wireless communication facilities within public rights-of-way except as prohibited by State Law.

Wireless communications facilities proposed to be located in Encinitas may be constructed only pursuant to a permit issued by the City in accordance with this Chapter and shall comply with Municipal Code Title 30 "Zoning" and all other applicable laws and regulations.

This Chapter does not apply to hand held mobile phones, satellite dishes, amateur radio facilities, receiving antennae for AM and FM radio and television, which may be governed by other law including, but not limited to, Municipal Code Chapters 23.08, 30.16 and 30.48.

9.70.030 Definitions For the purposes of this Chapter, the following definitions apply. These definitions shall be adapted to the context for appropriate grammatical tense, number, case and gender.

Exhibit D.1.(a)

January 23, 2007

Kevin P. Sullivan, Esq.
401 E. Street, Suite 2400
San Diego, CA 92101

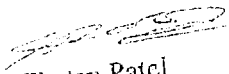
Re: Proposed Cingular Wireless Facilities at 3651 Manchester Avenue, City of Encinitas; Lukacz Residence

Dear Mr. Sullivan:

This letter provides information relating to the proposed Cingular Wireless ("Cingular") telecommunications facilities to be located at 3651 Manchester Avenue in the City of Encinitas.

Background and Experience

I am currently the Radio Frequency (RF) Manager for Cingular's San Diego Area. I oversee the technical requirements involved in Cingular's provision of its wireless telecommunication signal. During my employment at Cingular, I've read and/or reviewed hundreds of analyses for RF coverage for telecommunications sites.


Chetan Patel
RF Manager, San Diego

After extensive research and review, the Lukacz property was chosen as the best site and design that meets Cingular's radio signal coverage objectives and has the least impact on the surrounding community. The primary factors for selecting the Lukacz site were its elevation, surrounding topography, and its location near El Camino Real and Manchester Avenue. The computer generated graphic to be provided to the City of Encinitas in January 2007 labeled "Signal Coverage AFTER Proposed Site Implementation" shows the expected coverage such a site would provide. The site would provide coverage to all of the currently unserved portion of El Camino Real and approximately 1.2 miles of the unserved portion of Manchester Ave. (Due to the existing topographic relief in this area, the easternmost unserved portion of Manchester Ave. cannot be reasonably served with a site that would cover the prime target area. Theoretically, another site would be required to serve that eastern portion of Manchester Ave.) The Lukacz facilities would provide significantly increased coverage for "in building" and "in vehicle" services, and would substantially reduce areas with materially degraded signal or functionally no coverage. The proposed Lukacz site would also provide the needed coverage to the religious sites, businesses, and Mira Costa College along with the residences on the hillsides bordering El Camino Real.

FROM
BODY OF
LETTER

Original Alternative Site Analysis -

Exhibit D.1.(b)

NOTE:
Lukacz site does NOT constitute the "fewest possible facilities" as both Cingular and RF Consultant Kramer stated before City Council at the second appeal hearing.
RF Manager for Cingular clearly states another site would be required for requested coverage.

IMPORTANT PLANNING COMMISSIONER COMMENTS

Meeting of 12/20/07

Commissioner Felker questions Applicant Attorney Sullivan"

"When you are going over these alternative sites you mentioned Temple Solel and you said if you used that you would need multiple sites. How many other locations? One more or two more and why would that not be an alternative?"

Sullivan replied: "Well we would need at least one more site to achieve connectivity of coverage up to the North on El Camino Real and we would probably need another site to achieve the same coverage on Manchester to the east."

Commissioner Felker: "You are already not getting good coverage on Manchester to the east with this proposal. What would the other site be in conjunction with Temple Solel."

(Attorney then speaks of Somerford Place)

Commissioner Felker: "Why wasn't that more considered?"

Sullivan, "Well for one that would require two sites as opposed to one which would not seem to comply with the City's regulations that required us to minimize the number of cell sites."

Commissioner Felker: "Did the City actually tell you that you could not have two sites?"

Sullivan, "No, they didn't."

Commissioner McCabe: "That's our job, by the way, to define that."

Commissioner Chapo stated during discussion:

"I feel like the exploration of other sites hasn't been exhausted. I feel like we have been turned on to numerous sites here that could also serve, especially since I've heard here that **we're not obliged to provide the very best site that provides the very best coverage for the company**, but I would think one that is reasonable. We were shown a pattern in a couple of different sites that probably give reasonable coverage. And we were not shown a couple of different sites that could be possible. And I think we were also told a couple of things about potential heights of some of these sites that was misleading.....**I think there was a lot of information that wasn't completely accurate.** So I'm not satisfied that everything has been looked at commercially that would bring us down to a residential site as being the very last choice. I think that we still have a good number of choices, perhaps they are not going to perform as well as the site they have in question and, even at that, I still have questions myself that even if you said that residential sites are great, how do I know that there aren't a couple of other residential sites that would be even superior to this one. The question is just a matter of as someone said before, *"ya send out a questionnaire and ya got a taker and so we're going to build a case around that."*

Commissioner McCabe stated during discussion:

"They haven't presented anything to me to suggest that this is still an acceptable site."

"The applicant was supposed to come back to us with alternate sites. **They've come back with alternatives sites that to me seem perfectly reasonable.** Those should be considered. It may not be the best business deal or the fastest for them to get going, but they seem perfectly reasonable.

Their determination, they felt like it did not comply with the City ordinance, but I don't know of anything in the City ordinance that limits the actual number of cell sites to serve this other site and as Commissioner Chapo said, **"There's nothing in the code that says that we have to provide the best coverage for a cellular company."**

Deceptive

LUKACZ NEEDS MORE THAN ONE SITE +
Cingular submitted AN ALTERNATIVE FOR TWO —
BUT Appealed ON BASIS LUKACZ WAS ONLY ONE
Exhibit D.1.(c)

MACRO 12 Antenna Site

NOTE the density around Cingular's new 6 antenna site at the Christian Fellowship as compared to the density of the applicant Lukacz Site. Why then is it necessary for a **12 antenna site** to be wrapped around the balcony of an **occupied** residential living unit?

This amounts to **ZERO** tolerance for the residents. It is only aprx **27 feet** from the neighboring property.

There was NO noise study submitted with this "0" tolerance application.

In addition, Cingular intends to use my private residential property and the Olvera property as their access for this **commercial** venture.

FACT: Commissioner McCabe stated at the 12/20/07 hearing:

"Bottom of the list is residential. In fact it just blatantly says that is the last place a cell site should go. It is pretty clear in terms of residential use."

"Even though these things are semi-automated they do receive traffic so it is somewhat of a commercial operation and I think this was one of the things that was taken into consideration. There's trucks that go there and all kinds of maintenance that are done too, which is one of the reasons to avoid the residential."

There is something terribly wrong with this picture

FACT: FYI Number of Antennas approved.

Trabert Ranch Road	Sprint approved for 2
Somerford Place	Sprint approved for 3
Cardiff Sports Park	Sprint approved for 3
Cardiff Sports Park	Nextel approved for 6
1748 Noma	AT&T approved for 5
1910 Enc Blvd	Sprint approved for 2
780 Garden View	AT&T approved 6
415 Norfolk	Sprint approved 2
1661 Lake	Cingular approved 3
510 S. El Camino Real	Cingular approved 6

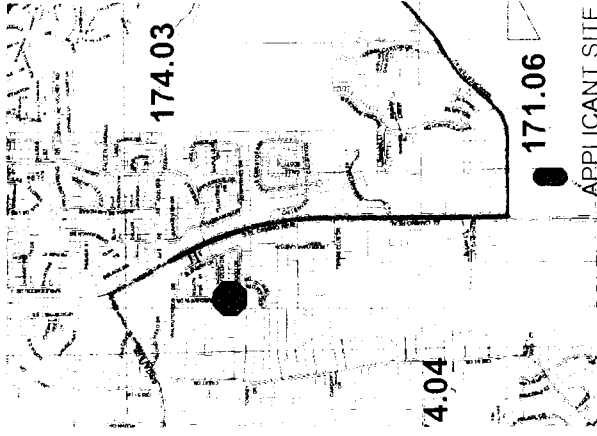
FACT: If this is approved then Cingular will have **18 Antennas** within **1 mile**. Nowhere in Encinitas has 1 Carrier needed this much coverage.

As stated by Planning Commissioner Avis upon denying this application at the Planning Hearing on October 5, 2006:

"As far as our prioritization of location for cell towers, this is the bottom of the barrel, if you will"----"I think there would have to be a meaningful presentation or a meaningful book of evidence to say this is the only one that is there. And I can't make that finding."

NS-030

Cingular NS030 NEW 6 Antenna Site at Christian Fellowship



NEVER ADDRESSED Steeple Site

Exhibit D.2

Many Alternatives Exist

DAS Encinitas NextG & Cingular work together installing this newer and better technology. Encinitas has licensed NextG in 2006 for its wireless communication needs to serve ALL carriers. The Cingular desired location at El Camino Real & Manchester Intersection has already been City approved and is ready to go. Cingular has been invited to join.

DAS RSF Extenet is constructing a "host hotel" behind Grangetto's for ALL wireless carriers. This service will extend as far as 12 miles. The area of Cingular's desired coverage is only 2 miles. Cingular has been invited to join.

TEMPLE SOLEL Parking Lot Elevation is 74 FT & Hill with NO TREES 152 FT

They were never contacted by Cingular & continue to desire the income from such a site.

BELMONT VILLAGE FRONT was graded down to 56 FT then rises as high as 105 FT

They were never contacted. They want a cell site. Perfect time to add to their construction plans which would give all the height necessary and would better serve MiraCosta campus as well as other desired Cingular coverage.

MIRACOSTA ELEVATION 70 FT TO 80FT

MiraCosta is properly zoned. A pole, tree or whatever would provide ALL the coverage Cingular desires.

MiraCosta has a Cingular site on their O'side campus. Cingular Project Mgr stated at Appeal he doesn't know why discussions stopped other than MiraCosta was too busy at that time and he never followed up later.

MiraCosta is one of Cingular's desired in-building coverage requests, yet it cannot be seen from the Lucacz Applicant Site because the view is blocked by "trees" at Lucacz site. Please note Cingular used this "tree objection" to dismiss Temple Solel.

Exhibit 8.A

Many Alternatives Exist ...continues

SOMERFORD PLACE Elevation 140 FT

Sprint Flagpole Site allows for co-location. Executive Director stated Cingular has not contacted. She said they would be open to discuss an additional carrier and is aware of carrier's need for additional equipment space.

LUX ART Elevation 210 FT

This unique structure reaches 240 ft with towers that would lend themselves to view & cover Cingular's requested area. They were dismissed due to topo???

TENNIS CLUB Elevation 220 FT *Not even mentioned.

GRAUER SCHOOL Elevation 130 FT

Grauer School has an existing flagpole. With ground elevation at 130 ft add to that the flagpole height, this would well exceed the Lucacz Applicant Site Height..

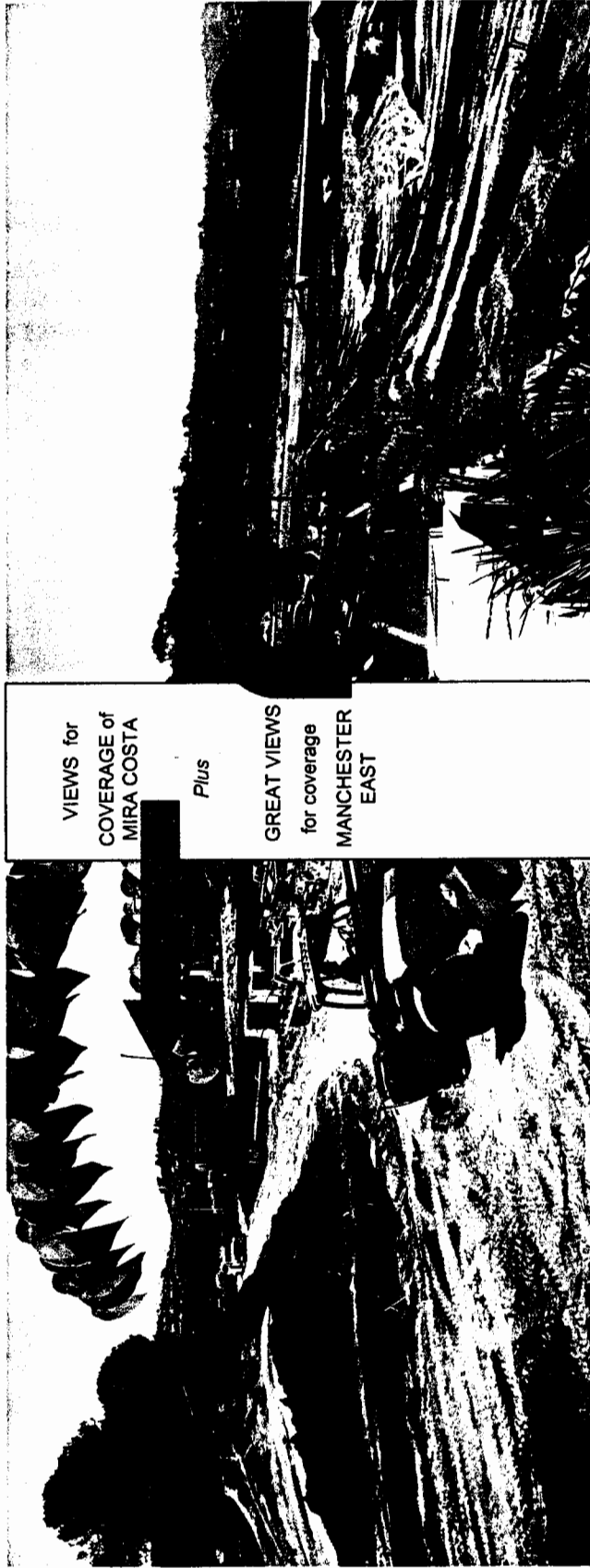
CARLOS FLOWERS Elevation 120 FT Not even mentioned.

PLEASE NOTE that since the 6 ANTENNA CINGULAR SITE IN THE FELLOWSHIP STEEPLE was recently constructed, Cingular's needs have changed. They themselves state in their submission package to you when addressing some of the above sites that these alternatives already have coverage. It would seem that Cingular's needs may now be met without the extensive height originally requested and certainly without entering onto private property.

Exhibit 8.A cont.

Belmont Village is an Alternative

Brent Covey of Belmont Village told me that they would welcome a cell site on their property. He also informed me that NO Cingular representative had contacted them, but he is definitely open for discussion.



Perfect timing to add cell site to construction, whether incorporated on building roof, as a balcony as was planned for Lukacz Site or by using a flagpole, faux tree or whatever.

THIS IS DEFINITELY A PREFERRED ALTERNATIVE RATHER THAN PRIVATE RESIDENTIAL PROPERTY.

- CINGULAR REQUESTS COVERAGE MANCHESTER SOUTH-WEST & EAST COVERED HERE
 - CINGULAR REQUESTS COVERAGE of RELIGIOUS INSTITUTIONS & MIRA COSTA CAMPUS COVERED HERE
 - CINGULAR REQUESTS COVERAGE OF LA NORIA & EL CAMINO REAL TO SOUTH-EAST COVERED HERE
 - CINGULAR REQUESTS COVERAGE OF EL CAMINO REAL NORTH which is NOW COVERED COVERED HERE with pole,DAS,
- by Steeple Site NS030 as they, themselves stated in their submission package. or co-location at Somerford Pl.

Exhibit 8.C

DATE: JUNE 15 2007

LOCATION: 3535 MANCHESTER AVE

CONTACT: BRENT COVEY

Title: BELMONT VILLAGE L.P.

CARLSBAD CA.

760-731-1137

Do I think the owner of this property might be open to discuss the possibility of allowing a cell site for revenue consideration of approximately \$30,000 a year?

YES X

NO _____

Comments:

YES they would ENTERTAIN A CELL SITE
ON THEIR PROPERTY.

DST

7-10-07

I personally spoke with Brent Covey who stated he would absolutely welcome Cingular to discuss a site on their property.

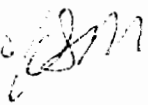
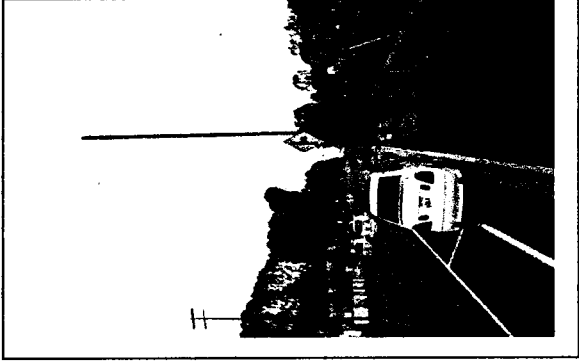
WENDY MOLDEN 

Exhibit 8, Cont.

Mira Costa Parking Lot and Across Manchester in the right of way provide excellent Light Pole or DAS coverage for Cingular's FOUR needed coverage areas:

- Covers Manchester to the West, which Lukacz site was unable to get around the curve.
- Covers Manchester to & beyond El Camino Intersection for the 46,000 daily vehicle trips
- Covers Manchester to the East which Lukacz site was unable to cover due to hillside behind Lukacz site
- Covers in building 1/8th to 1/4 mile with the DAS 360 nodes.... buildings in this area are at lower elevations. Lukacz site could not even reach Mira Costa College for coverage!



ALTERNATIVES WHICH MAKE MORE SENSE AND ADD REVENUE TO CITY OR COLLEGE

THERE IS NO REASON TO ENTER INTO RESIDENTIAL ZONING

DAS What is it?

Distributive Antenna System

Fiber optic distributed antenna systems to improve coverage and capacity for telecommunications carriers and balance the needs of communities and consumers with the needs of wireless service providers by using a patented fiber-optic architecture, low-impact, low-emission equipment without the need for cell towers.

ENCINITAS chose NEXTG (DAS provider) for their wireless telecommunication carriers in July 2006.

- DEL MAR IS UP & RUNNING WITH NEXTG AND CINGULAR
- CARLSBAD USES NEXTG DAS
- RANCHO SANTA FE IS NOW BUILDING THEIR DAS HUB
- SANTA CRUZ USES NEXTG & CINGULAR
- ATLANTA INTERNATIONAL AIRPORT USES CINGULAR & DAS
- NOTRE DAME USES NEXTG WITH CINGULAR
- AT&T USES DAS IN CANOGA PARK, OAKLAND, SAN FERNANDO VALLEY AND ROLLING HILLS ESTATES HERE IN CALIFORNIA.

A NEXTG NODE IS BEING INSTALLED FOR SPRINT AT THE CORNER OF EL CAMINO REAL AND MANCHESTER.....
THE EXACT LOCATION AT&T NEEDS COVERAGE AND NEXTG WOULD INSTALL ONE ACROSS THE STREET FOR AT&T

5 NODES COST APRX THE SAME AS MONTHLY PAYMENT TO LUKACZ

AT&T HAS BEEN INVITED TO JOIN BOTH NEXTG AND EXTENET DAS CARRIERS

THESE NODES ARE IN THE PUBLIC RIGHT OF WAY AND ARE AN ALTERNATIVE TO ENTERING PRIVATE RESIDENTIAL PROPERTY.

THE CITY OF ENCINITAS COLLECTS REVENUE FROM RIGHT OF WAY NODES.



DAS is a viable alternative...



★ 2 Fiber Optic Companies equipped to provide Cingular's needed coverage.

NextG is already licensed w/Encinitas. Cingular w/NextG is up & running in Del Mar.

Extenet is going in behind Grangetto's, less than 2 miles away and can easily service up to 12 miles.

Cost of repeater nodes is between \$500 & \$600 mo. Cingular states they need 5---less than Lucacz cost!!

Exhibit & F cost. (F)

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Exhibit F

Wendy Moldow
P.O. Box 941, Del Mar, CA 92014 Tel. 619-339-3339

April 12, 2008

06-001 MUP/CDP

Brian & Emily Lukacz
3631 Manchester Avenue
Encinitas, CA 92024
And
Ted Marioncelli, PlanCom, Inc.
AT&T/Cingular
302 State Place
Escondido, CA 92029
And
Glen Sabine, Attorney
City of Encinitas
505 South Vulcan
Encinitas, CA 92024

To ALL the Above:

We are the landowners of the properties on Manchester Avenue whose land the access road to the Lukacz residence lies.

We have just been made aware of your plan for construction of electric and telephone lines on our property as outlined by the attached document which was somehow not attached to the package for which approval was sought.

In any event, this document contravenes a written, filed Road Easement agreement applicable to all concerned, a copy of which is attached. Your plan clearly exceeds that to which the Lukacz's are bound.

~~As the majority of landowners accordingly, this letter constitutes formal notice that you, Brian & Emily Lukacz; Cingular/AT&T; and the City of Encinitas are not to proceed with any construction or obstruction of our right of way.~~

Signature on File

~~Wendy Moldow~~

Signature on File

Trustee for Olvera Living Trust

Attached is:

Cingular Route Plan &
Road Maintenance Agreement

Cc: Encinitas Planning Staff
Encinitas City Council

Exhibit 9

Recorded at the request of and
when recorded Return to:

2781

DOC # 2000-0432214

AUG 15, 2000 9:13 AM

Robert W. & Judith F. Spencer
731 S. Highway 101, suite 1L
Solana Beach, CA 92075

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 28.00



2000-0432214

Space above for recorder's Use Only

PRIVATE ROAD MAINTENANCE AGREEMENT

This AGREEMENT entered into on this 15th of March, 2000 by and between Robert W. & Judith F. Spencer (collectively Spencer), Ray M. & Ruth Olvera (collectively Olvera) and Rosalind B. Beasly (Beasly) for the maintenance and repair of certain private road easements, the legal descriptions of which and the plat map of which are set forth in Exhibit A, attached hereto, for the present and all future Owners (as defined herein) who will use the private road easement.

Recitals

WHEREAS, Spencer, Olvera and Beasly are each owners of separate parcels of real property as identified in Exhibit A,

WHEREAS, Spencer, Olvera and Beasly together with each successor in interest to the parcel described above owned by the parties hereto shall be collectively referred to herein as the Owners and,

WHEREAS, It is the desire of the Owners that said private road easements are to be maintained in a safe and useable condition by the Owners; and;

WHEREAS, It is the desire of the Owners to establish a method of maintenance and repair of said private road easements and for the apportionment of the expense of such maintenance and repair among existing and future Owner, and;

WHEREAS, It is the intention of the Owners that this Agreement constitute a covenant running with the land described above, binding upon each successive Owner of all or any portion of such property.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The property owned by the Owners is benefitted by this Agreement, and present and successive Owners of all or any proration of the property are expressly bound hereby for the benefit of the land.
2. The cost and expense of maintaining the private road easement described as Parcels 2 and 3 of Exhibit A shall be divided among other owners and paid by the Owners or the heirs, assigns and successors in interest of each such Owner in the following ratios:

<u>Owner</u>	<u>Share</u>
Spencer	3/8
Olvera	3/8
Beasly	2/8

Exhibit 10

3. In the event any of the herein described parcels of land are subdivided further, the Owners, heirs, assigns and successors in interest of each such newly created parcel shall be liable under this Agreement for their pro rata share of expenses and such pro rata shares of expenses shall be computed to reflect such newly created parcels.

4. The repairs and maintenance to be performed under this Agreement shall be limited to the following unless the consent for additional work is agreed to by a majority vote of the Owners owning 100% of the number of parcels, including subdivisions thereof as described in Paragraph 3 above: reasonable and normal road improvements and maintenance work to adequately maintain said private road easements and related drainage facilities to permit all-weather access. Repairs and maintenance under this Agreement shall include, but is not limited to, filling of chuck holes, repairing cracks, repairing and resurfacing of roadbeds, repairing and maintaining drainage structures, removing debris, maintaining signs, markers, striping and lighting, if any, and other work reasonable necessary and proper to repair and preserve the easement for all-weather road purposes.

5. If there is a covenant, agreement or other obligation imposed as a condition of subdivision approval to make private road improvements to the private road easement, the obligations to repair and maintain the private road easements as herein set forth shall commence when the private road improvements have been completed and approved by the City.

6. Any extraordinary repair required to correct damage to said road easements that results from action taken by or contracted for Owners or their successors in interest shall be paid by the party taking any action or contracting for whom which caused the necessity of extraordinary repair. The repair shall be such as to restore the road easements to the condition existing prior to said damage.

7. Repair and maintenance work on the private road easement shall be commenced when a majority of Owners agree in writing that such work is needed.

The Owners shall designate one of their members as the Agent necessary to contract and oversee and do all acts necessary to accomplish the repairs and maintenance required and/or authorized under this agreement. The Agent shall obtain three bids from licensed contractors and shall accept the lowest of said three bids and shall then initiate the work. The Agent shall be paid for all costs incurred including reasonable compensation for Agent's services, and such costs shall be added to and paid as part of the repair and maintenance costs; provided, however, that compensation for the Agent's services shall in no event exceed an amount equivalent to 10% of the actual costs of repairs and maintenance performed. In performing his or her duties, the Agent, as he or she anticipates the need for funds, shall notify the parties and each party shall within forty five (45) days pay the Agent, who shall maintain a trustee account and also maintain accurate accounting records which are to be available for inspection by any of the Owners or their authorized agent upon reasonable request. All such records shall be retained by the agent for a period of five (5) years.

7. Should any Owner fail to pay the pro rata share of costs and expenses as provided in this Agreement, then the Agent of any Owner(s) shall be entitled, without further notice, to institute legal action for the collection of funds advanced on behalf of such Owner in accordance with the provisions of the California Penal Code Section 845, and shall be entitled to recover in such action in addition to the funds advanced, interest thereon at the current prime rate of interest, until paid, all costs and disbursements of such action, including such sum or sums as the Court may fix as and for reasonable attorney fees.

8. Any liability of the Owners for personal injury to the Agent hereunder, or to any worker employed to make repairs or provide maintenance under this Agreement, or to third persons, as well as any liability of the Owners for damage to the property of Agent, or any such worker, or of any third persons, as a result of or arising out of repairs and maintenance under this Agreement shall be borne, as between the Owners in the same proportion as they bear the costs and expenses of such repairs and maintenance.

Each Owner shall be responsible for and maintain their own insurance, if any. Each of the Owners agrees to indemnify the other from any and all liability for injury to himself or herself or damage to their property when such injury or damage results from, arises out of, or is attributable to any maintenance or repairs undertaken pursuant to this Agreement.

9. Owners shall jointly and severally defend and indemnify and hold harmless the City of Encinitas, its engineer and its consultants and each of its officials, directors, officers, agents and employees from and against all liability, claims, damages, losses, expenses, personal injury and other costs, including costs of defense and attorney fees, to the Agent hereunder or to any Owner, any contractor, any subcontractor, any user of the road easement, or to any other third persons arising out of or in any way related to the use of, repair or maintenance of, or the failure to repair or maintain the private road easements.

Nothing in the Agreement, the specifications or the contract documents or City's approval of the plans and specifications or inspection of the work is intended to include a review, inspection acknowledgment or a responsibility for any such matter, and the City of Encinitas, its engineer and its consultants, and each of its officials, directors, officers, employees and agents, shall have no responsibility or liability therefore.

10. The foregoing covenants shall run with the land described above and shall be deemed to be for the benefit of the land of each of the Owners and each and every person who shall at anytime own all or any portion of the property referred to herein.

11. It is understood and agreed that the covenants herein contained shall be binding on the heirs, executors, administrators, successors, and assigns of each of the Owners.

12. It is the purpose of the signatories hereto that this instrument be recorded to the end and intent that the obligation hereby created shall be and constitute a covenant running with the land and any subsequent purchaser of all or any portion thereof, by acceptance of delivery of a deed and/or conveyance regardless of form, shall be deemed to have consented to and become bound by these presents, including without limitation, the right of any person entitled to enforce the terms of this Agreement to institute legal action as provided in Paragraph 8 hereof, such remedy to be cumulative and in addition to other remedies provided in this Agreement and to all other remedies at law or in equity.

13. Unless otherwise provided in this Agreement or by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or delivered to any party to this Agreement shall be in writing and shall be deemed duly served, delivered and received when personally delivered to the party to whom it is director, or in lieu thereof, when three (3) business days have elapsed following deposit in the United States mail, certified or registered mail, return receipt requested, first class postage prepaid, addressed as set forth on the signature page below. A party may change such address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

14. Whenever the context requires, any gender includes all others, and the singular number includes the plural, and vice versa. This Agreement contains the entire agreement between the parties regarding the subject matter hereof. No modification, waiver, amendment, or discharge of this Agreement shall be valid unless it is in writing and signed by the Owners and approved by the City of Encinitas.

15. In the event either party commences litigation (including arbitration) to enforce or interpret this Agreement, the prevailing party shall be entitled to recover actual attorney's fees and all litigation related costs (including expert witness fees) incurred in addition to all other items of recovery permitted by law.

16. Time is of the essence of each obligation hereunder. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.

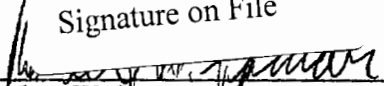
17. No inference, assumption, or presumption shall be drawn from the fact that a party or his attorney, or his Real Estate Broker or Agent prepared and/or drafted this Agreement. It shall be conclusively presumed that all parties participated equally in the preparation and/or drafting of this Agreement.

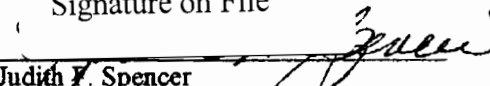
18. The recitals set forth above, and exhibits referred to and/or attached hereto, are incorporated by reference into this Agreement.

19. The parties acknowledge that their execution hereof is voluntary, that they have been advised by their respective counsel of all of the provisions hereof, and that, in executing this Agreement, each is not relying on any inducements, promises and representations made by the other party or his representatives except as may be expressly set forth herein.

20. If a dispute arises as to the performance of this Agreement, the parties agree to submit the matter to the American Arbitration Association for arbitration under the rules for commercial matters. The parties shall equally split fees and costs of the arbitration. The arbitrator may award the prevailing party its costs and reasonable attorney's fees. The parties shall have all discovery rights as provided in the California Code of Civil Procedure.

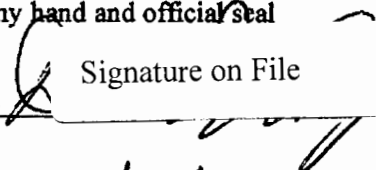
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

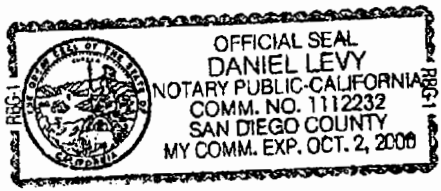
Signature on File

Robert W. Spencer
731 S. Highway 101 Suite 1L
Solana Beach, CA 92075

Signature on File

Judith F. Spencer
731 S. Highway 101 Suite 1L
Solana Beach, CA 92075

State of California)
County of San Diego) SS
)

On June 26, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert W. Spencer and Judith F. Spencer, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged that they executed in the same.

Witness my hand and official seal
Signature  Signature on File



See attached Acknowledgement Form (pgs)

MEMO

April 17, 2008

TO: California Coastal Commission
San Diego Coast District
Attention: Gary Cannon
Fax #619.767.2384

FROM: Wendy Moldow
3637 Manchester Ave
Encinitas, CA 92024
Tel. 619.339.3339

RE: Application # 6-Enc-08-053,
Cingular Wireless/Encinitas 06-001 MUP/CDP

Dear Gary,

Would you please review the following as part of the Appeal process as well?

Upon my microfilm investigation of the 1999 Design & Review process for the building of the house and accessory unit at the Applicant Site, 3631 Manchester, I discovered that this area is more sensitive than I thought, or perhaps the Planning Staff had remembered or checked. Evidently the Department of Fish and Game was involved as to the removal of sensitive "corethrogyne flaginifolia."

It appears through document after document that the Spencer's (former owners of Lukacz applicant property) were to have placed, as a condition for their building permit, **the remainder of the area of 25% slope and greater (not impacted by grading) into a conservation easement or deed restricted or another suitable device to preclude any future development or grading of the slopes.**

The OPEN SPACE / HABITAT EASEMENT recorded at that time does not fully take in to account "the remainder of the 25% slope" as was so designated and I feel that the Department of Fish and Game would NOT have allowed them to have graded any of the large portion still showing which was not included on the easement they recorded. This 38% slope extends within several feet of the rear of the existing accessory unit exactly where Cingular plans to add 240 sf building plus a walkway.

As the City has approved their MUP/CDP allowing the Lukacz to add a commercial business, it would appear that this project currently proposed on this 38% steep slope area needs to be moved to another, less sensitive area on the Applicant's parcel site. Or at the least be reviewed by the Department of Fish and Game to see that those guidelines as set before the landowners 9 years ago was, in fact, recorded properly.

Do you work directly with the Department of Fish and Game or would you recommend that I contact them?

Thank you for all your time and consideration.

Signature on File




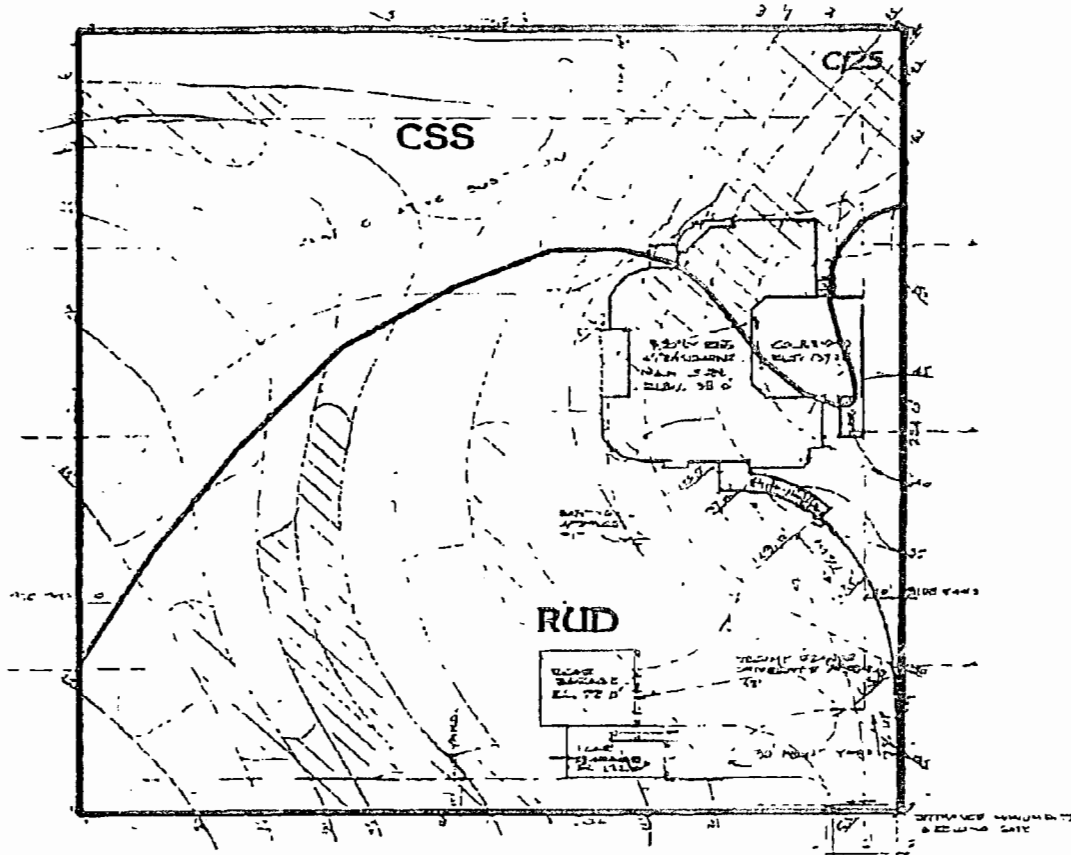
Attachments

Received

APR 17 2008

California Coastal Commission
San Diego Coast District

EXHIBIT NO. 7
APPLICATION NO.
A-6-ENC-08-35
Supplemental Letter from Appellant 4/17/08
Page 1 of 9
 California Coastal Commission



Vegetation Types/Landcovers:

CSS Coastal Sage Scrub

RUD Ruderal

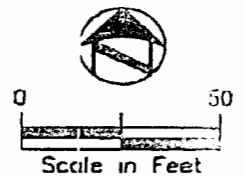
Sensitive Plant Species:

Cf Corethrogyne flagrifolia var. *linifolia*

NOTE: Number indicates individual plant count at that location.

BASE TOPO/GRADING SOURCE. Zijlstra 1998

3-68



**Spencer Residence Biological Resources Report & Impact Analysis
Receiver
Vegetation Map**

**FIGURE
3**

APR 17 2008

California Coastal Commission
San Diego Coast District

STATE OF CALIFORNIA THE RESOURCES AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME

Natural Community Conservation Planning
4949 Viewridge Avenue
San Diego, CA 92123
(619) 467 4251
FAX 467 4235



January 29, 1999

Mr Craig Olson, Project Planner
City of Encinitas
Community Development Department
505 South Vulcan Avenue
Encinitas, California 92024-3633

Received

APR 17 2008
San Diego Coast District
California Coastal Commission
San Diego Coast District

Comments on the Proposed Mitigated Negative Declaration for the Spencer Residence (Case No. 98-156 ADR/CDP/EIA)

Dear Mr Olson

The Department of Fish and Game (Department) has reviewed the above-referenced Mitigated Negative Declaration (MND) for the proposed development of a 1.08-acre parcel into one single-family residence. The property is located on Manchester Avenue north of San Elijo Lagoon in the City of Encinitas (City).

Onsite biological resources include 0.62 acre of disturbed ruderal vegetation and 0.44 acre of coastal sage scrub. No state or federally-listed plant or animal species were recorded on the proposed project site, however, Del Mar Mesa sand aster (*Corethrogyne filaginifolia* var *limifolia*), a sensitive plant species listed by the California Native Plant Society, was observed on the property. According to the MND the proposed project would include site development and a mandated 50-foot fuel management zone, and would impact 0.18 acre of coastal sage scrub and 0.47 acre of disturbed ruderal vegetation. Clearing and thinning of vegetation within the fuel management zone would directly impact 25 specimens of Del Mar Mesa sand aster.

The Department agrees that the de minimus exemption under the 4(d) rule for the interim loss of coastal sage scrub applies to the proposed project because of the following: 1) the take of coastal sage scrub is less than 1 acre (0.18 acres), 2) no California gnatcatchers were present during onsite focused surveys, 3) the loss of onsite coastal sage scrub does not preclude the design of a preserve system and 4) mitigation for coastal sage scrub loss would include the dedication of a proposed conservation (open space) easement of the remaining onsite coastal sage scrub (0.25 acre). The loss of coastal sage scrub that is approved through the de minimus process for this project should be counted against the City's 5% allocation. In addition to the proposed

3-35

Mr. Craig Olson
Page Two
January 29, 1999

open space easement, the MND proposes the revegetation of 0.11 acre of coastal sage scrub on the property adjacent to the remaining sage scrub. A five year monitoring program of the success of the revegetated areas would be required by the City as a condition of project approval. The proposed open space easement that will preserve 0.25 acre of coastal sage scrub and the proposed revegetation of 0.11 acre of sage scrub will result in the conservation of 0.36 acre of sage scrub. This would mitigate the proposed project's impacts at the recommended ratio of 2:1. In lieu of the coastal sage scrub planting and five-year monitoring program and open space easement, the MND offers an alternative mitigation measure where the project applicant could contribute funds or secure credits in a State-approved conservation bank located within the City's jurisdiction.

The Department recommends the alternative mitigation measure outlined in the MND in which the project applicant would purchase 0.36 acre of coastal sage scrub credits in a State-approved conservation bank. The proposed open space easement and revegetation program would appear to contribute minimal biological value toward the City's natural resource preserve system. If the project applicant chooses to mitigate coastal sage scrub loss through the dedication of the open space easement and revegetation program, we request that the applicant demonstrate that the sage scrub preserved and revegetated onsite will be of high quality and will be contiguous with other natural lands. We also request that Del Mar Mesa sand aster be included in the revegetation planting mix and that it be planted in suitable onsite soils.

The Department appreciates the opportunity to comment on the above-referenced MND. If you have any questions or comments please contact Ms. Stacy Hewitson at (619) 467-4229.

Signature on File

t

William E. Tippetts
Habitat Conservation Supervisor

3-36

Biological Resources Report & Impact Analysis Spencer Property, City of Encinitas, California

6.2 Mitigation Measures

The California Environmental Quality Act (CEQA) requires mitigation for all impacts determined to be significant.

a) Direct Impacts to Coastal Sage Scrub

The loss of 0.18 acre of coastal sage scrub, in a non-core area, typically would be mitigated at a ratio of 2:1 (0.36 acre) in a non-core area. This may take the form of off-site purchase and dedication to open space coastal sage scrub, on-site revegetation of coastal sage scrub, off-site revegetation or any combination thereof.

It is recommended that impacts to coastal sage scrub be mitigated onsite by placing a conservation easement over the remaining coastal sage scrub onsite (approximately 0.25 acre) and planting the remaining 0.11 acre onsite and adjacent to the remaining coastal sage scrub. It is also recommended that the seed mix include California sagebrush, white sage, California buckwheat, and deerweed. The minimum amount of vegetation required to be removed by the Fire Marshall should be removed. Five-year monitoring is not recommended due to the minor extent of impacts.

7.0 DETERMINATION OF CONSISTENCY WITH NCCP CONSERVATION GUIDELINES

Introduction and Background

The Spencers propose to build a single house and detached garage on their property within the City of Encinitas, north of Manchester Avenue and east of El Camino Real. The project would cause the direct loss of 0.18 acre of coastal sage scrub, as documented above. No other natural habitats would be affected.

At the time the California gnatcatcher (*Poliopitula californica*) was listed as a threatened species, the U.S. Fish and Wildlife Service proposed a Special Rule under Section 4(d) of the Federal Endangered Species Act. The rule defines the conditions under which "take" of the gnatcatcher and its associated coastal sage scrub habitat would not be considered a violation of the Endangered Species Act. The rule allows for the interim loss of up to 5 percent of the coastal sage scrub habitat in the region pending the implementation of an overall habitat management plan for the California gnatcatcher unless an exemption applies.

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California Coastal Commission
San Diego Coast District

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eastern boundary of the two lots directly south of the subject property (APN 262-062-28 and 41). The applicant proposes to improve the driveway access to Manchester Avenue which is currently difficult for a driver to negotiate due to its limited width and radius turn near the driveway access to Manchester. In accordance with the conditions of approval required by the Fire Department, the 12-foot width of the existing pavement within the access easements will be increased to 18 feet from the access driveway on Manchester Avenue to the driveway for APN 262-062-28 (the most southerly lot) and then to a 20-foot paved width along the easterly access easement across both of the properties to the south to the subject property. Staff has received a letter from the property owner of Assessor Parcel 262-062-28, Rosalind Beasley, which is addressed as 3637 Manchester Avenue (see Exhibit "B"). The letter objects to the fire department requirement to widen the access roadway from the current paved width of 12 feet to the 18 and 20-foot widths. The letter states that the increased widths are not necessary to serve the three homes accessed by the roadway, that there is not enough room on her property to accommodate the increased road width without impacting existing structures on her property, and that the road improvement will increase traffic on the access roadway since people will think it is an actual road rather than a private driveway.

The City Fire Marshal has determined that the access roadway width must be adequate to serve emergency vehicles since existing structures accessed by the roadway are not equipped with automated fire sprinkler systems. The project architect has been provided a copy of the Beasley letter and has agreed to meet with the property owner to explain the roadway improvements and how the improvements will avoid impacts to existing structures on the property. The project architect has prepared a site plan showing the roadway and driveway access improvements and existing structures on the Beasley property (see Exhibit "B"). The site plan indicates that no structures on the Beasley property would be impacted by the access roadway and driveway improvements. To address the concern that unnecessary traffic would access the roadway, a condition is included in the draft Resolution that requires the applicant to post signage at the driveway to Manchester Avenue which identifies the road as "Private, No Trespassing".

Site grading will create a pad elevation for the principal residential structure at 138.0 feet and a pad for the detached Accessory Unit and garage at an elevation of 122.0 feet. The pad elevations generally conform to the natural contour elevations through the middle of the areas proposed for the pads. Approximately 15,300 square feet (0.35 acres) of the 1.08 acre property would be impacted by grading. It is anticipated that the grading will balance the earth to be moved to create the building pads and that there will be no need to import or export fill material.

Hillside / Inland Bluff Overlay Zone Consistent with Municipal Code Section 30.34.030, the property is located within the City's Hillside / Inland Bluff Overlay Zone due to the existing steep slopes on the site. Approximately 22,650 square feet (0.52 acres) of the 1.08 acre property (48%) has slopes in excess of 25% grade. Grading would impact 2,120 square feet (0.04 acres) of the slopes of 25% grade or greater. The Hillside / Inland Bluff Overlay Zone standards limit impacts to steep slopes to 10%, or 2,265 square feet. Therefore, the steep slope encroachment conforms to the 10% standard. Consistent with the Hillside / Inland Bluff Overlay standards (M.C. Sec. 30.34.030 B.6), a condition is included in the draft Resolution that requires the remainder of the areas of 25% slope and greater (not impacted by grading) to be placed within an open space conservation easement or deed restricted or another suitable device to preclude any future development or grading of the slopes prior to the issuance of a grading permit for the project.

3-3

ATTACHMENT "B"
Resolution No. PC 99-11

WA
A
KURELLOTT
NEED THE CERT
PARK FEE
CONSERVATION BANK
DETAIL

Project No 98-156 ADR/CDP

Applicant Robert & Judith Spencer / Sjirk Zijlstra

Location 3631 Manchester Avenue

SC1 SPECIFIC CONDITIONS:

✓ SC2 This approval will expire on February 25, 2001 at 5 00 pm. two years after the approval of this project, unless the conditions have been met or an extension of time has been approved pursuant to the Municipal Code.

✓ SC5 This project is conditionally approved as set forth on the application and project plans dated received by the City on December 1, 1998, consisting of nine sheets including: (1) Sheet 1, Title Sheet & Site Plan; (2) Sheet 2, Floor Plan (primary residence); (3) Sheet 3, West and South Elevations (primary residence), (4) Sheet 4, East and North Elevations (primary residence), (5) Sheet 5, Section Details; (6) Sheet 6, Section Details; (7) Sheet 7, Foundation Lower Level; (8) Sheet 8, Garage Building Plans / Elevations; and (9) Sheet 9, Garage Building Elevations / Sections. In addition, one sheet of the Access & Utility Plan dated February 21, 1999, which was reviewed and approved by the Planning Commission as modified by the Fire Marshal regarding a 16 foot minimum access width in lieu of 14 feet. These items shall not be altered without express authorization by the Community Development Department.

✓ SCA Consistent with the Hillside / Inland Bluff Overlay standards (M.C. Sec. 30.34 030.B.6), prior to the issuance of a grading permit for the project, the remainder of the areas on the property having 25% slope and greater, which are not impacted by grading, shall be placed within an open space conservation easement, or shall be deed restricted, to preclude any future development of grading of the slopes.

SCB The 12-foot width of the existing pavement within the access easements will be increased to 20 feet from the access driveway on Manchester Avenue to the driveway for APN: 262-062-28 (the most southerly lot), and then to a varying paved width from 18 to 16 feet (as shown on the February 21, 1999 Access & Utility Plan) within the 20-foot easterly access easement across both of the properties to the south to the subject property in order to conserve existing landscaping within the access easement and to eliminate the need to relocate existing utility boxes to the satisfaction of the Fire Marshal. The driveway entrance to Manchester Avenue and the access roadway shall be designed to meet Fire and Engineering requirements. Approval from the County Health Department shall be required prior to grading permit approval to assure that the septic system facilities on the most southerly parcel and the middle parcel are not adversely impacted by the entry roadway's design. The applicant shall post signage at the driveway to Manchester Avenue which

FIRE

identifies the road as "Private, No Trespassing " The palm trees within the access easement shall be trimmed to the satisfaction of the Fire Marshal to reduce their fire hazard. Provisions for emergency access to the subject property through the driveway entry gate shall be made to the satisfaction of the Fire Marshal An "all weather" surface is required for the driveway on the subject property indicated on the approved plans as the "Fire Truck Turn Around" area to the satisfaction of the Fire Marshal The project shall comply with Encinitas Municipal Code Section 30 40 010 H related to the Olivenhain Community Dark Sky Policy.

SCC

The Mitigation Monitoring and Reporting Program (MMRP) established by the Environmental Initial Assessment for this project shall be implemented during the planning and construction of the approved project The following mitigation measures are required: (1) All recommendations presented in the Geotechnical Investigation prepared by Barry & Associates (dated November 25, 1998) shall be incorporated into the design and construction of the project Grading plans for lot development shall adhere to the recommendations of this report, as augmented where necessary by additional site-specific geotechnical investigations to the satisfaction of the City Engineer. (2) Prior to grading permit issuance, the applicant shall provide proof to the satisfaction of the Community Development Department that 0.36 acre credits of habitat have been purchased within the Manchester Avenue Conservation Bank to mitigate impacts to 0.18 acres of Coastal sage scrub (CSS) habitat at a 2:1 ratio A DeMinimus Exemption is established for this project since the CSS habitat loss is less than one acre, the loss is a minimal risk to the overall CSS conservation efforts under the on-going Multiple Habitat Conservation Program (MHCP) for North San Diego County, and the mitigation required will contribute to regional conservation efforts The 0.18 acre habitat loss will not be counted against the City's 5% CSS allocation.

G1 STANDARD CONDITIONS:

CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:

- ✓ G2 This approval may be appealed to the City Council within 15 calendar days from the date of this approval in accordance with Chapter 1.12 of the Municipal Code.
- ✓ G4 Prior to building permit issuance, the applicant shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Community Development Director.
- ✓ G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

✓ *Height Cert.*
 G7

Prior to issuing a final inspection on framing, the applicant shall provide a survey from a licensed surveyor or a registered civil engineer verifying that the building height is in compliance with the approved plans

G8

A Mitigation Monitoring and Reporting Program (MMRP) as set forth in the Environmental Initial Assessment herein referenced, shall be established and funded by the developer or property owner. The amount of funds necessary to implement the MMRP will be determined by the Community Development and Engineering Services Departments prior to issuance of any permits for the project

✓ *P.A.D. 1/26/01*
 G13
Park Fees Due

The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to building permit issuance to the satisfaction of the Community Development and Engineering Services Departments. The applicant is advised to contact the Community Development Department regarding Park Mitigation Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.

✓

HW6

This project has been identified as having a potential impact on fish and/or wildlife; therefore, pursuant to Section 711.4 of the State Fish and Game Code, the applicant must submit to the City of Encinitas a negotiable check in the amount of \$1,275.00 if this project includes a Negative Declaration, or a check in the amount of \$875.00 if this project includes an Environmental Impact Report. The purpose of the above State established fee is to defray the cost of managing and protecting fish and wildlife resources which may be impacted by the development. The check, made payable to the County Clerk of San Diego County, must be submitted prior to the end of the 4th day following the City's action. Failure to submit a negotiable check will cause the project approval to become null and void since the Notice of Determination can not be filed without payment of this fee or authorized notice of exemption as provided in Section 711.4. **NO BUILDING PERMITS OR OTHER ENTITLEMENTS WILL BE PROCESSED UNTIL THIS CONDITION IS SATISFIED.**

B1 BUILDING CONDITION:

CONTACT THE ENCINITAS BUILDING DIVISION REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION:

B2

The applicant shall submit a complete set of construction plans to the Building Division for plancheck processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plans, section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The Uniform Building Code with California Amendments, the California Mechanical, Electrical and

MEMO

July 14, 2008

TO: Gary Cannon
California Coastal Commission
San Diego Coast District
FAX #619-767-2384

Case #6-Enc-08-053

Dear Gary;

Thank you for informing me that your staff report will be available on the 18th of July. AT&T has signed on to the fiber optic system now being installed near the intersection of Manchester, Encinitas Blvd and Rancho Sante Fe Road. This is only two miles from their desired site above my home. ExtcNct, the service provider has capabilities to reach more than 10 miles from their hub due to be completed and up and running mid August. This system was designed to cover most of Rancho Santa Fe extending in to parts of Encinitas. AT&T has requested and is in the process of reviewing plans for their coverage via this fiber optic system to extend down Manchester to El Camino Real providing them the coverage they need at this intersection.

This alternative method would also allow them to cover an area NOT met with the site now before you as these proposed 12 antennas do not cover Manchester going towards the Ranch due to the terrain.

This concerns the Coastal Commission because they have before them a request for permits that is simply no longer needed if another option is taken for AT&T/Cingular coverage.

NextG, is another fiber optic network service company who has installed their cell site coverage for Cingular (AT&T) throughout Del Mar more than a year ago. It was up and running in record time according to Steve Casey, AT&T's Network Operations Manager. Mr. Casey is the one who is now looking in to this alternative here on Manchester.

NextG already has the corner of Manchester and El Camino Real approved by the City of Encinitas for Sprint. They would welcome AT&T in a heartbeat.

There is no reason for this to even go before Coastal Commission at this time and it would seem prudent to postpone this item to the next meeting as it may just simply go away.

Thank you for all your work, it is appreciated.

Signature on File

Wendy Moldow

3637 Manchester Avenue, Encinitas, CA 92024

Received


JUL 14 2008

California Coastal Commission
San Diego Coast District

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SAN DIEGO


EXHIBIT NO. 8
APPLICATION NO.
A-6-ENC-08-35
Supplemental Letter from Appellant
7/14/08
Page 1 of 3
 California Coastal Commission

January 23, 2007

NextG Launches DAS Wireless Network in Less Than Eight Months

-Innovative Network Enhances Wireless Performance For Ocean-Side Community-

SAN JOSE, CA - NextG Networks, the leading provider of Distributed Antenna System (DAS) networks, announced it launched a DAS Network in Del Mar, California, which was fully operational in less than eight months. The Network enhances the wireless performance for the ocean-side community by filling in coverage gaps and increasing the capacity of the existing infrastructure.

 **"The NextG DAS Network is a carrier-class system that was installed and carrying traffic in record time," said Steve Casey, Cingular's executive director of network operations. "It is a significant cooperative project enabling us to provide coverage and support for our new high-speed wireless services for the residents and visitors to Del Mar."**

Equally important to enhancing the mobile performance for this ocean-side community, NextG's system met the city's desire for unobtrusive network equipment with minimal impact to the environment.

"The City of Del Mar has a long-standing commitment to preserving our community's natural setting," said Del Mar City Council member Crystal Crawford, who was mayor during the development and launch of the network. "I really appreciated how NextG Networks worked with us to make the DAS Network as unobtrusive as possible. As a long-time cellular customer, I can personally attest to the improved mobile coverage."

NextG's DAS Networks use strategically placed low-power, fiber-optic-fed antenna nodes that blend very well with the surrounding landscape by using existing street lights and utility poles. The DAS Networks also are protocol-neutral, scaling easily to support multiple wireless carriers, services, and technologies.

"The challenge in cities such as Del Mar is to design and deploy a mobile communications system that is not noticed by most residents, yet supports the carriers' services for voice, instant messaging, ringtone downloads, Internet surfing and all the new services," said John Georges, CEO and co-founder of NextG Networks. "This Network can support any carrier that wants to offer service in Del Mar."

About NextG Networks

NextG Networks is the market leader in DAS Networks, using fiber-fed distributed antenna systems to operate carrier-class wireless networks. With its proprietary fiber optic architecture and expert public rights-of-way site management, NextG designs, permits, builds, operates and manages DAS Networks. The DAS-Networks are protocol-neutral, scaling easily to support multiple wireless carriers, services, and technologies. NextG provides RF transport and backhaul services to service providers over discrete, multi-frequency, scalable networks that improve the quality, coverage, and capacity of any wireless service. NextG Networks is headquartered in San Jose, CA and operates regional subsidiaries throughout the United States.

CASE #6 ENC-08-053

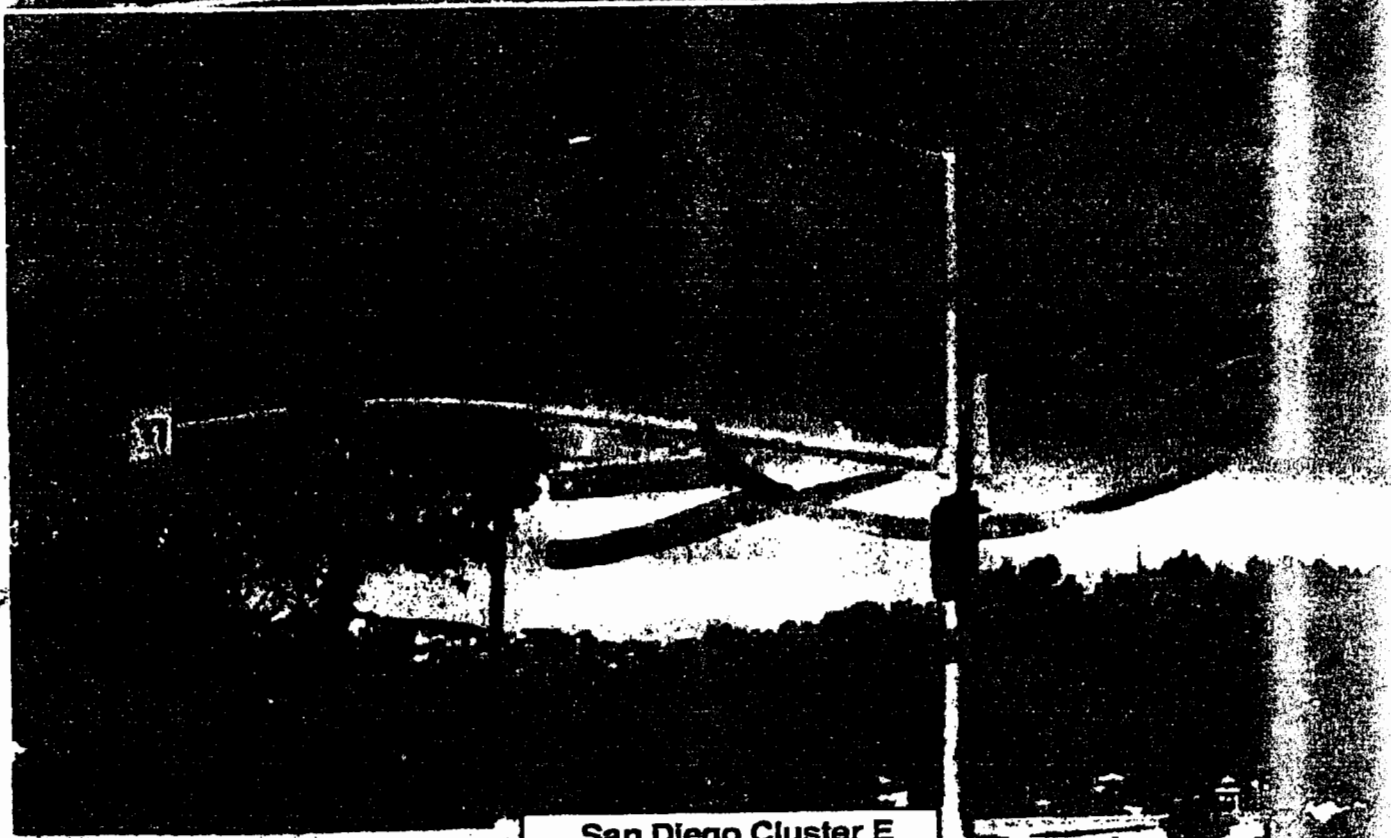
7-14-08 MEMO ATTACHMENT

Next G Approved to install Sprint At Manchester El Camino REAL

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Existing



Proposed

San Diego Cluster E
 Manchester Ave. / El Camino
 Encinitas, CA
 Node # E19N

Photograph taken by Aerial Imagination 510 924

RECEIVED 4/20/06

JUL 14 2008

CALIFORNIA COASTAL COMMISSION

CASE # 6 ENC-08-053 7-14-08 MEMO ATTACHMENT

MEMO

July 15, 2008

TO: Gary Cannon
California Coastal Commission
San Diego Coast District
FAX #619-767-2384

Case #6-Enc-08-053

RECEIVED

JUL 15 2008

RE: Postponement

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Gary,


Yesterday's banking industry downfall has put me over the edge. When Cingular's application process began over two and a half years ago, the value of my home was over a million dollars. My basic instinct as a homeowner was to protect my property and my equity. I contacted 4 local, experienced North County appraisers and presented in writing to the City the loss of property value, as per the Appraisal Journal from which each quoted, stating that I would lose up to 20% of my property's value if this macro 12 antenna site were built.

For over two and a half years I have been held hostage in my attempt to protect my residential property rights...unable to leave the area or plan trips as hearings for this application have been postponed again and again. Cingular/AT&T has been the one who has postponed at least 3 of these themselves.

I was reminded by a friend who has worked with the Coastal Commission on several occasions that the Commission is here to protect the coastline as well as those who own property in it. I am living a David and Goliath scenario. The City, after having its Planning Commissioners unanimously turn this project down twice, was presented a "secret letter" just prior to Cingular's second appeal. This letter which is now under investigation with our District Attorney's office, was the reason so stated by members of Council as to why they upheld the appeal. Fear of fighting Goliath.

I realize you only deal with a small section of my property where they desire to trench. During this entire application process, Cingular nor their site locators never bothered to contact me, not even once, to discuss using my property as their access for this commercial venture or even to offer any explanation or even compensation for trenching through my land. Their application alluded to simply repairing their destruction "on or beside" my easement.

My contact with Steve Casey was an eye opener for Cingular/AT&T. Please keep in mind this project was presented to Cingular by a site locator who stood to make a large chunk of money that would not be available to him if the cell carrier went directly to the alternative fiber optic network providers. Cingular fired this site locator following the first Appeal to the City Council as it became apparent he hadn't done his homework. Cingular, then already invested, had little to lose but to go ahead substituting

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A-6-ENC-08-35
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 California Coastal Commission

②

another site locator (Ted Marioncelli) for the second Planning Commission meeting and then for the second Appeal.

Steve Casey, Cingular/AT&T's Network Operations Manager took the time to actually visit the site with his engineer after my phone call in April of this year. This is why Mr. Casey is attempting to find an alternative site for their needs as he told me. And he is in the process of doing just that.

I now stand to lose my home if this site is built. I am overwhelmed with fear. I paid approximately 650K for my home almost 6 years ago and have put another 100K in to it. My loan is 540K @ 4.3% until May of 2009. I am retired on a fixed income. With yesterday's news, refinancing my home will not even be an option due to the market downturn coupled with the up to 20% loss this site will cause. My house will not appraise and I will simply lose it. As a real estate agent, I have no work to even go back to!

I find it ironic that not only do I own a creek, but now find myself "up the creek"!

Please, I am begging you at this point to see if there is any way that you can simply move this Coastal Commission Hearing until they next meet. My entire world is on the line here. If given the time I am certain AT&T will have gotten the coverage they need without using this site.

I hereby respectfully request a postponement of the August meeting. Thank you.

Signature on File

Wendy Moldow

3637 Manchester Avenue, Encinitas 92024 619-339-3339