

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

Appeal filed: 3/24/97
49th Day: 5/13/97
Staff: MB-V
Staff Report: 6/19/97
Hearing Date: 7/9/97



STAFF REPORT: APPEAL
DE NOVO HEARING

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 Partnerships/o Lindsay Nielson

APPELLANT: William Stratton

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.

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 Nos. 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:

Staff recommends approval with a Special Condition regarding coordination with the County of Ventura conditions of approval. All conditions of the County of Ventura Coastal Development Permit Conditional Use Permit 4950 are to be incorporated into the Coastal Commission Coastal Development Permit.

I. BACKGROUND

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 upheld the findings of the Planning Commission and approved CUP-4950 subject to conditions. The conditions of approval are attached to this report as Exhibit 1.

The approval with conditions was appealed to the Coastal Commission by William Stratton and was filed on March 24, 1997. The appellant had participated in the local hearing process through correspondence which qualified him as an appellant to the Coastal Commission. On May 13, 1997 the Commission took public testimony and determined that appeal A-4-VNT-97-068 raised a substantial issue regarding project conformance with the County of Ventura certified Local Coastal Program (LCP).

II. DE NOVO HEARING PROCEDURES

When the Commission finds 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. The proposed development is inland of the first public road and, thus, these issues need not be addressed.

Further, it is noted that the project is neither subject to appeal by virtue of location between the first public road and the sea or within 300 ft. of the inland side of the beach or of the mean high tide line as mapped on the Commission's post-certification jurisdiction map. (See Section 30603 (a)(1) of the Coastal Act) The project is appealable, however, by virtue of not being a principal permitted use as designated by the certified LCP. (See Section 30603 (a)(4) of the Coastal Act)

Any person may testify during the de novo stage of an appeal.

III. STAFF RECOMMENDATION

A. Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the County of Ventura LCP, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

B. Standard Conditions

1. Notice of Receipt and Acknowledgment. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. Terms and 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.

C. Special Condition: Compliance with County Conditions.

All conditions of County of Ventura Coastal Development Permit for Pacific Bell Mobile Services found in approved Conditional Use Permit No. CUP-4950 are included in their entirety and incorporated into this Coastal Commission permit. (see Exhibit 1)

IV. RECOMMENDED FINDINGS AND DECLARATIONS

A. Project Description and Background.

1. Project Description

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.

2. General Location

The proposed development is in the North Coast of Ventura County inland and near Pitas Point. This North Coast area extends from the Ventura River to Rincon Point.

The site is on the inland side of the old Coast Highway (sometimes referred to as the Rincon Parkway), which is 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, and beaches all of which are 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. There are some improved public stairways to the beach as provided for under coastal development permits, as well as one pedestrian underpass under the 101 Freeway.

3. Site Description

The proposed development is located on a 210 sq. ft. in area site on a 3.61 acre parcel at 3945 Pacific Coast Highway. The 210 sq. ft. 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 is located across (inland of) the old Coast Highway, opposite the Faria Community and Faria County Park. The Faria Community is a residential enclave between the first public road and the sea. The site is above a low bank shouldering the railroad tracks.

According to the County administrative record, the site is intended by the applicant as the single 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.

There are two existing antennas on the site and a third antenna located nearby on the public right-of-way. 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.

B. Federal Legislation and Health Risk

Most of the appellant's concerns in his appeal materials related to the alleged adverse environmental effects of telecommunications facilities. 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 applicant asserts (see County administrative record) that the project emissions are below this standard.

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 [see 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 remaining 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.

In summary, 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.

C. Conformance to Land Use Plan Standards

a. Background and Methodology

Local government approval was subject to a number of conditions. The conditions of approval included the following which are relevant to 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.

County findings 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. Coastal Act policies are included as part of the Land Use Plan, but are implemented by the standards of the LCP.

The relevant policy and requirements of the certified LCP, discussed below, address allowed land use, hazards, scenic and visual quality, access and recreation opportunities, public works facilities, and environmentally sensitive habitats/protection of coastal waters.

b. Allowed Land Use

The proposed development is within 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 (p. 16) 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 they are regulated by the Public Utilities Commission.

In summary, the project is a permitted use subject to a CUP in the area designated Open Space on the Land Use Map of the certified LUP.

c. Land Use Plan Policies

(1) Hazards

The impact of the intensity of radiation on human beings and animals was a significant component of the appeal's allegations. Radio Frequency/Electromagnetic Fields are not identified as a hazard in the LCP. 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.

This objective refers to provisions in County ordinances. They do not address the intensity of radiation on human beings and animals as a 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 for this permit, further, does not identify any provisions in the County ordinances regarding human-induced hazards, which require protection of public safety and property.

Further, the list of recognized hazards in the LUP is confined to four topics. 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 noted above, 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. The County findings indicate that the project is acceptable under Federal standards which include consideration of hazards. Recent Coastal Commission actions in San Diego (see above) indicate a disinclination by the Coastal Commission to require an assumption of risk condition relative to any potential hazard from transmissions. In addition, there is not policy in the certified LCP which would require such a condition.

In summary, because of the LCP does not identify intensity of radiation as a hazard and because all required review relative to hazards as identified by the LCP was undertaken by the County as part of the approval process, the proposed development is in conformity with the hazards policies of the Local Coastal Program.

(2) Scenic and Visual Quality

(a) Visual Setting

The proposed antenna will potentially impact three types of public views to and along the coast, i.e. the views from Faria County Park, the Old Coast Highway, and the 101 Freeway.

The impact on views from Faria County Park is limited because the campground is set approximately fifteen feet below the level of the Old Coast Highway, which in turn is below the level of the antenna site located above the Old Coast Highway and situated on a low bank inland of the railroad tracks. Further, the campground is bordered by large, dense cypress trees. The combination of these factors is that, as observed during the staff site visit, only glimpses of a portion of the potential antenna would be available through gaps in the vegetation. This view impact is further diminished because the antenna would be seen against the backdrop of the foothills inland of the 101 Freeway and the lower portion of the antenna would be blocked by intervening topography.

Views of the site are available from time to time traveling north along the Old Coast Highway. The view of the antenna site is blocked by the almost continuous residential development in the Solimar Community and the southern section of the Faria Beach Community. Further, there are vertical elements of vegetation such as palm, cypress, and myoporum, on both sides of the Old Coast Highway which either mask or block the potential antenna. As the road curves to the west along the northwestern segment of the Faria Beach Community, the view of the site is blocked or merges with the existing palm tree nursery and the raised elevation of Padre Juan Canyon Road as it travels inland toward the overpass.

Views of the site will be more pronounced from a vehicle traveling south along the Old Coast Highway, because of the lack of permanent development seaward of the roadway. Recreational vehicles park along the seaward shoulder as a County authorized camping facility. The vehicles block the view of the antenna site from some locations, or make it difficult to distinguish as a separate visual element. A further combination of factors limit the view impact including view impact masking or merging. This is due to the alignment of this and the other antennas, and due as well to the backdrop of vegetation in Faria County Park, Faria Beach, and the Padre Juan Canyon Road overpass. All these features lessen any perception of the new antenna as a distinct object with individual, discernable view impact.

Views of the site traveling north along the 101 Freeway are first available as the freeway reaches a crest north of the Ventura River, although at this point it would be difficult to distinguish the antenna because of the distance of several miles. The view is then blocked intermittently by native or ruderal vegetation along the Freeway such as giant rye grass and castor beans. Further, the pitch and drop of the Freeway while traveling down to and along the vicinity of the Solimar Community eliminates much of the intermediate views. Views closer to the site than the Solimar Community are difficult because of the blockage by the palm tree nursery and various vertical elements of vegetation along the Old Coast Highway.

Moving south along the 101 Freeway, there is a momentary view of the site just south of the Mussel Shoals area. South of this there are views of the site before reaching the vicinity of the Seacliff Community, but these are diminished and finally eliminated by the roadway slope and pitch and vegetation and low lying road cuts on the seaward side. A good closer view of the site opens up from the freeway briefly in the area just north of the Padre Juan Canyon Road overpass. However, this view would only show the antenna as extending a few degrees above the backdrop of the cypress tree line at the County Park and is similar to the three other antennas existing.

In all the above locations, there are numerous examples of informational and directional signs and utility poles close to the roadway which create a much larger impact on visual quality than the proposed antenna.

(b) LCP Consistency

The administrative record shows that there has been controversy at the local hearing stage regarding screening of the proposed project. There was concern that the height of the trees proposed to screen the tower could not fully block the facility, because at that height any trees would interfere with the signal. There was also contention that the cellular towers, if masked or camouflaged, would not be recognizable for prudent avoidance, especially by children. The impact on the view from the nearby County public park, Faria County Park, was cited as a visual impact.

None of these contentions are related to the LCP Land Use Plan's policy framework. The project does not raise any issue with specific LCP policies or standards relative to visual quality. The County designation of the Old Coast Highway as a scenic highway has not been incorporated into the LCP.

The 1978 LCP Issue Identification for preparation of the Local Coastal Program initially identified three visual concerns in the North Coast of Ventura County -- oil processing facilities, recreational vehicle parking on the Old Coast Highway, and height of residences in existing residential communities. The final certified LUP, however, did not find that there were any visual quality issues that needed to be addressed. No Visual Quality section was provided for the North Coast Area. This is confirmed by the following statement in the introductory section of 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.

Condition 7.d. of the County indicates that:

Trees used for screening the antennas shall be of sufficient height to provide the maximum feasible view blockage from nearby residences.

This view is not connected to any LCP policies in the County findings, however.

In summary, for these reasons, the project conforms with the scenic and visual quality policies of the LCP.

(3) Access and Recreation Opportunities

The LUP supports improving and increasing public recreational opportunities and 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 with the text regarding the Faria Community or Faria County Park relative to access.

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 or access way traversing from the 101 Freeway to the coast which could be affected by the proposed development. The prior status of the area was vacant land except for the recently constructed two antenna sites and the access road to the oil fields inland of the 101 Freeway.

Development will not preclude access or recreation-related improvements on the remainder of the site. Unpaved and paved roads across the site remain available for use by occasional strollers and runners and will not be affected.

For these reasons, the Commission finds the project is conforms with the public access and recreation policies of the LCP. By virtue of location inland of the first public road (see PRC Section 30604 (d)) no specific finding is necessary that the development is in conformity with the public access and public recreation policies of the Coastal Act.

(4) Public Works Facilities

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 LUP defines Public Works in terms of more traditional public services and contains no mention of telecommunication facilities. The service area for the services mentioned (roads, flood control measures, water and sanitation) was clearly an issue in development of the LCP. Such services were limited to existing residential enclaves, to maintain them 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 is specifically mentioned as an example of the type of facility which could be growth inducing unless controlled by LCP policies.

There is nothing in the 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, as noted above. They link service areas as regulated by the Federal (i.e. Federal Communications Commission) and State (i.e. Public Utilities Commission) 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 clearly inappropriate.

As noted above, the project conforms to the concept of a single allowed site for this type of facility (see reference to Federal provisions as noted in the County's findings). The expansion of areas for communications facilities into "antenna farms" is a topic not addressed by the LCP presently. A potential policy problem remains when there are a variety of existing and proposed technologies which can cause a variety of types of antennas to be located in certain areas. The resolution of this issue goes beyond the scope of the presently certified LCP. Each new technology may result in a new antenna type, and require another antenna resulting in an "antenna farm". 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 and has prepared a set of draft guidelines. The County is reviewing 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.

For the above reasons, the Commission finds that the project conforms with the policies of the public works policies of the LCP.

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

The LUP identifies environmentally sensitive habitat areas in the North Coast as consisting of tidepools, 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 purposes 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 to the southeast. 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 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.

For these reasons, the Commission finds that the project conforms with the policies of the certified LCP relative to habitat protection and marine resources.

(6) Future Redesign

In past decisions of the Coastal Commission approving similar facilities, such as Coastal development permits Nos. 6-97-7 and 6-97-9 (Pacific Bell Mobile

Services), the Commission has required a redesign condition:

1. Future Redesign. Prior to the issuance of the coastal development permit, the applicant shall agree in writing that where future technological advances would allow for reduced visual impacts resulting from the proposed wireless communication facility, the applicant agrees to make those modifications. In addition, if, in the future, the facility is no longer needed, the applicant agrees to abandon the facility and be responsible for removal of all permanent structures, and restoration of the site as needed to re-establish the area consistent with the character of the surrounding area.

The findings for permit 6-97-9 (Pacific Bell Mobile Services) (p. 3) indicate that the intent of this condition is to assure:

that this and other scenic coastal corridors will not be littered with outdated and obsolete facilities in the future [and that] ... With this condition, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent possible, consistent with Section 30251 of the Coastal Act.

Such a condition is inapplicable in the case of the proposed project in Ventura County. The above findings are based on the Coastal Act, while the standard of review in the case of the proposed Ventura County facility is the certified LCP. The LUP does not contain policies which address redesign of antenna facilities where future technological advances would allow for reduced visual impacts or restoration of the site as needed to re-establish the area character. As noted above, the LCP explicitly states that there were no identified scenic and visual quality issues identified for areas, such as this area (i.e. the North Coast of Ventura County).

In addition, the following features of the Ventura County coastal development permit are noted. Their permit (CUP 4950) as a conditional use permit is limited in duration depending on compliance with the conditions, and may be suspended, modified or revoked if the conditions are not met. Restoration is already a part of the conditions of approval:

6. Miscellaneous Property Regulations:

...

- c. Upon expiration of this permit, or abandonment of the use, the premises shall be restored by the permittee to the conditions existing prior to the issuance of the permit, as nearly as practicable.

Lastly, it should be noted that the project area is previously disturbed. There has been development in the project area for many decades associated with the construction of the railroad, the 101 Freeway, and energy facility development in inland areas which have access to the coast in the project vicinity.

For the above reasons, the Commission finds that the project as conditioned by Ventura County conforms to the standards of the certified LCP relative to future redesign and site restoration.

d. Conformance to Zoning Ordinance Standards

1. Antennas

The section of the Zoning Ordinance on antennas only applies to noncommercial facilities:

Sec. 8175-4.9 - Antennas - Citizen band and amateur radio transmitting and receiving antennas, intended for private noncommercial uses and accessory to a dwelling, may be erected above the height limits for structures, to a maximum height of 75 feet. See Sec. 8175-5.1i for standards.

This section refers to Sec. 8175-5.1i which provides for the installation standards for citizen band and amateur radio antennas. For example, antennas are required to be color-coordinated with background material, be located on the most unobtrusive location on the site, and use appropriate screening or landscaping. Further, a site plan is required for the whole property. These provisions address concerns expressed in the administrative record relative to mitigating the visual impact of the Pacific Bell project. These provisions do not apply to commercial antennas, however, and there are no similar provisions for commercial antennas.

Public Works facilities, as noted previously, are defined in the certified LCP Zoning Ordinance (p. 16) [emphasis added] as:

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.

Section 8175-5.9 - Public Works Facilities in the County certified LCP Zoning Ordinance repeats the criteria found in the above-cited objective and policies in the Land Use Plan regarding service levels, facility expansion, and service areas. As noted above relative to the LUP, "Public Works" are recognized when they constitute public services such as water, sewer, and highways, and there is no mention of telecommunication facilities. The service area for the services mentioned was clearly an issue in development of the LCP which sought containment of existing residential enclaves in their existing location and configuration. Communication facilities of the type proposed are not analogous. They link service areas regulated by the Federal and State criteria in terms of service area.

In summary, the Commission finds that for the above reasons the proposed project conforms to the standards of the certified Zoning Ordinance relative to antennas.

2. Landscaping

County landscaping requirements under the certified LCP Zoning Ordinance are discretionary. Sec. 8176-4 - LANDSCAPING REQUIREMENTS indicates [emphasis

added] that: "Any permit for development approved by the County may be conditioned to require permanent landscaping and irrigation in accordance with this article." Further, Sec. 8176-4.1.a states that: "Applicable native plant materials and drought tolerant species are encouraged for water conservation."

Typically, in areas where the Coastal Commission has retained jurisdiction, there is a requirement that a landscaping plan be prepared by a licensed landscape architect to screen and soften the visual impact of the site using primarily native, drought tolerant species. In the case of the Ventura County ordinance, this choice of plants and materials is discretionary, as noted.

While Ventura County has chosen to require a landscaping plan as part of their permit, the use of plant material has not been specified, such as native, drought tolerant, or other species. The applicant did indicate a desire to use palm trees similar to the palm tree nursery to the south of the project. Further, while the County findings noted that this was acceptable, the choice of palm trees was not required in the conditions of approval.

In summary, the choice of landscaping does conform to the standards of the certified LCP Zoning Ordinance because of the discretionary nature of the ordinance.

3. Grading

An incidental amount of grading can be anticipated for brush clearing and foundation work. According to the project applicant, approximately 8.5 cu. yds. of grading will take place, including 5.5 cu. yds. for the antenna and 3 cu. yds. for utilities. Such a small amount of grading is clearly incidental and insignificant and, as discussed below, is allowable under the standards of the LCP Zoning Ordinance.

The application to Ventura County indicates that the existing vegetation on the site is native brush. The Commission staff site visit indicates that the site and immediately surrounding area has been previously disturbed and contains a mixture of native brush, cleared land, ruderal vegetation, and existing developed antenna sites.

Sec. 8175-5.17 - Grading and Brush Removal of the certified LCP Zoning Ordinance provides standards which "... shall apply to all developments involving more than 50 cubic yards of grading or more than one-half acre of brush removal." Sec. 8175-5.17.9 states that a discretionary permit is required for greater than one-half acre of brush removal or "all substantial hillside grading (over 50 cu. yds of cut or fill)".

The project does not involve over one half acre of brush removal, nor is hillside grading involved. As noted above, grading is estimated by the project applicant to be 8.5 cu. yds. of material. As a previously graded access road exists, no significant grading would be necessary to reach the site for construction purposes.

For the above reasons, the project as conditioned by the County, conforms with the standards of the certified LCP Zoning Ordinance relative to grading.

HEARING DATE: November 21, 1996

APPROVAL DATE: March 4, 1997

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PLANNING DIVISION CONDITIONS:

NOTICE TO PERMIT HOLDER: Failure to abide by and faithfully comply with any conditions for the granting of this Permit shall constitute grounds for one or more of the following actions in accordance with the County's adopted Schedule of Enforcement Responses:

- Public reporting of violations to the Planning Commission;
- Suspension of permit operations;
- Modification of permit conditions; and/or
- Revocation of the permit.

It is the permittee's or his successors in interest, responsibility to be aware of and to comply with the permit conditions described below and the rules and regulations of all jurisdictions having authority over the use described herein.

PERMIT DESCRIPTION:

Pacific Bell Mobile Services proposes to construct, operate and maintain an unmanned telecommunications facility at 3945 Pacific Coast Highway near the Faria Beach community. The project site is a 210 square foot portion of a 3.6 acre lot within the C-O-S (Coastal Open Space) zone. There are two existing telecommunications facility located on the property. The proposed facility will consist of four 63 inch by 6 inch by 21 inch panel antennas mounted on a 35 foot high monopole and two Base Transceiver Station (BTS) cabinets to be located at the base of the pole. There will also be a "temporary during construction" palletized BTS unit (approximately 4 feet by 2.5 feet by 20 feet in height) that could be at the site for as long as six months.

SYSTEM DESCRIPTION:

Pacific Bell Mobile Services was granted a Personal Communications Services (PCS) license from the Federal Communications Commission (FCC) in January, 1995, for California. PCS is considered to be the next generation of wireless telecommunications which will offer a variety of voice, data and imaging services through one service. PCS is a digital technology which allows for additional features not currently provided through analog systems.

Panel antennas will be used at the site to allow "sectoring" of the equipment. By sectoring the site, radio frequencies can be reused, increasing the efficiency of the system by allowing more customers to be served by less equipment. The cell site will have two sectors with two directional antennas per sector.

1. Permitted Land Uses:

This Permit is granted for a 210 square foot portion of APN 060-0-380-260 as a telecommunications facility. The facility will include the following:

One (1) 35 foot high monopole,

Four (4) panel antennas,

Two (2) Base Transceiver Station (BTS) cabinets approximately 4 feet by 2.5 feet by 5 feet in height.

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One "temporary during construction" palletized BTS unit that must be removed within six months of the permit approval date.

See Exhibit "3" for site plan and elevations.

2. Permit Expiration/Renewal/ Modification:

- a. This Permit is granted for a 10 (ten) year period, and will expire on November 21, 2006.
- b. If the permittee desires an extension, at least six (6) months prior to the expiration date, the permittee must contact the Planning Division to determine the appropriate type of modification application for such extension.
- c. Upon acceptance of the appropriate modification application as "complete" prior to the expiration date, the Permit may continue in force until action is taken on the modification, and on any appeals.
- d. Failure of the County to notify the permittee of the above dates shall not constitute grounds for continuance of this Permit after expiration.
- e. This Permit shall expire if the use for which it was granted is discontinued for a period of 365 consecutive days or more.
- f. Land uses, facilities, or structures other than those specifically approved by this Permit shall require the filing and approval of an appropriate modification application.
- g. The Planning Director shall conduct a review of this CUP in five years (March 4, 2002) to determine if changes in technology or Federal Regulations or standards have been made which would warrant a modification to the permit pursuant to Section 8181-10 of the Coastal Zoning Ordinance to incorporate these changes.

3. Responsibilities Prior to Construction:

- a. Prior to construction, a Zoning Clearance for Construction shall be obtained from the Planning Division and a Building Permit (if needed) shall be obtained from the Building and Safety Division. Prior to the issuance of this Zoning Clearance the following conditions must be met to the satisfaction of the Planning Director:
 - 7a. Submittal of Landscaping and Irrigation Plans
 - 8a. Condition Compliance Fee and Reimbursement Agreement
 - 8b. Permit Processing Fees
 10. Acceptance of Conditions

4. Responsibilities Prior to Use Inauguration:

- a. Prior to inaugurating the use for which this permit is granted, a Zoning Clearance for Use Inauguration shall be obtained from the Planning Division. Prior to the issuance of this Zoning Clearance, the following conditions shall be satisfied:

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- 7b. Landscape Installation
- 7f. Signed Agreement with Property Owner for Landscaping
- 13. Hazardous Materials Permit - Environmental Health

EXHIBIT NO.	1
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	Conditions of Approval p 3 of 7

5. Permit Expiration:

This permit shall automatically expire if any of the following circumstances occur:

- a. A Zoning Clearance has not been issued within six months of permit approval. The Planning Director may grant a one year extension during the initial year period based on a written request by the applicant.
- b. A Building Permit (if one is required) has not been issued within six months of issuance of the Zoning Clearance.
- c. The Building Permit expires prior to completion of construction.

Based on evidence presented in writing by the applicant of a substantial hardship or other extenuating circumstances, the Planning Director may reactivate the permit if such request is made within three years of the permit approval date.

6. Miscellaneous Property Regulations:

- a. The property area covered by this permit shall be maintained in a neat and orderly manner at all times during the life of the permit.
- b. All utility connections on the site shall be placed underground from the property line.
- c. Upon expiration of this permit, or abandonment of the use, the premises shall be restored by the permittee to the conditions existing prior to the issuance of the permit, as nearly as practicable.
- d. The "temporary during construction" equipment must be removed by May 30, 1997.
- e. Once the facility is constructed and operational, the applicant shall be limited to an average of four (4) trips a month for maintenance purposes.
- f. The applicant shall provide the Planning Division and the Faria Beach Homeowners Association with the name and phone number of a local contact person who can be called upon to respond to complaints that might arise over the construction and operation of the site.

7. Landscape Requirements:

- a. Prior to the issuance of the Zoning Clearance for Construction, three sets of Landscaping and Irrigation Plans, together with a maintenance program, shall be prepared by a State licensed Landscape Architect, in accordance with the Ventura County Guide to Landscape Plans, and submitted to the Planning Division for approval. The Landscaping and Irrigation Plans shall be

CONDITIONS FOR: Conditional Use Permit CUP 4950

APPLICANT: PACIFIC BELL

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accompanied by a fee specified by the Board of Supervisors. The applicant shall bear the full cost of plan review and final inspection.

- b. Prior to the issuance of the Zoning Clearance for Use Inauguration, all landscaping and irrigation system installation shall be completed, and approved by the Planning Director or the Planning Director's designee.
- c. Continued landscape maintenance shall be subject to periodic inspection by County Planning Staff. The permittee shall be required to remedy any defects within two weeks after notification by County Planning staff.
- d. Trees used for screening the antennas shall be of sufficient height to provide the maximum feasible view blockage from nearby residences.
- e. Trees planted for screening of the antennas shall surround the entire site except for areas which would block antenna transmissions.
- f. Prior to issuance of zoning clearance for use inauguration, the applicant shall provide the Planning Director with a signed agreement with the property owner which provides for the installation and maintenance of the landscaping required outside of the CUP boundary.

8. Condition Compliance/Financial Requirements/Limitations:

- a. Prior to the issuance of the Zoning Clearance for Construction, the permittee, or successors in interest, shall submit to the Planning Division a \$240.00 fee as a deposit to cover costs incurred by the County for Condition Compliance review, with a fee Reimbursement Agreement signed by the applicant.
- b. Prior to the issuance of the Zoning Clearance for Construction, all permit processing fees owed to that date must be paid. After issuance of the Zoning Clearance for Construction, any final billed processing fees must be paid within 30 days of the billing date.
- c. The permittee shall fund all necessary costs incurred by the County or its contractors for inspection, permit compliance, monitoring, and/or review activities as they pertain to this permit. The permittee shall also fund all necessary costs incurred by the County or its contractors for enforcement activities related to resolution of confirmed violations. Costs will be billed at the contract rates in effect at the time enforcement actions are required.
- d. The permittee shall reimburse the County within 30 days of invoicing by the County. Failure to pay the required bill or maintain the required deposit fee balance shall be grounds for suspension or revocation of this Permit.
- e. As a condition of issuance and use of this Permit, including adjustment, modification or renewal of the Permit, the permittee agrees to:

- 1) defend, at the permittee's sole expense, any Action brought against the County by a third party challenging either its decision to issue this permit or the manner in which the County is interpreting or enforcing the conditions of the permit; and

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- 2) indemnify the County against any settlements, awards, or judgments, including attorney's fees, arising out of or resulting from any such action.

Upon demand from the County, the permittee shall reimburse the County for any court costs and/or attorney's fees which the County may be required by a court to pay as a result of any such action the permittee defended or had control of the defense of the suit. The County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the permittee of its obligations under this condition.

- f. If any of the conditions or limitations of this Permit are held to be invalid, that holding shall not invalidate any of the remaining conditions or limitations set forth.

In the event that any condition contained herein is determined to be in conflict with any other condition contained herein, then where principles of law do not provide to the contrary, the conditions most protective of public health and safety and natural environmental resources shall prevail to the extent feasible, as determined by the Planning Director.

In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law, or threatened to be filed therein, which action is brought in the time period provided for by Code of Civil Procedures Section 1094.6 or other applicable law, this Permit shall be allowed to continue in force until the expiration of the limitation period applicable to such action, or until final resolution of such action, provided the permittee has, in the interim, fully complied with the fee, exaction, dedication or other mitigation measure being challenged.

If any condition is invalidated by a court of law, and said invalidation would change the findings and/or the mitigation measures associated with the approval of this permit, the project may be reviewed, at the discretion of the Planning Director, by the Planning Commission and substitute feasible conditions/mitigation measures may be imposed to adequately address the subject matter of the invalidated condition. The determination of adequacy shall be made by the Planning Commission. If the Planning Commission cannot identify substitute feasible conditions/mitigation measures to replace the invalidated condition, and cannot identify overriding considerations for the significant impacts that are not mitigated to a level of insignificance as a result of the invalidation of the condition, then the Permit may be revoked.

- g. Neither the issuance of a permit hereunder nor compliance with the conditions thereof shall relieve the permittee from any responsibility otherwise imposed by law for damage to persons or property, nor shall the issuance of any use permit hereunder serve to impose any liability upon the County of Ventura, its officers or employees for injury or damage to persons or property.

Except with respect to the County's sole negligence or intentional misconduct, the permittee shall indemnify, defend and hold harmless the County, its officers, agents, and employees, from any and all claims, demands, costs, expenses,

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CONDITIONS FOR: Conditional Use Permit CUP 4950

APPLICANT: PACIFIC BELL

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including attorney's fees, judgments or liabilities arising out of the construction, maintenance, or operations described herein under Condition 1 (Permitted Use), as it may be subsequently modified pursuant to the conditions of this Permit.

9. Requirements of Other Agencies:

This Permit shall not relieve the permittee of the responsibility of securing and complying with any other permit which may be required by other County Ordinances, or State or Federal laws. No condition of this permit for uses allowed by County Ordinance shall be interpreted as permitting or requiring any violation of law, or any lawful rules, regulations, or orders of an authorized governmental agency. In instances when more than one set of rules apply, the stricter ones shall take precedence. Facility design and operations shall comply with all applicable requirements of Federal, State, and Local authorities, and all such requirements shall, by reference, become conditions of this Permit.

10. Acceptance of Conditions:

Prior to the issuance of the Zoning Clearance for Construction, the permittee shall sign a statement indicating awareness and understanding of all permit conditions, and shall agree to abide by these conditions.

11. Change of Ownership:

No later than ten days after a change in property ownership or change of lessee of this property, the Planning Director shall be notified, in writing, of the new name and address of the new owner or lessee. The same letter shall state that the new owner or lessee has read all conditions pertaining to this permit and agrees with said conditions.

ENVIRONMENTAL HEALTH DIVISION CONDITIONS:

12. The storage, handling, and disposal of any potentially hazardous material shall be in compliance with applicable state regulations.

13. Prior to inauguration of use, the applicant shall contact the Hazardous Materials Section of the Environmental Health Division and obtain all necessary permits (654-2813).

NOTE: If hazardous materials in excess of 55 gallons, 500 pounds, or 200 cubic feet are to be stored onsite, a Business Emergency/Contingency Plan shall be submitted to and approved by the Hazardous Materials Section prior to issuance of certificate of occupancy or inauguration of use, whichever occurs first.

PUBLIC WORKS AGENCY CONDITIONS:

14. Prior to issuance of a Building Permit, a soils engineering report must be submitted to the Public Works Agency, Development Services Division.

Prior to the issuance of a Building Permit, unless determined by the Public Works Agency that a Grading Permit is not necessary, the permittee shall submit to the Public Works Agency for review and approval, a grading plan; and shall obtain a Grading Permit.

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If the amount of grading is greater than 1,000 cubic yards, the grading plan shall be prepared by a Registered Civil Engineer. Grading involving less than 1,000 cubic yards shall not require a Registered Civil Engineer to prepare, unless the permittee chooses to have the grading performed by a Civil Engineer, or, the building official determines that special conditions or unusual hazards exist.

16. If it is determined that a Grading Permit is required, the Public Works Agency may request a Geology Report, the permittee shall, upon our request, submit to the Public Works Agency for review and approval, a Geology Report with the submittal of the Grading Plans.

The grading plan shall incorporate the recommendations of the approved report.

17. If it is determined that a Grading Permit is required, the Public Works Agency may request a Soils Engineering Report, the permittee shall, upon our request, submit to the Public Works Agency for review and approval, a Soils Engineering Report with the submittal of the Grading Plans.

The grading plan shall incorporate the recommendations of the approved report.

18. A soils engineering report will be required for the building permit in order to provide recommendations for the foundation and to address Uniform Building Code Section 1804.

FIRE DEPARTMENT CONDITIONS:

19. A Fire Department access road shall be available to the site and maintained as a most weather access road in order to insure access by Fire Department equipment.
20. All grass and brush shall be cleared and maintained to a distance of 100 feet from structures.

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APPLICATION NO.
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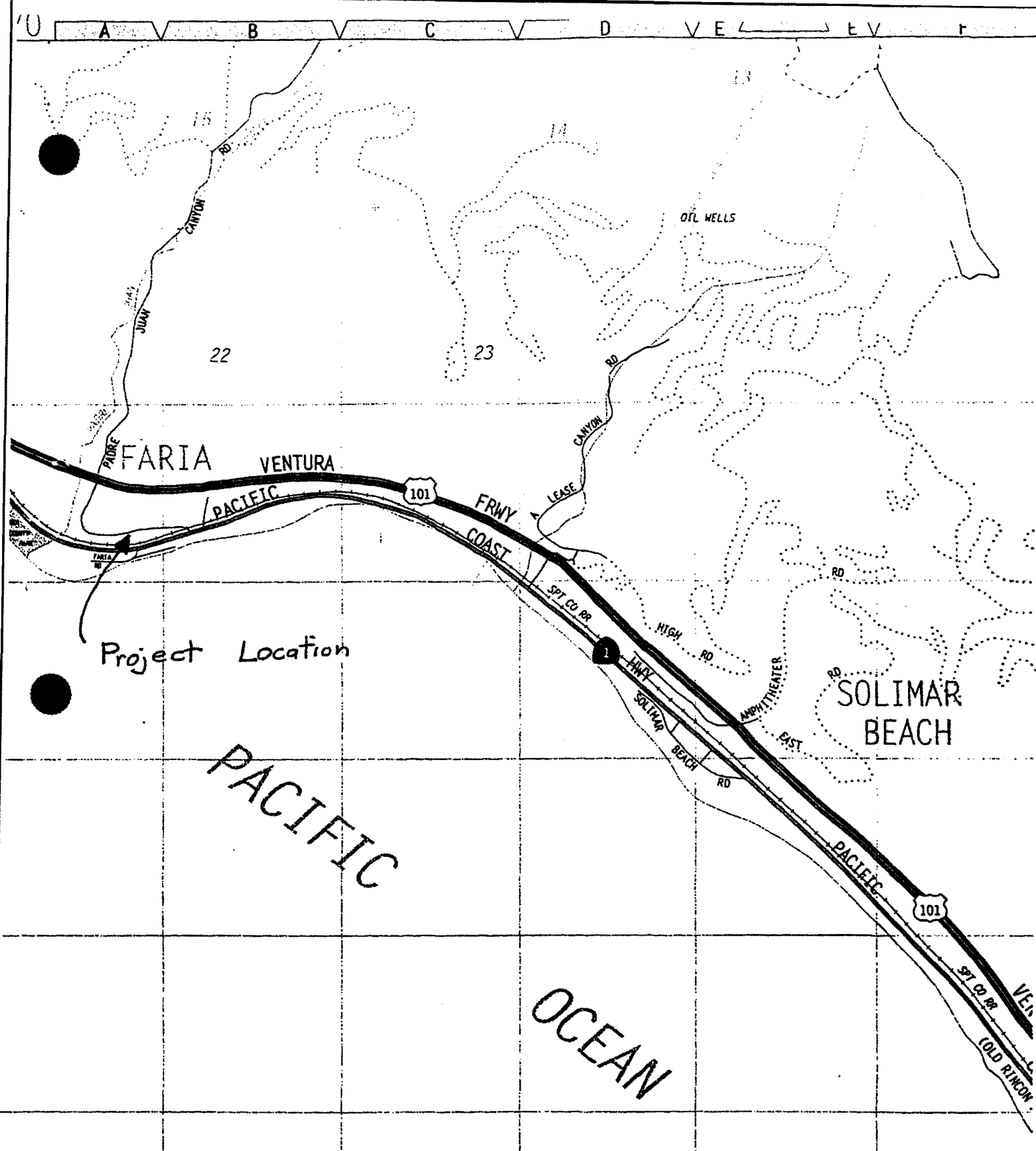


EXHIBIT NO.	2
APPLICATION NO.	
A-4-VNT-97-068	
Pacific Bell	
Project Location	

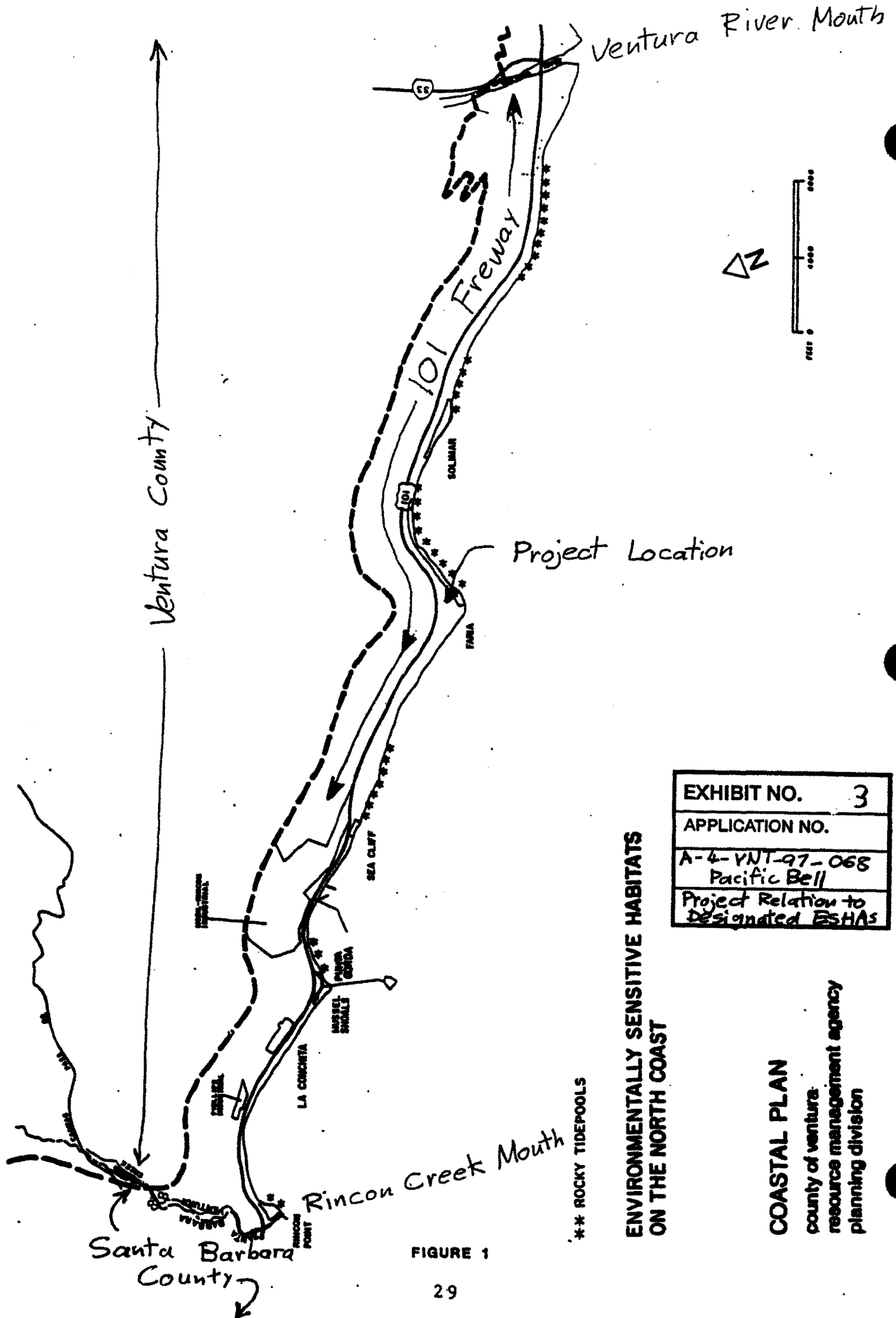


FIGURE 1

**ENVIRONMENTALLY SENSITIVE HABITATS
ON THE NORTH COAST**

EXHIBIT NO.	3
APPLICATION NO.	
A-4-VNT-97-068	
Pacific Bell	
Project Relation to	
Designated ESHAs	

COASTAL PLAN

county of ventura
resource management agency
planning division

[illegible]

M E M O R A N D U M

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.

EXHIBIT NO. 5
APPLICATION NO.
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Pacific Bell
Liability Waiver
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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)

EXHIBIT NO. 5
APPLICATION NO.
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Liability Waiver
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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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Pacific Bell
Liability Waiver
p 3 of 3

JANA ZIMMER, Attorney
2640 Las Encinas Lane
Santa Barbara, CA 93105

EXHIBIT NO. 6
APPLICATION NO. 1 of 3
A-4-VNT-97-068 Pacific Bell
Letter from Applicants Attorney

Phone: 805/563-1591
Fax: 805/687-4156

June 3, 1997

RECEIVED

JUN 04 1997

Mr. Peter Douglas
Mr. Ralph Faust
California Coastal Commission
45 Fremont St. Suite #2000
San Francisco, CA. 94105

BY FAX AND MAIL

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Appeal of William Stratton- A-4-VNT-97-068 [PacBell Mobile Services]
Hearing Date: July 8-10, 1997

Dear Mr. Douglas and Mr. Faust:

I represent Mr. William Stratton, the appellant in this matter. We request that the staff consider the following legal issues prior to making its recommendation to the Commission on the appeal. We believe that, in the current procedural posture, the Commission does not have discretion to approve a permit for this PCS facility for the reasons set forth below.

- The County has unlawfully "designated" the project site as the location for a future "antenna farm". The approval of the permit would validate a *de facto* and illegal amendment of the certified Local Coastal Plan.

- The County failed to conduct adequate environmental review. Among other things, the County failed to provide a complete project description, and failed to consider the *cumulative* effects of past approvals, [see, Notices of Final Action for CUP #4775, 4776, 4888, prior CUP's granted for microwave antennas at this site], and reasonably foreseeable future expansions and additions.¹ Without such analysis, it is impossible for the Commission to evaluate consistency with LCP policies and the Coastal Act.

Without a permit denial at this time, and firm direction to the County to prepare and submit for certification an LCP amendment designating appropriate sites for antenna farms, this particular parcel- which is located directly across from the entrance to Faria County Park,- will become the site of a proliferation of such antennae and facilities by default, and without regard to its impact on recreational policies, coastal access and health effects.

1. The County's permit approval constitutes an unlawful amendment to the certified local Coastal Plan

Pub. Res. Code Section 30514(e) provides that an amendment to a certified local coastal

¹We understand there are potentially fourteen (14) companies interested in colocating facilities at this site.

program includes, but is not limited to, "any action by the local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel". As conceded both by the County Board of Supervisors [Minutes of meeting of March 7, 1997, and by the Commission's staff, the LCP as currently certified does not expressly include antenna farms. [Substantial issue staff report p.5 "The expansion of areas for communications facilities into "antenna farms" is a topic not addressed by the LCP presently"...the 'technology of various types of communication facilities built may have not been anticipated at the time the LCP was developed..."]. At the same time, the County has, without taking any appropriate legislative action to amend its LCP, already "designated" this site as the location for a consolidated antenna farm, and has approved a number of conditional use permits for antennae for that site. Contrary to the initial staff position, we do not believe it is appropriate for the Commission to approve any such permits while it "waits" for local action. The law requires that unless a use or activity is expressly permitted by the LCP, it is prohibited.

We contend that both the past and the current permit approvals constitute "actions" which, in effect amend the LCP without proper review and certification by the Commission. Compare, Conway v. City of Imperial Beach (1997) 52 Cal. App. 4th 78 [holding that an interim ordinance under Gov. Code Section 65858 need not be certified prior to taking effect, because there was no change in the relative composition of residential, industrial or recreational uses, and the City was acting under Section 30005 to adopt and enforce additional regulations more restrictive than the Act.] By contrast, here, the County's past and present actions do add a use which is not explicitly contemplated in the LCP, and its inclusion would alter the anticipated use of the Faria parcels without review of its impacts, alternatives or mitigations, and without consideration of its full implications for Coastal Act policies.

While the County might argue that its CUP process sufficiently addresses Coastal Act policies, that cannot change the fact that its informal method for including these new uses in the coastal zone is unlawful. Instructive on this point is Gherini v. California Coastal Commission (1988) 204 Cal. App. 3d 699. In Gherini, the County of Santa Barbara actually submitted a proposed LCP provision for certification which would have allowed oil drilling on agricultural lands on Santa Cruz island. The County argued that since it would control such drilling activity through a CUP process, the policies of the Coastal Act would be adequately addressed. The Commission- and ultimately the Court of Appeal- rejected this argument, stating that such an approach would bypass the Commission's review of the overall plan for compliance with the Act and allow local determinations free of the Commission's statewide perspective.

Here, of course, the County has failed to submit any proposed amendment to the LCP. Instead it has attempted to "interpret" existing provisions to include antenna farms as a permitted use, and has "designated" a site by approving numerous CUP's on an add hoc basis. We contend that this approach violates the principle that mandates the Commission to exercise its independent judgment on a proposed local program. Such decisions cannot be completely delegated to local entities where they are likely to be subject to local economic and political pressures which cannot so readily influence the Commission. Accordantly, we contend that an antenna farm cannot be found consistent with the certified LCP because it is neither included nor contemplated by the certified LCP.

EXHIBIT NO. 6
APPLICATION NO. P20f3
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Pacific Bell
Letter from Applicants
Attorney

2. The County has failed to address the cumulative effects of past, present and reasonably foreseeable projects on this site, and its analysis therefore cannot form the basis for any environmental findings by the Commission

As indicated, the County has effectively designated this property as an antenna farm site without proper amendment of its LCP. The environmental review for the project was a negative declaration, which violated CEQA for a number of reasons, including a misleading project description, and a failure to analyze cumulative impacts to coastal resources, wildlife, recreation, and human health. Because the project was inaccurately described, we contend that the statute of limitations on a CEQA challenge to the County's action is at least 180 days from the date of approval. See, Concerned Citizens of Costa Mesa v. City (1986) 42 Cal. 3d 929; McQueen v. Board of Directors (1988) 202 Cal. App. 3d 1136. Furthermore, there is ample precedent that the Commission can and should consider cumulative effects to coastal resources in its permit decisions. Stanson v. Coastal Commission (1980) 101 Cal. App. 3d 38, 48 citing Coastal Southwest Dev. Corp v. CCZCC 55 Cal. App. 3d 525; Whitman v. Board of Supervisors 88 Cal. App. 3d 397, 406-410. This cumulative analysis is important, of course, for purposes of analyzing consistency with Coastal Act policies. It is also important for analysis of the health effects of anticipated emissions from this site. Even if the Commission were to assume that the ANSI standards adopted in the FCA are appropriate and adequate to protect the public health- and of course we, along with the EPA, contend that they are not- unless the Commission insists on emissions figures for the *reasonably foreseeable full buildout of the site*, it has no way to conclude whether the ANSI standard of 1200 mw per cm2 will be triggered. It is our understanding that the County of Ventura is aware of at least fourteen (14) companies which are interested in co-locating at this site.

Accordingly, the Commission need not, and should not presume that the County's environmental analysis was adequate. Based on the current state of the record, the Commission cannot make the required findings as a certified regulatory agency, under Pub. Res. Code Section 21081.5(d)(2)(A) that there are no feasible alternatives and/or that impacts have been mitigated to the maximum extent feasible.

Thus we contend that the Commission must deny the permit and direct the County to come forth with appropriate proposed amendments to the LCP.² The alternative is to acquiesce in the unlawful transformation of this open space parcel to an antenna farm. We submit that this would constitute an abdication of the Commission's oversight role under the statute.. We will provide additional evidence in response to the staff report and at the hearing. Thank you for your consideration of these legal issues.

Sincerely,

Jana Zimmer

EXHIBIT NO. 6
APPLICATION NO.
A-4-VNT-97-068
Pacific Bell
Letter from Applicants Attorney

²Note that the reasonable delay attributable to processing of such amendments would not violate the FCA. See, Sprint Spectrum v. City of Medina (1996) W. Dist. Wash 924 F. Supp. 1036.