

**CALIFORNIA COASTAL COMMISSION**

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# W 9a

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49 <sup>th</sup> Day:	Waived
Staff:	Tamara L. Gedik
Staff Report:	June 24, 2010
Hearing Date:	July 7, 2010
Commission Action:	

**STAFF REPORT: APPEAL****SUBSTANTIAL ISSUE & DE NOVO**

APPEAL NO.:	A-1-MEN-10-001
APPLICANTS:	Phillip H. & Grace Lavender Sharples and Verizon Wireless
AGENT:	Pamela Nobel, NSA Wireless
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately 1.8 miles southeast of Mendocino, on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4 miles east of its intersection with State Highway One, located at 43600 Comptche-Ukiah Road, Mendocino County.
PROJECT DESCRIPTION (as approved by the County):	Construction and operation of a remote-controlled telecommunication facility to support a wireless provider (Verizon Wireless), consisting of a 135-foot tall lattice tower with 12 panel antennas and 2 microwave dishes. Associated ground equipment includes a 60-kilowatt generator, a 210-gallon fuel

storage tank, and a 240-square-foot equipment shelter.

## PROJECT DESCRIPTION

(as amended *de novo*):

Construction and operation of a remote-controlled telecommunication facility on a private residential parcel to support a wireless provider (Verizon Wireless), consisting of a 160-foot tall lattice tower with 12 panel antennas; 2 microwave dishes; 2 wireless GPS antennas; and ground-based equipment. Project includes improvements to an existing access road; clearing trees and herbaceous vegetation for the construction of the tower; limbing trees for vertical clearance along the access road; installation of underground power and telephone lines; and above ground utility metering and termination equipment. The facility will be located within a fenced lease area consisting of approximately 1500 square feet (30'x50').

APPELLANTS:

(1) the California Native Plant Society, Dorothy King Young Chapter; (2) Carol & Robert Zvolensky, D'Ann Finley, Phil Conwell, and Wilbert Horne; and (3) Commissioners Stone and Sanchez.

SUBSTANTIVE FILE  
DOCUMENTS:

1) Mendocino County file CDU No. 13-2007;  
2) Mendocino County Local Coastal Program;

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## **SUMMARY OF STAFF RECOMMENDATIONS:**

### **1. Summary of Staff Recommendation: Substantial Issue**

The staff recommends that the Commission, after public hearing, determine that a **SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

On December 17, 2009, the Mendocino County Planning Commission approved Coastal Development Use Permit No. CDU 13-2007 for the construction and operation of a telecommunication facility consisting of a 135-foot-tall lattice tower, 12 panel antennas, two microwave dishes, and ground based equipment. The approved development is located at 43600 Comptche-Ukiah Road, approximately 1.8 miles southeast of the Town of Mendocino (APN 119-410-17) (Exhibit Nos. 1 and 2).

Three separate appeals of the County's decision to grant the permit with conditions were filed in a timely manner with the Commission within 10 working days of receipt by the Commission of the County's Notice of Final Action. The appeals were filed by (1) the California Native Plant Society, Dorothy King Young Chapter; (2) Carol & Robert Zvolensky, D'Ann Finley, Phil Conwell, and Wilbert Horne; and (3) Commissioners Stone and Sanchez.

The appeals allege the approval of CDU 13-2007 by Mendocino County is inconsistent with the policies and standards of the certified Local Coastal Program (LCP) including, but not limited to, policies and standards regarding development within and adjacent to environmentally sensitive habitat areas (ESHA). The Commission finds that the appeals raise a substantial issue of conformance of the project as approved with the ESHA protection provisions of the certified LCP including, but not limited to, the LUP's references to Section 30240 of the Coastal Act, and including LUP Policy 3.1-7, CZC Section 20.496.020, CZC Section 20.532.100(A)(1)(b), and CZC Section 20.532.100(A)(1)(a), because (1) the approved development does not provide a buffer between the development and rare plant ESHA and ESHA buffers are not allowed to be reduced to less than 50 feet; (2) only resource dependent uses are allowed in a rare plant ESHA and a telecommunication facility is not an allowed use within rare plant ESHA; (3) the County has not demonstrated there is not a feasible less environmentally damaging alternative to locating the development with the ESHA; and (4) the development will result in significant degradation of rare plant ESHA in the location of the approved telecommunications facility.

**The motion to adopt the staff recommendation of Substantial Issue is found on page 8.**

## **2. Summary of Staff Recommendation *De Novo*: Approval with Conditions**

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project at Alternative Site 4. Staff believes that as conditioned, the development as amended for purposes of the Commission's *de novo* hearing would be consistent with the policies and standards of the Mendocino County LCP pertaining to development in highly scenic areas and on ridges, and would avoid impacts to environmentally sensitive habitat.

### **Proposed Project**

For the purposes of *de novo* review by the Commission, the applicants submitted an amended project description dated April 2, 2010 and modified site plans dated March 29, 2010 (Exhibit Nos. 11 and 12). The amended project information relocates the proposed

project to a site that is located outside of ESHA and more than 50 feet outside ESHA buffers (Recommended Alternative 4), thereby eliminating the potential for the development to adversely impact environmentally sensitive habitat.. The amended project includes an updated botanical assessment with ESHA buffer analyses.

The proposed project site is located approximately 1.8 miles southeast of Mendocino, on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4 miles east of its intersection with State Highway One, located at 43600 Comptche-Ukiah Road, Mendocino County. The site is located on an approximately 12.41-acre rural residential parcel that is currently developed with a single-family residence.

The subject property is designated in the Coastal Land Use Plan and zoned in the Coastal Zoning Ordinance as Rural Residential – 5-acre minimum parcel size (RR-5). The proposed telecommunications facility is a form of land use consistent with the Major Impact Services and Utilities land use type listed in the LCP. Both the Coastal Land Use Plan and Coastal Zoning Ordinance list the Major Impact Services and Utilities land use type as a conditional use in the Rural Residential land use classification and zoning district.

As revised for purposes of *de novo* review, the proposed project involves construction and remote operation a telecommunication facility on the approximately 12.41-acre private residential parcel to support a wireless provider (Verizon Wireless). The proposed facility will consist of a 160-foot tall lattice tower with 12 panel antennas; 2 microwave dishes; 2 wireless GPS antennas; and ground-based equipment. The project includes improvements to an existing 10-foot-wide earthen access road; clearing trees and herbaceous vegetation for the construction of the tower; limbing trees for vertical clearance along the access road; installation of underground power and telephone lines; and above ground utility metering and termination equipment. The facility will be located within an approximately 1500 square feet (30'x50') fenced lease area located north of the County approved site.

The revised project site is located outside of ESHA, and more than 50 feet outside ESHA buffers (Exhibit Nos. 11). The relocated site is approximately 75 feet north of the County-approved building site, and approximately 3 feet lower in elevation. The County-approved tower (135 feet) is 25 feet lower in height than the currently proposed tower (160 feet).

Underground power and telephone lines will be installed within the centerline of the access road. The applicant's botanist has suggested using underground horizontal boring techniques to avoid significant impacts to adjacent pygmy ESHA that surrounds the road, thereby protecting roots and preserving the hydrology.

Road improvements include widening the first 15 feet of driveway approach that adjoins Comptche-Ukiah road, pursuant to Mendocino County Department of Transportation (DOT) requirements, to a width of 14 feet and paving this surface with asphalt concrete. The remainder of the access road will be surfaced with a layer of crushed road base and angular rock.

Construction of the telecommunications facility requires clearance of 1,500 square feet for installation of a concrete slab and a surrounding 6-foot-tall chain-link fence with 3 strands of barbed wire. To accommodate the building site, Recommended Alternative 4 proposes removal of 11 trees; refer to Exhibit 14 pages 3 and 4 for a summary of tree species and sizes to be removed.

To satisfy state fire safe regulations pursuant to CalFire Conditions of Approval referenced in file No. 155-07, trees overhanging the access road will be limbed to maintain 15 feet of vertical clearance. CalFire also requires maintenance of a 30-foot clearance of vegetation for fire-safe defensible space. These requirements are discussed further in ESHA findings below.

Ground-based equipment includes a canopy shed to house battery cabinets for back-up power, and transmitting and receiving equipment. Two air-conditioning units will be mounted to the shed to provide cooling for the equipment. The applicant also proposes to install a 60kw diesel generator to provide back-up power in the event of a prolonged power outage. The applicant indicates the generator will meet the County's noise standard of 50dBa or less at the nearest off-site residence.

#### Visual Resources

The LCP policies and standards governing the protection of visual resources at the site, which is located on a ridge in a designated highly scenic area, require conformance with a number of visual criteria, including criteria related to: (1) minimizing the impacts of development on ridges; (2) minimizing landform alteration; (3) utilizing tree planting to screen development; (4) utilizing appropriate building materials, colors, and lighting; (5) protecting views to and along the coast; and (6) ensuring the development is visually compatible with and subordinate to the character of its setting. For the reasons discussed below, the staff believes that the development as conditioned is consistent with both the LUP policies and zoning standards affecting development within highly scenic areas and the LUP policies and zoning standards affecting development on ridges.

As part of the initial project review, the County used a balloon test to conduct a visual simulation of the affects of the project. The balloon was placed at the alternate "meadow" site (approximately 120 feet west of the County-approved site) to prevent the balloon from becoming stuck in the trees, and raised to the originally-proposed tower height of 135 feet (Exhibit 13). County staff drove along the closest public roads to help determine the project's visual impact to the surrounding area. The County noted the tower would be visible briefly when driving past the subject property on Comptche-Ukiah Road from either direction. The County was also able to see the balloon using binoculars from vantage points within the Town of Mendocino including from the High School, which is on some of the higher elevation land in the Town.

The applicants have prepared visual simulations using photos taken of the balloon test and extrapolating the location and heights to the proposed alternate locations (Exhibit 13). The simulations include photographs marking the tower location as viewed from three different vantage points in the Town of Mendocino (see Exhibit 13), including the

following: (1) looking southeast from Mendocino High School; (2) looking southeast from Lake Street; (3) looking southeast from Main Street.

Based upon the simulations that include the existing trees in place, the proposed facility will be slightly visible above the ridgeline, but due to the distance from town and the placement of the facility within a wooded area on the property, it appears the facility will be relatively unnoticed unless viewed with binoculars. Therefore, the photographs in the visual analysis indicate that the proposed tower would not be prominent from the various public vantage points and not even visible from most.

The existing mature forest vegetation at the top of the ridge is a significant defining element of the ridgeline in this location and provides a screening backdrop to the proposed telecommunications facility as viewed from the Town of Mendocino. The proposed facility has been sited on a relatively level terrace at the top of the ridge. Construction of the proposed facility would not involve significant grading. Additionally, the proposed facility would be served by an existing earthen access road. No new driveway access or associated grading would be required.

The proposed facility would not include reflectors or beacons. The FAA does not require such features for towers that are less than 200 feet in height. Special Condition No. 9 limits the use of lighting on the facility to the minimum necessary for safety, and prohibits the use of reflectors or beacons. It further limits all lighting to low-wattage, directionally-downcast lighting.

Special Condition No. 10 would require that existing trees and other vegetation outside the building site, which provide screening for the proposed facility and associated access roads, be maintained in good condition throughout the life of the project, and requires 1:1 replacement with natives of any trees that die or become decadent.

In addition, Special Condition No. 5 would require that any future improvements to the telecommunications facility would require a coastal development permit such that the County and the Commission would have the ability to review all future development on the site to ensure that future improvements would not be sited or designed in a manner that would result in an adverse environmental impacts, including impacts on views.

For all of the reasons discussed above, the proposed development would be visually compatible with and subordinate to the character of its setting, as required by LCP policies regarding new development located in highly scenic areas. Therefore, staff believes that, as conditioned, the proposed development will: (a) be sited and designed to protect views to and along the ocean and scenic coastal areas; and (b) minimize the alteration of natural landforms, and (c) be compatible with the character or the surrounding area consistent with LUP Policy 3.5-4 and CZC Section 20.504.020(D).

#### ESHAs

Several rare plant species occur on the subject property: much of the property is dominated by a Mendocino Cypress (*Hesperocyparis pygmaea*)/ Bolander Pine (*Pinus contorta* var. *bolanderi*) woodland. These species, combined with the presence of both Labrador tea (*Ledum glandulosum*) swamp habitat along the southwestern portion of the

property and near a meadow containing pygmy manzanita (*Arctostaphylos mendocinoensis*), are indicative of the “Mendocino pygmy cypress Woodland” vegetation community type (Sawyer and Keelor-Wolf 2009). The Mendocino pygmy cypress community type is itself recognized as a sensitive plant community with a CNDDDB state/global ranking of “S2/G2.” The Commission has consistently found in actions on other coastal development permits that the Mendocino pygmy cypress woodland community is a form of ESHA. Other special-status species in and near the meadow include the local endemic corn lily (*Veratrum fimbriatum*) and California sedge (*Carex californica*), which has a CNPS listing of 2.3.

In addition, because of their relative rarity at the state and global levels, Bolander pine and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

The County-approved development site (Site 1) occurs within pygmy ESHA. Two other alternatives were considered during the County review of the project. Alternative Site 2 was similarly located in pygmy ESHA that had been maintained over the years as a meadow, which included wetland characteristics. Although located outside of ESHA and ESHA buffers, Alternative Site 3 was dismissed by the applicant due to limitations of feasibility resulting from steep topography and poor soils.

Alternative 4, the proposed new facility site for purposes of the Commission’s de novo review of the proposed telecommunications facility is located within the 100-foot ESHA buffer, but has been sited outside the minimum 50-foot ESHA buffer. Alternative 4 is sited and designed to prevent impacts to ESHA, and Special Condition 6 ensures the development will be compatible with the continuance of habitat by limiting activities that may occur at the building site, and requiring an erosion and drainage control plan. Special Condition 8G requires the presence of a botanist onsite during construction activities to ensure surrounding ESHA areas are protected. Therefore, the Commission finds that, as conditioned, the proposed Alternative 4 development is consistent with LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4)(a)-(k).

In addition to the recommended special conditions regarding the protection of visual resources, staff is recommending Special Condition No. 6 requiring implementation of standard Best Management Practices (BMPs) during construction to control the erosion of exposed soils and minimize sedimentation of coastal waters during construction.

Therefore, as conditioned, staff recommends that the Commission find that the project is consistent with the certified Mendocino County LCP.

**The Motion to adopt the Staff Recommendation of Approval with Conditions is found on page 8.**

**I. STAFF RECOMMENDATION, MOTION AND RESOLUTION ON SUBSTANTIAL ISSUE**

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

**Motion:**

I move that the Commission determine that Appeal No. A-1-MEN-10-001 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

**Staff Recommendation:**

Staff recommends a **NO** vote. Following the staff recommendation will result in the Commission conducting a *de novo* review of the application, and adoption of the following resolution and findings. Passage of this motion, via a yes vote, will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution to Find Substantial Issue:**

The Commission hereby finds that Appeal No. A-1-MEN-10-001 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the proposed project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

**II. MOTION, STAFF RECOMMENDATION *DE NOVO*, AND RESOLUTION**

The staff recommends that the Commission adopt the following resolution:

**Motion:**

*I move that the Commission approve Coastal Development Permit No. A-1-MEN-10-001, subject to conditions, pursuant to the staff recommendation.*

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings.

The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve Permit:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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**PART ONE – SUBSTANTIAL ISSUE**

**STAFF NOTES:**

**1. Appeal Process**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified

local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because (1) the approved subdivision is a form of development not designated as the “principal permitted use” under the certified LCP, and (2) the approved development is located within a sensitive coastal resource area (“highly scenic area”) pursuant to Section 30603(a)(3) of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

## **2. Filing of Appeals**

Three separate appeals of the County’s decision to grant the permit with conditions were filed in a timely manner with the Commission within 10 working days of receipt by the Commission of the County’s Notice of Final Action (Exhibit No. 9 ) on January 6, 2010 3, 2008. The appeals were filed by (1) the California Native Plant Society, Dorothy King Young Chapter; (2) Carol & Robert Zvolensky, D’Ann Finley, Phil Conwell, and Wilbert Horne; and (3) Commissioners Stone and Sanchez.

## **3. 49-Day Waiver**

The hearing on the appeal was originally scheduled to be opened during the Commission’s February, 2010 meeting. Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On February 2, 2010, prior to the 49<sup>th</sup> day after the filing of the appeal and after publication of an initial staff recommendation on the substantial issue question, the applicants submitted a signed 49-Day Waiver waiving the applicants’ right to have a hearing set within 49 days from the date the appeal had been filed and requested a postponement.

### **III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

#### **A. Appellants Contentions:**

Appellant A: California Native Plant Society, Dorothy King Young Chapter, claims that the approved project is inconsistent with the environmentally sensitive habitat area (ESHA) protection provisions of the Mendocino County certified Local Coastal Program (LCP) because the County's findings fail to identify the forest area where the telecommunications facility is proposed as part of a Mendocino Cypress Alliance (pygmy forest) rare plant community ESHA and the approved facility will displace portions of this ESHA.

Appellant B: Carol & Robert Zvolensky, D'Ann Finley, Phil Conwell, and Wilbert Horne claim that the approved project is inconsistent with the ESHA protection provisions of the certified LCP, specifically CZC Section 20.532.100(A)(1)(b), because the County's findings for approval do not demonstrate that there is no feasible less environmentally damaging alternative to locating the telecommunications facility in an ESHA as approved. The appellant believes that an open meadow on the subject property that reportedly does not currently contain rare plant ESHA should be reexamined as an alternative location for the facility that would avoid impacts to the rare plant ESHA.

Appellant C: Commissioners Mark Stone and Esther Sanchez claim that the approved project is inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policy 3.1-7 and CZC Section 20.496.020 because the approved development is located within rare plant ESHA and (1) ESHA buffers are not allowed to be reduced to less than 50 feet, and (2) only development allowed in the adjacent ESHA can be allowed within a buffer area and a telecommunication facility is not an allowed use within rare plant ESHA. The requirements of Coastal Act Section 30240(a) that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependent on those resources shall be allowed within those areas also precludes the development of a telecommunications facility within rare plant ESHA.

#### **B. Local Government Action**

On December 17, 2009, the Mendocino County Planning Commission approved Coastal Development Use Permit No. CDU 13-2007 for the construction and operation of a telecommunication facility consisting of a 135-foot-tall lattice tower, 12 panel antennas, two microwave dishes, and ground based equipment. The approved development is located at 43600 Comptche-Ukiah Road, approximately 1.8 miles southeast of the Town of Mendocino (APN 119-410-17) (Exhibit Nos. 1 and 2).

The decision of the County Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action,

which was received at the Commission's North Coast District Office on January 6, 2010 (Exhibit No. 9). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

Three separate appeals of the County's decision to grant the permit with conditions were filed in a timely manner with the Commission. The appeals were filed by (1) the California Native Plant Society, Dorothy King Young Chapter; (2) Carol & Robert Zvolensky, D'Ann Finley, Phil Conwell, and Wilbert Horne; and (3) Commissioners Stone and Sanchez.

### **C. Commission's Appeal Jurisdiction Over the Project**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area, such as designated "special communities." Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because (1) the approved subdivision is a form of development that is not designated as a "principal permitted use" under the certified LCP and (2) the approved development is located within a sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act (see below).

#### **The Approved Development is Not Designated the Principal Permitted Use**

The subject property is designated in the Coastal Land Use Plan and zoned in the Coastal Zoning Ordinance as Rural Residential – 5-acre minimum parcel size (RR-5). The approved telecommunications facility is a form of land use consistent with the Major Impact Services and Utilities land use type listed in the LCP. Both the Coastal Land Use Plan and Coastal Zoning Ordinance list the Major Impact Services and Utilities land use type as a conditional use in the Rural Residential land use classification and zoning

district. Therefore, the approved use is not the principal permitted use for the subject property and the County's decision to grant the Coastal Development Use permit for the development is appealable to the Commission pursuant to Section 30603 of the Coastal Act.

The Approved Development is Located Within a Sensitive Coastal Resource Area

Section 30116 of the Coastal Act defines "Sensitive Coastal Resource Areas" as follows:

*"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:*

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*
- (b) Areas possessing significant recreational value.*
- (c) Highly scenic areas. (emphasis added)*
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*
- (e) Special communities or neighborhoods which are significant visitor destination areas.*
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.*
- (g) Areas where divisions of land could substantially impair or restrict coastal access.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*
- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by

the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRA's. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRA's, local government approvals of development located in SCRA's delineated in LCP's would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRA's in LCP's is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRA's, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRA's. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan). The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRA's did not have the effect of preventing local governments from designating SCRA's through the LCP process. If the Commission's decision not to designate SCRA's rendered the Coastal Act provisions that relate to SCRA's moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRA's.

Although a city or county is not required to designate SCRA's in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the town of Mendocino (1992).

Designation of SCRA's in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRA's, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Use Permit CDU No. 13-2007 was accepted by the Commission in part, on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "*Sensitive Coastal Resource Areas*" to mean "*those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.*" Subparts (c) of these sections include "*highly scenic areas.*" This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "*those [areas] identified on the Land*

*Use Maps as they are adopted.*” Adopted Land Use Map No. 17 designates the area inclusive of the site that is the subject of Mendocino County CDU No. 13-2007 as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “*after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...*” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved “*located in a sensitive coastal resource area*” as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County’s approval of local CDP No. CDU No. 13-2007 is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

**D. Site and Project Description**

The proposed project site is located approximately 1.8 miles southeast of Mendocino, on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4 miles east of its intersection with State Highway One, located at 43600 Comptche-Ukiah Road, Mendocino County. The site is located on an approximately 12.41-acre private residential parcel that is currently developed with a single-family residence.

The subject property is designated in the Coastal Land Use Plan and zoned in the Coastal Zoning Ordinance as Rural Residential – 5-acre minimum parcel size (RR-5). The proposed telecommunications facility is a form of land use consistent with the Major Impact Services and Utilities land use type listed in the LCP. Both the Coastal Land Use Plan and Coastal Zoning Ordinance list the Major Impact Services and Utilities land use type as a conditional use in the Rural Residential land use classification and zoning district.

The property is on the fourth marine terrace on the south edge of Big River. Several rare plant species occur on the subject property: much of the property is dominated by a Mendocino Cypress (*Hesperocyparis pygmaea*)/ Bolander Pine (*Pinus contorta* var. *bolanderi*) woodland. These species, combined with the presence of both Labrador tea (*Ledum glandulosum*) swamp habitat along the southwestern portion of the property and near a meadow containing pygmy manzanita (*Arctostaphylos mendocinoensis*), are indicative of the “Mendocino pygmy cypress Woodland” vegetation community type (Sawyer and Keelor-Wolf 2009). The Mendocino pygmy cypress community type is

itself recognized as a sensitive plant community with a CNDDDB state/global ranking of “S2/G2.” The Commission has consistently found in actions on other coastal development permits that the Mendocino pygmy cypress woodland community is a form of ESHA. Other special-status species in and near the meadow include the local endemic corn lily (*Veratrum fimbriatum*) and California sedge (*Carex californica*), which has a CNPS listing of 2.3. In addition, because of their relative rarity at the state and global levels, Bolander pine and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

The northwestern portion of the property transitions into an upland forest dominated by coast redwood (*Sequoia sempervirens*) and is located upslope from the pygmy forest habitat. Additional species present in this habitat include western hemlock (*Tsuga heterophylla*), Bishop pine (*Pinus muricata*), tan-oak (*Lithocarpus densiflorus*), Douglas-fir (*Pseudotsuga menziesii*), and an occasional wax myrtle (*Myrica californica*). The northeastern property line is defined as the centerline of a tributary that drains to Big River, and is located downslope of the upland redwood forest community. According to the applicant’s project description, tree height in wooded areas is approximately 109 feet.

A private driveway that provides access to the subject property from Comptche-Ukiah Road transitions into a 10-foot-wide earthen access road. The access road extends approximately 650 feet towards the proposed project site. The access road forks eastward towards the existing house approximately 400 feet from its nexus with Comptche-Ukiah road.

On December 17, 2009, the Mendocino County Planning Commission approved Coastal Development Use Permit No. CDU 13-2007 for the construction and operation of a telecommunication facility consisting of a 135-foot-tall lattice tower, 12 panel antennas, two microwave dishes, and ground based equipment. (Exhibit Nos. 1 and 2).

**E. Substantial Issue Analysis**

Section 30603(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.

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project’s inconsistency with policies of the certified LCP.

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.

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., tit. 14, section 13115(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 and with the public access policies of the Coastal Act;
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 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 appeals raise a substantial issue of conformance of the project as approved by the County with the policies of the certified LCP

### **1. Allegation Raising A Substantial Issue**

All three appeals contend that the approved project is inconsistent with the environmentally sensitive habitat area (ESHA) protection provisions of the Mendocino County certified Local Coastal Program (LCP).

At least two rare tree species occur at the project site: Bolander pine (*Pinus contorta* var. *bolanderi*) and Mendocino cypress (*Hesperocyparis pygmaea*<sup>1</sup>).

The County findings contain an exhibit (Exhibit C within Commission Exhibit 9) which indicates that a total of 44 Pygmy cypress trees (including 10 trees greater than 6 inches

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<sup>1</sup> Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., [http://ucjeps.berkeley.edu/about\\_ICPN.html](http://ucjeps.berkeley.edu/about_ICPN.html)). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

diameter at breast height (dbh) and 34 trees less than 6 inches dbh) and 16 Bolander pine trees (including 3 trees greater than 6 inches dbh and 13 trees less than 6 inches dbh), and 18 other trees would be removed from the project footprint to make way for the approved telecommunication facility.

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is “...*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities.*” Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an **area** including plants or animals or their habitats is **either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem**. As discussed above, at least two rare plant species occur on the subject property: Bolander pine (*Pinus contorta* var. *bolanderi*) and Mendocino cypress (*Hesperocyparis pygmaea*). Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society<sup>2</sup> and the Department of Fish and Game.<sup>3</sup> Both species have a CNPS listing of “1B.2”<sup>4</sup> and a CNDDDB state/global ranking of “S2/G2.”<sup>5</sup> Because of their relative rarity at the state and global levels, Bolander pine and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies.

As discussed above, at least 16 Bolander pine trees, 44 Mendocino cypress trees, and 18 other trees within the County identified forest ESHA would be removed. These trees exist within a much larger forest area containing an undocumented number, but many more tree specimens of the affected ESHA. The large concentrations of Bolander pine and Mendocino cypress do constitute rare plant habitat and therefore meet the first test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. The large concentrations of rare trees within the project footprint could be easily disturbed or degraded by human activities and developments such as

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<sup>2</sup> California Native Plant Society (CNPS). 2009. *Inventory of Rare and Endangered Plants* (online edition, v7-09d). California Native Plant Society. Sacramento, CA. Accessed from <http://www.cnps.org/inventory>.

<sup>3</sup> California Department of Fish and Game, Natural Diversity Database (NDDDB). October 2009. *Special Vascular Plants, Bryophytes, and Lichens List*. Quarterly publication. 71 pp.

those that would be necessary to develop them for the approved telecommunication facility including grading, paving, building construction, foot trampling, etc. In fact, the County findings acknowledge that many such trees would be eliminated to accommodate the development. Such activities would fragment or otherwise demolish the presently intact habitat, reduce habitat size, and degrade and alter habitat quality and conditions that are integral to the “special nature” of the existing habitat area. Therefore, the large concentrations of Bolander pine and Mendocino cypress in the approved project site meet the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

Besides Bolander pine and Mendocino cypress rare plant ESHA, the approved development site may constitute other forms of ESHA. The County staff report and findings indicate that the project site is within Bishop Pine, Shore Pine, and Pygmy Cypress forest types which the County indicates are forest types that are deemed Environmentally Sensitive Habitat Areas (ESHAs). In addition, Appellant A, the California Native Plant Society, contends that the site should be identified as part of a Mendocino Cypress Alliance (pygmy forest) rare plant community ESHA. Appellant A also indicates that the site is likely to contain Shore Pine Forest rare plant community ESHA. The presence or extent of these other forms of ESHA on the development site is not clear. The County’s findings for approval of the project do not document the extent to which these possible rare plant communities may be present on the site and do not analyze how any of these other possible ESHA on the site conform with the Coastal Act and LCP definitions of ESHA. Whether or not these other forms of ESHA exist at the site and would be affected by the approved development, the presence of Bolander pine and Mendocino cypress rare plant ESHA at the development site has been established as discussed above, and is not in dispute.

The County staff had recommended that the project be denied on the basis that the project will result in the removal of ESHA and that a less environmentally damaging alternative exists on the property. The County staff identified a meadow area located approximately 120 feet southwest of the proposed site where there was sufficient area to site the telecommunication facility and maintain at least a 50-foot buffer from all ESHA. In its action to approve the project over the County staff recommendation of denial, the Planning Commission found that based on testimony of the applicant’s biologist, the meadow area (although not ESHA now) was likely to be future ESHA and has an overall equal value to the project site, and all feasible mitigation measures related to impacts have been adopted.

Whether or not the alternative meadow site may become an ESHA in the future, the County’s findings fail to address the consistency of the approved development with the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020 including (1) why a buffer width less than 100 feet may be appropriate, (2) how a reduced buffer is allowable based on analysis of the seven criteria specified in CZC Section 20.496.020(A)(1) that must be applied in determining whether a potential reduction of the ESHA buffer is warranted, (3) how a buffer less than the minimum of 50 feet required by LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) is allowable at all under the LCP.

Furthermore, the County's approval acknowledges that a future telecommunication facility would be located directly within the ESHA and would require the removal of rare trees, and the County's findings fail to address how these ESHA resources will not be significantly degraded by the proposed development as required by CZC Section 20.532.100(A)(1)(a).

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. CZC Section 20.532.100(A)(1)(a) requires that ESHA resources affected by development will not be significantly degraded by the proposed development. The LCP policies identify specific uses permitted in wetland and riparian ESHAs, but do not specifically identify what uses are allowed within rare plant ESHA, and by extension, within the rare plant buffer.

Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Although Section 30240 of the Coastal Act is not listed in the section of the certified Land Use Plan entitled, "Coastal Element Policies: Habitats and Natural Resources," which contains LUP Policy 3.1-7 and other LUP policies governing the protection of ESHA, Section 30240 is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA.

Although local governments are responsible for drafting the precise content of their LCPs, the Coastal Act requires that LCPs must, at a minimum, conform to and not conflict with the resource management standards and policies of the Coastal Act. It can be presumed that the County was aware that the Coastal Act established the minimum standards and policies for local coastal programs and knew, that in drafting its local coastal program, it was constrained to incorporate the development restrictions of Section 30240(a) of the Coastal Act, including the restriction that only uses dependent on those resources shall be allowed in those areas. It can also be assumed that in certifying the Mendocino County LCP, the Commission understood and found that the LCP conformed to (i.e. incorporated) the minimum policies and standards of the Coastal Act, including the development restrictions of Section 30240(a).

As noted above, the narrative for the section of the Land Use Plan containing LUP policies governing the protection of ESHA includes Section 30240. In addition, the narrative contains statements that acknowledge the protections afforded by Section 30240 and the County's commitment to incorporate those protections into the LCP, including the following statements:

- "The Coastal Act mandates the preservation of significant natural resources and habitats;"

- “Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California;”
- This Local Coastal Plan represents the commitment of the County of Mendocino to provide continuing protection and enhancement of its coastal resources

The LCP policies do not expressly authorize non-resource dependent uses nor any other uses within rare plant ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Commission finds that the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

The protection of ESHA in the coastal zone is an issue of statewide concern addressed by Section 30240 of the Coastal Act. The approved telecommunication facility is not in any way dependent on the rare tree or forest habitat at the site. Therefore, as a telecommunication facility is not listed in the LCP as an allowable use within rare plant ESHA and the Coastal Act only allows resource dependent uses within an ESHA, the appeals raise a substantial issue as to whether the approved development conforms with the use limitations of the certified LCP, including its references to 30240, and including LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4).

Appellant B, Yovlensky et.al., additionally claims that the approved project is also inconsistent with CZC Section 20.532.100(A)(1)(b). This section of the zoning code states that no development shall be allowed in an ESHA unless there is no feasible less environmentally damaging alternative. As discussed above, the Commission finds that the appeals raise a substantial issue as to whether allowing a telecommunications within a rare plant ESHA is consistent with the limitations of the ESHA protection requirements that limit development in rare plant ESHA to only resource dependent uses. Even if the telecommunications facility were a resource dependent use, which it is not, the development would also be subject to the limitations of Section 20.532.100(A)(1)(b) that no development shall be allowed in an ESHA unless there is no feasible less environmentally damaging alternative. Appellant B claims the development does not meet this requirement because the County’s findings for approval do not demonstrate that there is no feasible less environmentally damaging alternative to locating the

telecommunications facility in an ESHA as approved. The appellant believes that an open meadow on the subject property that reportedly does not currently contain rare plant ESHA should be reexamined as an alternative location for the facility that would avoid impacts to the rare plant ESHA. Indeed, in recommending denial of the project, County staff indicated that the meadow contained no known ESHA and locating the telecommunications facility in the meadow would be a feasible less environmentally damaging alternative. It should be noted that the property owners of the property containing both the approved site and the alternative meadow site are coapplicants for the permit with Verizon Wireless.

The County Planning Commission, in approving the project over the County staff's recommendation for denial noted in its findings that the applicants' biologist provided testimony that the meadow area is likely to be future ESHA and has overall equal value to the project site, and that all feasible mitigation measures would be applied to the project. However, the ESHA protection policies of the LCP do not refer to the protection or future ESHA, only ESHA. In addition, there is no certainty that the meadow area, if left on its own, would eventually be colonized by rare plants or rare plant communities and become an ESHA in the future. In addition, the adopted findings do not demonstrate how locating the project in an area that is not currently ESHA is not less environmentally damaging than locating the project as approved within an acknowledged rare plant ESHA that will require the removal of dozens of rare plants. Therefore, the County has not adopted findings that provide factual and legal support for addressing the consistency of the project with the requirements of CZC Section 20.532.100(A)(1)(b), and the Commission finds that the appeal raises a substantial issue of conformance with Section 20.532.100(A)(1)(b).

Finally, the adopted findings do not fully explain how with the displacement of rare trees by the approved telecommunications tower, the approved development is consistent with the requirements of CZC Section 20.532.100(A)(1)(a) that ESHA resources affected by development will not be significantly degraded by the proposed development. As noted above, dozens of rare trees would be removed to make way for the development. The County staff report states that the Department of Fish & Game has indicated that the removal of the trees project will have a significant impact. The County's findings note that the approved development includes mitigation in the form of planting trees of the affected species within the meadow site that was rejected as a less environmentally damaging feasible alternative. The fact that mitigation in another location is required by the County indicates that the ESHA in the location where the telecommunications facility will be sited will be significantly degraded. In addition, Section 20.532.100(A)(1)(a) simply prohibits development in an ESHA if the ESHA will be significantly degraded. This code section does not state that such degradation can be allowed if mitigation is provided. Therefore, the Commission finds that the appeal raises a substantial issue of conformance with CZC Section 20.532.100(A)(1)(a).

**6. Conclusion.**

Therefore, because (1) the approved development does not provide a buffer between the development and rare plant ESHA and ESHA buffers are not allowed to be reduced to less than 50 feet, (2) only resource dependent uses are allowed in a rare plant ESHA and a telecommunication facility is not an allowed use within rare plant ESHA, (3) the County has not demonstrated there is not a feasible less environmentally damaging alternative to locating the development with the ESHA, and (4) the development will result in significant degradation of rare plant ESHA in the location of the approved telecommunications facility, the Commission finds that the appeals raise a substantial issue of conformance of the project as approved with the ESHA protection provisions of the certified LCP including, but not limited to, the LUP's references to Section 30240 of the Coastal Act, and including LUP Policy 3.1-7, CZC Section 20.496.020, CZC Section 20. 532.100(A)(1)(b), and CZC Section 20. 532.100(A)(1)(a).

**CONCLUSION OF PART ONE: SUBSTANTIAL ISSUE**

The Commission finds that for the reasons stated above, the project as approved by the County raises a substantial issue with respect to the conformance of the approved project with respect to the policies of the certified LCP regarding the protection of visual resources and environmentally sensitive habitat areas.

## PART TWO—*DE NOVO* ACTION ON APPEAL

### **STAFF NOTES:**

#### **1. Procedure**

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP and/or the public access policies of the Coastal Act, the local government's approval no longer governs, and the Commission must consider the merits of the project. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program and not between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP).

The Coastal Commission effectively certified the County of Mendocino's LCP in 1992. On November 15, 2001, the Mendocino County Planning Commission adopted *Guidelines for the Development of Wireless Communication Facilities* to regulate wireless communication facilities. However, these guidelines have not been adopted or certified into the local coastal program element of the County land use plan and are therefore not within the purview of the Commission's standard of review.

Testimony may be taken from all interested persons at the *de novo* hearing.

#### **2. Submittal of Additional Information by the Applicant**

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of the following:

- (a) Alternative 4 Site Plans Dated June 1, 2010 (Exhibit No. 11);
- (b) Alternative 5 Site Plans Dated June 1, 2010 (Exhibit No. 12);
- (c) Botanical Assessment for Alternatives 4 and 5 dated March 29, 2010; (Exhibit No. 14);
- (d) Copy of Revised State Fire Safe Regulations Conditions of Approval prepared by Cal Fire and submitted June 16, 2010 (Exhibit No. 19);
- (e) Photo simulation of proposed project Alternatives 4 and 5 to assess consistency with visual resource policies, submitted on June 15, 2010 (Exhibit No. 13).

The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit.

**3. Amended Project Description Submitted by Applicants for *de novo* Review**

For the purposes of *de novo* review by the Commission, the applicants submitted an amended project description dated April 2, 2010 and modified site plan showing preferred alternative project site 4 dated March 29, 2010 (Exhibit No. 11). The amended project information relocates the proposed project to a site that is located outside of ESHA and ESHA buffers. The amended project includes an updated botanical assessment with ESHA buffer analyses.

The amended project description addresses issues raised by the appeal where applicable, and provides additional information concerning the amended project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

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**IV. STANDARD CONDITIONS:** See Attachment A.

**V. SPECIAL CONDITIONS:**

**1. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**2. Deed Restriction**

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-10-001, the applicant shall submit for the review and approval of the Executive Director, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate

that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**3. Future Development**

This permit is only for the development described in coastal development permit No. A-1-MEN-10-001. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply. Accordingly, any future improvements or changes to the permitted structures shall require an amendment to Permit No. A-1-MEN-10-001 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**4. Abandonment of Telecommunications Facilities**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement that if in the future, the approved telecommunications tower is no longer needed, the applicant agrees to abandon the structure and be responsible for the removal of the structure and restore the site consistent with the character of the surrounding area. Before performing any work in response to the requirements of this condition, the applicant shall obtain a coastal development permit amendment from the Commission.

**5. Accommodation of Additional Users**

The applicant shall make any extra telecommunications capacity on the tower available for lease to licensed public or private telecommunication providers.

**6. Revised Plans**

**A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-10-001**, the applicant shall submit final revised plans to the Executive Director for review and approval. The revised plans shall include a site plan, building elevation views, and shall provide for the following changes to the project:

- 1) Site Plan Revisions
  - a. The plans shall depict the location of the telecommunications facility and surrounding fencing in relation to minimum vegetation clearance required by the California Department of Forestry and Fire Protection (CDF) to meet fire safety standards.
  - b. The plans shall depict that no new development, including but not limited to CDF vegetation clearance requirements, will encroach within the minimum 50-foot buffers for all ESHAs.

- c. The plans shall depict the driveway, facility access road, and turnout location(s) at the minimum width required by the County and by CDF, and surfaced with gravel or another pervious material.
  - d. The site plan shall depict runoff and drainage conveyance systems that are consistent with the provisions of the erosion and runoff control plan required below.
- 2) Erosion and Drainage Runoff Control Plan
- a. The plans shall include an erosion and Runoff Control Plan that incorporates design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction. The drainage plan shall include a site map showing drainage features relating to the structure footprint and any other physical structures associated with development. The final runoff control plans shall at a minimum include the following provisions:
    - i. No grading activities shall occur along the access road through ESHA or adjacent ESHA buffer areas. Any grading necessary for construction of the building site shall avoid and in no way disrupt rare plant ESHA, watercourse ESHA, ESHA buffer, or natural drainage patterns. Grading shall not significantly increase volumes of surface runoff, and adequate measures shall be taken to ensure there is no increase in surface runoff off-site;
    - ii. Soil grading activities shall be restricted to the dry-season between April 15 and October 14;
    - iii. Coarse angular rock shall be used for surface improvements to the earthen access road. To preserve hydrology, soils, and drainage features, a base layer of filter fabric shall be used, and no river-run cobble shall be used on the access road.
    - iv. Adjoining property shall be protected from excavation and filling operations and potential soil erosion;
    - v. A physical barrier consisting of silt fencing and/or bales of straw placed end-to-end shall be installed downslope of any construction areas. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;
    - vi. Native vegetation at the site shall be maintained to the maximum extent possible. Soil excavated or imported for

the telecommunications facility, or for other purposes, shall not be stockpiled onsite, except within the footprint of the proposed telecommunications facility. Any disturbed areas shall be replanted with low-growing herbaceous vegetation that conforms with the planting limitations of Special Condition Nos. 8(B), immediately following project completion, and covered by jute netting, coir logs, and/or rice straw;

- vii. The washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials on the parcel shall be prohibited, and any accidental spill of such materials shall be promptly cleaned up and restored; and
  - viii. An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials from entering any ESHA.
- B. The permittees shall undertake development in accordance with the approved revised plans. Any proposed changes to the approved revised plan shall be reported to the Executive Director. No changes to the approved revised plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**7. Best Management Practices and Construction Responsibilities**

- The permittee shall comply with the following construction-related requirements:
- A. Prior to the commencement of any construction activities, the construction zone shall be fenced with temporary construction fencing to protect ESHA habitat occurring outside the construction area. The temporary/construction fencing shall be installed within the existing road prism. To maintain ESHA and ESHA buffers adjacent to the existing road, no fencing-related materials shall extend outside the existing road prism. Fencing materials shall be maintained in place until the authorized development is completed. No construction-related activities shall be allowed to encroach into the areas protected by the temporary exclusion/construction fencing;
  - B. Contractors shall be informed of the presence of sensitive habitat areas on the site and the importance of avoiding disturbance to areas outside of the authorized building site, especially with regard to erosion and runoff from the building site;
  - C. Only road surfacing materials outlined in Special Condition 6(A)(2)(a)(iii) shall be used on the access road.

- D. Any and all excess excavated material resulting from construction activities shall be removed and disposed of at a disposal site outside the coastal zone or placed within the coastal zone pursuant to a valid coastal development permit;
- E. Straw bales, coir rolls, and/or silt fencing structures shall be installed prior to and maintained throughout the construction period to contain runoff from construction areas, trap entrained sediment and other pollutants, and prevent discharge of sediment and pollutants downslope toward the tributary that drains to Big River;
- F. All best management practices employed shall be effective during the rainy season (October 15 through April 14) if construction occurs during that time of year;
- G. On-site native vegetation shall be maintained to the maximum extent possible during and after construction activities;
- H. Parking for construction, staging, and equipment storage must be limited to the gravel lot of the residence, to minimize trips through the ESHA. During construction no vehicles will go beyond the access road and/or Verizon Wireless leased area. No staging or stockpiling of materials shall occur outside of the construction and building envelope or within ESHA buffers;
- I. All on-site stockpiles of construction debris shall be covered and contained at all times to prevent polluted water runoff;

**8. Protection of Sensitive Plant Habitat**

The permittee shall comply with the following requirements to protect sensitive plant habitat:

- A. Comply with the temporary exclusion/construction fencing requirements of Special Condition No. 7(A).
- B. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist at the site of the proposed development. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- C. No clearing or removal of trees or vegetation shall occur, other than authorized clearing of trees and vegetation located outside of ESHA and ESHA buffers at the building site for project construction and to meet California Department of Forestry and Fire Protection fire safety standards; and minor limbing of overhead trees alongside the access road only, to maintain vertical clearance for equipment access.
- D. The width of the existing access road that is surrounded by ESHA and ESHA buffer shall be no greater than its existing width of 10 feet.
- E. To preserve the sensitive soils, hydrology, and root structure of pygmy woodland ESHA adjacent to the existing access road, no grading of the road surface shall

occur in areas surrounded by ESHA or ESHA buffer, as outlined in Special Condition 6(A)(2)(a).

- F. To avoid significant impacts to the pygmy ESHA that surrounds the road, thereby protecting roots and preserving the hydrology, underground horizontal boring techniques shall be used to install underground utility lines within the centerline of the existing road.
- G. A qualified botanist shall be retained by the applicant to remain onsite during road improvement and facility construction activities to ensure protection of ESHAs.
  - 1. The botanist shall photo-document site conditions prior to-, during-, and post- construction.
  - 2. Within 90 days of completion of project construction and installation, the botanist shall submit photos to the Commission with a final report that documents whether all protective measures outlined in the Conditions of Approval have been met, and include recommendations for mitigation if Conditions have not been met.

**9. Lighting Restrictions**

- A. All exterior lights, including any lights attached to the tower and building structures, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.
- B. No reflectors or beacons shall be used. Changes to the permitted structures shall require an amendment to Permit No. A-1-MEN-10-001 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**10. Maintenance of Existing Screening Trees**

Existing trees and other vegetation outside the building site, which will provide screening for the proposed facility and associated access roads, shall be maintained in good condition throughout the life of the project. If any of these existing trees die, become decadent, rotten, or weakened by decay or disease and must be removed for any reason, they shall be replaced in approximately the same location at a 1:1 ratio, no later than May 1<sup>st</sup> of the next spring season, and replaced in-kind or with another native species occurring within the same habitat onsite. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used.

**11. Other Permit Requirements**

This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

**12. Mendocino County Encroachment Permit**

**PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-047**, the applicant shall submit for the review and approval of the Executive Director a copy of an Encroachment Permit issued by Mendocino County Department of Transportation for the construction of the proposed driveway, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the County. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**13. Conditions Imposed By Local Government**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

**III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares the following:

**1. Incorporation of Substantial Issue Findings**

The Commission hereby incorporates by reference the Substantial Issue Findings above into its findings on the *de novo* review of the project.

**2. Site Description**

The proposed project site is located approximately 1.8 miles southeast of Mendocino, on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4 miles east of its intersection with State Highway One, located at 43600 Comptche-Ukiah Road, Mendocino County. The site is located on an approximately 12.41-acre private residential parcel that is currently developed with a single-family residence.

The subject property is designated in the Coastal Land Use Plan and zoned in the Coastal Zoning Ordinance as Rural Residential – 5-acre minimum parcel size (RR-5). The proposed telecommunications facility is a form of land use consistent with the Major Impact Services and Utilities land use type listed in the LCP. Both the Coastal Land Use Plan and Coastal Zoning Ordinance list the Major Impact Services and Utilities land use

type as a conditional use in the Rural Residential land use classification and zoning district.

The property is on the fourth marine terrace on the south edge of Big River, and much of the property is dominated by a Mendocino Cypress (*Hesperocyparis pygmaea*<sup>4</sup>)/ Bolander Pine (*Pinus contorta* var. *bolanderi*) woodland. Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society<sup>5</sup> and the Department of Fish and Game.<sup>6</sup> Both species have a CNPS listing of “1B.2”<sup>7</sup> and a CNDDDB state/global ranking of “S2/G2.”<sup>5</sup> These features, combined with the presence of both Labrador tea (*Ledum glandulosum*) swamp habitat along the southwestern portion of the property; and near a meadow containing pygmy manzanita (*Arctostaphylos mendocinoensis*), are indicative of the “Mendocino pygmy cypress Woodland” vegetation community type (Sawyer and Keelor-Wolf 2009). The Mendocino pygmy cypress community type is recognized as a sensitive plant community with a CNDDDB state/global ranking of “S2/G2.”<sup>7</sup> Other special-status species in and near the meadow include the local endemic corn lily (*Veratrum fimbriatum*) and California sedge (*Carex californica*), which has a CNPS listing of 2.3.

The northwestern portion of the property transitions into an upland forest dominated by coast redwood (*Sequoia sempervirens*) and is located upslope from the pygmy forest habitat. Additional species present in this habitat include western hemlock (*Tsuga heterophylla*), Bishop pine (*Pinus muricata*), tan-oak (*Lithocarpus densiflorus*), Douglas-fir (*Pseudotsuga menziesii*), and an occasional wax myrtle (*Myrica californica*). The northeastern property line is defined as the centerline of a tributary that drains to Big River, and is located downslope of the upland redwood forest community. According to the applicant’s project description, tree height in wooded areas is approximately 109 feet.

A private driveway that provides access to the subject property from Comptche-Ukiah Road transitions into a 10-foot-wide earthen access road. The access road extends approximately 650 feet towards the proposed project site. The access road forks eastward towards the existing house approximately 400 feet from its nexus with Comptche-Ukiah road.

### **3. Project Background**

In 2007, the applicant requested a conditional use permit from Mendocino County (CDU 13-2007) for development of a 135-foot-tall tower and telecommunications facility on the

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<sup>4</sup> Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., [http://ucjeps.berkeley.edu/about\\_ICPN.html](http://ucjeps.berkeley.edu/about_ICPN.html)). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

<sup>5</sup> California Native Plant Society (CNPS). 2009. *Inventory of Rare and Endangered Plants* (online edition, v7-09d). California Native Plant Society. Sacramento, CA. Accessed from <http://www.cnps.org/inventory>.

<sup>6</sup> California Department of Fish and Game (CDFG), Natural Diversity Database (NDDDB). April 2010. *Special Vascular Plants, Bryophytes, and Lichens List*. Quarterly publication. 71 pp.

<sup>7</sup> CDFG. December 2009. *List of California Vegetation Alliances*. Biogeographic Data Branch, Vegetation Classification and Mapping Program. Sacramento, CA.

subject property. The application included consideration of 3 potential sites for the facility: Site 1 (county-approved alternative), which is located within Mendocino pygmy cypress woodland ESHA and included removal of 34 pygmy cypress trees plus removal of other native trees (Exhibit 15); Site 2, which is located within a meadow opening surrounded by pygmy forest and within the 50-foot buffer of ESHA for the pygmy forest and pygmy Manzanita ESHAs; and Site 3, which is located within upland redwood forest and outside ESHA buffers. According to the local record, Site 3 was quickly discarded by the applicant due to constraints with slope, soils, and requirements to extend the road 100 feet.

During the county hearing, questions were raised whether the meadow site was actually pygmy habitat in a “transitional” state that would warrant recognition as ESHA. According to the Mendocino County Planning Commission Minutes (Exhibit 9), this led to questioning whether Site 2 would be a less environmentally damaging alternative or not. The County ultimately approved Site 1 with inclusion of mitigation measures submitted by the applicant’s botanist as conditions of approval.

As described above, the project was subsequently appealed to the Coastal Commission on January 11, 2010 by (1) the California Native Plant Society, Dorothy King Young Chapter (CNPS-DKY); (2) Carol & Robert Zvolensky, D’Ann Finley, Phil Conwell, and Wilbert Horne; and (3) Commissioners Stone and Sanchez. On March 1, 2010, Commission staff visited the site, joined by Mr. Sharples (owner/applicant); Verizon Wireless representatives (co-applicants); and Theresa Sholars (rare plant chair) and Lori Hubbard of CNPS-DKY. As a local expert on Mendocino Pygmy Cypress Forest Habitat, Ms. Sholars discussed the components characteristic of this sensitive community type, and explained the concept of a “transitional” pygmy forest is a misnomer. Therefore, it was concluded that the meadow site is pygmy ESHA because it contained a suite of species (California sedge, pygmy manzanita, Labrador tea, and lichens, surrounded by Bolander pine) and soil features (spodosols) indicative of pygmy habitat. The landowner acknowledged the meadow had been formed 30 years ago when trees were cleared for grazing, and had been maintained as such since then. In addition, it was noted by Ms. Sholars and Commission staff that other ESHA components were also present in the meadow, including the presence of several special-status species and wetland features.

The group examined other portions of the property, and observed two potential alternate sites located within the upland coast redwood community. The sites appeared to occur outside of the 50-foot pygmy ESHA buffers. Following discussion of these potential sites, the applicants agreed to scope these two alternatives further and submit an amended project proposal.

#### **4. Project Description**

The proposed project as amended is for construction and remote operation a telecommunication facility on the approximately 12.41-acre private residential parcel to support a wireless provider (Verizon Wireless). The proposed facility will consist of a 160-foot tall lattice tower with 12 panel antennas; 2 microwave dishes; 2 wireless GPS antennas; and ground-based equipment. The project includes improvements to an existing

10-foot-wide earthen access road; clearing trees and herbaceous vegetation for the construction of the tower; limbing trees for vertical clearance along the access road; installation of underground power and telephone lines; and above ground utility metering and termination equipment. The facility will be located within a fenced lease area consisting of approximately 1500 square feet (30'x50').

Two alternative sites have been considered and both are located north of previously-proposed sites: Alternative 4 (applicants' chosen alternative for the revised project description) and Alternative 5. Both sites are more than 100 feet south of and upslope from an unnamed creek that drains to Big River. Additionally, both facility sites are located outside of ESHA, and more than 50 feet outside ESHA buffers (Exhibit Nos. 11 and 12). Alternative 4 is located approximately 75 feet north of the County-approved building site, and approximately 3 feet lower in elevation. The County-approved tower (135 feet) is 25 feet lower in height than the currently proposed tower (160 feet). Alternative 5 is located approximately 170 feet northwest of the County-approved site, and approximately 5 feet lower in elevation.

Underground power and telephone lines will be installed within the centerline of the access road. The applicant's botanist has suggested using underground horizontal boring techniques to avoid significant impacts to the pygmy ESHA that surrounds the road, thereby protecting roots and preserving the hydrology.

Road improvements include widening the first 15 feet of driveway approach that adjoins Comptche-Ukiah road, pursuant to Mendocino County Department of Transportation (DOT) requirements, to a width of 14 feet and paving this surface with asphalt concrete. The remainder of the access road will be surfaced with a layer of crushed road base and angular rock. Alternative 5 requires the access road to be extended approximately 50 feet, which would require further improvements.

Construction of the telecommunications facility requires clearance of 1,500 square feet for installation of a concrete slab and a surrounding 6-foot-tall chain-link fence with 3 strands of barbed wire. To accommodate the building site, the applicants propose removal of 11 trees (refer to Exhibit 14 pages 3 and 4 for a summary of tree species and sizes to be removed).

To satisfy state fire safe regulations pursuant to CalFire Conditions of Approval referenced in file No. 155-07, trees overhanging the access road will be limbed to maintain 15 feet of vertical clearance. CalFire also requires maintenance of a 30-foot clearance of vegetation for fire-safe defensible space. These requirements are discussed further in ESHA findings below.

Ground-based equipment includes a canopy shed to house battery cabinets for back-up power, and transmitting and receiving equipment. Two air-conditioning units will be mounted to the shed to provide cooling for the equipment. The applicant also proposes to install a 60kw diesel generator to provide back-up power in the event of a prolonged power outage. The applicant indicates the generator will meet the County's noise standard of 50dBa or less at the nearest off-site residence.

## 5. Visual Resources

### Summary of Applicable LCP Provisions:

Land Use Plan (LUP) Policy 3.5-1 states, in applicable part, as follows:

...

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. [Emphasis added]*

LUP Policy 3.5-3 states, in applicable part, as follows:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...*

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

*In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.*

LUP Policy 3.5-4 states in applicable part (emphasis added):

*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.*

...

*Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story*

*above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.*

LUP Policy 3.5-5 states as follows:

*Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.*

Section 20.504.015, “Highly Scenic Areas,” of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

...

**(C) Development Criteria.**

*(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

*(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*

*(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

...

*(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:*

- (a) Near the toe of a slope;*
- (b) Below rather than on a ridge; and*
- (c) In or near a wooded area.*

...

*(8) Minimize visual impact of development on ridges by the following criteria:*

- (a) Prohibiting development that projects above the ridgeline;*
- (b) If no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation;*
- (c) Prohibiting removal of tree masses which destroy the ridgeline silhouette.*

...

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991) [emphasis added].

CZC Section 20.504.020 states, in applicable part, as follows:

...

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

LUP Policy 3.5-15 states in applicable part (emphasis added):

*Installation of satellite receiving dishes shall require a coastal permit. In highly scenic areas, dishes shall be located so as to minimize visual impacts. Security lighting and floodlighting for occasional and/or emergency use shall be permitted in all areas. Minor additions to existing nightlighting for safety purposes shall be exempt from a coastal permit. In any event no lights shall be installed so that they distract motorists and they shall be shielded so that they do not shine or glare beyond the limits of the parcel wherever possible.*

#### Project Consistency with Applicable LCP Provisions:

The visual resources protection policies of the LCP require, among other things, that new development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas. The subject property is located in a designated "highly scenic area" approximately 1.8 miles southeast of the Town of Mendocino (Exhibit Nos. 1-4).

The facility is proposed on a ridge top approximately 1.8 miles southeast of the Town of Mendocino, and within a group of trees with an average height of approximately 100 feet. Elevation of the county-approved facility is approximately 452 feet. The vantage point from the facility does not afford nor interfere with ocean views.

As amended for *de novo* review, the project is located approximately 75 feet north of the County-approved building site and approximately 3 feet lower in elevation. The County-approved tower (135 feet) is 25 feet lower in height than the currently proposed tower (160 feet).

As part of the initial project review, the County used a balloon test to conduct a visual simulation of the affects of the project. The balloon was placed at the alternate “meadow” site (approximately 120 feet west of the County-approved site) to prevent the balloon from becoming stuck in the trees, and raised to the originally-proposed tower height of 135 feet (Exhibit 13). County staff drove along the closest public roads to help determine the project’s visual impact to the surrounding area. The County noted the tower would be visible briefly when driving past the subject property on Comptche-Ukiah Road from either direction. The County was also able to see the balloon using binoculars from vantage points within the Town of Mendocino including from the High School, which is on some of the higher elevation land in the Town.

According to the local record, there are several residences in the area from which the top of the tower may be visible, including a 6-unit bed and breakfast business known as the Mendocino Farm House, which is located approximately 1500 feet east of the proposed facility. The County surmised after review of aerial photos and ground surveillance that because most residences in the vicinity are located within clearings surrounded by trees, the proposed facility would be effectively screened from their views.

The applicants have prepared visual simulations using photos taken of the balloon test and extrapolating the location and heights to the proposed alternate locations (Exhibit 13). The simulations include photographs marking the tower location as viewed from three different vantage points in the Town of Mendocino (see Exhibit 13), including the following: (1) looking southeast from Mendocino High School; (2) looking southeast from Lake Street; (3) looking southeast from Main Street.

Based upon the simulations that include the existing trees in place, the proposed facility will be slightly visible above the ridgeline, but due to the distance from town, the facility will be relatively unnoticed unless viewed with binoculars. The photographs in the visual analysis indicate that the proposed tower would not be prominent from the various public vantage points and not even visible from most.

The existing mature forest vegetation at the top of the ridge is a significant defining element of the ridgeline in this location and provides a screening backdrop to the proposed telecommunications facility as viewed from the Town of Mendocino. The proposed facility has been sited on a relatively level terrace at the top of the ridge.

Therefore, the Commission attaches Special Condition No. 10 which requires that existing trees and other vegetation outside the building site, which provide screening for the proposed facility and associated access roads, be maintained in good condition throughout the life of the project, and requires 1:1 replacement with natives of any trees that die or become decadent.

The proposed facility would not include reflectors or beacons. The FAA does not require such features for towers that are less than 200 feet in height. Special Condition No. 9 limits the use of lighting on the facility to the minimum necessary for safety, and prohibits the use of reflectors or beacons. It further limits all lighting to low-wattage, directionally-downcast lighting.

Although the Commission finds that the single communications tower currently proposed would protect views to and along the ocean and scenic coastal areas, the installation of additional towers in the area would not necessarily be consistent with the limitations of Section 30251 of the Coastal Act. Other communications companies may seek to install their own facilities to provide service. The installation of multiple communications towers in the vicinity could have both individual and cumulative visual impacts. Therefore, to minimize the cumulative visual effects on views of the scenic coastal area, the Commission finds that the proposed project can only be approved with attached Special Condition No. 3 which requires the applicant to make any extra telecommunications capacity on the tower available for lease to licensed public or private telecommunication providers. The Commission finds that clustering the maximum number of antennas and microwave dishes onto one tower will reduce the overall number of future towers constructed on the ridgeline. The clustering of communication facilities on fewer towers will minimize the cumulative adverse impacts resulting from the construction of communication towers along this part of the north coast.

However, to ensure that any additional microwave dishes or antennas added to the proposed tower will not significantly increase the height of the tower and create adverse visual impacts the Commission finds that proposed project can only be approved with attached Special Condition No. 1. Special Condition No. 1 requires that any modification to the approved coastal development permit including additions or improvements to the structures will require a coastal development permit or amendment. The Commission would then have the ability to review the visual impacts of any such proposed changes.

Further, in the future, if the facility is no longer needed, the applicant shall agree to abandon the facility and obtain a coastal development permit amendment from the Commission for the removal of all permanent structures and the restoration of the site as outlined in Special Condition No. 2.

With regard to alterations of landforms, the amended project as proposed includes installation of a concrete pad for placement of the telecommunication facilities, but does not include excavation or other alteration of landforms. Therefore, the proposed project would minimize the alteration of landforms consistent with LUP Policy 3.5-1 and CZC Section 20.504.020.

Therefore, the Commission finds that, as conditioned, the proposed development will: (a) be sited and designed to protect views to and along the ocean and scenic coastal areas; and (b) minimize the alteration of natural landforms, and (c) be compatible with the character or the surrounding area consistent with LUP Policy 3.5-4 and CZC Section 20.504.020(D).

## 6. Environmentally Sensitive Habitat Areas (ESHA)

### Summary of Applicable LCP Provisions:

Mendocino County Land Use Plan (LUP) Policy 3.1-2 states the following (emphasis added):

*Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.*

*If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.*

LUP Policy 3.1-7 states the following (emphasis added):

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*

3. *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

LUP Policy 3.1-18 states the following (emphasis added):

*Public access to sensitive wildlife habitats such as rookeries or haulout areas shall be regulated, to insure that public access will not significantly adversely affect the sensitive resources being protected.*

*Development within buffer areas recommended by the California Department of Fish and Game to protect rare or endangered wildlife species and their nesting or breeding areas shall meet guidelines and management practices established by the Department of Fish and Game, and must be consistent with other applicable policies of this plan.*

CZC Section 20.496.015 states, in applicable part, the following (emphasis added):

**(A) Determining Extent of ESHA.** *The Coastal Permit Administrator shall review, with the assistance of land use maps, all permit applications for coastal developments to determine whether the project has the potential to impact an ESHA. A project has the potential to impact an ESHA if:*

...

(2) *The development is proposed to be located within an ESHA, according to an on-site investigation, or documented resource information; ...*

(3) *The development is proposed to be located within one hundred (100) feet of an environmentally sensitive habitat and/or has potential to negatively impact the long-term maintenance of the habitat, as determined through the project review.*

...

**(D) Development Approval.** *Such development shall only be approved if the following occurs:*

(1) *All members of the site inspection team agree to the boundaries of the sensitive resource area; and*

(2) *Findings are made by the approving authority that the resource will not be significantly degraded by the development as set forth in Section 20.532.100(A)(1).*

**(E) Denial of Development.** *If findings cannot be made pursuant to Section 20.532.100(A)(1), the development shall be denied.*

CZC Section 20.532.100 states, in applicable part, the following (emphasis added):

*In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:*

**(A) Resource Protection Impact Findings.**

***(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:***

- (a) The resource as identified will not be significantly degraded by the proposed development.*
- (b) There is no feasible less environmentally damaging alternative.*
- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.*

...

Section 20.496.020 of the CZC states, in applicable part, the following (emphasis added):

***(A) Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.***

***(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.***

*Standards for determining the appropriate width of the buffer area are as follows:*

- (a) Biological Significance of Adjacent Lands...*
- ...
- (b) Sensitivity of Species to Disturbance...*
- ...
- (c) Susceptibility of Parcel to Erosion...*
- ...
- (d) Use of Natural Topographic Features to Locate Development...*
- ...
- (e) Use of Existing Cultural Features to Locate Buffer Zones...*
- ...
- (f) Lot Configuration and Location of Existing Development...*
- ...
- (g) Type and Scale of Development Proposed...*
- ...

***(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:***

- (a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.

Section 20.496.045 of the CZC states, in applicable part, the following (emphasis added):

(A) **Pygmy Forests- General.**

- (1) Pygmy forests are generally categorized as a unique ecosystem but if they contain a rare or endangered species they are categorized as an ESHA.
- (2) New development on parcels which contain pygmy type vegetation shall be located in the least environmentally damaging locations and shall minimize the removal of native vegetation and alteration of soils and natural land forms.
- (3) Where feasible, new development should only be permitted at the periphery of pygmy forest habitat where construction does not cause penetration of the hardpan, where septic systems do not drain into adjacent pygmy forest habitat, and where dwellings do not require that an access road be built through intact pygmy forest.
- (4) Scientific, educational and passive recreational uses are permitted where trails result in minimal impact to surrounding vegetation. Boardwalks should be built where trails traverse terrain that is seasonally wet due to the presence of a perched water table, or areas with a fragile ground cover consisting of several species of lichen.
- (5) Because the pygmy forest has a low carrying capacity for foot traffic, trails proposed by the applicant should be built around the forest perimeter, where possible

(B) **Development Requirements in or adjacent to a pygmy forest categorized as ESHA.**

- (1) Development permitted in or adjacent to pygmy forests categorized as ESHA are to be severely restricted and shall be limited to uses that do not interfere with the hydrologic regime, soil acidity or low nutrient status and shall not cause adverse impacts to this unique ecosystem or to water quality (See ESHA Buffer Areas, Section 20.496.020)

Project Consistency with Applicable LCP Provisions:

As discussed above, several rare plant species occur on the subject property: much of the property is dominated by a Mendocino Cypress (*Hesperocyparis pygmaea*<sup>8</sup>)/ Bolander Pine (*Pinus contorta* var. *bolanderi*) woodland. Both species are included on lists of rare,

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<sup>8</sup> Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., [http://ucjeps.berkeley.edu/about\\_ICPN.html](http://ucjeps.berkeley.edu/about_ICPN.html)). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

threatened, and endangered species by the California Native Plant Society<sup>9</sup> and the Department of Fish and Game.<sup>10</sup> Both species have a CNPS listing of “1B.2”<sup>10</sup> and a CNDDDB state/global ranking of “S2/G2.”<sup>11</sup> These features, combined with the presence of both Labrador tea (*Ledum glandulosum*) swamp habitat along the southwestern portion of the property; and near a meadow containing pygmy manzanita (*Arctostaphylos mendocinoensis*), are indicative of the “Mendocino pygmy cypress Woodland” vegetation community type (Sawyer and Keelor-Wolf 2009). The Mendocino pygmy cypress community type is itself recognized as a sensitive plant community with a CNDDDB state/global ranking of “S2/G2.”<sup>11</sup> Other special-status species in and near the meadow include the local endemic corn lily (*Veratrum fimbriatum*) and California sedge (*Carex californica*), which has a CNPS listing of 2.3.

Because of their relative rarity at the state and global levels, Bolander pine and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies. The Commission has consistently found that the Mendocino pygmy cypress woodland community is a form of ESHA.

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. CZC Section 20.532.100(A)(1)(a) requires that ESHA resources affected by development will not be significantly degraded by the proposed development. The LCP policies identify specific uses permitted in wetland and riparian ESHAs, but do not specifically identify what uses are allowed within rare plant ESHA, and by extension, within the rare plant buffer.

Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Although Section 30240 of the Coastal Act is not listed in the section of the certified Land Use Plan entitled, “Coastal Element Policies: Habitats and Natural Resources,” which contains LUP Policy 3.1-7 and other LUP policies governing the protection of ESHA, Section 30240 is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA.

Although local governments are responsible for drafting the precise content of their LCPs, the Coastal Act requires that LCPs must, at a minimum, conform to and not conflict with the resource management standards and policies of the Coastal Act. It can be presumed that the County was aware that the Coastal Act established the minimum

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<sup>9</sup> California Native Plant Society (CNPS). 2009. *Inventory of Rare and Endangered Plants* (online edition, v7-09d). California Native Plant Society. Sacramento, CA. Accessed from <http://www.cnps.org/inventory>.

<sup>10</sup> California Department of Fish and Game (CDFG), Natural Diversity Database (NDDDB). April 2010. *Special Vascular Plants, Bryophytes, and Lichens List*. Quarterly publication. 71 pp.

<sup>11</sup> CDFG. December 2009. *List of California Vegetation Alliances*. Biogeographic Data Branch, Vegetation Classification and Mapping Program. Sacramento, CA.

standards and policies for local coastal programs and knew, that in drafting its local coastal program, it was constrained to incorporate the development restrictions of Section 30240(a) of the Coastal Act, including the restriction that only uses dependent on those resources shall be allowed in those areas. It can also be assumed that in certifying the Mendocino County LCP, the Commission understood and found that the LCP conformed to (i.e. incorporated) the minimum policies and standards of the Coastal Act, including the development restrictions of Section 30240(a).

As noted above, the narrative for the section of the Land Use Plan containing LUP policies governing the protection of ESHA includes Section 30240. In addition, the narrative contains statements that acknowledge the protections afforded by Section 30240 and the County's commitment to incorporate those protections into the LCP, including the following statements:

- “The Coastal Act mandates the preservation of significant natural resources and habitats;”
- “Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California;”
- This Local Coastal Plan represents the commitment of the County of Mendocino to provide continuing protection and enhancement of its coastal resources

The LCP policies do not expressly authorize non-resource dependent uses nor any other uses within rare plant ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Commission finds that the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

The proposed project as amended relocates the building site from within ESHA to a site located outside of ESHA and ESHA buffers (**Exhibit No. 11**). An existing earthen access road bisects Mendocino pygmy ESHA and extends approximately 650 feet from the nexus with Comptche-Ukiah Road to the site of the proposed development. The development includes treatment of the road surface with gravel to protect soil surfaces from impacts of facility service equipment. Commission staff contacted Battalion Chief

Larry Grafft on June 16, 2010 to discuss fire safe requirements referenced in Cal Fire Conditions of Approval (COA) File 155-07 (Exhibit 19). The COA indicate a driveway standard for roads (driveways) greater than 150 feet that requires a turnout near the midpoint that is a minimum of 10 feet wide and 30 feet long (with a 25-foot taper at each end). An existing 10-foot-wide earthen path runs perpendicular to the access road but is located farther down the access road than the midway point, and located within the 50-foot ESHA buffer. Mr. Grafft indicated this existing path would be sufficient to satisfy the driveway standard requirements (PRC Title 14, Section 1273.10), thereby avoiding additional impacts to ESHA.

The amended project does not propose to expand the width of the current 10-foot-wide road; however, underground utilities are proposed to be installed within the centerline of the road. The applicant's botanist, Kjeldsen Botanical Consulting, submitted a Botanical Assessment for Alternatives 4 and 5 on March 29, 2010 (Exhibit 14). The botanical assessment notes that the project will not require tree removal in ESHA, but does reference the installation of underground utility lines in the center of the access road. The botanist recommends use of underground horizontal boring techniques to avoid significant impacts to the ESHA as a means of protecting roots and preserving the hydrology. The access road is an existing facility and is not part of the adjoining ESHA.

Therefore, the Commission finds that as amended for the Commission's *de novo* review, the proposed project as conditioned does not involve development of any use within an ESHA.

As cited above, LUP Policy 3.1-7 and CZC Section 20.496 contain specific requirements for the establishment of a buffer area between development and an adjacent ESHA to protect ESHA from disturbances associated with proposed development. The width of the buffer area is required to be a minimum of 100 feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game and County Planning staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area is required to be measured from the outside edge of the ESHA and shall not be less than 50 feet in width. Development permitted within a buffer area is required to be generally the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply within the standards set forth in CZC Section 20.496.020(A)(4)(a)-(k).

As stated above CZC 20.496.045(B)(1) states that development in or adjacent to pygmy forest ESHA shall be limited to uses that do not interfere with the hydrologic regime and that do not adversely affect the ecosystem or water quality.

The new site for the proposed telecommunications facility is located within the 100-foot ESHA buffer, but has been sited outside the minimum 50-foot ESHA buffer. The applicant's biologist prepared an analysis that substantiates that a 50-foot buffer is adequate to protect the ESHA from the impacts of the proposed above ground development based on the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) of the MCCZC (see Exhibit No. 14, pages 39-47)

Regarding CalFire fire safe regulations, maintenance of a 100-foot defensible space around and adjacent to buildings or structures is required at all time (PRC Section 4291). While both Alternatives 4 and 5 were sited outside the 50-foot ESHA buffer, the requirement to maintain vegetation clearance of 100 feet around the telecommunications facility would have resulted in encroachment within the 50-foot buffer, inconsistent with CZC Section 20.496.020(A)(4)(a)-(k). After dialog between the applicant and CalFire Battalion Chief Larry Grafft, CalFire determined that the 100-foot defensible space could be reduced to 30 feet if the communications structure is constructed of concrete (Exhibit 19). Special Condition 6A(1) requires revised site plans to show the extent of the 30-foot defensible space in relation to the building site and ESHA buffer to ensure vegetation clearing does not occur within the buffer, and restricts any vegetation clearing from occurring within the buffer unless an amendment to Coastal Development Permit A-1-MEN-10-001 is obtained first.

The access road is an existing facility and is not part of the adjoining ESHA. Special Conditions 6A(2), 7, and 8E restrict road improvements such that grading of the road surface is not allowed, and use of rock for the surface is restricted to angular rock (not river cobble). To minimize damage of the soil surface and hardpan caused by installation of underground utility lines within the center of the existing road, Special Condition 8F requires installation using horizontal boring equipment, to avoid significant impacts to the ESHA, protecting roots and preserving the hydrology. Therefore, the Commission finds the project as conditioned minimizes alteration to soils, consistent with CZC Sections 20.496.045(A)(2) and (3).

Special Condition 7A requires installation of temporary fencing along the access road during construction activities to clearly demarcate no-entry areas. Permanent fencing has not been recommended because there is insufficient room within the existing roadbed to install fencing while maintaining the minimum 10-foot width required by various jurisdictions, and installation outside the roadbed would encroach into ESHA and ESHA buffer.

Special Condition 6 ensures the development will be compatible with the continuance of habitat by limiting activities that may occur at the building site, and requiring an erosion and drainage control plan. Special Condition 8G requires the presence of a botanist onsite during construction activities to ensure surrounding ESHA areas are protected. Therefore, the Commission finds that, as conditioned, the proposed development is consistent with LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4)(a)-(k).

## **8. Federal Telecommunications Act**

Public entities' powers to regulate the placement of telecommunication facilities are limited by the Federal Communications Commission ("FCC") and Federal law, specifically the Telecommunications Act of 1996 ("TCA"). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in U.S.C., Titles 15, 18 & 47), precludes state and local governments from enacting ordinances that prohibit or have the effect of prohibiting the provision of telecommunications services, including wireless services.

47 U.S.C. section 253 preempts state and local regulations that maintain the monopoly status of a telecommunications service provider. Section 253(a) states: “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” TCA also contains provisions applicable only to *wireless* telecommunications service providers. 47 U.S.C. section 332(c)(7) preserves the authority of local governments over zoning decisions regarding the placement and construction of wireless service facilities, subject to enumerated limitations in section 332(c)(7)(B). One such limitation is that local regulations “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” (47 U.S.C. section 332(c)(7)(B)(i)(II).) An agency runs afoul of either 47 U.S.C. section 253 or 47 U.S.C. section 332(c)(7) if (1) it imposes a “city-wide general ban on wireless services” or (2) it actually imposes restrictions that amount to an effective prohibition. (47 U.S.C. section 253(a); 47 U.S.C. section 332(c)(7)(B)(i)(II).) A public entity can run afoul of TCA’s effective prohibition clause if it prevents a wireless service provider from closing a significant gap in service coverage, taking into account the feasibility of alternative facilities or site locations.

State and local governments must act “within a reasonable time frame” in acting on applications, and decisions to deny such requests must be “in writing and supported by substantial evidence contained in a written record.” (47 U.S.C. section 332(c)(7)(B)(iii).) In addition, state and local governments cannot “regulate the placement, construction and modification of cellular facilities on the basis of environmental effects of radio frequency emissions” if the facilities comply with the FCC regulations with respect to such emissions. (47 U.S.C. section 332(c)(7)(B)(iv).) If an agency denied or regulated a cell phone tower on the basis of the environmental effects of radio frequency emissions (RFEs) that comply with the federal regulations, then that agency action is preempted.

The limitations upon a state and local government’s authority with respect to telecommunications facilities contained within the Telecommunications Act of 1996 (TCA) do not state or imply that the TCA prevents public entities from exercising their traditional prerogative to restrict and control development based upon aesthetic or other land use considerations. Other than the enumerated exceptions, the TCA does not limit or affect the authority of a state or local government. Though Congress sought to encourage the expansion of telecommunication technologies, the TCA does not federalize telecommunications land use law. Instead, Congress struck a balance between public entities and telecommunication service providers. Under the TCA, public entities retain control “over decisions regarding the placement, constructions, and modification of telecommunication facilities.” (47 U.S.C. § 332(c)(7)(A).)

The Commission’s adherence to the restrictions provided by the TCA is documented by substantial evidence contained within this staff report

Regarding the need for the Commission to act on this application within a reasonable period of time, on November 18, 2009, the Federal Communications Commission (the “FCC”) released a Declaratory Ruling clarifying Section 332©(7) of the Communications Act. *See In Re: Petitioner for Declaratory Ruling to Clarify Provisions of Section*

332(c)(7)(B) to *Ensure Timely Siting Review, Etc.*, FCC 09-99 (FCC November 18,2009) (the “Ruling”). The ruling permits a wireless service provider whose application has been pending for a period of 90 days for collocation applications, and 150 days for all other applications to seek judicial review within 30 days on the basis that a state or local permitting authority failed to act on the application within “a reasonable time”. Ruling, ¶ 45. For applications pending on the date of the Ruling, the applicable deadline for action is calculated from the date of the Ruling, not the date the application was filed. Ruling, ¶ 51. The Ruling further permits the period for review of an application to be extended by mutual consent. Ruling, ¶ 49.

In order to allow the Commission to continue to review the appeal in an orderly manner, without either party risking the loss of important rights, on April 16, 2010 the applicant and Commission staff entered into an Agreement stating that the time period within which the Commission may act on the appeal shall be extended through July 15, 2010, and that no limitations period for any claim of unreasonable or unlawful delay in processing the appeal shall commence to run before said date.

However, as expressly stated in the Agreement signed by the applicant and Commission staff, in the event the Commission has not taken final action on the appeal by July 15, 2010, the Agreement shall not be construed as an admission by the Commission that such failure to act is unreasonable or unlawful, nor shall it be construed to waive or otherwise impair the rights of Verizon Wireless with respect to any such claim. In addition, the Agreement shall not be construed to waive any claims by the Commission regarding the validity or applicability of the requirements and deadlines established in the Ruling.

## **9. California Environmental Quality Act**

Mendocino County is the lead agency for the purposes of CEQA review. The County determined that the proposed project could be adequately mitigated through the conditions of approval so that no significant adverse environmental impacts would result from the proposed project, and therefore adopted a Negative Declaration for the proposed project.

Section 13096 of the Commission’s administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified Mendocino County

LCP, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP and Section 30010 of the Coastal Act. All feasible mitigation measures, which will minimize all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**EXHIBITS:**

1. Regional Location Map
2. Vicinity Map
3. Zoning Map
4. Aerial Photo
5. County-Approved Project Plans
6. Appeal A (CNPS)
7. Appeal B (Zvolensky Et. Al)
8. Appeal C (Sanchez & Stone)
9. Notice of Final Local Action & County Staff Report
10. Site Photos
11. Revised Site Plans- Alternative 4 for *de novo* review
12. Revised Site Plans- Alternative 5 for *de novo* review
13. Visual Simulations of Proposed Development
14. March 29, 2010 Botanical Assessment and Recommendations
15. Original Project Description and Alternatives Analysis from Local Record
16. Correspondence following Appeal
17. Applicant's and Interested Parties' Correspondence
18. *Ex Parte* Disclosures
19. CalFire Revised Conditions of Approval for fire safety standards

**APPENDIX A**

**STANDARD CONDITIONS:**

**1. Notice of Receipt & Acknowledgement**

The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

**2. Expiration**

If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

**3. Interpretation**

Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.

**4. Assignment**

The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms & Conditions Run with the Land**

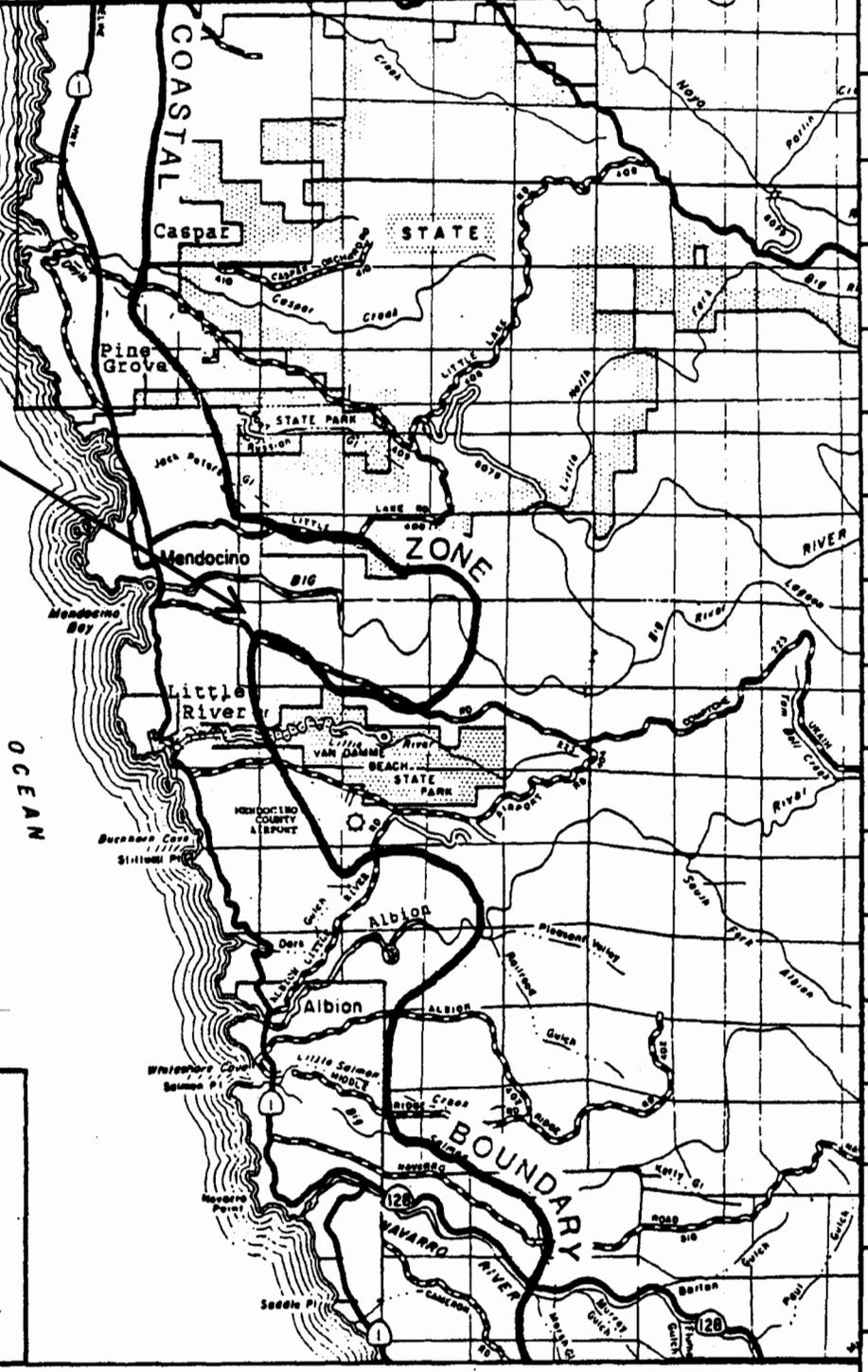
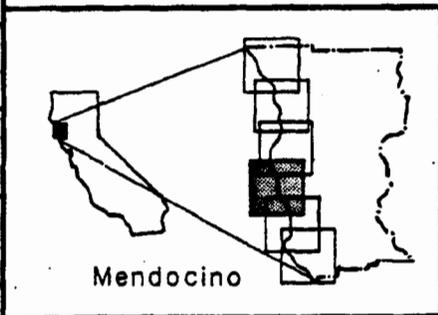
These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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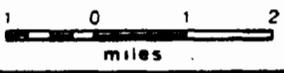
PROJECT SITE

**EXHIBIT NO. 1**  
**APPEAL NO.**  
 A-1-MEN-10-001  
 SHARPLES & VERIZON  
 REGIONAL LOCATION MAP

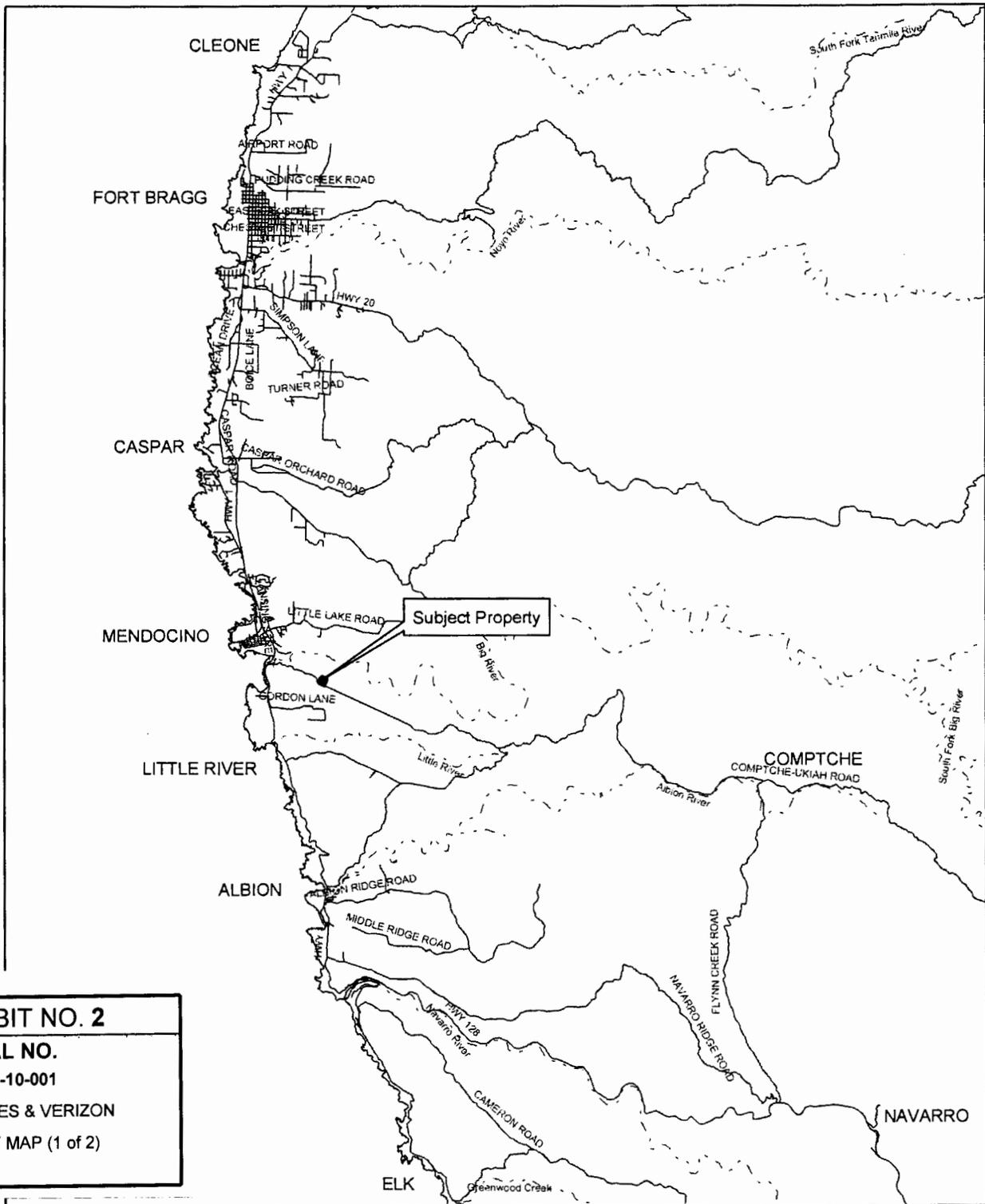


California Coastal Commission

LOCATION MAP



County of Mendocino

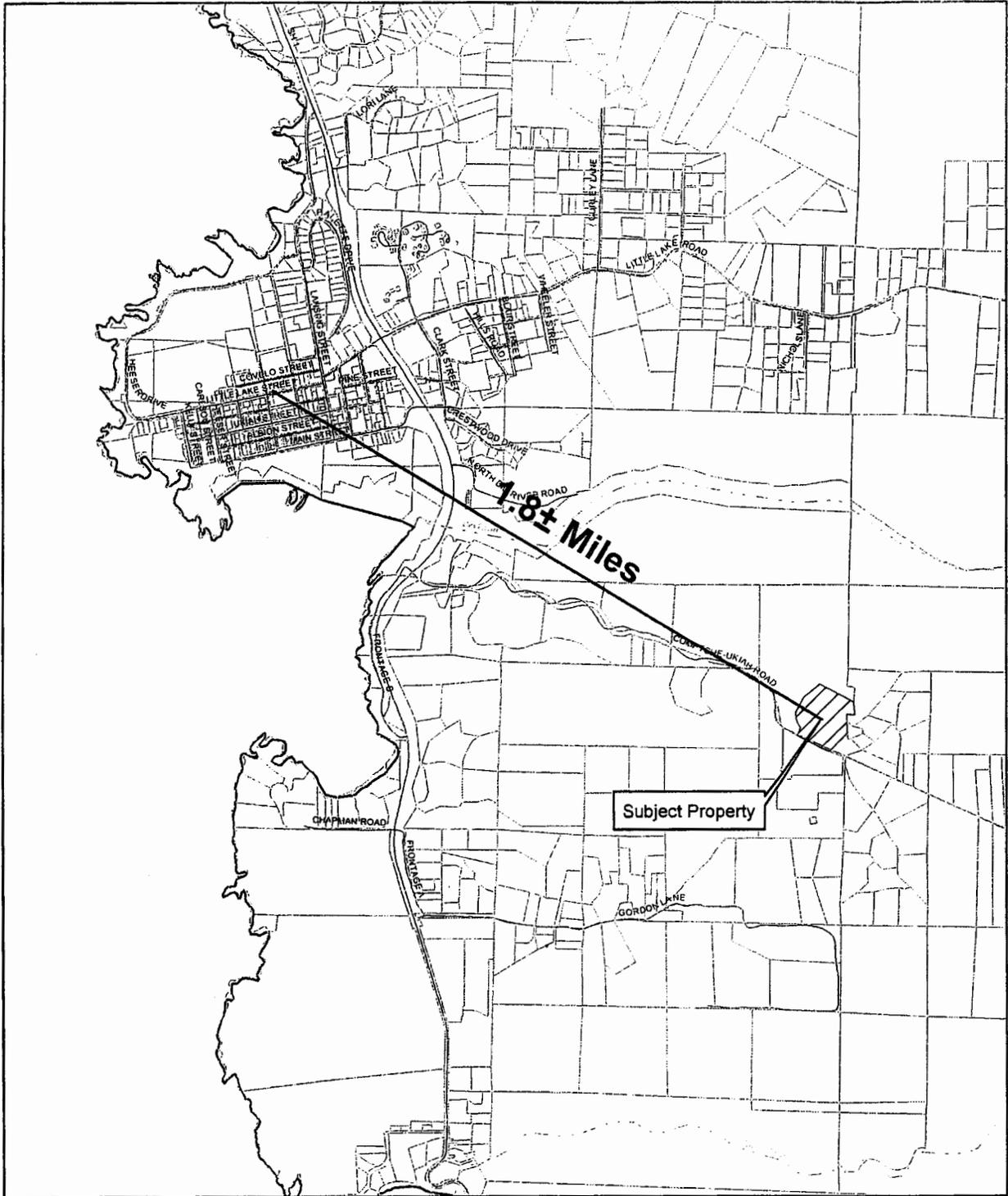


**EXHIBIT NO. 2**  
**APPEAL NO.**  
**A-1-MEN-10-001**  
**SHARPLES & VERIZON**  
**VICINITY MAP (1 of 2)**

**OWNER:** SHARPLES, Philip & Lavender  
**APPLICANT:** VERIZON WIRELESS  
**AGENT:** MILLER, Tom  
**CASE:** CDU 13-2007  
**APN:** 119-410-17

**LOCATION MAP**

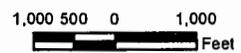




OWNER: SHARPLES, Philip & Grace  
 APPLICANT: VERIZON WIRELESS  
 AGENT NOBEL, Pamela  
 CASE #: CDU 13-2007  
 APNs: 119-410-17

**DISTANCE FROM SITE TO MENDOCINO**

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)



2012



Location of Proposed Tower Site

Subject Property

**EXHIBIT NO. 4**  
**APPEAL NO.**  
A-1-MEN-10-001  
SHARPLES & VERIZON  
AERIAL PHOTO

OWNER: SHARPLES, Philip & Lavender  
APPLICANT: VERIZON WIRELESS  
AGENT: MILLER, Tom  
CASE: CDU 13-2007  
APN: 119-410-17

**ORTHOPHOTO - August 2005**









**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
710 E STREET, SUITE 200  
EUREKA, CA 95501  
VOICE (707) 445-7833 FAX (707) 445-7877



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: California Native Plant Society, Dorothy King Young Chapter - Cont: Lori Hubbard

Mailing Address: P.O. Box 985

City: Point Arena, CA

Zip Code: 95468

Phone: 707-882-1655

**SECTION II. Decision Being Appealed**

RECEIVED

JAN 11 2010

CALIFORNIA  
COASTAL COMMISSION

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Use Permit to allow the construction and operation of a telecommunication facility to support a wireless provider (Verizon Wireless), consisting of a 135-foot tall lattice tower, 12 panel antennas, 2 microwave dishes, and ground-based equipment.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

43600 Comptche Road, 1.8 miles east of State Highway 1. AP# 119-410-17

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

<b>EXHIBIT NO. 6</b>
<b>APPEAL NO.</b>
A-1-MEN-10-001
SHARPLES & VERIZON
APPEAL A: CALIF. NATIVE PLANT SOCIETY (1 of 6)

**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-1-MEN-10-001

DATE FILED: 1/11/10

DISTRICT: North Coast

**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: December 17, 2009

7. Local government's file number (if any): CDU 13-2007

**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:

Verizon Wireless  
2785 Mitchell Drive  
Walnut Creek, CA 94598

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) Philip and Grace Lavender Sharples  
100 N. Frankin St.  
Fort Bragg, CA 95437

(2) NSA Wireless, Inc.  
Pamela Nobel  
12647 Alcosta Blvd., Suite 110  
San Ramon, CA 94583

(3)

(4)

## 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.

#### FACTUAL SUPPORT LACKING -- RARE BOTANICAL RESOURCES MIS-IDENTIFIED:

Supporting documentation with the Coastal Permit application identified both pygmy cypress (now called *Hesperocyparis pygmaea*) and Bolander pine (*Pinus bolanderi*) on the landowners' preferred project site.

However, the documentation failed to correctly identify this as pygmy forest, which is afforded protection under Mendocino County's Local Coastal Program and Land Use Plan. The presence of both the cypress and the pine indicate pygmy forest. Instead, the project documentation referred to "Bishop Pine, Shore Pine and Pygmy Cypress woodland".

Please note that "shore pine" - *Pinus contorta* ssp. *contorta*, is not known to occur this far inland from its sea bluff habitat. Nor is it known to grow with pygmy cypress. Occurrence of "shore pine woodland" on this site would make botanical history!

The documentation also failed to consider that this pygmy forest, or Mendocino Cypress Alliance, is a vegetation type listed as rare by the CA Department of Fish and Game. Bishop Pine Alliance is also considered rare by CDFG, though neither so rare nor so demanding in its requirements as pygmy forest. The County is obligated to protect this site as Environmentally Sensitive Habitat (ESHA) because 1) pygmy cypress and Bolander pine are species of concern for the CA Dept. of Fish and Game (as are several other species likely to be found in pygmy forest); 2) the vegetation type qualifies as ESHA under the County's LCP, and by virtue of its state listed status.

#### COMPLETELY INADEQUATE, UNWORKABLE MITIGATION PROPOSED:

The project proponent proposes to mitigate for the loss of trees, but the loss of a rare plant community and damage to ESHA was NOT addressed.

This project is located in Coastal Zone in Environmentally Sensitive Habitat (ESHA), but the type of ESHA was characterized as mere stands of rare plant species. This ESHA is also a rare plant community, or Alliance, so designated by the CA Department of Fish and Game.

Presence on the site of the rare Mendocino Cypress Alliance, locally known as pygmy forest, is indicated by the presence of both pygmy cypress (*Hesperocyparis pygmaea*) and Bolander pine (*Pinus contorta* ssp. *bolanderi*). These trees occur naturally together only on flat marine terraces on true pygmy soil types.

Pygmy forest is completely dependent on specific soil chemistry, soil structure and hydrological regime. It is impossible to re-create this rare vegetation type by merely planting pygmy forest species on a site that lacks the necessary soil and water conditions.

The project proponent proposes to mitigate the loss of trees, but the loss of a rare plant community is not addressed. The proposal to plant pygmy species on a site described as "ruderal grassland" CANNOT re-create the pygmy forest community. The very fact that the proposed mitigation site is now ruderal

grassland proves that it lacks the necessary conditions to support pygmy forest.

Thus the only possible mitigation for this project would be formal preservation of intact pygmy forest on another site. CNPS is willing to provide advice if mitigation of this type is undertaken.

If Verizon and/or the landowners are not willing to meet this obligation, then the County must deny the project as currently proposed. Alternative sites on the landowners' property or elsewhere should also be further considered.

CNPS sent a letter dated 12-10-09 explaining this situation. The County Planning Commission failed to fully consider the statements of CNPS when approving this project. Approval of a project with wholly inadequate mitigation for loss of ESHA is contrary to the California Coastal Act.

#### LEGAL SUPPORT FOR COUNTY'S DECISION - INADEQUATE:

Litigation by the Sierra Club in 1993 guaranteed protection for pygmy forest in the Coastal Zone in Mendocino County: *Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602,611 [15 Cal.Rptr.2d 779] (Pygmy Forest)

"Under the Coastal Act, Commission is required to protect the coastal zone's delicately balanced ecosystem. (§ 30001, subs. (a)-(c); §30001.5, subd. (a); *City of San Diego v. California Coastal Com.* (1981) 119 Cal.App.3d 228, 233; *Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 611 (Pygmy Forest).) Thus in reviewing all programs and projects governed by the Coastal Act, Commission must consider the effect of proposed development on the environment of the coast. (See *City of San Diego v. California Coastal Com.*, supra, 119 Cal.App.3d at p. 234.)

In addition to the protection afforded by the requirement that Commission consider the environmental impact of all its decisions, the Coastal Act provides heightened protection to ESHA's. (Pygmy Forest, supra, 12 Cal.App.4th at p. 611.) Section 30107.5 identifies an ESHA as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Section 30240 of the Coastal Act protects the area of an ESHA from uses that threaten the habitat values of that ESHA. It does not allow for any process by which the habitat values of an ESHA can be isolated and then recreated in another location. Thus, even if the proposed mitigation were feasible (which it is not) this kind of attempt to re-create ESHA habitat values is not permitted under Section 30240.

#### PRECEDENT SET BY THIS PROJECT:

CNPS believes this project would set a very negative legal precedent for protection of botanical resources within Mendocino County's Coastal Zone, and for protection of Mendocino's rare and unique pygmy forest resources. Most occurrences of pygmy forest lie outside the Coastal Zone, and under ongoing threat while receiving little or no protection.

This project would set a precedent that would undermine those protections that do exist for pygmy forest within the Coastal Zone.

Nor can pygmy forest on public lands be considered truly protected, since State Parks are under siege and public agencies like State Parks and the California Dept. of Forestry and Fire Protection (owner of Jackson Demonstration State Forest) lack the funds and personnel to adequately protect pygmy forest against illegal recreational vehicle activities, campfires, trash dumping and other ongoing depredations.

#### SIGNIFICANCE OF RESOURCE:

The Mendocino Cypress Alliance, or pygmy forest, occurs only in a few areas of the coastal belt in Mendocino County (occurrence of this forest in Sonoma County is poorly documented and unlikely to hold up under scrutiny).

This Alliance is unique and of value to science, since its vegetation is adapted to a set of very harsh conditions imposed by soil chemistry and geomorphological features that control the hydrology on

pygmy terraces. The environmental conditions that give rise to pygmy forest are themselves very rare on a worldwide scale.

Pygmy forest once occupied about 4,000 acres at 28 locations, but an inventory taken of those sites in 1983 revealed that 14 were "either destroyed or severely degraded. Much additional degradation has occurred since then, and the CA Dept. of Fish & Game plans to re-visit old records and conduct ground surveys to compile new data on the extent and condition of Mendocino's pygmy forest sites.

**PUBLIC IMPERATIVE LACKING:**

Many Mendocino County coast residents have voiced their opposition to this project and to cell phone towers in general. Thus it cannot be said that there is overwhelming public support for this project, such as might override environmental considerations. Further, Mendocino's coastal zone contains much open land, so that Verizon's choices of cell tower sites are not limited as they would be in an urban area.

546

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

*for California Native Plant Society*  
Signature of Appellant(s) or Authorized Agent

Date: January 7, 2010

**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: \_\_\_\_\_

6 of 6

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
710 E STREET, SUITE 200  
EUREKA, CA 95501  
VOICE (707) 445-7833 FAX (707) 445-7877



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Carol and Robert Zvolensky, D'Ann Finley, Phil Conwell, Wilbert Horne

Mailing Address: 43544 Comptche Ukiah Rd.

City: Mendocino

Zip Code: 95460

Phone: 707.937.0351

**SECTION II. Decision Being Appealed**

**RECEIVED**

JAN 13 2010

CALIFORNIA  
COASTAL COMMISSION

1. Name of local/port government:

Mendocino County Planning Commission

2. Brief description of development being appealed:

Construction and operation of a telecommunications facility to suport wireless provider (Verizon) consisting of a 135 foot tall lattice tower, 12 panel antennas, 2 microwave dishes adn ground base equipment.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1.8+/- miles southeast of Mendocino lying on the north side of Comptche Ukiah Road (CR #223), and approximately 1.4+/- miles east of it's intersection of Highway One, located at 43600 Comptche-Ukiah Rd.  
AP #119-410-17

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

<b>EXHIBIT NO. 7</b>
<b>APPEAL NO.</b>
A-1-MEN-10-001
SHARPLES & VERIZON
APPEAL B: ZVOLENSKY ET.
AL. (1 of 6)

**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-1-MEN-10-001

DATE FILED: 1/13/10

DISTRICT: North Coast

**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: 12/17/09

7. Local government's file number (if any): CDU 13-2007

**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:

Verizon Wireless  
2785 Mitchell Drive  
Walnut Creek, Ca 94598

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) Norman de Vall, interested party (Agent)  
5975 South Highway One  
Elk, Ca 95432

(2) Christy Wells

(3) Molly Warner

(4) Beth Bosk

2 of 6

### **SECTION III. Identification of Interested Persons**

Local Government's File Number: CDU 13-2007

Names and Addresses of Appellants:

Carol and Robert Zvolensky  
43544 Comptche-Ukiah Road  
Mendocino, CA 95460

D'Ann Finley  
704 Elmwood Drive  
Davis, CA 95616

Phillip Conwell  
P.O. Box 937  
Mendocino, CA 95460

Wilbert Horne  
43570 Comptche-Ukiah Road  
Mendocino, CA 95460

**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.

We understand that Rick Macedo, DFG biologist, is very strict in terms of CEQA, and that he knows his biology. We believe that the potential impacts to the natural resources on this project may be mitigated as he and the project biologist state. So, in terms of CEQA, we believe that the impact may be mitigated to a level that is less than significant.

Nevertheless, the issue is with the language and findings required by our LCP, not with CEQA. Our LCP states that you can't develop in an ESHA unless specific findings can be made. We concur with Staff that findings 20.532.100(A)(1)(a) and (c) can be made, but that (b) can't.

Therefore, though we believe that the impact to the resources may be mitigated, we do still believe that the approval is weak.

We base this on Dusty Duley's comment that the "finding from Department of Fish & Game was that the meadow is not an ESHA." See page 19, 3rd paragraph of the Draft Minutes.

There appears to be disagreement as to the extent of the ESHA, as the project biologist (Dr. Kjeldsen) stated that the meadow is "more valuable habitat site than the forest in the ESHA," (Minutes, Page 18, 16th paragraph) and subsequently the Commission has basically made the determination that the potential future ESHA is the same as ESHA.

The problem is that DFG's finding disagrees with the finding that the Commission made; this is the vulnerability. There should have been stronger analysis to support the finding that there is no feasible less environmentally damaging alternative.

Therefore, we believe that the hearing should have been continued so that a secondary site visit with DFG could occur to reanalyze the meadow as potential ESHA.

=====  
MCZC Chapter 20.532.100(A)(1) Development in Environmentally Sensitive Habitat Areas, states:

"No development shall be allowed in an ESHA unless the following findings are made:

(a) The resource as identified will not be significantly degraded by the proposed development.

4 of 6

(b) There is no feasible less environmentally damaging alternative.

(c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted."

MCZC Chapter 20.496.015(B) Disagreement as to Extent of ESHA, states:

"Where the Coastal Permit Administrator and representatives of the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain as to the extent of the sensitive habitat on any parcel, such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, county staff member and representatives from Fish and Game and the Coastal Commission."

=====

**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.

<sup>1</sup>  
Signature on File  
~~Signature of Appellant(s) or Authorized Agent~~ <sup>1</sup> Signature on File *leg*

Date: 1/7/10

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

**Section VI. Agent Authorization**

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

<sup>1</sup> Signature on File  
~~Signature of Appellant(s)~~ <sup>1</sup> Signature on File

Date: 1/7/10

*6 of 6*

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET, SUITE 200  
EUREKA, CA 95501

VOICE (707) 445-7833 FAX (707) 445-7877



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

### SECTION I. Appellant(s)

Name: See Attachment 1

Mailing Address:

City:

Zip Code:

Phone:

### SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County Planning Commission

2. Brief description of development being appealed:

Construction and operation of a telecommunication facility to support wireless provder (Verizon Wireless) consisting of a 135-foot tall lattice tower, 12 panel antennas, 2 microwave dishes, and ground based equipment

3. Development's location (street address, assessor's parcel no., cross street, etc.):

43600 Comptche-Ukiah Road, Mendocino (Mendocino County) (APN(s) 119-410-17)

4. Description of decision being appealed (check one.):

- Approval; no special conditions  
 Approval with special conditions:  
 Denial

<b>EXHIBIT NO. 8</b>
<b>APPEAL NO.</b> A-1-MEN-10-001
SHARPLES & VERIZON
APPEAL C: COMMISSIONERS SANCHEZ & STONE (1 of 14)

**RECEIVED**

JAN 21 2010

CALIFORNIA  
COASTAL COMMISSION

**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-1-MEN-10-001

DATE FILED: January 21, 2010

DISTRICT: North Coast

**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: December 17, 2009

7. Local government's file number (if any): CDU 13-2007

**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:

Verizon Wireless  
2785 Mitchell Drive  
Walnut Creek, CA 94598

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) Philip and Grace Lavender Sharples  
100 North Franklin Street  
Fort Bragg, CA 95437

(5) Carol and Robert Zvolensky  
43544 Comptche-Ukiah Road  
Mendocino, CA 95460

(2) NSA Wireless, Inc.  
Attn: Pamela Nobel  
12647 Alcosta Boulevard, Suite 110  
San Ramon, CA 94583

(6) D'Ann Finley  
704 Elmwood Drive  
Davis, CA 95616

(3) California Native Plant Society, Dorothy King Young Chapter  
Attn: Lori Hubbart  
P. O. Box 985  
Point Arena, CA 95468

(7) Phillip Conwell  
P. O. Box 937  
Mendocino, CA 95460

(4) Norman de Vall  
5975 South Highway One  
Elk, CA 95432

(8) Wilbert Horne  
43570 Comptche-Ukiah Road  
Mendocino, CA 95460

2 of 14

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

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

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- 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.

See Attachment 2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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.)

Note: The above description 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.

SECTION V. Certification

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

Signed: \_\_\_\_\_ **Signature on File**  
Appellant or Agent \_\_\_\_\_ 0

Date: 1/21/10

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



ATTACHMENT 1

SECTION I. Appellant(s)

1. Esther Sanchez  
City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054  
  
(760) 435-097
  
2. Mark W. Stone  
County Government Center  
701 Ocean Street, Suite 500  
Santa Cruz, CA 95060  
  
(831) 454-2200

## ATTACHMENT 2

### APPEALABLE PROJECT:

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because (1) the approved subdivision is a form of development not designated as the "principal permitted use" under the certified LCP, and (2) the approved development is located within a sensitive coastal resource area ("highly scenic area") pursuant to Section 30603(a)(3) of the Coastal Act.

### REASONS FOR APPEAL:

The County of Mendocino approved the application of Philip H. & Grace Lavendar Sharpless and Verizon Wireless for Coastal Development Use Permit No. CDU 13-2007 for the construction and operation of a telecommunication facility consisting of a 135-foot-tall lattice tower, 12 panel antennas, two microwave dishes, and ground based equipment. The approved development is located at 43600 Comptche-Ukiah Road, approximately 1.8 miles southeast of the Town of Mendocino. The approval of CDU 13-2007 by Mendocino County is inconsistent with the policies and standards of the certified Local Coastal Program (LCP) including, but not limited to, policies and standards regarding development within and adjacent to environmentally sensitive habitat areas (ESHA).

### LCP Policies on Environmentally Sensitive Habitat Areas:

Environmentally Sensitive Habitat Areas (ESHA) are defined in **Section 3.1 of the Mendocino County Land Use Plan (LUP)** as follows:

*Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

7 of 14

**Coastal Zoning Code (CZC) Section 20.308.040** “Definitions (E)” defines ESHA as follows (emphasis added):

*“Environmentally Sensitive Habitat Area” means any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.*

**CZC Section 20.496.010** “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states the following (emphasis added):

*...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.*

**LUP Policy 3.1-7** states the following (emphasis added):

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

CZC Section 20.496.020 "Environmentally Sensitive Habitat and other Resource Areas—Development Criteria" states the following (emphasis added):

*(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

*(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

*Standards for determining the appropriate width of the buffer area are as follows:*

*(a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

*Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.*

*(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.*

*(c) Susceptibility of Parcel to Erosion.* The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

*(d) Use of Natural Topographic Features to Locate Development.* Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

*(e) Use of Existing Cultural Features to Locate Buffer Zones.* Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.

*(f) Lot Configuration and Location of Existing Development.* Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

*(g) Type and Scale of Development Proposed.* The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...

**(2) Configuration.** The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

**(3) Land Division.** New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

**(4) Permitted Development.** Development permitted within the buffer area shall comply at a minimum with the following standards:

*(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*

*(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*

*(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological*

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characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

11/29/14

Consistency Analysis:

At least two rare tree species occur at the project site: Bolander pine (*Pinus contorta* var. *bolanderi*) and Mendocino cypress (*Hesperocyparis pygmaea*<sup>1</sup>). In addition, the County staff report and findings indicate that the project site is within Bishop Pine, Shore Pine, and Pygmy Cypress forest types which the County indicates are forest types that are deemed Environmentally Sensitive Habitat Areas (ESHAs).

The County findings contain an exhibit (Exhibit C) which indicates that a total of 44 Pygmy cypress trees (including 10 trees greater than 6 inches diameter at breast height (dbh) and 34 trees less than 6 inches dbh) and 16 Bolander pine trees (including 3 trees greater than 6 inches dbh and 13 trees less than 6 inches dbh), and 18 other trees would be removed from the project footprint to make way for the approved telecommunication facility.

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is "...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities." Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an **area** including plants or animals or their habitats **is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem**. As discussed above, at least two rare plant species occur on the subject property: Bolander pine (*Pinus contorta* var. *bolanderi*) and Mendocino cypress (*Hesperocyparis pygmaea*). Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society<sup>2</sup> and the Department of Fish and Game.<sup>3</sup> Both species have a CNPS listing of "1B.2"<sup>4</sup> and a CNDDDB state/global

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<sup>1</sup> Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., [http://ucjeps.berkeley.edu/about\\_ICPN.html](http://ucjeps.berkeley.edu/about_ICPN.html)). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

<sup>2</sup> California Native Plant Society (CNPS). 2009. *Inventory of Rare and Endangered Plants* (online edition, v7-09d). California Native Plant Society. Sacramento, CA. Accessed from <http://www.cnps.org/inventory>.

<sup>3</sup> California Department of Fish and Game, Natural Diversity Database (NDDB). October 2009. *Special Vascular Plants, Bryophytes, and Lichens List*. Quarterly publication. 71 pp.

ranking of "S2/G2."<sup>5</sup> Because of their relative rarity at the state and global levels, Bolander pine and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies. The County findings also indicate that the site contains Bishop Pine, Shore Pine, and Pygmy Cypress forest types which are rare forest types. However, because ESHA refers to an "area" rather than an individual species, one must consider whether or not the proposed telecommunication facility site constitutes an "area" on the property where the above referenced ESHA types occur.

As discussed above, at least 16 Bolander pine trees, 44 Mendocino cypress trees, and 18 other trees within the County identified forest ESHA would be removed. These trees exist within a much larger forest area containing an undocumented number, but many more tree specimens of the affected ESHA. The large concentrations of Bolander pine and Mendocino cypress do constitute rare plant habitat and therefore meet the first test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. The large concentrations of rare trees within the project foot print could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop them for the approved telecommunication facility including grading, paving, building construction, foot trampling, etc. In fact, the County findings acknowledge that many such trees would be eliminated to accommodate the development. Such activities would fragment or otherwise demolish the presently intact habitat, reduce habitat size, and degrade and alter habitat quality and conditions that are integral to the "special nature" of the existing habitat area. Therefore, the large concentrations of Bolander pine and Mendocino cypress in the approved project site meet the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The County staff had recommended that the project be denied on the basis that the project will result in the removal of ESHA and that a less environmentally damaging alternative exists on the property. The County staff identified a meadow area located approximately 120 feet southwest of the proposed site where there was sufficient area to site the telecommunication facility and maintain at least a 50-foot buffer from all ESHA. In its action to approve the project over the County staff recommendation of denial, the Planning Commission found that based on testimony of the applicant's biologist, the meadow area (although not ESHA now) was likely to be future ESHA and has an overall equal value to the project site, and all feasible mitigation measures related to impacts have been adopted.

Whether or not the alternative meadow site may become an ESHA in the future, the County fails to address the consistency of the project with the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020 including (1) why a buffer width less

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than 100 feet may be appropriate, (2) how a reduced buffer is allowable based on analysis of the seven criteria specified in CZC Section 20.496.020(A)(1) that must be applied in determining whether a potential reduction of the ESHA buffer is warranted, and (3) how a buffer less than the minimum of 50 feet required by LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) is allowable at all under the LCP. Furthermore, the County's approval acknowledges that a future telecommunication facility would be located directly within the ESHA and would require the removal of rare trees.

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. The LCP sets forth uses permitted in wetland and riparian ESHAs, but is silent with regard to allowable uses within rare plant ESHA, and thus allowable uses within the rare plant buffer. Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. The approved telecommunication facility is not in any way dependent on the rare tree or forest habitat at the site. Therefore, as a telecommunication facility is not listed in the LCP as an allowable use within rare plant ESHA and the Coastal Act only allows resource dependent uses within an ESHA, the approved development is inconsistent with the use limitations of LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4).

Therefore, because (1) ESHA buffers are not allowed to be reduced to less than 50 feet, and (2) because only development allowed in the adjacent ESHA can be allowed within a buffer area and a telecommunication facility is not an allowed use within rare plant ESHA, the project as approved by the County is inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policy 3.1-7 and CZC Section 20.496.020.



COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES  
501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

IGNACIO GONZALEZ, DIRECTOR  
Telephone 707-463-4281  
FAX 707-463-5709  
pbs@co.mendocino.ca.us  
www.co.mendocino.ca.us/planning

December 29, 2009

RECEIVED

JAN 06 2010

CALIFORNIA  
COASTAL COMMISSION

NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

**CASE#:** CDU 13-2007

**DATE FILED:** 6/21/2007

**OWNER:** PHILIP & GRACE SHARPLES

**APPLICANT:** VERIZON WIRELESS

**AGENT:** PAMELA NOBEL- NSA WIRELESS

**REQUEST:** Use Permit to allow the construction and operation of a telecommunication facility to support a wireless provider, (Verizon Wireless) consisting of a 135-foot tall lattice tower, 12 panel antennas, 2 microwave dishes, and ground based equipment.

**LOCATION:** In the Coastal Zone, 1.8+/- miles southeast of Mendocino, lying on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4+/- miles east of its intersection with State Highway 1, located at 43600 Comptche-Ukiah Road, Mendocino; AP# 119-410-17.

**PROJECT COORDINATOR:** DUSTY DULEY

**ACTION TAKEN:**

The Planning Commission, on December 17, 2009, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc:

COASTAL COMMISSION  
ASSESSOR

<b>EXHIBIT NO. 9</b>
<b>APPEAL NO.</b> A-1-MEN-10-001
SHARPLES & VERIZON
NOTICE OF FINAL LOCAL ACTION (1 of 56)

FILING REQUESTED BY  
County of Mendocino  
Planning & Building Services Dept  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

AND WHEN FILED MAIL TO  
County of Mendocino  
Planning & Building Services Dept  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

### NOTICE OF DETERMINATION

To:  Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

Mendocino County Clerk  
501 Low Gap Road, Room 1020  
Ukiah, CA 95482

Subject: Filing of Notice of Determination in compliance with Section 21108 and 21152 of the Public Resources code.

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**Project Title:**

CASE#: CDU 13-2007  
DATE FILED: 6/21/2007  
OWNER: PHILIP & GRACE SHARPLES  
APPLICANT: VERIZON WIRELESS  
AGENT: PAMELA NOBEL- NSA WIRELESS

---

**State clearing House Number**  
(If Submitted to Clearing House)

**Contact Person**  
DUSTY DULEY

**Area Code/Number/Extension**  
707-463-4281

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**Project Location:**

In the Coastal Zone, 1.8+/- miles southeast of Mendocino, lying on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4+/- miles east of its intersection with State Highway 1, located at 43600 Comptche-Ukiah Road, Mendocino; AP# 119-410-17.

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**Project Description:**

Use Permit to allow the construction and operation of a telecommunication facility to support a wireless provider, (Verizon Wireless) consisting of a 135-foot tall lattice tower, 12 panel antennas, 2 microwave dishes, and ground based equipment.

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This is to advise that the County of Mendocino has approved the above-described project on December 17, 2009 and has made the following determinations regarding the above described project:

1. The project will not have a significant effect on the environment.
2. A Negative Declaration was prepared pursuant to the provisions of CEQA.
3. Mitigation measures were a condition of the project approval.
4. A Statement of Overriding Considerations was not adopted.

This is to certify that the Negative Declaration and record of project approval is available to the general public at 501 Low Gap Road, Room 1440, Ukiah.



FINAL FINDINGS AND CONDITIONS OF APPROVAL  
CASE # CDU 13-2007 - PHILIP & GRACE SHARPLES (OWNERS)  
VERIZON WIRELESS (APPLICANT)  
DECEMBER 17, 2009

The Planning Commission approves Coastal Development Use Permit # CDU 13-2007 per the findings and conditions of approval contained in the staff report and modified during the public hearing on December 17, 2009, finding that;

**General Plan Consistency Finding:** The proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

**Environmental Findings:** The Planning Commission finds that the project can be adequately mitigated through conditions of approval and therefore the Commission adopts a Negative Declaration.

**Coastal Development Permit Findings:** The Planning Commission approves CDU# 13-2007 subject to the conditions of approval recommended by staff further finding that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
2. That the proposed use will not constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.
3. That such use preserves the integrity of the zoning district.
4. The proposed development is in conformity with the certified local coastal program.
5. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities.
6. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district.
7. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
8. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
9. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

Further in regard to the Environmentally Sensitive Habitat (ESHA) that has been identified on the property, that the Planning Commission finds, pursuant to Mendocino County Code Section 20.532.100(A)(1), that:

- (a) The resource as identified will not be significantly degraded by the proposed development.

- (b) There is no feasible less environmentally damaging alternative. Specifically noting that the "meadow area" within the project, that was the only feasible alternative site, has been identified through the public discussion and by testimony by the professional botanist at the public hearing, as being a likely future area of ESHA that was only disrupted by past actions on the property and is overall of equal resource value.
- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

**CONDITIONS OF APPROVAL:**

- \*\*1. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site.
- \*\*2. All grading and site preparation, at a minimum, shall adhere to the following "Best Management Practices": The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
  - a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
  - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
  - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
  - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
  - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1<sup>st</sup>.
  - f. All earth-moving activities shall be conducted between May 15<sup>th</sup> and October 15<sup>th</sup> of any given calendar year unless an Erosion and Sedimentation Prevention Plan, prepared by a registered civil engineer, has been submitted and approved by the Department of Planning and Building Services which outlines wet weather earthmoving and drainage control protocols. Such plan shall include all appropriate Best Management Practices that shall be installed in accordance with the approved Erosion and Sediment Prevention Plan prior to the start of construction during the rainy season.
  - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
    - 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
    - 2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m<sup>3</sup>) on any one lot and does not obstruct a drainage.
- \*\*3. All antennas and the antenna tower shall comply with wind loading and other structural standards

contained in applicable building and technical codes, industry codes, and manufacturer standards so as not to endanger the health and safety of residents, employees or travelers in the event of structural failure due to extreme weather conditions, seismic events or other acts of nature.

- \*\*4. The access road from Comptche-Ukiah Road (CR# 223) to the project site shall be covered with an impermeable sealant or rocked at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
- \*\*5. All grading activities must comply with District Regulation 1 Rule 430 regarding fugitive dust emissions.
- \*\*6. Prior to the development phase of the project, the applicant shall contact the Mendocino County Air Quality Management District for a determination as to the need for a permit from the District for the proposed generator.
- \*\*7. The Generator shall be equipped with mufflers and spark arresters, and shall not produce noise levels exceeding 50 dBa at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency use are not included in this limitation. If necessary the generator shall be enclosed by a noise barrier shelter designed by an acoustical engineer and remain oriented and screened to limit excessive noise to surrounding residences.
- \*\*8. Exterior light fixtures shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site, and shall be turned off except when in use by facility personnel. No aircraft warning lighting shall be installed.
- \*\*9. Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.
- \*\*10. Prior to commencement of construction activities or issuance of a building permit, the applicant shall complete a standard private driveway approach onto Comptche-Ukiah Road (CR# 223), to a minimum width of fourteen (14) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with asphalt concrete. The applicant shall obtain written verification from the County Department of Transportation stating that this condition has been met to the satisfaction of the County Department of Transportation and submit it to the Department of Planning and Building Services
- \*\*11. The applicant shall complete Cal Fire standard fire safe requirements pursuant to CDF File #155-07. The applicant shall obtain written verification from Cal Fire stating that this condition has been met to the satisfaction of Cal Fire and submit it to the Department of Planning and Building Services.
- \*\*12. The facility shall provide if requested, space for any public emergency service provider to locate emergency communication service equipment on the tower, provided no interference to function will result ~~at a minimum or~~ and no fee shall be required.
- \*\*13. Exterior surfaces of structures and equipment shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
- \*\*14. The total height of tower including antennas will not exceed 135 feet in height above ground level. Within sixty (60) days of completion of the installation of the facility, the applicant shall perform a tape-drop to confirm that the height is no greater than approved, and shall submit a written certification to the County of the actual height.
- \*\*15. Existing trees and other vegetation, which will provide screening for the proposed facility and associated access roads, shall be protected from damage. No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility. All eucalyptus trees shall be removed from the site.

- \*\*16. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
- \*\*17. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
- \*\*18. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
- \*\*19. Prior to the final inspection by the Building Division of the Department of Planning and Building Services, an identification sign for each company responsible for operation and maintenance of facilities at the site, no larger than one square foot, shall be mounted on the fence exterior in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall be posted.
- \*\*20. The antennas and supporting structure shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
- \*\*21. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
- \*\*22. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site and to require no more than a reasonable charge for collocation.
- \*\*23. One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower.
- \*\*24. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
- \*\*25. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless the Planning Commission has approved a modification.
- \*\*26. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
- \*\*27. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
- a. That the permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which the permit was granted have been violated.
  - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

- \*\*28. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- \*\*29. This permit is issued for a period of ten years, and shall expire on December 17, 2019. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
- \*\*30. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within two years shall result in the automatic expiration of this permit.
- \*\*31. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,043.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to December 28, 2009 (within 5 days of the end of any appeal period). Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

#### SPECIAL CONDITIONS:

- \*\*1. The applicant shall fully comply with the ESHA loss mitigation plan as detailed in the 11 page Verizon Wireless Proposed Mitigation Plan dated September 4, 2009 and found on file in the Planning and Building Services Department (PBS). The applicant shall complete all plantings and develop a watering system acceptable to PBS prior to removal of any trees or issuance of a building permit. Failure to maintain planted trees shall be grounds for revocation of this Use Permit.
- \*\*2. The special-status species Pygmy Manzanita and Corn Lily locations shall be flagged and surrounded by temporary fencing to prevent inadvertent disturbance during construction.

**COUNTY OF MENDOCINO  
ENVIRONMENTAL REVIEW GUIDELINES  
NEGATIVE DECLARATION**

**I. DESCRIPTION OF PROJECT.**

DATE: DECEMBER 21, 2009

**CASE#:** CDU 13-2007

**DATE FILED:** 6/21/2007

**OWNER:** PHILIP & GRACE SHARPLES

**APPLICANT:** VERIZON WIRELESS- CALCOM SYS.

**AGENT:** PAMELA NOBEL- NSA WIRELESS

**REQUEST:** Use Permit to allow the construction and operation of a telecommunication facility to support a wireless provider, (Verizon Wireless) consisting of a 135-foot tall lattice tower, 12 panel antennas, 2 microwave dishes, and ground based equipment.

**LOCATION:** In the Coastal Zone, 1.8+/- miles southeast of Mendocino, lying on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4+/- miles east of its intersection with State Highway 1, located at 43600 Comptche-Ukiah Road, Mendocino; AP# 119-410-17.

**PROJECT COORDINATOR:** DUSTY DULEY

**II. DETERMINATION.**

In accordance with Mendocino County's procedures for compliance with the California Environmental Quality Act (CEQA), the County has conducted an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, it has been determined that:

Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, a NEGATIVE DECLARATION is adopted.

The attached Initial Study and staff report incorporates all relevant information regarding the potential environmental effects of the project and confirms the determination that an EIR is not required for the project.

\*\*\*\*\*

THIS DIVISION OF LAND IS DEEMED COMPLETE WHEN ALL CONDITIONS HAVE BEEN MET, AND THE COUNTY RECORDER RECORDS THE APPROVED PARCEL MAP.

AYES: Little, Calvert, Hall, Holtkamp, Ogle, Nelson, and Warner  
NOES: None  
ABSENT: None

Commissioner Little asked staff to place a discussion on the next agenda regarding the establishment of guidelines for proof of adequate water supply.

[Break 10:36 AM – 10:48 AM]

5b. **CASE#: CDU 13-2007**

DATE FILED: 6/21/2007

OWNER: PHILIP & GRACE SHARPLES

APPLICANT: VERIZON WIRELESS- CALCOM SYS.

AGENT: TOM MILLER- CALCOM SYSTEMS

REQUEST: Use Permit to allow the construction and operation of a telecommunication facility to support a wireless provider, (Verizon Wireless) consisting of a 135-foot tall lattice tower, 12 panel antennas, 2 microwave dishes, and ground based equipment.

LOCATION: In the Coastal Zone, 1.8+/- miles southeast of Mendocino, lying on the north side of Comptche-Ukiah Road (CR# 223), and approximately 1.4+/- miles east of its intersection with State Highway 1, located at 43600 Comptche-Ukiah Road, Mendocino; AP# 119-410-17.

PROJECT COORDINATOR: DUSTY DULEY

Commissioner Calvert and Holtkamp noted that Verizon was their cell carrier.

Mr. Dusty Duley, Project Coordinator, reviewed the staff report and discussed a power point presentation of the project. He noted that expanded notice had been provided including extending the radius from 300 to 1000 feet and that notices had been posted in the Town of Mendocino. He noted substantial correspondence had been received on the project and paraphrased the common threads of each side; noting those in favor of the proposed tower stated an increased ability to telecommute, tourists use of technology, increased public safety and meeting an unserved area of the community; while the opposed side noted the impact ESHA's, existing service in the area, health concerns and would prefer a monopine or other stealthed design. He discussed past case history in the area in which one proposed tower had been denied and other applications had been withdrawn before reaching the public hearing process due to extensive public opposition. Mr. Duley noted the anticipated coverage from the proposed tower and discussed project details including access off of Comptche Ukiah Road, vegetation removal and minor improvements along the access road. He discussed the balloon fly, which did not take place at the proposed site, but a nearby meadow labeled as "site 2", the visibility of the tower, photo sims and noted the photos of a flyover of the area. He noted the terrain along with the heavily wooded area would limit visibility of the tower from Highway 1, but the tower could be seen from the Town of Mendocino with binoculars. Mr. Duley discussed the botanical survey which disclosed the presence of the ESHA, which identified the project site as having several rare species along with pygmy type soils and noted he had performed a site view accompanied by Rick Macedo from the Department of Fish and Game, who had confirmed that sensitive resource were located in the area. Mr. Duley noted that Fish and Game's suggestions can be found on page PC 4 of the staff report along with Exhibit C, which was a tree count for replanting as a mitigation plan. He noted that the Department of Fish and Game was satisfied with the mitigation and monitoring plan submitted by Verizon, but stated that based on the Coastal Code 20.532.100(A)(1), no development is allowed unless resources will not be degraded by development and there is no feasible less damaging alternative site. Mr. Duley noted that staff had identified the open meadow as an alternative site and thus were recommending denial of the proposed site. He noted if the Commission chose to adopt the alternate motion and approve the tower, Verizon would like changes made to Condition #12 regarding public emergency providers.

the alternative site in the meadow did not meet the required setbacks from the property lines and stated that since the property was for sale, that location had been removed as a feasible location. She discussed the staff report and biological report, noting the Department of Fish and Game had accepted the mitigation plan and invasive species control program supplied by Verizon to build in the ESHA. Ms. Nobel further discussed the revegetation plan for the meadow, which she felt at worst would net a zero impact to the ESHA. Last, she introduced the team of experts, Tom Miller, Dr. Chris Kjeldsen, Bill Hammett, Navjot Sidhu, and Chris Durand, available to answer the Commission's question and hoped that the alternative motion could be approved.

Commissioner Warner discussed the letter regarding Condition #12 and the suggested alternate wording.

Ms. Nobel noted any public emergency service provider would be allowed to install equipment on the tower.

**Tom Miller**, Verizon Specialist Regulatory Real Estate, commented that public emergency service providers were never charged for their collocations, however he would like language prepared that the installation could not legally be passed to another individual that was not part of the emergency service system. He commented that Verizon would like the condition clarified to remove any ambiguity.

**Terry Gross**, County Counsel, noted she would review the proposed language and respond later in the hearing.

Commissioner Hall noted the insertion of "public" into a previous cell tower application and asked the range of service the proposed tower would provide.

Mr. Miller discussed the range of services available.

Commissioner Ogle asked further details on the internet air cards.

**Navjot Sidhu**, Verizon's Radio Frequency Engineer, showed the Commission an internet air card and discussed its application in laptops/net books and the wireless internet adopting of new technology that would increase data speed downloads to be comparable to cable connections.

Chairman Nelson asked if the meadow consisted of appropriate soils for replanting of pygmy forests.

**Dr. Chris Kjeldsen**, Verizon's Botanist that provided the Biological Assessments, discussed the meadow and site and noted it appeared to have been previously cleared by a landowner by the age of trees and planting of several eucalyptus. He commented that the meadow was a regenerating area similar to the project site with the soil as the pygmy type vegetation which was currently reproducing. He stated that the meadow had the potential to be use as mitigation because it would speed up the reproduction of the pygmy in the meadow area.

Commissioner Warner asked Mr. Kjeldsen's opinion on the collapse of bishop forests.

Dr. Kjeldsen discussed the absence of normal fires, which periodically enriched the land and created diversity, as a cause of system collapse.

Mr. Gross commented on Verizon's request regarding Condition #12 and felt further clarity was need. She suggested modifying the condition language to state "The facility shall provide if requested, space for any public emergency service provider to locate emergency communication service equipment on the tower, provided no interference to function will result at a minimum or and no fee shall be required."

The public hearing was declared open.

**Jim Mastin** stated he was a candidate for 5<sup>th</sup> District Supervisor and felt the only motive for the placement of the cell tower was monetary gains. He was concerned with the destruction of 2000 square feet of ESHA habitat with an alternative site available on the same parcel. He agreed with staff's recommendation for denial.

**Phillip Conwell**, adjacent owner, noted it was interesting that Mr. Sharples did not want to see the tower from his home but felt it was okay to subject his neighbors to the tower. He was mainly concerned with the aesthetics of the project, devaluation of his property and location of the new airport flight paths.

**Christy Wells** also noted she was a candidate for 5<sup>th</sup> District Supervisor, mother and Landowner who had just learned of the hearing and asked that it be postponed to a later date.

**Beth Bosk** also asked the hearing be postponed and located on the coast.

**Annemarie Weibel** was opposed to the proposed cell tower damaging affects of EMF's to plants and wildlife, noting a precautionary principle policy and grading ordinance had not been adopted in Mendocino County.

**Wilbert Horne**, adjacent owner and fire chief, noted the rural setting of the area and discussed RF studies. He noted the Little River Airport was nearby and that strobe lights would be necessary impacting the aesthetics of area. He asked more information about the diesel storage tank, the 100 foot clearance and noted the property was located in an area of extremely high fire danger with bogs and ponds in the area.

**Carol Zvolensky**, read letter prepared for the Commission and discussed the Wireless Guidelines. Her main concern was the visual impacts of the proposed tower.

**Robert Zvolensky** agreed with his wife's previous comments and stated he was opposed for aesthetics, commercial development, proximity to the airport and establishment of a precedent.

**Shirley Freriks**, representing Mendocino Coast Broadband Alliance, discussed the status of broadband and need/advantage of broadband to the area which would also boost the economy with visitor services. She stated the future was wireless technology.

**Ted Williams**, Fire Marshall for Albion Little River, stated there was no cell coverage along that strip of highway and the tower was needed for public safety if nothing else. He discussed his previous experience working for intel for 12 years and stated that the lack of broadband and cell coverage in the area was a disadvantage. He commented on other sources of EMF in homes equal to that of cell phones.

**Michael Maltas** asked if the Commission was clear about how cell technologies interact and stated he was not speaking to one particular tower, but felt a review of Wireless Guidelines was needed. He noted the complexity of the issue, increased technology in a short period of time and did not approve of the "piecemeal" installation of towers. He was concerned that increased download speed meant more power output from cell towers.

The public hearing was declared closed.

[Lunch 12:28 PM – 1:32 PM]

**Chris Durand**, NSA Wireless, clarified design questions presented during public testimony and also discussed the access road into the facility. He commented that only minor improvements to the road including, installation of gravel/base rock and extending the encroachment onto Comptche Ukiah Road were necessary and stated that Tracy Bordeaux of CalFire was satisfied with the access. He discussed the generator and noted the diesel fuel tank was double walled, clearly marked for first responders and was monitored by an off-site computer system for draw-down. Mr. Durand stated

that all applications were submitted to the FAA for a full review and approval and that no lighting was required or proposed for the tower.

Chairman Nelson asked if the fuel tank was fitted with a containment structure to protect against leaks.

Mr. Durand was not sure of the containment structure but did comment that bollards would be installed to prevent a vehicle from running into the tank.

**Bill Hammett**, Hammett & Edison, provided the EMF study for the project and discussed the results noting the proposed tower would be 1,000 times below FCC emission standards. He discussed levels of energy present from the facilities, present in home products, air cards, etc.

Commissioner Hall asked the specific types of emission present with the tower, noting the broad range of services provided.

Mr. Hammett stated all emissions were radio waves from the tower.

Commissioner Little asked how radio waves dissipate and if the emissions were calculated cumulatively, such as the Stanford Inn tower being added to the proposed tower to create a greater EMF output. He also asked if the number of towers would increase the strength so that 3 towers would mean 3 times the energy, EMF output.

Mr. Hammett stated the signal strength dissipates exponentially, but the total energy was additive; however he noted the distance between the Stanford Inn and the proposed tower would add very little to the overall output in the area.

Commissioner Little asked the magnitude of EMF exposure from a normal home's florescent lights, TV, PG transformer and the comparison to living near a cell tower.

Mr. Hammett stated that the background EMF was equal to or greater than a tall cell tower and that the emissions from the facility probably would not register of the project site.

Ms. Nobel commented on the visual aspect of the tower and noted that the surrounding trees were between 80-100 feet high and would obstruct much of the view from the road.

Mr. Duley concurred and discussed page PC 17, noting the elevation line.

Commissioner Little asked if the balloon had been observed from any adjacent residences.

Mr. Duley stated he did not go onto anyone's private property to observe the balloon, but did travel east along Comptche Ukiah Road and Warner Lane and could not see the balloon.

Commissioner Little noted page PC 33 and asked if the narrow opening was not the characteristic of tree cover in the area.

Mr. Duley stated the opening was the driveway of the subject property and the balloon was quickly disguised by the tree cover.

Commissioner Warner asked about the consideration of a stealth design from the public comment.

Ms. Nobel noted she had discussed the need for a stealth design with staff, but had concluded that the area was densely covered with trees and a stealth design not necessary.

Mr. Durand commented that a monopine 135 feet tall would not blend with the forest well and noted a concern with the weather on the coast. He stated monopines had a greater tendency to fade, wear out and break in high winds and required a much more substantial foundation to be poured than a lattice tower, which would also provide more usable space for future collocation.

Commissioner Hall asked the visibility of the tower and need for aircraft warning lights.

Mr. Durand was not aware of any requirements for a strobe light on a tower, unless that tower was over 200 feet, according to the FAA.

Mr. Miller noted that Verizon was required to registered all towers with the FAA and once vetted and approved, should be recorded on airport maps.

Commissioner Calvert noted the change in technology and that recently, cell towers were being proposed shorter and closer together, she asked why this tower was being proposed at the 135 foot height.

Mr. Sidhu noted that the tree height was the reason for this current request for a 135 foot tower.

Commissioner Calvert discussed the difference between analog and digital technology and asked how the tower would function so far away from Highway 1.

Mr. Sidhu commented that vehicles "suck up" less power than houses and the proposed tower would have a relatively small footprint, but should be able to function as far away as Highway 1.

Ms. Nobel discussed the coverage map and noted that even boats in the ocean could get cell service from the proposed tower.

Commissioner Calvert noted the spotty coverage along the coast which was not consistent and had numerous dropped calls and asked if the proposed tower would prevent such instances relative to bars of service.

Mr. Sidhu commented that "bars" were a relative term from company to company and between phone and technology, but the proposed tower should be sufficient to provide service to the area and prevent poor signal strength or dropped calls from Verizon.

Commissioner Calvert asked other towers in the area would create interference and how collocation worked.

Ms. Nobel noted it could be a challenge to collocate equipment, but there was a reference in the Wireless Guidelines that stated "without interference".

Mr. Sidhu stated that the same frequencies can cause interference, but there were several ways to provide mitigation and avoid the problem.

Ms. Nobel summarized further that Verizon was in agreement with the staff report and revised Condition #12 and hoped the Commission would approve the alternative motion.

Mr. Lynch discussed why staff was recommending denial and described the Commission's role to interpret the impact of development in the ESHA. He discussed the Department of Fish and Games input on project for impacts and noted the mitigation plan for planting "in kind" trees. Mr. Lynch stated that the Coastal Plan dictates that the ESHA cannot be developed unless no other feasible less environmentally damaging alternative can be found, which is staff's basis for denial. He noted several policies in the General Plan call for the enhancement of communications and broadband, but that document must be balanced with the resource protection policies of the Local Coastal Plan.

Chairman Nelson asked if the meadow would have greater or less aesthetic impact than the proposed site.

Mr. Lynch stated that staff had flown the balloon from the meadow and not the proposed project site.

Mr. Duley was unsure of the visibility from the project site, which would require the removal of approximately 28 trees and could increase visibility from the Town of Mendocino.

Commissioner Hall noted the juggling act to protective the ESHA and increasing technology for communication and public safety.

**Commissioner Hall made the recommended motion by staff for denial, finding the project inconsistent with Section 30240(a) of the California Coastal Act and Section 20.532.100 (A)(1) of the Coastal Zoning Code as the project will result in the removal of ESHA and a *less environmentally damaging alternative* has been identified on the property, which was seconded by Commissioner Warner; however the motion failed (3-4) as follows:**

**AYES: Hall, Holtkamp, Warner  
NOES: Calvert, Ogle, Little, Nelson  
ABSENT: None**

Commissioner Calvert thought a discussion of the meadow location could result in a motion that would pass and asked how the Commission felt and if the applicant would provide further discussion.

Chairman Nelson agreed he was in favor of the tower, but confused by the Fish and Game findings and concerned with the potential visibility to neighbors.

Mr. Lynch noted that the Coastal Act policies were more stringent than Fish and Games policy and that staff understands the meadow area was not considered to be in ESHA; therefore a feasible alternative for the project existed. He noted that Fish and Game could not approve something that the Coastal Commission will not allow and it was at the discretion of the Commission to balance the LCP and habitat protection.

Chairman Nelson asked staff's opinion regarding if the Commission approved the project, would the Coastal Commission deny it.

Mr. Lynch stated that the Commission would have to approve specific findings for development in an ESHA.

Commissioner Little discussed page PC 25 and the ESHA boundary lines, commenting that if the meadow was in an early stage of habitat development within the project site, one could assume that over time the meadow would become ESHA, thus it was not less environmentally damaging.

Mr. Lynch commented that the Coastal Commission also reviewed soil types and would be interested in both the pygmy soils and vegetative types.

Commissioner Little noted that the meadow potentially had the same soil and noted the testimony received from the Department of Fish and Game that they have accepted the planting in the meadow. He questioned whether the greater impact would be caused by moving into the meadow rather than placing the tower where the applicant had proposed.

Mr. Lynch noted that a gentlemen from the public comment had stated the area burned in the 1930's, thus it could possibly be concluded that it was the same soil type overall and that the meadow is not a less damaging feasible alternative because it is the same as the ESHA staff is trying to protect.

Chairman Nelson noted a further argument could be made that the meadow site used as mitigation is larger than the project site, thus a greater amount of pygmy will be gained from the proposal.

Commissioner Calvert noted she had driven the roads and parked along the project site and did not see how any neighbors would be able to view the tower over the trees, noting the soils appeared more "transitional" than classic pygmy.

Mr. Duley commented that the project did not contain "pygmy" per the strict definition, only pygmy soils and pygmy type vegetation, which has regenerated.

Commissioner Calvert asked how the property was interpreted as ESHA from transitional soils.

Mr. Duley discussed the various types of ESHA that exist, noting it was a generalized term that could be applied to pygmy species, forest types or woodlands.

Commissioner Warner asked staff to discuss what would happen at the proposed site.

Mr. Duley discussed the proposed Site 1 and its location within the ESHA and noted that proposed Sites 2 and 3 would not meet the required setbacks from property lines.

Commissioner Calvert asked the zoning and acreage of the adjacent parcel.

Mr. Duley stated it was a 51 acre parcel, zoned FL160.

Commissioner Warner commented that she did not understand the advantage to clearing an area of established forest when a site was available as an alternative within the same parcel and ownership.

Chairman Nelson commented that the biologist had stated the meadow would be more diverse than the established forest and preferred the location of proposed Site 1.

Commissioner Holtkamp commented that the biologist had stated that the meadow was already disturbed.

Chairman Nelson mentioned that the clearing at proposed Site 1 would be smaller than the meadow, thus the new area of pygmy would be several times larger than the section removed.

Commissioner Hall thought the General Plan contained specific language that protection an ESHA was the higher priority than to try and mitigate its loss, noting he maintained that an alternative site was available.

Commissioner Holtkamp commented that it should be the cell companies trying to establish a plan for coverage and that it was not the Counties responsibility to make something work. She was troubled by approving single cell towers at a time versus an entire system and thought the ESHA provided the justification for denial of the tower.

Commissioner Little asked by Verizon had chosen a site within the ESHA boundary rather than moving the proposed tower 100 feet northeast.

Mr. Miller noted the applicant had selected the three proposed sites and noted the major concern had been with setbacks from the property lines. He did not believe that Verizon was cognizant of the ESHA boundary during the process, but noted the botanist would be needed to evaluate the site.

Dr. Kjeldsen discussed the project site and noted the primary issue was that the entire site has experienced a disturbance, making it difficult to say that there is a pygmy forest. He noted the species indicate soils close to pygmy forest and that towards the east there are classic pygmy forests. He noted the presence of the eucalyptus trees on Site 1 and felt that it was more appropriate to call the meadow unique than the selected site, noting the meadow was a more valuable habitat than the forest in the ESHA.

Commissioner Little discussed the lines on the maps and asked if the site could be moved northeast.

Dr. Kjeldsen saw no reason that the tower could not be moved elsewhere since he had completed a survey of the area.

Mr. Lynch noted for the Commission that the argument from the botanist that the meadow was a more valuable habitat site than the proposed ESHA was an important findings to make for the site.

Ms. Nobel stated that moving the site into the dense redwood tree canopy was not a preferred alternative site and thought that the ESHA was somewhat of a grey area. She felt it was possible to mitigate the ESHA by finding that the meadow was more valuable than the site, noting the meadow would not meet the required setback from the property lines.

Mr. Duley commented that the ESHA map was somewhat misleading and that the entire property was within an ESHA boundary; however the finding from the Department of Fish and Game was that the meadow is not ESHA.

Dr. Kjeldsen stated that today the absence of vegetation rules out the meadow as ESHA, but in time the meadow will become ESHA, thus the mitigation is to push the process along faster and replant the area as proposed in the mitigation plan.

Mr. Lynch commented that an individual could not be denied the right to develop a property; however there was an existing home on the property, thus the Commission did not have to grant any other entitlements if they chose. He noted a motion to approve the site should include the statement that there is evidence that the whole property is ESHA and that the most compatible site within the proposed development is proposed Site 1.

Commissioner Calvert asked if staff and the applicant could craft a sufficient motion for approval a short break was observed.

Staff and the applicant agreed to work out a motion during the break.

[Break 3:06 PM – 3:16 PM]

Mr. Lynch read the suggested language for approval of the project, finding that the project is in compliance with the proposed mitigation measures and will reduce impacts to ESHA to a less than significant level; further finding that the project meets the General Plan Consistency, Environmental Consistency, Coastal Permit findings and Supplemental findings of the California Coastal Act and Section 20.532.100 (A)(1), which states that resources as identified will not be degraded and that through discussion and testimony provided by a certified biologist, the meadow area is likely to be future ESHA and has overall equal value to the project site, and all feasible mitigation measures related to impacts have been adopted.

Commissioner Warner added that the mitigation area is larger than the proposed site to be removed.

Mr. Lynch added to the suggested motion that through mitigation, the habitat lost will be attenuated by a larger ESHA area and noted the executive summary of mitigation plan, second paragraph from bottom that 125 trees will be planted for loss at the project site.

Commissioner Hall noted the math did not add up to cut down 28 trees and replant 125.

Dr. Kjeldsen noted the difference was due to the eucalyptus trees, which had not been counted for the replanting, thus 25 was the appropriate number to calculate the mitigation plan.

Commissioner Calvert discussed page PC 11 Condition #15 and stated that she would like language added to insure the removal of the eucalyptus trees.

Ms. Gross reminded the Commission of the addition to Condition #12 "...space for public emergency service provider to located emergency service equipment... and that no fee shall be required".

Upon motion by Commissioner Calvert, seconded by Commissioner Ogle and carried by the following roll call vote, IT IS ORDERED to approve CDU 13-2007 per the alternate motion as recommended by staff on page PC 9 and during discussion, making the Environmental Findings, General Plan

Consistency Findings and Supplemental Findings that there is no feasible less environmentally damaging alternative site and modifying Condition #12 and Condition #15 per discussion among the Commission as noted above.

**General Plan Consistency Finding:** The proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

**Environmental Findings:** The Planning Commission finds that the project can be adequately mitigated through conditions of approval and therefore the Commission adopts a Negative Declaration.

**Coastal Development Permit Findings:** The Planning Commission approves CDU# 13-2007 subject to the conditions of approval recommended by staff further finding that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
2. That the proposed use will not constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.
3. That such use preserves the integrity of the zoning district.
4. The proposed development is in conformity with the certified local coastal program.
5. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities.
6. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district.
7. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
8. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
9. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

Further in regard to the Environmentally Sensitive Habitat (ESHA) that has been identified on the property, that the Planning Commission finds, pursuant to Mendocino County Code Section 20.532.100(A)(1), that:

- (a) The resource as identified will not be significantly degraded by the proposed development.
- (b) There is no feasible less environmentally damaging alternative. Specifically noting that the "meadow area" within the project, that was the only feasible alternative site, has been identified through the public discussion and by testimony by the professional botanist at the public hearing, as being a likely future area of ESHA that was only disrupted by past actions on the property and is overall of equal resource value.
- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

- \*\*1. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site.
- \*\*2. All grading and site preparation, at a minimum, shall adhere to the following "Best Management Practices": The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
- a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
  - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
  - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
  - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
  - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1<sup>st</sup>.
  - f. All earth-moving activities shall be conducted between May 15<sup>th</sup> and October 15<sup>th</sup> of any given calendar year unless an Erosion and Sedimentation Prevention Plan, prepared by a registered civil engineer, has been submitted and approved by the Department of Planning and Building Services which outlines wet weather earthmoving and drainage control protocols. Such plan shall include all appropriate Best Management Practices that shall be installed in accordance with the approved Erosion and Sediment Prevention Plan prior to the start of construction during the rainy season.
  - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
    1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
    2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m<sup>3</sup>) on any one lot and does not obstruct a drainage.
- \*\*3. All antennas and the antenna tower shall comply with wind loading and other structural standards contained in applicable building and technical codes, industry codes, and manufacturer standards so as not to endanger the health and safety of residents, employees or travelers in the event of structural failure due to extreme weather conditions, seismic events or other acts of nature.
- \*\*4. The access road from Comptche-Ukiah Road (CR# 223) too the project site shall be covered with an impermeable sealant or rocked at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
- \*\*5. All grading activities must comply with District Regulation 1 Rule 430 regarding fugitive dust emissions.

- \*\*6. Prior to the development phase of the project, the applicant shall contact the Mendocino County Air Quality Management District for a determination as to the need for a permit from the District for the proposed generator.
- \*\*7. The Generator shall be equipped with mufflers and spark arresters, and shall not produce noise levels exceeding 50 dBa at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency use are not included in this limitation. If necessary the generator shall be enclosed by a noise barrier shelter designed by an acoustical engineer and remain oriented and screened to limit excessive noise to surrounding residences.
- \*\*8. Exterior light fixtures shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site, and shall be turned off except when in use by facility personnel. No aircraft warning lighting shall be installed.
- \*\*9. Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.
- \*\*10. Prior to commencement of construction activities or issuance of a building permit, the applicant shall complete a standard private driveway approach onto Comptche-Ukiah Road (CR# 223), to a minimum width of fourteen (14) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with asphalt concrete. The applicant shall obtain written verification from the County Department of Transportation stating that this condition has been met to the satisfaction of the County Department of Transportation and submit it to the Department of Planning and Building Services
- \*\*11. The applicant shall complete Cal Fire standard fire safe requirements pursuant to CDF File #155-07. The applicant shall obtain written verification from Cal Fire stating that this condition has been met to the satisfaction of Cal Fire and submit it to the Department of Planning and Building Services.
- \*\*12. The facility shall provide if requested, space for any public emergency service provider to locate emergency communication service equipment on the tower, provided no interference to function will result at a minimum of and no fee shall be required.
- \*\*13. Exterior surfaces of structures and equipment shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
- \*\*14. The total height of tower including antennas will not exceed 135 feet in height above ground level. Within sixty (60) days of completion of the installation of the facility, the applicant shall perform a tape-drop to confirm that the height is no greater than approved, and shall submit a written certification to the County of the actual height.
- \*\*15. Existing trees and other vegetation, which will provide screening for the proposed facility and associated access roads, shall be protected from damage. No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility. All eucalyptus trees shall be removed from the site.
- \*\*16. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
- \*\*17. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.

- \*\*18.** In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
- \*\*19.** Prior to the final inspection by the Building Division of the Department of Planning and Building Services, an identification sign for each company responsible for operation and maintenance of facilities at the site, no larger than one square foot, shall be mounted on the fence exterior in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall be posted.
- \*\*20.** The antennas and supporting structure shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
- \*\*21.** Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
- \*\*22.** By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site and to require no more than a reasonable charge for collocation.
- \*\*23.** One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower.
- \*\*24.** The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
- \*\*25.** The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless the Planning Commission has approved a modification.
- \*\*26.** This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
- \*\*27.** This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
- a. That the permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which the permit was granted have been violated.
  - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.
- Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.
- \*\*28.** This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- \*\*29.** This permit is issued for a period of ten years, and shall expire on December 17, 2019. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.

- \*\*30. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within two years shall result in the automatic expiration of this permit.
- \*\*31. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,043.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to December 28, 2009 (within 5 days of the end of any appeal period). Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

**SPECIAL CONDITIONS:**

- \*\*1. The applicant shall fully comply with the ESHA loss mitigation plan as detailed in the 11 page Verizon Wireless Proposed Mitigation Plan dated September 4, 2009 and found on file in the Planning and Building Services Department (PBS). The applicant shall complete all plantings and develop a watering system acceptable to PBS prior to removal of any trees or issuance of a building permit. Failure to maintain planted trees shall be grounds for revocation of this Use Permit.
- \*\*2. The special-status species Pygmy Manzanita and Corn Lily locations shall be flagged and surrounded by temporary fencing to prevent inadvertent disturbance during construction.

AYES: Little, Calvert, Ogle, Nelson,  
NOES: Hall, Holtkamp and Warner  
ABSENT: None

**6. Matters from Staff.**

Mr. Lynch commented that he would provide information for a discussion regarding the proof of water requirements and update of the Wireless Guidelines for the January agenda.

Commissioner Little noted he would not be present for the January meeting, but felt the discussion should begin so that at a future Planning Commission meeting, the appropriate policies could be adopted. He did not expect any specific discussion at the January meeting.

Chairman Nelson asked that the discussion also include the NPDES requirements.

Mr. Lynch noted that stormwater guidelines should be adopted in a new policy by June 2010.

Commissioner Warner asked that the discussion of the Wireless Guidelines include new materials related to cell phone technology.

Mr. Lynch noted he would research policies and standards from surrounding Counties for the discussion in January and noted some interesting information in San Francisco.

Commissioner Little commented that the point of the water policy discussion was to set the framework for the future, to develop a policy for Redwood Valley that could be expanded to include additional areas of the County.

**7. Matters from Commission.**

STAFF REPORT FOR COASTAL DEVELOPMENT USE PERMIT

#CDU 13-2007  
DECEMBER 17, 2009  
PAGE PC-1

**OWNER:**

PHILIP H. AND GRACE LAVENDER SHARPLES  
100 NORTH FRANKLIN STREET  
FORT BRAGG, CA 95437

**APPLICANT:**

VERIZON WIRELESS  
2785 MITCHELL DRIVE  
WALNUT CREEK, CA 94598

**AGENT:**

NSA WIRELESS, INC  
PAMEL NOBEL  
12647 ALCOSTA BLVD, SUITE 110  
SAN RAMON, CA 94583

**REQUEST:**

Coastal Development Use Permit to allow the construction and operation of a telecommunications facility to support a wireless provider, Verizon Wireless, including a 135-foot tall lattice tower with 12 panel antennas, 2 microwave dishes. Associated ground equipment includes a 60 kilowatt generator, a 210 gallon fuel storage tank and a 240 square foot equipment shelter.

**LOCATION:**

In the coastal zone, 1.8± miles southeast of the Town of Mendocino, lying on the north side of Comptche-Ukiah Road (CR# 223), 1.4± miles east of its intersection with State Highway 1, located at 43600 Comptche-Ukiah Road, Mendocino; AP# 119-410-17

**TOTAL ACREAGE:**

1,500 square foot leased area within a 12.41± acres "host" parcel

**GENERAL PLAN:**

Rural Residential- 5 acre minimum (RR5)

**ZONING:**

Rural Residential- 5 acre minimum + Planned Unit Combining District (RR 5 + PD)

**EXISTING USES:**

Residential

**ADJACENT ZONING:**

North: Forestland- 160 acre minimum (FL 160)  
East: Rural Residential- 5 acre minimum + Planned Unit Combining District (RR 5 and RR 5 + PD)  
South: Rural Residential- 10 acre minimum (RR 10)  
West: Forestland- 160 acre minimum (FL 160)

**SURROUNDING LAND USES:**

North: Forestland/Vacant  
East: Residential  
South: Residential  
West: Forestland/Vacant

**SURROUNDING LOT SIZES:**

North: 51.37± acres  
East: 1.0± – 8.8± acres  
South: 12.5± acres  
West: 51.37± acres

**SUPERVISORY DISTRICT:**

## OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA:

CDU 32-97/CDV 14-97

Crown Castle International submitted a Use Permit request (U# 20-2001) to allow for the construction of a 124-foot tall tower with 12 panel antennas on a property located approximately 0.3 miles south of the current proposed site. Prior to scheduling a public hearing or completing a staff report, staff received much correspondence in opposition to the project including a petition signed by 431 people living near the coast. Common concerns noted by area residents included; negative impacts to views, health concerns from radio frequency emissions, negative impacts on property values and the need to look for an alternative site that is not so close to private residences.

The Board of Supervisors, upheld the action of the Planning Commission, and approved Coastal Development Use Permit (CDU# 1-2003) on appeal. This approval authorized Edge Wireless, now AT&T Mobility, to install a "stealth" wireless antenna, disguised as a pier supporting a deck to a single-family dwelling. The associated electronics were located inside the property owner's garage.

A Coastal Development Use Permit (CDU# 11-2003) was submitted by US Cellular for a similar project at the Stanford Inn. This request included the placement of 4 panel antennas within 2 existing chimney structures, two global positioning satellite (GPS) antennas, and associated electronics housed within an indoor storage room. This project was a "stealth" application as antennas were proposed to be entirely hidden within the chimney structure. The project was approved by the Planning Commission at the February 19, 2004 meeting. Project opponents appealed the decision to the Board of Supervisors who overturned the Commission's decision at the May 25, 2004 meeting due to a perceived inconsistency with the County Wireless Guidelines as the area is primarily residential and that an alternative neighboring site at the nearby location of CDU# 1-2003 might have been available. It was later determined that the nearby facility (CDU# 1-2003) could not support an additional carrier and thus was not a collocatable site. Facing litigation from the cellular company, the Board overturned their earlier decision at the January 4, 2005 meeting. Opposition to the project appealed the Board's approval decision to the California Coastal Commission (CCC) contending that the use is inconsistent with the Rural Residential and Visitor Accommodations and Services Zoning Districts. The appellants also contended that the project approval was inconsistent with the Mendocino Town Plan, specifically those policies that address preservation of the town's "character", understanding that the use of cell phones would significantly change and modify the historic character of the Town of Mendocino. The CCC upheld the decision of the County finding that the project was consistent with Local Coastal Plan and did not impact coastal resources.

Coastal Development Use Permit (CDU# 17-2007) was approved by the Planning Commissions on March 6, 2008 allowing Edge Wireless to locate 3 panel antennas within two other chimney structures on the Stanford Inn and associated ground equipment within an enclosed outdoor lease area. Edge Wireless has since transferred their permit entitlement to another wireless carrier, T-Mobile.

**BACKGROUND:** The Telecommunications Act of 1996 was signed into law on February 8, 1996. This act preserves the authority of a State or local governments over decisions regarding the placement, construction, and modifications of personal wireless services, subject to limitations. Section 704(7)(B)(iii) requires that any denial ~~shall be in writing and supported by substantial evidence contained in a written record.~~ Section 704(7)(B)(iv) prohibits denial on the basis of radio frequency emissions if those emissions are below the standards as determined by the Federal Communications Commission (FCC).

On November 15, 2001, the Mendocino County Planning Commission adopted *Guidelines for the Development of Wireless Communication Facilities* to regulate wireless communication facilities. By adopting this resolution, the Planning Commission acted to maintain the County's authority over decisions regarding development, operation, and maintenance of wireless facilities.

**PROJECT DESCRIPTION:** The applicant is requesting a Coastal Development Use Permit to authorize the construction and operation of a new wireless communications facility. The project proposal includes the construction of a new 135-foot tall lattice tower to hold 12 panel antennas and 2 microwave dishes. Associated ground equipment to be located within the applicant's 1,500 square foot leased area, includes a 60 kilowatt diesel

generator, a 210 gallon fuel storage tank and a 240 square foot equipment shelter. The leased area will be secured by a 6-foot tall chain link fence around the perimeter.

The applicant's project description discusses additional facility details and Verizon's objectives, stating in part,

*The communication facility will use Verizon Wireless' CDMA (Code Division Multiple Access) system – utilizing lucent technology – and will be an integral component of Verizon Wireless' developing communications network for the Mendocino area. The site is adequate for meeting the desired coverage objectives; namely, extending cell phone coverage along Comptche-Ukiah Road and Highway 1. There is currently a serious and significant gap in service for those living, working, and traveling along this portion of the coast.*

The project site is located in the Coastal Zone on the north side of Comptche-Ukiah Road (CR# 223) approximately 1.4 miles east of its intersection with State Highway 1 and around 1.8 miles southeast of the Town of Mendocino. Existing improvements on the property include the owner's single-family residence, garage and small storage shed.

The wireless communication facility will be unmanned and will operate 24 hours a day, 7 days a week.

**ENVIRONMENTAL REVIEW:** In assessing potential environmental impacts from the project, the following areas of concern were identified.

Earth (Item 1): Grading will be required to clear the applicant's 1,500 square foot leased area, a future access path around the site and to improve the existing access road to County and California Department of Forestry and Fire Protection (Cal Fire) standards. Depending on the amount of earth to be moved, the applicant may need to obtain a grading permit from the County Planning and Building Department subject to the provisions contained in Appendix J, of the 2007 California Uniform Building Code. If any trenching of utility lines is required, trenches will need to be filled and resurfaced to match the original surface. A seasonal creek that serves as natural drainage for the property is located approximately 300 feet north of the project site. The creek eventually drains into Big River.

Condition numbers 1 and 2 are provided to address immediate and short-term impacts from grading activities. Condition number 3 is offered to ensure the facility is constructed in accordance with all applicable building safety standards.

Air (Item 2): The Mendocino County Air Quality Management District (AQMD) responded to staff's referral with general comments regarding potential impacts to air quality. Concerns to air quality addressed by AQMD include: Potential for property to contain naturally occurring asbestos, particulate matter generated by unpaved roads, and fugitive dust emissions from grading activities. According to County maps, the project is not located in an area that likely contains Naturally Occurring Asbestos. As the facility will be unmanned and only serviced bi-monthly, the project is not expected to produce significant amounts of air emissions or odors once site construction is completed. Condition numbers 4 through 6 are recommended to achieve compliance with AQMD standards, holding impacts in this case to a level that is less than significant.

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~~Plant and Animal Life (Items 4 and 5): Staff cross-referenced the project with the California Natural Diversity Database which indicated several sensitive plant species located on or near the property. Staff directed the applicant to complete a botanical study to determine the presence of any special status plant species or their habitat. Kjeldsen Biological Consulting completed a study of the project site dated July 29, 2008. The study determined that the proposed project site is within a regenerating Bishop Pine, Shore Pine and Pygmy Cypress woodland, further noting that some of trees would need to be removed to accommodate the project. Special-status species Pygmy Manzanita and Corn Lily were also discovered along the existing access road, well away from the project site. A map showing the plant species location in relation to project site is included on page PC 25. As the road already exists, no impacts to the pygmy manzanita or corn lily are anticipated and it is recommended that their locations be flagged and surrounded by temporary fencing to prevent inadvertent disturbance during construction. (Special condition number 2)~~

As proposed, the project site lies within the Bishop Pine, Shore Pine and Pygmy Cypress woodlands boundary. These forest types are deemed Environmentally Sensitive Habitat Areas (ESHA) and are protected resources under Section 30240(a) of the California Coastal Act which states,

*Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

Further Section 30240(b) states,

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Staff visited the site accompanied by a biologist from the Department of Fish and Game (DF&G), Mr. Rick Macedo, to determine the project's potential impact to the protected habitat or resource area. According to Mr. Macedo in his email to staff dated November 24, 2008, the project site is located in a *fully functioning Bishop Pine and Shore Pine forest*, and impacts to the ESHA are anticipated but the extent of impact could not be determined without additional information. Mr. Macedo went on to recommend the following information be provided by the applicant:

1. A survey shall be conducted that tallies, by species and diameter class, the number of trees that will be removed or damaged as a result of the project.
2. A mitigation and monitoring plan shall be developed for purpose of replacing lost and damaged trees and other vegetation. This plan shall propose specific tree replacement ratios (at least 5:1 for every native tree lost or damaged) and a monitoring plan (at least two years) that tracks planted trees and replaces those that are dead and dying.
3. An invasive species control program shall be developed. This program shall be designed to remove invasive species that may grow in areas that have been disturbed as result of this project.

Further, Section 20.532.060 of the Coastal Zoning Code requires additional project information for development within ESHA including Section E (4) which states that the biologist evaluate,

*Alternatives to the proposed development, including different projects and alternative locations.*

Based on Mr. Macedo's determination and following goals and procedures for developing in ESHA as set forth in the Mendocino County Coastal Element of the General Plan and Coastal Zoning Code, staff requested the applicant update the botanical survey subject to the requirements of Section 20.532.060 of the Mendocino County Coastal Zoning Code. In response, staff received an addendum to the previous botanical study, again completed by Kjeldsen Biological Consulting dated February 3, 2009. The study evaluated the proposed site as well as two alternative sites on the property identified as the "Open Meadow" and the "Redwood Forest" site. As staff requested, the study also identified the type, size and number of trees that would need to be removed at each site to accommodate the project. The information is provided in a summary table found in Exhibit C.

One alternative site consists of an open meadow located 120± feet southwest of the proposed site, and another alternative site is just north of the project site within a patch of Redwood Dominated Forest. The alternative Redwood Forest site was quickly ruled out by the applicant as existing slope and soil types were determined to be unsuitable for construction of the tower.

According to the study, the only site that would not require removal of any trees and would not disturb ESHA is alternative site 3 (open meadow). The biologist determined that there is sufficient area in the meadow to site the facility and maintain a 100 foot buffer from ESHA on all sides except to the east where a row of Bishop Pines grow. A specific distance to Bishop Pines was not included. A map on page PC 25 outlines the extent of the ESHA (Mendocino Cypress on map) in relation to the open meadow (Site #2 on map). Section 20.496.020 of the Mendocino County Coastal Zoning Code discusses appropriate buffer areas to ESHA from development stating in part

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas...The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width.*

Although a specific location for the facility, if it were to be sited in the meadow, has not been determined. Staff believes that there is adequate open space to maintain a 50 foot buffer from ESHA on all sides. The hired biologist determined that to reduce the buffer would not degrade the ESHA.

Regarding the proposed site, to develop in ESHA the following 3 findings found in Section 20.532.100 (A)(1) of the Coastal Zoning Code must be made:

1. **No development shall be allowed in an ESHA unless the following findings are made:**
  - (a) *The resource as identified will not be significantly degraded by the proposed development.*
  - (b) *There is no feasible less environmentally damaging alternative.*
  - (c) *All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.*

*\* Emphasis added*

Staff with consultation from DF&G has determined that the project will have a significant impact as ESHA will need to be removed to accommodate the project. The open meadow site was identified early on in the project planning process as a preferred alternative since it would not impact ESHA and in comparison to proposed site, would not increase the visual impacts to public locations. According to the project agent, Pamela Nobel, the property owners are not interested in allowing Verizon Wireless to place their facility in the meadow as it would be highly visible to them when traveling down their private driveway. This was reiterated in staff conversation with Mr. Sharples while conducting a site view.

Staff has been told by the project agent that the alternative Redwood Forest site will not work because of soil type and slope stability and the alternative open meadow site is not an option due to an unwilling landowner. Understanding staff's preference to site the facility in the meadow and the above noted findings that must be made to approve the project, the applicant chose to continue forward with the original site adding a proposed mitigation plan to compensate for the loss of ESHA. A summary of the proposed mitigation measures is found in Exhibit D.

Understanding that 28 trees with a diameter breast height (DBH) of greater than 6 inches will need to be removed to accommodate the site and considering DF&G suggested 5:1 replanting ratio, the applicant is proposing to plant 125 trees within the open meadow. Types of trees to be used are noted in the executive summary. ~~3,000 square feet of the meadow would be used to plant the 125 trees. Based on the applicant's site plan, the project will~~ result in the removal of approximately 2,000 square feet of ESHA to accommodate the leased area and access path around. The mitigation plan also includes provisions for the planting, watering and monitoring of the trees. Monitoring will include the identification and removal of invasive species within the mitigation site for five years. Rick Macedo of DF&G has reviewed the mitigation plan and found it to satisfy his recommendations noted on the previous page.

Should the Commission choose to approve the project at the proposed location, staff recommends special condition number 1 requiring the applicant comply with all provisions detailed in the Mitigation Plan.

Noise (Items 6): The applicant is proposing to install a 60-kilowatt generator, to be used solely for providing emergency power during periods of energy transmission interruption and for routine testing. The only other anticipated noise to be generated by the project will result from construction activity and vehicles. Staff offers

condition number 7 requiring the generator remain oriented and screened to limit excessive noise from the closest neighboring receiver.

Light and Glare (Item 7): The application states that 2 lights will be mounted on the equipment shed approximately 8 feet above ground level. Condition number 8 is recommended to require that these and any future lights be shielded or downcast to prevent the light source from being visible from off the property and be turned off after use by company personnel.

Land Use (Item 8): The Coastal Plan land use classification for the parcel is Rural Residential – 5 acre minimum (RR-5). Within the RR-5 classification *Major Impact Services and Utilities* are a conditional use, subject to approval of a coastal development use permit. Surrounding land uses vary from 1 to 12± acres parcels with single-family residences to a vacant 50± acres parcel zoned Forestland (FL 160).

The Wireless Communication Guidelines list residential areas as the "least preferred" sites for wireless facilities. The nearest off-site residences are located approximately 600 feet east and 800 feet south of the project site. Staff determined that the issue of potential conflict with residential land use compatibility does not rise to the level of significance and that the proposed wireless facility does not conflict with the planned use of the area.

Transportation/Circulation (Item 12): Access to the site is provided from an existing private driveway off Comptche-Ukiah Road (CR# 223) extending 550± feet to the project site. The project will generate a minor amount of additional traffic in conjunction with the construction of the facility. After construction is complete, traffic to the site will consist of one or two visits per month by company representatives as necessary to maintain the facility. Some road improvements will be necessary to meet Cal Fire requirement to construct a turnout for fire engines. The County Department of Transportation (DOT) is recommending that a standard private driveway approach be constructed to minimum width of 14 feet, are to be improved 15 feet from the edge of Comptche-Ukiah Road. Any work conducted within the County right-of-way will first require obtainment of an encroachment permit from DOT. See condition numbers 9 and 10.

Public Services (Item 13): The project will have no direct impact on public facilities. By providing improved wireless telephone service, emergency communications may be facilitated, allowing more prompt response by emergency service providers in times of emergency. The project is within the California Department of Forestry and Fire Protection (Cal Fire) responsibility area. Cal Fire reviewed the proposed project and recommended fire safe standards pursuant to CDF File Number 155-07. No response was received from the Mendocino Fire District or the Mendocino Unified School District. Condition number 11 requires the applicant to complete fire safe standards to the satisfaction of Cal Fire.

As communication capability is extremely important to emergency service providers, especially in remote locations, staff recommends condition number 12, which would require the facility to provide, if requested, space for any emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.

Human Health (Item 16): The Federal Communications Commission (FCC) has set maximum permissible exposure limits for radio frequency transmitters, and the Telecommunications Act of 1996 prohibits local governments from regulating wireless service facilities based on environmental effects of radio frequency emissions as long as the facilities comply with FCC regulations for emissions. Verizon Wireless has retained the services of Hammett & Edison, Inc., Consulting Engineers to evaluate the proposed telecommunication facility for compliance with appropriate guidelines limiting human exposure to radio frequency electromagnetic fields. Their report summary states:

*The maximum ambient RF exposure level due to the proposed Verizon operation is calculated to be 0.00056 mW/cm<sup>2</sup>, which is 0.094% of the applicable public limit. The maximum calculated level at the second floor elevation of any nearby building would be 0.11% of the applicable public limit.*

The wireless communications facility will be within a compound that is surrounded by a locked chain link fence is not in a location likely to be accessed by anyone other than maintenance personnel. Appropriate signage will be posted disclosing that the facility is not to be accessed by anyone other than maintenance personnel.

Aesthetics (Item 17): Aesthetics is typically a concern associated with this type of use because of the substantial height of structures used to support communication antennas. The visibility of a facility is a function of its height, design, and its exposure to neighbors and the general public. The project site is located in a semi-rural area approximately 1.8± miles southeast of the Town of Mendocino at an elevation of around 450 feet above sea level. A visual simulation was conducted using a balloon to simulate the height of the proposed 135 foot tall tower. To avoid getting the balloon stuck in the tall trees, staff chose to fly the balloon from the open meadow 120± feet west of the project site. Staff was present and observed the test. Photographic simulations using the balloon test are included with this report and are concluded to be a reasonable representation of the visual impacts.

Staff drove along the closest public roads to help determine the project's visual impact to the surrounding area. Staff determined that the top half of the tower would be visible for a short distance when traveling in both directions along Comptche-Ukiah Road as you go by the Sharples property (Page PC 33). Staff was also able to see the balloon using binoculars from vantage points within the Town of Mendocino including from the High School, which is on some of the higher elevation land in the Town. Using the photos of the balloon provided by staff, the applicant has completed photo-simulations of the tower as seen from Town, and are found on pages PC 26 - 30. Topography and trees effectively hid the balloon from view as staff traveled along State Highway 1.

The facility is proposed on a ridge top within a group of trees with an average height of 100± feet that will successfully hide the ground equipment and the majority of tower from public views. Again, the nearest off-site residences that staff is aware of are located approximately 600 feet east and 800 feet south of the project site. There are several residences in the area from which the top of the tower may be visible. Staff is also aware of a 6-unit bed and breakfast business known as the Mendocino Farm House located 1500± feet east of the proposed facility. Based on site visits and aerial photos, residences and the Farm House are built within clearings surrounded by mature trees that seem tall enough to conceal the site from their private views.

The property is located in a "highly scenic area" as designated by the Coastal Element. Section 3.5-4 calls for buildings in a highly scenic area to be *sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area*. As the facility is proposed on a ridge top, the following Section provides further direction stating,

*Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridge line; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of trees masses which destroy the ridgeline silhouette.*

The facility will be visible on the ridge when viewed at a distance from the Town of Mendocino which is known for its historical charm and natural setting. A total of 78 trees, 28 with dbh > 6 in., would be removed from the project site to accommodate the facility, although staff is unsure as to how many, if any of those trees are currently in the forefront of the imposed tower as seen in the photo-simulations. Although a cellular tower may not fit in with the town's overall character, with views at a distance, the conflict does not rise to a level of significance. No public ocean views are impacted by the development.

~~As previously mentioned, staff is recommending that the facility be sited in the meadow to avoid impacts to ESHA. Visual impacts from the alternative meadow site are anticipated to be similar to the proposed site as seen from Comptche-Ukiah Road and the Town of Mendocino.~~

Consistent with Item (B)(2)(b) of the Wireless Guidelines condition number 13 is recommended requiring all exterior surfaces of structures and equipment associated with a communications facility have subdued colors and non-reflective materials selected to blend with their surroundings.

Condition Numbers 14 and 15 are recommended to mitigate visual impacts by limiting the facilities height, and to protect/preserve existing vegetation.

In the event that use of the facility should cease, it is recommended that condition numbers 16 and 17 be imposed, requiring that all portions of the facility above ground level be removed from the site, and the site be restored to a natural condition.

Cultural Resources (Item 19): The Northwest Information Center (NWIC) at Sonoma State University responded to staff's referral noting that a cultural resource study has never been completed for the property. NWIC determined that the project area has a "low" possibility of containing archeological resources and recommended that no further study is warranted. However, condition number 18 is recommended to achieve compliance with the County's archaeological ordinance and ensure protection of any cultural resources that may be discovered on the site.

**COMPLIANCE WITH WIRELESS COMMUNICATIONS GUIDELINES:** The applicant has submitted all information as required by the Wireless Communications Guidelines adopted by the Planning Commission. A review of applicable policy standards follows:

According to Standard B(1)(a) the Wireless Communications Guidelines:

*Communications facilities that can co-locate with an existing facility will generally have highest preference, followed by facilities located on existing structures or buildings, then followed by facilities that can be designed or located so as to be visually unobtrusive ("stealthed"). Highly visible sites and sites within or near residential areas or schools are least preferred and will only be considered when there is compelling evidence that no other less visible alternative exists.*

According to the applicant's project description,

*A new site is being proposed because we are unaware of any feasible sites for collocation in the vicinity of the proposed project.*

Staff asked the applicant to evaluate the Stafford Inn site where US Cellular and T-Mobile currently utilize their antennas hidden within the Inn's chimneys. The applicant responded that the site would not work noting,

*Limited space for Verizon Equipment, and RF engineer rejected coverage potential. Did not meet the coverage objective for Highway One. Partial coverage of town.*

The applicant's coverage map showing anticipated service area for Verizon customers as a result of the project is found on page PC 24. AT&T Wireless provides cellular coverage to the Town of Mendocino from antennas located below the deck of a single-family home in Town. Staff is unaware of any other existing facilities in the vicinity. Verizon has stated that the tower will be able to accommodate future collocation and have agreed to negotiate in good faith with third parties that may want utilize the site in the future. As proposed the tower would extend approximately 35 feet above the tree line and wireless carriers typically need 10 feet of separation on the tower when collocating their antennas, effectively leaving room for 1 or 2 other wireless carriers. A full list of alternative sites reviewed by the applicant is found in Exhibit B.

Standard B(2)(g) of the Wireless Communications Guidelines states,

*New communications facilities shall be discouraged on ridge top sites where they will be silhouetted against the sky from the surrounding community, or from highly used public locations.*

As shown in the photo simulations, approximately the top 35 feet of the tower will be silhouetted against the sky as viewed at a distance from locations within the Town of Mendocino. According to the applicant, siting the facility further north on the property and lower on the ridge is not feasible due to slope and soil type.

Conditions numbers 19 through 23 are recommended to achieve compliance with requirements of the Wireless Communications Guidelines.

**CUMULATIVE IMPACTS:** There are no impacts associated with the current project that become significant when considered in conjunction with other existing or planned facilities in the vicinity.

**STAFF RECOMMENDATION:** Staff understands that the applicant has spent a considerable amount of time and resources developing the site including the creation of a mitigation plan to offset the impacts to ESHA. To construct the facility within ESHA and offset the impact by replanting trees in the open meadow rather than place the facility in the meadow and avoid damaging ESHA in the first place seems counterintuitive. As it has been

explained to staff, the landowner is unwilling to grant the applicant permission to construct the facility in the meadow because they don't want to look at it when traveling down their own driveway. The choice is the owner's prerogative and staff cannot force them to grant Verizon permission. The concept of development of alternative site replacement for habitat impacts is common practice in many development scenarios. However, as there is a potential alternative site within this property and that this project would not be considered a "taking" as there is already principally permitted uses developed, the specific findings to permit development within the ESHA cannot be supported. Attempting to find a better solution or compromise, staff wonders if requiring the addition of native landscaping around the facility, if it was placed in the meadow, would lead the owner's to reconsider their stance on the meadow site.

As proposed staff cannot recommend approval of the site, as staff cannot make the required finding set forth in Section 20.532.100 (A)(1) of the Coastal Zoning Code.

**RECOMMENDED MOTION:** The Planning Commission denies Coastal Development Use Permit CDU# 13-2007 finding that the project is inconsistent with Section 30240(a) of the California Coastal Act and Section 20.532.100 (A)(1) of the Coastal Zoning Code as the project will result in the removal of ESHA and a *less environmentally damaging alternative* has been identified on the property.

**ALTERNATIVE MOTION:** The Commission approves Coastal Development Use Permit CDU# 13-2007 finding that compliance with the proposed mitigation measures will reduce impacts to ESHA to a less than significant level.

**ALTERNATIVE MOTION:**

**General Plan Consistency Finding:** The proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

**Environmental Findings:** The Planning Commission finds that the project can be adequately mitigated through conditions of approval and therefore the Commission adopts a Negative Declaration.

**Coastal Development Permit Findings:** The Planning Commission approves CDU# 13-2007 subject to the conditions of approval recommended by staff further finding that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
2. That the proposed use will not constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.
3. That such use preserves the integrity of the zoning district.
4. The proposed development is in conformity with the certified local coastal program.
5. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities.
6. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district.
7. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

8. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
9. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

## RECOMMENDED CONDITIONS:

- \*\*1. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site.
- \*\*2. All grading and site preparation, at a minimum, shall adhere to the following "Best Management Practices": The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards.
  - a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
  - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
  - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
  - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
  - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1<sup>st</sup>.
  - f. All earth-moving activities shall be conducted between May 15<sup>th</sup> and October 15<sup>th</sup> of any given calendar year unless an Erosion and Sedimentation Prevention Plan, prepared by a registered civil engineer, has been submitted and approved by the Department of Planning and Building Services which outlines wet weather earthmoving and drainage control protocols. Such plan shall include all appropriate Best Management Practices that shall be installed in accordance with the approved Erosion and Sediment Prevention Plan prior to the start of construction during the rainy season.
  - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
    1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
    2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m<sup>3</sup>) on any one lot and does not obstruct a drainage.

- \*\*3. All antennas and the antenna tower shall comply with wind loading and other structural standards contained in applicable building and technical codes, industry codes, and manufacturer standards so as not to endanger the health and safety of residents, employees or travelers in the event of structural failure due to extreme weather conditions, seismic events or other acts of nature.

- \*\*4. The access road from Comptche-Ukiah Road (CR# 223) to the project site shall be covered with an impermeable sealant or rock at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
- \*\*5. All grading activities must comply with District Regulation 1 Rule 430 regarding fugitive dust emissions.
- \*\*6. Prior to the development phase of the project, the applicant shall contact the Mendocino County Air Quality Management District for a determination as to the need for a permit from the District for the proposed generator.
- \*\*7. The Generator shall be equipped with mufflers and spark arresters, and shall not produce noise levels exceeding 50 dBA at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency use are not included in this limitation. If necessary the generator shall be enclosed by a noise barrier shelter designed by an acoustical engineer and remain oriented and screened to limit excessive noise to surrounding residences.
- \*\*8. Exterior light fixtures shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site, and shall be turned off except when in use by facility personnel. No aircraft warning lighting shall be installed.
- \*\*9. Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.
- \*\*10. Prior to commencement of construction activities or issuance of a building permit, the applicant shall complete a standard private driveway approach onto Comptche-Ukiah Road (CR# 223), to a minimum width of fourteen (14) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with asphalt concrete. The applicant shall obtain written verification from the County Department of Transportation stating that this condition has been met to the satisfaction of the County Department of Transportation and submit it to the Department of Planning and Building Services
- \*\*11. The applicant shall complete Cal Fire standard fire safe requirements pursuant to CDF File #155-07. The applicant shall obtain written verification from Cal Fire stating that this condition has been met to the satisfaction of Cal Fire and submit it to the Department of Planning and Building Services.
- \*\*12. The facility shall provide if requested, space for any public emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.
- \*\*13. Exterior surfaces of structures and equipment shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
- \*\*14. The total height of tower including antennas will not exceed 135 feet in height above ground level. Within sixty (60) days of completion of the installation of the facility, the applicant shall perform a tape-drop to confirm that the height is no greater than approved, and shall submit a written certification to the County of the actual height.
- \*\*15. Existing trees and other vegetation, which will provide screening for the proposed facility and associated access roads, shall be protected from damage. No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility.

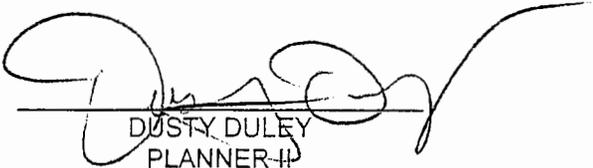
- \*\*16. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
- \*\*17. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
- \*\*18. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
- \*\*19. Prior to the final inspection by the Building Division of the Department of Planning and Building Services, an identification sign for each company responsible for operation and maintenance of facilities at the site, no larger than one square foot, shall be mounted on the fence exterior in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall be posted.
- \*\*20. The antennas and supporting structure shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
- \*\*21. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
- \*\*22. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site and to require no more than a reasonable charge for collocation.
- \*\*23. One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower.
- \*\*24. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
- \*\*25. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless the Planning Commission has approved a modification.
- \*\*26. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
- \*\*27. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
- a. That the permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which the permit was granted have been violated.
  - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

- \*\*28. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- \*\*29. This permit is issued for a period of ten years, and shall expire on December 17, 2019. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
- \*\*30. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within two years shall result in the automatic expiration of this permit.
- \*\*31. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,043.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to December 28, 2009 (within 5 days of the end of any appeal period). Any waiver of the fee shall be on a form issued by the Department of Fish and Game upon their finding that the project has "no effect" on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to insure timely compliance with this condition.**

**SPECIAL CONDITIONS:**

- \*\*1. The applicant shall fully comply with the ESHA loss mitigation plan as detailed in the 11 page Verizon Wireless Proposed Mitigation Plan dated September 4, 2009 and found on file in the Planning and Building Services Department (PBS). The applicant shall complete all plantings and develop a watering system acceptable to PBS prior to removal of any trees or issuance of a building permit. Failure to maintain planted trees shall be grounds for revocation of this Use Permit.
- \*\*2. The special-status species Pygmy Manzanita and Corn Lily locations shall be flagged and surrounded by temporary fencing to prevent inadvertent disturbance during construction.

11-20-09  
DATE

  
DUSTY DULEY  
PLANNER-II

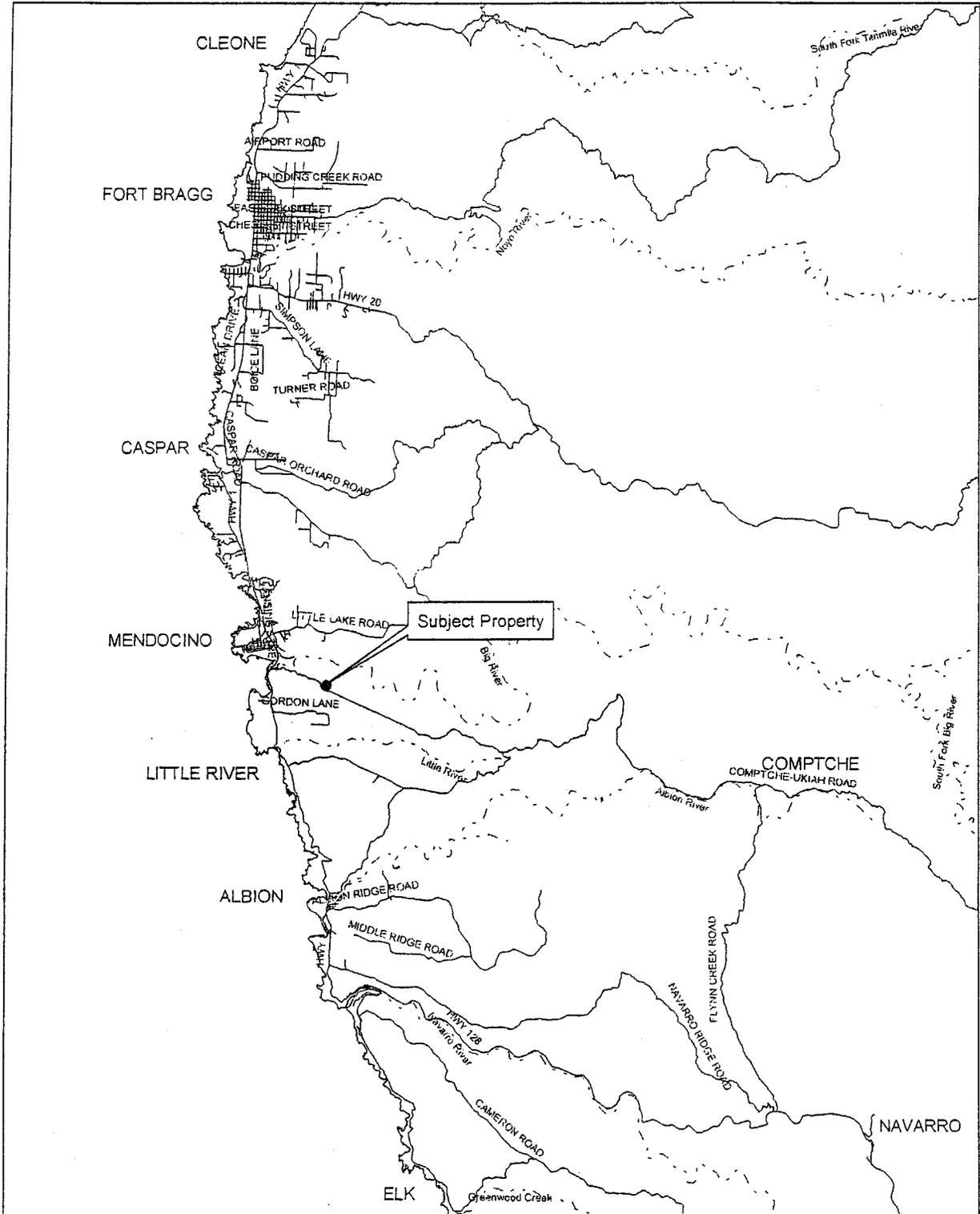
DD/at  
November 19, 2009

Negative Declaration  
Appeal Fee - \$1342.00  
Appeal Period - 10 days

\*\* Indicates conditions relating to Environmental Considerations - deletion of these conditions may affect the issuance of a Negative Declaration.

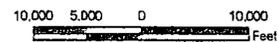
SUMMARY OF AGENCY COMMENTS:

Planning – Fort Bragg Office	No response
Department of Transportation	Comments Received – Road Improvements
Environmental Health – Ukiah	No comment
Building Inspection – Fort Bragg	No comment
Emergency Services	No response
Assessor	No response
Air Quality Management District	General comments on impact from unpaved roads and asbestos
NWIC at Sonoma State University	Project has low possibility of containing archaeological site
Cal Fire	Fire Safe Standards pursuant to CDF File #155-07
Native Plant Society	No response
Dept of Fish and Game	ESHA present on project site. Proposed mitigation measures
Coastal Commission	No response
Caltrans – Div. of Aeronautics	No response
Mendocino Fire District	No response
Mendocino Unified School District	No response
Federal Communications Commission	No response
Public Utilities Commission	No response
Federal Aviation Administration	No response

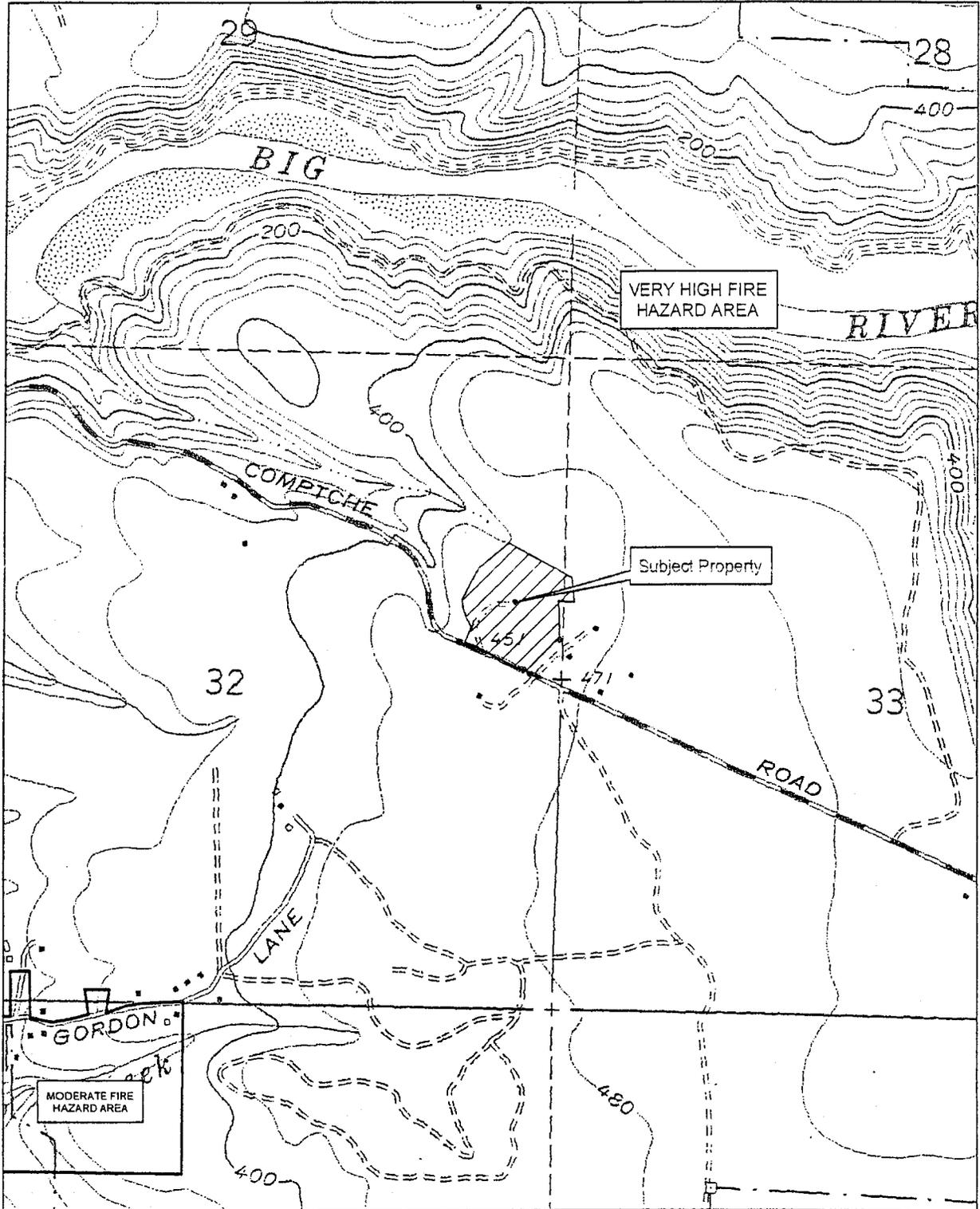


OWNER: SHARPLES, Philip & Lavender  
APPLICANT: VERIZON WIRELESS  
AGENT: MILLER, Tom  
CASE: CDU 13-2007  
APN: 119-410-17

LOCATION MAP

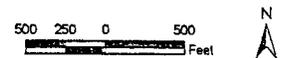


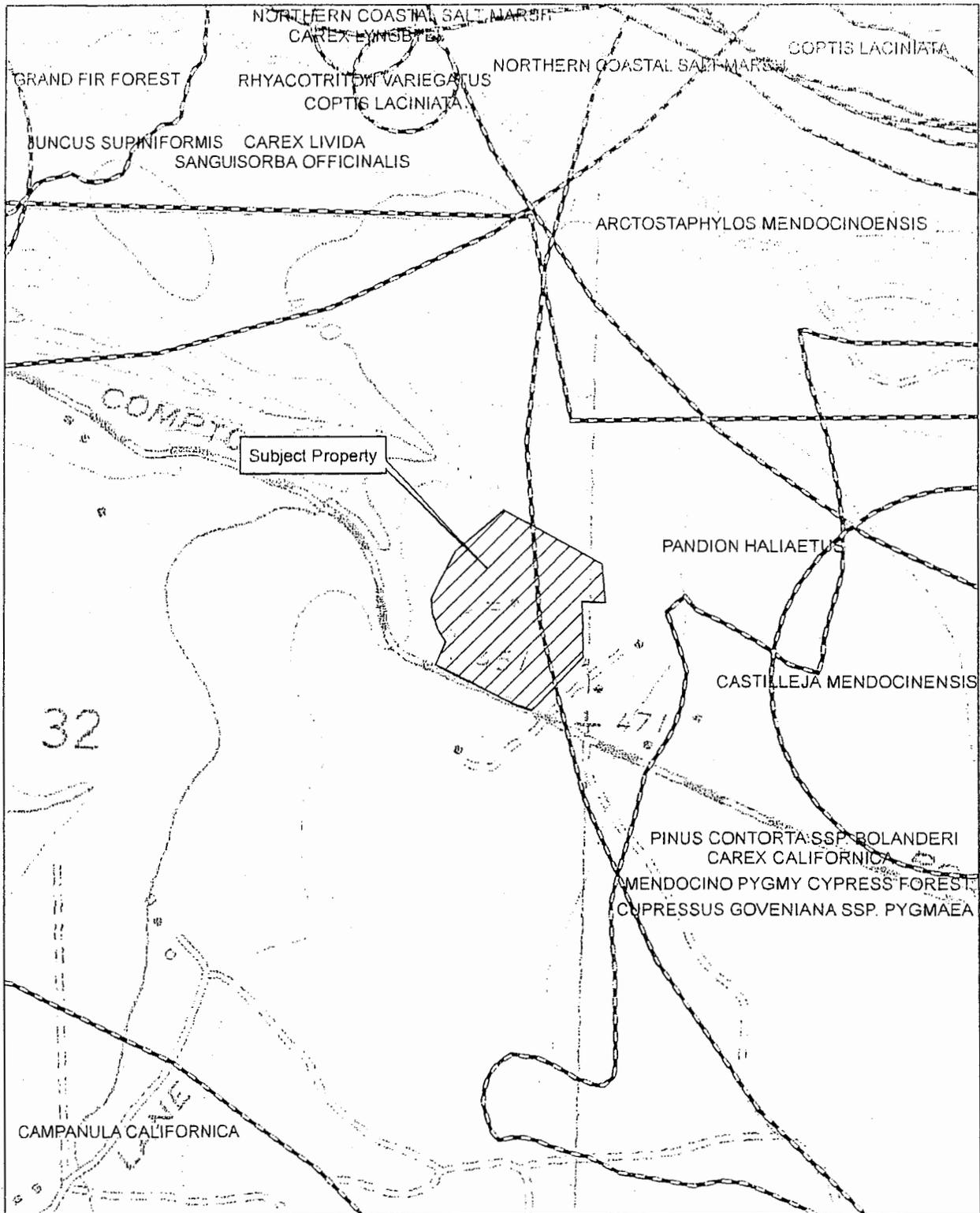




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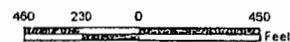
**FIRE HAZARD SEVERITY ZONES**  
MENDOCINO RURAL FIRE PROTECTION DISTRICT

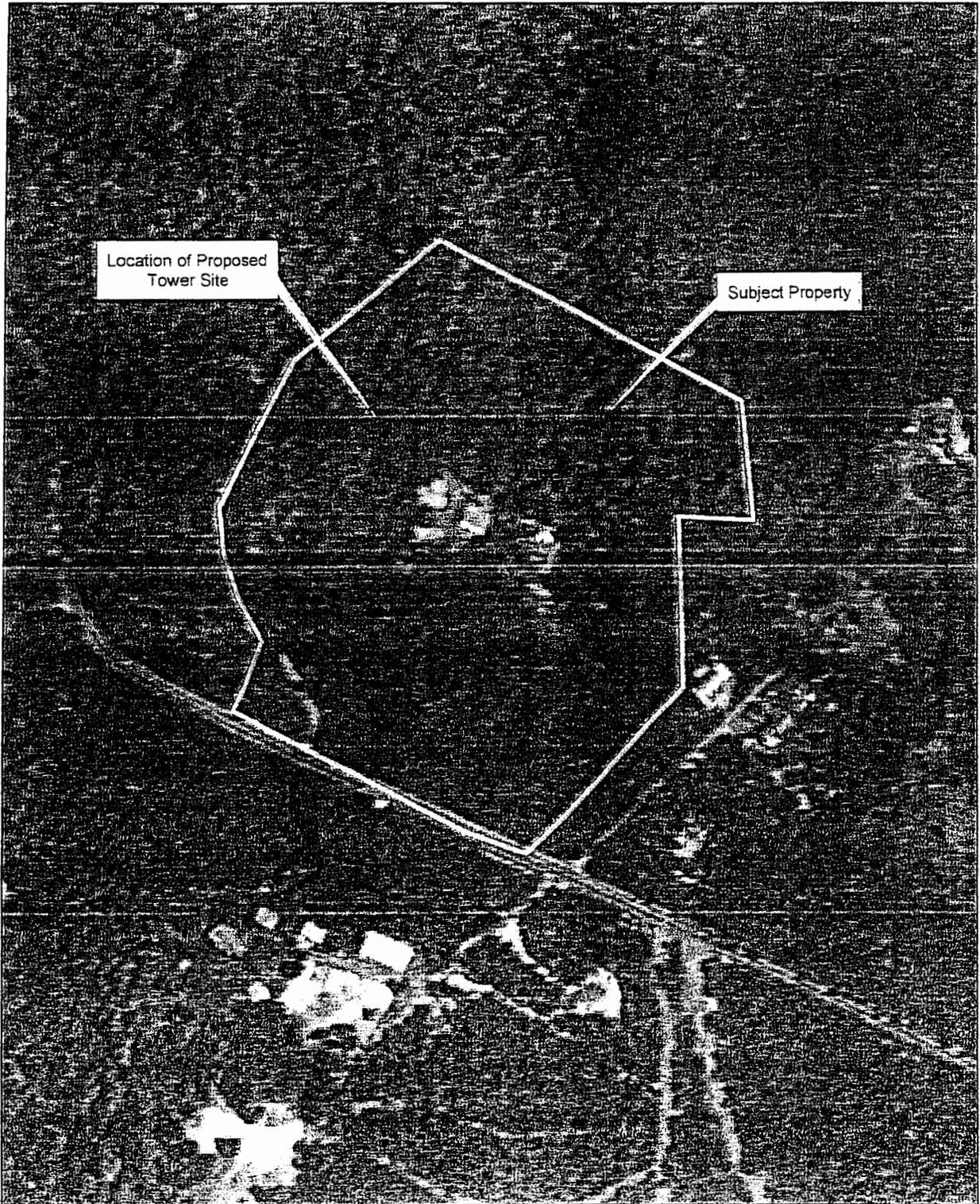




OWNER: SHARPLES, Philip & Lavender  
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 AGENT: MILLER, Tom  
 CASE: CDU 13-2007  
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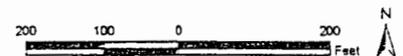
CALIFORNIA NATURAL DIVERSITY  
 DATABASE RAREFIND (August 2007)

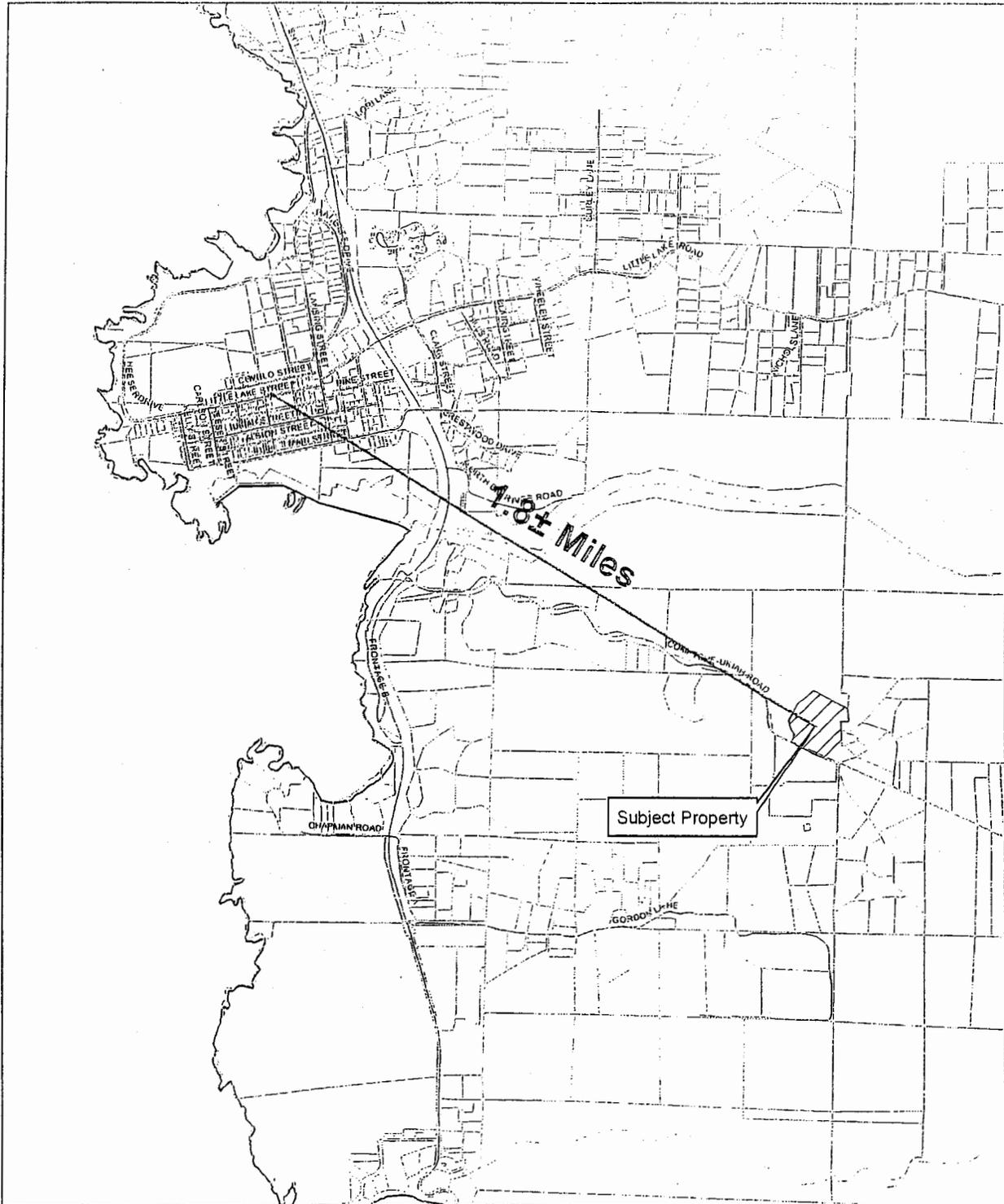




OWNER: SHARPLES, Philip & Lavender  
APPLICANT: VERIZON WIRELESS  
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CASE: CDU 13-2007  
APN: 119-410-17

ORTHOPHOTO - August 2005

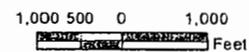




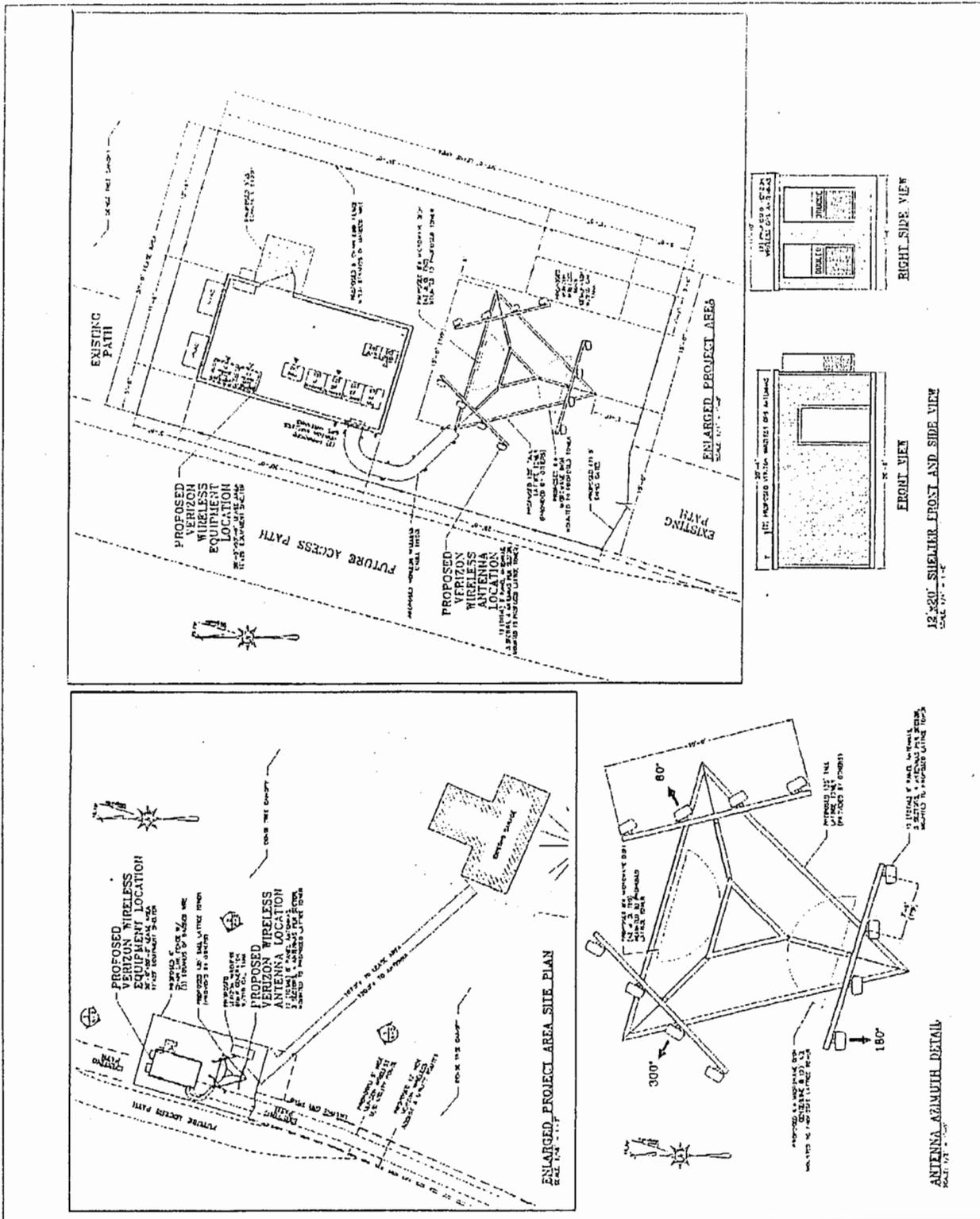
OWNER: SHARPLES, Philip & Grace  
 APPLICANT: VERIZON WIRELESS  
 AGENT: NOBEL, Pamela  
 CASE #: CDU 13-2007  
 APNs: 119-410-17

DISTANCE FROM SITE TO MENDOCINO

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES. they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)







OWNER: SHARPLES, Philip & Lavender  
 APPLICANT: VERIZON WIRELESS  
 AGENT: MILLER, Tom  
 CASE: CDU 13-2007  
 APN: 119-410-17

SITE PLAN





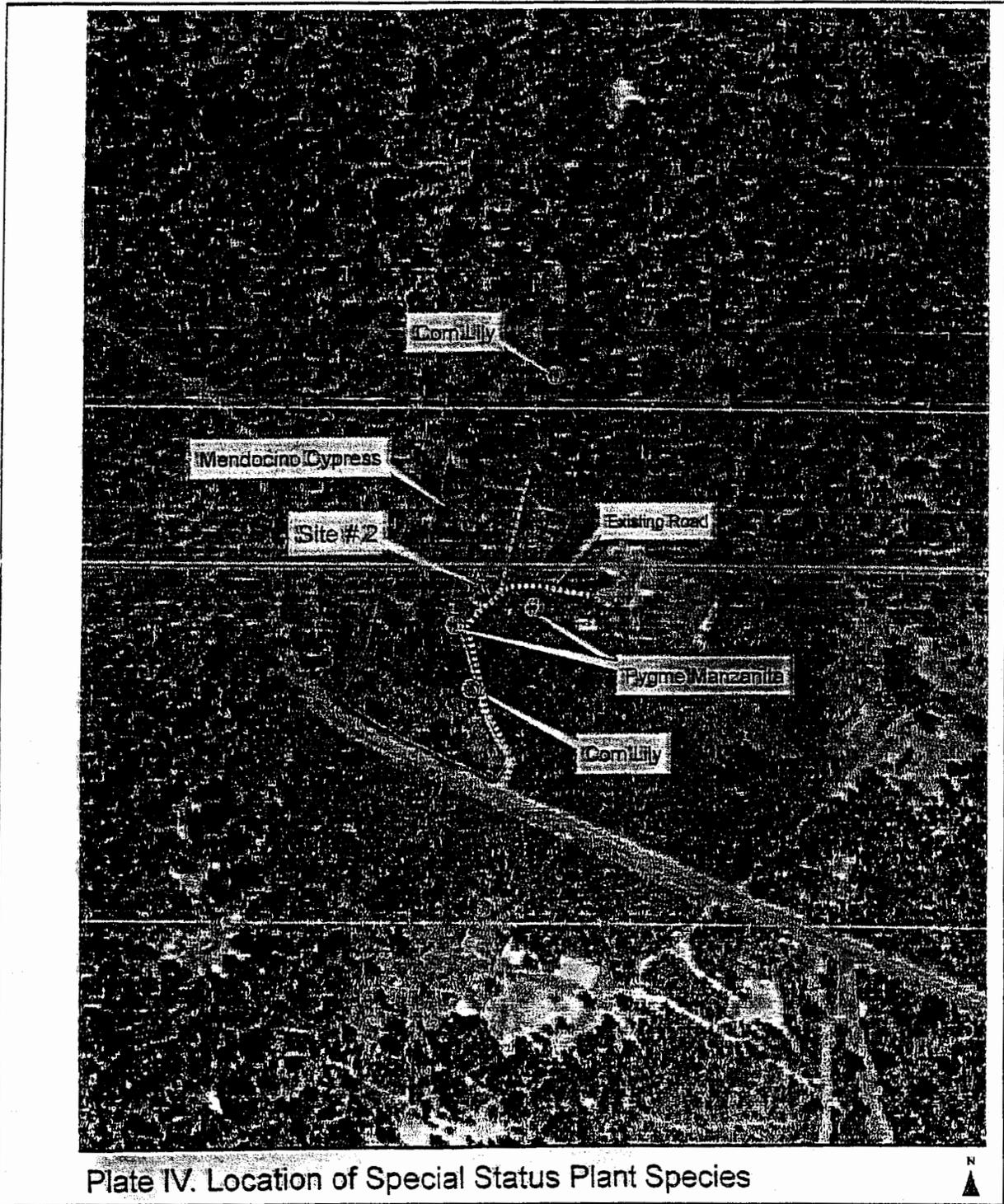
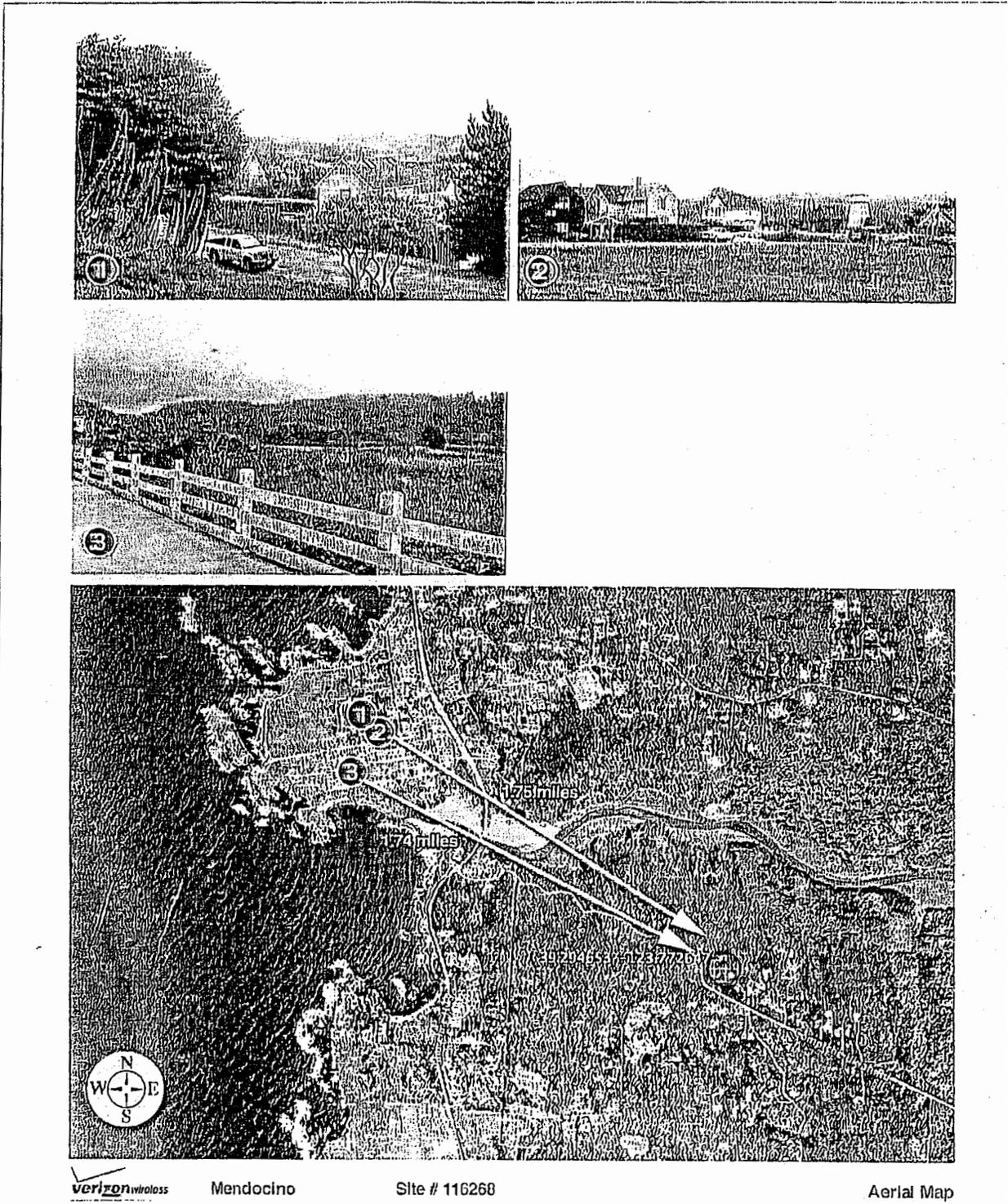


Plate IV. Location of Special Status Plant Species

OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT: NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

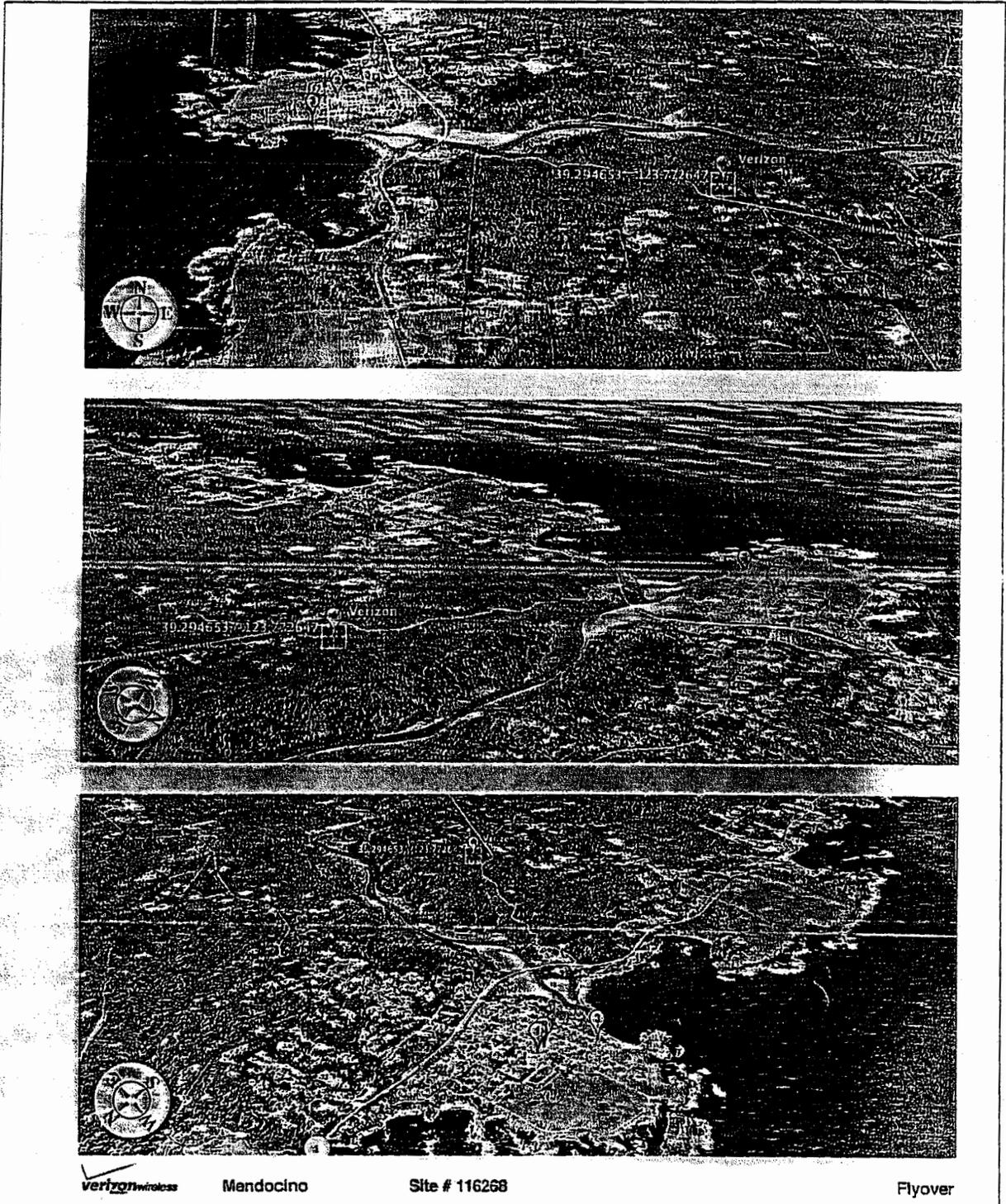
LOCATION OF SPECIAL STATUS PLANT SPECIES

Not To Scale



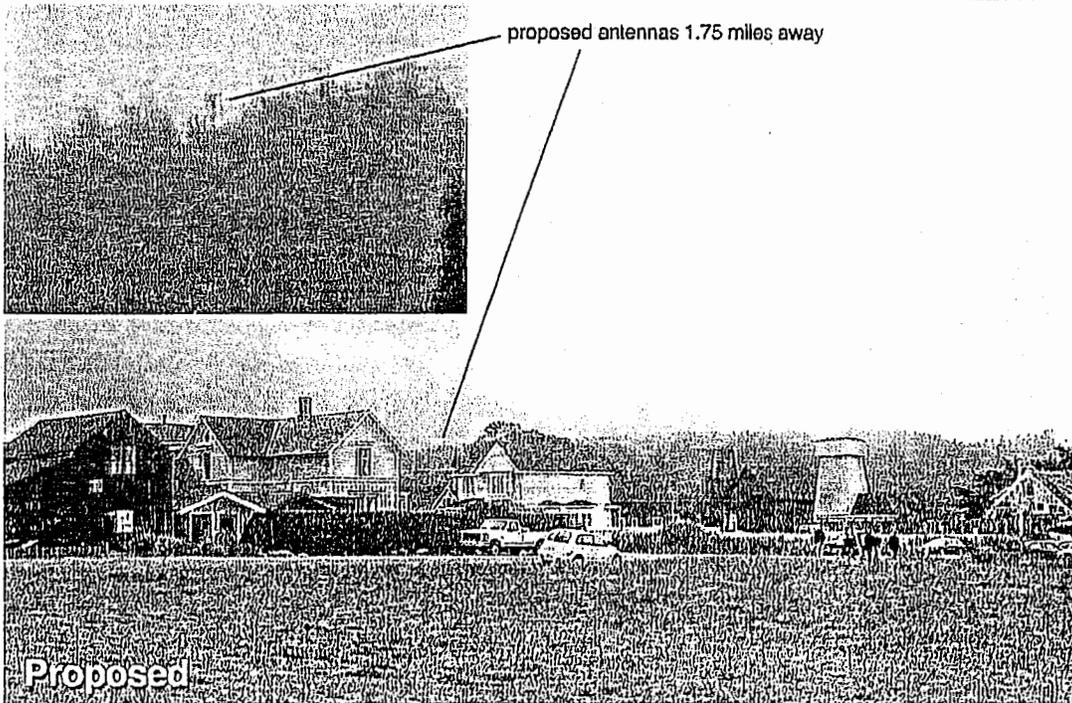
OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

AERIAL MAP



OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

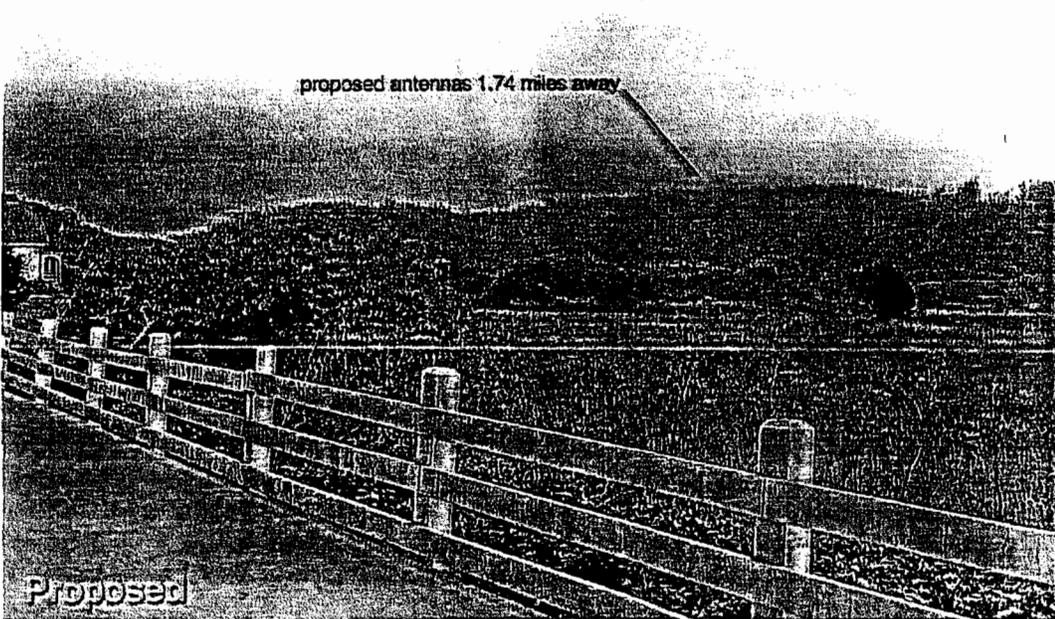
FLYOVER



verizon wireless Mendocino Site # 116268 Looking Southeast from Lake Street

OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT: NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

LOOKING SOUTHEAST FROM LAKE STREET  
IN THE TOWN OF MENDOCINO

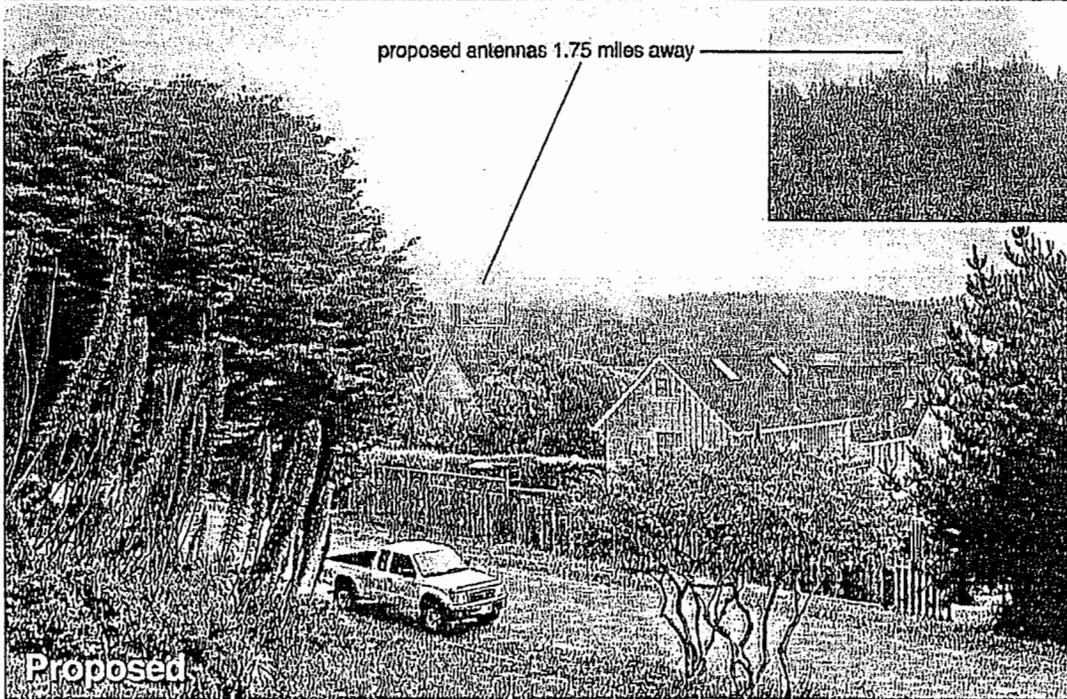


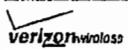
 Mendocino Site # 116268 Looking Southeast from Main Street

OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT: NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

LOOKING SOUTHEAST FROM MAIN STREET  
IN THE TOWN OF MENDOCINO

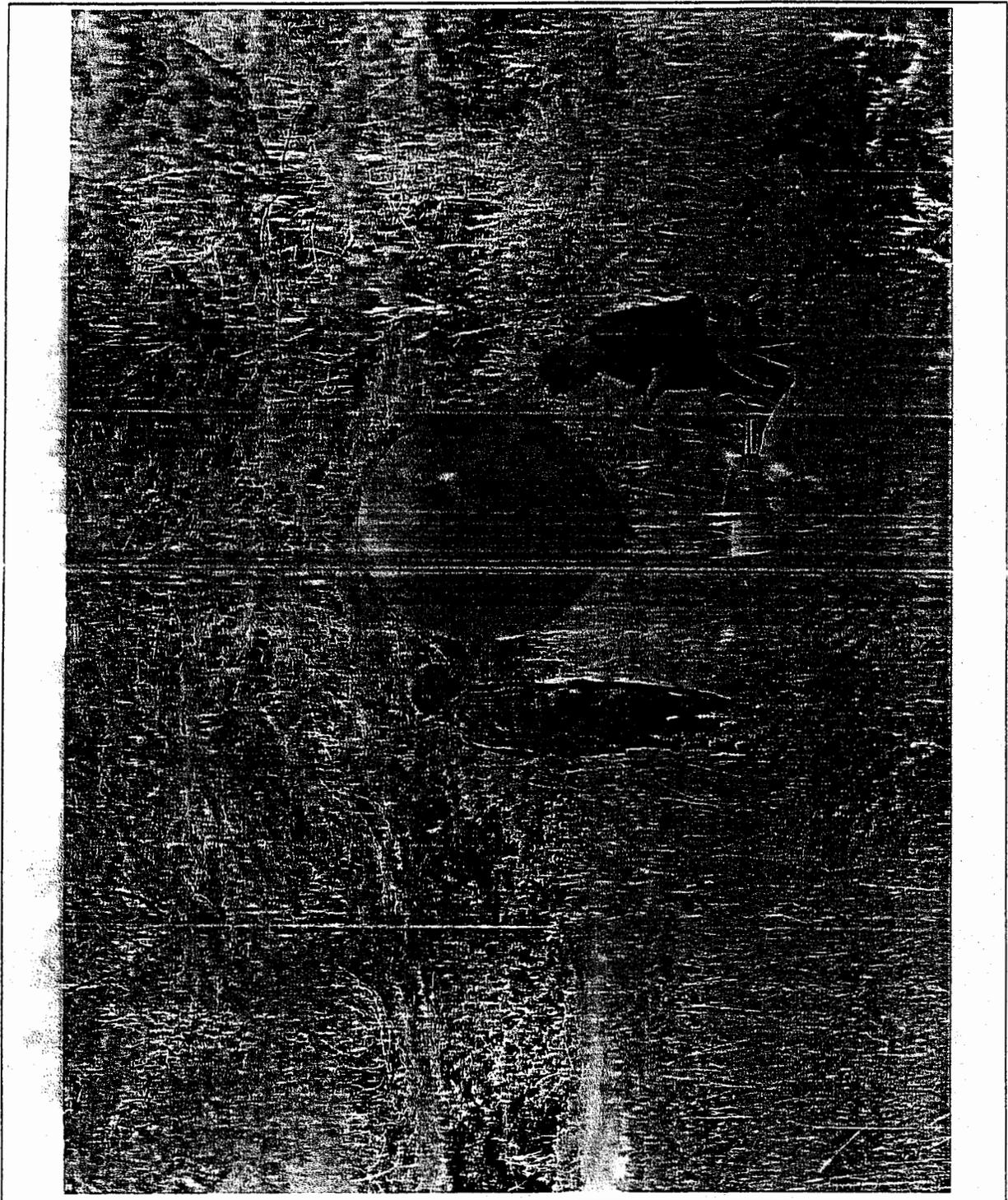
Not To Scale




 Mendocino      Site # 116268      Looking Southeast from Mendocino High School

OWNER: SHARPLES, Philip & Grace  
 APPLICANT: VERIZON WIRELESS  
 AGENT: NOBEL, Pamela  
 CASE #: CDU 13-2007  
 APNs: 119-410-17

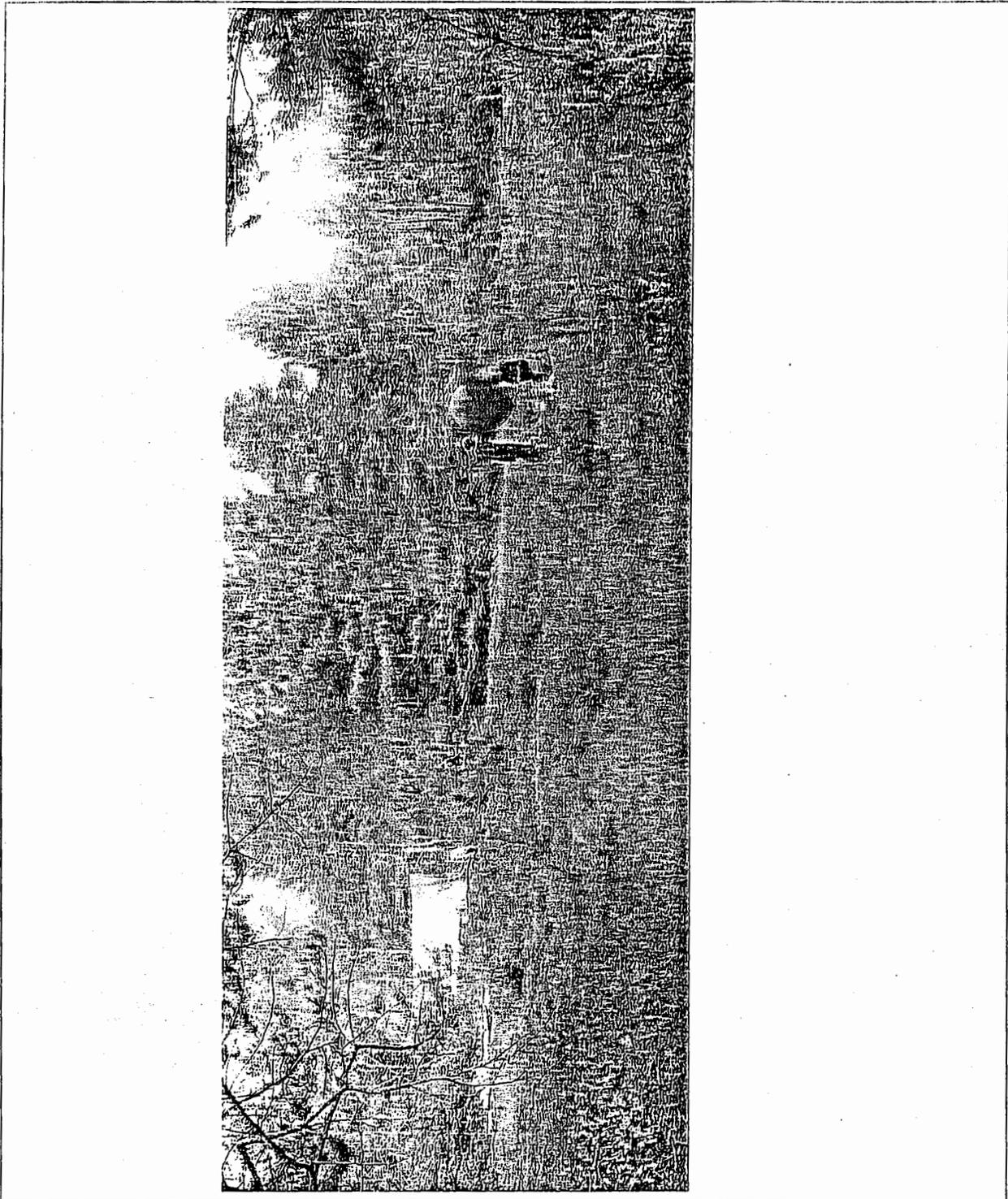
LOOKING SOUTHEAST FROM  
 MENDOCINO HIGH SCHOOL  
 IN THE TOWN OF MENDOCINO



OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

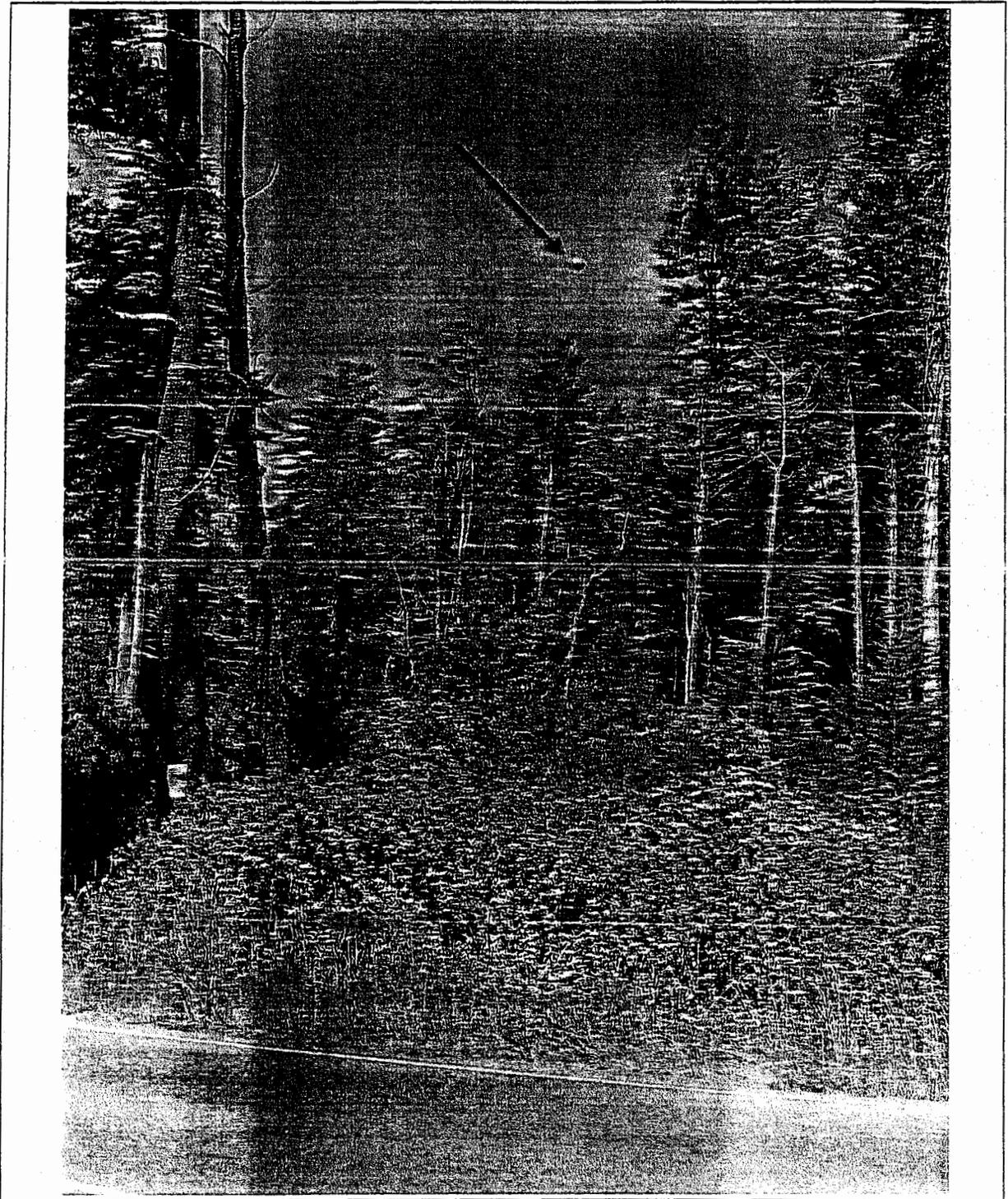
BALLOON USED FOR VISUAL-SIMULATION TEST

Not To Scale



OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT: NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

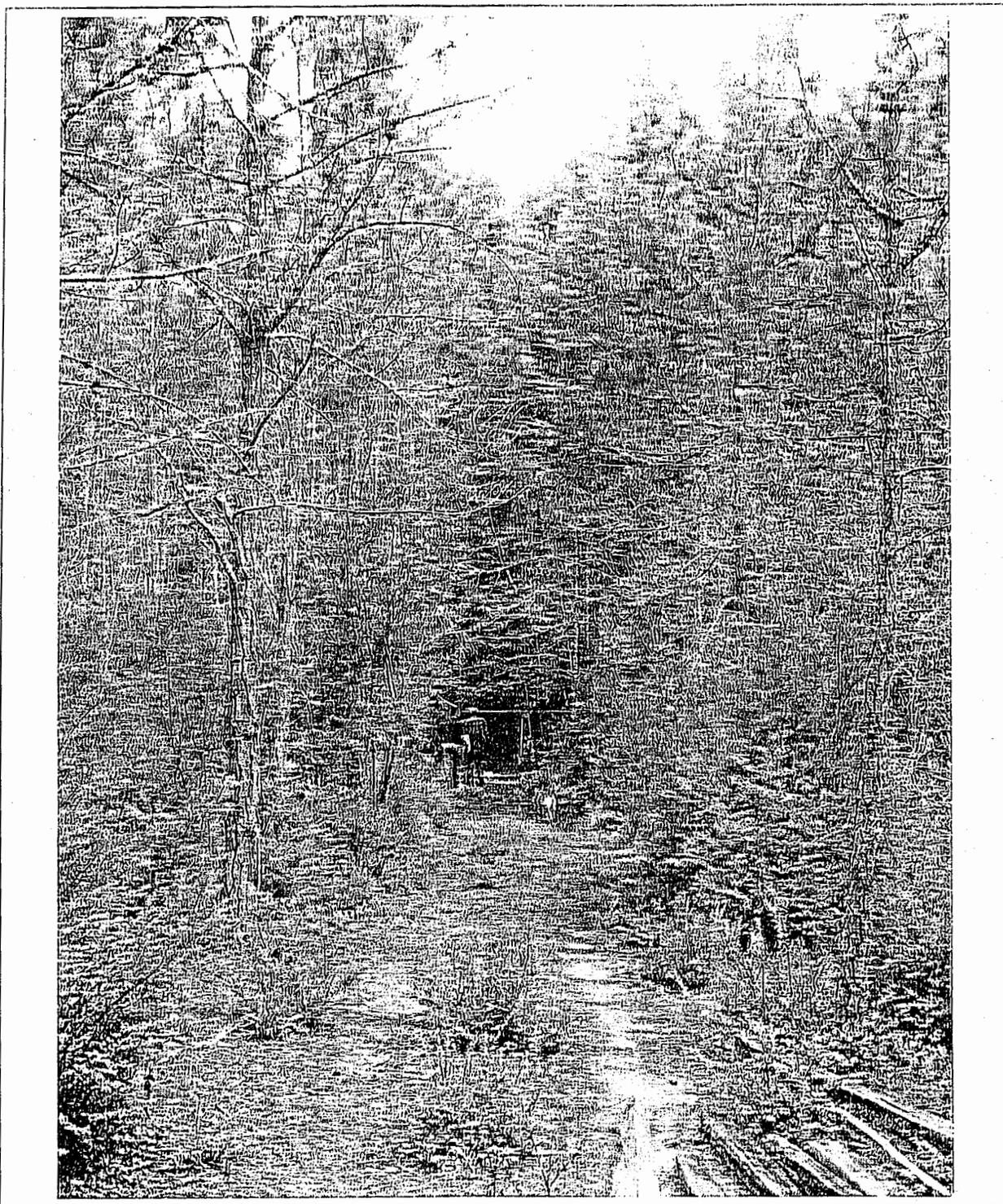
VIEW OF OPEN MEADOW



OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

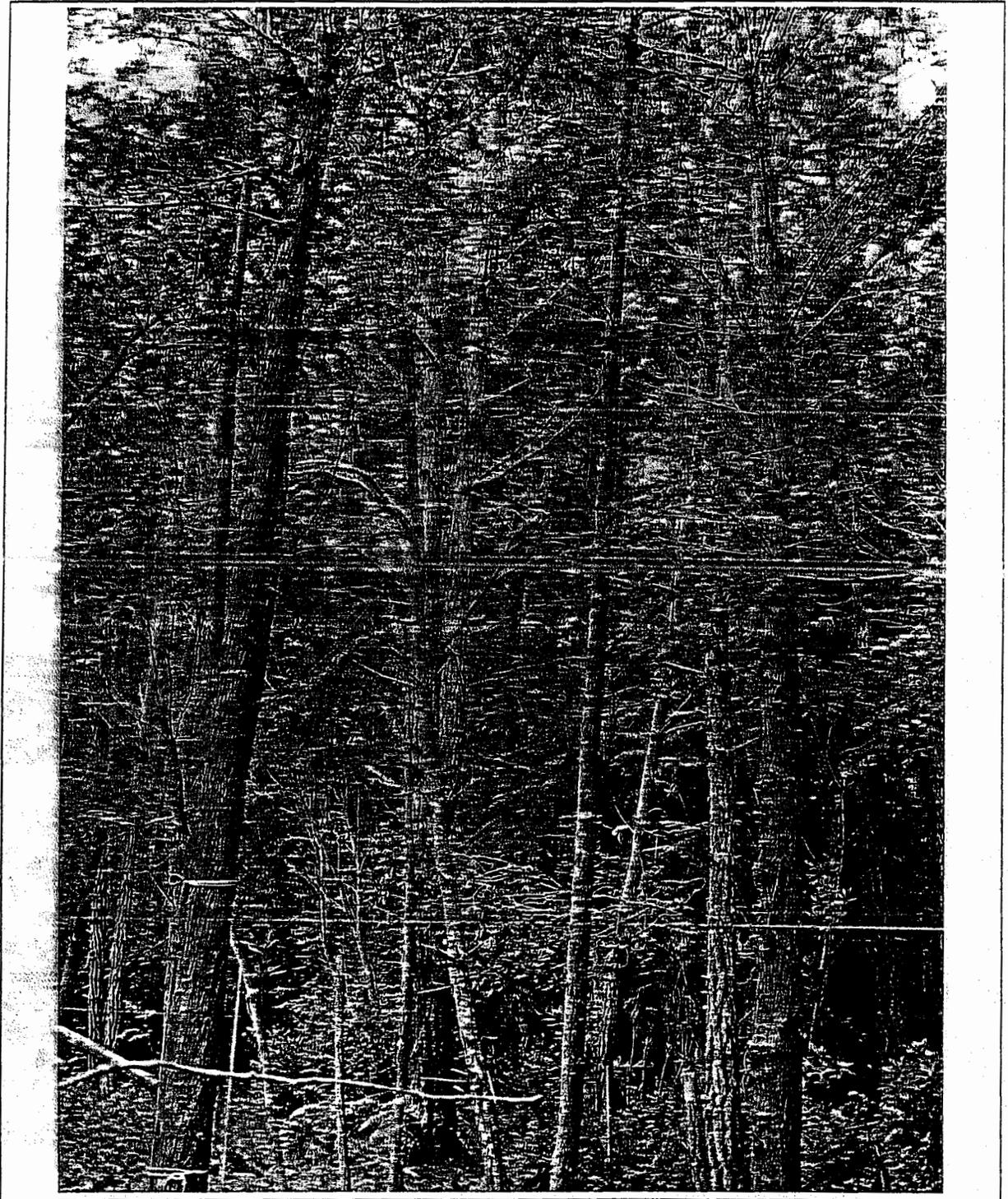
VIEW OF BALLOON FROM COMPTCHE UKIAH ROAD  
AT OWNER'S PRIVATE DRIVEWAY

Not To Scale



OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

VIEW OF ACCESS ROAD LEADING  
TO PROJECT SITE



OWNER: SHARPLES, Philip & Grace  
APPLICANT: VERIZON WIRELESS  
AGENT NOBEL, Pamela  
CASE #: CDU 13-2007  
APNs: 119-410-17

TYPICAL TREES TO BE REMOVED  
AT PROJECT SITE

Not To Scale