

**CALIFORNIA COASTAL COMMISSION**

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Commission Action:



## RECORD PACKET COPY

### STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-00-222

**APPLICANT:** Socal Communications, LLC/James A. Kay Jr.

**AGENT:** Don Schmitz

**PROJECT LOCATION:** 23-acre parcel located at 1953 Latigo Canyon Road, (top of Castro Peak) unincorporated Malibu area of Los Angeles County

**PROJECT DESCRIPTION:** relocate existing 120 ft. high communications tower and construct an additional 150 ft. high tower, with no grading, in "antenna farm" area.

**LOCAL APPROVALS RECEIVED:** Los Angeles County, Department of Regional Planning, Approval-in-Concept/Conditional Use Permit dated September 27, 1997.

**SUBSTANTIVE FILE DOCUMENTS:** Certified Malibu/Santa Monica Mountains Land Use Plan; Geologic and Geotechnical Report for Minor Relocation of 60-ft. Communication Tower, Castro Peak, prepared by GeoSoils, Inc., dated June 15, 1999; Coastal Development Permit 4-98-219 (Remote Communications Systems); Geologic Reports for Proposed Communication Tower and for Tower Relocation, Castro Peak, prepared by GeoSoils, Inc., dated August 6, 1996, & December 18, 1996.

#### SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with six (6) special conditions regarding: Geologic Recommendations; Wildfire Waiver; Landscape and Erosion Control Plan; Future Development Deed Restriction; Future Redesign of Telecommunications Facilities and Abandonment Provisions; and Condition Compliance.

After-the-fact approval of the proposed development will relocate one tower incorrectly constructed on National Park Service land and bring a second tower into compliance with the requirements of the Coastal Act. The proposed development equipment is consistent with other similar equipment in place on Castro Peak and would not result in visual intrusion to an otherwise undisturbed ridgeline view. The Commission has found that consolidation of telecommunications facilities on Castro Peak reduces the impacts to coastal resources that would otherwise result from the scattered placement of associated equipment.

## **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, as conditioned, 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 governments 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 effects 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 on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

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

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

5. **Terms 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. Geologic Recommendations.**

All recommendations contained in the Geologic and Geotechnical Report for Minor Relocation of 60-ft. Communication Tower, Castro Peak, prepared by GeoSoils, Inc., dated June 15, 1999, and Geologic Reports for Proposed Communication Tower and for Tower Relocation, Castro Peak, prepared by GeoSoils, Inc., dated August 6, 1996,

and December 18, 1996, shall be incorporated into all final plans, designs and construction practices and all plans must be reviewed and approved by the geotechnical consultants prior to the issuance of this coastal development permit. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director's satisfaction of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require **an amendment to the permit** or a new coastal permit. The Executive Director shall determine whether required changes are "substantial".

2. Wildfire Waiver

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

3. Landscape and Erosion Control Plan.

A. Prior to the issuance of the coastal development permit, the applicant shall submit landscaping and fuel modification plans prepared by a licensed landscape architect for review and approval by the Executive Director. The plans shall incorporate the following criteria:

(1) To control erosion, minimize the need for irrigation and to screen or soften the visual impact of development, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species that tend to supplant native species shall not be used. Plantings shall include vertical elements to screen and soften the visual impact of the development as seen from public viewing areas.

(2) Vegetation within 50 feet of the proposed house may be removed to mineral earth or planted in a zone of irrigated lawn or similar ground cover. Selective thinning, for purposes of fire hazard reduction shall be allowed in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The applicant shall submit evidence to the

satisfaction of the Executive Director that the fuel modification plan required herein has been approved by the Los Angeles County Forestry Department.

(3) All plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.

(4) All development approved herein shall be undertaken in accordance with the final approved plans. Any proposed changes to the approved final landscape or fuel modification plans shall be reported to the Executive Director. No changes to said plans shall occur without a Coastal-Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

B. Monitoring Plan

(1) Five years from the date of the date of issuance of this coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

(2) If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

4. Future Development Deed Restriction.

(a) This permit is only for the development described in Coastal Development Permit 4-00-222, and does not include the use or placement of a residential trailer. Pursuant to Title 14 of the California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the communication facilities included in this permit. Accordingly, any future improvements to the permitted structures shall require an amendment to Coastal Development Permit 4-00-222 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

(b) Prior to the issuance of Coastal Development Permit 4-00-222, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission-approved amendment to this coastal development permit.

5. Future Redesign/Abandonment Provisions.

Prior to the issuance of Coastal Development Permit 4-00-222, the applicant shall submit a written agreement stating that where future technological advances would allow for reduced visual impacts resulting from the proposed communication facility, the applicant agrees to make those modifications which would reduce the visual impact of the proposed facilities. In addition, the applicant agrees that if in the future, the facility is no longer needed, the applicant agrees to abandon the facility and be responsible for the removal of all permanent structures, and for the restoration of the site consistent with the character of the surrounding area. Before performing any work in response to the requirements of this condition, the applicant shall contact the Executive Director of the California Coastal Commission to determine if an amendment to this coastal development permit, or a new coastal development permit, is necessary.

6. Condition Compliance

Within 60 days of Commission action on Coastal Development Permit No. 4-00-222, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of Coastal Development Permit Nos. 4-00-222. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act

**IV. Findings and Declarations**

The Commission hereby finds and declares:

**A. Background and Project Description**

The applicant seeks after-the-fact approval for the construction of a 150 ft. high telecommunications tower and for the relocation of a 120 ft. high communications tower incorrectly placed on adjacent National Parks Service land. The subject site is a 23-acre parcel located at the top of Castro Peak, in an area that has become an "antenna farm" for communications facilities. The site is designated as "Mountain Land" in the certified Malibu/Santa Monica Mountains Land Use Plan, characterized by very low-intensity rural development (density of one residential unit per 20 acres). However, development of this area of Castro Peak is limited to telecommunications facilities.

Access to the site is by Castro Peak Motorway, an unpaved fire road branching from Latigo Canyon Road.

In the course of processing the applicant's proposal for the relocation of the 120-ft. high tower, Commission staff determined that an existing 150 ft. antenna was constructed without the benefit of the necessary coastal development permit. The applicant amended the application to include the 150-ft. high tower. The relocation of the 120-ft. tower is necessary because the tower had been incorrectly sited approximately 35 feet over the applicant's property line, onto the adjacent National Park Service land.

In addition, the applicant uses a temporary trailer on site as a residential employee's dwelling – also without benefit of the necessary coastal development permit, in addition to a range of other equipment, storage buildings, etc. Staff requested that the applicant prepare a comprehensive inventory of all structures on site and seek a coastal development permit for any structure or type of use that cannot be verified to pre-date the Coastal Act. The applicant's agent has notified staff that the applicant intends to comply with this request and is actively seeking conceptual approval for applicable structures, including the residential trailer, from Los Angeles County Department of Regional Planning. If the applicant does not follow through with the timely submittal of an application for the necessary coastal development permit for the unauthorized development on site, the matter will be turned over to the Commission's Enforcement Unit for investigation.

As noted, the applicant is not seeking approval for the residential trailer under the present application. The applicant states, however, that the trailer is continuously occupied by a residential security employee and potentially by the employee's family. Telecommunications towers and associated equipment, such as antennas and microwave dishes, are considered potentially hazardous industrial development, pursuant to the standard for siting new development set forth in Coastal Act Section 30250. The Federal Communications Commission (FCC) licenses such facilities and establishes radiofrequency emissions standards.

Because a significant number of other telecommunications towers and related structures also occupy the Castro Peak area adjacent to the subject parcel, the Commission's consideration of the site for future approval of a residential structure raises issues of land use compatibility. The applicant has been requested to provide evidence from the FCC that the location and use of a residential structure less than 20 feet from the base of one of the proposed towers, and in an area subject to potential background radiation from the cumulative location of similar equipment on other Castro Peak lands, has been found consistent with applicable human health and safety standards by the FCC. The applicant has declined to provide such evidence to date (see Exhibits 4 & 5), stating that regulation of health effects standards for such facilities is pre-empted by federal regulation. The Commission does not dispute the regulatory jurisdiction of the FCC, but the FCC itself states in guidelines for local government published in June, 2000, that siting, construction, environmental review, and other matters related to the location, design, and permitting of new development remains within the proper jurisdiction of state and local governments. In addition, the FCC

guidelines encourage state and local governments to verify that telecommunications facilities are operated in compliance with FCC standards.<sup>1</sup>

Thus, consideration of whether a residential structure is appropriately sited in close proximity to hazardous telecommunications facility industrial development is properly a matter for Commission consideration. In evaluating the land use compatibility of these two different forms of potential development, the Commission would not be attempting to regulate a field pre-empted by federal statutes. The Commission finds, however, that eventual review of the future application for an on-site residential structure must include either a statement by the FCC that the agency has evaluated the proposed location of such a residence in light of any health risks posed by the applicant's on-site telecommunications equipment, and other nearby equipment (all subject to FCC licenses), and found that no adverse human health effects would be posed by such placement to occupants of any age or health status residing in the subject structure.

Should the applicant, in response, provide written evidence from the FCC that the agency will not undertake such evaluation of the safety of adjacent residential occupation of the site, the Commission finds that the applicant must submit an alternative analysis of the safety concerns raised by a residential development application for the subject site. Such evaluation of the safety of the proposed residence for potential occupants of all age ranges must take into consideration the exposure of the residents to the individual and cumulative effects of any source of non-ionizing radiation from licensed equipment on Castro Peak. The analysis must be prepared by a reviewer qualified to evaluate such matters, subject to the Executive Director's review of qualifications.

The Commission finds that it is timely and appropriate to place the applicant on notice of these concerns and the requirements of the Commission for future consideration of a residential application. The applicant's 23-acre parcel is designated "Mountain Land" in the certified Malibu/Santa Monica Mountains Land Use Plan and is therefore eligible for the construction of one residence (applicable density is one dwelling unit per 20 acres). By undertaking the present application, however, the applicant may be limiting the use of the site for future residential development. Thus the Commission hereby notifies the applicant that the potentially hazardous nature of the proposed development may result

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<sup>1</sup> Guidelines published by the FCC in June, 2000 for use by state and local governments state:

"...state and local governments may wish to verify compliance with the FCC's exposure limits in order to protect their own citizens. As a state or local government official, you can play an important role in ensuring that innovative and beneficial communications services are provided in a manner that is consistent with public health and safety.

... This document addresses only the issue of compliance with RF exposure limits established by the FCC. It does not address other issues such as construction, siting, permits, inspection, zoning, environmental review, and placement of antenna facilities within communities." (emphasis added)

in future limitations on the placement of residential development on the subject site should the Commission approve, and the applicant construct, the proposed telecommunications facilities.

The Commission notes that no other operator of communications equipment or towers on Castro Peak has sought Commission approval for a residentially occupied structure within or immediately adjacent to the antennae farms on Castro Peak.

## **B. Geologic Stability; Hazards**

Section 30253 of the Coastal Act states in part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The Commission has relied, in past permit actions, upon the certified Malibu/ Santa Monica Mountains Land Use Plan for policy guidance. The certified LUP sets forth the following applicable policies:

- P147 Continue to evaluate all new development for impact on, and from, geologic hazard.
- P148 Continue to limit development and road grading on unstable slopes to assure that development does not contribute to slope failure.
- P149 Continue to require a geologic report, prepared by a registered geologist, to be submitted at the applicant's expense to the County Engineer for review prior to approval of any proposed development within potentially geologically unstable areas including landslide or rock-fall areas and the potentially active Malibu Coast-Santa Monica Fault Zone. The report shall include mitigation measures proposed to be used in the development.

The proposed development is located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, and assures stability and



structural integrity. The applicant proposes to relocate one 120-ft. high above ground telecommunications tower and to construct an additional 150-ft. high above ground tower on a 23-acre site atop Castro Peak, in the unincorporated Malibu area of Los Angeles County.

The applicant has submitted a series of geologic review reports for the proposed project. A geologic report prepared by GeoSoils, Inc., dated December 18, 1996 states that a geologic study was conducted of the proposal to place a communications tower upon Castro Peak, in Malibu. The study noted that good exposures of bedrock are available all around the ridge top upon which the tower will be built. The report states that the ridge is underlain by very dense, hard bedrock and that footings for the proposed tower will penetrate any shallow, sandy topsoil that overlies the bedrock. The report concludes that:

"...The ridgetop site is free of geologic or soil related problems that might adversely affect the future performance of the planned 150-ft. high tower. The site will be safe from the hazards of landslide, settlement, or slippage, and the proposed work will not affect the geologic stability of the property outside of the building site. Recommendations contained within the GeoSoils, Inc., report for this site, dated August 6, 1996, should be followed."

In addition, the applicant has provided a supplemental report prepared by GeoSoils, Inc., dated June 15, 1999 for the proposed relocation of the tower presently located on National Park Service land adjacent to the subject parcel. That report concludes that:

"... Geologic and geotechnical conditions reported in GeoSoils, Inc. reports dated August 6, 1996 and December 18, 1996, are applicable to this existing tower to be noted as they both are situated on the same ridge, in the same bedrock materials, and within the area of the ridge. Specific recommendations contained within these reports are applicable to the three new piers for the existing tower. Copies of these reports are included and are a part of this report."

Special Condition 1, Geologic Recommendations, requires that the applicant provide evidence that the final project plans have been approved by the geologic consultant as incorporating all applicable recommendations set forth by the consultant. The Commission finds that implementation of this condition will ensure that the proposed project is designed and constructed in accordance with the professional consultants' recommendations to achieve geologic stability, consistent with the requirements of Coastal Act Section 30253.

In addition, Special Condition 3 requires the preparation and implementation of a landscape plan incorporating primarily locally native plant species. Native chaparral and coastal sage scrub species are adapted to the Mediterranean climate that characterizes the Santa Monica Mountains. The deeply rooted, drought tolerant shrubs that typify these plant communities are adapted to the characteristic hot dry summers and cool, rainy winters. These features of native plants also make them the optimal choice for landscaping steep, exposed sites, such as Castro Peak, because the deep

roots provide erosion control and the drought tolerance of the native plants enhances their survival in the relatively remote site with limited water. In addition, landscape vegetation that does not require significant irrigation further reduces the potential for erosion by eliminating the artificial application of water that often creates gullies and other erosional features on hillsides. For these reasons (in addition to the protection of habitat provided by native plant species), locally native plants are the optimal choice for erosion control on steep slopes with thin soils. For these reasons, Special Condition 3 requires the use and conservation of native plant species on site, consistent with the fuel modification requirements of the Los Angeles County fire department.

Finally, as noted above, the Santa Monica Mountains are subject to extreme wildfire hazard. The native shrubs store flammable substances known as terpenes in their leaves and stems (these substances are thought to increase their ability to survive with little moisture during the long, hot dry seasons of the Mediterranean climate), which, combined with low humidity conditions and high winds – particularly the hot, dry Santa Ana winds that blow from the inland areas down the mountain flanks and toward the sea—create an unparalleled threat of seasonal wildfires.

Wildfires in the Santa Monica mountains present extreme hazards to life and property that cannot be fully mitigated. For this reason, the Commission requires applicants for development in the Santa Monica Mountains to proceed only if the applicants fully acknowledge this risk and agree to hold harmless and to indemnify the Commission, its employees and agents from the liability that may arise as the consequence of siting development in an area subject to such risks. Special Condition 2 requires the applicant to acknowledge these risks and to indemnify the Commission and its employees and agents from any liability that may result from the applicant's decision to nevertheless proceed with the subject development.

The Commission finds that provided Special Conditions 1, 2 and 3 are fully implemented, the subject proposal is consistent with the applicable requirements of Coastal Act Section 30253.

### **C. Visual Resources and Landform Alteration**

Section 30251 of the Coastal Act states that:

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 landforms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The Commission has relied, in past permit actions, upon the certified Malibu/ Santa Monica Mountains Land Use Plan for policy guidance. The certified LUP sets forth the following applicable policies:

- P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.
- P129 Structures shall be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.
- P130 In highly scenic areas and along scenic highways, new development shall:
- Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.
  - Minimize the alteration of natural landforms.
  - Be landscaped to conceal raw-cut slopes.
  - Be visually compatible with and subordinate to the character of its setting.
  - Be sited so as not to significantly intrude into the skyline as seen from public viewing places.
- P131 Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and protected. The proposed relocation/construction of the subject towers will not increase the amount of paved surfaces on site or require grading. The towers will be located on Castro Peak, a visually prominent site designated as a "significant ridgeline" in the certified Malibu/Santa Monica Mountains Land Use Plan. Castro Peak is one of the highest and most prominent peaks in the Santa Monica Mountains. It is this peak's high elevation and geographic location, however, that provide the necessary conditions for use as a communications equipment site. As the result, radio and broadcasting tower facilities and appurtenant structures have been located on Castro Peak for decades.

Facilities for emergency broadcasting for Los Angeles County police and fire agencies are presently located on Castro Peak, including a 120-ft. high orange and white striped, steel lattice communications tower, an 80 ft. high tower, fuel tanks, and storage buildings. The Commission also approved a 170 ft. high and a 120 ft. high communications tower on Castro Peak pursuant to Coastal Development Permit 4-98-219 (Remote Communications Systems), in addition to previous approvals for GTE Mobilnet facilities.

Because Castro Peak has become a *de facto* communications tower site, the location of the applicant's towers here is consistent with the land use pattern already established and minimizes the visual impacts that would otherwise result from the isolated, scattered placement of individual towers in other mountain or ridgetop locations in the Santa Monica Mountains. Therefore, the Commission finds that clustering the proposed towers in the same general location with other similar development on Castro Peak minimizes the individual additional contributions of the

proposed development to the overall impact already absorbed by the coastal viewshed of Castro Peak.

However, to ensure that additional microwave dishes or antennas added to the proposed towers will not significantly increase the visual impacts of the towers, the Commission finds that the project can only be approved if conditioned by Special Condition 4 (Future Development). This condition requires that any modification to the approved coastal development permit, including additions or improvements to the structures, will require an amendment to this permit or a new coastal development permit from the Commission or certified local government. Thus, if implemented, Special Condition 4 provides that future development of ~~the subject site~~ that would otherwise be exempt from further review will be considered for consistency with Coastal Act Section 30251, in addition to other applicable Coastal Act policies.

In addition, Special Condition 5 requires the applicant to implement future technological innovations that may eventually replace the technology represented by the proposed project, if such innovations are less visually intrusive yet accomplish the same objective. In addition, Special Condition 5 requires the ultimate removal (subject to applicable permits) of the subject towers should their use eventually be abandoned. If implemented, Special Condition 5 will minimize, reduce, and eventually eliminate the adverse visual impacts of the proposed project, to the maximum extent feasible.

Therefore, the Commission finds for all of the reasons set forth above, that as conditioned by Special Conditions 4 and 5, the proposed project is consistent with the applicable provisions of Coastal Act Section 30251.

#### **D. Locating New Development; Local Coastal Program**

Coastal Act section 30250 states in pertinent part:

- (a) New residential, commercial, or industrial development, except as otherwise provided for in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...
- (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

Coastal Act Section 30604 states in pertinent part:

- (a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will

not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3.

As noted in Section A, the applicant has informed staff that an unpermitted mobile home/trailer on the subject site is being occupied as an on-site employee residence. The applicant has not amended the present application to seek a coastal development permit for such use but states that conceptual approval for the trailer is actively being sought from Los Angeles County.

The proposed towers and the antennas and microwave dishes that may be placed on them, in addition to other similar adjacent development, ~~constitutes new~~, potentially hazardous industrial development. Castro Peak has been designated for this type of use by virtue of significant similar, long-term development, and the Commission has previously determined that clustering such development in this location reduces the impacts on coastal resources that would otherwise result from scattered locations of similar development. In addition, the physical characteristics of Castro Peak cannot be replicated at other nearby sites, thus limiting the potential range of alternative sites.

Thus, the Commission finds that locating the proposed development in an area of similar telecommunications development is consistent with the applicable requirements of Coastal Act Section 30250.

Los Angeles County is actively preparing an update of the certified Malibu/Santa Monica Mountains Land Use Plan as part of a planning effort to obtain a fully certified Local Coastal Program. Commission staff has requested that the County consider designating the Castro Peak area exclusively for telecommunications facilities. Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal 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 Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### **E. Violation.**

This application includes the after-the-fact request for relocation and re-construction of a 120-ft. high telecommunications tower and the construction of a 150-ft. high telecommunications tower on the subject site. To ensure that the unpermitted, violation aspect of this application is resolved in a timely manner, Special Condition 6 requires that the applicant satisfy all "prior to issuance" requirements specified in the conditions within ninety (90) days of Commission action on this Coastal Development Permit (CDP) application, or within such additional time as the Executive Director may grant for

good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. In addition, approval of this permit does not constitute approval for any other development on site, for which the applicant claims to be presently seeking local government approval.

#### **F. California Environmental Quality Act**

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

The proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is consistent with CEQA and the policies of the Coastal Act.

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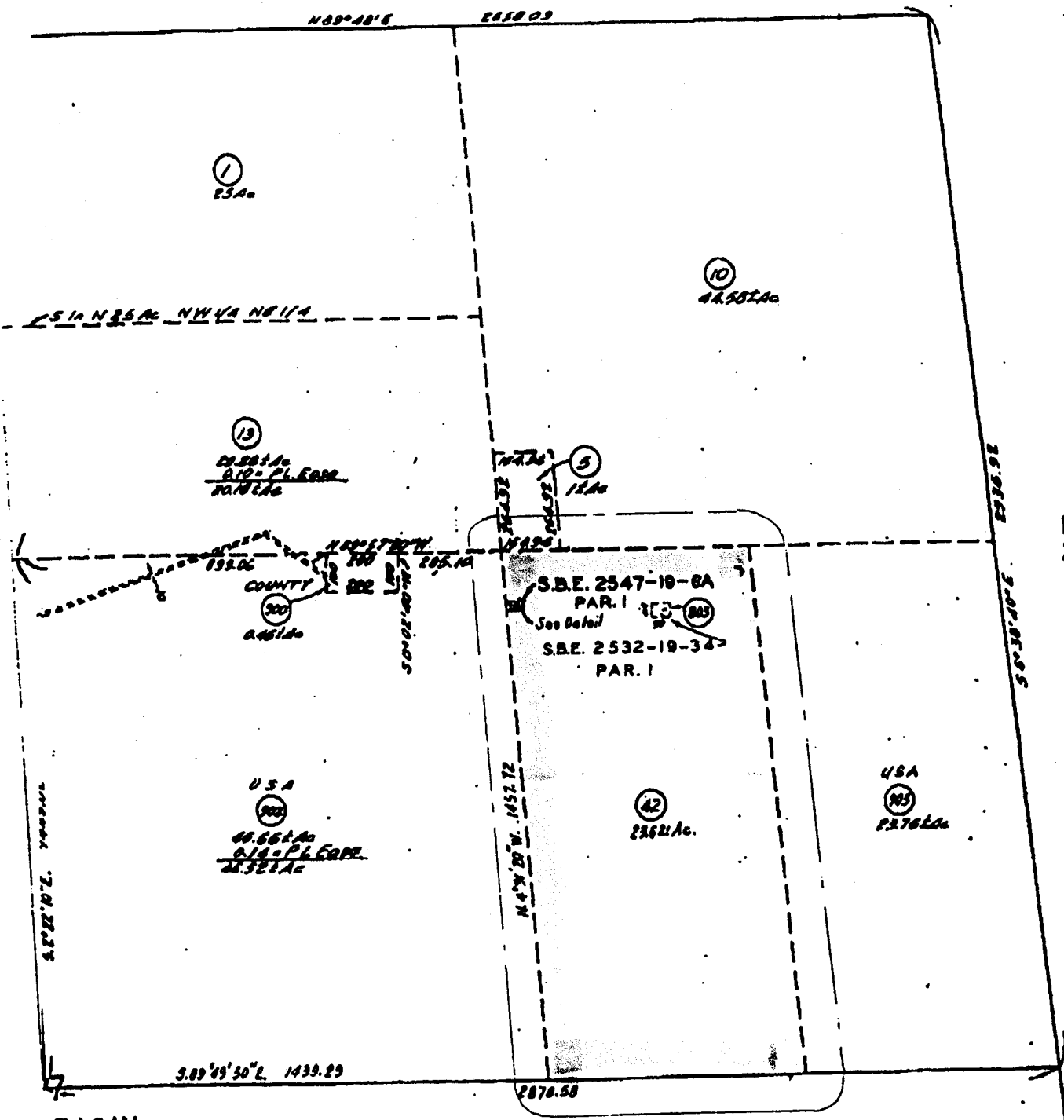
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT



Point Dume  
Dante Cove  
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EXHIBIT NO. /
APPLICATION NO. SICAL
4-00-272
Area Maps

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SECTION LINES PER CS B-7

EXHIBIT NO. 2
APPLICATION NO. Socal
4-00-222
Parcel map



81

Left

NOT APPROVED

CHAIN LINK FENCE

EXISTING ACCESS ROAD

NPS land

HORSE RIDING ARENA & STABLE AREA

NOT APPROVED

SEE DETAIL 'B'

EXISTING 60' TOWER (AFTER MOVE)

Relocated Tower

EXIST. PORTABLE BLDGS

GATE

EMERGENCY GENERATOR

EXISTING POWER PANEL

EXIST. PORTABLE BUILDINGS

NOT No 31

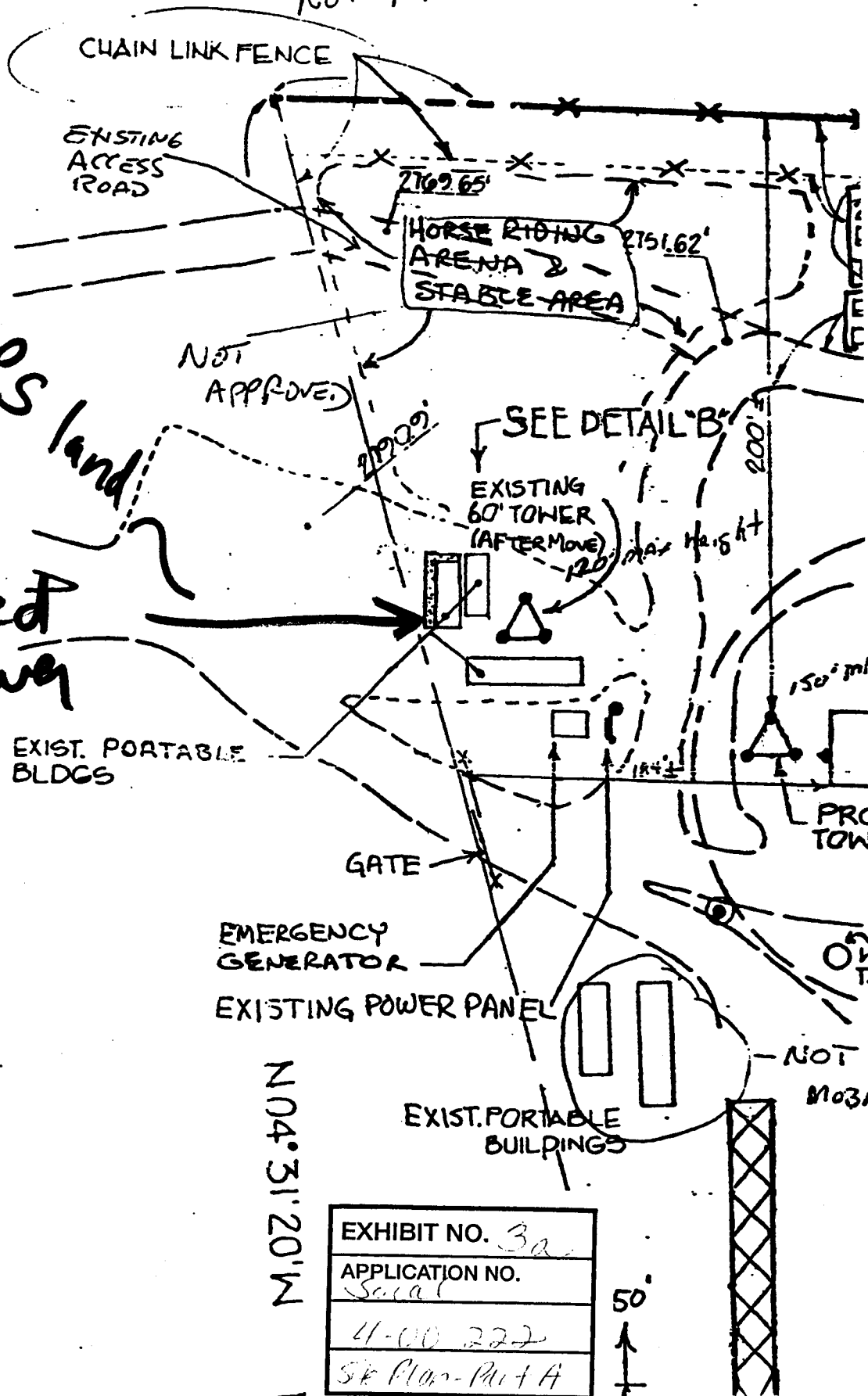


VICINITY MAP  
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APPLICATION NO. <i>Saca</i>
<i>4-00 222</i>
<i>SK Plan-Part A</i>

50' ↑



Middle

CONSTRUCTION OF AN ACCESS ROAD IN THIS LOCATION WAS NOT APPROVED BY THIS COND. TITLE USE PERM.

N 89° 57' 20" W 692.08'

20' WIDE EASEMENT FOR EGRESS AND INGRESS TO BE DEVELOPED

EXISTING PRIVATE DRIVEWAY ACCESS

CASTRO MOTORWAY

EXISTING DRIVEWAY GATE

Proposed 150' tower (after-the-fact)

PAC-TEL (AIR-T FACILITY)

60' TOWER (FALCON CASE)

SEE DETAIL "A"

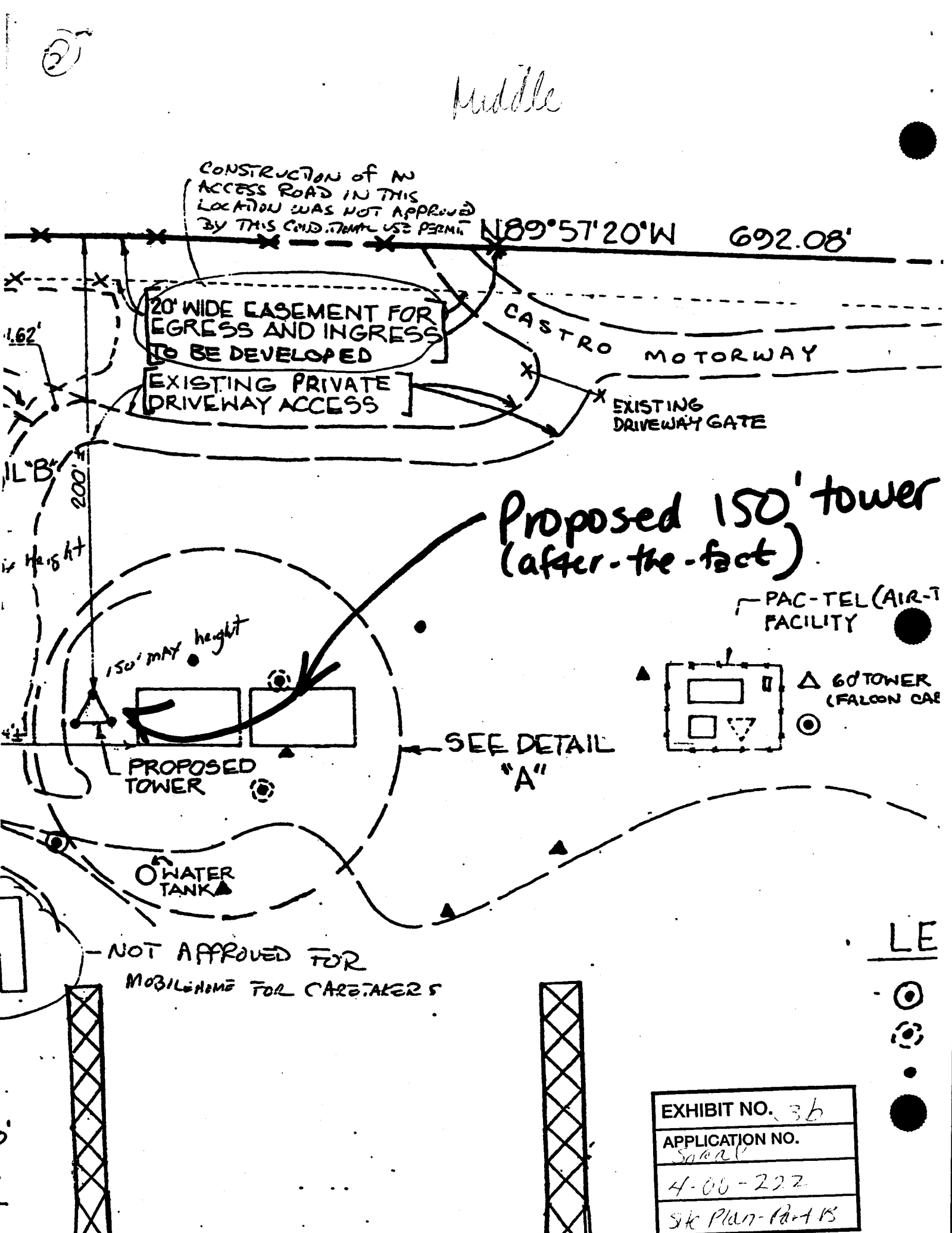
PROPOSED TOWER

WATER TANK

NOT APPROVED FOR MOBIL HOME FOR CARETAKERS

LE

EXHIBIT NO. 36
APPLICATION NO. 30001
4-00-222
Site Plan - Part B



3

Right →

CONSTRUCTION OF AN ACCESS ROAD IN THIS LOCATION WAS NOT APPROVED BY THIS CONDITIONAL USE PERMIT

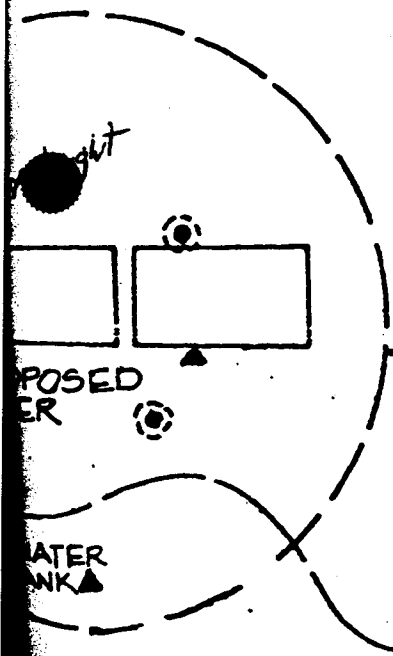
N 89° 57' 20" W 692.08'

WIDE EASEMENT FOR EGRESS AND INGRESS TO BE DEVELOPED

EXISTING PRIVATE DRIVEWAY ACCESS

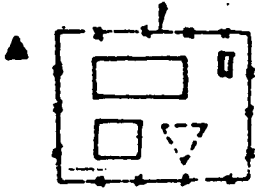
CASTRO MOTORWAY

EXISTING DRIVEWAY GATE



SEE DETAIL "A"

PAC-TEL (AIR-TOUCH) FACILITY



60' TOWER (FALCON CABLE)

170' TOWER

LEGEND

- 100' WOODEN PO
- 40' STEEL PO
- 80' WOODEN P
- 35' TOWER EXT TO 75'

APPROVED FOR [unclear] FOR CARETAKERS



EXHIBIT NO. 30
APPLICATION NO. 50021
4-00-222
Site Plan Part 6



December 28, 2000

California Coastal Commission  
89 South California Street, Suite 200  
Ventura, Ca 93001

Attention: Melanie Hale

RE: 1953 Latigo Canyon (Kay)

Dear Ms. Hale,

Pursuant to your request, enclosed please find the correspondence prepared by Robert J. Keller, esq. regarding the scope of jurisdiction and authority of state and local governments with respect to the regulation of the placement and operation of antenna facilities to be used in connection with wireless telecommunications operations and services. In addition, please find the Federal Communications Commission licenses held by James Kay.

As you will note, the correspondence provides that Section 322 of the Communications Act preempts state regulation of mobile radio telecommunications operations, subject to prescribed exceptions. Those exceptions include regulations or restrictions based on concerns related to potential harmful health effect of possible exposure to radio frequency radiation. However, the FCC has adopted a policy excluding certain operations from evaluation, related to potential harmful effect of possible exposure to radio frequency radiation, based on operating power level and height. The facilities on the Kay property are of the type that is categorically excluded from evaluation.

Thank you for your time and consideration regarding this matter and please do not hesitate to contact us should require additional information or have any questions or comments.

Sincerely,  
SCHMITZ & ASSOCIATES

  
Stephanie Dreckmann  
Senior Planner

EXHIBIT NO. 4
APPLICATION NO. Social
4-00-222
Correspondence

xc: James Kay  
Robert J. Keller

LAW OFFICES  
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Of Counsel to:  
Shainis & Peltzman, Chartered  
1850 M Street, N.W. – Suite 240  
Washington, D.C. 20036-5803  
Tel: 202.293.0011 ext. 109

November 15, 2000

**VIA FACSIMILE & REGULAR MAIL**

Mr. Don Schmitz  
Schmitz & Associates  
29350 PCH – No. 12  
Malibu, California 90265

Dear Mr. Schmitz:

You have asked me to comment on the scope of jurisdiction and authority of state and local governments with respect to regulation of the placement or operation of antenna facilities (including supporting structures, such as towers) to be used in connection with wireless telecommunications operations and services.

I am a member of the District of Columbia Bar (1979 examination), the Federal Communications Bar Association, and of the American Bar Association's Communications Law Forum of its Section of Public Utility, Communications and Transportation Law. My practice concentration for more than twenty years has been federal telecommunications law, focusing primarily on the Communications Act of 1934, as amended, 47 U.S.C. §151 et seq., and the rules, regulations, and policies adopted thereunder by the Federal Communications Commission ("FCC"). I have represented numerous clients (including local government entities) before the Federal Communications Commission, federal courts, and other state and federal agencies. I am a graduate of the Columbus School of Law at the Catholic University of America in Washington, D.C., and I am a member of the adjunct faculty of the Columbus School of Law's Institute for Communications Law Studies where I have developed and teach a course in the regulation of wireless telecommunications services.

I understand that you are asking this question in connection with a certain local government approvals that our mutual client, James A. Kay, Jr., seeks for the construction, modification, and/or relocation of a tower. It is my further understanding that all of the antennas to be placed on this tower are for use by entities authorized by the FCC pursuant to Title III of the Communications Act, 47 C.F.R. § 301 et seq., to construct and operate land mobile radio facilities that come within the scope of "personal wireless services" as that term is used in Section 332(c)(7) of the Communications Act.

EXHIBIT NO. 5
APPLICATION NO. 50121
4-00-222
Correspondence

Don Schmitz, Esquire  
November 15, 2000  
Page 2

Section 332 of the Communications Act generally preempts state regulation of mobile radio telecommunications operations, subject to certain carefully prescribed exceptions. Section 332(c)(7) reserves the traditional zoning authority of state and local governments and their agencies, but this authority does not extend to regulations or restrictions based on concerns related to the potential harmful health effects of possible exposure radiofrequency radiation. The statute expressly states:

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 Commission's regulations concerning such emissions.

47 U.S.C. § 332(c)(7)(B)(iv). The radio facilities to be placed on the tower in question are subject to compliance with Commission regulations concerning emission levels and exposure, see, generally, *Guidelines for Evaluating the Harmful Effects of Radiofrequency Radiation*, ET Docket No. 93-62, Report and Order, 11 FCC Rcd 15123 (1996); Second Memorandum Opinion and Order, 11 FCC Rcd 17512 (1996); *Relief From State and Local Regulations*, ET Docket No. 97-197, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 13494 (1997); affirmed sub nom. *Cellular Phone Taskforce v. FCC*, 205 F.3d 82 (2d Cir. 2000), and the authorizations assume the obligation of compliance with the federal standards.

Pursuant to its primary jurisdiction over such matters, the FCC has adopted a policy of categorical exclusion of certain types of operations from evaluation where the combination of operating power level and height of the antenna above ground combine to virtually eliminate the likelihood of any exposure to harmful radiation. For the types of land mobile radio services that would occupy the tower in question, the FCC categorically excludes facilities from evaluation provided the antenna is at least three (3) meters above ground level and the effective radiated power level is no greater than one thousand (1,000) watts. I have verified with the tower owner that any antennas placed on this tower will meet those levels. Accordingly, should any state or local government entity persist in demanding further showings or demonstrations relating to potential harmful effects of radiation, we should consider seeking relief pursuant to Section 332(c)(7)(B)(v) of the Communications Act.

If you require additional information or if I can be of further assistance, please don't hesitate to contact me.

Very truly yours,



Robert J. Keller

