

*M 15P***CALIFORNIA COASTAL COMMISSION**

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Staff: RMR-LB *RMR*
Staff Report: 07-15-97
Hearing Date: August 12-15, 1997
Commission Action:



STAFF REPORT: REGULAR CALENDAR

RECORD PACKET COPY

APPLICATION NO.: 5-97-130

APPLICANT: Los Angeles Cellular

AGENT: Leslie Daigle

PROJECT LOCATION: 2801 La Salud, Newport Beach, Orange County

PROJECT DESCRIPTION: Installation of an unmanned radio telecommunications facility in Bonita Park, consisting of a 60 foot high pole, separate underground equipment shelter, an above-ground environmental control cabinet, a cabinet to house an emergency generator, an underground coaxial cable, and one parking space for maintenance purposes. The proposed monopole, with 12 antennas, a microwave dish and field lights, will replace an existing park light pole. The height of the proposed monopole is the same as the existing light pole. The application also includes an acknowledgement that any additions to the proposed monopole will require a permit from the Coastal Commission.

Lot area:	NA
Building coverage:	NA
Pavement coverage:	NA
Landscape coverage:	NA
Parking spaces:	1
Zoning:	NA
Plan designation:	Recreation & Environmental Open Space
Project density:	NA
Ht abv fin grade:	60 feet

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Newport Beach

SUMMARY OF UNRESOLVED ISSUES

This application was scheduled for hearing on the Consent Calendar for July 1997 and was taken off the calendar by the Commission.

Staff has received objections from the law firm of Chevalier, Allen & Lichman representing the Newport North Villas Homeowners' Association and from Dan Rabun, President of the Newport North Villas Homeowners' Association. The objections concern the health and safety aspects of emissions from the proposed telecommunications facility and the visual impact of the proposed development.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified land use plan, Reports from Jerrold Bushberg, Ph.D. dated September 4, 1996 and July 3, 1997, Coastal Development Permit 6-97-20, Letter from Chevalier, Allen & Lichman dated July 7, 1997, Letter from L.A. Cellular amending project dated July 7, 1997, Letter from Chevalier, Allen & Lichman dated July 21, 1997, Letter from Dan Rabun dated July 22, 1997

LIST OF EXHIBITS

1. Vicinity Map
2. Park Plan
3. Project Site
4. Section
5. Viewshed Analysis
6. Antennae & Field Lights Section
7. July 7, 1997 Letter from Chevalier, Allen & Lichman
8. March 6, 1997 Letters from the City of Newport Beach to the Newport North Villas and Newport North Townhomes
9. Letter from L.A. Cellular Amending the Project Description
10. Letter from Dan Rabun dated July 22, 1997
11. Letter from Chevalier, Allen & Lichman dated July 21, 1997

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the proposed development with a special condition regarding the future redesign or removal of the telecommunications facility, a future development special condition, and compliance with a condition to color the pole to match the color of the existing field light poles.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. 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 this permit is reported to the Commission. 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 in the application for permit, subject to any special conditions 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 project during its development, 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.

III. Special Conditions.

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 telecommunication facility, the applicant agrees to make those modifications which would reduce the visual impact of the proposed facility.

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 vegetation. Before performing any work in response to the requirements of this condition, the applicant shall contact the Executive Director of the California Coastal Commission to determine if an amendment to this coastal development permit is necessary.

2. Future Improvements

This coastal development permit 5-97-130 only approves the project as described herein. Any future development, as defined in Section 30106 of the Coastal Act including but not limited to alterations, modifications and additions of equipment by the applicant or another party, shall require an amendment to this permit or a new coastal development permit from the Coastal Commission or its successor agency.

3. Color of Monopole

Prior to the issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director a letter stating that the proposed monopole shall be painted the same color as the existing field light poles.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

The applicants are proposing to remove an existing 60 foot high field light pole at the Bonita Creek multi-purpose recreational community park and replace it with a new pole of the same height with field lights and a microwave dish and antenna arrays for telecommunication purposes. There will be three antenna arrays with four antennas per each array for a total of 12 antennas, plus a proposed four foot in diameter microwave antenna. Associated with the pole is an unmanned 25 foot by 11 foot equipment vault. A minimal amount of grading is required resulting in the removal of some annual grass. A parking space for maintenance purposes will be provided. The development includes a generator and housing which will be used for emergency purposes only. No fencing is proposed with the project.

The main features of the development are the underground vault, the monopole and the antennas. The applicants will remove the existing field light pole and replace it with a monopole of equal height. The following technical specifications were derived from the project plans submitted by the applicant (see exhibit 6). The field light array, consisting of 6 two foot wide lights on a 17 foot long pole, will be replaced at 60 feet above finished grade. The three monopole antenna arrays, consisting of three 12 foot long poles with 4 antennae each, will be placed on the pole at 50 feet above finished grade. The four foot long microwave dish will be placed directly under the antennae arrays. The antenna are each four feet long by one foot wide. The new pole will be two feet in diameter at the top. See exhibits 4 and 6 for visual representations.

The proposed development is located at the northeastern corner of Bonita Creek Park, a multi-use recreational community facility. The park is bounded on the north by University Drive, on the west by La Vida, on the south by La Salud, and on the east by Bonita Creek. Located nearby, north and west of Jamboree Road, is the Upper Newport Bay Ecological Reserve. To the north, south and west are residential communities. The condominium units adjacent to La Salud Street are approximately 930 feet from the proposed monopole (see exhibit 2). Directly across University Drive from the proposed development are high density residential units. There is a maintenance road on the east separating the park from Bonita Creek consisting of a thirty foot easement and two fifteen foot easements, all for water districts. East beyond Bonita Creek are the San Joaquin Hills Transportation Corridor and MacArthur Boulevard.

Bonita Creek Park consists of a parking lot, recreational building, general park open area, and back-to-back baseball fields. The telecommunications pole is proposed to be located in the far right eastern corner of the baseball field, close to University Drive (see exhibit 2). The proposed monopole would be situated 240 feet from the public parking lot, 360 feet from home plate in the softball field, and 390 feet from an existing recreational building. The proposed development is located approximately 930 feet from the residences to the south.

B. Health and Safety Issues

In previous telecommunication projects such as this one, the issue of the safety of emissions has been controversial. At the public hearing for CDP 6-97-20 the Commission expressed concern, relative to this type of project, as to whether radio frequency emissions produced by these facilities pose a health risk to the public. Given the ongoing controversy, the Commission considered whether it 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. At the public hearing for CDP 6-97-20 the Commission decided not to require indemnification because, in the case of wireless communication facilities, federal law precludes the Commission from regulating the placement, construction, and modification of such facilities based upon environmental effects of radio frequency emissions if a facility complies with federal standards.

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 applicant submitted a total of two reports by Jerrold Bushberg, Ph.D., a health and medical physics consultant. The first report concerned radiofrequency radiation emissions from the antennas and the second was in reference to radiofrequency radiation emissions from the microwave dish. The reports were prepared in accordance with the recommendations contained in the Federal Communications Commission, Office of Science and Technology Bulletin 65 (page 8, equation 3) entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation."

In the first report, dated September 4, 1996, the consultant prepared a worst case scenario of radiofrequency radiation exposure and compared these worst case results with the standards set by the Federal Communications Commission, the American National Standards Institute and the National Council on Radiation Protection and Measurement. The current agreed upon standard by these agencies is 579 uW/cm² for continuous exposure at 869 MHz. The consultant reports that in the worst case scenario the maximum exposure from the proposed facility will not result in power densities in excess of 4.2 uW/cm², well below the maximum emissions allowed by the federal standards.

Staff received a letter dated July 21, 1997 from Chevalier, Allen & Lichman concerning the health effects of microwave emissions (see exhibit 11). The letter concerned the placement of a telecommunications facility on the grounds of the El Morro School in Laguna Beach. However, as was stated above, the Commission has no regulatory authority over telecommunications facilities on the basis of the environmental effects of radiofrequency emissions.

The second report, July 3, 1997, was prepared to address concerns that the microwave dish emissions were not addressed in the first report. This report concludes that the microwaves will not be harmful and states that:

The maximum exposure from the microwave portion of this facility will be less than 0.7 uW/cm² (i.e., 0.07% of the public exposure safety standard for microwave frequencies) at 2,941 feet from the base of any sector at the transmission site. ... Exposures closer to or further away from the transmission site, at or below the heights specified, will be lower than the stated maximum given above.

Given the very low levels of radiofrequency/microwave fields that would be generated, even in proximity to this facility, and given the evidence on biological effects in a large data base, there is no scientific basis to contend that harmful effects will attend the utilization of this cellular telecommunication facility.

C. Miscellaneous Objections

1. Letter of July 7, 1997

Prior to the July 1997 hearing in Ventura the law firm of Chevalier, Allen & Lichman, representing the Newport North Villas Homeowners' Association, submitted a letter of objection to the proposed development. In this letter the law firm requested that the item be pulled from the consent calendar because of inadequate notice, the City's and Commission's descriptions of the project differed, the terms of the contract allowed L.A. Cellular to add to the arrays without a permit, the project is located adjacent to an environmentally sensitive habitat area, and the land use plan for the City of Newport Beach gives priority for recreational uses.

The law firm raised objections regarding notice, both at the City and Coastal Commission levels. A City of Newport Beach staff report was provided in the CDP application which states that City staff was directed to notify any affected homeowner associations in the area. Copies of letters dated March 6, 1997 were sent to the Newport North Villas and Newport North Townhomes homeowner associations providing a description of the project and offering to make a presentation (see exhibit 8).

The opponents' objections were formulated with the aim of having the item removed from the consent calendar and placed on the regular calendar to allow a full public hearing. The Commission did remove the item from the consent calendar. Objections raised in the Chevalier, Allen & Lichman letter of July 7, 1997 concerned inadequate notice and differing or inadequate project descriptions. The applicants' mailing list was adequate and homeowners within 100 feet of the parcel boundary did receive notice of the proposed development. Specifically, the July 7, 1997 letter from Chevalier, Allen & Lichman acknowledges receiving notice by stating:

In this case, the "Important Public Hearing Notice" received by Dan Rabun, President of the Association on June 26, 1997 describes the Project as:

The project description in the letters from the City to the homeowners was more comprehensive than the description in the public notice sent by the Commission. That is because the project description on the public notices sent by the Commission is a summary not a comprehensive project description.

In response to their concerns that the L.A. Cellular contract allows co-location of other equipment on the proposed pole without a Coastal

Commission permit, this permit includes a special condition requiring that any modifications or additions to the approved development requires either an amendment to this permit or a new coastal development permit.

In regard to their final two concerns, the development is separated from the Bonita Creek riparian area by a 30 foot easement and two fifteen foot easements. There will be no adverse impacts to the Bonita Creek riparian area. Additionally the development is located in an established multi-use recreational park area and will not result in any native or riparian vegetation being directly impacted by the development. Finally, the development is located in the far right field corner of the baseball field, will replace an existing light pole adjacent to University Drive and will not have any adverse impacts on the use of Bonita Creek park as a recreational facility.

D. Scenic and Visual Resources

Section 30251 of the Coastal Act states:

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, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed development is located in a community park adjacent to the Upper Newport Bay Ecological Reserve to the north and Bonita Creek to the east. The surrounding land uses consist of residential, open space, roadways and the Upper Newport Bay Ecological Reserve. Further to the east is the University of California at Irvine campus.

With the popularity of cellular technology has come a major increase in the number of applications for telecommunication monopoles. The perception of the visual appearance of telecommunication monopoles is subjective. Generally speaking, however, it is safe to conclude that a stand-alone 60 foot pole sprouting antennae can have a major visual impact, depending on its location and the nature of the surrounding development.

1. Potential Visual Impacts

The Commission's concern is with the potential visual impact of the proposed development upon public scenic resources. In this case, the primary public scenic resource is the Upper Newport Bay Ecological Area. Possible viewsheds of concern are the views from nearby roadways, University, Jamboree, MacArthur and the San Joaquin Hills Transportation Corridor, to the Bay. In addition, the Commission is concerned with the potential visual impact of development from the Upper Newport Bay Regional Park looking south and east at the bay. The proposed development will be located in the line of sight of the residential condominiums on Salud looking north towards the Bay. However, private views are not a Coastal Act issue. Also, Bonita Creek Park is an

active recreational park and was not created because of the views or overlook potential. Directly north of the park is a high density housing development which completely blocks views of San Diego Creek and the Bay from the park.

In a letter dated July 22, 1997 (Exhibit 11) Dan Rabun states that the proposed development will have an adverse visual impact because the proposed pole is larger than the existing light poles, the proposed pole will have climbing spikes, questions the specifications for the size and spacing of the antenna arrays and microwave dish, and adversely impacts views on MacArthur Blvd. heading south past University Drive.

The data on the technical specifications of the proposed development, i.e., the size of the antenna, microwave dish, and diameter of the pole, were taken directly from the plans submitted by the applicant. In his letter of objection, Dan Rabun asserts that these technical specifications are not correct. However, if the information on the plans is not correct, then according to special condition two, the applicants will have to amend their project. The proposed telecommunications facility pole will not be an exact duplicate of the existing field light poles, however, in order for the development to have an adverse visual impact it must be in a location where it obstructs or interferes with public views.

The area around Upper Newport Bay is a highly scenic area, particularly for persons looking west while travelling on MacArthur Boulevard or the San Joaquin Hills Transportation Corridor. Exhibit 5 shows a map of the area and the viewshed vantage points. On a site visit staff determined that the proposed development would not be visible to traffic going north or south on Jamboree Road. The development would not be visible for traffic heading west along University until after the road overpass at MacArthur. On the western side of the southbound lanes of the MacArthur Road overpass at Bonita Creek there is a 10 to 12 foot high sound wall which extends south for at least one-quarter of a mile. In addition, there are a series of four utility poles along MacArthur Road adjacent to Bonita Creek which are several feet in diameter with climbing spikes and resemble telecommunication poles without the antenna.

Bonita Creek Park is located south of Upper Newport Bay and is not in the line of sight of the bay for passengers travelling along MacArthur Boulevard and the San Joaquin Hills Transportation Corridor. Many people hike, run and bicycle along the pathways adjacent to University Drive along the Upper Newport Bay Ecological Reserve. The proposed development is located landward of University Drive and would not interfere with views of the bay from University Drive.

The proposed development would be visible to motorists heading south on MacArthur and the San Joaquin Hills Transportation Corridor, however the main focus points are the car dealership being constructed east of Jamboree, the new housing adjacent to San Diego Creek across University Drive from Bonita Creek Park, and the views to the bay. The proposed development is outside the line of sight of these features. The view of motorists travelling north on MacArthur would be limited by the 10-12 foot high sound wall on the western side of the road parallel to Bonita Creek. Once beyond this sound wall the proposed development would not be visible and would not obstruct views to the bay.

The northern portion of the uplands adjacent to the Upper Newport Bay Ecological Reserve contains the Upper Newport Bay Regional Park which will include a major interpretive center. The park and monopole will not be visible from the proposed interpretive center. Between the park and the bay is a high density residential development complex which effectively blocks views of the development from the northern side of upper Newport Bay. The monopole might be visible from the Santa Ana Heights Trail which runs from the Santa Ana Delhi Channel to Jamboree Road, however it would not be a significant visual impact because of the presence of the housing project.

2. Site Selection

Because of the perceived adverse visual impact of many of these telecommunication poles, many local government agencies, as well as the communication companies themselves, have begun to search for innovative approaches to monopole location and design. For instance, the Commission approved CDP 5-95-263 for the construction of a cupola, containing antennas, on top of an existing bathroom building in Crystal Cove State Park. It is completely unobtrusive and has virtually no visual impact. Another way to address the spread of monopoles is to cluster them or co-locate several companies at a given site.

In this case the telecommunications company has selected a siting option which takes advantage of existing development. At the perimeter of the baseball field at Bonita Creek Park are a series of 14 light poles for nighttime recreational use of the field. The applicants propose to remove one of the poles and replace it with a pole of their own of identical height, put a light array on it, and place the three antenna arrays and microwave array on the pole beneath the lights.

Blending the telecommunications pole in with the other field light poles will minimize any adverse visual impacts that installation of a stand-alone 60 foot high pole might have. Other portions of the proposed development, including the underground equipment shelter and above ground cabinets will not be visually obtrusive.

The proposed pole itself will have minimal adverse visual impacts because one pole is being replaced with another, assuming a compatible color scheme. Each pole will have a field light array. The difference is the three antenna arrays and the one microwave dish. In addition, Section 30251 of the Coastal Act calls for the protection of the scenic and visual qualities of coastal areas and that development shall be sited and designed to protect views. Bonita Creek Park is located inland of the Upper Newport Bay and adjacent to the San Joaquin Hills-MacArthur Boulevard roadways. Scenic views of the bay from University and Jamboree will not be impacted by the proposed development. The area around MacArthur Boulevard at San Diego Creek has become increasingly developed with the San Joaquin Hills Transportation Corridor, the Fletcher Jones car dealership off of Jamboree and high density housing adjacent to Bonita Creek. In addition, there are high rises located on the northern portion of the upper bay adjacent to Jamboree.

Staff contends that the proposed development would be located in a peripheral location and would not have significant adverse visual impacts on the scenic and visual quality of the Upper Newport Bay area. Staff contends that the primary visual impact would be from the pole itself and that the antenna

arrays and microwave dish, although visible, will not have enough of an adverse visual impact to find non-conformance with the Chapter 3 policies of the Coastal Act regarding protection of scenic and visual quality.

Because of the rapid pace of technology and advances in telecommunications equipment design, the proposed technology may become obsolete. Therefore, the Commission finds that when the proposed equipment becomes obsolete and is no longer viable, that it be removed and the Executive Director be queried as to whether a CDP or amendment would be required to restore the site to its original condition. The Commission also finds that in order to make the proposed pole compatible with the existing field light poles, the proposed pole shall be painted the same color as the existing field light poles. In addition, in order to ensure that future additions to the monopole do not occur without Coastal Commission review, the applicant shall be conditioned to agree that any future additions or changes will require an amendment to the permit or a new coastal development permit.

Only as conditioned does the Commission find the proposed development is compatible with surrounding development, minimizes landform alteration, and conforms with Section 30251 of the Coastal Act.

E. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. As conditioned the proposed development is consistent with the policies contained in the certified Land Use Plan. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program [Implementation Plan] for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Section 30251 visual and scenic policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



EXHIBIT NO. 1
APPLICATION NO.
5-97-130

VICINITY



California Coastal Commission

**CALIFORNIA
COASTAL COMMISSION**


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NO. 2
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EXHIBIT NO. 2
APPLICATION NO.
5-97-130
SITE PLAN

 California Coastal Commission

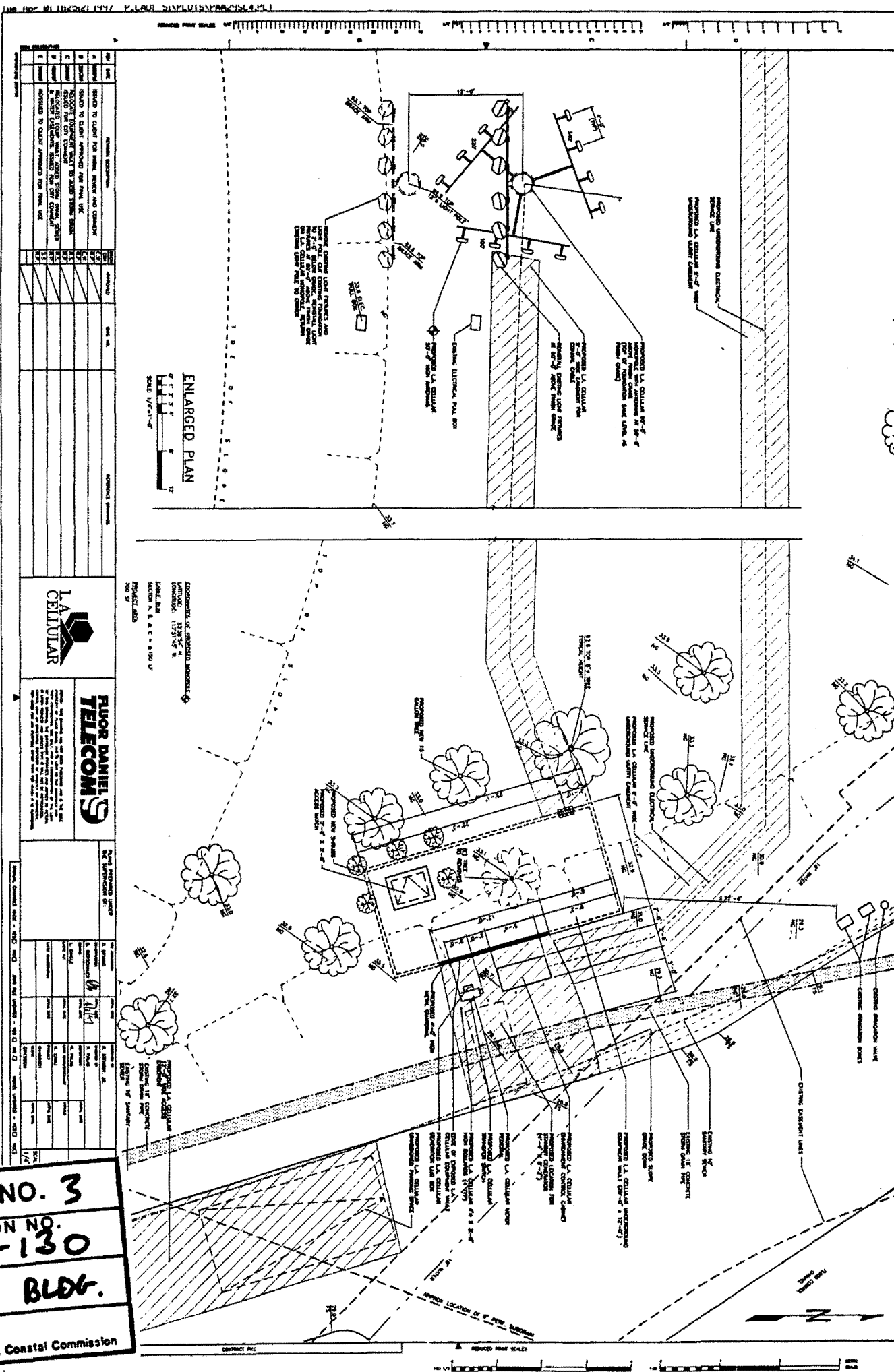
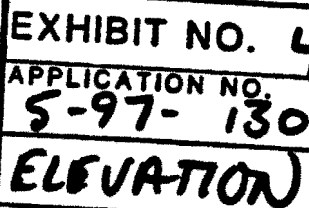


EXHIBIT NO. 3
APPLICATION NO.
6-97-130
EQUIP. BLDG.





SEE 859 MAP

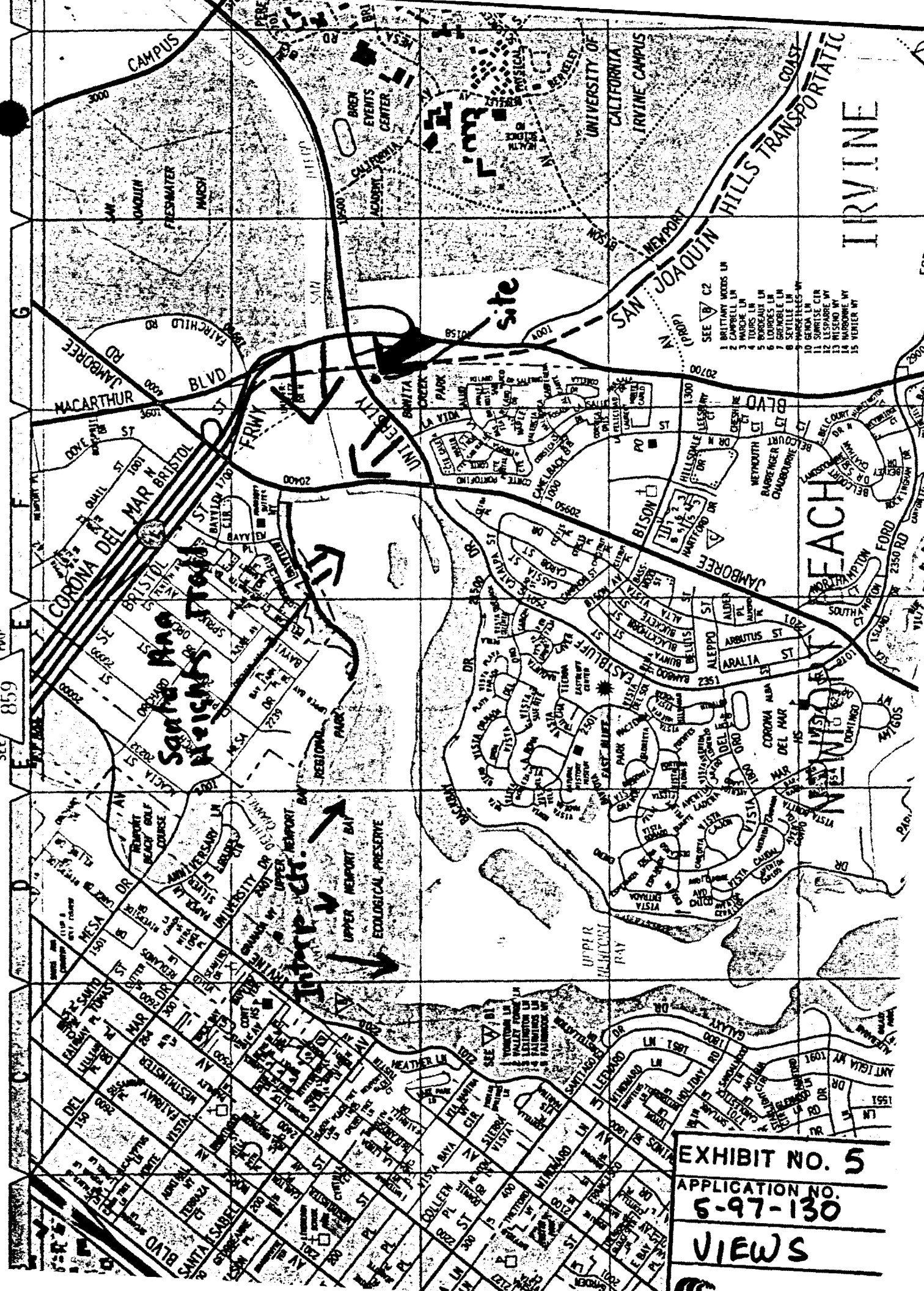

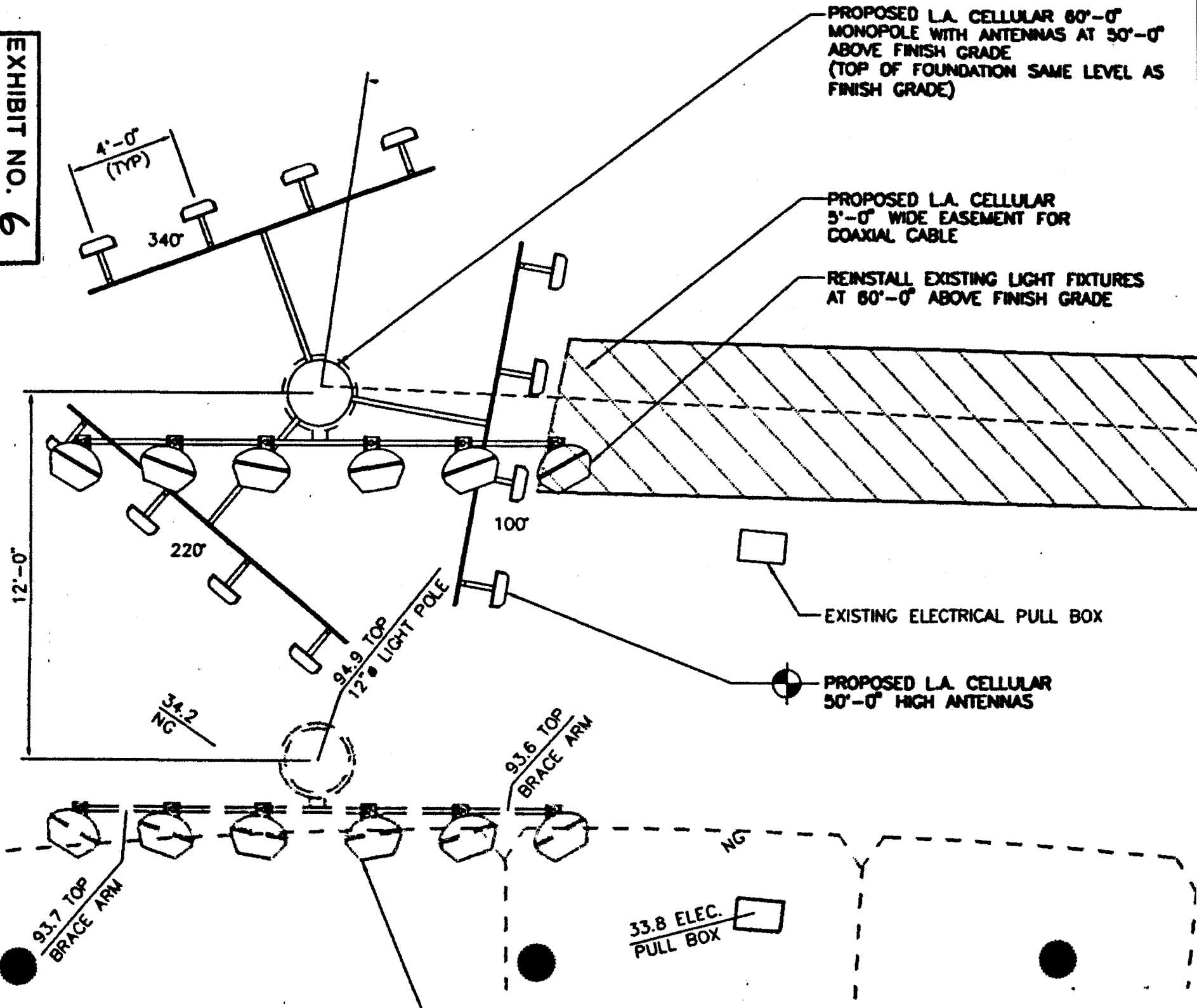


EXHIBIT NO. 5
APPLICATION NO.
6-97-130
VIEWS

 California Central Commission	EXHIBIT NO. 6
	APPLICATION NO. 5-97-130
	Antenna





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July 7, 1997

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Re: Application for Coastal Development Permit No. 5-97-130 -
Installation of Radio Telecommunication Facility in
Bonita Creek Park, Newport Beach - Objections of Newport
North Villas Homeowners Association and Request for Removal
of Application from Consent Calendar for July 9, 1997

Dear Mr. Maloney-Rames:

We represent the Newport North Villas Homeowners Association ("Association"), which includes 159 single-family homes in the City of Newport Beach ("City"). The Association hereby objects to the approval of Coastal Development Permit No. 5-97-130 ("Application") for the installation of an unmanned telecommunications facility by Applicant L.A. Cellular ("L.A. Cellular"), consisting of a monopole containing 12 cellular antennae, a microwave antenna and field lights, and a separate equipment shelter ("Project"). The installation will be located in Bonita Creek Park, an active recreational facility which includes Bonita Creek, the designated open space area surrounding it, and is in close proximity to the single family residences of the Association's members. The Association further requests that the Coastal Commission ("Commission") remove the Permit Application from the Consent Calendar at the above meeting, and continue it for further detailed consideration.

EXHIBIT NO. 7
APPLICATION NO. 5-97-130
OBJECTIONS
7-7-97 California Coastal Commission

The Association's objections and requests are made on the following grounds:

A. The Coastal Commission hearing has not been adequately noticed.

1. There has not been adequate descriptive notice as required by 14 C.F.R. § 13025.¹

Commission Guidelines § 13025 requires the Commission refrain from voting "upon substantive or policy matters of general importance, including permit applications, when adequate descriptive notice has not been given as part of the required notice of the meeting."

In this case, the "Important Public Hearing Notice" received by Dan Rabun, President of the Association, on June 26, 1997 describes the Project as:

"Installation of an unmanned radio telecommunications facility in Bonita Park, consisting of a 60 foot high pole and separate underground equipment shelter. The proposed monopole [sic], with 12 antennas [sic], a microwave antenna and field lights, will replace an existing park light pole. The height of the monopole is the same and the previous light pole."

However, this description conflicts with the Project description contained in a letter to the Association from the City, dated March 6, 1997 (a copy of the City letter is attached as Exhibit "A" to these objections).² In that letter, the Project is described somewhat differently. For instance, the height of the proposed monopole is described as 70 feet, not 60 feet, an 18%

¹ All reference to the Coastal Commission regulations contained in 14 C.F.R. § 13001, *et. seq.*, shall hereafter be referred to as "Commission Guidelines".

² The Association would certainly have raised these concerns earlier, except for the fact that the March letter in question was sent by the City to a management company that is defunct, and no longer handling the Association's business. Thus, the letter did not reach the Association in time to make such comments. And even if, for argument's sake, it had been properly served, the letter contains no dates for hearings at either the Commission or the City which would have enabled the Association to ascertain the time needed for comment.

Robin Maloney-Rames
Coastal Program Analyst
July 7, 1997
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difference. Moreover, the City's letter acknowledges that the equipment shelter will not merely be "separate" or "underground", but will also be accompanied by above ground fixtures, notably a 4' x 9' cabinet, housing an equipment generator and a 3' x 4' manhole to allow access to the generator. Both will unavoidably change the visual character of that area of the park. The Commission Notice says nothing of these above ground features.

Clearly, there is a discrepancy between the Project as noticed by the City, and that noticed by the Commission. Such a discrepancy is misleading to the recipients of notice and makes it impossible for them to determine the true nature of the Project. Descriptive notice is, therefore, inadequate, and requires that the Commission refrain from voting on the Permit Application, at a minimum until adequate notice is forthcoming.

2. There is no evidence of adequate posting of notice as required by Commission Guidelines § 13054(b).

Commission Guidelines § 13054(b) require, in pertinent part, that an applicant post "at a conspicuous place, easily read by the public, and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the Commission." Absent such notice, as well as the signing of a Declaration of Posting, verifying that posting actually took place, "the Executive Director of the Commission shall refuse to file the Application, or shall withdraw the Application from filing if it has already been filed when he or she learns of such failure."

Here, there is no overt evidence at, or in any reasonable proximity to, the site, of any required posted notice. The Association has been unable to locate any party that can attest to having seen such posted notice. Due to the short time frame between the Association's receipt of the Commission's Notice and the date of the hearing, it has been unable to verify such posting through access to Commission documents including the required Declaration of Posting. In short, the Association is as yet unaware of any evidence in the record indicating that the requisite posting has taken place. Without such evidence, the Commission should withdraw the Application from consideration.

B. The impact of the Project is not "de minimis", and, therefore, the Permit Application does not belong on the Consent Calendar.

Only Permit Applications "which in the opinion of the Executive Director of a Commission are de minimis with respect to the purposes and objectives of the Coastal Act of 1996" may be scheduled on the Consent Calendar. Commission Guidelines, § 13100. In this

case, at a bare minimum, there are significant questions raised by the Commission's Notice of Hearing a mere 11 days ago, concerning the severity of the Project's impacts, and indicating that they may indeed be far more than de minimis.

1. The Staff Report does not contain an adequate analysis of the environmental impacts of the microwave antenna.

The Commission Staff Report purports to go into some detail concerning potential radio frequency radiation emissions from the Project. However, the discussion is limited to the impacts of the 12 cellular antennae, and completely omits any discussion or analysis of the characteristics of the microwave antenna, including, but not limited to, radio frequency of transmission, power output, and function and description of operation. These facts are a critical predicate to any analysis of the potential impacts of the Project, as without that information, it is impossible to ascertain whether the facility will be operating in excess of the maximum level covered by Federal Communications Commission ("FCC") guidelines for human exposure to radio frequency radiation.

However, even without an in-depth assessment, some major issues can be isolated at this point. First, there is a potential issue of Electromagnetic Interference ("EMI") in what is commonly known as the "back course" from John Wayne Airport. The "back course" is a flight path which is used rarely, but in which the Federal Aviation Administration ("FAA") refuses to allow such interference. Before the tower is located, the EMI problem must be assessed, not only by our experts, and those of the Applicant, but by the FAA as well.

Second, the assertion in the Staff Report and accompanying study that there will be no noise, fumes or smoke, cannot be accurate, insofar as the Project design calls for a standby engine which will inevitably generate some level of noise, fumes or smoke, particularly in the region of the exhaust vent. In addition, that vent may also be quite hot. Fuel, gasoline or diesel for the engine will need to be stored which raises unanswered questions about tank safety, location, fumes and venting. Third, this facility will require substantial power, in addition to that provided by the on-site generator, which will have to come onto the site in some fashion. If it comes from overhead lines, this could cause visual, radio frequency emission and other environmental impacts.

Finally, from a visual standpoint, this tower will be extremely intrusive, not only because of its height, and the substantial array of antennae which will be required, but also because of the need to fence for safety reasons to separate people and the engine and wiring and other potential hazards.

2. The Appendix to the Staff Report does not analyze the environmental impacts of the microwave antenna.

Attached to the Staff Report is a study, performed by Jerrold T. Bushberg, Ph.D., apparently on behalf of the Applicant, L.A. Cellular, which the staff construes as an analysis of the maximum exposure to radio frequency radiation which will be caused by the Project. The report, however, deals only with the exposure that will result from a portion of the Project, that resulting from the 12 cellular antennae, and omits any analysis of the radiation exposure, if any, that will result from the microwave antenna. The microwave antenna, despite the absence of any discussion of it or its characteristics in the Staff Report, must be assumed to be a significant component of the Project, if for no other reason than that the City opines that the light pole must be replaced to accommodate, not the cellular antennae, but the microwave attachment.

Further, even if, for argument's sake, the study had included the impacts of the microwave antenna, the notice of the hearing given to the Association did not provide sufficient time for the Association to obtain its own analysis of the accuracy of the report's assumptions and conclusions. In fact, the Association was not given the consultant report, or the Staff Report to which it was attached. Rather, the Association had to spend additional time obtaining the study and report, which allowed even less opportunity for an independent analysis.

In short, more time is required for an analysis by the Association and the Commission of the Report's completeness and accuracy. Until such analysis is concluded, the hearing on the Application should be continued.

3. Due to a "co-install" clause between the City and L.A. Cellular, the Project is not limited to that described in the Staff Report, but, rather, the Project and its impacts are open ended.

The subject telecommunication facility is apparently being installed pursuant to a lease between the City and L.A. Cellular. That lease contains a clause which requires the parties to allow other commercial telephone service providers access at the same cost to install their antennae on the same pole.

This clause raises important questions about the true scope of the Project. For instance, is it feasible, or even possible, to add more antennae and/or microwave devices to the same pole? If not, will additional poles be required, thus further impacting the visual and recreational resources of the park? Even if additional poles are not required, will the addition of more equipment on the same pole increase radiation or other toxic impacts on human beings? Will the

Robin Maloney-Rames
Coastal Program Analyst
July 7, 1997
Page 6

addition of such new equipment be subject to new approvals by the City and/or Commission? If not, how will the impacts be assessed and controlled?

These are but a few of the major questions raised by the specter of numerous companies in the decontrolled cellular telephone industry demanding the same access as currently enjoyed by L.A. Cellular. None of these questions have as yet been answered, or even addressed, nor will they have been by the time of the hearing on July 9. At a bare minimum, the Commission should consider the addition of a special condition on the Application, requiring Commission approval for added equipment installation. This cannot be done if the Permit Application remains on the Consent Calendar. Therefore, the Application should be removed from the Consent Calendar for consideration of the addition of these, and other, additional restrictions on the Project.

4. The proposed Project is located in an area designated by the 1985 Newport Beach General Plan as an environmentally sensitive habitat area.

The proposed Project is located in Bonita Creek Park, an area bordering, and in some places including, Bonita Creek, a stream, surrounded by wetlands, and flowing into upper Newport Bay Ecological Reserve, itself an environmentally sensitive habitat area. The Newport Beach General Plan Recreation and Open Space Element ("Open Space Element") designates the Bonita Creek Park area as an Environmentally Sensitive Habitat Area ("ESHA") (Newport Beach General Plan Open Space and Recreational Element, Exhibit 3)³

The Coastal Act mandates with respect to the protection of ESHAs are unequivocal.

"Development in areas adjacent to environmental 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." Public Resources Code § 30240(b).

³ The Open Space Element was certified in 1985 by Resolution 85-7 of the Newport Beach City Council. Amendments may have since been made, although the short time frame between Commission notice and the time of the hearing makes any certainty in that respect as yet impossible. What is certain is that Bonita Creek continues to flow in its natural course in and around the site, and surrounding wetlands remain intact as they were in 1985.

In this case, the proposed Project could hardly be less compatible with either an ESHA or a recreational area. As a threshold matter, it has not yet, as set forth above, been definitively determined the extent to which the Project will environmentally degrade the surrounding area with radio frequency emissions. What is certain at this point is that the proposed Project is totally incompatible with both the habitat of the creek and the recreational facilities that have grown up in proximity to it. It occupies space that would otherwise be devoted to recreation for humans, or the natural state of animals and plants. Both are protected by the Coastal Act, and far more consideration must be given to possible impacts on sensitive environmental values than the opportunities afforded by the Consent Calendar allows.

5. The proposed Project contravenes the Local Coastal Program which gives priority to recreational facilities.

The Local Coastal Program/Land Use Plan of the City of Newport Beach ("LCP") establishes policies which, among other things, require that suitable land be reserved for low cost recreational facilities, and that such facilities be given priority over other uses (LCP, p. 2). The proposed Project is in an area set aside for a community park, and dedicated to recreational uses within the coastal zone. While this park may not be the classic example of a coastal recreational or visitor serving facility, it is nonetheless located in the coastal zone, in an ESHA, and in close proximity to the Back Bay ESHA. Thus, it is protected by all the constraints imposed upon recreational and environmentally sensitive areas within the coastal zone.

Nevertheless, L.A. Cellular seeks to locate within this environmentally sensitive area, dedicated to the recreation of children, a facility that will not only adversely impact the esthetic nature of the natural surroundings, but could pose a danger to the very people who were originally intended to use the facility, i.e., those children. At this point, it is impossible to determine with accuracy what that danger may be. It is certain, however, that a heavy pole containing, at minimum, 12 cellular antennae and one microwave antenna, and supporting generators, motors, gasoline and other support equipment cannot but degrade the character of the entire area. To approve the Project without a thorough investigation of what these impacts may be would fly in the face not only of the Newport Beach General Plan and LCP, but also of the Coastal Act and its protections.

In light of the above issues, the Association requests that the consideration of the Application be removed from the Consent Calendar for July 9, 1997, and that it be put over for a full hearing at such a later time as will allow full consideration of the potential impacts of the

Robin Maloney-Rames
Coastal Program Analyst
July 7, 1997
Page 8

proposed project. The Association thanks the Commission in advance for its cooperation in complying with this request.

Sincerely,


Roger P. Freeman

RPF/sb

cc: Newport North Villas Homeowners Association



CITY OF NEWPORT BEACH

March 6, 1997

Newport North Villas
c/o Carol Lite
Marquiw Management Group
3009 Daimler Street
Santa Ana, CA 92705

Dear Ms. Lite:

NE corner of park *Bonita Creek* *cellular*

Post-It® Fax Note	7671	Date	# of pages
To <i>Teresa Henry</i>		From <i>Peggy Ducey</i>	
Co./Dept.		Co.	
Phone #		Phone #	
Fax # <i>562-590-5084</i>		Fax #	


As the contact person for Newport North Villas, I am contacting you about a recent proposal by L.A. Cellular to construct a telecommunications facility in Bonita Creek Park. Attached are pictures of the proposed project. City staff has been working with L.A. Cellular to develop a facility that will minimize the visual impact on the community, while providing the technical link the company needs for its cellular services.

L.A. Cellular has proposed to lease a portion of Bonita Creek Park to construct a telecommunications substation consisting of a 12' x 28' underground vault and a cellular microwave antenna mounted on a light pole. The vault will be located in the northeast corner of the park, next to the existing baseball field. The underground vault will have only a few above-ground fixtures, including a 3'x4' manhole to allow for access to the underground vault, a 4'x9' cabinet that would house an emergency generator, and an electrical meter. Routine maintenance of the vault equipment is expected to be about twice a month. The facility does not generate any noise, nor emit fumes, smoke or odors.

The facility would also include a microwave antenna mounted on the existing 70' light pole at the baseball field. L.A. Cellular will replace the existing light pole with a new pole that would match the other lights in appearance, but can accommodate the weight of the microwave attachments. Once the pole is replaced, the existing light fixtures would be attached to the new pole. No new lighting will be added to the park.

The City wants to inform the residents in the surrounding area of the proposed project before the Council takes final action on the project. The City and L.A. Cellular would be happy to attend your next Association meeting to

City Hall • 3300 Newport Boulevard • Newport Beach, California 92663

EXHIBIT NO. 8
APPLICATION NO. 5-97-130
NOTICE LETTERS
 California Coastal Commission

answer any questions you might have about the project. Please contact me at (714) 644-3002 if you wish further information.

Sincerely,

P. Ducey
Peggy Ducey
Assistant to the City Manager



CITY OF NEWPORT BEACH

March 6, 1997

Newport North Townhomes
c/o Diana Wright
2 Corporate Park, #200
Irvine, CA 92714

Dear Ms. Wright:

As the contact person for Newport North Townhomes, I am contacting you about a recent proposal by L.A. Cellular to construct a telecommunications facility in Bonita Creek Park. Attached are pictures of the proposed project. City staff has been working with L.A. Cellular to develop a facility that will minimize the visual impact on the community, while providing the technical link the company needs for its cellular services.

L.A. Cellular has proposed to lease a portion of Bonita Creek Park to construct a telecommunications substation consisting of a 12' x 28' underground vault and a cellular microwave antenna mounted on a light pole. The vault will be located in the northeast corner of the park, next to the existing baseball field. The underground vault will have only a few above-ground fixtures, including a 3'x4' manhole to allow for access to the underground vault, a 4'x9' cabinet that would house an emergency generator, and an electrical meter. Routine maintenance of the vault equipment is expected to be about twice a month. The facility does not generate any noise, nor emit fumes, smoke or odors.

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The City wants to inform the residents in the surrounding area of the proposed project before the Council takes final action on the project. The City and L.A. Cellular would be happy to attend your next Association meeting to

City Hall • 3300 Newport Boulevard • Newport Beach, California 92663-3884



Los Angeles Cellular Telephone Company

July 7, 1997

Mr. Robin Maloney-Rames
State of California
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

Re: Los Angeles Cellular 5-97-130
Future Modification

Dear Mr. Maloney-Rames:

The approval for Coastal Development Permit no. 5-97-130 will be before the Coastal Commission as a consent calendar item on Wednesday, July 9, 1997.

LA Cellular wishes to amend the project description as follows:

Any future modifications including, but not be limited to, the addition of antennas or additional height will require an amendment to the Coastal Development Permit 5-97-130, or a new Coastal Development Permit. This shall be applicable to all proposed modifications, not limited to L A Cellular.

If you have any questions, or require any additional information, please do not hesitate to contact my office at (310) 468-6132 or Holly Sandler at (714) 669-9194.

Thank you in advance for your assistance.

Respectfully,


Leslie Daigle
Government Relations

cc: Holly Sandler, J.L. Hare Associates

P.O. Box 6028, Cerritos, California 90702-6028 (310) 9

EXHIBIT NO. 9
APPLICATION NO. 5-97-130
Letter Amending
Project
California Coastal Commission

July 22, 1997

Robin Maloney-Rames
California Coastal Commission
South Coast Area
245 West Broadway, Suite 380
Long Beach, CA 90802-4416

(562) 590-5071 fax (562) 590-5084

Ref: LA Cellular Application 5-97-130.

The purpose of this letter is to present the reasons why the above application should be denied. Information is arriving daily providing more education to me on the technical issues involved with the proposed installation. I will forward additional significant information to you as it becomes available, and I will be appearing at the upcoming meeting to make a complete presentation.

1. I don't know if public opposition is a concern you recognize, but we have sent out a petition asking for this tower to be located somewhere else more suitable. As of today, we have received back 131 out of the 159 homes in our development (83%), plus at least 100 more from the apartments and town homes in Newport North, Bayridge and Belcourt. This is a tremendous response. We are also pursuing our City Council to reject this installation. We have a hearing with the Finance Committee tomorrow.
2. This structure will have a very significant visual impact on the public view in what your staff report says is a highly scenic area.
 - a. The structure will be very much more significant than what is shown on the drawings and described in the application. The structural engineering design for these towers, which must be for maximum seismic rating, essential service factor increase, and using criteria for a flexible structure, will result in a tower of 60' as having a 3 to 4 foot diameter pole, most likely of polygon cross section. This is what I have seen on similar towers in my area. This tower will also most likely have climbing spikes, and a flanged joint near mid height. This is in contrast to the existing light pole, which is 12 7/8 " outside diameter pipe at the bottom and tapers to 6" outside diameter pipe at the top. These light poles are tall, sleek, and slender. The LA Cellular tower will not be. There are 14 matching poles now in the park, with this tower, there would be 13 matching and one sore thumb. LA Cellular has provided no detailed specifications on the pole, it could be worse than what I have described.
 - b. The attached notes, which we received from your files, demonstrate the inaccuracies on which you have had to rely on to date, absent detailed and construction-ready drawing or specifications on the tower, antennas, and microwave unit. Staff stated at the last meeting that whatever was on the

EXHIBIT NO. 10
APPLICATION NO. 5-97-130
LETTER
DAN RABUN

drawings would be enforced as to what is actually built. The problem with that is that the drawings and specifications are so vague and undetailed that virtually anything could be built and still comply with these concept drawings. I believe that you have the obligation to request that the Applicant produce detailed drawings so that a proper review can be made. These hand notes say 2½ feet between antennas. No where on the plans is the call-out for the model of antennas to be used, but using the ones referenced in Dr. Bushbergs' report, I called Decibel Products in Dallas and spoke to Ed in Engineering, who reported to me that minimum spacing on these antennas is 5 feet, therefore, the antenna arrays are not 12 feet long as indicated in the notes, but 20 feet. The notes say the existing light fixture is 17 feet long (6 lights, 2' wide each, 2' between lights). I went to the City of Newport Beach today and looked at the drawings, and confirmed by looking at the actual lights. The reality is that the lights are 2' on center, so that the overall fixture is 10 feet long. Therefor, instead of the lights at 17' and the antennas at 12', the reality is the opposite, lights at 10' and antennas at 20'. The antennas will also be mounted at some unknown distance out from the tower, which I assume to be at least 9 feet. Therefore, the antennas will be significantly more prominent than the existing lights.

- c. There is no detail on the microwave unit at all, and the representation on the drawings appears to me to be understated. The impression is created in the application that this is a dish, like a satellite dish. The truth is that these are typically quite thick, 1-2 feet, and look more like military radar units.
 - d. There have been on every other tower I have seen, any number of spiky protuberances and odd antennas, as well as cables, wires, u-bolts structural members, and miscellaneous things.
 - e. The artists renderings that were provided to us (I don't know if you got them or not) are very misleading for the above reasons, but also because they show very small antenna arrays on the existing pole, which will not be the case.
 - f. Every one of these things I have seen, looks very militaristic and threatening, something from out of this world, and nothing at all like the existing light poles in the Park.
3. This tower will be visually prominent in the public view of coastal areas, even though it is proposed to be installed on a pole of similar height to the existing light poles. It will be out of context with the surrounding areas, which are residential, open space park, Back Bay, natural creeks, and protected habitat wetlands.
- There is a new "postcard" view from the new 73 heading south just past the University exit, as you come out of a low section of the freeway by the airport, and go up high, and look west into the alignment of the Bonita and San Joaquin Creeks as they become the Back Bay. As your eye pans across, you see the green and trees of Bonita Creek Park, the hills of Newport Beach, the Downcoast Newport Coast Hills, and the UC Irvine campus.. This is a highly scenic area as you leave the congestion of the "city" and enter

the Coastal Area. OOPS! Right in the middle of this panorama, up close in your field of view, right along the road, is this proposed tower, standing out from all the rest! Try it once or twice for yourself. This spot is the gateway to the Newport Beach Coastal areas and the Back Bay which everyone visiting or living in our area will see as they drive on the 73 from the airport or the 405. Any prudent person would assure that the entrance to their home makes the best impression. I don't know exactly where the Coastal Zone boundary is, but I'll bet it is right in this area. This magnificent public view will be forever marred by this tower. In this "mother of all planned areas", famous all over the world for the skill of our developers and planners, we have to be better than this at leaving behind a more beautiful and useful place than we found. We live in this area of Newport Beach (and the Coastal Zone), and pay the extra price to have our utility lines underground. There has to be a better place to locate this tower. In fact, we need to get after the powers that be, to put all the overhead power lines in this viewshed underground.

4. The Coastal Commission is the conservator of the publics' enjoyment of Coastal areas and views. Your goal should be to "do no harm", and hopefully, leave things a bit better than you found them. If you approve this tower on the grounds that the incremental negative visual impact will be minimal, it will be a step in exactly the wrong direction, and a step down the slippery slope of incremental degradation. If you cut down only a few trees at a time, at some point, the forest begins to not look like a forest anymore.
5. We are informed that trees will interfere with the radiation signals from the tower. Probably true, since I've never seen one of these except in clear space. Does that mean that all the trees in the park and in the University Ave. median and in the adjacent Bonita Creek Wetlands protected habitat will have to be topped off and maintained below the antennas? We have all been waiting on the trees in the park to grow up and shield the lights and recreation facilities from view. A park is supposed to have big beautiful trees, what now? Does the Commission have a duty to protect these trees, some of which are in the protected wetlands.
6. The Contract with LA Cellular (and Section 704 of the new Federal Telecommunications Act of 1996) says the Commission must allow any other cell phone provider to add equipment at the same site (this is called co-location). This could mean on the same pole, or it could mean more towers. This tower is for the common analog type cellular phones, however a separate digital system (which uses 21 added antennas) is very likely to added soon, as well as the new PCS system with its own antennas, and who knows what else. As the usage increases on the cellular system, more and more towers will be required, or more antennas on the existing ones. The pressure to expand operations and equipment on the existing towers will be great. Once the tower is in, it is much more difficult to draw a line and say no more, and there will have to be controversy after controversy. Can you believe that other wireless providers won't be there in short order? In fact, there are 14 existing light poles in Bonita Creek Park. Let's see, that means one for LA Cellular, one for Air-Touch, one for ATT, one for McCaw, one for Prime Matrix, one for Pacific Bell, one for NexTel, one for NextWave, and six for any others! How could you argue when it was too much?

7. What is the Commissions Policy on evaluating these things. Looking at each one Ad Hoc is a dangerous way to proceed. No policy means a good chance of setting dangerous precedents, and the 1996 Federal Telecommunications Act will be used continue those bad precedents The Commission should step back and develop a policy first.. I see no demonstration of harm to LA Cellular if this tower is delayed or not approved. In fact, what is the need for it?
8. Have other alternatives been considered, less prominent in the public view? There is a new commercial/research area being graded across Jamboree. Something like that is not near homes. In fact, I believe that there are over 1000 of these in Southern California alone, and from my research, only a very few, maybe less than 10, have met this type of opposition. This particular one is just not going in the right place.

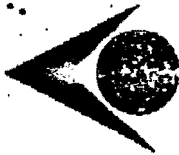
I intend to bring photographs to the meeting to demonstrate my points. Do you have any suggestions on format of presentation.

Our Attorney, Roger Freeman, will also be preparing a separate letter to you, and a hard copy of this letter is in the mail.

Please change your recommendation. Thank You.

Dan Rabun, President - Newport Homeowners Association

c. Roger Freeman 714 474 9606 fax



CHEVALIER, ALLEN & LICHMAN LLP

Attorneys at Law

Commercial Litigation • Aviation Law & Litigation • Environmental Law & Litigation

July 21, 1997

Mr. Robin Maloney-Rames
Coastal Program Analyst
California Coastal Commission
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200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

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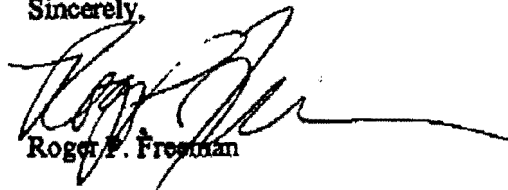
Re: Application for Coastal Development Permit No. 5-97-130 -
Installation of Telecommunication Facility in Bonita Creek Park,
Newport Beach - Objections of Newport North Villas
Homeowners Association

Dear Mr. Maloney-Rames:

This letter supplements our letter of July 7, 1997, objecting to the above-entitled Coastal Development Permit Application. The additional documents consist of a letter of February 7, 1994 from Dr. Gale Granger, Director of Immunological Research, UCI Clinical Cancer Center, discussing existing scientific evidence of the carcinogenic effects of radio frequency transmissions of the same type produced by the proposed facility. Further, the pictures which we presented on July 9 were made part of the record. However, it is our intention to supplement these photographs of the existing site with additional photos of projects similar to the proposed facility so that the Commission will be able to understand its full visual impact. We would appreciate you adding these to our original submission, when they are submitted. It is our intention to transmit them to you shortly.


Thank you in advance for your cooperation.

Sincerely,



Roger P. Freeman

cc: Dan Rabun

EXHIBIT NO. 11
APPLICATION NO. 5-97-130
Letter
 California Coastal Commission



DEPARTMENT OF MOLECULAR BIOLOGY
AND BIOCHEMISTRY
SCHOOL OF BIOLOGICAL SCIENCES
FAX (714) 856-8331

IRVINE, CALIFORNIA 92717

February 7, 1994

Mr. Douglas Rowe
31544 1st Avenue
Laguna Beach, CA 92677

Dear Doug:

I read with great interest the report sent to Dr. Terry Bustillos by Dr. Jerrold Bushberg. The essence of Dr. Bushberg's report is that the cellular radiotelephone facilities on the grounds of the El Morro school possess no cancer risk to the children in that school. Mr. Bushberg's position is to be expected for he has been regularly employed to defend the placement of the tower on the school grounds. It is important to mention that the general public, the scientific community, and the power industry has great concern about the effects of various forms of energy on human health. Dr. Bushberg's report is well written and many relevant issues are discussed. However, this report does not even begin to convince me that this facility has absolutely no risk to the children of El Morro school. The reasons for my position on this matter, and I believe that a similar position would be taken by many scientists, are outlined below.

It has been estimated that 80 percent of human cancers can be traced to environmental causes and for the last nine decades it has been a struggle to show which agents are responsible and how they induce the cell and tissues changes that lead to this disease. I can give many examples of arguments presented by industry representatives over the years defending the numerous materials or safety processes such as asbestos, radiation (x-ray) and radioactive materials (radium), many types of carcinogenic chemicals, smoking, food additives pesticides, etc. only to find later that they do cause cancer and other serious health problems. It took 80 years for industry to admit that asbestos is a serious health hazard and 40 years for the tobacco industry to admit that smoking causes cancer and similar arguments are ongoing now in many areas. The situation is complicated by the fact that most cancer

causing agents (carcinogens) do not induce the disease for considerable lengths of time after the primary exposure(s). Thus, it often takes years to gather sufficient information to prove that a carcinogenic agent or energy source is cancer causing and unfortunately often times the evidence is obtained by human experience. In addition, many cancer inducing agents do not act alone but in concert with other agents called cocarcinogens. Thus, proving a substance or radiation source is a cancer causing agent or acts as a cocarcinogen takes time and effort.

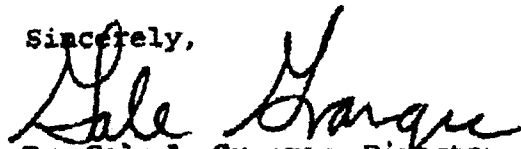
Over the last decade it has become apparent that Electro Motive Force (EMF) from various sources including power lines, microwaves, electrical appliances and electrical wiring configurations are associated with various types of cancer. Moreover, these studies have indicated that one susceptible population may be children. This is a serious issue and all parties involved, the public, the scientific community and the power industry are trying to determine if there is a problem and what should be done to correct any threat to the public health. While many types of studies are underway, they are at an initial stage and even animal studies are just beginning to appear in the literature. The results of animal studies are mixed; however, they provide reason for concern for they indicate that under certain conditions EMF can act as both a primary and cocarcinogen. Clearly, these studies are at an early stage and there is much effort to get to the bottom of this problem. I must say that I believe it is not possible at this time to assure the school and the parents about the absolute inactivity of these forms of energy on the children at the school. Obviously, the situation is complex and will relate, as pointed out by Mr. Bushberg, about dosage and exposure levels.

This issue could be debated back and forth but until more information is available I believe that there is a strong argument for not having these facilities on the grounds of the El Morro school. First and foremost is that this facility is centered in the middle of what may be the most susceptible population, i.e., children. Moreover, the children are exposed for the school day, the school year and for 6 years (Grades K-5). Finally, and the most compelling argument, is that we should not be exposing children to any situation that even remotely poses a risk to their health. Pac Tel must also realize that they may be held liable if a child in the school develops cancer while in school or even in the future. There is also certainly no lack of empty space and other potential sites for this facility.

When all aspects are considered it seems perfectly clear that for all concerned it would be wise to move this facility away from the school grounds. I do not have children in the El Morro school and

am sharing my views with you as a citizen and member of the scientific community of the University of California, Irvine that has been involved in cancer research for over 25 years.

Sincerely,



Dr. Gale A. Granger, Director
Immunological Research
UCI Clinical Cancer Center

~~Director of Scientific Research
Memorial Cancer Institute
Long Beach Memorial Hospital~~

Director of Basic Research
The Neurosciences Institute
Hospital of the Good Samaritan

Professor of Immunology
Departments of Molecular Biology
& Biochemistry
Microbiology and Molecular Genetic