

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
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Hearing Date: 5/13-16/97



# Tu21a

**STAFF REPORT: APPEAL  
SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: County of Ventura

DECISION: Approval with Conditions

APPEAL NO.: A-4-VNT-97-068

APPLICANT: Pacific Bell Mobile Services

PROPERTY OWNER: Faria Family Partnership c/o Lindsay Nielson

PROJECT LOCATION: 210 sq. ft. site east of existing antennas, south of 101 Freeway and Padre Juan Canyon Road and north of old Pacific Coast Highway, Southern Pacific Railroad tracks, and Faria Community, 3945 Pacific Coast Highway, North Coast of Ventura County.

PROJECT DESCRIPTION: Installation of 4 panel antennas on a 35 ft. monopole, two base transceiver station (BTS) cabinets 4 ft. by 5 ft. in size and placement of a "temporary during construction" palletized BTS unit approximately 4 ft. by 5 ft. by 20 ft. height, not longer than six months on the site.

APPELLANT: William Stratton

SUBSTANTIVE FILE DOCUMENTS: County of Ventura certified Local Coastal Program; County of Ventura administrative record for coastal development permit Conditional Use Permit 4950; Coastal development permits no. 6-97-7 and 6-97-9 (Pacific Bell Mobile Services); Staff, San Diego District, Modifications to Regular Calendar Staff Report and Preliminary Recommendations Dated March 20, 1997.

**SUMMARY OF STAFF RECOMMENDATION:**

The appellant contends that the project is inconsistent with the Ventura County Local Coastal Program because the project is inconsistent with Land Use Plan policies regarding allowed land use, hazards, scenic and visual quality, access and recreation opportunities, public works facilities, and environmentally sensitive habitats/protection of coastal waters. The appellant also contends that the project is inconsistent with Section 8175 - 5.9 of the Coastal Zoning Ordinance.

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed because the project as submitted is consistent with the standards set forth in the certified local coastal program and the public access policies of the Coastal Act.

Should the Commission find a substantial issue exists and open the de novo hearing, staff recommends the Commission continue the de novo hearing to a subsequent meeting.

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## I. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act (Section 30603) provides for appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Development approved by counties and cities may be appealed if they are: (1) located within the mapped appealable 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, whichever is the greater distance; (2) located within 100 feet of any wetland, estuary, or stream; (3) located in a sensitive coastal resource area. Furthermore, development approved by a County may be appealed if it is not designated as a principal permitted use in zoning ordinance or zoning district map, where located outside the designated appeal areas.

For development approved by the local government as noted above, the grounds for the appeal are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires that the Commission hear an appeal unless the Commission determines that no substantial issue is raised with respect to the grounds on which the appeal has been filed pursuant to PRC Section 30603. If the staff recommends "substantial issue" and no Commissioners object, the Commission may proceed directly to a de novo public hearing on substantial issue.

If the staff recommends "no substantial issue", or the Commission decides to hear arguments and vote on substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. It takes a majority of the Commissioners present to find that no substantial issue is raised.

Should the Commission find that substantial issue does exist, the Commission will proceed to a full public hearing on the merits of the project at the same time or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test of the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program pursuant to Section 30604(b) of the Coastal Act.

In addition, PRC Section 30604(c) of the Coastal Act requires that, for development between the first public road and the sea, a finding must be made

by the approving agency, whether the local government or Coastal Commission on appeal, that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

In summary, with respect to public access and recreation questions, the Commission is required not only to consider the certified LCP, but also Chapter 3 policies when conducting a de novo hearing on a project which has been appealed. Finally, the only persons qualified to testify before the Commission during the substantial issue stage of the hearing are the applicant, persons who opposed the application before the local government (or their representatives), and the local government; all other persons may submit testimony in writing to the Commission or Executive Director. Any person may testify during the de novo stage of an appeal.

## II. LOCAL GOVERNMENT ACTION

At their meeting of March 4, 1997, the Ventura County Board of Supervisors denied the appeal of Barbara Tracy Susman of the Planning Commission's decision to approve Conditional Use Permit 4950 for a telecommunications facility proposed by Pacific Bell Mobile Services. The decision was to uphold the findings of the Planning Commission and approve CUP-4950 subject to conditions.

Local government approval was subject to a number of conditions. The conditions of approval included the following which are relevant to contentions of the appellant and the certified LCP:

- o Limiting the height of the antenna to 35 ft.
- o Requirement of landscaping and irrigation plans, including installation and maintenance.
- o Trees to screen the antenna from nearby residences surrounding the entire site.

The proposed project was approved by the Board of Supervisors on an appeal from the Planning Commission's decision. Notice of the hearing was published in the Ventura County Star and sent to property owners within 300 feet and residents within 100 feet of the proposed project.

Local opposition to the project at the Planning Commission included three cards mailed in opposition, thirteen speaker's cards turned in and seven residents from the Faria Beach residential community who spoke against the project. Most of the concerns were related to visual impacts. At the Planning Commission meeting, the height of the facility was reduced by the applicant from 40 to 35 ft. and the applicant also submitted a "mock-up" plan illustrating proposed landscaping with palm trees.

The appeal to the Board of Supervisors focused on visual impact, creating "unsightly blight" and an "antenna farm", and denigration of property values and the tax base, and creation a health hazard. Eight written communications were received, including the present appellant to the Coastal Commission, which concentrated on the alleged health hazard. One letter in favor of the project was received from AT&T Wireless Services. The appeal to the Board did

not address any alleged conflicts with the certified LCP or the access and recreation policies of the Coastal Act.

County staff responded that the proposed landscaping would create a slight positive visual impact and that as the only PCS facility to be allowed, approval will not create an "antenna forest". Relative to the alleged health hazard, staff noted that a site-specific cumulative impact analysis was made of emissions for the site (375.8 microwatts per centimeter squared) which were found to result in readings far below the national standard (1,200 microwatts per centimeter squared). They also noted that the 1996 Federal Telecommunications Act prohibits a jurisdiction from denying a project if it is below the national standard.

The Board of Supervisors indicated concern with the lack of policy on antennas and antenna farms and requested staff analysis of a County-wide policy. They expressed a need for a "master conditional use permit" for the site for future development. Staff development of general visual guidelines for antenna requests was also directed. Lastly, the Planning Director was directed to conduct a five year review of the project to determine if changes in technology or Federal regulations would warrant modification to the permit.

### III. APPELLANTS CONTENTIONS

The appellant contends that the project is inconsistent with the Ventura County LCP because the development would be inconsistent with the policies and requirements of the certified Local Coastal Program. (See Exhibits 1 and 2)

The appellant also contends that the project is inconsistent with Section 8175 - 5.9 of the Coastal Zoning Ordinance.

### IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Public Resource Code Section 30603.

MOTION: I move that the Commission determine that Appeal No. A-4-VNT-97-068 raises NO Substantial issue with respect to the grounds on which the appeal has been filed.

A majority of Commissioners present is required to pass the motion. Staff recommends a YES vote on the above motion which would result in the finding of no substantial issue and the adoption of following findings and declarations.

## V. FINDINGS AND DECLARATIONS ON SUBSTANTIAL ISSUE

The Commission finds and declares as follows:

### A. Project Description and Background.

#### 1. Proposed Project

The proposed project as approved by the County of Ventura includes installation of 4 panel antennas on a 35 ft. monopole, two base transceiver station (BTS) cabinets 4 ft. by 5 ft. by 20 ft. in size and a "temporary during construction" palletized BTS unit approximately 4 ft. by 5 ft. by 20 ft. height, to be allowed not longer than six months on the site.

The proposed development is located on a 210 sq. ft. site on a 3.61 acre parcel at 3945 Pacific Coast Highway. The site is east of three existing antennas visible from the 101 Freeway (southbound) and the old Pacific Coast Highway, first public road near the beach. Of the three existing antennas, one is in the public right-of-way and the other two are located on the same parcel i.e. on private property.

The site is south of the 101 Freeway and Padre Juan Canyon Road and north of old Pacific Coast Highway, Southern Pacific Railroad tracks, and across (inland of) the old Coast Highway from the Faria Community and Faria County Park. The Faria Community is a residential enclave between the first public road and the sea. The site itself is inland of this road. The site is above a low bank shouldering the tracks.

The site is visible from several points along the southbound route of the 101 Freeway. Just northwest of the site is a very visible area along the shoulder of the old Coast Highway that is used by recreational vehicles for camping.

According to the County administrative record, the site is intended as the single allowed site to provide service to the Highway 101/Route 1 corridor for the new Personal Communication Services (PCS) under Federal Communications Commission license. PCS is considered to be (Ventura County Administrative Record) the next generation of wireless communication which offers a variety of services with multiple access through "one number identity". It is a digital system in contrast to the present analog technology. It will integrate two way paging, data transfer, FAX, and eventually be able to transmit video images.

As noted, there are two existing antennas on the site. County CUP-4775/4776 (March, 1993) permitted the addition of a whip antenna to an existing wooden utility pole, four whip antennas on a new 40 ft. high monopole, an underground equipment center, and a partially underground radio equipment shelter. CUP-4888 (June, 1995) permitted a monopole with eight panel antennas and 3 microwave dishes, a GPS antenna, and a whip antenna.

#### 2. Federal Legislation and Health Risk

Most of the appellant's concerns relate to the environmental effects of telecommunications facilities, either directly or indirectly. The appellant has submitted over forty pages of material on the adverse environmental

effects of transmissions (radio frequency emissions) and electromagnetic fields.

According to PacBell's project description (County of Ventura Administrative Record), the Federal Communications Commission (FCC) has adopted a standard for allowable radio frequency emissions to Personal Communications Systems (PCS) public exposure in order to address their responsibilities under the National Environmental Policy Act (NEPA). The FCC standard of 1,200 microwatts per centimeter is based on standards for Personal Communication Services (PCS) developed by the American National Standards Institute (ANSI) and the Institute of Electrical & Electronic Engineering (IEEE).

The issue of health risk has been a matter of recent concern of the Coastal Commission and is addressed in a recent memo from the staff of the San Diego District, entitled "Modifications to Regular Calendar Staff Report and Preliminary Recommendations" dated March 20, 1997. Staff was requested by the Commission to look into whether the applicant should indemnify the Commission in the event that emissions from a PCS antenna project were a potential basis for a lawsuit against the Commission. Staff noted that the Telecommunications Act of 1996 states, in part:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC] regulations concerning such emissions.

In the case of two San Diego area facilities proposed by Pacific Bell Mobile Services, the applicant had submitted information indicating that emissions were below Federal standards, (Coastal development permits no. 6-97-7 and 6-97-9 (Pacific Bell Mobile Services)).

Since the Commission had no authority to regulate such emissions, and State law granted immunity to the Commission from liability for issuing permits, staff found a low likelihood that the Commission would be liable for damages. It was recommended that the Commission not consider an assumption of risk as part of their conditions of approval as this would create an additional burden on applicants and staff.

Federal regulation does not preempt the ability of State and local governments to regulate facilities such as that proposed. (City of Bloomington Minnesota, Report to the Planning Commission, June 6, 1996.) Language was originally proposed in the Federal Telecommunication Act to override zoning controls. This language was replaced with language that reads:

Except as provided (herein), nothing in this act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

State and local governments may not unreasonably discriminate among providers of functionally equivalent service, prohibit the provision of services, or regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC regulations.

B. Substantial Issue Analysis.

1. Conformance to Land Use Plan Standards

a. Background and Methodology

County findings area are based on the objectives and policies for the North Coast, one of three segments of the coastline of Ventura County. Each segment is designed to be a self-contained set of background material, objectives, policies, and standards for that portion of the coast. The North Coast is the area between Rincon Point (Santa Barbara/Ventura County line) and the Ventura River.

The appellant cites alleged inconsistencies with Coastal Act policies, rather than with the certified LCP. Coastal Act policies are included as part of the Land Use Plan, but are implemented by the standards of the LCP.

The appellant's contentions are addressed in the following findings to the extent they relate to the grounds for appeal in the Coastal Act (Section 30603) i.e. as they constitute standards implementing these Coastal Act policies. This is because the grounds for appeal are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. The relevant policy and requirements of the certified LCP address allowed land use, hazards, scenic and visual quality, access and recreation opportunities, public works facilities, and environmentally sensitive habitats/protection of coastal waters. Therefore, the contentions are examined relative to these categories of policy.

b. Allowed Land Use

The proposed development is an area designated Open Space in the LUP. Open Space is a land use category which provides for:

... the preservation and enhancement of valuable natural and environmental resources while allowing reasonable and compatible uses of the land [and] protect[ing] public safety through the management of hazardous areas such as flood plains, fire prone areas, and landslide prone areas.

Principal permitted uses include one dwelling unit per parcel, agricultural uses listed as principal permitted uses under the Agriculture designation, and "... passive recreational uses that do not alter physical features beyond a minimal degree and do not involve structures." The minimum lot size is ten acres.

Other specific uses are allowed and found compatible with the various land use designations, according to the LUP, as established by the certified LCP zoning ordinance Compatibility Use Matrix. The Matrix allows communications facilities in the Coastal Open Space zone subject to a Conditional Use Permit. Communication facilities are not defined in the LUP, but the certified LCP Zoning Ordinance indicates that:

Communication Facilities - Includes such uses as radio and television antennas, radar stations, and microwave towers.

In addition, the Matrix allows Public Works facilities in the Coastal Open Space zone subject to a Conditional Use Permit. Public Works facilities are not defined in the LUP, but the certified LCP Zoning Ordinance indicates that (emphasis added):

Public Works - means the following:

- (a) All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by a utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.

Telecommunications facilities such as proposed come within the scope of this definition because it is regulated by the Public Utilities Commission.

The County has made findings relative to location of the project in the area designated open space on the Land Use Map of the certified LCP and found that the proposed project as conditioned is consistent with the LUP policies for this designation. The appellant raises no contention as to the unsuitability of the allowed use according to the Land Use Map component of the certified LCP. For these reasons, the Commission finds that the appeal does not raise a substantial issue relative to the allowed land use.

#### c. Land Use Plan Policies

##### (1) Hazards

The appellant's contention is that the project is inconsistent with the LCP because of the impact of the intensity of radiation on human beings and animals. The appellant cites the alleged increase in childhood cancer, and birth defects associated with Radio Frequency/Electromagnetic Fields, as established by over 134 health studies. Over forty pages of background information has been provided by the applicant.

The appellant does not identify specific LCP hazard policies or standards with which the project would be inconsistent. The Hazards Section of the North Coast Section of the LUP states that:

##### Objective

To protect public safety and property from naturally-occurring and human-induced hazards as provided in County ordinances.

Further, Radio Frequency/Electromagnetic Fields are not identified as a hazard in the LCP. The following policies in the North Coast section of the LUP refer only to geologic, seismic, flood, and fire hazard:

##### Policies

1. The County's existing General Plan Goals, Policies and Programs (Chapter 2) and Hazards Appendix provides direction for geologic, seismic, flood and fire hazard.



2. New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazard.

As part of the local approval process, the project was reviewed by various County agencies and other concerned governmental agencies as to protection of public safety and property to the extent provided in County ordinances. This included agencies such as the County Sheriff, Public Works Department, and Air Pollution Control District. The County administrative record does not identify any provisions in the County ordinances regarding human-induced hazards, which require protection of public safety and property.

As noted above, State and local governments may not unreasonably discriminate among providers or functionally equivalent service, prohibit the provision of services, or regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC regulations. The County findings indicate that the project is acceptable under Federal standards. Recent Coastal Commission actions in San Diego indicate a disinclination to require an assumption of risk condition relative to any potential hazard from transmissions.

In summary, because of the LCP does not identify intensity of radiation as a hazard and because all review relative to hazards as identified was undertaken by the County as part of the approval process, the appeal does not raise a substantial issue relative to hazards.

## (2) Scenic and Visual Quality

The appellant's contention is that the project is inconsistent with the LCP because of the height of the trees proposed to screen the tower could not fully screen them, because at that height they would interfere with the signal. The appellant also contends that the cellular towers, if masked or camouflaged, would not be recognizable for prudent avoidance, especially by children. Further, the impact on the view from the nearby County public park -- Faria County Park -- is cited as a visual impact. Lastly, the project is alleged to be inconsistent with the designation of the old Coast Highway as a scenic highway.

None of these contentions are related to the LCP Land Use Plan's policy framework. The appellant does not identify or assert any conflict with specific LCP policies or standards relative to hazards with which the project would be asserted as inconsistent.

As noted in the LUP:

### General Statements

...

6. No significant visual or scenic problems were identified in most of the unincorporated parts of the County during the issue identification phase of the LCP, thus no specific scenic or visual policies are included, except in the Santa Monica Mountains.

No visual or scenic problems were identified in the LUP and the project does not create any visual or scenic problems. The project will not block any

views to or along the coast. Although there is a contention relative to scenic highways, the LUP does not recognize scenic highways as a separate category and only contains provisions related to the scenic attribute of highways in the Santa Monica Mountains. Further, the contention relative to hazards to children and prudent avoidance is addressed the sections above on hazards and Federal regulatory provisions.

In summary, for these reasons, the appeal does not raise a substantial issue relative to scenic and visual quality.

### (3) Access and Recreation Opportunities

#### (a) Local Coastal Program

The appellant contends that the project is inconsistent with the LCP because the antenna degrades the recreational value of Faria County Park. He cites the use of the area by low and moderate income persons who pay a fee of \$12.00 to \$18.00 a day for recreational vehicle camping. Activities he notes as taking place in the area include fishing, digging clams, hooking octopus, tide pool exploration, swimming, and surfing. Viewing of bottlenose dolphins and migrating whales also takes place. Lastly, he cites the use of the area by birdwatchers observing species such as the godwit, willet, sanderling, sand piper, plover, cormorant, loon, western grebe, brown pelican, and various species of gull.

The LUP supports improving and increasing public recreational opportunities. The appellant does not identify specific LCP policies or standards relative to recreation opportunities with which the project would be inconsistent. He cites the impact on Faria County Park, but the policies on Faria County Park in the LUP only address the topics of connection with the sewer line to Ventura and support for future acquisition by the State Department of Parks and Recreation.

The LUP supports maximizing public access including mandatory lateral and vertical access for all development between the first public road and the ocean. No specific policies are included for the Faria Community or Faria County Park relative to access. The appellant does not identify specific LCP policies or standards relative to access with which the project would be inconsistent.

In summary, because of the development as conditioned by the County is consistent with the above policies in the certified LCP, the appeal does not raise a substantial issue relative to access and recreation.

#### (b) Coastal Act Policies

As noted above, appealed projects, i.e. those meeting PRC Section 30603(b) of the Coastal Act, allow as grounds for the appeal that the development is not in conformity with the public access policies of Chapter 3 of the Coastal Act. The appellant does not make contentions as to the project raising an issue as to the public access policies of the Coastal Act which would trigger consideration under PRC Section 30603(b).

Although the appellant does not cite lack of conformance with Coastal Act access policies as grounds for an appeal under PRC Section 30603(b), since

Coastal Act Sections 30210-30214 provide for the maximization of public access and recreation opportunities, it is appropriate to briefly further examine the proposed project in light of these policies.

The proposed development is in the North Coast of Ventura County. This area extends from the Ventura River to Rincon Point. The site is on the inland side of the old Coast Highways (sometimes referred to as the Rincon Parkway), as noted above as the first public road. This highway was the main route from Ventura to Santa Barbara prior to construction of the 101 Freeway approximately thirty years ago. The road is still used as a more leisurely and scenic route along this section of the coast in comparison to the 101 Freeway, by local residents and by day and overnight visitors using various County and State parks, as well as stretches of beach open to the general public.

There are ample opportunities for lateral and vertical access to the beach in this area, either from various County "pocket parks", or directly from the old Coast Highway shoulder to the water. Lateral and vertical access has been a condition of approval on numerous coastal development permits in this area. Most of these permits were for individual or community augmentation of existing shoreline protection. Beaches are generally sandy in character and at extreme low tides lateral access is virtually unimpared for the length of the North Coast, a distance of approximately fifteen miles.

By virtue of the location inland of the old Coast Highway, the proposed project will not impact lateral or vertical access to the shoreline from the nearest public road. There is no access point traversing from the 101 Freeway to the coast affected by the proposed development. The prior status of the site was vacant land.

There is no access opportunity or use that would be precluded, nor have there been any proposal for access or recreation-related improvements on the site. Unpaved and paved roads across the site remain available for use by occasional strollers and runners and will not be affected by the proposed project.

For these reasons, the Commission finds the project is consistent with Coastal Act public access policies. By virtue of location inland of the old Coast Highway, i.e. the first public road, under PRC Section 30604(c) of the Coastal Act a finding is not required by the County, or Coastal Commission on appeal, that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

#### (4) Public Works Facilities

The appellant contends that because the proposed development has a service area beyond that of the local community, it is inconsistent with the LCP. He contends that it is a duplicate of facilities already in place and that the property could experience further development by cellular phone companies. Further, he contends that the facility is not an essential service but rather is a convenience, which expands coverage already covered by wireline service or which could be covered by fiber optical cable without degrading the viewshed. He also contends that the location next to the old Coast Highway is only necessary for convenience because of the proximity of the road. The applicant has also cited a policy governing electric transmission lines and their viewshed impacts, but these are a different type of facility.

The LUP includes the following relevant provisions for Public Works in the North Coast section:

Objective

To maintain current service levels for existing developments.

Policies

1. New or expanded public works facilities (including roads, flood control measures, water and sanitation) will be designed to serve the potential population within the subarea's boundaries, and to mitigate impacts on agriculture, open space lands, or environmentally sensitive habitats.
2. Services are limited to existing areas defined in the Coastal Commission permit for the North Coast sewer (Regional Application 208-03). Any changes or extension of services will require a new permit.

...

The preceding text of the LUP defines Public Works in terms of more traditional public services such as water, sewer, and highways, and contains no mention of telecommunication facilities.

The consideration of service area for the services mentioned (roads, flood control measures, water and sanitation) was clearly an issue in development of the LCP. The document considered such services in light of containment of existing residential enclaves in their existing location and configuration, while preserving remaining areas for agriculture, open space, and recreation and access. This containment implemented Coastal Act policies on locating and planning new development and public works capacities. (Article 6 of the Coastal Act)

The north coast sewer line, specifically mentioned, is an example of the type of facility which could be growth inducing unless controlled by LCP policies. There is nothing in the contentions of the appellant or administrative record of the County to demonstrate that the project is not designed to serve only the potential population of its service area or is growth inducing.

Communication facilities of the type proposed are not analogous to "hard" public works such as those cited. They link service within a system with service areas regulated by the Federal and State governments which have their own criteria in terms of service area. The application of the "service area" concept such as used for extension of water and sewer lines in the LUP is not appropriate. As noted above, the project conforms to the concept of a single allowed site for this type of facility, as conforming to Federal provisions as noted in the County's finding.

A potential problem remains when there are a variety of existing and proposed technologies. Each may result in a new antenna type, and require another antenna resulting in an "antenna farm".

The expansion of areas for communications facilities into "antenna farms" is a topic not addressed by the LCP presently. Although antennas are included as a land use regulated by the LCP, more specific provisions may be needed. These provisions would be addressed through future amendment to the LCP. The technology of various types of telecommunication facilities built may have not been anticipated at the time the LCP was developed in the late 1970s and early 1980s.

The County is working on improved provisions for telecommunications as directed by their Board of Supervisors. The County is already looking at other ordinances such as those in the San Diego area and the draft ordinance for Santa Barbara County. Such an effort is appropriate for resolution at the local level and it is reasonable to wait for the development of new provisions which may then be introduced into the LCP. Interim, or emergency ordinances, may also be developed at the local level. However, since the appeal does not contain assertion which address existing local provisions, the appeal raises no substantial issue relative to Public Works provisions for the North Coast area.

#### (5) Environmentally Sensitive Habitat Areas/Protection of Coastal Waters

The appellant contends that the installation of cellular transmission facilities will have an adverse effect on wildlife and marine organisms. He notes that Padre Juan Creek is nearby and is a designated blue line stream with numerous game trails.

The LUP identifies environmentally sensitive habitat areas in the North Coast as consisting of tidepools and beaches, and creek corridors. The LUP contains policies to protect such areas through regulation of shoreline protection, public works projects, dredge and fill, and wastewater discharge. Allowable projects in the creek corridor and buffer are the same as provided in the Coastal Act. Substantial alterations of streams and creek corridors are limited to those allowed for in the Coastal Act.

The proposed development was subject to a Biological Resources Initial Study Checklist by Fugro West, Inc. (May 31, 1996). Surrounding vegetation was found to consist of coastal sage scrub and southern coastal bluff scrub. The nearest rare, threatened or endangered species, the least Bell's vireo, was found to be located along the Ventura River, a distance of approximately five miles. Wetlands in the Padre Juan Canyon drainage, located approximately 800 feet from the site, were found to be unaffected by the proposed facility. The project was found to not affect regional wildlife movement.

While the environmental effect of cellular transmission facilities is subject to a Federal provisions, it is not clear that this extends to the potential effects on wildlife. The policies of the certified LCP do not address any potential effects of radio frequency or electromagnetic fields on wildlife or the intertidal area. The policies on Tidepools and Beaches and Creek Corridors in the North Coast section address physical impacts such as those associated with dredging and filling, wastewater disposal, solid waste disposal, and projects in riparian areas. Therefore, the appellant's contentions do not raise a substantive issue relative to the present provisions of the LCP regarding habitat protection and marine resources.

d. Conformance to Zoning Ordinance Standards

The appellant's contentions cite subsection a. of Section 8175-5.9 - Public Works Facilities in the County certified LCP Zoning Ordinance. This provision repeats the criteria found in the above-cited objective and policies in the Land Use Plan regarding service levels, facility expansion, and service areas. The project does not raise any substantive issue for the reasons previously indicated.

No factual contentions are made as to conformance with the standards found in the Zoning Ordinance. Therefore, the Commission finds that the approved project raises no substantial issue with the certified LCP Zoning policies.

D. Other Contentions Not Considered Part of Appeal

The appellant also makes further contentions as to the inadequacy of the project which are not considered as part of this appeal because they relate to the hazard issue. Further, assertions regarding the freedom to choose from among telecommunications alternatives and the impacts of antennas on property values are not appropriate for consideration under the Coastal Act.

E. Summary and Conclusion

The grounds for appeal of a coastal development permit issued by a local government after certification of its local coastal program are limited. In this case, the appeal has not established that the proposed project, as approved by the County, does not conform to identified policies, objectives and standards of the certified LCP.

The Commission finds that the appellant raises no significant issue relative to County approval of the project which they determined is an allowable use under the certified LCP. There are no grounds to the allegation that development does not conform to the standards of the certified LCP. There is no conflict relative to provisions of the LCP Zoning Ordinance. Local regulation of telecommunications facilities is evolving and may result in proposed amendments to the LCP.

For these reasons, the Commission finds that the proposed project does not raise substantial issue with respect to consistency with the policies and standards of the certified Local Coastal Program.

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VENTURA, CA 93001  
(805) 641-0142

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT



MAR 24 1997

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

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

WILLIAM R. STRATTON

4258 FARLE RD.

VENTURA CA. zip 93001-9711

Area Code (805) 648-1925  
Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: VENTURA COUNTY BOARD OF SUPERVISORS

2. Brief description of development being appealed: CELLULAR PHONE (PCS) TOWER INSTALLATION  
- COJOINING 3 OTHER TOWERS FORMING "ANTENNA FARM"

3. Development's location (street address, assessor's parcel no., cross street, etc.): 3945 PACIFIC COAST HWY VENTURA, CA 93001 PARCEL: 060-0-380-260

4. Description of decision being appealed: (AP 407)

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: w/TREES TO SCREEN TOWERS

c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/88

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

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

- a.  Planning Director/Zoning Administrator
- c.  Planning Commission
- b.  City Council/Board of Supervisors
- d.  Other \_\_\_\_\_

6. Date of local government's decision: March 4, 1997

7. Local government's file number (if any): CV 4950

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:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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) ENVIRONMENTAL DEFENSE CENTER  
501 E. MAIN ST.  
VENTURA, CA 93001
- (2) ENVIRONMENTAL COALITION (NEIL MOYER)  
110 S. 20th  
Ojai, CA 93023
- (3) TIMOTHY DESMOND  
4235 FARIA RD  
VENTURA, CA 93001 TRACY BUSMAN  
3674 W. PAC. COAST HWY  
VENTURA, CA 93001
- (4) YVON CHOUINARD  
PO Box 150 4230 FARIA RD.  
VENTURA, CA 93001
- (5) BOB & NANCY GREGORY - 3996 W. PAC. COAST HWY  
VENTURA, CA 93001

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

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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.)

<sup>"PUBLIC WORK"</sup>  
INCONSISTENT WITH VENTURA COUNTY PLAN P. 58  
PCS TOWER WILL INCREASE TRANSMITTING CAPACITY (WITH 3 OTHERS)  
FAR BEYOND PRESCRIBED SERVICE TO POPULATION WITHIN SUBAREAS  
BOUNDARIES, INCONSISTENT W/ CALIF. COASTAL 30254 - CELL PHONES ARE NOT  
AN "ESSENTIAL" SERVICE, BUT A CONVENIENCE, INCONSISTENT WITH CALIF.  
COASTAL 30253.1. RATHER THAN "MINIMIZE RISKS" THIS IS A HEALTH  
HAZARD - RF/EMF RADIATION FIELDS ARE ASSOCIATED WITH INCREASED  
RISKS OF CANCER & BIRTH DEFECTS (UP TO 1000 FT.), INCONSISTENT W/ SEC 30251 -  
SCENIC AND VISUAL QUALITY IS DEGRADED (TREES CANNOT BE AS TALL AS TOWERS,  
TRANSMISSION WOULD BE BLOCKED) # 30116.6 & P. 2. INSTALLATION WILL IMPACT  
ARIZONA COUNTY PARK WHERE "LOW & MIDDLE INCOME CITIZENS RELY ON THIS VANTAGE  
POINT TO ENJOY WHALES, DOLPHINS, BIRDS. IT IS ALSO A PROMINENT SURFING "BREAK"  
DESTINATION.

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.

*William R. Stratton*

Signature of Appellant(s) or Authorized Agent

Date 24 March 1997

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.

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\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

ARGUMENT

CELL PHONE TOWERS ARE DESCRIBED IN A VENTURA STAR HEADLINE AS "ANTENNA FARMS."

TOWERS OF METAL EXTRUDING FROM THE COAST LANDSCAPE BLEMISHES THE NATURAL BEAUTY THAT SO MANY CITIZENS COME TO THE FARIA BEACH AREA TO ENJOY.

THE ABILITY TO TELECOMMUNICATE IS A REALITY OF CONTEMPORARY LIFE THAT HAS GENERATED A TENSION BETWEEN THE PUBLIC'S NEED TO USE A UTILITY AND THE PUBLIC'S INTEREST IN PRESERVING AND PROTECTING ITS FRAGILE AND PERISHABLE NATURAL RESOURCES.

*Section 30254, Ca Coastal Act p 48*

IT IS REASONABLE TO CONSIDER ACCOMODATING THE PUBLIC INTEREST TO THE PUBLIC NEED. THE COMMISSION IS IN FACT ASKED TO MAKE SUCH JUDGEMENTS OF COMPROMISE FOR <sup>"essential public services"</sup> ~~THE GENERAL GOOD~~ IN THIS CASE, HOWEVER, THERE IS NO ARGUMENT <sup>"essential public services"</sup> FOR ~~PUBLIC NEED~~ \* A CONVENIENCE FOR THE FEW CAN NEVER BALANCE AGAINST WHAT IS CLEARLY OF BROAD PUBLIC INTEREST.

ALTHOUGH THE ABILITY TO TELECOMMUNICATE MAY BE CONSIDERED <sup>essential</sup> ~~A NECESSITY~~ OF CONTEMPORARY LIFE, DOING SO WITH A CELL PHONE IS NOT, ~~A~~ <sup>NECESSITY</sup> \* IT IS A CONVENIENCE.

*minor*  
A CONVENIENCE ENJOYED BY THE AFFLUENT MAJORITY, THE NEGATIVE CONSEQUENCES OF WHICH MUST BE BORN BY ALL.

THE NATURAL SCENIC BEAUTY AND RECREATIONAL RESOURCES OF THE FARIA BEACH ARE ENJOYED BY ALL CITIZENS, LOW INCOME TO WEALTHY. THE HAZARDS AND DISRUPTION OF THE CELL PHONE TOWERS AFFECT ALL CITIZENS WHO VENTURE INTO THE ~~BARRENE~~ AREA OF THE DEVICES.

*RADIATION FIELDS*

CELL PHONE TECHNOLOGY CANNOT BE DEFINED AS A NEED, IT MAY BE DEFINED AS A HAZARD. IT MAY BE DEFINED AS AN EYESORE. IT MAY BE DEFINED AS AN IMPLIMENT OF THE PRIVLEDGED THAT IS PAID FOR BY THE COMMON CITIZEN.

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THIS IS A SENSITIVE COASTAL RESOURCE AREA THAT WILL BE DAMAGED BY THE INSTALLATION OF CELL PHONE TOWERS.

BASIS OF APPEAL: THE SCENIC BEAUTY IN AND AROUND FARIA BEACH<sup>Co</sup> IS ALTERED AND IMPAIRED BY THE INSTALLATION OF CELL PHONE TOWERS. (NOTE: UNDIAGNOSED SYMPTOMS OF HEALTH HAZARDS TO HUMAN, MARINE, AND WILDLIFE REQUIRE INVESTIGATION.)

WHO IS AFFECTED BY THE CELL PHONE TOWERS (30116.b,e,f. )

- 1) RESIDENTS OF FARIA BEACH \* A SHORELINE COMMUNITY THAT PROVIDES BEACH AND OCEAN ACCESS TO THE PUBLIC FOR RECREATIONAL PURPOSES.
- 2) VISITORS TO THE FARIA RV PARK WHERE MANY LOW AND MODERATE INCOME CITIZENS CAN PARK OVERNIGHT AT A CAMPSITE AND ENJOY THE NATURAL BEAUTY AND RECREATIONAL OPPORTUNITIES OF THE COASTLINE AND OCEAN.
- 3) LOW AND MODERATE INCOME MOTORISTS WHO RESERVE PARKING SPACES ALONG SIDE PACIFIC COAST HIGHWAY FOR OVERNIGHT PARKING IN ORDER TO INEXPENSIVELY ENJOY THE NATURAL BEAUTY AND RECREATIONAL OPPORTUNITIES OF THE COASTLINE AND OCEAN.
- 4) SURFERS WHO ARE DRAWN TO THE FARIA BEACH AREA BECAUSE OF A NUMBER OF WELL KNOWN OCEAN SWELLS AND WAVE BREAK POINTS THAT PROVIDE THE EXCELLENT SURF CONDITIONS FOR WHICH SOUTHERN CALIFORNIA IS SO WELL KNOWN.
- 5) MARINE LIFE WATCHERS WHO ARE DRAWN TO THE FARIA BEACH AREA IN THE SPRING TO WATCH THE NORTHBOUND MIGRATION OF WHALES WHO COME CLOSE TO THE SHORE.
- 6) YEARROUND, PEOPLE DELIGHT IN WATCHING FOR DOPHOIN AND A VARIETY OF SEA BIRDS WHO ARE DRAWN TO THIS AREA BY A SEA ABUNDANT WITH FISH AND SQUID.
- 7) NATURALISTS AND MARINE BIOLOGISTS COME TO STUDY THE TIDE POOLS. CITIZENS COME TO ENJOY THEIR BEAUTY CLOSE\*UP.

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**RE: Cellular/PC Tower Installation  
3945 PCHy  
Appeal 407, WP - 4950**

**FROM: Bill Stratton  
4258 Faria Road  
Ventura, CA**

**COASTAL ZONING ORDINANCE  
Sec. 8175 - 5.9 PUBLIC WORKS FACILITIES**

a. The proposed installation of a 35-foot PCS (Personal Communications Service) tower next to three existing antenna towers is contrary to this ordinance:

**"New or expanded public works facilities shall be designed to serve only the potential population of the unincorporated and incorporated areas within LCP boundaries, and to eliminate impacts on agriculture, open space lands, and environmentally sensitive areas."**

The proposed Pac Bell Mobile tower and antenna is designed to serve a wide area. More importantly, it is a duplicate facility of three already in place. This tower is a different technology (digital) competing with Cellular One, AT & T wireless and SMR for market share of vehicular phone users between Ventura and Santa Barbara. The 3.61 acre-site is designed for maximum use (as announced by the land owner's lawyer to the Board of Supervisors). This means co-location by any or all of the following cellular phone companies: Sprint Spectrum, Air Cellular, Pacific Bell Mobile, Nextel, McCaw Wireless, Mobile West, US West, Dialpage, GTE, Mobile Net, Unisite, -- in addition to the three companies already in place at 3945 PCH. A total of 16 companies can demand antennas there. (FCC Act of 1996 prevents discrimination against competitors). This proliferation of duplicate facilities is intended strictly to maintain market share. (Not to serve the sub-area as prescribed by the California Coastal Act Sec. 30254.)

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Sec. 8175 - 5.9 (COASTAL ZONING ORDINANCE)

c. "Electrical transmission line right-of-ways shall be routed to minimize impacts on the viewshed in the coastal zone, especially in scenic rural areas and to avoid locations which are on or near sensitive habitats, or recreational, or archaeological resources, whenever feasible."

While this does not specify RF (radio frequency) transmission, these towers are transmitters of electricity. Page 129 of the Coastal Plan Appendices identifies this North Coast part of Highway 101 as "a scenic highway." Page 18 of the CP Appendices, II, describes this area as an "environmentally sensitive habitat" under paragraphs C. - "streams", e. "coastal waters". f. "riparian habitat." The existing towers and proposed PCS antenna site are within 100 feet of Padre Juan Creek, a listed watershed and habitat of wild life with numerous game trails presently used by a wide variety of animals. (See California Coastal Plan Sec. 8178 - 2.4.c.1) Faria County Park (directly opposite towers) is a "rocky, intertidal area" as described in Coastal Plan (North Coast) Appendices, Page 18. II.e.

**CALIFORNIA COASTAL ACT - LAND RESOURCES (p. 44)**

Sec. 30240. b. "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 those areas, and shall be compatible with the continuance of those habitat and recreation areas."

Existing antennas atop a Cal Trans pole are within 50 feet of Faria Park, a County Park for Recreational Vehicles. Two other cellular antennas are within 300 feet. The tallest, over 20 feet, has antenna panels extending more than 10 feet sideways. All of these are immediately opposite the entrance to the Park and clearly visible, significantly degrading

the area. The proposed PCS tower is sited within this same viewshed. Padre Juan creek adjoins the antenna site. Existing towers are on the bank of a riparian habitat. An Environmental Impact Study was not done. Evidence of many animals and birds would have been clearly established by game trails, tracks, nests, droppings, and simple observation. The creek area is presently visited by a number of deer, coyote, gray fox, bobcat, possum, raccoon, rabbit, ground squirrel, coastal rattlesnake and king snake. Birds recently seen include Great Horned Owl, Barn Owl, Scrub Jay, Raven, Crow, and migratory Harris and Kestrel Hawks. All of these animals, reptiles and birds are in the area between Highway 101 and the beach. (Red-tailed Hawks, once numerous in this area, have not been seen since the use of pesticides and fungicides on adjoining acreage devoted to agriculture).

No computer model showing intensity of radiation or the range of unhealthy exposure was provided or required. Other similar towers are known to create health risks up to 1000 feet. The riparian habitat is within 100 feet which is recognized by cell phone companies as dangerous. Those people who are familiar with RF/EMF (Radio Frequency Electromagnetic Fields) know there is an increased rate of childhood cancer, brain tumors and birth defects in these fields of radiation. Over 134 health studies have established a correlation between EMF and serious health risks. (See attached news articles and lists of studies.) Increased media attention has created "cancer-phobia" among people who do not want to expose their children or themselves to the danger represented by the presence of cellular/PCS towers. This degrades the recreational value of the Faria County Park as well as the scenic value.

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Section 30254 - California Coastal Act

"Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential and basic industries vital to the economic health of the region, state or nation, public recreation, commercial recreation and visitor serving land uses shall not be precluded by other development."

The cellular phone is not an essential service. The Public Utility Commission does not regulate phones or cell towers -- only applications for tower sites. Cellular phones are a convenience enjoyed by a minority of Americans and they do not provide a unique, vital service. They merely expand wireline telephone coverage. The same services (including FAX, modem, digital communication) are provided by fiber optic cable which is underground and not degrading the viewshed. Cell towers can be sited where they do not increase health risks and diminish scenic values.

The antennas at 3945 Pacific Coast Highway are located there primarily for ease of maintenance and accessibility by road. They can be placed at a greater distance from Faria residents and the County Park without diminution in line of sight transmission.

It should be noted that frequent maintenance of the generators by cell company technicians will multiply the effect on the habitat.

Section 30253.5 California Coastal Act

"Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses."

Under the Scenic Highway Act, the Edison Company and Faria residents provided funds for undergrounding all utilities less than three years ago. The purpose was to enhance scenic quality and remove transformers, with their risk of electro-pollution. This achievement has been directly negated by siting multiple towers on Pitas Point.

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Section 30251 California Coastal Act

"The scenic and visual qualities of 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."

Cellular towers are in direct conflict with this act. While Planning Commission has mandated the planting of mature trees "to screen" the structures, the trees cannot be as tall as the towers. Otherwise they will interfere with transmission. This masking or camouflaging of potentially dangerous radiation is beyond what would be recognizable by the public for prudent avoidance purposes. Children venture from the County Park up into the antenna area, thus increasing their exposure. Cell companies themselves do not advise human presence in close proximity. There are fences around only the generators.

Section 30116, a.b.c.e.f.

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

Pitas Point, including Faria Beach Colony and Faria County Park, meets this definition under the five descriptions: "Special marine habitat, (inter-tidal pool), significant recreational value, highly scenic areas, significant visitor destination areas, and areas that provide existing coastal housing or recreational opportunities for low-and-moderate income persons."

The County allows RV parking along the Pacific Coast Highway in addition to the Faria Park. Fees are \$18 and \$12. These people definitely qualify as low-and-moderate income persons. Many are retired. They come to fish, dig clams, hook octopus, explore the tide pools, swim and surf. Pitas Point is highly regarded as one of the best surfing breaks in



the County, particularly when there are strong west and northwest swells. Being a rocky point, the erosion is slight, maintaining a permanence. It is also a vantage point for viewing the whale migration and a local population of bottlenose dolphins seen on a daily basis year round. The array of shore birds includes godwit, willet, sanderling, sand piper, plover, cormorant, loon, western grebe, and brown pelican. There are as well three species of gull.

Marine wildlife and park users are within the 300 foot and buffer zone. They are also within the strongest transmission of radio frequency electromagnetic field, which has been shown to be associated with health risk up to 1000 feet.

Recommendation for mitigation:

The proposed PCS tower is deserving of an environmental impact study and report. As are the three already installed.

There should be a computer model or aerial map indicating the range of radiation and intensity. An estimate of cumulative project RF radiation should also be done where antennas are co-located. Levels should be routinely estimated and mapped for 1, 2, 3, 10, 20, 50, 100, 200 and FCC level microwatts per centimeter squared.

Mandatory monitoring by the county should be through an independent (not industry) RF expert. The public should have the right to request the reports.

RF measurement equipment should be provided. Local industry representatives do not yet have RF measurement equipment available.

The County should keep a map of where these sites are located in order that the public can see if they are near one, assuming many are now disguised.

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The proposed PCS tower should be installed at a greater distance from the public. The California Public Utilities Commission (CPUC) has recommended that cellular phone companies avoid building their towers near schools and hospitals. "Public perception about potential health problems will continue to exist as long as there remain unanswered and unexplored questions in the scientific community on the EMF and RF radiation issue," a CPUC report states. The CPUC advisory board recommended that , "Until clearer answers emerge, the commission should consider the possibilities that a health hazard could exist."

**Synopsis of argument regarding NEGATIVE IMPACT ON PROPERTY VALUES**

**resulting from the installation of cellphone towers:**

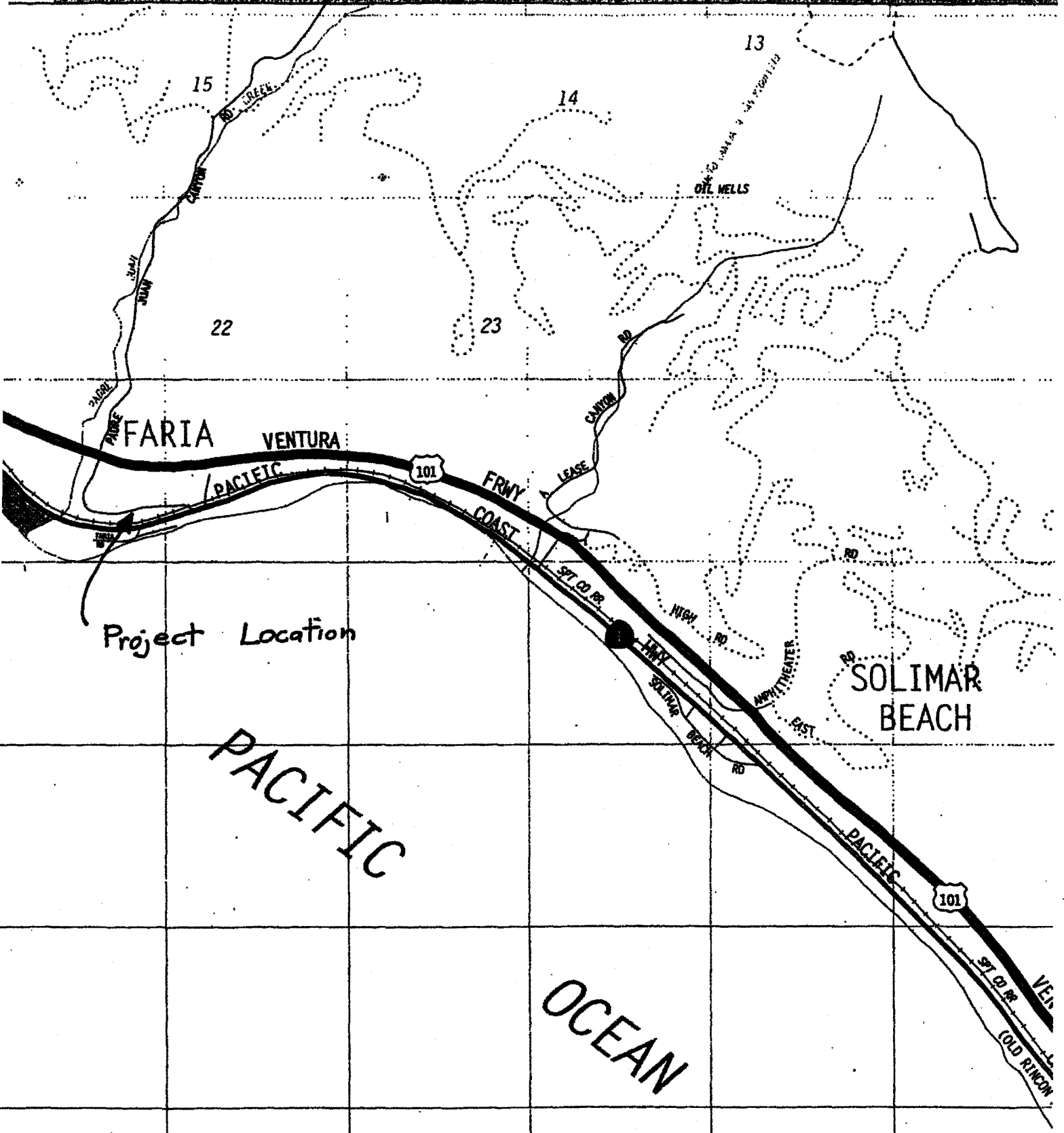
- Cellphone towers can decrease property value. This can result from a number of factors including the eyesore factor as well as the cancer fear issue. Cancer fears and aesthetic effects cause a neighborhood to lose its reputation as a safe and beautiful community.
- Fear of health and environmental hazards from exposure to EMF from powerline is expected to repeat itself in the cellular tower radio-frequency microwave radiation debate. The marketplace provides evidence that home and property in close proximity to electric power lines have decreased in value from 30% to 40% and at times have become completely unlivable and unsalable.
- A unanimous ruling of the New York State Court of Appeals (October 12, 1993) found that landowners can be compensated for diminishment of their property.

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values due to "cancerphobias" caused by installation of high voltage power lines, regardless of whether there is scientific proof that the lines pose a health risk. Approximately 20 feet of horizontal and vertical separation is typically needed between different antennas. On a tower, the need for separation may have a cumulative effect of adding multiple platforms which may make the tower more visually obtrusive.

*William R. Johnston*

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Project Location

PACIFIC

OCEAN

EXHIBIT NO. 3
APPLICATION NO.
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Pacific Bell
Project Location

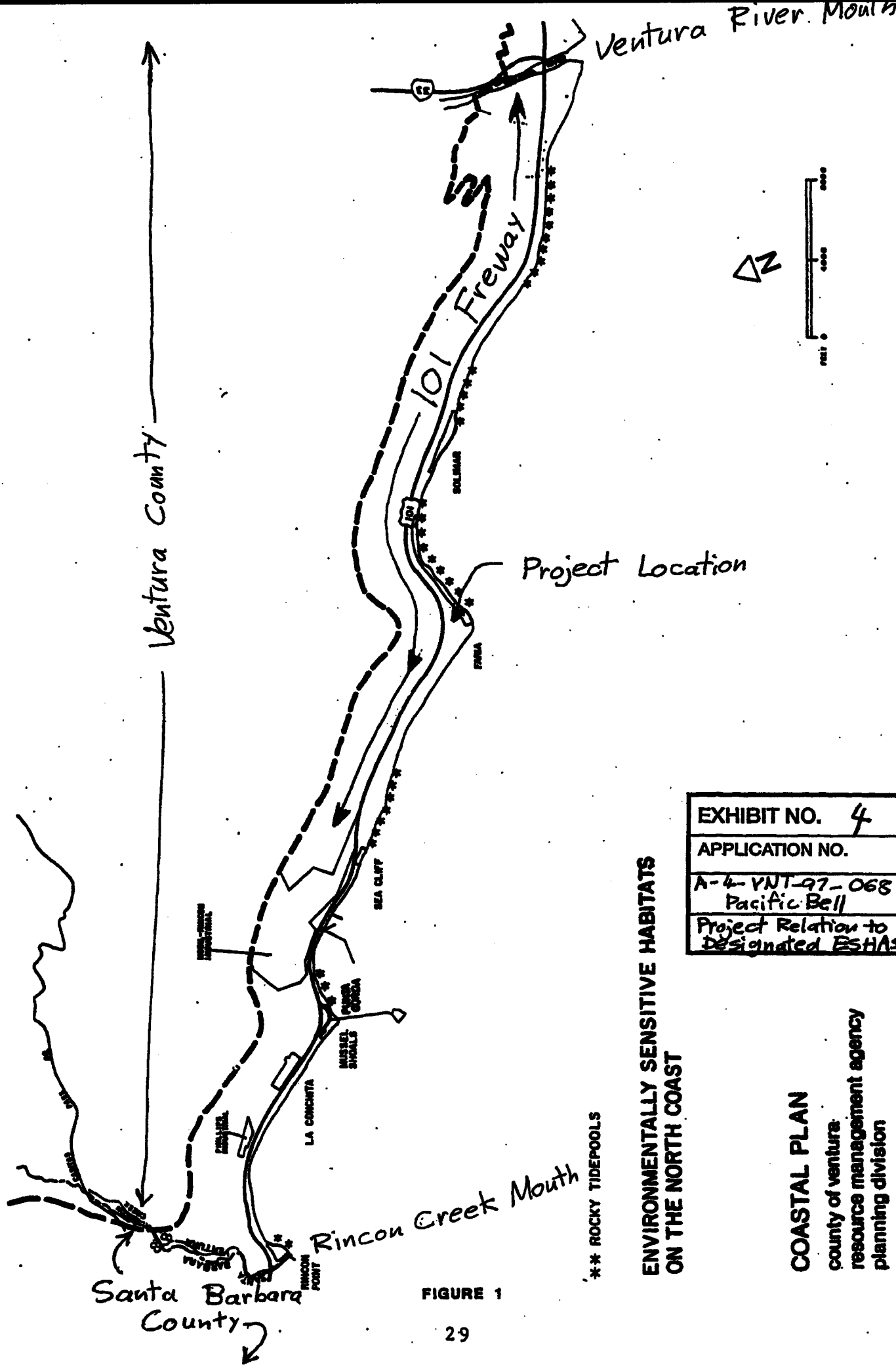


EXHIBIT NO. 4
APPLICATION NO.
A-4-VNT-97-068 Pacific Bell
Project Relation to Designated ESHAs

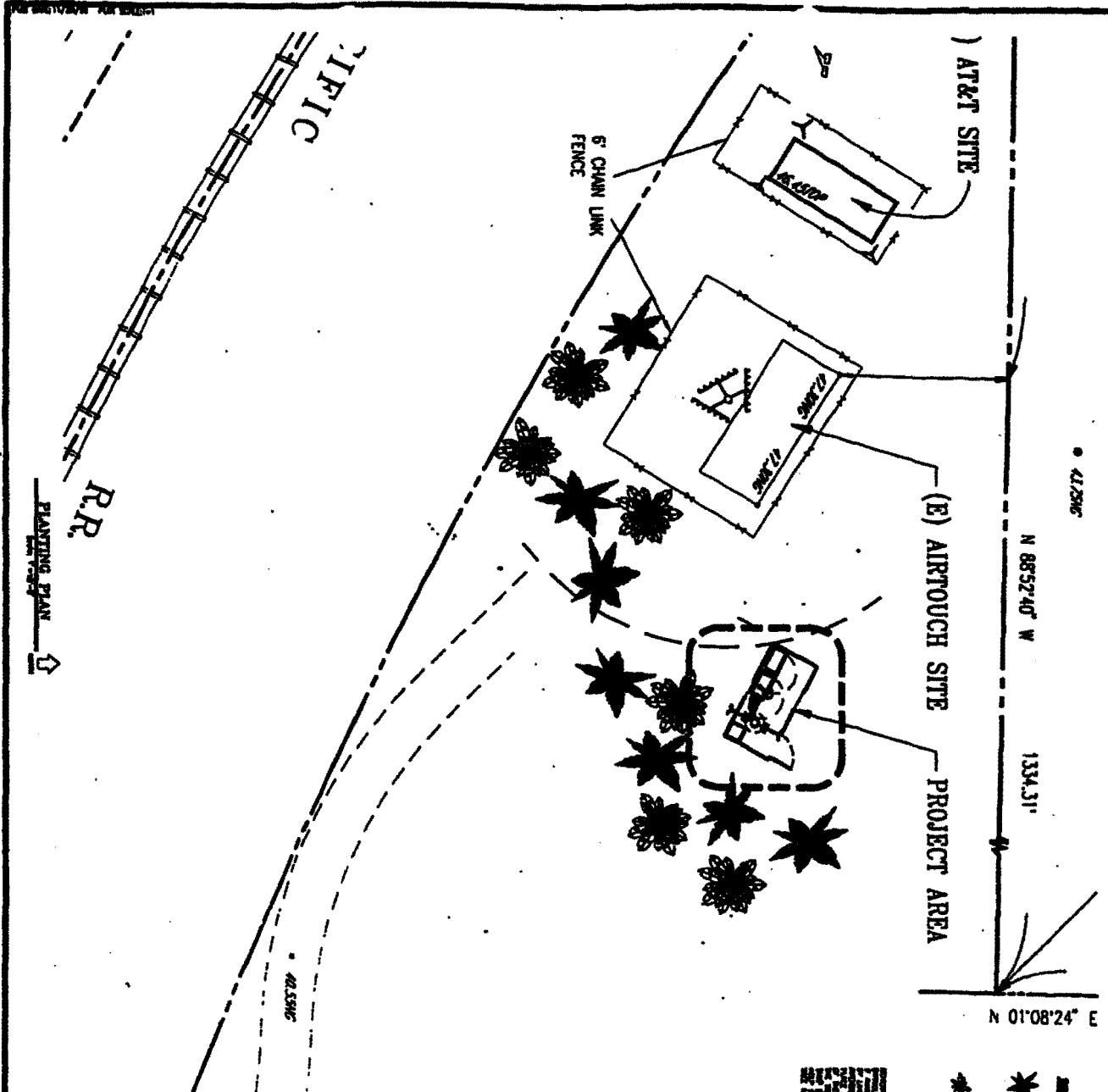
**ENVIRONMENTALLY SENSITIVE HABITATS  
ON THE NORTH COAST**

**COASTAL PLAN**  
 county of ventura  
 resource management agency  
 planning division

\*\* ROCKY TIDEPOOLS

FIGURE 1





THESE PLANS, SPECIFICATIONS, AND CONDITIONS SHALL BE READ IN CONJUNCTION WITH THE GENERAL CONDITIONS OF CONTRACT FOR THE CONSTRUCTION OF THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL MAINTAIN ALL NECESSARY RECORDS AND DOCUMENTATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY BONDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY REFERENCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY REFERENCES.

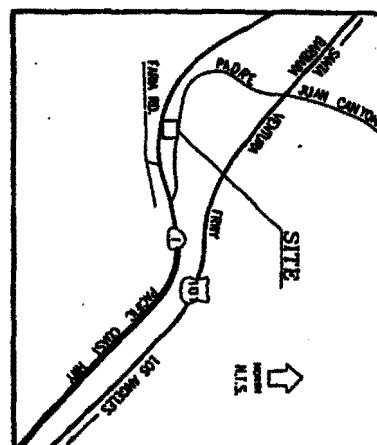
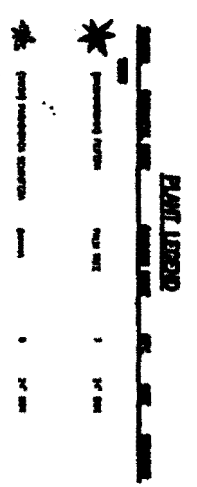


EXHIBIT "3"(a)

L-1	FCH / VENTURA 4551 N. FCH VENTURA, CA 93003 LA 388-01	<b>CARAWAY COMMUNICATIONS</b> 2801 STATE STREET, SUITE 210 STANFORD, CALIF. 94304 (415) 354-1000 FAX (415) 354-1001 PHONE PROJECT OFFICE 2828 N. GARDEN AVENUE, SUITE 200 LOS ANGELES, CALIFORNIA 90040 (213) 363-1000 FAX (213) 363-1010	<b>PACIFIC BELL</b> <b>Mobile Services</b> 4420 ROSEWOOD DR., BLDG. 2, 4TH FLOOR PLEASANTON, CALIFORNIA 94588	EXHIBIT NO. 5b. APPLICATION NO. A-4-VNT-97-068 Pacific Bell Site Plans
		PLANTING PLAN AND LEGEND	PLANTING PLAN AND LEGEND	

MEMORANDUM

TO: Commissioners and  
Interested Persons

DATE: April 4, 1997

FROM: Staff

FILE NOS: 6-97-7 & 6-97-9

SUBJECT: Modifications to Regular Calendar Staff Report and  
Preliminary Recommendations Dated March 20, 1997

Staff recommends the following changes to the above cited staff reports:

On Page 1 of the staff reports, the following should be added after the second paragraph under Staff Notes:

The Commission's concern relative to this project relates to the controversy regarding whether radio frequency emissions produced by these facilities pose a health risk to the public. Given this ongoing controversy (as noted in newspaper articles, television news stories, various lawsuits, etc.), the Commission requested that staff investigate whether or not the Commission should require the applicant to indemnify the Commission in the event that emissions from this project are the basis for a lawsuit against the Commission.

In the case of wireless communication facilities, federal law precludes the Commission from regulating placement, construction, and modification of such facilities based upon environmental effects of radio frequency emissions if a facility complies with federal standards. Specifically, Section 704 of the Telecommunications Act of 1996 states, in part:

"No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions."

The Federal Communications Commission (FCC) has adopted standards for emissions from wireless service facilities. The adopted standards are those established by the American National Standards Institute (ANSI). In the case of the proposed development, the applicant has provided information which indicates that the radio frequency emissions produced by the proposed wireless communication facility comply with the adopted ANSI standards. The information indicates that these emissions will be well below the maximum emissions allowed by the federal standards.

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Liability Waiver pi of s



Since the radio frequency emissions comply with the federal standards, the Commission has no authority to regulate the proposed development on the basis of these emissions. Furthermore, State law grants the Commission immunity from liability for issuance of permits. Thus, the likelihood of the Commission being held liable for damages resulting from radio frequency emissions is low. However, the public concern over these emissions creates the potential for litigation against the Commission should it approve the proposed development. Therefore, the Commission should consider whether to require the applicant to assume the risk and indemnify the Commission as a condition of approval of the development.

The Commission should also consider whether to require the assumption of risk/indemnity condition as a means of notifying future owners of the project that the Commission cannot be held liable. The Commission has imposed the assumption of risk/indemnity on projects that are potentially subject to damage from geologic or flood hazard in part to notify future homeowners of the risk and of the Commission's immunity from liability.

Staff recommends that the Commission not impose a waiver of liability/indemnification condition. To do so would essentially result in imposition of this condition on all projects that have radio frequency emissions, and even all projects that simply present some litigation potential. This would create an additional time burden for both staff and applicants. Given that the risk of Commission liability is low, staff believes that the additional time burden created outweighs the risk. In addition, the notice function of this condition is reduced in this situation where the project will be owned by corporations presumably familiar with both the issues surrounding the effects of radio frequency emissions and the federal statute that preempts Commission regulation on the basis of radio frequency emissions.

However, if the Commission decides to require that the applicant indemnify the Commission, the attached condition has been drafted for reference.

(3394M)

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APPLICATION NO.
A4-WT-97-068 Pacific Bell
Liability Waiver pt of 3

Special Condition of Approval of Wireless Communication Facilities.

Waiver of Liability/Indemnification. The permittee acknowledges that federal law prohibits the Coastal Commission from regulating placement, construction, and modification of the approved development on the basis of environmental effects of the radio frequency emissions of the development. The permittee assumes the liability for any adverse health and environmental effects that are caused by radio frequency emissions of the approved development and unconditionally waives any claim of liability on the part of the Commission. The permittee shall indemnify and hold harmless the Commission, its officers, agents, and employees for any damages and expenses incurred by the Commission as a result of claims that radio frequency emissions of the permitted development caused adverse health or environmental effects. Upon sale of the development, the permittee shall provide written notice to the purchaser that this waiver of liability and indemnification condition is binding upon the purchaser.

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Liability Waiver p 3 of 3