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RECORD PACKET COPY**W15a**

Filed: August 14, 2003
49th Day: Waived
Staff: Randall Stemler
Staff Report: February 27, 2004
Hearing Date: March 17, 2004
Commission Action:

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: **A-1-MEN-03-052**

APPLICANT: Edge Wireless

PROJECT LOCATION: Approximately ¾ mile south of the town of Mendocino, west of Highway One approximately 0.2 mile southwest of the intersection of Highway One and the Comptche-Ukiah Road, between Road 500B and the Pacific Ocean, located at 9950 Road 500B (APN 119-310-09).

PROJECT DESCRIPTION: Installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone services, and an underground coaxial cable from the radio cabinet to the antenna.

APPELLANTS: 1) James & Bettilou Lovera;
2) Arthur Firstenberg.

SUBSTANTIVE FILE DOCUMENTS: 1) Mendocino County CDU No. 1-2003; and
2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed.

The development, as approved by the County, consists of installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone services, and an underground coaxial cable from the radio cabinet to the antenna. The project site is a blufftop parcel approximately $\frac{3}{4}$ -miles south of the Town of Mendocino off of Road 500B (Brewery Gulch Drive).

The two appellants collectively pose fourteen separate contentions that the project as approved is inconsistent with the certified Mendocino County Local Coastal Program (LCP) and the public access policies of the Coastal Act. These contentions include: (1) allegations of detrimental health effects from radio frequency radiation (RFR); (2) allegations that the permit was obtained by fraud; (3) allegations of previous coastal development permit violations by the property owner; (4) failure to adhere to the Planning Commission's Wireless Communications Facilities Guidelines; (5) lost revenue when cellular service facilities are not located on public property; (6) non-compliance with the Americans with Disabilities Act (ADA); (7) geologic hazard; (8) the fact that the communication antenna is not a principally permitted use; (9) inconsistencies with the non-conforming structures provision of the LCP; (10) impacts on environmentally sensitive habitat area (ESHA); (11) impacts on visual resources; (12) inconsistencies of the zoning code requirements related to the California Environmental Quality Act (CEQA); (13) lack of public notice; and (14) allegations that inconsistencies with the LCP were overlooked because of a misinterpretation of federal law.

Staff recommends that the Commission find that contentions 1-6 are invalid grounds for appeal and that contentions 7-14 do not raise a substantial issue of conformity of the approved development with the certified LCP.

Specifically, with regard to the contentions that are invalid grounds for appeal, staff is recommending that the Commission find that the contentions regarding the detrimental effects from radio frequency radiation are not valid grounds for appeal as they do not allege an inconsistency of the approved development with any policy or standards of the certified LCP. In addition, the regulation of RFR emissions is a federal matter not within the purview of the Mendocino County LCP.

Staff is recommending that the Commission find that the contention concerning allegations that the permit was obtained by fraud does not raise valid grounds for appeal, because the contention raises a procedural issue related to whether revocation could be taken up with the County after approval, and is not a substantial or substantive inconsistency of the approved project with the certified LCP. In addition, the allegations of fraud relate to whether the conditions of approval are adequate to mitigate the effects of RFR, a matter governed by federal law and not the certified LCP.

Staff is recommending that the Commission find that the contention that there are previous coastal development permit violations on the property does not raise valid grounds for appeal as no inconsistencies of the project as approved with the certified LCP stemming from any violations have been identified, and the consistency of the approved project with the certified LCP is not affected by any un-permitted development.

Similarly, staff is recommending that the Commission find that the contentions concerning inconsistencies with Planning Commission Wireless Communications Facilities Guidelines and non-conformance with the Americans with Disabilities Act are invalid grounds for appeal, as the guidelines and laws cited are not policies of the certified LCP with which the approved development must conform.

Similarly, staff is recommending that the Commission find that the contention that the cellular service facility should be located on public property so that revenue from leasing the site for the communications facility would go to a public agency does not raise valid grounds for appeal as the contention fails to identify an inconsistency of the project as approved with the certified LCP.

Regarding the contentions that are valid grounds for appeal, staff recommends that the Commission find that the contentions regarding geologic hazard, principally permitted structures, non-conforming structures, ESHA protection, visual resources, inconsistencies with zoning code provisions related to CEQA, lack of appropriate public notice, and inconsistencies with the LCP that were overlooked because of a misinterpretation of federal law are valid grounds for appeal but do not raise a substantial issue of conformance of the approved development with the policies and standards of the LCP.

Staff recommends that the Commission find that the contention regarding geologic hazards does not raise a substantial issue because the antenna would be hung under the presently permitted residence and the approved development would create no greater geologic hazard and create no greater need for future shoreline protective works than already exists.

Staff recommends that the Commission find that the contention regarding principally permitted uses does not raise a substantial issue because although the development is a conditional use, a use permit was approved for the development by the County.

Staff recommends that the Commission find that the contention regarding non-conforming structures does not raise a substantial issue because there is no evidence that the existing residence is a non-conforming structure and that even if the house were non-conforming, the house would conform with the conditions specified in the non-conforming structures section of the certified coastal zoning code and would therefore be allowed to continue.

Staff recommends that the Commission find that the contention regarding environmentally sensitive habitat areas (ESHA) protection does not raise a substantial issue because there are no indications of ESHA on the subject property.

Staff recommends that the Commission find that the contention regarding visual resources does not raise a substantial issue of conformance with the policies or standards of the LCP relating to development in highly scenic areas because the project as approved would have an insignificant impact on public views to and along the coast as (1) the placement of the radio equipment within the existing garage would completely hide from view that portion of the approved development; (2) the stealth antenna hung under the existing deck would be camouflaged to look like the other foundation piers for the platform of the house and deck; and (3) the improvement to the fence running along the road frontage would match the materials and height of the existing fence.

Staff recommends that the Commission find that the contention regarding inconsistencies of the project as approved with the coastal zoning code provisions relating to CEQA does not raise a substantial issue because the County did follow CEQA procedures in its action on the permit and the contention raises a procedural issue, rather than a substantial or substantive inconsistency of the approved project with the certified LCP.

Staff recommends that the Commission find that the contention regarding the lack of appropriate public notice does not raise a substantial issue because the contention raises a procedural inconsistency and not a substantive inconsistency of the approved project with the certified LCP.

Finally, staff recommends that the Commission find that the contention alleging that the inconsistencies with the LCP were overlooked because of a misinterpretation of federal law does not raise a substantial issue because all of the specific contentions raised in the appeals have been reviewed and evaluated and determined not to raise a substantial issue of conformance of the project as approved with the certified LCP, regardless of how the federal law is interpreted.

For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the certified LCP and the public access policies of the Coastal Act. The motion to adopt the staff recommendation of No Substantial Issue is found on Page No. 6.

STAFF NOTES:

1. Appeal Process

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

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

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed house is located (1) between the sea and the first public road paralleling the sea; (2) within 300 feet of the mean high tide line; (3) within 300 feet of the top of the seaward face of a coastal bluff; and (4) within a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "highly scenic areas." The approved development is located within an area designated in the LCP on the certified land use map as a "highly scenic area," and, as such, is appealable to the Commission. The subject development is also appealable to the Commission because the approved telecommunications facility is not a principally permitted use.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will

have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal

Two appeals were filed by (1) James and Bettilou Lovera (hereafter referred to as Appellant #1); and (2) Arthur Firstenberg (hereafter referred to as Appellant #2) (Exhibit Nos. 5 and 6). Both appeals were filed with the Commission in a timely manner on August 14, 2003 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 4) on August 1, 2003.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-03-052 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-03-052 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

I. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS.

The Commission received two appeals of the County of Mendocino's decision to approve the development from James and Bettilou Lovera (Appellant #1), and Arthur Firstenberg (Appellant #2). The project as approved by the County involves installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone services, and an underground coaxial cable from the radio cabinet to the antenna. The project is located along the Mendocino County coastline, approximately $\frac{3}{4}$ mile south of the town of Mendocino, west of Highway One approximately 0.2 mile southwest of the intersection of Highway One and the Comptche-Ukiah Road, between Road 500B and the Pacific Ocean, located at 9950 Road 500B.

The appeals raise fourteen contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit Nos. 5 and 6.

1. Detrimental Health Effects Posed From Radio Frequency Radiation (RFR).

Both appellants contend that approval of the project would jeopardize public health and safety by allowing installation of a wireless telecommunication (cellular) facility that would propagate dangerous radio frequency radiation (RFR).

2. Permit Obtained by Fraud

Appellant #2 contends that the project as approved by the County was granted a permit based on fraudulent information provided to the County to justify compliance with Federal Communications Commission (FCC) RFR exposure limits. The appellant contends that the mitigations imposed by the County were based on the fraudulent data in the report and thus are wholly inadequate to address the effects of the true RFR exposure conditions on-site.

3. Previous Violations by the Property Owner

Both appellants contend that there is a long-standing coastal development permit violation on the subject property regarding an illegal amateur radio antenna sited on the owner's (King) property. Additionally, the appellants contend that the deck of the existing residence is not up to code.

4. Inconsistencies with LCP Overlooked Because of Misinterpretation of Federal Law

Appellant #1 contends that the County only approved the project out of a mistaken belief that denial of the project would constitute a prohibition of the provision of personal wireless communications facilities in violation of federal law.

5. Failure to Adhere to Planning Commission Guidelines

Appellant #1 contends that the project as approved is not consistent with Planning Commission Guidelines adopted by Mendocino County in November 2001.

6. Lost Revenue When Cellular Service Facilities are Not Located on Public Property

Appellant #1 contends that cellular service facilities should be located on public property rather than on private property so that local agencies of government would benefit from fees paid for the use of the property.

7. Non-compliance with Americans with Disabilities Act (ADA)

Appellant #2 contends that a request for accommodation under ADA was ignored by the Mendocino County Board of Supervisors prior to approval of the project.

8. Inconsistencies of Zoning Code Requirements Related to the California Environmental Quality Act (CEQA)

Appellant #2 contends that the project as approved by the County is inconsistent with Coastal Zoning Code (CZC) Section 20.532.040 and CEQA requirements because the environmental review for the project is flawed with regard to human health, animal, and bird life. Inconsistency of the County's approval of the project with the LCP is cited.

9. Lack of Public Notice

Appellant #2 contends that the project as approved is inconsistent with LCP CZC Sections 20.536.005(D)(4) and (6) because public notice was not given prior to the

County adding a condition of approval for installation of a wooden fence and gate along the property frontage along County Road 500B.

10. Geologic Hazard

Appellant #2 contends that the project as approved by the County is inconsistent with the requirement of CZC Section 20.500.020(B)(1) that new development be set back from the edges of bluffs to ensure their safety from bluff erosion for a period of 75 years.

11. Not a Principally Permitted Use

Appellant #2 contends that the project as approved is not a principally permitted use in the Rural Residential zone.

12. Non-Conforming Structures

Appellant #2 contends that the project as approved by the County is inconsistent with CZC Section 20.480.010, which lists conditions under which non-conforming structures may be continued. The appellant states that the addition of new use types is not one of those conditions that allow the continuance of a non-conforming structure.

13. Environmentally Sensitive Habitat Area (ESHA) Protection

Both appellants contend that the project as approved by the County is inconsistent with LUP Policy 3.1-2 as the development would not adequately protect ESHA including habitat supporting ground animals and bird rookeries.

14. Visual Resources

Both appellants contend that the project as approved by the County is inconsistent with the visual resource protection provisions of the LCP. Appellant #1 asserts that the existing ham radio antenna tower located on the subject property is extremely visible, and for years "has defied every principle of the Coastal Act as related to preservation of the view corridor." Additionally, Appellant #1 asserts that the County approval results in an inadequate opportunity for co-location for more future communication facilities leading to future visual blight.

B. LOCAL GOVERNMENT ACTION.

On April 17, 2003, the Mendocino County Planning Commission held a lengthy public hearing on the project proposal, at the conclusion of which, the hearing on the project was continued to a later time. On May 15, 2003, the Mendocino County Planning Commission failed to reach a majority vote to either deny or approve the project. The motion to deny failed on a 2-3 vote. Under Planning Commission rules, four votes are

required to take an action in effect resulting in denial of the project. The Planning Commission's failure to reach a definitive action on May 15, 2003 was appealed to the Mendocino County Board of Supervisors by the applicant. On July 22, 2003 the Board of Supervisors approved with conditions the Coastal Development Use Permit for installation of a wireless telecommunications facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone service, and an underground coaxial cable from the radio cabinet to the antenna.

The County attached twenty-two conditions of approval to the permit. The full text of all of the conditions is found on pages 2 through 4 of Exhibit No. 4 (the Notice of Final Local Action). The conditions that are most relevant to the contentions raised in the appeals are Condition Nos. 6,11,12,13,17,18,19,20,21, and 22. These conditions of the County approval are listed below:

6. One or more warning signs consistent with FCC and ANSI regulations, shall be displayed in close proximity to the antenna. Provided that the locations meet applicable requirements, the signs shall be located below the deck, on the north and west sides, to minimize aesthetic impacts from the public road. If a sign is required to be visible from the road, or the main approach to the property, it shall be mounted on the wall of the residence, if permissible, rather than on a separate free-standing support. The intent is that Federal safety requirements will be met with the least visual impact from public locations.
11. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site.
12. Prior to the final inspection by the Building Division, an identification sign for each company responsible for operation and maintenance of facilities at the site, not larger [than] one square foot, shall be mounted on an exterior wall in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall also be posted.
13. The antennas and supporting structure shall be inspected every five years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
17. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal

agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.

18. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:

- a. That the permit was obtained or extended by fraud.
- b. That one or more of the conditions upon which the permit was granted have been violated.
- c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

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

19. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
20. Under encroachment procedures administered by the Mendocino County Department of Transportation, as may be applicable, a wooden fence and gate(s), designed to match the existing rough finished wooden fence and gates (maximum space between pickets: four inches) along the property frontage along County Road 500B, from the northeast corner of the structure, paralleling the County Road, shall be installed along the length of the property frontage. Gates and fences shall be installed and maintained at each of the driveway entrances, which shall be closed accept [sic] for short-term purposes of encroachment.
21. Within 90 days or prior to activation of service of the wireless communication equipment on the site, whichever occurs first, the property owner shall remove the existing tower and antenna on the site.
22. Within 30 days, the applicant shall apply for a building permit for the deck, westerly side of the dwelling. The permit shall be administered under the appropriate building permit standard as determined by the Building Official. Work shall be completed within 90 days.

The Notice of Final Action of the Board's approval of the project was received by Commission staff on August 1, 2003 (Exhibit No. 4). The County's approval of the project was appealed to the Coastal Commission in a timely manner on August 14, 2003 within 10-working days after receipt by the Commission of the Notice of Final Local Action. Staff requested a copy of the local record on August 14, 2003. A copy of the local record was received on September 2, 2003.

C. PROJECT AND SITE DESCRIPTION.

Approval has been granted by the County to install a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence. The project consists of placing a 53-inch by 25-inch radio cabinet within an existing 28-foot by 24-foot, approximately 6-foot-tall, 672-square-foot garage structure, extending underground electric service to the garage from an existing power source across the street, adding appropriate wiring within the garage to the radio cabinet, and adding underground coaxial cable from the cabinet to a stealth antenna to be located underneath the exterior deck of the existing 18-foot-tall, 1,118-square-foot residential "dome" structure. The antenna would be housed in a custom fiberglass composite shell that has the appearance of the adjacent concrete pier supports that serve as foundations for the deck platform and residence (Exhibit Nos. 3 and 7). No grading, vegetation removal, or road extensions would be performed. Minimum trenching would be required for running electrical power and coaxial lines.

The subject property is an approximately 2 $\frac{3}{4}$ -acre, bluff top parcel located approximately $\frac{3}{4}$ of a mile south of the Town of Mendocino and about .2 of a mile southwest of the intersection of Highway One and Comptche-Ukiah Road at 9950 Road 500B (Brewery Gulch Drive), Mendocino County (Exhibit Nos. 1 and 2).

The site has been previously developed with a residence and garage built pursuant to Coastal Development Permit (CDP) No. NCR-CC-73-049 approved by the Commission on June 14, 1973 (Exhibit No. 8). There also is a ham radio tower and antenna located in the front yard of the property between the garage and the residence, which is allegedly un-permitted development because it was constructed without the benefit of a coastal development permit. The antenna extends to a height approximately 60 feet above the ground, and is mounted on the approximately 37-foot-tall lattice tower affixed to a wooden pole.

The terrain of the subject property includes the rocky bluff face and the flat, open, bluff top covered with mowed grassland without any trees, and underlain by stable bedrock. There are no indications of ESHA on the property.

The parcel is in an area along the Mendocino coastline designated as highly scenic. Due to the siting and design of the approved development, very little of the facility would be visible. New utility services to the approved antenna would be placed underground.

Radio equipment would be housed within the existing garage. The antenna itself would be located underneath the deck/foundation of the existing house, and contained in a fiberglass composite shell designed to mimic the appearance of the other concrete posts that support the deck and house.

The County's Land Use Plan classification for the parcel is Rural Residential – 5-acre minimum (RR-5). The same classification also applies to the neighboring parcels. Within the RR-5 classification, uses allowed by conditional permit include "major impact services and utilities" and "minor impact services and utilities."

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

1. Appellants' Contentions That Are Not Valid Grounds For Appeal

Six of the fourteen contentions raised by the appellants do not present valid grounds for appeal. As discussed below, these six contentions are raised in regard to (a) detrimental health effects from RFR; (b) allegations that the permit was obtained by fraud; (c) allegations of previous coastal development permit violations by the property owner; (d) failure to adhere to the Planning Commission's Wireless Communications Facilities Guidelines; (e) lost revenue when cellular service facilities are not located on public property; and (f) non-compliance with ADA. These contentions do not allege inconsistencies of the approved development with the policies and standards of the certified LCP and thus, are not valid grounds for appeal pursuant to Section 30603(b)(1) of the Coastal Act.

a. Detrimental Health Effects Posed From Radio Frequency Radiation (RFR)

Both appellants raise a contention that the County's approval of the project would subject the public and adjacent neighbors to detrimental health effects.

On behalf of Appellant #1 (the property owner's immediate neighbor to the south) attorney Rodney Jones states that "the Lovera's concern involves health and peace of mind, based on the reality that they will find themselves exposed to a significant electromagnetic field and bombarded by radio frequency radiation...what many contend is a major health hazard. It also presents itself as an economic and health hazard "albatross" that will attach to their property in perpetuity." Attorney Jones goes on to state that due to the "uncertainty about the long-range health effects" of radio frequency

radiation, “approval of the facility would mean an immediate loss in their property value and significantly impair their right to quiet enjoyment of their home.” (See pages 8-14 of Exhibit No.5).

Appellant #2 claims that individuals with electrical hypersensitivity are risking their lives by living in the vicinity of the County-approved telecommunications facility, and includes a letter from attorney Gail Flatt in his appeal, which contains the following statement: “My clients are a group of individuals living in and around the Village of Mendocino who have all been diagnosed with electrical hypersensitivity. ...They are asking only that there be a small part of the County where they can live relatively normal lives and avail themselves of the County’s services, programs and activities without risking their lives.” (See pages 29-31 of Exhibit No. 6).

The appellants do not cite a specific LCP policy that they feel the County’s actions do not conform with in this regard. The concerns raised by the appellants do not allege an inconsistency of the local approval with the certified LCP, but rather, the appellants raise general concerns about the detrimental health effects posed from RFR. Thus, because the contention does not allege an inconsistency of the local approval with the certified LCP, the Commission finds that this contention is not a valid grounds for appeal.

Even if the appellants could cite a specific LCP policy regarding the detrimental health effects of RFR, which they have not, the County’s and the Commission’s review of this issue is limited by the requirements of federal law.

The development as approved by the County would provide for the installation of a wireless telecommunications (cellular) facility designed to serve the Town of Mendocino and vicinity in compliance with Federal Communications Commission (FCC) safety regulations. Pursuant to Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996, and Title 47 Section 332(c)(7)(B)(iv) of the U.S. Code, “[n]o State or local government or instrumentality therefore 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.” Therefore, the regulation of RFR emissions is a federal matter and is not within the purview of the Mendocino County LCP.

b. Permit Obtained by Fraud

Appellant #2 raises the contention that the County’s approval of the project relied on acceptance of a fraudulent engineering report submitted by the applicant to demonstrate compliance with FCC exposure limits. The appellant states that any mitigations approved by the Board of Supervisors in the way of fencing and signage were added with the fraudulent data in mind, and are wholly inadequate to mitigate the effects of the true

exposure conditions on-site. The appellant cites inconsistency of the project as approved with CZC Section 20.536.030(A)(1).

The appellant contends that the permit was obtained by fraud, and states that fraud is grounds for revocation under CZC Section 20.536.030(A)(1). CZC Section 20.536.030(A)(1) provides that a coastal development permit may be revoked or modified upon a finding that such permit was obtained or extended by fraud. While CZC Section 20.536.030(A)(1) does provide a mechanism for revocation of a permit obtained by fraud, it is not an LCP provision that governs the review of a project prior to approval by the County. The contention raises a procedural issue related to whether revocation should be taken up with the County after approval, and not a substantial or substantive inconsistency of the approved project with the certified LCP. The appellant may decide to utilize the permit revocation procedure set forth in CZC Section 20.536.020(A)(1) after any coastal development permit is actually issued for the County-approved project, but the contention does not allege an inconsistency of the project as approved with the certified LCP. Furthermore, this allegation of fraud relates to whether fencing and signage conditions imposed by the County are adequate to mitigate the effects of RFR from the approved project. As discussed in the previous section, the detrimental effects of RFR are not addressed by an LCP policy identified by the appellants. Therefore, whether or not any special conditions that may have been imposed by the County to mitigate the human health effects of RFR were influenced by the alleged fraudulent engineering report and are adequate, does not affect the consistency of the approved project with any identified substantive policy of the certified LCP. Therefore, the Commission finds that the appellant's contention does not raise a substantial issue of conformity of the approved project with the certified LCP even if it was a valid grounds for appeal.

c. Previous Violations by the Property Owner

Both appellants raise contentions that County Building Code and Coastal Act violations are occurring on the subject property related to previously permitted and un-permitted development. However, as discussed below, the legality of the existing development does not affect the consistency of the approved development with the certified LCP, and no LCP policies or standards are cited that allege inconsistency of the approved project with the certified LCP even if the alleged violations that may be occurring did affect the consistency of the approved development with the certified LCP.

The appellants assert that an existing ham radio antenna that is located on the subject parcel has been in violation of the Coastal Act for many years. The erection of the approximately 37-foot-tall lattice tower and ham radio antenna affixed to it are un-permitted development for which no coastal development permit was ever issued. In October 1979, the property owner applied for an after-the-fact coastal development permit to legalize an antenna and tower previously erected. The Commission granted CDP No. 79-A-106 on October 16, 1979 approving the applicant's amateur radio antenna

with two special conditions: (1) “[t]he applicant shall, within two months of the granting of the permit, lower the existing antenna to a height no greater than the height of the existing single family residence on the subject parcel;” and (2) “[p]rior to the issuance of the permit, the applicant will negotiate in good faith with the attorney general’s representative or the executive director to resolve any outstanding violations.” The antenna was never lowered as required by the special condition imposed, and the permit was never issued.

Additionally, Appellant #2 asserts that “[t]he existing deck, to which the antenna would be attached, is neither safe nor up to code. ...The house itself has been under construction for three decades, is still unfinished, and has never been finalized by a building inspector.” At the time the residence was constructed, the County code required the deck to have a safety railing, but a railing has never been provided for the deck. The appellants do not cite a specific LCP policy that they feel the County’s actions do not conform with in this regard. The concerns raised by the appellants do not allege an inconsistency of the local approval with the certified LCP, but rather, the appellants raise general concerns about the fact that the existing ham radio tower and antenna are in violation of the Coastal Act and the existing deck and home may be in violation of certain County building code provisions. The approval of the wireless telecommunications facility does not depend on the presence or absence of the ham radio tower and/or the deck railing to function or to be installed. Thus, because the contention does not allege an inconsistency of the local approval with the certified LCP, the Commission finds that this contention is not a valid grounds for appeal. The Commission notes that even though the appellant’s contention does not raise valid grounds for appeal, the County-approved permit would correct the apparent violations. Removal of the existing tower and ham radio antenna is required by Condition No. 21 of the County-approved permit, which states that: “[w]ithin 90 days or prior to activation of service of the wireless communication equipment on the site, whichever occurs first, the property owner shall remove the existing tower and antenna on the site.” Also, the County addresses the alleged building code violation regarding the deck railing by imposing Special Condition No. 22 that requires the owner to bring the deck up to current building code standards.

d. Failure To Adhere To Planning Commission’s Wireless Communication Facilities Guidelines

Appellant #1, through the letter attached to the appeal from attorney Rodney Jones raises a contention that the project as approved is inconsistent with County guidelines addressing wireless communication facilities. The Jones letter states: “[i]n November 2001, the [County Planning] Commission passed guidelines specifically addressing Wireless Communications Facilities. These are to ‘be followed to the greatest extent possible.’ Guideline No. 12 calls for a ‘narrative discussing the factors leading to the selection of the proposed site...including alternative sites considered.’ Standard B.1.a unequivocally states that sites ‘near residential areas or schools are least preferred and will only be considered when there is compelling evidence that no other less visible

alternative exists.”” The Mendocino County Planning Commission Guidelines on wireless communication facilities have never been incorporated into the LCP through an LCP amendment. The appellant does not cite a specific LCP policy or statement that they feel the County’s actions do not conform with in this regard. The concerns raised by the appellants do not allege an inconsistency of the local approval with the certified LCP, but rather an alleged inconsistency with other County guidelines that are not part of the LCP. Thus, because the contention does not allege an inconsistency of the local approval with the certified LCP, the Commission finds that the contention raised by the appellants is not a valid grounds for appeal.

e. Lost Revenue When Cellular Service Facilities Are Not Located On Public Property

Appellant #1, through the letter attached to the appeal from attorney Rodney Jones, raises a contention that “[c]ell towers should be located on public property so that the extensive amounts paid for use of such property inure to the public generally rather than flow into the pockets of private owners.” The appellant does not cite a specific LCP policy that they feel the County’s actions do not conform with in this regard. The concerns raised do not allege an inconsistency of the local approval with the certified LCP, but rather, the appellant comments that this wireless communications facility should be located on public property so that a public entity could derive rental income from the company establishing the communications facility. Thus, because the contention does not allege an inconsistency of the local approval with the certified LCP, the Commission finds that the contention raised by the appellants is not a valid grounds for appeal.

f. Non-compliance with Americans With Disabilities Act

Appellant #2 alleges an inconsistency of the County’s approval of the proposed development with the Americans With Disabilities Act (ADA). His appeal states that “[a] request for accommodation under the ADA was made to the Board of Supervisors, which improperly neither discussed, nor responded to the request before voting on the application.” The appellant included a letter from attorney Gail Flatt to the County that alleges that the ADA requires that reasonable modifications be made to the County’s zoning process to accommodate her clients who are diagnosed with electrical hypersensitivity. Ms. Flatt suggests that reasonable modification should be made requiring that Edge Wireless locate its cell tower outside of the area in and around the Village of Mendocino. (See pages 29 through 31 of Exhibit No. 6)

The appellant does not cite a specific LCP policy that they feel the County’s actions do not conform with in this regard. The concerns raised do not allege an inconsistency of the local approval with the certified LCP, but rather, the appellant expresses the opinion that the ADA requires that Edge Wireless locate its facility outside of the Village of Mendocino to accommodate a group of individuals who are diagnosed with electrical hypersensitivity. Thus, because the contention does not allege an inconsistency of the

local approval with the certified LCP, the Commission finds that the contention raised by the appellant is not a valid grounds for appeal.

2. Appellants' Contentions That Are Valid Grounds For Appeal

Eight of the fourteen contentions raised in this appeal do present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding: (a) geologic hazard; (b) not a principally permitted use; (c) non-conforming structures; (d) ESHA protection; (e) visual resources; (f) inconsistency of zoning code requirements related to CEQA; (g) lack of public notice; and (h) inconsistency with LCP overlooked because of misinterpretation of federal law.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to all of the allegations below, the appeal raises no substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act.

Allegations Raising No Substantial Issue:

a. **Geologic Hazard.**

Appellant #2 contends that the County approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to protect coastal development from bluff retreat, in that the development as approved "does not comply with shoreline erosion and geologic requirements." The appellant cites CZC Section 20.500.020(B)(1) that requires geologic setbacks from the edges of coastal bluffs.

LCP Policies and Standards

LUP Policy 3.4-7 states:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.

CZC Section 20.500.020 Geologic Hazards—Siting and Land Use Restrictions states:

(A) *Faults...*

(B) *Bluffs.*

(1) *New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.

Discussion

LUP Policy 3.4-7 and CZC Section 20.500.020 provide that a geotechnical investigation and report be prepared for new structures to determine an adequate blufftop setback so that new structures are setback a sufficient distance from the bluff edge to ensure their safety and eliminate the need for shoreline protective works.

Appellant #2 contends that the project as approved by the County is inconsistent with these certified LCP policies and standards. The appellant asserts that the LCP "requires new development to be set back from the edges of bluffs to ensure their safety from bluff erosion for 75 years... A coastal development permit for a new antenna to be located on a deck already extending over the edge of an eroding bluff should not be permitted."

The project as approved authorizes attaching the antenna to an existing deck, which is a platform that serves as the foundation for an existing residence that was granted and issued a coastal development permit in 1973. The antenna would not extend the footprint of the presently permitted residence any closer to the ocean. The original permit did not include any condition prohibiting the installation of future shoreline protective works to protect the approved structures should such protective works be needed. The appellant has not presented any geotechnical evaluation indicating that the development as approved is in danger of succumbing to erosion by cliff recession within 75 years. No evidence has been provided that there is any extraordinary amount of coastal bluff erosion occurring at the site.

In approving the proposed development the County found that a geotechnical report was not necessary for the following reasons:

- (1) The site is underlain by solid rock visible along the westerly bluff face;
- (2) The area of construction lies within the area already developed with the existing residence and garage;

- (3) The earthwork involved with the project is not significant, consisting of minor trenching and a hole of approximately 3 cubic feet;
- (4) The project will impose no significant structural loads on the ground, or alter drainage patterns; and
- (5) The geologic bore holes necessary to prepare a full geotechnical report would constitute a disturbance to the site of nearly the same magnitude as the work proposed in association with the project.

To the extent that coastal bluff erosion were to threaten the approved antenna during its economic life, such erosion would also threaten the house itself which was previously permitted without any prohibition on the installation of future shoreline protective works to protect the structure. As the approved antenna would be attached to the previously permitted house, whatever action is taken at the time to protect the house from being endangered by bluff retreat and collapsing into the ocean, whether the action be moving the structures or constructing a shoreline protective device, would at the same time prevent the antenna from being undermined by bluff retreat and collapsing into the ocean. In addition, as discussed above, the County determined that the approved project would not increase the risk of geologic hazard affecting the site. Therefore, the installation of the approved antenna would not create any greater risk of geologic hazard affecting the site or engender any greater need for a seawall than already exists to protect the existing house.

Therefore, for all of the above reasons, no substantial issue is raised with regard to the conformance of the project as approved with the provisions of LUP Policy 3.4-7 and CZC Section 20.500.020. Given (1) the evidence submitted that the subject property is located in an area exhibiting stable bedrock, (2) the evidence submitted that the installation of the antenna would not increase the risk of geologic hazard, and (3) the lack of any countering geotechnical information suggesting that the development as approved is in danger of succumbing bluff retreat during its economic life, there is a high degree of factual and legal support for the local government's decision that the development is consistent with the geologic hazard provisions of the certified LCP. Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved project with the certified Local Coastal Program and the public access policies of the Coastal Act.

b. Not a Principally Permitted Use

Appellant #2 contends that the County-approved development is not a principally permitted use where the subject property is located in a Rural Residential (RR:L5) zone. CZC Sections 20.320.075 and 20.320.080 describe conditional uses allowed in the applicable Rural Residential Zone.

LCP Policies and Standards

LUP Policy 2.2 – Description of Land Use Plan Map Designations – lists Principal Permitted Uses and Conditional Uses for property zoned Rural Residential:

Principal Permitted Use: Residential and associated utilities, light agricultural, home occupation.

Conditional Uses: Cottage industry; conservation and development of natural resources; public facilities and utilities determined to be necessary on Rural Residential lands; recreation-education.

CZC Section 20.320.075 – Major Impact Services and Utilities states:

Services or facilities which may have a substantial impact. Such uses may be conditionally permitted when the public interest supercedes the usual limitations placed on land use and transcends the usual restraints of zoning for reasons of necessary location and community wide interest. Typical places or uses are power generating facilities, sewage disposal facilities, septic disposal facilities and sites, sanitary landfills (including recycling operations), water treatment plants and natural gas pipelines.

CZC Section 20.320.080 – Minor Impact Utilities states:

Public utilities which have a local impact on surrounding properties and are necessary to provide essential services. Typical uses are electrical and gas distribution lines, microwave transmitting/receiving stations and relay stations.

CZC Section 20.376.010 – Principal Permitted Uses for RR Districts states:

The following use types are permitted in the Rural Residential District:

(A) Coastal Residential Use Types.

*Family Residential: Single-family
Vacation Home Rental.*

(B) Coastal Agricultural Use Types.

*Light Agriculture;
Row and Field Crops;*

Tree Crops.

(C) Coastal Open Space Use Types.

Passive Recreation.

CZC Section 20.376.015 – Conditional Uses for RR Districts states:

The following are permitted uses upon the issuance of a coastal development use permit.

(A) Coastal Residential Use Types...

(B) Coastal Civic Use Types.

Alternative Energy Facilities: On-site;
Alternative Energy Facilities: Off-site;
Community Recreation;
Day Care Facilities/Small School;
Educational Facilities;
Fire and Police Protection Services;
Group Care;
Lodge, Fraternal and Civic Assembly;
Major Impact Services and Utilities;
Minor Impact Utilities;
Religious Assembly.

Discussion

The appellant asserts that the development as approved by the County “is not the principal permitted use in this Rural Residential zone, and it does not conform to the certified local coastal program.”

The Mendocino County certified Land Use Plan for the subject property is Rural Residential—5-acre minimum. This residential classification is intended to encourage local small scale farming with residences located as to create minimal impact on agricultural viability, and is not intended to be a growth area. Principally permitted uses for the Rural Residential land use classification of the LUP include residential and associated utilities, light agriculture, and home occupation. The certified coastal zoning code district for the subject property is Rural Residential – 5-acre minimum (RR-5). CZC Section 20.376.010 includes single-family, vacation home rental, light agricultural, row and field crops, tree crops, and passive recreation as principally permitted uses for the subject property.

Conditional uses allowed by use permit include cottage industry, conservation and development of natural resources, public facilities and utilities determined to be necessary on Rural Residential lands, and recreation-education. CZC Section 20.376.015 – Conditional Uses for RR Districts – includes Major Impact Services and Utilities and Minor Impact Utilities as conditional uses for the subject property. CZC 20.320.80 – Minor Impact Utilities – defines typical public service utilities as utilities necessary to provide essential services and provides the example of microwave transmitting/receiving stations and relay stations. Because the proposed cellular antenna would be an allowable conditional use on the property, the County required a use permit application for the telecommunications facility, and granted a coastal development permit that was a use permit for the project. Therefore, the County found that the proposed wireless facility is consistent with the planned use of the area.

The appellant is correct in stating that the approved antenna development is not a principally permitted use of the subject property. However, the certified LCP does allow for certain other uses in the RR zone if approved by use permit, including minor and major impact utilities such as the approved wireless telecommunications antenna. Because the County's approval granted use permit authorization for the antenna as a conditional use in the RR zone, there is a high degree of factual and legal support for the local government's decision that the development is consistent with the use provisions of the certified LCP.

Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved project with provisions of the certified Local Coastal Program and the public access policies of the Coastal Act.

c. Non-Conforming Structures.

Appellant #2 contends that the County approval of the project is inconsistent with Mendocino County's CZC provisions governing geologic setback requirements for the continuance of non-conforming structures. The appellant states that CZC Section 20.480.010 lists the conditions under which non-conforming structures may be continued. "Addition of new uses types is not one of those conditions."

LCP Policies and Standards

CZC Section 20.480.005 states:

To allow for the continued utilization of lawfully existing improvements and uses made nonconforming by the adoption of the Coastal Element of the Mendocino County General Plan and this Division, where the use is compatible with adjacent land uses and where it is not feasible to replace the activity with a conforming use.

- (A) *A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this Division but which does not conform with the use regulations for the zone in which it is located.*
- (B) *A nonconforming structure is a structure which was lawfully erected prior to the effective date of the application of these regulations but which, under this Division, does not conform with the standards of yard spaces, height of structures, distance between structures, parking, etc., prescribed in the regulations for the zone in which the structure is located.*

CZC Section 20.480.010 states:

- (A) *A legal nonconforming use or structure may be continued if it conforms to the following criteria:*
 - (1) *If the existing use is contained within a structure built or modified to accommodate the existing use, conformance is required with the applicable building code and/or zoning code in effect at the time of construction or modification.*
 - (2) *The use must be compatible with adjacent land uses, such that its hours of operation, noise levels, aesthetic impacts, and traffic to the site do not now significantly impact adjacent land uses.*
- (B) *Routine maintenance and repairs may be performed on a nonconforming structure or site.*

CZC Section 20.480.015 states:

Existing legal nonconforming structures may be remodeled, rehabilitated or reconstructed as long as the exterior dimensions of the building remain the same.

Discussion

Appellant #2 contends that the project as approved by the County is inconsistent with the certified LCP policies and standards related to continuance of non-conforming structures. The appellant notes that the existing house was permitted in 1973, prior to certification of the geologic setback policies of the LCP on October 13, 1992. The appellant contends that the existing house does not conform to the certified geologic setback policies, and thus is a non-conforming structure relative to required geologic setbacks that would ensure the safety of the house from bluff erosion and cliff retreat during its economic life span of 75 years. The appellant asserts that the County's approval of the project violates the provisions of CZC Section 20.480.010, which state the circumstances under which non-conforming structures are allowed to continue.

The appellant assumes that the existing house is a non-conforming structure for purposes of required geologic setbacks simply because its construction pre-dates certification of the Mendocino County LCP. However, CZC Section 20.480.005(B) defines what a non-conforming structure is and states that it is a structure which was lawfully erected prior to the effective date of the application of these regulations, but which does not conform with the standards of the coastal zoning code for yard spaces, height of structures, distance between structures, parking, etc., that are prescribed in the regulations for the zone in which the structure is located. The appellant asserts that because of its alleged noncompliance with the geologic setback requirements, the house is a non-conforming structure, but no evidence is provided that demonstrates any inconsistency with geologic setback requirements. The geologic hazard policies articulated by LUP Policy 3.4-7 and CZC Section 20.500.020(B) of the LCP as described above were adopted after the house was built, and only require that "new" structures and not already existing structures, be set back a sufficient distance from the bluff edge to ensure their safety from bluff retreat during their economic life span. The house is not a new structure, and is already more than 30 years old. Even if LUP Policy 3.4-7 and CZC Section 20.500.020(B) applied when the house was built, there are no indications that coastal bluff retreat would affect the house over its economic life. In fact, the County made a finding that the site is underlain by solid rock, and did not require a geotechnical study for the proposed development. No evidence has been provided demonstrating that the existing permitted house and garage do not conform to the other zoning code provisions that apply in the RR district. In fact, consistent with the current zoning code requirements, the existing permitted house and garage observe minimum front, side and rear yard setbacks of at least 20 feet, as well as conform to the height limitations requiring the structures be no higher than 18 feet above average natural grade.

Whether or not the structure is a legal non-conforming structure, there is no substantial issue as to whether the structure meets the criteria under which CZC Section 20.480.010 allows a legal non-conforming structure to be continued. CZC Section 20.480.010 allows for the continuance of a legal non-conforming structure according to two criteria: (1) if the existing use is contained within a structure built or modified to accommodate the existing use, conformance is required with the applicable building code and/or zoning code in effect at the time of construction or modification; and (2) the use must be compatible with adjacent land uses, such that its hours of operation, noise levels, aesthetic impacts, and traffic to the site do not now significantly adversely impact adjacent land uses.

Regarding the first criterion, the original and existing use of the structure is as a single-family residence, and the house was originally constructed as a single-family residence. No evidence has been submitted, except for the lack of a deck railing, that the house as originally approved does not conform to the building and zoning codes applicable at the time of construction. Even if the house is non-conforming, as a condition of approval, the County is requiring the deck to be brought up to code. In addition, the house appears

to conform to the basic building code and zoning code (R-R, Residential-Resort) requirements in effect for the property at the time the house was constructed, such as front yard and side yard setback requirements and height limitations. Regarding the second criterion, the use is compatible with adjacent land uses in that the house will continue to be used as a single-family residence consistent with the use of adjacent lands as a residential area with other residences of a similar or larger scale around it, and its “hours of operation, noise levels, aesthetic impacts, and traffic to the site” would not present significant adverse impacts to the adjacent residentially-zoned land uses. Therefore, even if the house were a non-conforming structure, which it is not, the house conforms to both criteria set forth in CZC Section 20.480.010 necessary for continuance of a non-conforming structure.

The appellant also contends that “addition of new use types” is not a condition under which non-conforming structures may be continued. The appellant misinterprets CZC Section 20.480.010(A). To be allowed to continue, a legal non-conforming use need only conform to two criteria: A(1) and A(2). As discussed above, the existing structure would meet those criteria if it were a legal non-conforming structure. CZC Section 20.480.010(A) does not preclude combining new conforming uses with previous non-conforming uses. As discussed above, the approved antenna use is a conforming use in the RR zone. Minor and major impact utilities are allowed as a conditional use in the RR zone, and the County granted a use permit for this antenna.

In addition, CZC Section 20.480.015 specifically allows remodeling, rehabilitation and reconstruction of existing legal non-conforming structures as long as the exterior dimensions of the building remain the same. The coastal development use permit as approved by the County would not increase the building footprint or height, and is therefore also in compliance with CZC Section 20.480.015.

For all of the above reasons, there is a high degree of factual and legal support for the local government's decision that the development is consistent with the legal nonconforming structure provisions of the certified coastal zoning code.

Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance with the certified Local Coastal Program and the public access policies of the Coastal Act.

d. ESHA Protection.

Both appellants contend that the County approval of the project is inconsistent with Mendocino County's LCP policies and standards designed to protect ESHA. Appellant #1 points out that the siting of the approved wireless communications facility would occur “near a shorebird roosting, resting and nesting area” inconsistent with LUP Policy 3.1-2. Appellant #2 did not cite any LCP policies or standards regarding ESHA

protection, but did state that ground animals and birds are at risk from the development as approved.

LCP Policies and Standards

Policy 3.1-2 states in applicable part:

Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones or streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, [and] a representative of the California Coastal Commission... If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied...

Policy 3.1-7 states in applicable part,

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

1. *It shall be sited and designed to prevent impacts which would significantly degrade such areas;*

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

Section 20.496.020 of the Coastal Zoning Ordinance states in applicable part:

ESHA- Development Criteria

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

(1) *Width.*

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development.

The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width....

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

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

Discussion

LUP Policy 3.1-2 cited by Appellant #1 requires that development proposals in ESHA such as wildlife habitat, shall be subject to special review to determine the current extent of the sensitive resource. LUP Policy 3.1-7 requires that a buffer area shall be established adjacent to all ESHA to provide sufficient area to protect the ESHA from significant degradation from future development. The width of the buffer shall be a minimum of 100 feet unless it is determined by the Department of Fish and Game that a narrower buffer (not less than 50 feet) would protect the resources of the habitat area.

The appellants raise concerns about the protection of shorebird roosting, resting, and nesting areas and ground animals and birds. The appellants contend that the County-approval is inconsistent with the LCP ESHA protection policies as it would harm wildlife due to the close proximity of the communications facility to their habitat. The appellants imply that the RFR emissions from the approved facility would have significant adverse impacts on ESHA.

The appellants' appeals are not specific enough to understand the reasons for the contention that ESHA resources would be jeopardized. The County analyzed possible negative impacts of approving the project such as increased noise, annoying light and glare, reduction in air quality or water quality, and prior to approval found that no significant adverse environmental impacts to ESHA would occur from the proposed project.

The appellants have not provided any biological information or other documentation verifying that any ESHA actually exists at or near the site, and the County staff report does not identify any. Appellant #1 provided pictures of the bluffs and indicated that birds roost on the bluffs, but the pictures do not depict any roosting birds, and the appellants have not otherwise demonstrated that ESHA exists at the site. The development as approved would be underneath the existing platform that provides the deck and foundation for the house, and inside the existing garage, and in neither of these locations would the development encroach any closer to any identified ESHA that might exist in the area. Furthermore, as discussed previously, the County's and the Coastal Commission's consideration of certain aspects of the approved development under appeal is bound by the requirements of federal law. Pursuant to Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996, and Title 47 Section 332(c)(7)(B)(iv) of the U.S. Code, “[n]o State or local government or instrumentality therefore 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.” Thus, there is a high degree of factual and legal support for the local

government's decision that the development is consistent with the ESHA protection provisions of the certified LCP.

e. Visual Resources.

Both appellants contend that the County approval of the project is inconsistent with Mendocino County's LCP policies and standards related to protection of visual resources. The appellants cite inconsistency of the project as approved with LCP Policy 4.7-10 and CZC Section 20.504.15.

LCP Policies and Standards

Policy 3.5-1 states in applicable part:

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

LCP Policy 3.5-3 states in applicable part:

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

...

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

...New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LCP Policy 4.7-10 states:

Brewery Gulch Road south of Big River on the west side of Highway One shall be preserved as an existing bluff top access affording spectacular views of Mendocino Bay and the town of Mendocino. These views shall be protected and enhanced by possible future relocations of power lines as indicated in Policy 4.7-3.

CZC Section 20.504.010 states in applicable part:

The purpose of this section is to insure that 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.

CZC Section 20.504.15 states in applicable part:

Coastal Zoning Ordinance Section 20.504.015 – Highly Scenic Areas.

- (A) *The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:*

...

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

...

- (C) *Development Criteria.*

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

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

- (3) *New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials*

including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

(4) All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this Chapter.

...

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

Discussion

The subject property is designated as highly scenic. LUP Policy 3.5-1 and Chapter 20.504 of the Coastal Zoning Code require that new development in highly scenic areas be sited and designed to protect views to and along scenic coastal areas, and be subordinate to the character of its setting. LUP Policy 3.5-3 requires new development in highly scenic areas to provide for the protection of ocean and coastal views from public areas including highways, coastal trails, and beaches. LUP Policy 4.7-10 specifically provides that the views from Brewery Gulch Drive shall be protected and enhanced by the relocation of power lines.

Both appellants contend that the project as approved by the County is inconsistent with LCP policies and standards regarding visual resources and development within highly scenic areas. The project location is on a blufftop parcel west of Highway 500B (Brewery Gulch Drive) in an area that offers spectacular views overlooking Mendocino Bay and the town of Mendocino to the north. Appellant #1 states that “the new stealth tower...will be near road 500B-(also known as Brewery Gulch Dr.) which is designated part of the coastal hiking trail.” The appellant asserts through the letter from their attorney, Rodney Jones, that in approving the project, the County failed to adequately explore less intrusive sites with alternative system designs and alternative tower and antenna designs. Appellant #1 further contends that the size and location of the facility as approved by the County limits co-location and “would result in having many, many more sites to deal with.” The letter from Attorney Jones also emphasizes the benefits of co-location and states that “[co-location] is an essential element of an acceptable site.

Failure [to co-locate] offers the prospect of spawning a ‘tower war’ by other providers wanting a bite of the Mendocino pie.” Attorney Jones suggests the County approve an alternative site with a bigger (but camouflaged) tower that offers more opportunity for other providers to co-locate. Moreover, Appellant #1 refers to the existing un-permitted ham radio tower and antenna on the property, stating that it is “extremely visible.” Attorney Jones believes that the current ham tower “far exceeds the height of the residence, standing approximately three times higher at around sixty feet... [T]he Coastal Zone height limit under all circumstances is not to exceed 18 feet above natural grade

(Section 20.504.15).” Appellant #2 also refers to the presence of the un-permitted ham radio tower and antenna, and states that its existence is an “eyesore in one of the most scenic points on the coast....” Appellant #2 then refers to LCP Policy 4.7-10, which describes the location of the subject property (Brewery Gulch Road south of Big River on the west side of Highway One) and states that the area shall be preserved as an existing bluff top access affording spectacular views of Mendocino Bay and the town of Mendocino.

As discussed below, the Commission finds that none of these contentions and issues raised by the appellants concerning protecting views from public vantage points raise substantial issues of conformance of the project as approved with the visual resource policies of the LCP.

The subject property is currently developed with a single-family residence, and detached garage. There also is a ham radio tower and antenna located in the front yard of the property between the garage and the residence, which is alleged to be un-permitted development because it was constructed without the benefit of a coastal development permit. The antenna extends to a height approximately 60 feet above the ground, and is mounted on an approximately 37-foot-tall lattice tower attached to a wooden pole. The erection of the tower and ham radio antenna affixed to it are also alleged to be un-permitted development for which no coastal development permit was ever issued. In October 1979, the property owner applied for an after-the-fact coastal development permit to legalize the antenna and tower, which had been previously erected. The Commission granted CDP No. 79-A-106 on October 16, 1979 approving the applicant’s amateur radio antenna with two special conditions: (1) “[t]he applicant shall, within two months of the granting of the permit, lower the existing antenna to a height no greater than the height of the existing single family residence on the subject parcel;” and (2) “[p]rior to the issuance of the permit, the applicant will negotiate in good faith with the attorney general’s representative or the executive director to resolve any outstanding violations.” The antenna was never lowered as required by the special condition imposed, and the permit was never issued. The current project as approved by the County would allow placement of a 53-inch by 25-inch radio cabinet within the existing garage, and placement of a stealth antenna underneath the exterior deck, which forms the foundation platform upon which the permitted house is built. The antenna would be housed in a fiberglass composite shell “false pier” suspended from the deck, and would have an appearance similar to the other concrete piers supporting the deck/platform and house. No grading, vegetation removal, or road extensions would be performed. Only minimal trenching would be necessary for placement of underground coaxial cable connecting the antenna and radio equipment located in the garage. The antenna would be approximately eighty-five feet from the County Road, and approximately 500 feet from the nearest neighbor to the south.

Impact of Approved Development on Views to and Along the Coast

With regard to the contentions that the approved development would adversely affect views to and along the coast from Brewery Gulch Drive and other public vantage points, the Commission notes that due to its design and location under the deck, very little of the facility would be visible from public locations. The approved antenna's distance from public locations would make it very difficult to identify the stealth antenna as anything other than a supporting foundation for the existing deck. In addition, the repairs to the existing wooden fence between the subject property and County Road 500B required by County-imposed Special Condition No. 20 would have very little impact on views. The existing fence is constructed of rough finished grape stakes that are spaced apart from each other, and approximately 3½ feet tall on average. The repairs to the existing fence and gates would simply restore the fence to its original condition and would not block views because of the approximately 4-inch gaps between the grape stakes, and the fact that the fence averages only about 3 ½ feet in height. Moreover, the radio equipment would be housed inside the existing garage and be completely invisible. Therefore, the Commission finds that no substantial issue is raised that the approved development would adversely affect views to and along the coast inconsistent with LUP Policies 3.5-1 and 3.5-3 and Chapter 20.504 of the Coastal Zoning Code.

Opportunities for Co-Location of Cell Phone Antenna

With regard to the contention that the approved development would not provide for the opportunity to co-locate cell phone antenna facilities from more than one service provider, the Commission agrees that providing co-location capability when siting antenna towers can minimize the cumulative impact on visual resources of cell phone antenna development. However, the Commission notes that the County imposed Special Condition No. 11 to require the applicant to "negotiate in good faith with third parties requesting shared use of this site." Therefore, no substantial issue of conformance is raised that the project as approved will lead to cumulative adverse impacts on coastal visual resources by failing to allow for co-location of cell phone facilities.

Impacts of Existing Ham Radio Tower and Antenna

With regard to the contention that the existing ham radio tower and antenna creates adverse visual impacts, the existence of the approximately 60-foot-tall, un-permitted, ham radio tower and antenna on the subject property is a source of numerous complaints. Both appellants assert that the County was wrong to approve the present application for a use permit to develop a communications facility on the same property with the existing illegal tower and antenna. However, the application before the County included a proposal to remove the existing ham radio tower and antenna from the subject property. The County imposed Special Condition No. 21 to require removal of this un-permitted development within 90 days or prior to activation of service of the wireless communication equipment on the site. Therefore, with approval of the permit, the

alleged adverse visual resource impacts from the ham tower and antenna would be removed pursuant to the special condition, and no substantial issue is raised of conformance of the ham radio tower and antenna to the visual resource protection policies of the certified LCP.

Development Subordinate to the Character of its Setting

The Commission finds that the project as approved raises no substantial issue with regard to visual resource protection requirements of the certified LCP that new development be subordinate to the character of its setting for several reasons. First, the placement of the radio equipment within the existing garage would completely hide from view that portion of the approved development. Second, the stealth antenna hung under the existing deck would be camouflaged to look like the other foundation piers for the platform of the house and deck. Finally, the improvement to the fence running along the road frontage would match the materials and height of the existing fence. The Commission notes that the extent and scope of the development approved by the County is very small, as it consists of (1) installation of an antenna housed in a fiberglass shell fake-pier to be suspended from underneath the deck of the existing house, (2) installation of a radio cabinet placed within the existing garage of the house, (3) burial of underground cables, and (4) in-kind repairs to an existing fence. Therefore, for the reasons discussed above, the appeal does not raise a substantial issue of consistency of the approved development with the visual resource provisions of the certified LCP, including LUP Policies 3.5-1, 3.5-3, and 4.7-10; and Chapter 20.504 of the Coastal Zoning Code. Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance with the certified Local Coastal Program and the public access policies of the Coastal Act.

f. Inconsistency of Zoning Code Requirements Related to CEQA

Appellant #2 alleges an inconsistency of the County's approval of the proposed development with Mendocino's certified CZC Section 20.532.040 and CEQA.

LCP Policies and Standards

Section 20.532.040 states:

Upon acceptance of an application as complete, the Director or his designee shall complete an environmental review of the project as required by the California Environmental Quality Act (CEQA), shall study the project for conformance with all applicable requirements of this Chapter. The Director shall refer relevant portions of the completed application to those departments, agencies or individuals who received copies of the application during application check, or other individual/group that the department believes may have relevant authority or expertise. The Director or designee shall prepare a written report and

recommendation for action on the application with findings and evidence in support thereof.

Discussion

Appellant #2 contends that the approved project is inconsistent with CZC Section 20.532.040 because in the appellant's opinion, the environmental review for the project was flawed with regard to human health and also animal life. The appellant states, "both ground animals and birds are at risk, particularly as the project is next to Big River State Park and the antenna would sit atop a bluff harboring bird rookeries."

Coastal Zoning Code Section 20.532.040 requires the County to complete an environmental review of the proposed project as required by CEQA, but CEQA is not itself a substantive LCP policy by which the consistency of the approved development is measured. Rather, the requirement of CZC Section 20.532.040 deals with the procedure leading up to the County action, and does not deal with the project as approved. Thus, the contention raises a procedural inconsistency and not a substantial or substantive inconsistency of the approved project with the certified LCP. In addition, the coastal resource that the appellant indicates is affected by the allegedly flawed environmental review process is ESHA. However, the appellant has not provided any evidence that ESHA is actually present or even that other wildlife would be harmed by the project as approved. Therefore, the significance of the coastal resource affected by the decision is not substantial.

Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved project with provisions of the certified Local Coastal Program and the public access policies of the Coastal Act.

g. Lack of Public Notice

Appellant #2 alleges an inconsistency of the County's approval of the proposed development with requirements for public notice as required in CZC Section 20.536.005(D)(4) and (6).

LCP Policies and Standards

CZC Section 20.536.005(D) states:

Notice that the Coastal Permit Administrator will report proposed issuance of the coastal development administrative permit to the Board of Supervisors shall be mailed at least ten (10) calendar days prior to the meeting. The notice shall be provided by first class mail to:

- (1) *The applicant;*
- (2) *All property owners within three hundred (300) feet of the property lines of the project site, and to each occupant of property within one hundred (100) feet of the property lines of the project site. Where the applicant is the owner of all properties within three hundred (300) feet of the property lines of the project site, notice shall be provided to all property owners within three hundred (300) feet and to all occupants within one hundred (100) feet of the applicant's contiguous ownership;*
- (3) *All persons who have requested to be on the mailing list for that development project;*
- (4) *All persons who have furnished self addressed and stamped envelopes and requested to be on the mailing list for development located within the Coastal Zone boundaries; and*
- (5) *The Coastal Commission.*

Discussion

The appellant contends that approval of the proposed project included provisions for repairing a 50-foot fence “at the last minute by the Board of Supervisors on the subject property, (a) with no advance public notice; (b) with no public discussion or input; (c) with almost no discussion by the Board of Supervisors itself.”

CZC Section 20.536.005(D) sets forth County noticing requirements for reporting proposed issuance of coastal development administrative permits, but this zoning code provision is not itself an LCP provision by which the consistency of the approved development is measured. The proposed development was approved by the Board of Supervisors, and was not an administrative permit governed by the requirements of CZC Section 20.536.005(D). Even if CZC Section 20.536.005(D) were applicable to the Board’s review of the permit application, the noticing requirements of CZC Section 20.536.005 (D) are process oriented, and deal with the procedure leading up to the County action. The contention therefore raises a procedural inconsistency and not a substantial or substantive inconsistency of the approved project with the certified LCP. The contention thus raises a local issue relevant to internal procedures and not an issue of regional significance since the County has LCP notification policies in place and the County’s decision to approve the permit would not influence the existing LCP standards that include notification provisions. Furthermore, the Commission notes that it’s own hearing on this appeal has provided additional opportunities for interested parties to provide comments on the project.

Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved development with the certified Local Coastal Program and the public access policies of the Coastal Act.

h. Inconsistency with LCP Overlooked Because of Misinterpretation of Federal Law

Appellant #1 contends that the County approved the project based on a mistaken belief that denial of the project would constitute a prohibition on the provision of personal wireless communication services in violation of federal law. Currently, there is a gap in cell phone services of any kind in and around the Town of Mendocino. The contention suggests that the County mistakenly believed that failure to approve the facility to fill the gap in cell phone service would be in violation of federal law. The appellant submitted a letter from their attorney, Rodney Jones, as part of the appeal that opines that a County denial would not have been in violation of federal law. The letter from Mr. Jones states in part:

“The fact that there is a gap in the coastal service area with respect to the town of Mendocino does not compel you to fill that gap based on request of the Kings, Edge, or any other service provider. Refusing to fill such a gap does not constitute a ‘prohibition’ within the meaning of federal law. (OmniPoint Communications. Inc. v. Scranton (M.D. Pa. 1999) 36 F.Supp.2nd 222.233 (‘Were courts to hold that merely because there are some gaps in service in an area...the public interest necessarily tips the balance in favor of allowing a variance, local boards would be obliged to approve virtually every application.’) Thus, you should not feel stampeded or pressured into making a decision favorable to King/Edge based on a claim that an unfavorable decision would constitute a ‘prohibition’ in violation of federal law. In fact, the FCC regulations themselves expressly contemplate that there will exist so-called service ‘dead spots.’ (360 Communications Co., *supra*). ...From the available information in the file, it appears that the service gap only concerns the town proper of Mendocino. Evidently, some cell service is available from the headlands to the west of town, south toward Little River, and on the road north to Fort Bragg.”

The appellants imply that the project as approved is inconsistent with the LCP and the County approved it out of a mistaken belief that to deny the project would violate federal law. However, as discussed above, none of the other contentions of the appeals raise a substantial issue of conformance of the project as approved with the certified LCP.

Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance with the certified Local Coastal Program and the public access policies of the Coastal Act.

Conclusion

The Commission finds that for the reasons stated above the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP.

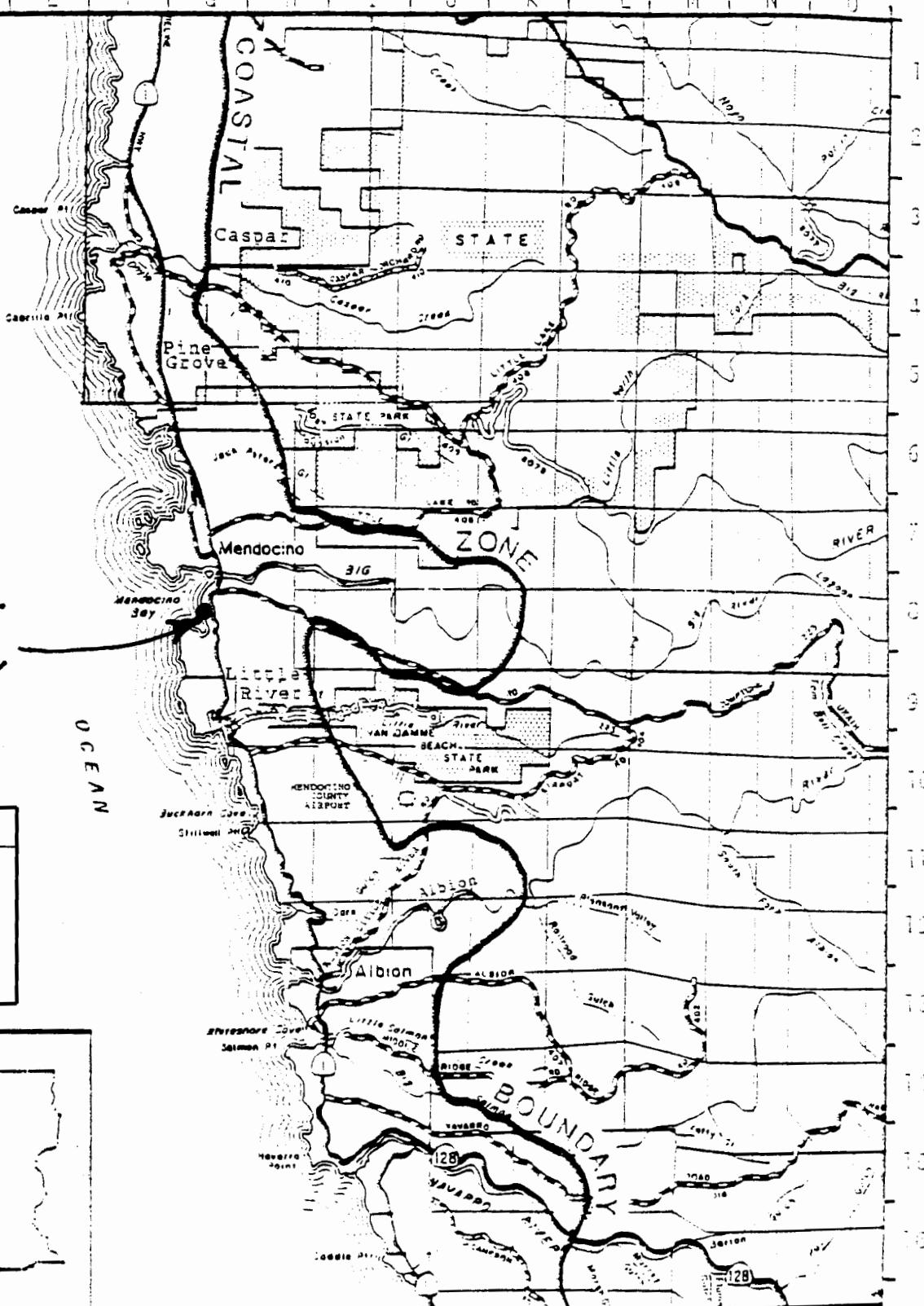
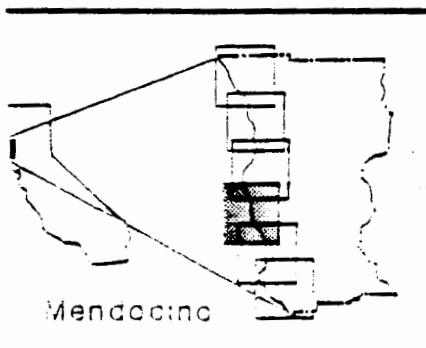
EXHIBITS

1. Regional Location Map
2. Vicinity Location Map
3. Project Plans
4. Notice of Final Action
5. Appeal #1 – James and Bettilou Lovera
6. Appeal #2 – Arthur Firstenberg
7. Photographs
8. CDP for Existing House
9. Applicant's Correspondence

PROJECT SITE

EXHIBIT NO. 1

APPLICATION NO.
A-1-MEN-03-052
EDGE WIRELESS
REGIONAL LOCATION
MAP



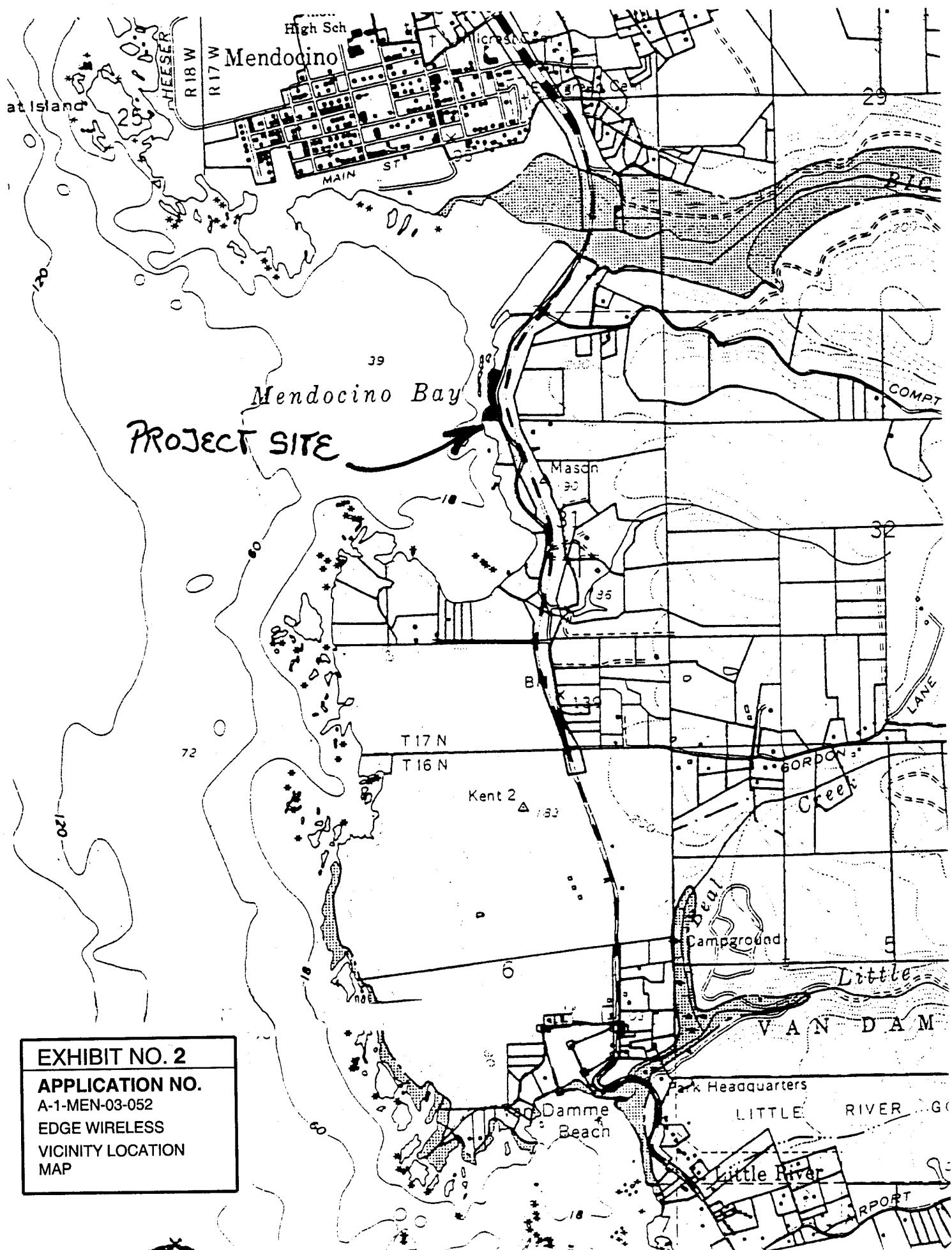
California Coastal Commission

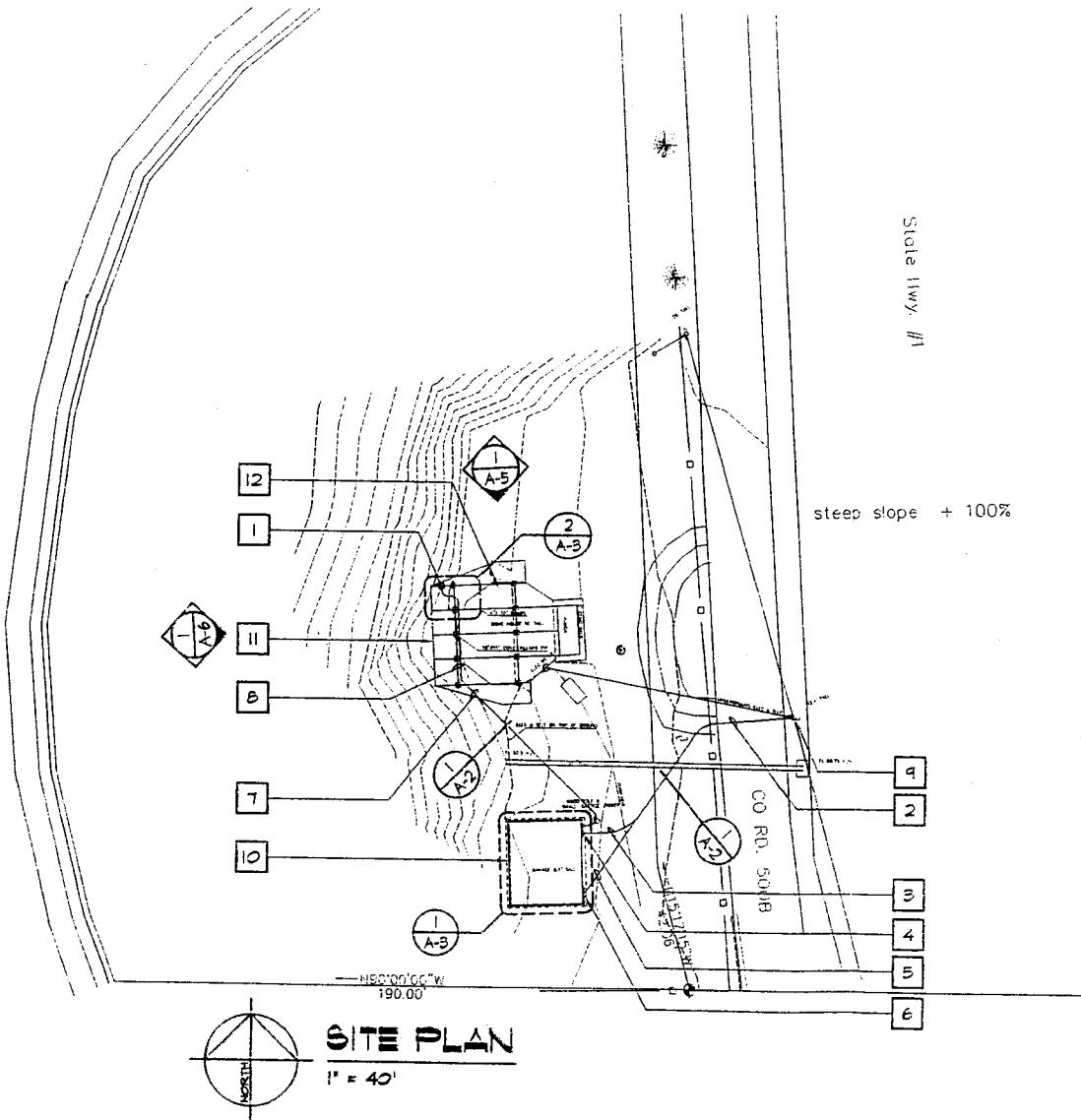
LOCATION MAP

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County of Mendocino





KEY NOTES

- 1 R.F. ANTENNA LOCATION BELOW EXSTG. DECK - SEE 2/A-3 FOR MORE INFORMATION.
 - 2 NEW UGE&T, SEE 1/A-2 - COORDINATE W/ PROPERTY OWNER, LOCAL UTILITY COMPANIES, AND COUNTY ROAD DEPARTMENT FOR LOCATION, REQUIREMENTS AND PERMITS.
 - 3 NEW UGE, SEE 1/A-2 - COORDINATE W/ PROPERTY OWNER AND LOCAL ELECTRIC COMPANY FOR LOCATION.
 - 4 NEW ELEC. METER BASE - SEE 1/E-1 AND COORDINATE W/ PROPERTY OWNER AND EDGE WIRELESS FOR LOCATION.
 - 5 NEW UGT, SEE 1/A-2 - COORDINATE W/ PROPERTY OWNER AND LOCAL TELEPHONE COMPANY FOR LOCATION.
 - 6 NEW TELEPHONE DEMARK - SEE 1/E-1 AND COORDINATE W/ PROPERTY OWNER AND EDGE WIRELESS FOR LOCATION.
 - 7 UNDERGROUND R.F. COAX CABLE IN 4"Φ CONDUIT - SEE 1/A-2 AND COORDINATE W/ PROPERTY OWNER AND EDGE WIRELESS FOR LOCATION. NOTE CROSSING OF EXSTG. ELEC. & TELE. ON GROUND SURFACE BETWEEN HOUSE AND GARAGE.
 - 8 UNDER-DECK R.F. COAX CABLE IN 3"Φ CONDUIT ATTACHED TO UNDERSIDE OF EXSTG. DECK FRAMING - COORDINATE W/ PROPERTY OWNER AND EDGE WIRELESS FOR LOCATION.
 - 9 EXSTG. POLE MOUNTED ELEC. TRANSFORMER W/ NEW ELEC. AND TELE. DROPS TO NEW UGE&T.
 - 10 EXSTG. GARAGE.
 - 11 EXSTG. WOOD DECK.
 - 12 EXSTG. DOME HOUSE.

EXHIBIT NO. 3

APPLICATION NO.

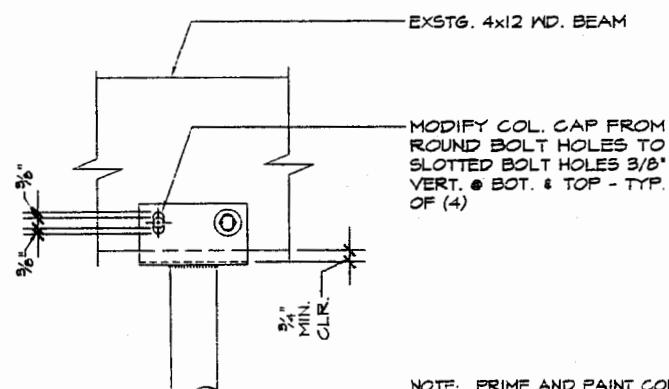
A-1-MEN-03-052

EDGE WIRELESS

PROJECT PLANS

(1 of 4)

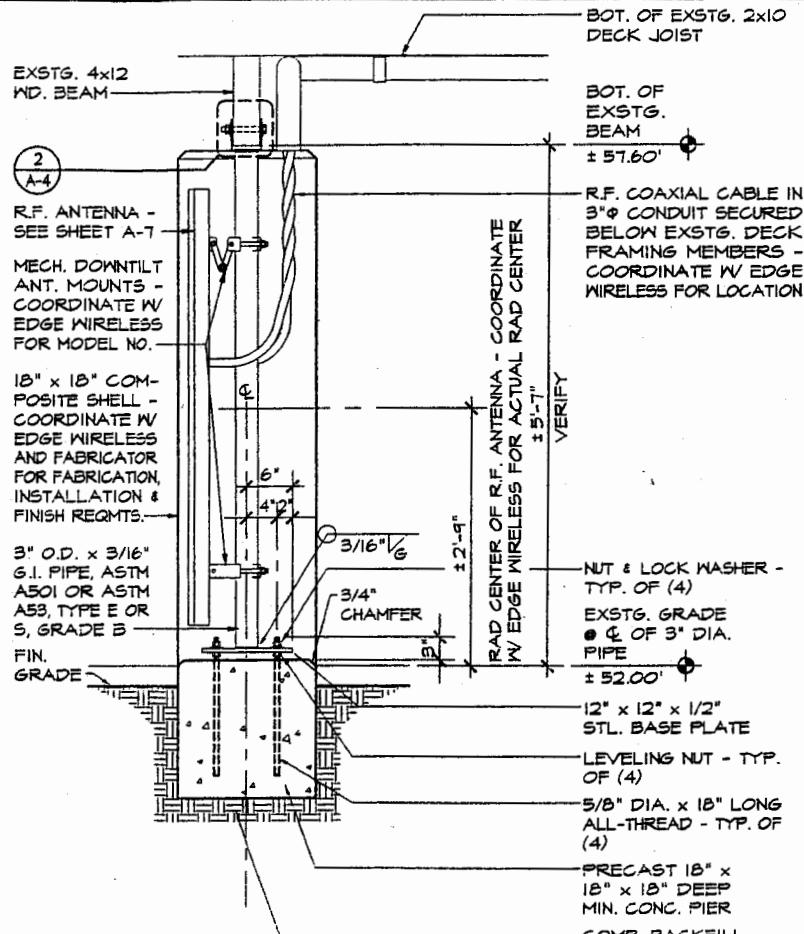
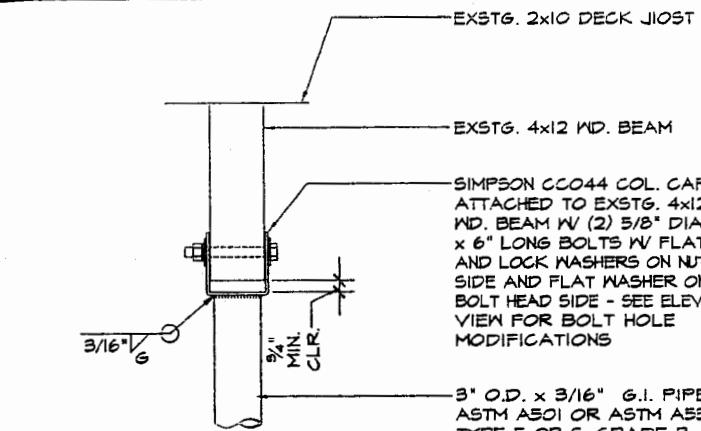
PRELIMINARY
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CONSTRUCTION

ELEVATION VIEW

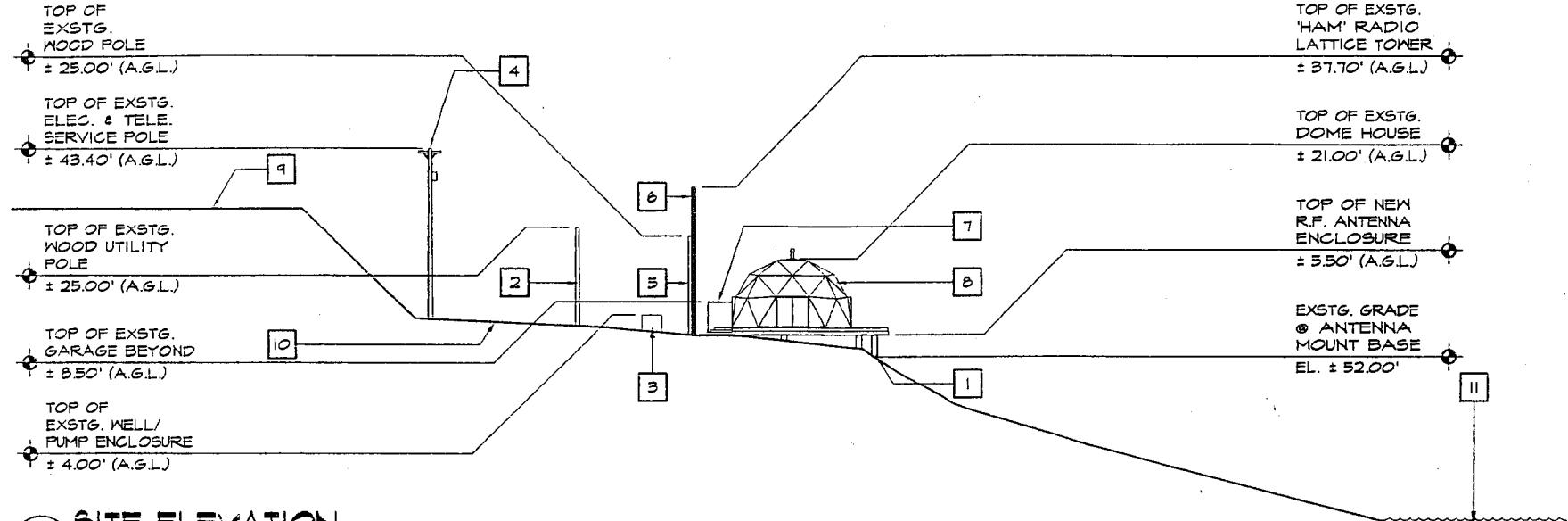
NOTE: PRIME AND PAINT COL. CAP AND PIPE ASSEMBLY W/ CORROSION RESISTANT MATERIALS

2 ANTENNA MOUNTING PIPE @ COL. CAP

A4 1 1/2"=1'-0"



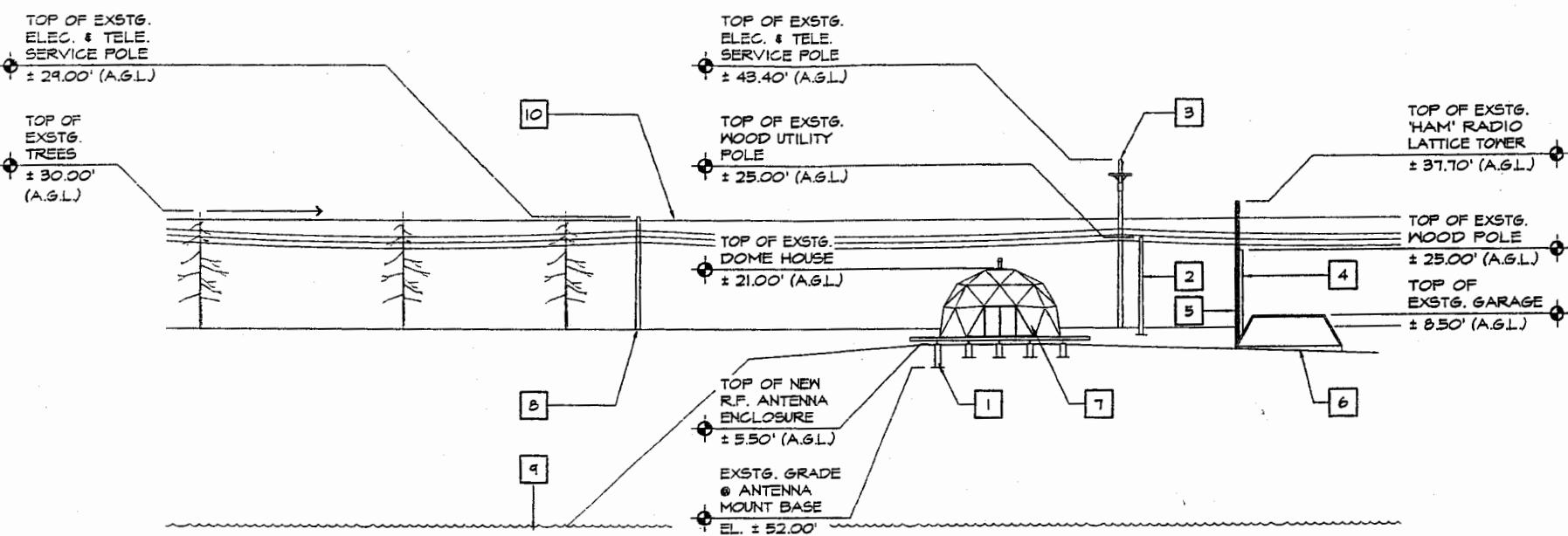
*PRELIMINARY
NOT TO BE USED
FOR BID OR
CONSTRUCTION*



KEY NOTES

- | | |
|---|--|
| [1] EXSTG. WOOD UTILITY POLE. | [8] EXSTG. 'DOME' HOME AND DECK - SEE SHEETS A-1, A-3 AND A-6 FOR MORE INFO. |
| [2] EXSTG. WELL/PUMP ENCLOSURE. | [9] APPROX. LOCATION OF STATE HIGHWAY ONE. |
| [3] EXSTG. ELEC. & TELE. SERVICE POLE W/ EXSTG. POLE MOUNTED ELECTRIC TRANSFORMER W/ NEW DROPS TO NEW USE&T - "PACIFIC GAS & ELECTRIC CO.". | [10] APPROX. LOCATION OF CO. RD. 500B. |
| [4] EXSTG. WOOD POLE. | [11] PACIFIC OCEAN. |
| [5] EXSTG. 'HAM' RADIO LATTICE TOWER. | |
| [6] EXSTG. GARAGE BEYOND - SEE SHEETS A-1, A-3 AND A-6 FOR MORE INFO. | |

PRELIMINARY,
NOT TO BE USED
FOR BID OR
CONSTRUCTION



1 SITE ELEVATION

A-1 N.T.S.

KEY NOTES

- 1 R.F. ANTENNA CONCEALED WITHIN 18" x 18" COMPOSITE SHELL - SEE I/A-4 AND SHEET A-7.
- 2 EXSTG. WOOD UTILITY POLE.
- 3 EXSTG. ELEC. & TELE. SERVICE POLE W/ EXSTG. POLE MOUNTED ELECTRIC TRANSFORMER W/ NEW DROPS TO NEI UGE&T - "PACIFIC GAS & ELECTRIC CO.".
- 4 EXSTG. WOOD POLE.
- 5 EXSTG. 'HAM' RADIO LATTICE TOWER.
- 6 EXSTG. GARAGE - SEE SHEETS A-1, A-3 AND A-5 FOR MORE INFO.
- 7 EXSTG. 'DOME' HOME AND DECK - SEE SHEETS A-1, A-3 AND A-5 FOR MORE INFO.
- 8 EXSTG. ELEC. & TELE. SERVICE POLE.
- 9 PACIFIC OCEAN.
- 10 LINE OF SLOPE ABOVE & BEYOND AND APPROX. LOCATION OF STATE HIGHWAY ONE.

"PRELIMINARY,
NOT TO BE USED
FOR BD OR
CONSTRUCTION"



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

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www.co.mendocino.ca.us/planning

RECEIVED

July 29, 2003

AUG 01 2003

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

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

CASE#: CDU 1-2003

DATE FILED: 1/15/2003

OWNER: CHARLES & PAMELA KING

APPLICANT: EDGE WIRELESS LLC

AGENT: COMMUNICATION SERVICES, INC ATTN: ALAN WATERS

REQUEST: Coastal Development Use Permit for the installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone service, and an underground coaxial cable from the radio cabinet to the antenna.

LOCATION: In the Coastal Zone, 3/4+- mile south of the Town of Mendocino, 0.2+- mile southwest of the intersection of Highway 1 and Comptche-Ukiah Road, between Road 500B and the Pacific Ocean, located at 9950 Road 500B; AP# 119-310-09.

PROJECT COORDINATOR: Charles Hudson

ACTION TAKEN:

The Board of Supervisors, on July 22, 2003, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was appealed at the local level.

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

Attachments

cc: CHARLES & PAMELA KING
EDGE WIRELESS LLC
COMMUNICATION SERVICES ATTN: ALAN WATERS
COASTAL COMMISSION
ASSESSOR

EXHIBIT NO. 4

APPLICATION NO.

A-1-MEN-03-052

EDGE WIRELESS

NOTICE OF FINAL ACTION
(1 of 53)

FINAL FINDINGS AND CONDITIONS OF APPROVAL
CDU 1-2003 – KING/EDGE WIRELESS
JULY 22, 2003

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

Department of Fish and Game Findings: The Planning Commission has evaluated the Initial Study and other information pertinent to the potential environmental impacts of this project and finds that, based upon the existing development on the subject parcel and surrounding parcels, the project will not have any adverse impact upon wildlife or the habitat upon which wildlife depends and, therefore, the Commission has rebutted the presumption set forth in subdivision (d) of Section 753.5.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

Project Findings: The Planning Commission making the above findings, approves #CDU 1-2003 subject to the conditions of approval recommended by staff.

CONDITIONS OF APPROVAL:

1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$25.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to July 28, 2003. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.

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2. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within 2 years shall result in the automatic expiration of this permit.
3. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site.
4. During construction of the project, before surfacing and vegetation sufficient to prevent erosion have been established, other erosion control measures shall be established and maintained sufficient to prevent erosion of soil from the site.
5. Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.
6. One or more warning signs consistent with FCC and ANSI regulations, shall be displayed in close proximity to the antenna. Provided that the locations meet applicable requirements, the signs shall be located below the deck, on the north and west sides, to minimize aesthetic impacts from the public road. If a sign is required to be visible from the road, or the main approach to the property, it shall be mounted on the wall of the residence, if permissible, rather than on a separate free-standing support. The intent is that Federal safety requirements will be met with the least visual impact from public locations.
7. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
8. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
9. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
10. This permit is issued for a period of ten years, and shall expire on July 22, 2013. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
11. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site.
12. Prior to the final inspection by the Building Division, an identification sign for each company responsible for operation and maintenance of facilities at the site, not larger one square foot, shall be mounted on an exterior wall in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall also be posted.
13. The antennas and supporting structure shall be inspected every five years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.

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14. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
15. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
16. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.
17. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
18. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

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

19. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
20. Under encroachment procedures administered by the Mendocino County Department of Transportation, as may be applicable, a wooden fence and gate(s), designed to match the existing rough finished wooden fence and gates (maximum space between pickets: four inches) along the property frontage along County Road 500B, from the northeast corner of the structure, paralleling the County road, shall be installed along the length of the property frontage. Gates and fences shall be installed and maintained at each of the driveway entrances, which shall be closed accept for short-term purposes of encroachment.
21. Within 90 days or prior to activation of service of the wireless communication equipment on the site, whichever occurs first, the property owner shall remove the existing tower and antenna on the site.
22. Within 30 days, the applicant shall apply for a building permit for the deck, westerly side of the dwelling. The permit shall be administered under the appropriate building permit standard as determined by the Building Official. Work shall be completed within 90 days.

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

I. DESCRIPTION OF PROJECT.

DATE: March 13, 2003

CASE#: CDU 1-2003

DATE FILED: 1/15/2003

OWNER: CHARLES & PAMELA KING

APPLICANT: EDGE WIRELESS LLC

AGENT: COMMUNICATION SERVICES, INC ATTN: ALAN WATERS

REQUEST: Coastal Development Use Permit for the installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone service, and an underground coaxial cable from the radio cabinet to the antenna.

LOCATION: In the Coastal Zone, 3/4+- mile south of the Town of Mendocino, 0.2+- mile southwest of the intersection of Highway 1 and Comptche-Ukiah Road, between Road 500B and the Pacific Ocean, located at 9950 Road 500B; AP# 119-310-09.

PROJECT COORDINATOR: Charles Hudson

II. DETERMINATION.

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

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

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



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

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

March 19, 2003

RECEIVED

Planning - FB
Department of Transportation
Environmental Health - FB
Emergency Services
Assessor
Dept of Forestry

MAR 24 2003
CALIFORNIA
COASTAL COMMISSION

Coastal Commission
Mendocino Fire District
Mendocino Unified School District
Federal Communication Commission
Public Utilities Commission

NOTICE OF PUBLIC HEARING AND AVAILABILITY OF DRAFT NEGATIVE DECLARATION FOR PUBLIC REVIEW

NOTICE IS HEREBY GIVEN THAT the Mendocino County Planning Commission at its regular meeting on Thursday, April 17, 2003, at 9:00 a.m., to be held at the Caspar Community Center, 15051 Caspar Road, Caspar, California, will conduct a public hearing on the following project and the Draft Negative Declaration at the time listed or as soon thereafter as the item may be heard.

CASE#: CDU 1-2003

DATE FILED: 1/15/2003

OWNER: CHARLES & PAMELA KING

APPLICANT: EDGE WIRELESS LLC

AGENT: COMMUNICATION SERVICES, INC ATTN: ALAN WATERS

REQUEST: Coastal Development Use Permit for the installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone service, and an underground coaxial cable from the radio cabinet to the antenna.

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PROJECT COORDINATOR: Charles Hudson

ENVIRONMENTAL DETERMINATION: The Department of Planning and Building Services has prepared a Draft Negative Declaration for the above project (no significant environmental impacts are anticipated which cannot be adequately mitigated). A copy of the Draft Negative Declaration is attached for your review.

RESPONSE DUE DATE: April 16, 2003. If no response is received by this date, we will assume no recommendation or comments are forthcoming and that you are in agreement with the contents of the Draft Negative Declaration.

It should be noted that the decision making body may consider and approve modifications to the requested project(s). Your comments regarding the above project(s) are invited. Written comments should be submitted to the Department of Planning and Building Services, at 501 Low Gap Road, Room 1440, Ukiah, California. Oral comments may be presented to the Planning Commission during the public hearing(s).

The Planning Commission's action shall constitute final action by the County unless appealed to the Board of Supervisors. If appealed, the Board of Supervisors action shall be final except that an approved project may be appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project. To file an appeal of the Planning Commission's decision, a written statement must be filed with the Clerk of the Board with a filing fee within 10 calendar days of the Planning Commission's decision. If you challenge the project in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s) described in this notice, or in written correspondence delivered to the Department of Planning and Building Services or the Planning Commission at, or prior to, the public hearing(s). All persons are invited to appear and present testimony in this matter.

Additional information regarding the above noted item may be obtained by calling the Department of Planning and Building Services at 463-4281, Monday through Friday, 8:00 a.m. through 5:00 p.m. Should you desire notification of the Planning Commission decision you may do so by requesting notification in writing and providing a self-addressed stamped envelope to the Department of Planning and Building Services.

RAYMOND HALL, Secretary to the Planning Commission

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STAFF REPORT FOR COASTAL DEVELOPMENT USE PERMIT

**#CDU 1-2003
APRIL 17, 2003
PAGE PC-1**

OWNER: CHARLES & PAMELA KING
PO BOX 1004
MENDOCINO, CA 95460

APPLICANT: EDGE WIRELESS LLC
600 SW COLUMBIA, SUITE 7200
BEND, OR 97702

AGENT: COMMUNICATION SERVICES, INC
ATTN: ALAN WATERS
4242 EAST PALM STREET
MESA, AZ 85215

REQUEST: Coastal Development Use Permit for the installation of a wireless telecommunications (cellular) facility consisting of an antenna concealed below the deck of an existing residence, a radio cabinet within an existing garage, new underground electrical and telephone service, and an underground coaxial cable from the radio cabinet to the antenna.

LOCATION: In the Coastal Zone, 3/4+- mile south of the Town of Mendocino, 0.2+- mile southwest of the intersection of Highway 1 and Comptche-Ukiah Road, between Road 500B and the Pacific Ocean, located at 9950 Road 500B; AP# 119-310-09.

TOTAL ACREAGE: 2.75+- acres

GENERAL PLAN: Rural Residential – 5 acres minimum (RR-5)

ZONING: RR:L-5

EXISTING USES: Single Family Residence

ADJACENT ZONING: North, East and South: RR:L-5
West: Ocean

SURROUNDING LAND USES: North and South: Residential
East: Road 500 and Highway 1
West: Ocean

SURROUNDING LOT SIZES: North: 2+- acres
East: Road 500 and Highway 1
South: 1.2+- acres
West: Ocean

SUPERVISORY DISTRICT: 5

GOV. CODE 65950 DATE: July 15, 2003

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: None.

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PROJECT DESCRIPTION: The application includes the following project description:

The project consists of installing a 53" by 25" radio cabinet within an existing garage structure, extending underground electric service to the garage from an existing power source across the street, adding appropriate wiring within the garage to the radio cabinet, and adding underground coaxial cable from the cabinet to a stealth antenna to be located underneath the exterior deck of the existing "dome" structure. The antenna will be housed in a custom composite shell that has the appearance of the adjacent concrete pier support. No grading, vegetation removal, or road extensions are necessary. Minimum trenching required for power and coaxial undergrounding.

(Note: The applicant has included the undergrounding of utility lines in the project description on the application form, however, the undergrounding of public utilities (i.e. electricity and telephone lines) within public utility easements is exempt from a Coastal Development Permit pursuant to Section 20.532.020(B) of the Coastal Zoning Code.)

ENVIRONMENTAL REVIEW:

Earth (Items 1A through 1G): Earthmoving associated with the project consists of approximately 170 feet of trenching for underground electrical lines, and an 18 inch square by 15 inch deep excavation for a precast concrete block underneath the existing deck at the base of the antenna enclosure. Trenching for utilities will occur across the County road and within the driveway access to the garage. Trenching for the coaxial cable to the antenna will occur between the garage and the house. Trenches will be filled and the surface restored to match the original surface. Conditions Number 3 and 4 are recommended to require that measures be taken to prevent erosion.

The amount of work proposed is not of sufficient magnitude to cause significant geological impacts or exposure of people or property to hazardous conditions. The applicant submitted a letter from Gene J. Abell, AIA, of the Abell Architectural Group, Inc., addressing geologic considerations. He states:

It has been brought to our attention that the Mendocino County Code requires a geotechnical report for this project since it is located on a bluff.

We presume the geotechnical report requirement for a site of this nature would be to assess the impact of structural elements or possible erosion to the site as a result of any new construction. As you are aware, this is a site for a concealed RF antenna for cellular phone transmission purposes. The antenna is hung structurally from the underside of an existing residential deck, and has an 18" square by 18" deep concrete ballast at the antenna base, placed into the ground approximately 14" to 16", to prevent the antenna from swinging in the coastal winds. The concrete does not serve as a structural foundation for the antenna, and is employed to imitate a pier for the residential deck.

Given the nature of this antenna installation, I do not believe a geotechnical report is necessary to determine if there are any impacts on the site, since there are no structural impacts to the site.

A geotechnical report was not required for the project for the following reasons: The site is underlain by solid rock visible along the westerly bluff face. The area of construction lies within the area already developed with the existing residence and garage. The earthwork involved with the project is not significant, consisting of minor trenching and a hole of approximately 3 cubic feet. The project will impose no significant structural loads on the ground, or alter drainage patterns. The geologic bore holes necessary to prepare a full geotechnical report would constitute a disturbance to the site of nearly the same magnitude as the work proposed in association with the project.

Air (Items 2A through 2C): The project will produce no air emissions or odors and will have no impact on air quality.

Water (Items 3A through 3I): No consumption or disposal of water is proposed by the project. No water courses will be affected. Maps prepared by the Federal Emergency Management Agency show the shoreline in the area

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below the 25 foot contour to be within a tsunami zone, however, the project site is at an elevation of 52 feet above sea level. The site is not subject to flooding.

Plant Life (Items 4A through 4D): The site has been previously developed with a residence and garage. There are no trees on the site. Neither the County Biological Resources Map nor the California Natural Diversity Data Base Maps indicate any sensitive plant species on the site. A minor amount of grass will be disturbed by trenching, but will quickly reestablish itself. No significant impacts are anticipated.

Animal Life (Items 5D – Habitat): No wildlife habitat will be affected by the project. No towers or guy wires are proposed that might be hazardous to birds. Staff recommends that the Planning Commission find the project to be “de minimis” and therefore, exempt from the Department of Fish and Game Section 711.4 wildlife habitat loss mitigation fee. (See Condition Number 1)

Noise (Item 6A through 6B): The only noise to be generated by the project will result from construction activity and vehicles. Once construction is completed there will be no noise generated by the facility. No permanent emergency generator is proposed, however, during periods of power outages, a temporary portable generator may be used. Except for the landowner’s residence, there are no nearby dwellings. The nearest neighboring residence is approximately 500 feet to the south.

Light and Glare (Item 7): No lighting is proposed as part of the project.

Land Use (Item 8): The Coastal Plan land use classification for parcel is Rural Residential – 5 acre minimum (RR-5). The same classification also applies to the parcels to the north and south of the site, as well as to the east beyond the Highway 1 and County Road 500B corridors. Within the RR-5 classification public facilities and utilities are a conditional use, subject to approval of a use permit. The proposed wireless facility is consistent with the planned use of the area.

Natural Resources (Item 9A): The site is not a source of natural resources, and the project will not consume any significant quantities of natural resources.

Population (Item 10): The facility will provide no local jobs or have any other attribute that would affect population distribution.

Housing (Item 11): The project will neither provide additional housing nor generate demand for additional housing.

Transportation/Circulation (Item 12): Access to the site from Highway 1 is provided by County Road 500B. The project will generate a minor amount of additional traffic in conjunction with the construction of the facility. After construction is complete, traffic to the site will consist of one or two visits per month necessary to maintain the facility. The Department of Transportation reviewed the application and offered the following comments:

Access to the subject property is from County Road 500B. As determined from our site review, there are currently two unimproved driveway approaches onto the County road. Since we expect negligible traffic impacts from the proposed use permit, no conditions are recommended to improve the driveway approaches. To address the proposed underground utility services in the County road right-of-way, we recommend the following condition of approval:

Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.

The Department of Transportation's recommended condition is included as Condition Number 5.

Public Services (Item 13A): The project will have no direct impact on public facilities. By providing wireless telephone service in an area where it has been previously unavailable, emergency communications may be facilitated, allowing more prompt response by emergency service providers in times of emergency. The California Department of Forestry and Fire Protection reviewed the application and determined the project was exempt from

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fire safe regulations. No response was received from the Mendocino Fire District or the Mendocino Unified School District.

Energy (Items 14A through 14B): A new electrical service will be installed from the existing electrical distribution lines along County Road 500B to accommodate Edge Wireless as a customer separate from the landowner, and not because the facility is a significant consumer of electrical energy. No alterations to generation or transmission infrastructure are required.

Utilities (Item 15A): The proposed facility will neither consume water nor generate sewage. Energy is addressed in the previous paragraph.

Human Health (Item 16): The Federal Communications Commission (FCC) has set maximum permissible exposure limits for radio frequency transmitters, and the Telecommunications Act of 1996 prohibits local governments from regulating wireless service facilities based on environmental effects of radio frequency emissions so long as the facilities comply with FCC regulations for emissions. Local governments may require applicants to show that proposed facilities comply with FCC regulations, and Edge Wireless has provided an evaluation prepared by Hammett & Edison, Inc. (See Attachment A.) The H&E report examines both the proposed facility and the private ham radio antenna operated on the site by the landowner, and finds that the radio frequency emissions from the two sources, both individually and together, will be in compliance with FCC requirements provided that access to the area within 2½ feet in front of the proposed antenna is restricted. The report states that posting of warning signs in the vicinity of the proposed antenna in compliance with American National Standards Institute (ANSI) conventions would be sufficient to meet FCC guidelines. A typical warning sign is 10 by 14 inches, with a black symbol and lettering on a yellow background. Condition Number 6 is recommended to require that signs consistent with FCC and ANSI regulations be displayed in close proximity to the antenna. This condition may not be enforceable due to the exemption provided by Code Section 20.476.035, which exempts signs required by State or Federal law, however, it is included to express the County's desire to maintain the scenic character of the coast, with the expectation that the applicant will be willing to cooperate.

The proposed antenna will be located at the northwest corner of the owner's residence, underneath the deck, on the far side of the house from County Road 500B. The antenna will be approximately 85 feet from the County road, 130 feet from the south property line, and 500 feet from the north property line. The antenna is not in a location likely to be accessed by anyone other than the landowner or maintenance personnel. The nearest neighboring residence is on the Lovera property, approximately 500 feet south of the King residence. The antenna will be aimed to the north, away from the Lovera property, with the King's garage and higher ground in between. To the northeast the nearest residence is approximately 2,000 feet away, on the west side of Highway 1, across from the Stanford Inn. Again, intervening higher ground obstructs a direct line between the antenna and the residence.

Aesthetics (Item 17): Due to its design and location, very little of the facility, will be visible. New utility services to the site to serve the facility will be installed underground from existing utility lines along County Road 500B. The radio equipment will be housed within an existing garage. The coaxial cable connecting the radio equipment to the antenna will be underground, and the antenna will be located underneath the deck of an existing residence and contained within a composite shell designed to look similar to the concrete posts supporting the deck. The location of the antenna shell under the deck limit its visibility from public locations, and its distance from public locations will make it difficult to identify the shell as anything other than a support post for the deck. The radio frequency warning signs required by Condition Number 6 may be visible from public locations, however, the condition requires that the signs be installed in the least visible location consistent with applicable regulations.

In the event that use of the facility should cease, it is recommended that Conditions Number 7 and 8 be imposed, requiring that all portions of the facility above ground level be removed from the site, and the site be restored to a natural condition.

Recreation (Item 18): The project will not cause any increased demand on recreational facilities. The site is located between the nearest public road and the shoreline, and therefore, must be consistent with Coastal Plan policies designed to protect and enhance public access to the shoreline. At the project site, there is no beach. The rocks along the shoreline drop nearly vertically into the ocean. Also, an easement to or along the top of the bluff would serve little purpose as County Road 500B is itself perched on the bluff edge just north of the landowner's residence.

A coastal bluff top access exists approximately 1,500 feet north of the site, and there is not proposed access shown on the County's Coastal Land Use Maps at the site. There is also additional nearby coastal access both north and south of the site. Access is available along the north side of the mouth of Big River and on the Mendocino headlands to the north, and also west of Gordon Lane south of the site. No requirement for an offer of dedication is warranted in conjunction with this application.

Cultural Resources (Item 19): The application was not referred to the Northwest Information Center at Sonoma State University. The project is entirely within the developed area associated with the existing dwelling, garage and landscaping, and involves only minor disturbance of earth for utility lines and a small concrete pier to support the antenna. Condition Number 9 is recommended to achieve compliance with the County's archaeological ordinance and ensure protection of any archaeological resources that may be discovered on the site.

COMPLIANCE WITH WIRELESS COMMUNICATIONS GUIDELINES: The applicant has submitted a Statement of Compliance addressing each of the items in the Wireless Communications Guidelines adopted by the Planning Commission. (See Attachment B.) The applicant also submitted Site Selection Narrative discussing considerations that led to the selection of the site of this application. (See Attachment C.) Conditions Number 10 through 14 are recommended to achieve compliance with requirements of the Wireless Communications Guidelines not addressed above.

CUMULATIVE IMPACTS: One potential source of cumulative impacts, that of the applicant's proposed wireless telephone facility operating in conjunction with the landowner's existing ham radio system, has been addressed above. As determined by Hammett & Edison, Inc., Consulting Engineers, the two facilities will be in compliance with FCC regulations for radio frequency emissions.

Edge Wireless has submitted their Master Plan for Mendocino County, which includes a list of current sites, sites in progress, and future sites. (See Attachment D.) The Master Plan also includes a colored map showing coverage areas for all of their facilities. In addition to the County Road 500B site of this application, the Master Plan shows a site in progress on Bald Hill north of Fort Bragg, and possible future sites in Mendocino, in Caspar, and in the City of Fort Bragg. The nearest existing wireless telephone facility known to staff is about 6 miles east on Comptche-Ukiah Road, on land owned by Hawthorne Timber Company. There is also an incomplete application that has been submitted for a wireless facility on land formerly owned by Daniels and now owned by Crown Castle, a company that builds antenna towers and leases space to wireless communications companies. The site is south of Comptche-Ukiah Road, about a mile east of Highway 1. Until the application is made complete, it is not being worked on by the Planning and Building Services Department. There are no impacts associated with the current project that become significant when considered in conjunction with other existing or planned facilities in the vicinity.

ENVIRONMENTAL RECOMMENDATION: No significant environmental impacts are anticipated which cannot be adequately mitigated, therefore, a Negative Declaration is recommended.

GENERAL PLAN CONSISTENCY RECOMMENDATION: The proposed project is consistent with applicable goals and policies of the General Plan.

RECOMMENDED MOTION:

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

Department of Fish and Game Findings: The Planning Commission has evaluated the Initial Study and other information pertinent to the potential environmental impacts of this project and finds that, based upon the existing development on the subject parcel and surrounding parcels, the project will not have any

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adverse impact upon wildlife or the habitat upon which wildlife depends and, therefore, the Commission has rebutted the presumption set forth in subdivision (d) of Section 753.5.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

Project Findings: The Planning Commission making the above findings, approves #CDU 1-2003 subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS:

1. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$25.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to May 2, 2003. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
2. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within 2 years shall result in the automatic expiration of this permit.
- ** 3. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site.
- ** 4. During construction of the project, before surfacing and vegetation sufficient to prevent erosion have been established, other erosion control measures shall be established and maintained sufficient to prevent erosion of soil from the site.

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- ** 5. Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.
- ** 6. One or more warning signs consistent with FCC and ANSI regulations, shall be displayed in close proximity to the antenna. Provided that the locations meet applicable requirements, the signs shall be located below the deck, on the north and west sides, to minimize aesthetic impacts from the public road. If a sign is required to be visible from the road, or the main approach to the property, it shall be mounted on the wall of the residence, if permissible, rather than on a separate free-standing support. The intent is that Federal safety requirements will be met with the least visual impact from public locations.
- ** 7. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
- ** 8. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
- ** 9. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
- 10. This permit is issued for a period of ten years, and shall expire on April 17, 2013. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
- 11. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site.
- 12. Prior to the final inspection by the Building Division, an identification sign for each company responsible for operation and maintenance of facilities at the site, not larger one square foot, shall be mounted on an exterior wall in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall also be posted.
- ** 13. The antennas and supporting structure, shall be inspected every five years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
- ** 14. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
- 15. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
- 16. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.

13 of 53

17. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
18. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

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

19. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

March 14, 2003

DATE



CHARLES N. HUDSON
PLANNER III

CNH:sb
3/13/2003

Negative Declaration

Appeal Fee - \$680.00
Appeal Period - 10 days

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

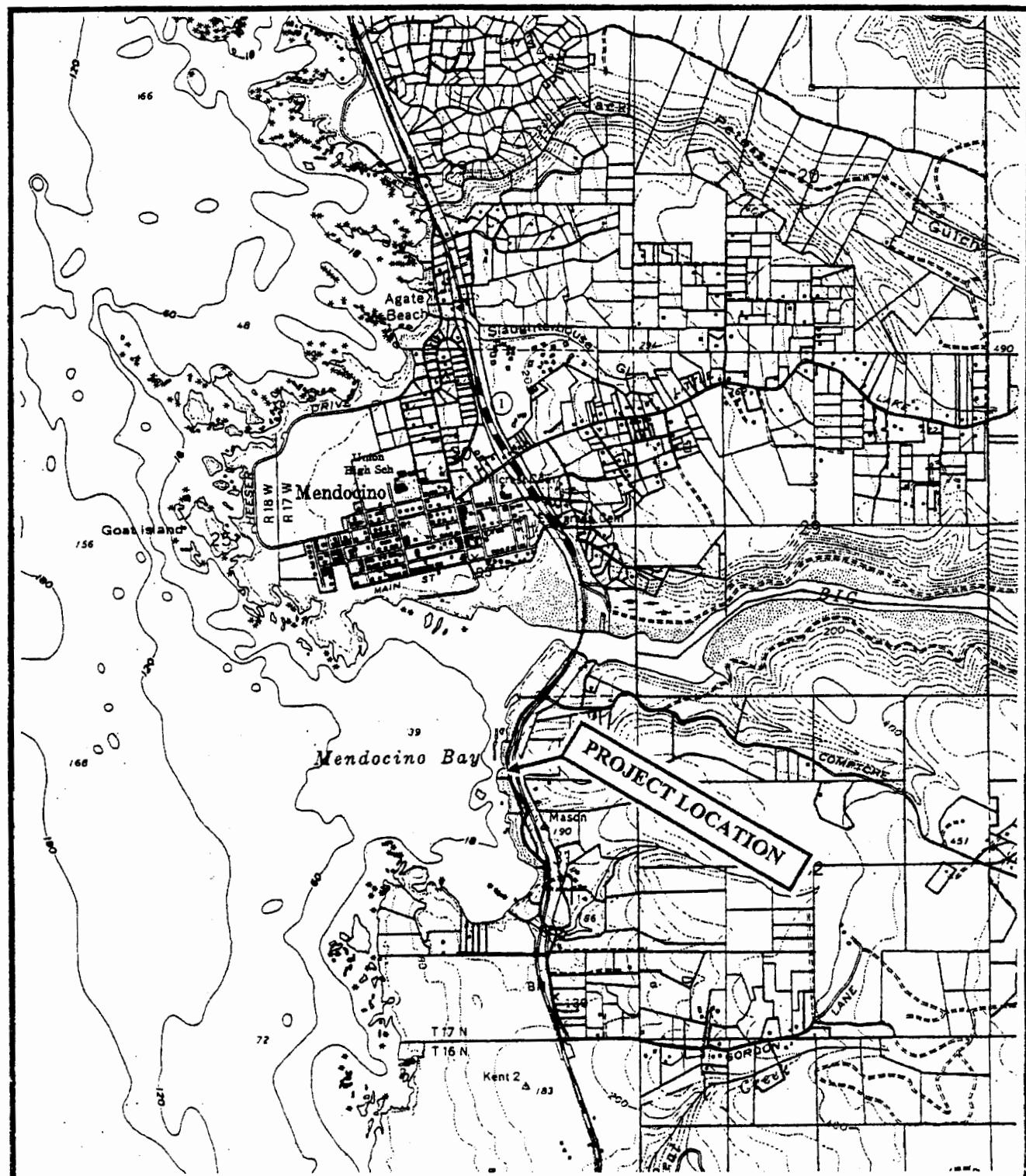
SUMMARY OF AGENCY COMMENTS:

Planning – FB	No comment.
Department of Transportation	Encroachment permit required.
Environmental Health – Fort Bragg	No comment.
Building Inspection – Fort Bragg	No comment.
Emergency Services	No response.
Assessor	No response.
CDF	CDF File Nos. 25-03, 26-03, & 35-03: No comment, project is exempt.
Coastal Commission	No response.
Mendocino Fire District	No response.
Mendocino Unified School District	No response.
Federal Communications Commission	No response.
Public Utilities Commission	No response.

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SUMMARY OF PUBLIC COMMENTS (received prior to 3/11/03):

1/26/03	Karin C. Uphoff	Opposed due to health dangers of RF emissions.
2/4/03	Annemarie Weibel	Telephone call voicing opposition due to unproven safety of RF emissions.
2/19/03	Richard Gardiner	Telephone call voicing support of the facility.



CASE NO: CDU 1-03

AGENT: Alan Waters

KING / EDGE WIRELESS

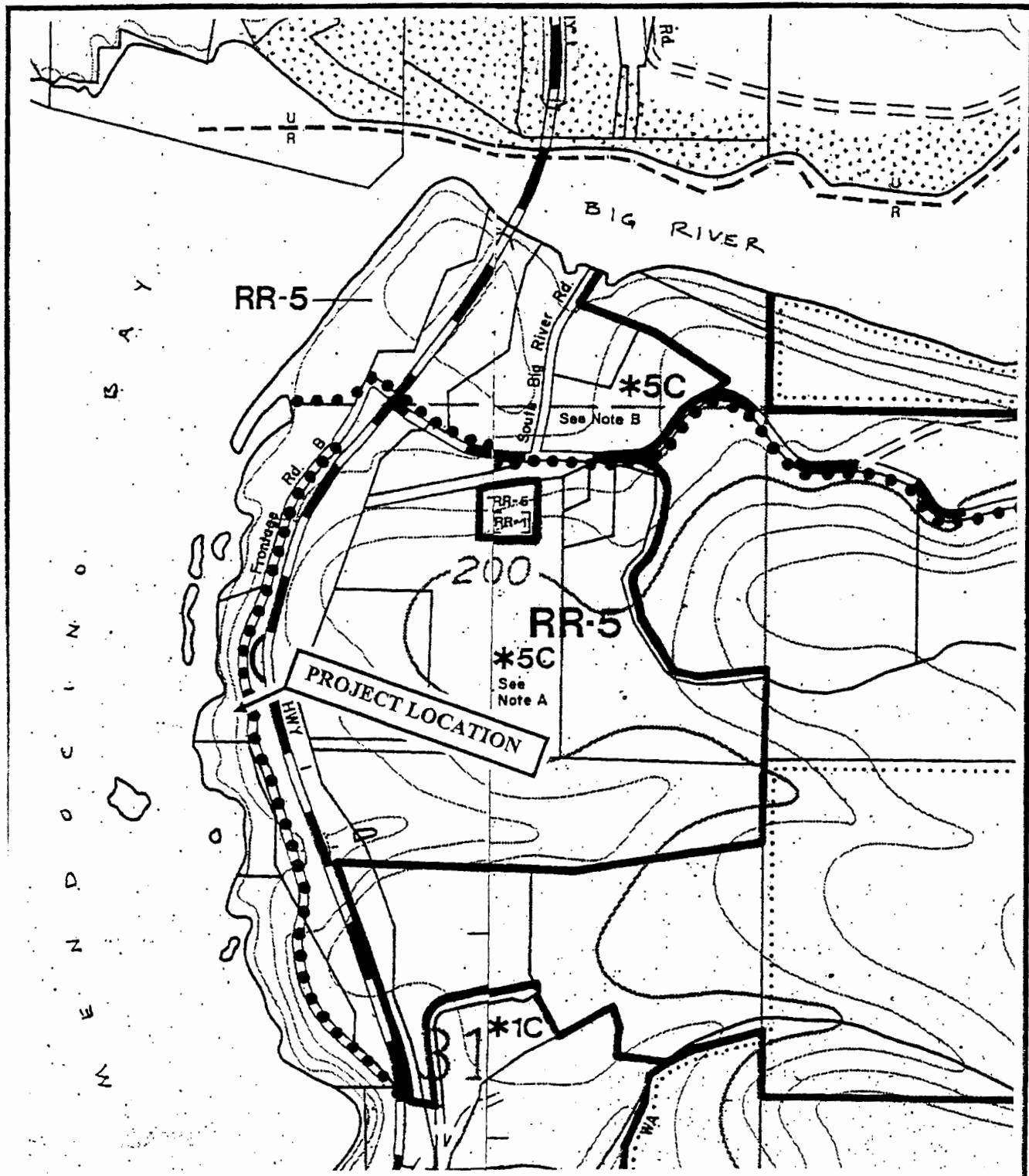
LOCATION MAP

1 INCH = 2000 FEET



NORTH

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CASE NO: CDU 1-03

AGENT: Alan Waters

KING / EDGE WIRELESS

COASTAL PLAN LAND USE MAP

1 INCH = 500 FEET



NORTH

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TOWER COORDINATES

LATITUDE: 36° 15' 46.80" N (NAD 83)
LONGITUDE: 123° 47' 46.80" W (NAD 83)
GROUND
ELEVATION: 42 FEET



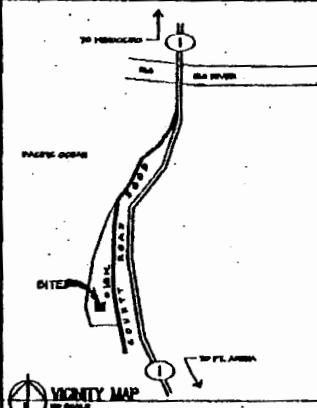
AT&T

edge WIRELESS

MEMBER OF THE AT&T WIRELESS NETWORK

**CELLULAR SITE
SITE NO. CA 122
MENDOCINO**

DRAWINGS INDEX	
SHEET	TITLE
1-1	100 ACT TITLE SHEET/NAME DATA, PROJECT NAME, MILEAGE DATA, MATERIALS AND EQUIPMENT LISTED
6-1	6-1 ENGINE
6-2	6-2 PLATE
6-3	6-3 UTILITY TRUNK DETAIL
A-1	A-1 CONCRETE AND POURING PLAN, POURING PREPARATION PLAN & CO. CAP.
A-2	A-2 REINFORCING BARS, STIRRUPS, TIE BARS, ETC.
A-3	A-3 CONCRETE FORMS, SHORING, ETC.
A-4	A-4 ARABIAN GOURDILIA, ARABIAN CONFINEMENT, RUST ALUMINUM METAL
A-5	A-5 PAVING, CONCRETE SLAB, PLATE, PAVING PREPARATION & ACCELERATOR PLATE
B-1	B-1 CONCRETE FORM PLAN, CONCRETE FORM, REINFORCING BARS
B-2	B-2 REINFORCING BARS, STIRRUPS, TIE BARS, ETC.

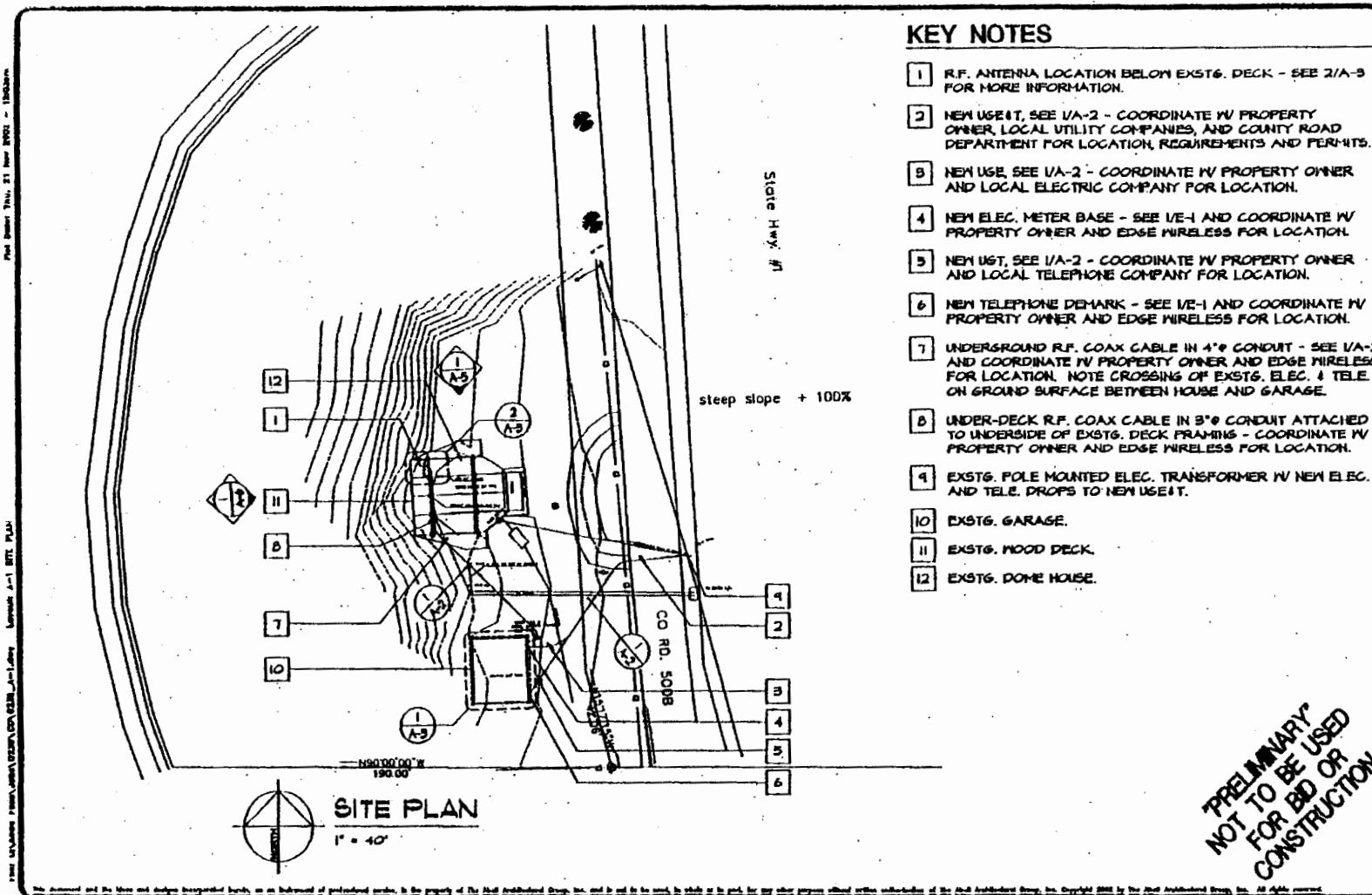


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FOR BD OR
CONSTRUCTION**

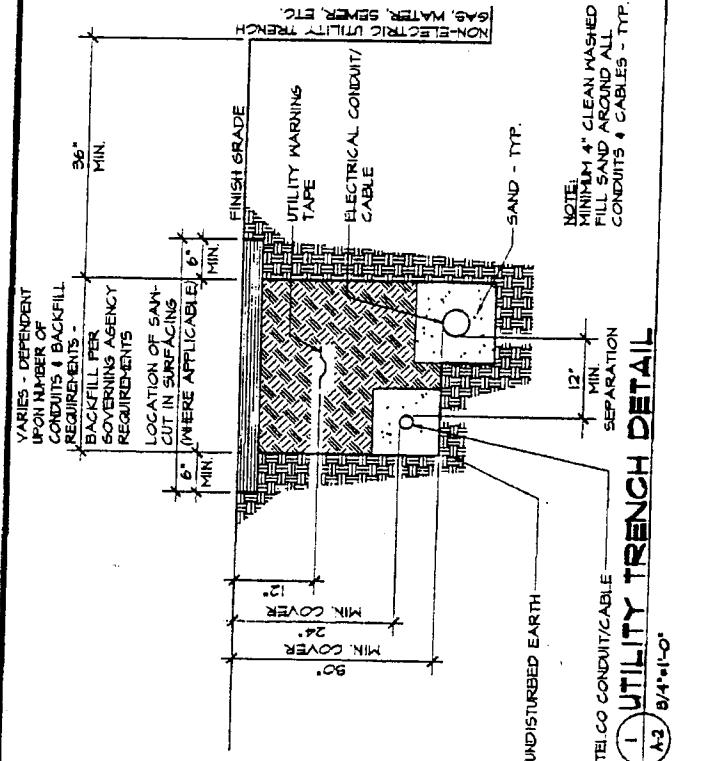
ENR
THE NEW ARCHITECTURAL GUIDE, INC.

SITE NO. CA 122
 CELLULAR SITE FOR EDGE WHEELS
 MEDOCOM
 1000 ROAD 6008
 BING ROAD, CALIFORNIA 93010

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NOTES							
 THE ARIZONA STATE ARCHITECTURAL GROUP, INC. 9999 ROAD 6008 MENDOCINO, CALIFORNIA 96160 SITE NO. CA 122 CELLULAR SITE FOR EDGE WIRELESS NON-ELECTRIC UTILITIES GAS, WATER, SEWER, ETC. NON-ELECTRIC UTILITY TRENCH							
A-2							
 <p>NOT TO BE USED</p> <p>FOR BURIED CONSTRUCTION</p> <p>PERMITS</p> <p>1 UTILITY TRENCH DETAIL</p> <p>1-2 9/4' x 1'-0"</p> <p>NOTE: MINIMUM 4" CLEAN WASHED FILL SAND AROUND ALL CONDUITS & CABLES - TYP.</p> <p>UNDISTURBED EARTH</p> <p>MIN. COVER</p> <p>MIN. CONDUIT/CABLE</p> <p>SEPARATION</p> <p>12" MIN.</p> <p>FINISH GRADE</p> <p>CUT IN SURFACING</p> <p>6" MIN.</p> <p>6" MIN.</p> <p>BACKFILL PER GOVERNING AGENCY REQUIREMENTS -</p> <p>VARIABLE - DEPENDENT UPON NUMBER OF CONDUITS & BACKFILL REQUIREMENTS -</p>							

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GENERAL NOTES

1. CONTRACTOR SHALL PERFORM ALL WORK IN ACCORDANCE WITH THE CURRENT UNIFORM BUILDING CODE (UBC) AND ALL OTHER GOVERNING AGENCY ORDINANCES.
 2. CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL EXISTING CONDITIONS AND DIMENSIONS BEFORE STARTING WORK.
 3. WHERE EXISTING CONSTRUCTION AND/OR FINISH IS MODIFIED, REPAIR TO MATCH EXISTING UNLESS NOTED OR SPECIFIED OTHERWISE.
 4. FILLING IN OR EXTENDING EXISTING WORK - MATCH EXISTING THICKNESS AND FINISH UNLESS NOTED OR SPECIFIED OTHERWISE.
 5. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF ALL EXISTING ITEMS, MATERIALS AND FINISHES TO REMAIN FROM DAMAGE. WHERE DAMAGE OCCURS, CONTRACTOR SHALL MAKE ALL NECESSARY REPAIRS AND REPLACEMENTS TO THE SATISFACTION OF THE OWNER, AT NO ADDITIONAL EXPENSE TO THE OWNER.
 6. CONTRACTOR SHALL INSTALL APPROPRIATE BACKING AND BLOCKING MATERIALS WHERE REQUIRED FOR A SOUND INSTALLATION.
 7. CONTRACTOR SHALL PERFORM ALL WORK IN SUCH A MANNER AS TO ELIMINATE HAZARDS TO PERSONS AND PROPERTY.
 8. CONTRACTOR SHALL REMOVE ALL ITEMS SHOWN TO BE REMOVED, FROM THE PREMISES IN A CLEAN AND SAFE MANNER.
 9. ITEMS TO BE REMOVED, BUT TO BECOME THE OWNER'S SALVAGE SHALL BE SAFELY STORED AT A LOCATION AGREED UPON IN ADVANCE WITH THE OWNER.
 10. ITEMS TO BE REMOVED, BUT TO BE REINSTALLED SHALL BE SAFELY STORED UNTIL INSTALLATION.

KEY NOTES

- OWNER SUPPLIED, CONTRACTOR INSTALLED
"NORTEL NETWORKS" MODEL NO. 58000
BASE TRANSCIVER STATION - INSTALL PER
MFGR'S INSTRUCTIONS. CONTRACTOR TO
VERIFY EXSTS. CONC. FLOOR'S ABILITY TO
SUPPORT THIS EQUIP. PRIOR TO EQUIPMENT
INSTALLATION.

NEW ELEC. METER BASE.

NEW TELEPHONE DEMARK.

EXSTG. 2x6 PLATE ON 5 1/2" HIGH CONC.
CURB - TYP.

EXSTG. 4x4 WD. POST - TYP.

EXSTG. SLOPED DBL 2x6 - TYP.

LINE OF EXSTG. SLOPED DBL. 2x6 ABOVE.

LINE OF EXSTG. 4x12 WD. BEAM ABOVE.

EXSTG. 2x6 WALL/ROOF DECKING.

LINE OF EXSTG. ROOF ABOVE.

EXSTG. GARAGE DOOR.

R.F. ANTENNA - SEE DETAIL 1/A-4 & SHEET
A-1, COORDINATE W/ EDGE WIRELESS FOR
MORE INFORMATION.

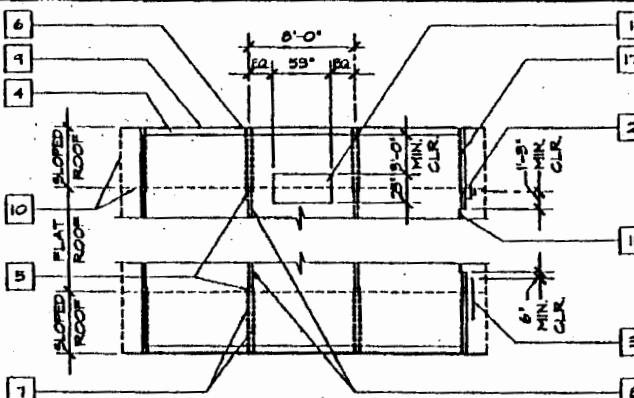
FIBERGLASS COMPOSITE CONCEALMENT
SHELL - EXT. TEXTURE AND COLOR TO
MATCH EXSTG. ADJACENT CONC. PIERS,
COORDINATE W/ EDGE WIRELESS AND SHELL
FABRICATOR FOR CONSTRUCTION DETAILS.

EXSTG. CONC. PIER.

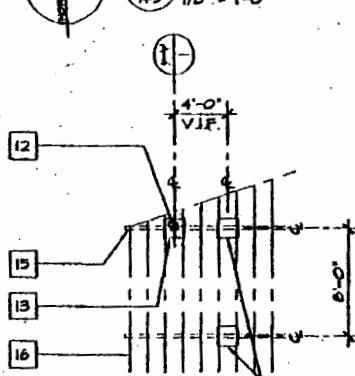
LINE OF EXSTG. 4x12 BEAM ABOVE EXSTG.
CONC. PIER - TYP.

LINE OF EXSTG. 2x10 DECK JOISTS @ 16" O.C.
ABOVE EXSTG. 4x12 BEAMS - TYP.

COAX CABLE ENTRY PORT - COORDINATE
W/ EDGE WIRELESS FOR CONSTRUCTION
REQUIREMENTS, SEE SHEET E-1 FOR OTHER
RELATED INFORMATION.

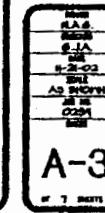
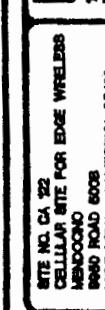
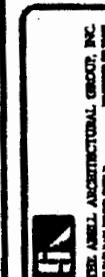


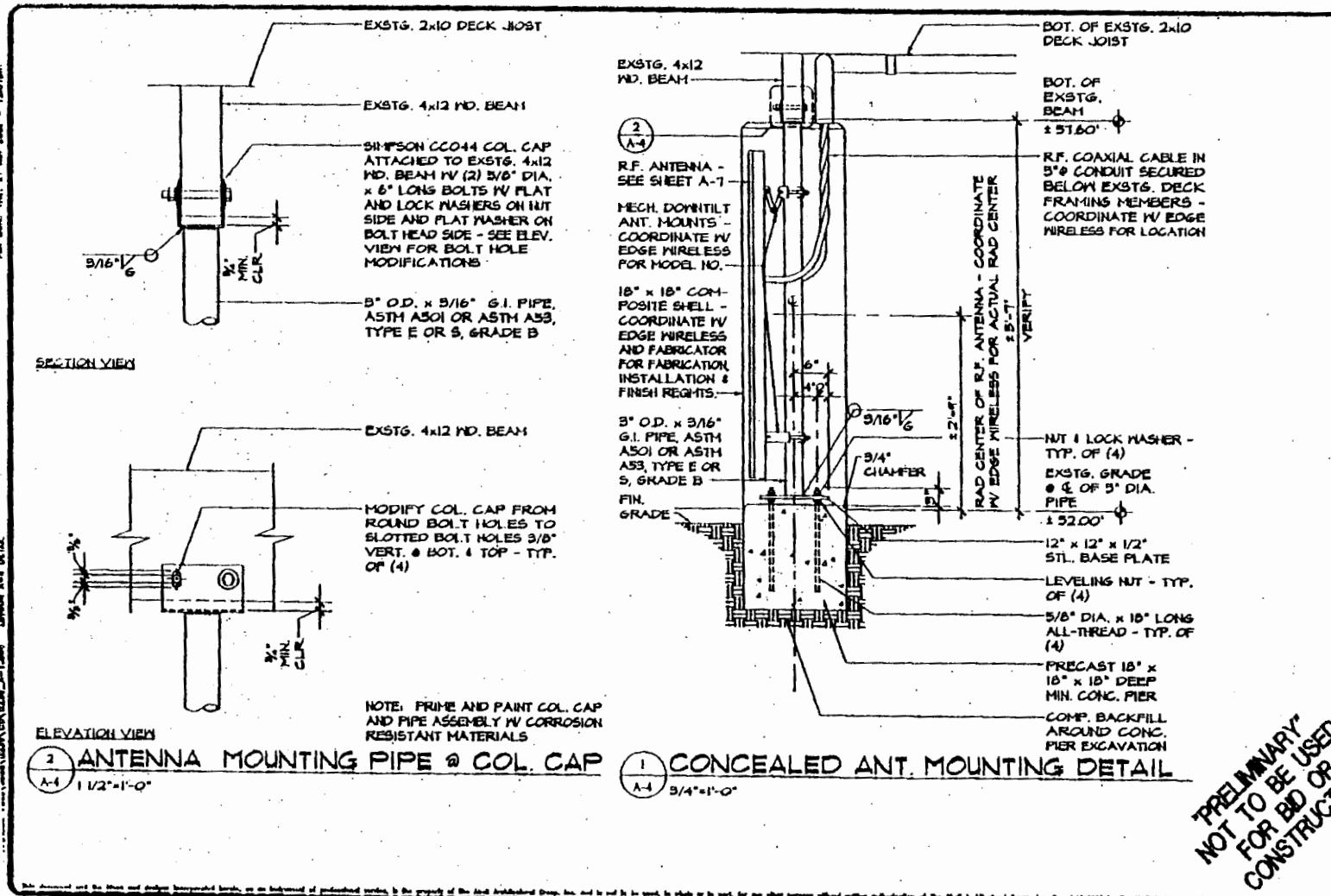
PARTIAL
GARAGE FLOOR PLAN



PARTIAL
FOUNDATION PLAN

**PRELIMINARY
NOT TO BE USED
FOR BD OR
CONSTRUCTION**





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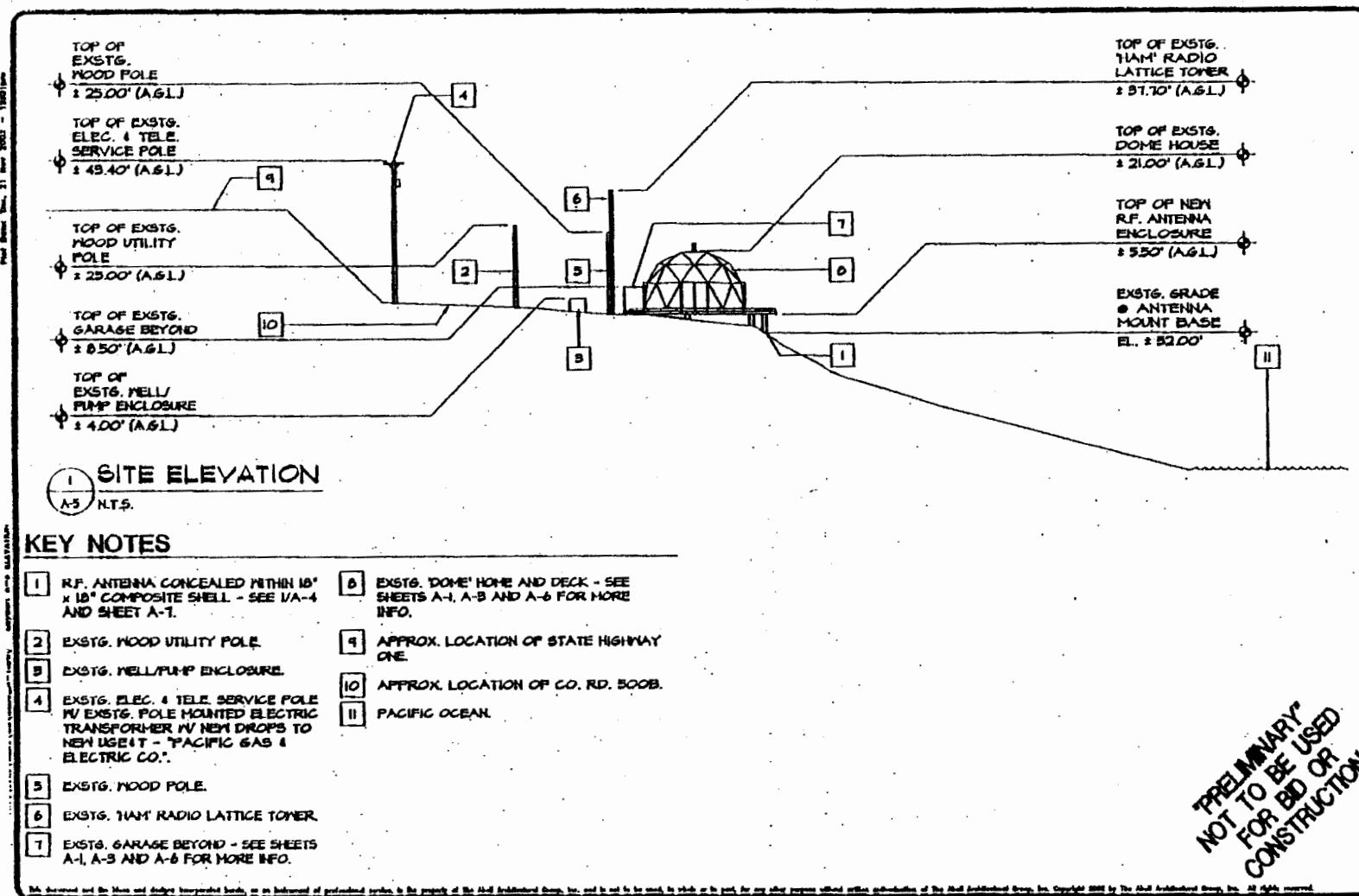
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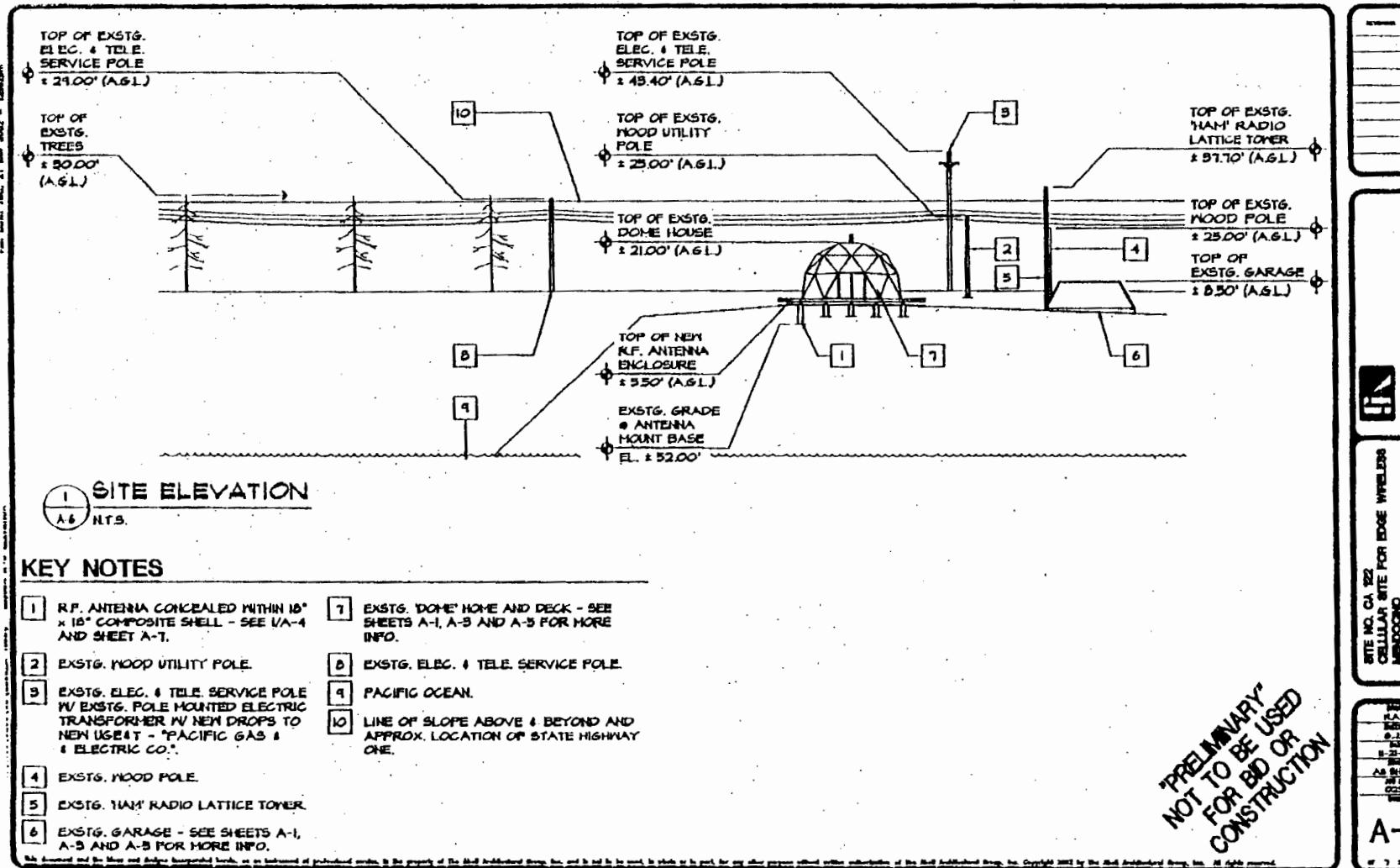
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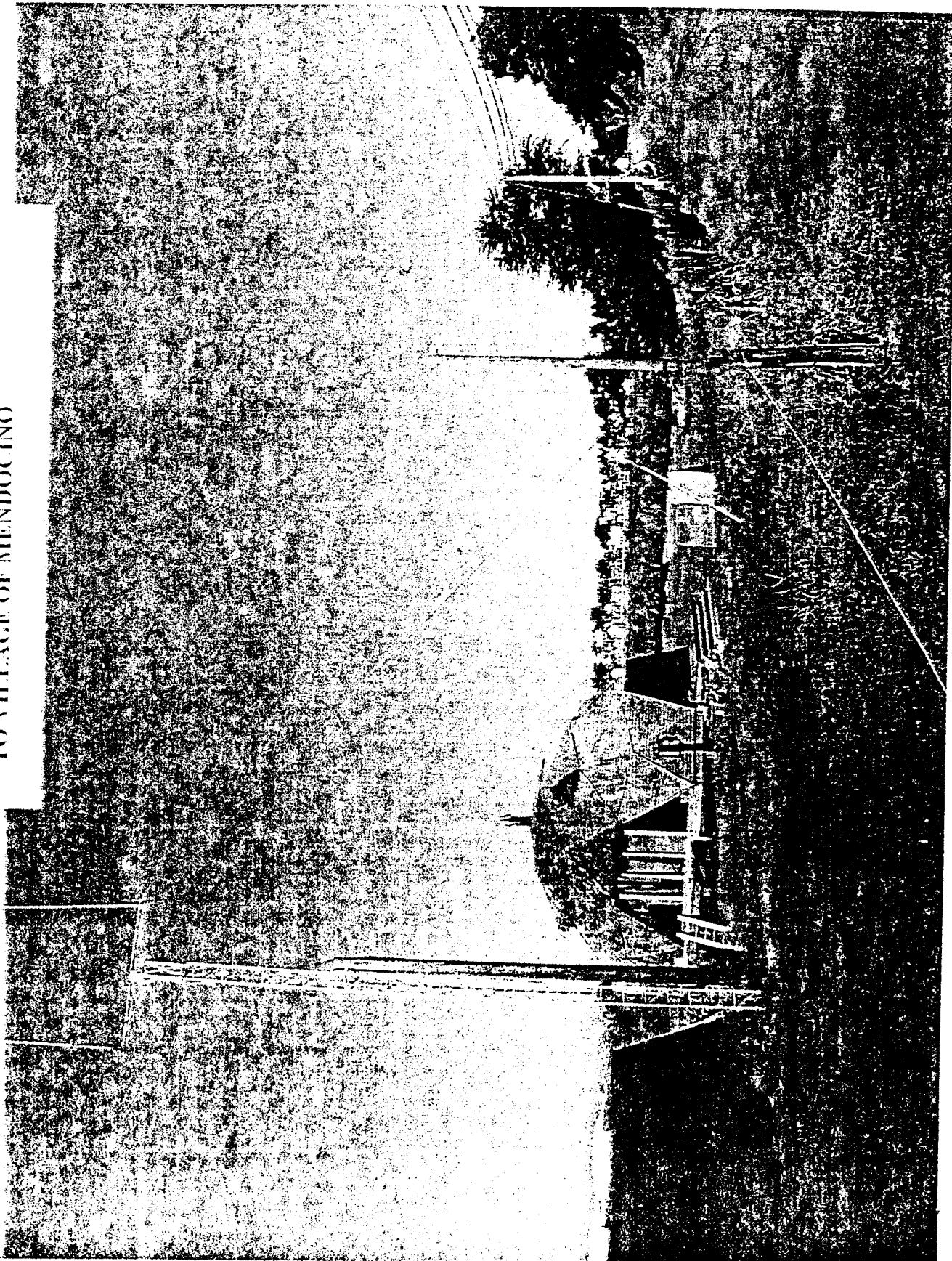
99

100





FROM SITE LOOKING NORTH ACROSS RAVINE
TO VILLAGE OF MENDOCINO



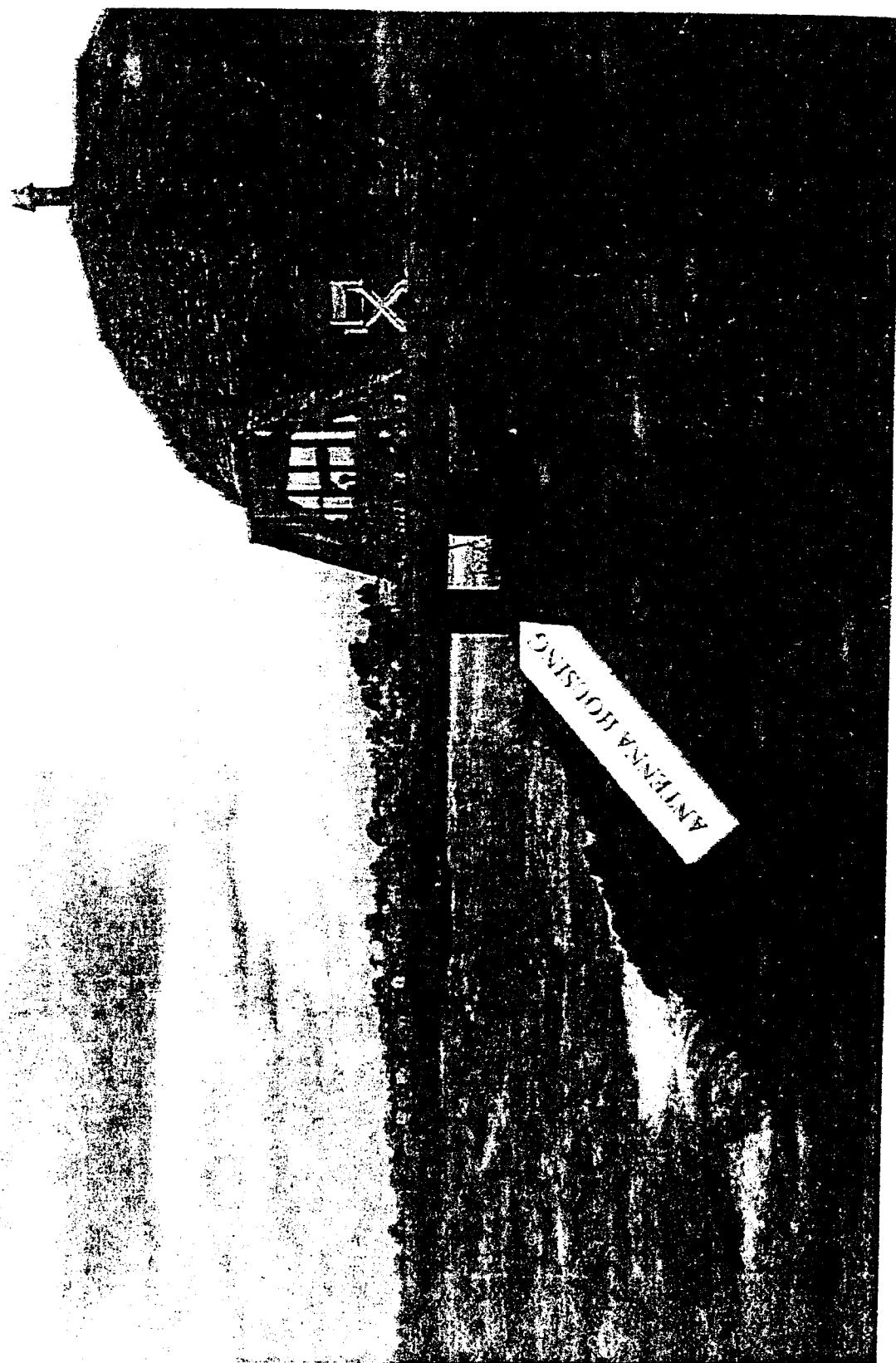
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INSPECTION OF AVIS STREET LANDLANSING STRIKE
MENDOCINO, CA (SHOT WITH 3X ZOOM LENS)



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PHOTOGRAPH SHOWING PROPOSED ANTENNA
AT THE ROYAL MARINE GARAGE



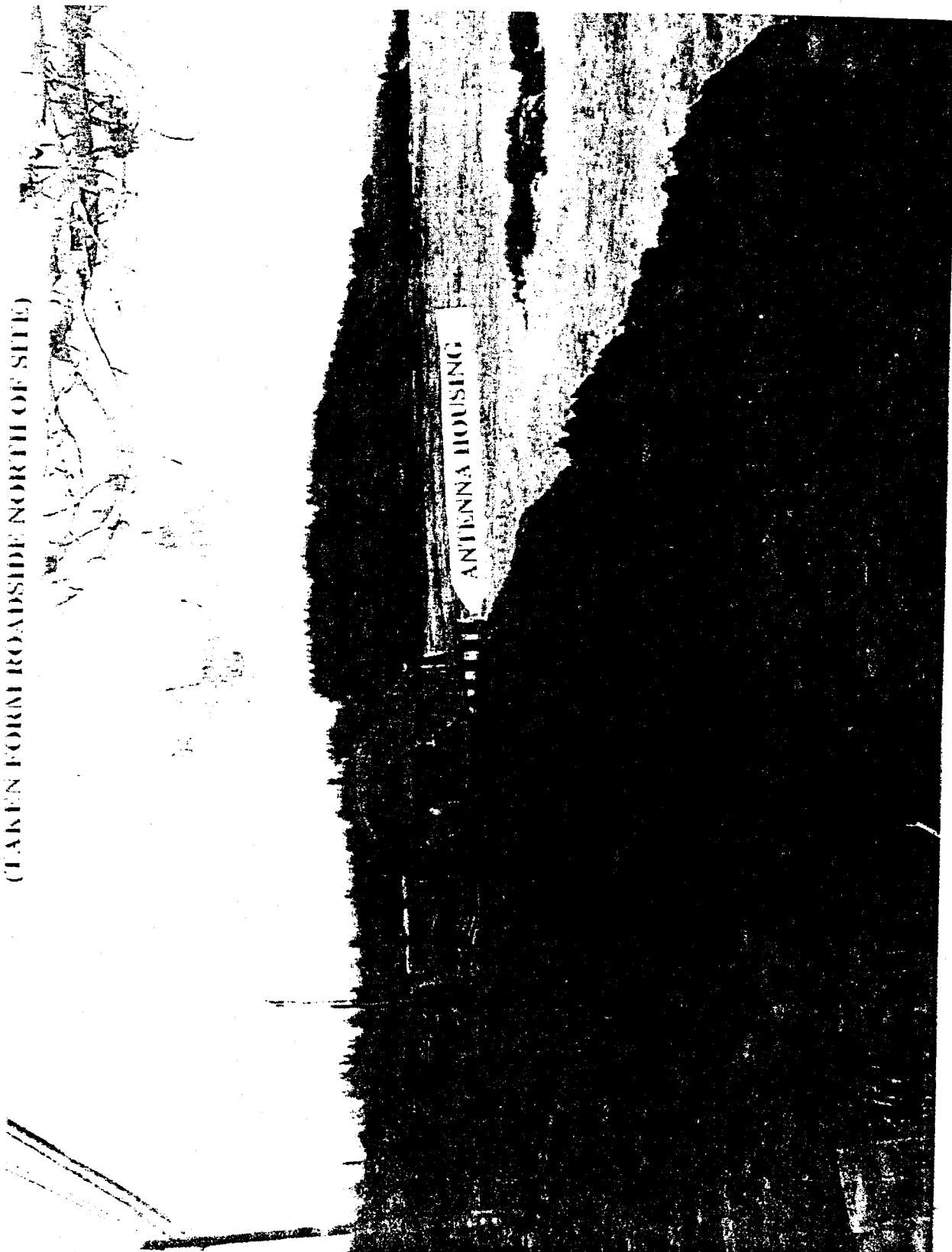
28 of 53

SITE AS IS LOOKING FROM NORTH



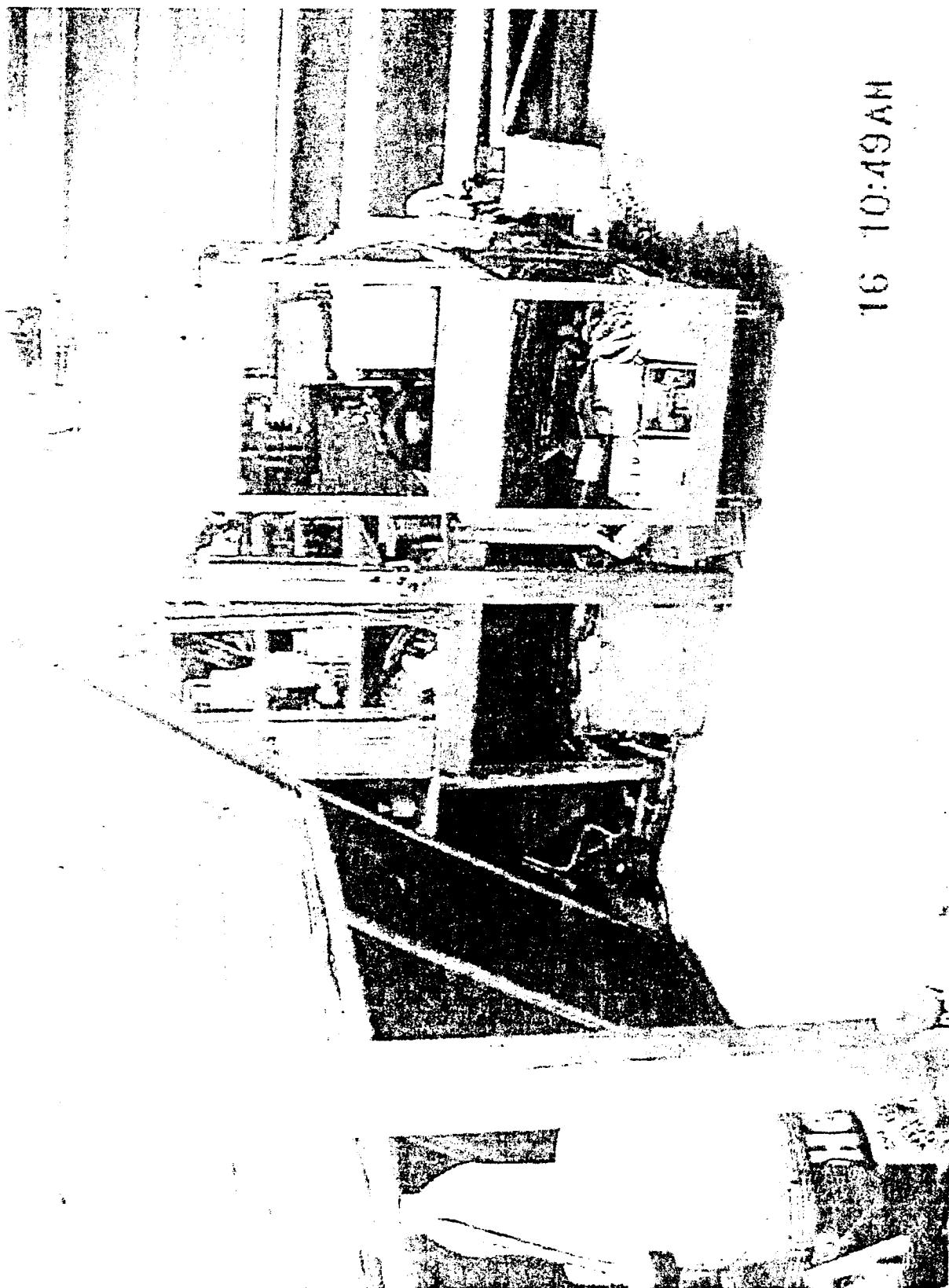
29453

PHOTO SIMULATION SHOWING PROPOSED ANTENNA
CLAWSON FORM, ROADSIDE NORTH OF SITE



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SPACE IN GARAGE FOR RADIO CABINET



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LOOKING EAST FROM GARAGE WITH
HAWAIIAN TOP OFF MIRRORED

32953

Edge Wireless • Proposed Base Station (Site No. CA-122)
9950 Road 500B • Mendocino, California

ATTACHMENT

A

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Edge Wireless, a personal wireless telecommunications carrier, to evaluate the proposed PCS base station (Site No. CA-122) located at 9950 Road 500B in Mendocino, California, for compliance with appropriate guidelines limiting exposure to radio frequency electromagnetic fields.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. In Docket 93-62, effective October 15, 1997, the FCC adopted the human exposure limits for field strength and power density recommended in Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent Institute of Electrical and Electronics Engineers ("IEEE") Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes nearly identical exposure limits. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

The most restrictive thresholds for exposures of unlimited duration to radio frequency ("RF") energy for several personal wireless services are as follows:

Personal Wireless Service	Approx. Frequency	Occupational Limit	Public Limit
Personal Communication ("PCS")	1,950 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Cellular Telephone	870	2.90	0.58
Specialized Mobile Radio	855	2.85	0.57
[most restrictive frequency range]	30-300	1.00	0.20

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called "radios" or "cabinets") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units. The transceivers are often located at ground level and are connected to the antennas by coaxial cables about 1 inch thick. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the

33453

**Edge Wireless • Proposed Base Station (S. No. CA-122)
9950 Road 500B • Mendocino, California**

horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that the power level from an energy source decreases with the square of the distance from it (the "inverse square law"). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by Edge Wireless, it is proposed to mount one EMS Model RR6518-00DP directional panel antenna within a new fiberglass cylinder below the deck of the dome-shaped house located at 9950 Road 500B in Mendocino. The antenna would be mounted at an effective height of about 4 feet above ground and would be oriented towards 340°T. The maximum effective radiated power in any direction would be 800 watts, representing four channels operating simultaneously at 200 watts each. Presently located on the property is an antenna for use in amateur ("ham") operations.

Measurements conducted at the site by the undersigned engineer, on November 22, 2002, with a temporary antenna installation revealed the power density level to be below the public limit for distances more than 2 $\frac{1}{2}$ feet in front of the proposed antenna. Measurements were also made of the amateur operation, and levels in all publicly accessible areas complied with the FCC standard. The measurement equipment used was a Wandel & Goltermann Type EMR-300 Radiation Meter (Serial No. P-0008) with a Type 8 Isotropic Electric Field Probe (Serial No. P-0036). Both meter and probe were under current calibration by the manufacturer.

Recommended Mitigation Measures

In order to comply with the FCC public exposure guidelines, it is recommended that access to the area within 2 $\frac{1}{2}$ feet of the antenna be precluded for all unauthorized persons.

To prevent occupational exposures in excess of the FCC guidelines, no access within 1 foot directly in front of the antenna itself should be allowed while the base station is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting

HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

ED0122557
Page 2 of 3

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Edge Wireless • Proposed Base Station (S. No. CA-122)
9950 Road 500B • Mendocino, California

explanatory warning signs* at the antenna, such that the signs would be readily visible from any angle of approach to persons who might need to work within that distance, would be sufficient to meet FCC-adopted guidelines.

Conclusion

Based on the information and analysis above, it is the undersigned's professional opinion that the base station proposed by Edge Wireless at 9950 Road 500B in Mendocino, California, can comply with the prevailing standards for limiting human exposure to radio frequency energy and, therefore, need not for this reason cause a significant impact on the environment. This finding is consistent with the measurements of actual exposure conditions taken of other operating base stations.

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2005. This work has been carried out by him or under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett
William F. Hammett, P.E.

November 27, 2002

-
- * Warning signs should comply with ANSI C95.2 color, symbol, and content conventions. In addition, contact information should be provided (e.g., a telephone number) to arrange for access to restricted areas. The selection of language(s) is not an engineering matter, and guidance from the landlord, local zoning or health authority, or appropriate professionals may be required.

HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

ED0122557
Page 3 of 3

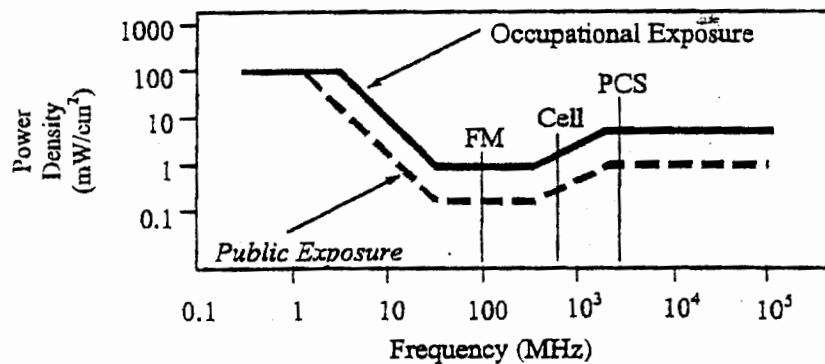
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CC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements, which are nearly identical to the more recent Institute of Electrical and Electronics Engineers Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

Applicable Range (MHz)	Electromagnetic Fields (f is frequency of emission in MHz)					
	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm ²)	
0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 – 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f ²	<i>180/f²</i>
30 – 300	61.4	<i>27.5</i>	0.163	<i>0.0729</i>	1.0	<i>0.2</i>
300 – 1,500	<i>3.54\sqrt{f}</i>	<i>1.59\sqrt{f}</i>	<i>\sqrt{f}/106</i>	<i>\sqrt{f}/238</i>	<i>f/300</i>	<i>f/1500</i>
1,500 – 100,000	137	<i>61.4</i>	0.364	<i>0.163</i>	5.0	<i>1.0</i>



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

FCC Guidelines
Figure 1

36453

RFR.CALC™ Calculation Methodology
Assessment by Calculation
of Compliance with Human Exposure Limitations

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements, which are nearly identical to the more recent Institute of Electrical and Electronics Engineers Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits.

Near Field. Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications cell sites. The near field zone is the distance from an antenna before which the manufacturer's published, far field antenna patterns have formed; the near field is assumed to be in effect for increasing D until three conditions have been met:

$$1) D > \frac{2h^2}{\lambda} \quad 2) D > 5h \quad 3) D > 1.6\lambda$$

where h = aperture height of the antenna, in meters, and
 λ = wavelength of the transmitted signal, in meters.

The FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives this formula for calculating power density in the near field zone about an individual RF source:

$$\text{power density } S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}, \text{ in mW/cm}^2,$$

where θ_{BW} = half-power beamwidth of antenna, in degrees, and
 P_{net} = net power input to the antenna, in watts.

The factor of 0.1 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates the distances to the FCC public and occupational limits.

Far Field. OET-65 gives this formula for calculating power density in the far field of an individual RF source:

$$\text{power density } S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}, \text{ in mW/cm}^2,$$

where ERP = total ERP (all polarizations), in kilowatts,

RFF = relative field factor at the direction to the actual point of calculation, and

D = distance from the center of radiation to the point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 ($1.6 + 1.6 = 2.56$). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of uneven terrain at the site, to obtain more accurate projections.



HAMMETT & EDISON, INC.
 CONSULTING ENGINEERS
 SAN FRANCISCO

Methodology
 Figure 2

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Attachment
B

STATEMENT OF APPLICANT COMPLIANCE REGARDING:

RESOLUTION OF THE MENDOCINO COUNTY PLANNING COMMISSION ADOPTING GUIDELINES FOR THE DEVELOPMENT OF WIRELESS COMMUNICATIONS FACILITIES

Applicant: Edge Wireless, LLC

Project: Wireless Communications Facility to be located at 9950 Road 500B,
Mendocino, CA. APN# 119-310-09.

Please consider the following statement of compliance with regard to the referenced application for a use permit and its conformance to the Planning Commission's November, 2001 policies regarding the development of wireless communication facilities in Mendocino County (the "Policies"). The Applicant may supplement this Statement during the processing of the Application in order to address further any pertinent questions or issues that may arise. The statements provided by the Applicant are in bold and follow the format and substance of the Policies.

(A) **Application submittal requirements:** An application for a use permit for a wireless communications facility shall include the following materials and information:

(1) A map showing the location of the proposed facility in relation to commonly identifiable landmarks such as towns and highways.

Included in application packet, "vicinity map" and on title page of drawings sheet T-1.

(2) A map showing the boundaries of the parcel on which the proposed communications facility is to be located, including all contiguous lands held by the same owner, and the location of the proposed facility and existing improvements on the parcel. "Parcel" means a separate parcel of land created in compliance with state laws and county ordinances, not just an area of land being leased by a communications provider.

Included in application packet, on drawings sheet C-1 (survey) and "Property Ownership" drawing by Astro Survey, stamped and attached.

(3) A site plan drawn to scale showing all components of the proposed facility, including towers, buildings, generators, fuel tanks, fencing, parking areas, access roads, utility lines, grading, tree removal and

proposed new vegetation.

Included in application packet, on drawings sheet A-1 (site plan).

- (4) Elevation drawings of the site and facility drawn to scale showing ground elevations and relative heights of structures and trees within 200 feet of the proposed facility, and specifying materials and colors of proposed structures.

Included in application packet on drawings sheets A-5 and A-6 (elevations) and sheet A-4 (A-4 concealed antenna mounting detail).

- (5) A description of the facility that includes:

- (a) The types of services to be provided by the applicant to its customers.

Mobile Personal Communications Services in accordance with FCC licensing, which may include but are not limited to voice, data and short message services.

- (b) The numbers, types and dimensions of antennas and other equipment to be installed.

One dual pole antenna measuring 56" High x 8" Wide x 3" deep. Please see drawings, sheet A-4 (concealed antenna mount detail)

- (c) The power rating for all antennas and equipment.

The power rating is 57 dBm EIRP at 1945-1950 mhz.

- (d) A statement that the system by itself, and in conjunction with other facilities in the vicinity, will conform to radio frequency radiation emission standards adopted by the FCC.

The proposed facility will conform to the applicable FCC standards. In this regard, please see enclosed Radio Frequency Cumulative Study.

- (e) Capacity of the site and facility to accommodate expansion through co-location.

The subject proposal is for installation of an antenna and associated equipment without the need for a pole, tower or

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other such supporting structure. The proposed facility will not preclude future location of other communication equipment on the subject property and the Applicant remains committed to cooperate with Mendocino regarding future collocation possibilities.

- (6) A map showing the locations of all other existing and proposed antennas included in the applicant's system for provision of service within Mendocino County, showing the approximate area served by each antenna.

Please see enclosed colored map "Edge Wireless Mendocino County Master Plan". The map shows all of the current, submitted, and future sites for the Edge Wireless system, along with the areas of coverage from each site in a colored overlay.

- (7) A map showing the locations of all other wireless communications facilities subject to a use permit within five miles of the proposed facility.

Please see map of communication sites maintained by Mendocino County Planning Department.

- (8) Evidence of ownership or authorization for use of the proposed site. Applicant shall not enter into a lease that precludes possible co-location.

Please see enclosed lease, title report and deed.

- (9) Evidence of easements or other authorization for proposed utility lines and for vehicular access between the site and a public road.

Please see enclosed lease.

- (10) Visual analysis of the proposed facility at design capacity, including at a minimum photo montages, photo simulations or other accurate representations of visual appearance from at least three different locations, at least two of which shall be from public locations from where the facility will be most visible. For locations determined by the Director of Planning and Building Services to be especially visually sensitive, the applicant may be requested to provide a demonstration of the proposed height of the facility on the site in the form of a tethered balloon, a vehicle-mounted boom, or other object raised to the proposed height.

Due to the absence of the need for a pole, tower or other such

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support structure for the proposed antenna, it is not anticipated that balloon, vehicle mounted boom or another such demonstration will be warranted. Please see enclosed photographic analysis of the proposed facility (application packet)

- (11) If the facility includes an antenna tower, provide a detailed description of the tower and its capacity to support additional antennas.

The proposed antenna facility does not require a support pole, tower or other such elevating structure.

- (12) A narrative discussing the factors leading to selection of the proposed site and antenna height, including alternative sites considered. For facilities not proposed to be co-located, the applicant shall provide a detailed statement substantiating why co-location is not practical.

Applicant currently is unable to provide communication services to the geographic area in which the subject property is located due to the absence of any of its communication facilities in this area. As a result, there is a significant gap in the service coverage of Applicant's communication network. Approval of this application will be the least intrusive method of partially filling that gap. It understands that other similar wireless communications companies also do not have such facilities in this area, resulting in the absence in this area of any personal wireless service provision which precludes consideration of collocation on a nearby existing facility at this time. Unless Applicant is able to commence provision of its communication service from the subject property, it will effectively be precluded from providing its communication services. The intended service area for the proposed facility is a significant one in terms of geographic area and persons that will benefit from the service, once provided. Also, please see enclosed "Site Selection Narrative".

- (13) A statement that the applicant and successors agree to negotiate in good faith for co-location of the proposed facility by third parties, and to require no more than a reasonable charge for co-location.

The Applicant has no objection to the location of further communication equipment on the subject property for collocation purposes, provided there is no resulting interference (exclusively an FCC matter) with the operation of Applicant's facility.

- (14) The Director of the Department of Planning and Building Services may waive submittal requirements or require additional information based on factors specific to an individual project. The Director may, at

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the applicant's expense, require independent peer review of any technical claims or data submitted as part of the review process.

To be determined by Director of the Department of Planning and Building Services.

(B) Standards:

(1)

General:

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

This facility is to be attached to an existing structure near property grade in a very low profile manner. Its stealth design and location is unobtrusive, visually and otherwise, with no resulting material visual or aesthetic consequences. While aesthetics are subjective in nature, Applicant has made the unobtrusive design the highest priority for the proposed facility while at the same time maintaining the functional integrity of the facility in terms of being able to serve the intended geographical area with the highest quality communications service reasonably possible with this design. There is no less obtrusive method of providing the communications service to this geographic area than the proposed facility.

- (b) The design of wireless communications facilities should promote co-location among different communication services providers. To the extent feasible, lease areas, antenna towers, and equipment structures shall be designed to provide for the consolidation of future facilities to eliminate or minimize the visual clutter resulting from multiple communications structures. Applicant shall not enter into a lease that precludes possible co-location.

The agreement between the property owner and the Applicant does not preclude collocation and, in keeping with the Policies, Applicant does not object to the future location of other communication facilities elsewhere on the subject property, provided it is protected from interference (exclusively an FCC matter). As the subject proposal does not

424 53

necessitate a supporting pole, tower or other structure, the granting of the Application will not provide a structural platform for future such facilities. As a result of the view shed in this area, the proposed very low profile and unobtrusive design solution was developed by Applicant, whereas a more conventional support structure, which would have served as such a platform, may have been more visible within the view shed.

- (c) Existing facilities should make available unutilized space for co-location of other antennas and equipment, including space for competing communication services providers.

Please see the statements in subsection (b) above.

- (d) If use of any portion of a communications facility is discontinued for more than one year, such portion of the facility no longer in use, above grade, shall be completely removed from the site and disused portions of the site shall be restored to a natural-appearing condition.

This can be addressed through a Bond which has been a requirement of previously approved permits.

- (e) Prior to issuance of any permits for new communications facilities, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the carrier abandons operations or fails to comply with requirements for removal of facilities.

Applicant will comply with this requirement and has done so in the past.

- (f) No signs, other than those required or necessary for operation of a communications facility shall be displayed on a communications facility site.

Applicant will comply.

- (g) An identification sign for each company responsible for operation and maintenance of facilities at the site, not larger than two square feet, shall be posted at a location from which it can be easily read from outside the perimeter of the communications facility, and shall provide the name, address, and emergency telephone

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number of the responsible company.

Applicant will comply.

- (h) Use permits for communications facilities shall be issued for a maximum term of ten years.
- (i) All wireless communications facilities shall comply with the applicable provisions of the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, California Fire Code, and rules and regulations imposed by state and federal agencies.

Applicant will comply.

- (j) Towers shall not be built with guy wires in the absence of compelling evidence that there is no feasible construction alternative.

No guy wires are associated with this facility.

- (k) Roads constructed or improved to provide access to a communications facility shall be provided with drainage facilities sufficient to convey storm runoff to natural drainage channels without erosion.

There is no road construction or improvement required for this project.

- (l) Generators shall be equipped with mufflers and spark arresters, and shall not produce noise levels exceeding 50 dBA at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency use are not included in this limitation.

There is no plan to install a permanent generator at this facility. In the event of an extended power outage (emergency use) a mobile generator will be used and removed when sufficient power is restored.

- (m) Expanded public notice may be provided for applications for new antenna towers when deemed necessary by the Director. In such cases, in addition to the standard notice provided to surrounding property owners, an eighth page legal ad may be published in a local newspaper of general circulation in lieu of a standard legal notice.

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To be determined by Director of the Department of Planning and Building Services.

(2) Visual appearance:

- (a) Communications facilities shall be located and designed to minimize visibility and to be visually compatible with their surroundings.

The stealth design of the antenna, which will appear to be a ground level structural support for the deck portion of the residential structure, will preclude any material visual impacts and will ensure the retention of the residential appearance of the existing development. As a result, the proposed facility will be visually compatible with its surroundings.

- (b) All exterior surfaces of structures and equipment associated with a communications facility shall have subdued colors and non-reflective materials selected to blend with their surroundings.

The existing color scheme of the current development on the property will be retained and will not include any reflective materials.

- (c) Co-location is required when feasible and when it minimizes adverse effects related to land use compatibility, visual resources, public safety and other environmental factors. Co-location is not required when it creates or increases such effects and/or technical evidence demonstrates to the satisfaction of the Planning Director that it is not feasible due to physical, spatial, or technological limitations. Fiscal constraints or competitive conflicts are not considered justifiable reasons for not co-locating a new facility where the opportunity for co-location exists.

Although no collocation is achievable with this Application, the proposed facility will not result in any adverse effects related to land use compatibility, visual resources, public safety and other environmental factors. The proposed facility will not preclude future location of other communication equipment elsewhere on the subject property. Applicant remains committed to working with the County and would work cooperatively should another carrier develop an acceptable co-location design elsewhere on the property.

- (d) Antennas mounted on visible surfaces of buildings or other

structures shall be designed to look like an integral part of the structure.

The antenna will be enclosed in a stealth enclosure that is designed to look like the existing concrete piers supporting the deck.

- (e) Antennas mounted on the exterior walls of a building entirely below the roof line or parapet top may extend into any required yard setback a distance not exceeding two feet.

The proposed antenna will actually extend below the structure and will not extend into the setback area beyond the existing deck.

- (f) Roof-mounted antennas shall be located as far back from the edge of the roof as technically possible to minimize visibility from street level locations.

Neither the antenna nor any associated equipment will be roof mounted or visible from street level locations.

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

The antenna will not be located on a ridge top. Given the attachment of the antenna below the deck portion of the structure there will not be any silhouette against the sky resulting from the antenna or associated equipment.

- (h) Facility towers, antennas, buildings and other structures and equipment visible from adjacent residences or public vantage points, shall be designed, located, constructed, painted, screened, fenced, landscaped or otherwise architecturally treated to minimize their appearance and visually blend with the surrounding natural and built environments.

Please see drawings and photos and photo simulations included within application, and the above compliance statements regarding the foregoing matters addressed in the Policies.

- (i) Outdoor lighting shall be kept to a minimum. Towers requiring FAA lighting are discouraged. Tower lighting, if approved, shall be the minimum required by FAA regulations. Towers requiring

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strobe lighting shall be prohibited. Other outdoor lighting shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site, and shall be turned off except when in use by facility personnel.

There will be no additional outdoor lighting associated with the proposed facility.

- (j) Satellite dishes and other parabolic antennas shall be located in the least visible functional location on the site. In general, preferred locations will be close to the ground, on a wall below the roof line, or back from the edge of a roof.

There will be no parabolic antenna associated with the proposed facility.

(3) Radio Frequency Emissions:

- (a) Every wireless communications facility, by itself and in combination with other nearby communications facilities, shall comply with the Federal Communications Commission's limits for human exposure to radio frequency electromagnetic fields

The proposed facility will conform to the applicable FCC standards. In this regard, please see enclosed Radio Frequency Cumulative Study, "Statement of Hammett & Edison, Consulting Engineers".

(4) Landscaping:

- (a) Existing trees and other vegetation which will provide screening for the proposed facility and associated access roads shall be protected from damage during and after construction.

Due to the stealth design of the facility and resulting absence of material visibility it is not anticipated that vegetative or other screening will be warranted. Applicant will ensure that access routes are not damaged in accordance with any applicable County regulations.

- (b) Areas of bare soil resulting from construction shall be replanted with vegetation compatible with that existing prior to construction, sufficient to stabilize soil and prevent erosion.

Applicant will comply.

47953

- (c) Additional landscaping shall be installed and maintained where it would provide a useful reduction in the visual impact of a communications facility. Introduced vegetation shall be native, drought tolerant species compatible with the predominant natural setting of the project area. Non-native drought tolerant species compatible with surrounding vegetation may be used in urban settings.

Due to the stealth design of the facility and resulting absence of material visibility it is not anticipated that vegetative or other screening will be warranted.

- (d) Communications facility sites, whether leased or purchased, shall be of sufficient size to include vegetative screening if landscaping would provide a useful reduction in visual impact.

Please see above statements in response to similar elements of the Policies. Also, please see drawings and photos within application.

- (e) No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility.

No tree removal or trimming is anticipated.

(5) Public Health and Safety:

- (a) Communications facilities shall incorporate reasonable security measures to prevent unauthorized access or vandalism.

Applicant will comply.

- (b) Communications facilities shall comply with California Department of Forestry Fire Safe Regulations, or with local fire agency requirements.

Applicant will comply.

- (c) Equipment buildings and enclosures shall be equipped with automatic fire extinguishing systems acceptable to the responsible fire agency.

Not required for this type of equipment.

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- (d) Antennas and antenna towers shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the state of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department. Costs of the inspection and report shall be borne by the applicant.

Applicant will comply.

- (e) Communications facilities intended to provide services for the benefit of the general public during an emergency shall be designed to survive possible storm or seismic events without interruption of service.

Applicant will comply.

- (f) Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.

Applicant will comply.

- (g) Antenna towers shall be subject to setbacks required by the County Zoning Code, and shall be set back a minimum of 110% of the overall height from any property line, and a minimum of 500% of the overall height from any off-site residence or school. Tower setbacks in excess of setbacks required by the Zoning Code may be reduced under any one of the following circumstances:

Due to the absence of a pole, tower or other support structure for the antenna, this provision regarding tower setbacks is not applicable.

- (i) The facility is proposed to be co-located with an existing, legally-established communications facility.
- (ii) All of the owners of affected properties agree to the reduced setback. A property is considered affected if its dwelling unit lies within a distance equivalent to the required setback for the subject tower prior to reduction and the reduced setback would result in the tower being located closer to the dwelling unit than the above setback would otherwise allow.
- (iii) Overall, the reduced setback enables greater mitigation of

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adverse visual and other environmental impacts than would otherwise be possible.

Date: 12-23, 2002

Edge Wireless, LLC

By: D.W.S.

Title: Director of System Development

*Attachment
C*

**SITE SELECTION NARRAT. E
9950 ROAD 500B, Mendocino, CA**

Edge Wireless is committed to providing the best Personal Communication Service possible. The network design (cell sites) is the result of a systematic approach to delivering a network that meets the needs of our customers. Our engineering group works closely with our customer service and sales departments to determine what our customers need. Once an area of need (Search Ring) has been identified the engineers perform a diligent study of any and all existing structures to determine if there is a collocation opportunity. Edge has consistently worked to collocate wherever possible.

With a list of potential candidates in hand the engineers then begin evaluating the suitability of each candidate. Zoning, quality of coverage and aesthetics are all part of the evaluation. As part of the due diligence site selection process the engineers visit the area to get an understanding of the environment. The candidates are then filtered down to a list of locations that provide some or all the needed coverage while being in an appropriate location with respect to land use. Our real-estate team then goes to work on securing the appropriate lease or license.

The need for service in the Mendocino area was identified over two years ago. Our research indicated that this area would be very difficult to serve for several reasons:

1. Heavy forestation that blocks or reduces the radio signal propagation.
2. Steep rolling terrain that blocks or reduces the radio signal propagation.
3. Sensitive view shed.
4. The majority of land composing the center of the search ring is designated historic and therefore very sensitive as well.

Given the large, thick forest and the rolling terrain it became apparent that as we moved the site further away from the village of Mendocino the need for a taller (higher) support structure grew dramatically. With an operating frequency of approximately 1900 MHz the engineers determined that we would need to be within 1 mile of the village if we were going to provide service.

With this information in hand we approached a number of locations.

Sites that were considered:

- Sites within the village:
 - Several Bed and Breakfast establishments
 - Water Tanks.
- Other towers in the area:
 - Mendocino CDF and other existing tower structures outside of the village.
 - Existing towers in the Casper area.

These candidates were too far away to cover our objectives

- Other existing structures within the operational cell radius that are not in the Village:
 - 9950 Road 500B

This site provided a suitable existing structure, a willing landlord and provided reasonable service to the village while minimizing the aesthetic impact.

**SITE SELECTION NARRATIVE
9950 ROAD 500B, Mendocino, CA**

All things considered we believe the proposed facility to be best solution. At this time the only other solutions would be a very large structure capable of accommodating multiple carriers or a site in the village itself.

Unfortunately the elements that allow this site to have such a minimal visual impact also restrict the potential for collocation. The proposal calls for Edge to locate equipment within the Landlord's garage where space is extremely limited. The proposed facility also utilizes a 'stealth' antenna enclosure beneath the Landlords deck. The antenna enclosure, which matches the existing foundation piers, is only large enough to accommodate a signal dual polarity antenna.

While the applicant believes that co-location would be very difficult given the numerous constraints presented by this location, the applicant remains committed to working with the County and would work cooperatively should another carrier develop an acceptable co-location design.

Attachment
D

Edge Wireless Mendocino County Master Plan

2002/2003

Current Sites (Green):

Edge Wireless currently has nine (9) sites with approved Use Permits in Mendocino County. Out of these nine (9) sites, five (5) are collocations.

Spanish Mountain
Ukiah DT
Laughlin
Willits/Black Bart
Willits Railroad
Cahto Peak/Laytonville
Sanel
Hopland
Hopland South (approved, not built)

Sites In Process (Dark Blue):

Edge Wireless has Five (5) additional sites in the zoning process. Four (4) of these sites are collocations.

Boonville (approved UP under appeal)
Fort Bragg/Bald Hill (approved UP under appeal)
Squaw Rock (application probable 1-27-03)
Russian River (UP hearing 1-16-03)
Mendocino (application probable 1-6-03)

Future Sites (Light Blue):

In the future Edge Wireless may pursue the following eleven (11) sites.

Fort Bragg DT (in the City of Fort Bragg)
Lake Mendocino/Potter Valley
Potter Valley Repeater
Willits North
Philo
Caspar
Mendocino Firestation
Round Valley/Covelo
Piercy
Leggett
Fetzer (UP approved but no current plans to build due to changed system design)

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CALIFORNIA COASTAL COMMIS

NORTH COAST DISTRICT OFFICE
 710 E STREET • SUITE 200
 EUREKA, CA 95501-1845
 VOICE (707) 446-7833
 FACSIMILE (707) 446-7877

MAILING ADDRESS:
 P. O. BOX 4808
 EUREKA, CA 95502-4808

APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form

RECEIVED

AUG 14 2003

SECTION I. Appellant(s)

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

JAMES & BETTILOU LOVERA
 P.O. BOX 712-9600 BREWERY GULCH DR.
 MENDOCINO, CA 95460 (707) 937-4626

Zip

Area Code

Phone No.

CALIFORNIA
 COASTAL COMMISSIONSECTION II. Decision BeingAppealed

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

2. Brief description of development being appealed: **COASTAL DEVELOPMENT USE PERMIT
 FOR THE INSTALLATION OF A WIRELESS
 TELECOMMUNICATIONS FACILITY (CELLULAR)**

3. Development's location (street address, assessor's parcel no., cross-street, etc.): **9950 ROAD 500B, MENDOCINO
 AP 119-310-09 (NEAR COMPTCHE UKIAH CROSS
 STREET)**

4. Description of decision being appealed

a. Approval; no special conditions:

b. Approval with special conditions:

c. Denial:

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: **A-1-MEN-03-052**DATE FILED: **8/14/03**DISTRICT: **North Coast****EXHIBIT NO. 5****APPLICATION NO.**

A-1-MEN-03-052

EDGE WIRELESS

APPEAL #1 (LOVERA,
 JAMES & BETTILOU
 (1 of 40))

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

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

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

6. Date of local government's decision: JULY 22, 03

7. Local government's file number (if any): CDU 1-03

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

EDGE WIRELESS LLC
600 SW COLUMBIA, SUITE 7200
BEND, OR 97702

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) SUZANNE & GLENN SCHEIN
P.O. BOX 910
MENDOCINO, CA 95460
- (2) JOAN CURRY
P.O. BOX 457
MENDOCINO, CA 95460
- (3) ANTONIA LAMB
P.O. BOX 395
MENDOCINO, CA 95460
- (4) DONNA SCHUYLER
P.O. BOX 1627
FORT BRAGG, CA 95437

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

- (5) JOHN & SABER GALLO
855 SEQUOIA CIRCLE
FORT BRAGG, CA 95437

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APPEAL FROM COASTAL FISH & GAME DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

THE NEW STEALTH TOWER WILL BE VERY CLOSE TO THE BLUFF EDGE AT GROUND LEVEL AND NEAR A SHOREBIRD ROOSTING, RESTING & NESTING AREA (LUP POLICY 5.1.2 DEFINITION OF SENSITIVE HABITAT)

IT WILL BE NEAR ROAD 500B (ALSO KNOWN AS BREWERY GULCH DR.) WHICH IS DESIGNATED PART OF THE COASTAL HIKING TRAIL, SECURITY AND SAFETY HAS BEEN POINTS OF CONCERN - PARTICULARLY WITH

SEE ADDITIONAL STATEMENT

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Signature of Appellant(s) or
Authorized Agent

Date

7/11/03

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

SECTION VI. Agent Authorization

I/We hereby authorize _____ to act as my/out representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date

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ADDITION TO PAGE 4

keeping the new gates closed at all times. The county cannot monitor such a requirement.

There has been very confusing and non-specific dialog in all of the previous hearings about co-location at this site; in regard to whether or not it can be accomplished.

Some supervisors have expressed concern that approving a site that limits co-location would result in having many, many more sites to deal with in order to conform to the telecommunications act of 1996.

They do agree that the county guidelines are not working in their present form.

See newspaper clipping dated July 24, 2003. Also hear tape #3 of Board of Supervisors hearing July 22, 2003 enclosed.

The several points included in Rodney Jones letter of July 15, 2003, particularly related to the project homeowners and their refusal to follow requirements of earlier Coastal Development Permits.

July 30, 2003

TO: The California Coastal Commission
RE: Edge Wireless/King CDU 1-03

The history of the King's property has been well documented in the (enclosed) material compiled and presented to the Mendocino County Planning Commission and the Board of Supervisors.

I would call your attention to the 7 page letter from Rodney Richard Jones dated July 15, 2003, specifically Pages 5 and 6.

Those of us who live near the King property (as well as others) cannot understand how the "extremely visible" tower came into existence. For years it has defied every principle of the Coastal Act as related to preservation of the view corridor.

This is especially personal to me. I purchased my property in 1978 and it is adjacent to the King parcel. Over a period of several years and many applications I was denied a Coastal Use Permit because "it would prejudice the Local Coastal Plan." I was persistent and I eventually received a permit in 1982.

Later, in the early 90's when I applied to the County for a permit to build a garage it was denied until I proved that my residence permit had been finalized, which it had been.

Coastal Commission Staffer, Linda Ruffing came to verify that my garage footprint was at least 30 feet from the bluff. While working she pointed toward the tower and asked "How do the locals feel about that?" My reply was "you don't want to know. It's hard to put into words."

The Coastal Commission's staff recommendation regarding the County's LCP (dated April 21, 1985) contains dialog that I feel fits this present situation. Under "Existing unauthorized development" is the following language in part:

"The intent section would establish a "Clean Slate" program which would give each violator the opportunity to identify himself, obtain a Use Permit, and bring the un-authorized structure up to building code standards.. etc. etc."

"For the Commission to approve such a program would be to unjustifiably grant a special privilege to one group of violators. It would condone violations of the Coastal Act, jeopardizing the strength and integrity of the Commission's overall enforcement efforts. Coastal Act violations which occurred prior to certification of the LCP must be resolved by the commission and not the County, therefore, this section must be deleted from the County plan." Emphasis added.

We feel strongly that approval of CDU1-03 would be an affront to the great majority of applicants who, over the

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years, have conformed to the conditions required by your Commission. We have supported your efforts to preserve the California Coast for the enjoyment of all.

We ask you to appeal the decision of the Mendocino County Board of Supervisors and deny the Edge Wireless/King CDU1-03 application.

Thank You,

Jim and Bettilou Lovera

Jim and Bettilou Lovera
707-937-4626
P.O.Box 712
Mendocino, Ca. 95460

cc: Rodney R. Jones

RODNEY RICHARD JONES

Lawyer

P.O. Box 139 45100 Main Street
Mendocino, California 95460
Phone 707.937.0549
rodjones@mtnet.org

July 15, 2003

Board of Supervisors
County of Mendocino
501 Low Gap Road
Ukiah, CA 95482

Re: Appeal No. CDU 1-03 (King/Edge Wireless)

Dear Members of the Board:

This letter is written on behalf of Jim and Bettilou Lovera. The proposed facility would be on the adjacent property of Charles and Pamela King, who have entered into a contract for use of their property by Edge at an undisclosed annual sum.

The Loveras oppose installation of the facility and urge denial of the appeal or a moratorium on the proposed facility pending consideration of an ordinance by the Mendocino Historical Review Board and yourselves. Approval of the facility would mean an immediate loss in their property value and significantly impair their right to quiet enjoyment of their home. Approval of the CUP might be viewed as an unconstitutional "taking" within the means of the 5th and 14th Amendments.

Rather than subject them to a diminution in value, they urge that you follow your own Resolution No. 2001-02 guidelines to the effect that sites "within or near residential areas" are "least preferred and will only be considered when there is compelling evidence that no other less visible alternative exists." (Standard 1a.)

Federal vs. County Regulatory Authority

Federal law largely preserves local authority to regulate the construction of "personal wireless service facilities," even though local governments cannot generally do so on the basis of radio frequency emission concerns where the emissions comply with FCC standards. (Valle-Riestra, Telecommunications: The Governmental Role in Managing the Connected Community [Solano Press, 2002]; GTE Mobilnet of South Texas Ltd. Partnership v. Pascouet, 61 S.W.3d 599 (Tex. App. Houston 14th Dist. 2001) [nuisance claims by landowners, against the owner of a neighboring 126-foot cellular telephone tower, were not preempted by the Federal Telecommunications Act of 1996. Finding the tower to be a nuisance did not make it impossible for the owner to comply with the FTA, as FTA is not designed to countenance nuisances.]

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The federal prohibitions imposed on local government are twofold: 1) to avoid unreasonable discrimination among providers, and 2) not to outright prohibit the provision of personal wireless services. (47 USC §332(c)(7)(B)(i).) These constraints arguably violate the 10th Amendment by encroaching on powers reserved to the states and their subdivisions. (See *Petersburg Cellular Partnership v. Board of Supervisors of Nottoway County* (4th Cir. 2000) 205 F.3d 688.) To my knowledge, the 9th District Court of Appeals (that encompasses California) has yet to address this issue and only the 10th District has held the FTA constitutional in the case of *Southwestern Bell Wireless v. Johnson County Board of Commissioners* (10th Cir. 1999) 199 F.3d 1185.)

The fact that there is a gap in the coastal service area with respect to the town of Mendocino does not compel you to fill that gap based on request of the Kings, Edge or any other service provider. Refusing to fill such a gap does not constitute a "prohibition" within the meaning of federal law. (*OmniPoint Communications, Inc. v. Scranton* (M.D.Pa. 1999) 36 F.Supp.2nd 222, 233 ["Were courts to hold that merely because there are some gaps in service in an area...the public interest necessarily tips the balance in favor of allowing a variance, local boards would be obliged to approve virtually every application."]) Thus, you should not feel stampeded or pressured into making a decision favorable to King/Edge based on a claim that an unfavorable decision would constitute a "prohibition" in violation of federal law. In fact, the FCC regulations themselves expressly contemplate that there will exist so-called service "dead spots." (360° Communications Co., *supra*.)

While it is true that FCC regulations preempt a broad class of public and private restrictions that impair installation of certain antennae types, those FCC regulations also embody exceptions either for "safety" or based on "historic preservation restrictions." (47 CFR §1.4000(b)) For example, in *In re Town of Steilacoom, Washington* FCC memorandum opinion (DA 00-2170), the agency recognized that the town could restrict satellite antennas to a size of two meters or less. As you undoubtedly know, where a question exists whether a town or county may restrict service or construction of facilities, local governments also may also apply to the FCC for a waiver of the regulations based on a "showing by the applicant of local concerns of a highly specialized or unusual nature." (47 CFR §1.4000(d), (f)-(g))

Federal law also does not prohibit you from adopting a temporary moratorium on constructions of new facilities. Moratoria for between 6 to 15 months have been upheld by the courts. (See, e.g., *SNET Cellular v. Angell* (D. R.I. 2000) 99 F. Supp. 2nd 190; *American Towers, Inc. v. Williams* (D.D.C. 2001) 146 F.Supp.2d 27; *Sprint Spectrum L.P. v. City of Medina* (W.D. Wash. 1996) 924 F.Supp. 1036.) In 1998, the FCC entered into an agreement with the Cellular Telecommunications Industry Association to establish guidelines creating an informal dispute resolution procedure and that discouraged moratoria of more than six months.

You are aware, of course, that any decision you make must be grounded on "substantial evidence," under both state and federal law. (47 USC §332(c)(7)(B)(iv).) Such evidence has been characterized as more than a "mere scintilla" though less than a "preponderance" (or 51%). (See, e.g. *NLRB v. Grand Canyon Mining Co.* (4th Cir. 1997) 116 F.3d 1039, 1044.) When evaluating the evidence if a decision is challenged in court, state and local zoning laws govern

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the weight to be given the various forms of evidence. (*Cellular Telephone Company v. Town of Oyster Bay* (2nd Cir. 1999) 166 F.3d 490.) The strength of testimony by local citizens, i.e. non-expert evidence, is accorded full weight and can be substantial evidence even in the face of contrary expertise offered by the wireless promoter. (See, e.g., *A.T.&T Wireless PCS v. City Council of Virginia Beach* (4th Cir. 1998) 155 F.3d 423, 430; *A.T.&T. Wireless PCS v. Winston-Salem Zoning Board* (4th Cir. 1999) 172 F.3d 307 [150 citizens opposed]; *360° Communications Co. v. Board of Supervisors* (4th Cir. 2000) 211 F.3d 79 [24 citizens and petition]; *Airtouch Cellular v. City of El Cajon* (S.D. Cal. 2000) 83 F.Supp. 2nd 1158.)

Where RF emissions comply with FCC standards, the local agency cannot deny an application based solely on such concerns. Thus, should you deny the King/Edge appeal, you should make a clear finding that you are doing so based on other considerations and list what those are. These would help insulate you from legal attack from King and Edge. Should either entity file suit, they then carry a "heavy" burden and must show not that further "reasonable efforts are so likely to be fruitless that it is a waste of time even to try." (*Town of Amherst v. Omnipoint Communications Enterprises, Inc.* (1st Cir. 1999) 173 F.3d 9, 14.)

Basis for Lovera Objections

1. No showing that a significant service gap exists and must be filled

From the available information in the file, it appears that the service gap only concerns the town proper of Mendocino. Evidently, some cell service is available from the headlands to the west of town, south toward Little River, and on the road north to Fort Bragg. There is no showing that this constitutes a "significant" service gap that would compel local government to authorize filling it. Plainly said, the world will still rotate and Edge will make its profit whether or not the small town of Mendocino is included in the world of Personal Wireless Service. Numerous standard phones exist in town, leaving Mendocino still connected with the outside world.

2. Failure to adequately explore less intrusive/more suitable alternatives sites.

Neither the application (Report for Coastal Development Permit [1/15/03] nor the Staff Report for Coastal Development Use Permit of April 17, 2003 prepared for the Planning Commission contain an adequate analysis of alternative sites. The service provider, however, is obliged to "show that the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve. This will require a showing that a good faith effort has been made to identify and evaluate less intrusive alternatives, e.g., that the provider has considered less sensitive sites, alternative system designs, alternative tower designs, placement of antennae on existing structures, etc." (*APT Pittsburgh L.P. v. Penn Township* (3rd Cir. 1999) 196 F.3d 469.) Where such alternatives exist, denial of the plans of the service provider does not amount to a "prohibition" even if the alternatives are – to the mind of the provider – "less than optimal." (*Sprint Spectrum v. Board of County Commissioners* (D.Colo. 1999) 59 F. Supp.2nd 1101; *Airtouch Cellular v. City of El Cajon* (S.D. Cal. 2000) 83 F.Supp.2nd 1158, 1167.)

Assuming that service is necessary for the town of Mendocino, there evidently has been no serious exploration of other locations that are far from residences and schools, that are feasible even if not "optimal" according to Edge. Not included in the King/Edge application but placed in the file in Ukiah by someone at some time is an undated, unsigned Edge document entitled, "Site Selection Narrative 9950 Road 500B, Mendocino, CA." The author is unknown and it consists mostly of boilerplate assurances lacking in specifics. It reports that some unidentified Edge employee "approached a number of locations" and concluded the King property was the most suitable. It ends with this broad conclusion: "All things considered we believe the proposed facility to be the best solution. At this time the only other solutions would be a very large structure capable of accommodating multiple carriers or a site in the village itself." (p. 2) Why? Would something else provide a solution at some "other time?" The unknown author does not say. What is said, however, is more distressing: "[T]he applicant believes that co-location would be very difficult given the numerous constraints presented by this location." (p. 2) Co-location an essential element of an acceptable site. Failure offers the prospect of spawning a "tower war" by other providers wanting a bite of the Mendocino pie.

Commonly, providers have used existing trees and/or constructed human-made imitation trees that fit in with others and essentially camouflage the tower. This was done in Santa Ana and Ontario, California. It is conceivable that there are ridgetop locations or a tower facility might be connected to an offshore buoy. Either would accomplish this objective without plunking even a stealth tower in the middle of a coastal residential area. (See Valle-Riestra, *supra*, pp. 246-249, 257 and Holt, *Developments: It May Be Art, But Can You Hear Me?* [Wall St. Jnl., December 10, 1997] for a description of these camouflaged approaches.) Local governments may attach such conditions to a use permit without running afoul of federal law. (*Omnipoint Communications Enterprises, L.P. v. Warrington Township* (E.D.Pa. 1999) 63 F.Supp.2nd 658.)

The unfulfilled duty to fully explore alternatives was fatal to the provider in *Airtouch Cellular*, where the federal court said, "Airtouch has tried to demonstrate that other sites are not reasonably available...However...Airtouch's own witnesses testified at the administrative hearings only that other sites would present challenges and be less than ideal. Those witnesses did not say that those sites were entirely unfeasible... Airtouch representatives did not testify that the Fletcher Hills water tank site was the only available alternative, but in effect that the site was the only site with the best coverage for the least expense." (83 F. Supp.2nd at p. 1168.) The court upheld the city's denial of a CUP, rejecting Airtouch's claim that "CUP denial 'frustrates the establishment of a nationwide cellular service network as intended by the Communications Act and the FCC rules... because it effectively prohibits, unreasonably restricts and improperly interferes with the installation of a cellular communication...'" (*Id.*, p. 1169.)

3. Failure to adhere to Planning Commission Guidelines, Resolution No. 2001-02

In November 2001, the Commission passed guidelines specifically addressing Wireless Communications Facilities. These are to "be followed to the greatest extent possible." Guideline No. 12 calls for a "narrative discussing the factors leading to the selection of the proposed site...including alternative sites considered." Standard B.1.a unequivocally states that sites "near residential

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areas or schools are least preferred and will only be considered when there is compelling evidence that no other less visible alternative exists."

It is puzzling why Edge would seek to do business in this community by proposing a tower initially next to the community's only grammar school and now seek to place it in a residential zone. This Board is requested to adhere to and act consistent with the guidelines and deny the appeal.

4. Granting the use permit would ratify prior illegal construction by King

The King parcel was developed under Coastal Commission Permit No. 73-CC-049. A subsequent permit No. 79-A-106 approved erection of a ham radio tower "no higher than the existing residence." There has been no known application made or approved for the present tower, which, as evidenced by the photographs in the file, far exceeds the height of the residence, standing approximately three times higher at around sixty feet. No justification for this illegal structure has ever been offered. King's representatives have said (April 17 Planning Commission) simply that King "chose not to" comply with this condition. Randy Stemler, staff at the Eureka Coastal Commission office, had opined that the existing tower is "clearly a violation."

Not only has the residence also remained "red-tagged" for a number of years, it is still listed with the County Assessor as only 50% complete, despite no new constructions for the past twenty years. Note also that the Coastal Zone height limit under all circumstances is not to exceed 18 feet above natural grade. (§20.504.15) A residence already characterized as "starkly visable" [sic] by the Coastal Commission now is home to an illegal ham radio tower.

By ignoring this existing illegality and presently granting a permit to the same parcel without requiring correction, Kings could subsequently claim that the County has ratified the illegal ham radio tower and refuse to conform to their original permit. In *County of Sonoma v. Rex* (1991) 231 Cal.App.3d 1289, operators of a bed and breakfast inn were found to be in violation of Sonoma County zoning ordinances and permanently enjoined from maintaining a bed and breakfast inn on their property without a use permit. The trial court order was affirmed on appeal. The appellate court cited *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497, where the Supreme Court said that "[t]he government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (See also *City of Imperial Beach v. Algert* (1962) 200 Cal.App.2d 48, applying estoppel principles to block ordinance application.) Surely the Kings will resist any attempt to reduce or remove the illegal existing ham tower if you approve the King/Edge application for yet an additional facility.

A well-known principle of equity should stop this application in its tracks. The principle demands that a party cannot seek legal support for a claim when he or she approaches the authorities with "unclean hands." It is well settled the courts of this State will not aid a party who comes to court with unclean hands nor referee the illegal schemes of private litigants. (Civil Code section 3517 ["No one

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can take advantage of his own wrong".) The unclean hands doctrine applies to legal as well as equitable claims and to contract as well as tort remedies. (*Jacobs v. Universal Development Corp.* (1997) 53 Cal.App.4th 692, 699.) The doctrine "'closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.'" (11 Witkin, *Summary of Cal.Law* (9th ed. 1990) *Equity*, § 8, p. 684.) This doctrine should apply so as to preclude the Kings from even requesting approval of a new permit, let alone getting such approval, until they have fully corrected the long-existing violation of their original tower permit.

5. Cell towers should be located on public property so that the extensive amounts paid for use of such property inure to the public generally rather than flow into the pockets of private property owners. The Loveras find it rather inexplicable that the County staff wants to locate a public telecommunications facility next to a private residence rather than at some existing public location such as the fire station in Mendocino. Given the asserted broad public interest in having universal cell phone service, why shouldn't the cash-strapped local agencies of government benefit from the county's action in providing tower locations?

6. Dimunition and "taking" of private property

The Loveras purchased their property in the late seventies and sought a residential construction permit from the Coastal Commission in 1980. They persevered in getting approval from the Commission by changing the design to make their home as least visible as possible. It resides on almost priceless and unique headland parcel. The controversy over this stealth tower location is likely to remain embedded in local memory for years. Passersby will be told of the existence of a cell tower by the mandatory warning signs that must be posted. The effect will be to stigmatize the entire area around Road 500B, as one containing significant electromagnetic beams coming and going. Given the uncertainty about the long-range health effects of such radiation, it cannot but help to diminish the property value of the Loveras.

As this Board knows, An inverse condemnation action is an eminent domain lawsuit initiated by one whose property was taken or damaged for public use by government action. "[P]ublic use" is "'a use which concerns the whole community or promotes the general interest in its relation to any legitimate object of government...'" (*Cantu v. Pacific Gas & Electric Co.* (1987) 189 Cal.App.3d 160, 164.) A physical invasion in the nature of trespass is not required. Rather, inverse condemnation also occurs when an intangible intrusion onto the property has caused no damage to the property but places a burden on the property that is direct, substantial, and peculiar to the property itself. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 939-940.) In *Cuna Mutual Life Insurance v. Los Angeles Metropolitan Transportation Authority* (2003) 108 Cal.App.4th 382, property owners adjacent to an MTA tunneling project were damaged and needed to spend money for underpinnings to avoid structural harm. The appellate court rejected MTA's argument that there can be no constitutional taking where there is no physical injury to the Building and that, thus, there was nothing to mitigate and no inverse condemnation occurred. The Court instead held that actual physical damage to the subject property is not a

prerequisite to an award of mitigation damages in an inverse condemnation proceeding.

This Board's approval of this celltower for public radiowave transmission could render it liable for damages caused by the Loveras' need to protect their property against this intrusion. This is not merely a case, for example, involving mere visual considerations and aesthetic preferences based on erection of an existing tower with one twenty feet taller on adjacent property. (*Oliver v. A.T.&T. Wireless Services* (1999) 76 Cal.App.4th 521 [Only allegation in support of nuisance claim that new tower's appearance interferes with their enjoyment of the property as seen from a single window of adjacent residence.] Rather, the Loveras' concern involves health and peace of mind, based on the reality that they will find themselves exposed to a significant electromagnetic field and bombarded by radio frequency radiation as signals are passed to and from the King tower. Like any reasonable homeowner, this will require them to take steps to protect themselves from what many contend is a major health hazard. It also presents itself as an economic and health hazard "albatross" that will attach to their property in perpetuity.

The Loveras would thus be entitled to seek either diminished value or stigma damages, representing the residual loss of market value after repairs have been made, or damages for decreased value. (*Aas v. Superior Court* (2000) 24 Cal.4th 627, 652; see also, *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250 regarding mitigation damages; *F.D.I.C. v. Jackson-Shaw Partners* (N.D.Cal.1994) 850 F.Supp. 839 [stigma damages unavailable in continuing nuisance cases where abatement possible and reasonable]; *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285 [City could be liable in inverse condemnation for operation of a sewage plant that emitted septic odors that were blown onto the plaintiff's neighboring property; though injury was unlike "those core cases of direct physical invasion which indisputably require compensation," did not vitiate the inverse condemnation claim].)

Conclusion

You have the right to exercise local authority over installation of cell towers, provided you do not outright prohibit installation. Your valid considerations include the propriety of the location and you have the right to insist that the proposed provider conduct not only an RF study for FCC compliance but include a thorough analysis of alternative sites that would offer similar service.

In light of this incomplete and faulty application, you are asked to deny the appeal and endorse the decision of the Planning Commission.

Sincerely,

Rodney R. Jones

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CDU 1-03

THE ENDODING BEACON

A COAST PAPER FOR COAST PEOPLE SINCE 1877

Thursday, July 24, 2

Mendocino, Mendocino County, California

126th Year, No. 51

Edge appeal OK'd by supervisors

By NAOMI JARVIE
Of The Beacon

The Board of Supervisors, in a 3-2 vote, approved the Edge Wireless LLC appeal of the county Planning Commission's deadlocked decision, to place a cellular facility under the deck of the home of Charles and Pamela King at 9950 Road 500B, Mendocino.

The permit was approved with modifications, including bringing the home's deck up to code, strengthening the fence to provide better security, providing two gates and removing of an existing illegal ham radio antenna.

Three applications by Edge, U.S. Cellular and Crown Castle have been submitted to the planning department for cellular facilities in the Mendocino area — for Comptche-Ukiah Road, the Stanford Inn and South Caspar.

About 25 people spoke against the facility Tuesday, with four in support of it. New information was given that hadn't been brought up at previous commis-



During Tuesday's Board of Supervisors' hearing for the Edge Wireless appeal, Mendocino residents brought two petitions bearing more than 1,000 signatures opposed to the cellular facility. Naomi Jarvie photo.

sion meetings.

Fifth District Supervisor David Colfax said with three more cellular applications in

planning, it is possible that the coast could end up with three more facilities. He motioned to delay action until a study result-

ing in county guidelines could be approved by the supervisors. He said the current guidelines are for the Planning Commission's use and have never been approved by the supervisors. Second District Supervisor Richard Shoemaker seconded the

motion. It was defeated.

Public testimony

Attorney Gail Flatt, speaking on behalf of a group of Mendocino citizens, quoted sections of the Americans with Disabilities Act that she said are not superseded by the Federal Telecommunications Act. She said while the TCA attempts to remove all or nearly all local control of the siting of cell phone towers, it does not pre-empt other federal laws, including the ADA.

Flatt said the ADA "guarantees qualified individuals with disabilities the right to be free from discrimination in all programs and activities of public entities, and Title II of the act requires a public entity to make reasonable modifications to its policies ..."

She said the county is a public entity covered by Title II, and the county's zoning function is a program or activity that falls within the Title II.

See EDGE on Page 12A

Edge

From Page 1A

Flatt said the group she was speaking for includes individuals with disabilities, their qualified status already determined by the Social Security Administration.

Flatt said the supervisors had been given documentation of their medical histories. She requested a modification of the county's zoning policy and practices with respect to the siting of the cellular facility at the King's residence saying it was a grave threat to the health of these citizens.

She said, "We are not asking you [the supervisors] to ban cell phone towers in all of Mendocino County." She said Mendocino has become a last refuge for people with this disability.

Colfax expressed concern about the ADA regulations and future impacts and suggested looking for other sites.

Edge's corporate counsel said that ADA concerns have nothing to do with the Board of Supervisor's decision on planning and siting.

Edge representative Alan Waters said that in his eight years in cellular siting, he hasn't heard the ADA issue raised.

Waters said for the county to have complete cell phone coverage, \$4.5 billion would have to be spent for 1,000 sites.

Electro-sensitive Mendocino resident Arthur Firstenberg said he'd done his own test, as an expert with 20 years experience,

and the test result of the required 2 1/2 feet for safety from any occupant or from the trail near the King's property, is actually 17 1/2 feet.

Edge engineer Nickie Littlefield, said the difference between the 2 1/2 feet determined by an on-site test, and the 17 1/2 feet is actual on-site testing versus worst case scenario.

Firstenberg said the proposed antenna would exceed FCC safety standards by Edge's own facts and asked for an independent review.

More testimony

Mendocino resident Antonia Lamb showed supervisors two petitions opposed to the facility she said totaled more than 1,000 signatures after duplications were removed.

Betty Lovera, the King's nearest neighbor, read a letter from Joan Curry who said there is a European movement for "slow cities," replacing roadways with town squares and cutting out fast food, cellular towers, etc. It's purpose is to upgrade the quality of life for citizens.

Elisa Price of Kelseyville said she'd had brain cancer from use of cellular phones. She said, "I am the first proven case in the U.S." Price used Erin Brockovich's physician.

"I am appalled by the application for the facility in a residential area," Price said. "The science has to be explored."

Glenn Schein said that there

are no other facilities in the county sited this close to a home.

Annette Jarvie said the CHP determined that a person using a cell phone has the same driving capability as a drunk driver.

Barbara Reed, owner of Reed Manor and a 30-year resident of Mendocino, supports the Edge facility. She said more and more visitors are dependent on cell phones to keep in contact with aged relatives, children, etc.

Planning Commissioner John McCowen spoke in support of the appellant, saying Edge had met the commission's guidelines. He said the opponents of the facility had failed to bridge the gap between emotional and rational thought.

Colfax said, "I am appalled at McCowen's presumption between emotional and rational thought. He said, "Aren't you endorsing the location at this site with a 30-year history of egregious violation of codes?"

McCowen said, he recommended in May that the existing antenna be removed. It's still there.

Colfax asked how future safety control of fencing and gates would be done. He said the county doesn't have a security patrol.

Al Beltrami, executive director of the Mendocino County Business Council, said he agreed with McCowen, and there was strong support from the council. He said the issue is planning, not ill use.

Supervisors discussion

Shoemaker asked whether a

vote could be taken by Mendocino residents.

County Counsel Frank Zotter said it could be done on an informal basis, but it would be non-binding.

Third District Supervisor Hal Wagenet asked if the supervisors have the authority to create a cell-free zone.

Zotter said not according to the FCC. It would be possible to modify use, but not to ban.

Colfax remarked that the third part of the guidelines resolution, "which has not yet been adopted," says to protect public health, safety and welfare. He asked about adverse effects of the cellular facility. As an example, he said, he'd just read something about Remco, in Willits.

"Chicken Little was right," Colfax said. "We were told to trust the experts.— wrong..." He said mental and public health are going to have to deal with the resulting physical and emotional problems.

He said the board needs to continue the matter, to look to the future for a plan, for a rational rather than ill-conceived decision.

Shoemaker said in a past cell tower hearing, it was discussed that a plan needed to be developed, that people have called the guidelines unsatisfactory. He commented on the six-hour meeting Tuesday, and the number of lengthy Planning Commission meetings about cellular tower issues.

He said, "We could be in a position to analyze the three pro-

posed sites together [in the Mendocino area], to review co-location and impacts."

Fourth District Supervisor Patti Campbell said, "This has been a difficult one for me, it is not black and white." She was concerned about the deck, fencing, gates and the existing illegal antenna removal. She asked if the owners were going to continue to live there with an antenna under their deck.

Littlefield said doing so would be within FCC regulations.

Campbell said it would be changing rules midstream to

MRC

From Page 1A

use the roads to haul timber, should have been written into the timber harvest plan, and it was not described as such.

She said MRC came to State Parks in May saying they wanted to open the road for the logging operation. Parks Superintendent Picard told MRC to put it in writing, which they did. Picard then wrote MRC a letter saying Fish and Game, Water Quality and the Department of Forestry must review the appurtenant road before proceeding.

Pasquinelli said Parks cannot stop the use of the road because there is a deed, but they wanted to see that it had the appropriate review.

She said MRC says they don't have total control over the road because the public can use it.

The road was last used in 1988, when Georgia-Pacific cut

continue the application until study had been done. She Edge met the current rules a wouldn't be fair to them.

First District Supervisor Michael Delbar agreed, saying the applicant has complied the guidelines.

Planner Frank Lynch said the use of cellular facilities have become a controversial issue in Francisco and all over country with lengthy mee and testimonials.

Campbell, Wagenet and bar voted to accept the application and Shoemaker oppo

the road for a logging operation, she said. The road can be reached from Comptche-L Road, but there has been no by the public, she said.

Pasquinelli said there are numerous examples of appurtenant roads under the timber harvest plan process where owners couldn't prevent public use of the road.

The question

Pasquinelli said the question the public is asking is, since Parks has acquired the property, they have control over the road and should be the lead agency doing the CEQA review.

Summarizing the issue, she said that when MRC says they have conditional environmental review, it has not been through the legal process. There are processes in which it could be reviewed; the timber harvest plan process, and CEQA.

From Custom Mahlars Summary

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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SANTA CRUZ, CA 95060
(831) 427-4863

W11b

Prepared July 23, 2003 (for August 6, 2003 hearing)

To: Commissioners and Interested Persons

From: Diane Landry, District Manager
Dan Carl, Coastal Planner

Subject: Santa Cruz County LCP Major Amendment Number 1-03 Part 1 (Wireless Facilities Ordinance) Proposed major amendment to the Santa Cruz County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's August 6, 2003 meeting to take place at the Hyatt Regency Huntington Beach, 21500 Pacific Coast Highway, in Huntington Beach.

Summary

Santa Cruz County is proposing to add wireless communications facility (WCF) ordinance sections to its certified Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning code). Currently, WCFs (such as cellular telephone facilities, towers, and antennas for transmitting electromagnetic/radio signals) aren't explicitly addressed by the LCP. Such facilities do, however, represent development that is regulated by the current LCP in the coastal zone, including being subject to the use and design standards of the underlying zone districts in which they may be proposed. The new proposed ordinance provides specific standards for WCFs, including specific siting and design criteria meant to minimize the potential for such facilities to negatively impact the scenic, agricultural, open space, and community/aesthetic character of the County's built and natural environment. The WCF ordinance is not meant to pre-empt federal law, and in particular is written to be consistent with the Federal Telecommunications Act of 1996 (FTA). FTA includes restrictions regarding what state and local governments can and cannot do with regard to WCFs (including prohibiting them from regulating WCFs on the basis of the environmental/health effects of radio frequency (RF) emissions). FTA does not, however, generally prohibit state and local governments from otherwise regulating the siting, design, and modification of WCFs. Per FTA, such regulation cannot discriminate among service providers and cannot prohibit provision of wireless service within the County. Current case law is slowly shaping the state and local government regulation parameters.

The County's ordinance would apply throughout the County's coastal zone and is structured to have three basic tiers within which different levels of WCF review and criteria apply. Within particularly sensitive areas of the County (such as between the first public road and the shoreline, in certain residential and agricultural zoning districts, and school grounds), WCFs would be prohibited. Within other sensitive areas of the County (specific residential and other zoning districts), WCFs would be restricted and criteria would be established on how and where they could be constructed in these areas. In all other non-prohibited and non-restricted areas, WCFs would be allowed subject to specific application, siting and design criteria are established. Certain types of WCFs (such as minor facilities, personal television antenna, public safety facilities, etc) would be exempted from the requirements of the



California Coastal Commission

August Meeting in Huntington Beach

Staff: D.Carl Approved by: *DCL*

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proposed IP sections. The ordinance would establish a variance criteria to vary those parts of it that can be proven by an applicant to violate FTA in an individual WCF application.

In general, the proposed WCF ordinance provides clear, well-thought policy direction for the siting of WCFs. The County has honed the ordinance over the past 2½ years through multiple public hearings, and through an advisory group including stakeholders from the wireless service industry and local environmental groups. The proposed WCF clearly addresses the issues associated with siting and designing WCFs in the most sensitive coastal zone areas, particularly the County's rural north and south coasts and the areas seaward of the first public road that could easily be adversely affected by a proliferation of WCF buildings, towers, and antennas.

Staff is mostly supportive of the proposed ordinance, but believes that there are a few areas that need to be clarified so that coastal resources are protected to the maximum extent feasible as directed by LCP Land Use Plan (LUP) policies. Primarily, the changes in this regard are minor clarifications to help tighten the ordinance language and eliminate potential areas of confusion and/or internal inconsistency that could affect the implementation and function of it in the future. More substantive changes include: clearly defining the first public road in terms consistent with the California Code of Regulations; clearly defining what WCF standards apply within the first public road right-of-way; clarifying allowed uses in specific zoning districts; clarifying co-location parameters; including water quality and non-invasive native vegetation requirements for WCFs; including provisions to address changing technologies for the redevelopment of existing WCFs; eliminating the retroactive application of non-certified LCP text to applications received before this ordinance is certified; and ensuring that the WCFs that are exempt from the specifics of the ordinance are still held to the other standards of the LCP applying to the underlying zone district site. Staff has worked closely with County staff on the suggested modifications, and County and Commission staff are generally in agreement on the changes.

With the identified modifications, staff recommends that the Commission find that the proposed LCP amendment is consistent with and adequate to carry out the policies of the LUP. As so modified, staff recommends that the Commission approve the LCP amendment.

Staff note

This proposed LCP amendment was filed on July 7, 2003. Pursuant to Coastal Act Section 30513, the Commission must act on it within 60 days of the day it was filed; 60 days from July 7, 2003 is September 5, 2003. Coastal Act Section 30513 provides that the amendment is deemed approved and certified by the Commission if action is not taken within the applicable time frame. However, Coastal Act Section 30517 allows the Commission to extend, for good cause, the 60-day time limit for a period not to exceed one year. Therefore, if the Commission does not act on this amendment at the August 2003 hearing, then the Commission will need to extend the deadline for Commission action by one-year or have the ordinance be approved and certified as submitted. Thus, in the event the Commission chooses to not take action on this amendment at the August hearing, Staff further recommends that the Commission extend the deadline for Commission action by one year (i.e., to September 5, 2004).

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I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, approve the proposed amendment only if modified. The Commission needs to make 2 motions in order to act on this recommendation.¹

1. Denial of Implementation Plan Major Amendment Number 1-03 Part 1 as Submitted

Staff recommends a YES vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion (1 of 2). I move that the Commission reject Part 1 of Major Amendment Number 1-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County.

Resolution to Deny. The Commission hereby denies certification of Part 1 of Major Amendment Number 1-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are

¹ Note that the motions and resolutions refer to "Part 1 of Major Amendment Number 1-03." The reason for this is that this amendment request is part 1 of a four part LCP amendment submitted by the County. In other words, LCP amendment number 1-03 is in four parts. The other three parts of the amendment are not a part of this staff report, are not before the Commission at this time, and will be evaluated and brought to the Commission for action in the future.

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California Coastal Commission

feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

2. Approval of Implementation Plan Major Amendment Number 1-03 Part 1 if Modified

Staff recommends a YES vote on the motion below. Passage of this motion will result in certification of the amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion (2 of 2). I move that the Commission certify Part 1 of Major Amendment Number 1-03 to the Santa Cruz County Local Coastal Program Implementation Plan if it is modified as suggested in this staff report.

Resolution to Certify with Suggested Modifications. The Commission hereby certifies Part 1 of Major Amendment Number 1-03 to the Santa Cruz County Local Coastal Program Implementation Plan if modified as suggested and adopts the findings set forth in this staff report on the grounds that, as modified, the Implementation Plan amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan Amendment may have on the environment.

II. Suggested Modifications

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Land Use Plan consistency findings. If the County of Santa Cruz accepts each of the suggested modifications within six months of Commission action (i.e., by February 6, 2004), by formal resolution of the Board of Supervisors, the corresponding amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

- 1. Modify Sections 13.10.660 through 13.10.668.** Modify proposed Implementation Plan Sections 13.10.660 through 13.10.668 as shown in exhibit G. Text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.
- 2. Retroactivity.** Specify that Section V of Ordinance 4714 and Section XII of Ordinance 4715 adopted by the County do not apply to applications for development in the coastal zone.

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3. **Reference.** All references to "Section 13.10.660 et. seq." in Ordinance 4715 adopted by the County shall be changed to "Sections 13.10.660 through 13.10.668 inclusive."
4. **Allowed Uses.** Make "Wireless Communications Facilities, subject to Sections 13.10.660 through 13.10.668 inclusive" a conditional use in the CA and AP zone districts by changing the not an allowed use identifier (i.e., the "--") in Section 13.10.312 to a level 5 review (i.e., a "5").

III. Findings and Declarations

The Commission finds and declares as follows:

A. Standard of Review

The standard of review for the proposed modifications to the County's LUP is consistency with the Coastal Act. The standard of review for proposed modifications to the County's IP is that they must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance on a parcel by parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified LCP LUP.

B. Proposed LCP Amendment

1. Federal Telecommunications Reform Act of 1996

The County's LCP amendment proposes to regulate wireless communication facilities (WCFs) that are also regulated by federal law. The consideration of this amendment is thus bound by federal law as summarized as follows (47 U.S.C. 332(c)):

1. Federal statute prohibits state and local regulations that prohibit or have the effect of prohibiting the provision of personal wireless services.
2. Federal statute prohibits state and local regulation of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions.
3. Any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence.

Under section 307(c)(7)(B) of the Federal Telecommunications Act of 1996 (FTA), state and local governments may not unreasonably discriminate among providers of personal wireless services, and any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. These provisions are similar to the requirements of California law,

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including the Coastal Act. FTA also prevents state and local governments from regulating the placement of wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations of the Federal Communications Commission (FCC) concerning such emissions.

The LCP amendment is not meant to pre-empt federal law, and in particular is written to be consistent with the FTA. FTA includes restrictions regarding what state and local governments can and cannot do with regard to WCFs, but it does not, however, generally prohibit state and local governments from otherwise regulating the siting, design, and modification of WCFs. FTA restrictions are written directly into the proposed IP text (see Section 13.10.660(a), (b), and (c) in exhibit B). Current case law is slowly shaping the state and local government regulation parameters.

2. Description of Proposed LCP Amendment

The amendment would add Sections 13.10.660 through 13.10.668 to the County's LCP IP, and would add wireless communications facilities as a conditional use in all zoning districts except for Commercial Agriculture (CA) and Agricultural Preserve (AP) (see clean copy of the proposed amendment sections in exhibit B). The IP text proposed would apply throughout the County's coastal zone and is structured to have three basic layers within which different levels of WCF review and criteria apply. Within particularly sensitive areas of the County (such as between the first public road and the shoreline, in certain residential and agricultural zoning districts, and school grounds), WCFs are prohibited. Within other sensitive areas of the County (specific residential and other zoning districts), WCFs are restricted and criteria are established on how and where they can be constructed in these areas. In all other non-prohibited and non-restricted areas, WCFs are allowed subject to specific application, siting and design criteria are established. Special siting, design, and alternative analysis criteria apply to WCFs proposed within a designated scenic area, and if WCF sites must be considered within the prohibited or restricted zones (because of FTA violation and/or because it meets certain criteria specific to the restricted area).

The County has prepared a map exhibit keyed to the restricted areas identified above (see exhibit D).

3. Effect of Changes Proposed

The LCP does not currently provide specific guidance on the siting and design of WCFs. Rather, the more general LCP requirements for development in the coastal zone currently apply to WCFs, including the requirements of the underlying zone district in which they may be proposed and any policies applicable to site specific issues (e.g., ESHA). These facilities are not currently explicitly identified as allowed uses within the coastal zone zoning districts.

The primary effect of the new LCP sections proposed would be to explicitly allow WCFs as a conditional use in all zone districts except for CA and AP, and to apply specific application and approval standards addressing siting and designs of them. The new sections specifically direct siting of WCFs away from sensitive coastal resource areas, including seaward of the first public road and on commercial agricultural property. Thus, the types of issues generally raised by these facilities will be better

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understood and should lead to better informed decisions. In addition, a clear LCP preference for avoiding coastal resource areas is established, subject to FTA variance requirements and special criteria. In other words, it will be relatively more difficult to site WCFs seaward of the first public road and in the rural agricultural, scenic, and open space areas of the County (see map in exhibit D). All WCFs would be designed to minimize impacts.

C. LUP Consistency

In order to approve an Implementation Plan amendment, it must be consistent with and adequate to carry out the Land Use Plan.

A. Applicable Policies

Visual Resources

The County's LCP is extremely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. This is particularly true as it pertains to maintaining the rugged character of the rural north Santa Cruz coast. LUP policies include:

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

LUP Policy 5.10.5 Preserving Agricultural Vistas. Continue to preserve the aesthetic values of agricultural vistas. Encourage development to be consistent with the agricultural character of the community. Structures appurtenant to agricultural uses on agriculturally designated parcels shall be considered to be compatible with the agricultural character of surrounding areas.

LUP Policy 5.10.6 Preserving Ocean Vistas. Where public ocean vistas exists, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

LUP Policy 5.10.7 Open Beaches and Blufftops. Prohibit the placement of new permanent

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structures that would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for approved structures: (a) allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

LUP Policy 5.10.9 Restoration of Scenic Areas. *Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. The type and amount of restoration shall be commensurate with the size of the project for which the permit is issued. Provide technical assistance for restoration of blighted areas.*

LUP Policy 5.10.10 Designation of Scenic Roads. *The following roads and highways are valued for their vistas. The public vistas from these roads shall be afforded the highest level of protection. State Highways: Route 1 – from San Mateo County to Monterey County...*

LUP Policy 5.10.11 Development Visible From Rural Scenic Roads. *In the viewsheds of rural scenic roads, require new discretionary development, including development envelopes in proposed land divisions, to be sited out of public view, obscured by natural landforms and/or existing vegetation. Where proposed structures on existing lots are unavoidably visible from scenic roads, identify those visual qualities worthy of protection (See policy 5.10.2) and require the siting, architectural design and landscaping to mitigate the impacts on those visual qualities. (See policy 5.14.10.)*

LUP Policy 5.10.12 Development Visible From Urban Scenic Roads. *In the viewsheds of urban scenic roads, require new discretionary development to improve the visual quality through siting, design, landscaping, and appropriate signage.*

LUP Policy 5.10.23 Transmission Lines and Facilities. *Require transmission line rights-of-way and facilities to be reviewed in accordance with the Zoning ordinance to minimize impacts on significant public vistas; especially in scenic rural areas, and to avoid locations which are on or near sensitive habitat, recreational, or archaeological resources whenever feasible.*

LUP Policy 5.10.24 Utility Service Lines. *Require underground placement of all new utility service lines and extension lines to and within new residential and commercial subdivisions. Require underground placement of all other new or supplementary transmission lines within views from scenic roads where it is technically feasible, unless it can be shown that other alternatives are less environmentally damaging or would have unavoidable adverse impacts on agricultural operations. When underground facilities are installed parallel to existing above ground lines, require the existing lines to be placed underground with the new lines. When above ground facilities are necessary, require that the design of the support towers or poles be compatible with the surroundings and that lines cross roadways at low elevations or curves in the road in accordance with California Public Utility Commission regulations for public utility*

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facilities.

LUP Objective 5.11 Open Space Preservation. To identify and preserve in open space uses those areas which are not suited to development due to the presence of natural resource values or physical development hazards.

LUP Policy 7.7.1 Coastal Vistas. Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...

Urban/Rural Distinction

The LCP is also structured to encourage rural lands to stay rural, and to direct development to urban areas of the County better able to absorb such development. LUP policies include:

LUP Objective 2.1 Urban/Rural Distinction. To preserve a distinction between urban and rural areas of the County, to encourage new development to locate within urban areas and discourage division of land in rural areas; and to achieve a rate of residential development which can be accommodated by existing public services and their reasonable expansion, while maintaining economic, social, and environmental quality.

Chapter 5 Open Space Protection Goal. To retain the scenic, wooded, open space and rural character of Santa Cruz County; to provide a natural buffer between communities; to prevent development in naturally hazardous areas; and to protect wildlife habitat and other natural resources.

Land Use Priorities

The LCP establishes a hierarchy of priority uses. The LUP states:

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. Maintain a hierarchy of land use priorities within the Coastal Zone:

First Priority: Agriculture and coastal-dependent industry

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.

Agriculture

The LCP is protective of agricultural land. Most of the County's north coast and south county rural coastal zone areas are designated for agriculture in the LUP. LUP policies include:

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LUP Objective 5.13 Commercial Agricultural Land. To maintain for exclusive agricultural use those lands identified on the County Agricultural Resources Map as best suited to the commercial production of food, fiber, and ornamental crops and livestock and to prevent conversion of commercial agricultural land to non-agricultural uses. To recognize that agriculture is a priority land use and to resolve policy conflicts in favor of preserving and promoting agriculture on designated commercial agricultural lands.

LUP 5.13.5 Principal Permitted Uses on Commercial Agricultural (CA) Zoned Land. Maintain a Commercial Agricultural (CA) Zone District for application to commercial agricultural lands that are intended to be maintained exclusively for long-term commercial agricultural use. Allow principal permitted uses in the CA Zone District to include only agricultural pursuits for the commercial cultivation of plant crops, including food, flower, and fiber crops and raising of animals including grazing and livestock production.

LUP 5.13.6 Conditional Uses on Commercial Agricultural (CA) Zoned Lands. All conditional uses shall be subject to standards which specify siting and development criteria; including size, location and density. Allow conditional uses on CA zoned lands based upon the following conditions: (a) The use constitutes the principal agricultural use of the parcel; or (b) The use is ancillary incidental, or accessory to the principal agricultural use of the parcel; or (c) The use consists of an interim public use which does not impair long term agricultural viability; and (d) The use is sited to avoid conflicts with principal agricultural activities in the area; and (e) The use is sited to avoid, where possible, or otherwise minimize the removal of land from agricultural production.

LUP 5.13.7 Agriculturally Oriented Structures. Allow only agriculturally oriented structures or dwellings on Commercial Agricultural Land; prohibit non-agricultural residential land use when in conflict with the fundamental objective of preserving agriculture.

Environmentally Sensitive Habitat Areas

The LCP is very protective of environmentally sensitive habitat areas. LCP wetland and wildlife protection policies include Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands). In general, these LCP policies define and protect ESHAs, allowing only a very limited amount of development at or near these areas. Relevant LUP policies include:

LUP Objective 5.1 Biological Diversity. To maintain the biological diversity of the County through an integrated program of open space acquisition and protection, identification and protection of plant habitat and wildlife corridors and habitats, low-intensity and resource compatible land uses in sensitive habitats and mitigations on projects and resource extraction to reduce impacts on plant and animal life.

LUP Policy 5.1.2 Definition of Sensitive Habitat. An area is defined as a sensitive habitat if it meets one or more of the following criteria: (a) Areas of special biological significance as identified by the State Water Resources Control Board. (b) Areas which provide habitat for

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locally unique biotic species/communities, including coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, mapped grasslands in the coastal zone and sand parkland; and Special Forests including San Andreas Live Oak Woodlands, Valley Oak, Santa Cruz Cypress, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests. (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below. (d) Areas which provide habitat for Species of Special Concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database. (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines. (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society. (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves. (h) Dune plant habitats. (i) All lakes, wetlands, estuaries, lagoons, streams and rivers. (j) Riparian corridors.

LUP Policy 5.1.3 Environmentally Sensitive Habitats. Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are: (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.

LUP Policy 5.1.7 Site Design and Use Regulations. Protect sensitive habitats against any significant disruption or degradation of habitat values in accordance with the Sensitive Habitat Protection ordinance. Utilize the following site design and use regulations on parcels containing these resources, excluding existing agricultural operations: (a) Structures shall be placed as far from the habitat as feasible. (b) Delineate development envelopes to specify location of development in minor land divisions and subdivisions. (c) Require easements, deed restrictions, or equivalent measures to protect that portion of a sensitive habitat on a project parcel which is undisturbed by a proposed development activity or to protect sensitive habitats on adjacent parcels. (d) Prohibit domestic animals where they threaten sensitive habitats. (e) Limit removal of native vegetation to the minimum amount necessary for structures, landscaping, driveways, septic systems and gardens; (f) Prohibit landscaping with invasive or exotic species and encourage the use of characteristic native species.

LUP Policy 5.1.9 Biotic Assessments. Within the following areas, require a biotic assessment as part of normal project review to determine whether a full biotic report should be prepared by a qualified biologist: (a) Areas of biotic concern, mapped; (b) sensitive habitats, mapped & unmapped.

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LUP Policy 5.1.12 Habitat Restoration with Development Approval. Require as a condition of approval, restoration of any area of the subject property which is an identified degraded sensitive habitat, with the magnitude of restoration to be commensurate with the scope of the project. ...

LUP Policy 5.1.14 Removal of Invasive Plant Species. Encourage the removal of invasive species and their replacement with characteristic native plants, except where such invasive species provide significant habitat value and where removal of such species would severely degrade the existing habitat. In such cases, develop long-term plans for gradual conversion to native species providing equal or better habitat values.

LUP Objective 5.2 Riparian Corridors and Wetlands. To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality, erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.

LUP Policy 5.2.5 Setbacks From Wetlands. Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.

LUP Policy 5.2.7 Compatible Uses With Riparian Corridors. Allow compatible uses in and adjacent to riparian corridors that do not impair or degrade the riparian plant and animal systems, or water supply values, such as non-motorized recreation and pedestrian trails, parks, interpretive facilities and fishing facilities. Allow development in these areas only in conjunction with approval of a riparian exception.

Water Quality

In addition to the above policies that incorporate water quality protection into them, the LCP also more categorically protects water quality, including its affect on ESHA. Relevant LUP policies include:

Objective 5.4 Monterey Bay and Coastal Water Quality. To improve the water quality of Monterey Bay and other Santa Cruz County coastal waters by supporting and/or requiring the best management practices for the control and treatment of urban run-off and wastewater discharges in order to maintain local, state and national water quality standards, protect County residents from health hazards of water pollution, protect the County's sensitive marine habitats and prevent the degradation of the scenic character of the region.

Objective 5.7 Maintaining Surface Water Quality. To protect and enhance surface water quality in the County's streams, coastal lagoons and marshes by establishing best management practices on adjacent land uses.



LUP Policy 5.4.14 Water Pollution from Urban Runoff. Review proposed development projects for their potential to contribute to water pollution via increased storm water runoff. Utilize erosion control measures, on-site detention and other appropriate storm water best management practices to reduce pollution from urban runoff.

LUP Policy 5.7.1 Impacts from New Development on Water Quality. Prohibit new development adjacent to marshes, streams and bodies of water if such development would cause adverse impacts on water quality which cannot be fully mitigated.

LUP Policy 5.7.4 Control Surface Runoff. New development shall minimize the discharge of pollutants into surface water drainage by providing the following improvements or similar methods which provide equal or greater runoff control: (a) include curbs and gutters on arterials, collectors and locals consistent with urban street designs; and (b) oil, grease and silt traps for parking lots, land divisions or commercial and industrial development.

LUP Policy 5.7.5 Protecting Riparian Corridors and Coastal Lagoons. Require drainage facilities, including curbs and gutters in urban areas, as needed to protect water quality for all new development within 1000 feet of riparian corridors or coastal lagoons.

LUP Policy 7.23.1 New Development. ...Require runoff levels to be maintained at predevelopment rates for a minimum design storm as determined by Public Works Design Criteria to reduce downstream flood hazards and analyze potential flood overflow problems. Require on-site retention and percolation of increased runoff from new development in Water Supply Watersheds and Primary Groundwater Recharge Areas, and in other areas as feasible.

LUP Policy 7.23.2 Minimizing Impervious Surfaces. Require new development to limit coverage of lots by parking areas and other impervious surfaces, in order to minimize the amount of post-development surface runoff.

LUP Policy 7.23.5 Control Surface Runoff. Require new development to minimize the discharge of pollutants into surface water drainage by providing the following improvements or similar methods which provide equal or greater runoff control: ... (b) construct oil, grease and silt traps from parking lots, land divisions or commercial and industrial development. Condition development project approvals to provide ongoing maintenance of oil, grease and silt traps.

Cumulative Impacts

The LCP protects against impacts associated with individual projects, as well as the cumulative impact from such projects in relation to current and potentially planned development. The LUP states:

LUP Policy 2.1.4 Siting of New Development. Locate new residential, commercial or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.



Conclusion

In sum, the County's LUP protects coastal resources, particularly rural, open space and agricultural lands, and specifically visual resources. The County's rural north and south coast areas, mostly agricultural and rural, are explicitly protected against inappropriate structures and development that would impact agricultural viability and public viewsheds. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act.

B. Consistency Analysis

In general, the proposed WCF ordinance provides clear, well-thought policy direction for the siting of WCFs. The County has honed the ordinance over the past 2½ years through multiple public hearings, and through an advisory group including stakeholders from the wireless service industry, local environmental groups, and other interested parties. The proposed WCF addresses the issues associated with siting and designing WCFs in the most sensitive coastal zone areas, particularly the County's rural north and south coasts and the areas seaward of the first public road that could easily be adversely affected by a proliferation of WCF buildings, towers, and antennas.

The proposed ordinance sections do, however, include some areas of potential confusion that are problematic and affect the ability of the proposed text to implement the land use plan policies in this regard. These are discussed more specifically below.²

First Public Road

The proposed ordinance sections define a series of areas within which WCFs are prohibited (see pages 8 and 9 of exhibit B). This includes the area between the coastline and the first public road parallel to it. However, the text is not clear as to where the inland extent of this area is measured. Because of this, it is unclear as to what criteria would apply within the first public road. This is critical in the County, particularly in the rural north coast where the first through public road is predominantly Highway One, and a critical public viewshed. Upon notification of this issue, the County indicated that the intent was to have this prohibition area extend to the seaward edge of the right-of-way. According to the County this was partly because the County anticipated that co-located microcell facilities on existing utility poles may be proposed, and may be found appropriate in certain cases, in this right-of-way.

The Commission's regulations interpret the first public road as extending to the inland extent of the right-of-way. In working through this issue with County staff, a balance was struck to ensure that the highly scenic areas (associated in many cases with the first through public road) were not going to absorb inappropriate WCF development inconsistent with the LUP. In sum, modifications are suggested so that the first public road is more clearly defined, is made a restricted use area within which WCFs are discouraged, and criteria are established directing WCFs to be co-located microcell facilities on the inland side of the right-of-way if they are allowed in the right-of-way. In addition, because of the highly

² Commission staff have worked closely with County staff on these identified issues, and appropriate changes to address concerns in this respect. Each of the modifications discussed in this finding have been discussed with County staff and Commission staff and County staff are generally in agreement.

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California Coastal Commission

scenic nature of the first public road generally, this area is often considered for utility under-grounding. Such under-grounding is generally encouraged, and any development authorized under the new ordinance sections should not prejudice these efforts in the future. Thus, any WCF allowed in the first public road (based on the criteria established for it) must agree to future relocation if the owner/operator of the road and/or the utility pole decides to underground utilities in that area.

See page 11 of exhibit G for modifications in this regard.

Exceptions for Prohibited Areas

The proposed ordinance sections define a series of areas within which WCFs are prohibited (see pages 8 and 9 of exhibit B). The ordinance also includes an TCA variance procedure (allowing exceptions if the applicant can prove application of the standard violates the TCA – see also below). Thus, if a TCA variance is granted, a WCF could be located in a prohibited zone. If these areas are going to be used for siting, and consistent with the remainder of the ordinance and the degree of increased potential for impact, it needs to be specified as to what type of facilities are allowed/preferred if LUP consistency is to be achieved. Therefore, similar to the exception procedure established for restricted areas by the proposed text, a similar set of criteria is established for the prohibited areas with a specification that they be co-located (to reduce the potential for adverse impact in these sensitive areas). See page 10 of exhibit G for modifications in this regard.

Exemptions

The types of WCFs exempted from the requirements of the ordinance sections are generally appropriate, including public safety WCFs operated by public safety agencies and minor facilities. However, the language proposed needs additional clarity on criteria (see pages 5, 7 and 8 of exhibit B), including specifying that these are for non-commercial use (as appropriate). In addition, the ordinance could be read to exempt these facilities from other applicable policies of the LCP.³ This can be addressed by expanding the preamble to the exemptions to ensure that it is clear that all other applicable LCP policies still apply to these facilities, and to ensure that the general development standards for WCFs (including protecting visual resources as much as feasible) apply to these facilities as well. Exempted WCFs would still be exempted from the more formal application and design review requirements of the proposed ordinance sections. See page 5, 8, and 9 of exhibit G for modifications in this regard.

Maximum Heights

The proposed ordinance sections do not establish maximum heights for WCF facilities and/or towers. Rather, the ordinance is structured to minimize impacts, including through the use of minimizing heights to the degree necessary to accomplish this. The ordinance states that “all towers shall be designed to be the shortest height possible so as to minimize visual impact” (see page 21 of exhibit B). In addition, all standards of the underlying districts continue to apply. That said, the underlying district regulations are not directive towards WCF facilities and towers. They are instead focused on the types of structures

³ See for example, the proposed text of Section 13.10.661 that could be read to imply that these exempted facilities do not have to comply with the LCP (page 8 of exhibit B).



generally considered in those districts (e.g., residential structures, agricultural structures, etc.).

Section 13.10.510(d) lists a series of height exceptions allowed in the zone districts, including specifying that “utility and commercial poles and towers may not be subject to the height limits prescribed in the district regulations” (see exhibit F). It could be argued, therefore, that there is no absolute height associated with commercial WCFs.

In terms of minor facilities exempted from the ordinance, the exemption text indicates that they cannot exceed the height limit for “non-commercial antennas” in the zoning district. Section 13.10.510(d) indicates that non-commercial antennas can be erected to a height not more than 25 feet above the height limit allowed in the zoning district, and further specifies that this height can be exceeded by 25 feet with a level 4 (administrative, public notice required) approval. That said, it isn’t clear to what height limit this section refers (since, like commercial facilities, the zone district texts themselves do not explicitly indicate what the height limit is for this type of project).

Thus, there is a certain lack of clarity as regards maximum allowed height for both the minor facilities (that need only be consistent with the underlying zone districts in this regard), and all other WCFs. Given the underlying LCP policies directed towards avoiding and otherwise minimizing impacts, like visual impacts, the lack of an absolute limit in this regard is not critical. It is expected that impacts due to height for non-exempted WCFs will be sufficiently addressed by the requirements of the proposed ordinance, including the requirement that towers be as short as possible, and the remainder of the LCP. Any such structures will likely be kept to levels consistent with the aesthetics of surrounding land and the built environment, and avoid visual impacts. For exempt facilities, by making it clear that the general parameters of the proposed ordinance sections (for siting and design preference) apply, and that the remainder of the LCP policies also apply (see suggested modifications on page 8 of exhibit G), these facilities too should not result in undue impact because of the lack of clarity regarding maximum heights.

That said, the lack of an absolute height maximum in the zoning districts is an LCP issue that should be addressed in the future.⁴ Any such LCP amendment should clearly specify height limits in each zone district for all structures (in addition to those generally expected, like SFDs in a residential zone), and should clarify the relationship of Section 13.10.510(d) to them. The Commission’s rebuttable presumption is that height limits for structures associated with conditional uses in this respect should not exceed the existing maximum height limit established for other conditional uses in those zone districts (e.g., the height limit identified for conditional use residential structures in the CA Commercial agriculture zone district is 28 feet), and should be subject to reasonable upper limits for the types of structural elements identified in Section 13.10.510(d). In sum, the LCP should be read broadly to protect against coastal resource impacts in these areas that might arise due to height of structures.

Allowed Uses

The proposed ordinance sections indicate that WCFs will be prohibited in certain zoning districts (R-1,

⁴ County staff indicates that this has been identified as a future planning work item.

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RM, RB, CA, and MH). The complementary ordinance adopted by the County makes WCFs conditional uses (i.e., subject to a level 5 approval) in each zone district except for CA and AP, where they would not be allowed uses (see exhibit C). There are 2 problems with this.

First, if the intent was to make WCFs not allowed uses in the prohibited zone districts, then the wrong zone districts were identified in the companion ordinance. That is, R-1, RM, RB, CA, and MH would be the zone districts in which they are not allowed uses, and not just CA and AP.

Second, the TCA variance procedure (see also below) could potentially allow for WCFs in any zone district, including the prohibited districts. However, the TCA variance procedure doesn't affect the allowed uses in the zoning districts, only proposed sections 13.10.660 through 13.10.668. Thus, a TCA variance could allow for siting in a CA district, for example, but WCFs would not be an allowed use in that district. This leads to a conflict within the IP. If the IP were changed such that WCFs were not allowed uses in each of the prohibited zone districts, then conflict is again possible.

Third, exempt WCFs would still be subject to the zone district use requirements, and thus not allowed uses in the CA and AP districts (as proposed) and not allowed in the other prohibited districts (if changed to match the prohibition zones).

Therefore, in order to resolve this inconsistency, and consistent with the intent of the proposed text, a modification is suggested to make WCFs conditional uses in all zone districts. This addresses the fact that they may be allowed, subject to a TCA variance, and the use codes should reflect this. It does not, however, undo the protection offered the prohibited zoning districts since the prohibitions would still apply (unless they represented a violation of the TCA). By making them a conditional use (i.e., a level 5 review in Santa Cruz County LCP parlance), actions taken on associated coastal development permits are also appealable to the Commission. See suggested modification 4.

Other Resource Areas

The ordinance purpose (see page 1 of exhibit B) and required findings section (see pages 25 and 26 of exhibit B) focus on visual resources, and visual and ESHA resources respectively. To be consistent with the LUP, other protected resource types within the County should also to be identified so it is not assumed that the ordinance doesn't address those types of coastal zone resource concerns. For example, consistent with the LUP, other purposes of the ordinance are to likewise address preservation of agricultural and open space land, and the community and aesthetic character of the built and natural environment; this is particularly the case relative to the rural north and south County areas. Modifications are suggested to elaborate on the purpose and required findings, including specifying that such applications be found consistent with all applicable requirements of the LCP (see pages 1, 31, and 32 of exhibit G).

Definitions

The proposed ordinance sections rely in part on "technical feasibility" in evaluating siting and design of



WCFs. However, “technically feasible” is not currently defined. A modification is included to provide a definition for this term as follows: “capable of being accomplished based on existing technology compatible with a wireless service provider’s existing network.” See page 7 of exhibit G. The burden of proof of any infeasibility should be borne by an applicant, and a modification is suggested to make this the case (see page 22 of exhibit G).

The proposed ordinance sections rely in part on “non-major modification and maintenance activities,” including exempting same from ordinance requirements. Although “major modification” is defined,⁵ “non-major modification” is not. A definition is suggested to ensure that the definition of “non-major” is clear, and so that there aren’t any questions in the future as to what qualifies as non-major. See page 6 of exhibit G.

The proposed ordinance sections refer to a “wireless communications facilities GIS map” (see page 12 of exhibit B). However, while the definition of this map is implied, it is not clear. Since applicants will be required to submit data to be included in this map, a definition is suggested to ensure that it is clear that this is “map maintained by the County in Geographic Information System (GIS) format that includes location and other identifying information about wireless communication facilities in the County” (see page 8 of exhibit G).

Application Requirements

Several of the WCF application requirements need detail to ensure that adequate information with which to render decisions consistent with the LUP (and the LCP) is submitted, that this information is clear, and that it is organized in a manner most useful to decision making bodies for their review. Several modifications are suggested in this regard in issue areas including, but not limited to, co-location efforts made, alternatives analysis, changes in technology, potential for modifications to existing facilities to reduce impacts, vegetation screening, landscaping plans, drainage plans, reduced plans, photo simulations, existing and finished grades, height measurements, and surrounding properties (see pages 13 through 22 of exhibit G). The changes suggested are generally minor clarifications, reorganizing and making more specific application requirements in this regard.

General Standards for Wireless Facilities

Several of the WCF general development standards (in proposed Section 13.10.663) need to be fleshed out further consistent with the LUP protection afforded these resources, particularly visual resources. Several modifications are suggested in this regard to: indicate that facilities are to be integrated to the maximum extent feasible with the existing site, and that they are to avoid or minimize to the maximum extent feasible visibility of WCFs within significant public viewsheds; provide clarifying detail on camouflaging measures necessary; specify that in some cases stealth-type structures that mimic structures typically found in the built environment where the facility is located may be appropriate (e.g., small scale water towers, barns, and other typical farm-related structures on or near agricultural areas);

⁵ In terms of power output and visual impact specifically, and not other things. Although limited, these two areas are likely sufficient to capture the intent of what a “major” modification should be considered (see pages 4 and 5 of exhibit B).



specify landscape and vegetation plan parameters (including removal of non-native invasive plants and replacement with non-invasive native species appropriate to the site area; ensuring that screening is complete upon facility completion; ensuring that all required camouflaging (including vegetation and stealth features) are maintained for the life of the WCF; providing parameters for future co-location; providing parameters for future modifications to existing facilities to reduce resource impacts; specifying that approved plans, including all required maintenance, are provided for each approval; and encouraging wireless providers to evaluate their facilities on an ongoing basis to ensure consistency with the LCP, and further encouraging providers to individually and collectively pursue modifications as appropriate to reduce resource impacts, particularly viewshed impacts, in the County's coastal zone (see pages 22 through 29 of exhibit G).

Water Quality and Drainage

The proposed ordinance sections generally require drainage and erosion control plans with WCF applications. The plan requirements are not, however, clearly spelled-out. So as to ensure consistency with the LUP in this regard (as seen in the policies listed above), additional detail consistent with the type of water quality measures commonly required by the Commission is necessary. Thus, a modification is suggested to require both construction and permanent erosion control and drainage plans. See page 17 of exhibit G for modifications in this regard.

Use of the term "Variance"

As discussed above, the proposed ordinance text includes an TCA variance procedure (see page 27 of exhibit B). The TCA variance allows exceptions if the applicant can prove that the application of a particular standard or requirement of the proposed ordinance sections violates the TCA. The ordinance text calls this a "variance." Variance, though, as that term is commonly understood in a land use context (and in this LCP) is dependent on, and refers to, site conditions and constraints. This is a very different concept than a TCA exemption, and includes a series of required variance findings. In order to be as clear as possible, and to ensure that the TCA variance is not argued to be the more commonly understood variance found in the existing LCP, and thus require that variance findings be made for a TCA variance, this term needs to be changed. Because it is actually an exception to the WCF ordinance sections, it is more aptly described as an "exception." See pages 32 and 33 of exhibit G for modifications in this regard.

13.10.660 et seq

The proposed ordinance sections refer to the proposed text as Sections 13.10.660 et. seq.. The term "et. seq." is commonly used when it refers to a whole subset of nested sections or policies (e.g., when referring to a whole chapter of a zoning code). In this case, the proposed text is not nested, and although it is implied that it refers to 13.10.660 through 13.10.669, it is not clear that that is the case. It also does not include a proposed section 13.10.669, and this interpretation could imply that that section applies when and if it is developed in the future, whatever 13.10.669 may be about. To err on the very conservative side, and to be as specific as possible as to which ordinance sections are involved, this term needs to be replaced with "13.10.660 through 13.10.668 inclusive" where it exists in the proposed text



(see exhibit G for this modification throughout, and see suggested modification 3).

Retroactivity of Interim Ordinance within the Coastal Zone

In adopting the proposed LCP text, the County also adopted a standard specifying that a previous interim wireless ordinance adopted by the County would apply to applications deemed complete by April 29, 2003 (see page 27 of exhibit B and page 3 of exhibit C). However, the interim ordinance was not submitted and was thus not reviewed nor certified by the Commission as part of the LCP. It cannot be made to apply retroactively to applications deemed complete as of a specific date. The Commission's practice has been that the certified standards in effect at the time that a decision is rendered are the standards that are applied within the context of that decision,. The same would be the case for any applications received by the County for which actions have not yet been taken. Therefore, a modification is necessary to specify that the retroactivity clause does not apply to applications for development in the coastal zone (see suggested modification 2).⁶

Public Agency Disclosure

The proposed ordinance text (see page 11 of exhibit B) requires public safety agencies to disclose locations of there facilities unless exempted by the Board of Supervisors. This section is in proposed section 13.10.661. However, public safety agencies are exempted from complying with 13.10.661. Therefore, this requirement has been moved to the 13.10.660(e) text on exemptions (see page 9 of exhibit G).

Clarifications/Other

In addition to those issues detailed above, there are multiple instances where the language of the proposed text needs to be reordered, made to be consistent with other parts of the ordinance, and/or elaborated upon consistent with LUP resource policies (e.g., general standards for protecting visual character), to ensure its clear implementation consistent with the LUP policies it implements. Suggested modifications to this effect are shown throughout the proposed text. See exhibit G (throughout).

Conclusion

The Commission must determine whether the zoning code changes proposed are consistent with and adequate to carry out the LUP. In general, the IP text proposed is consistent with the LUP in this sense. There are, however, areas in which there are inconsistencies and/or other issues that would affect the proposed text's ability to carry out the LUP policies ensure that coastal resources are protected as directed by the LUP. Fortunately, there are modifications that can be made to address the identified issues. These modifications have been discussed with the County and they area generally supportive of them.

In conclusion, if so modified in all of the ways outlined here according to the cited modification texts, then the IP as amended by the proposed amendment, and as further modified as suggested above and in

⁶ The County indicates that there is one such application pending at the County, and that a decision is likely to be rendered in the near future.



the cited modification texts, is approved as being consistent with and adequate to carry out the certified LUP as amended.

D. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

The County in this case exempted the proposed amendment under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

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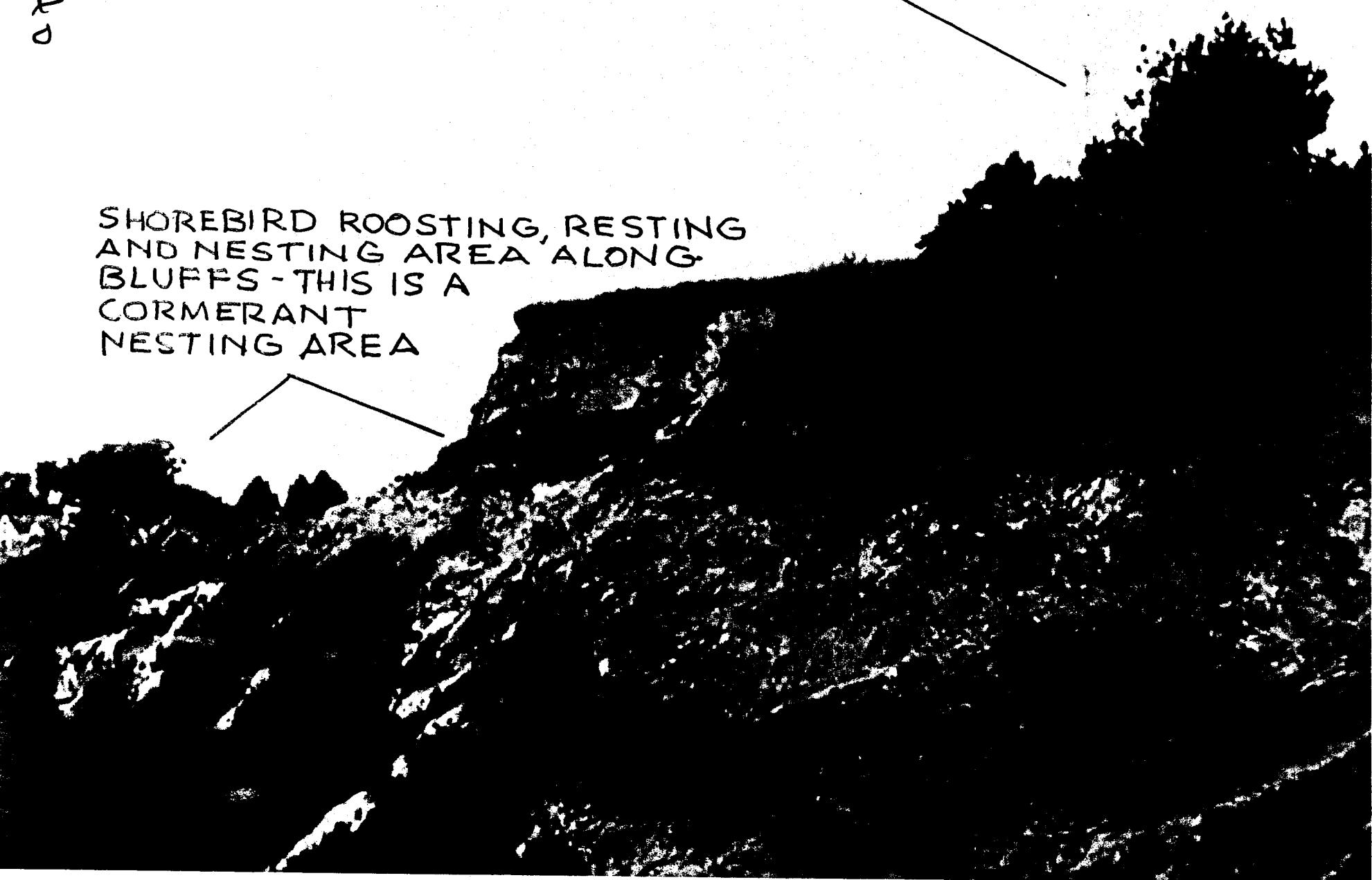
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NO. 1 OF 3

88C
87D

EXISTING KING SHORT WAVE ANTENNA

SHOREBIRD ROOSTING, RESTING
AND NESTING AREA ALONG
BLUFFS - THIS IS A
CORMERANT
NESTING AREA

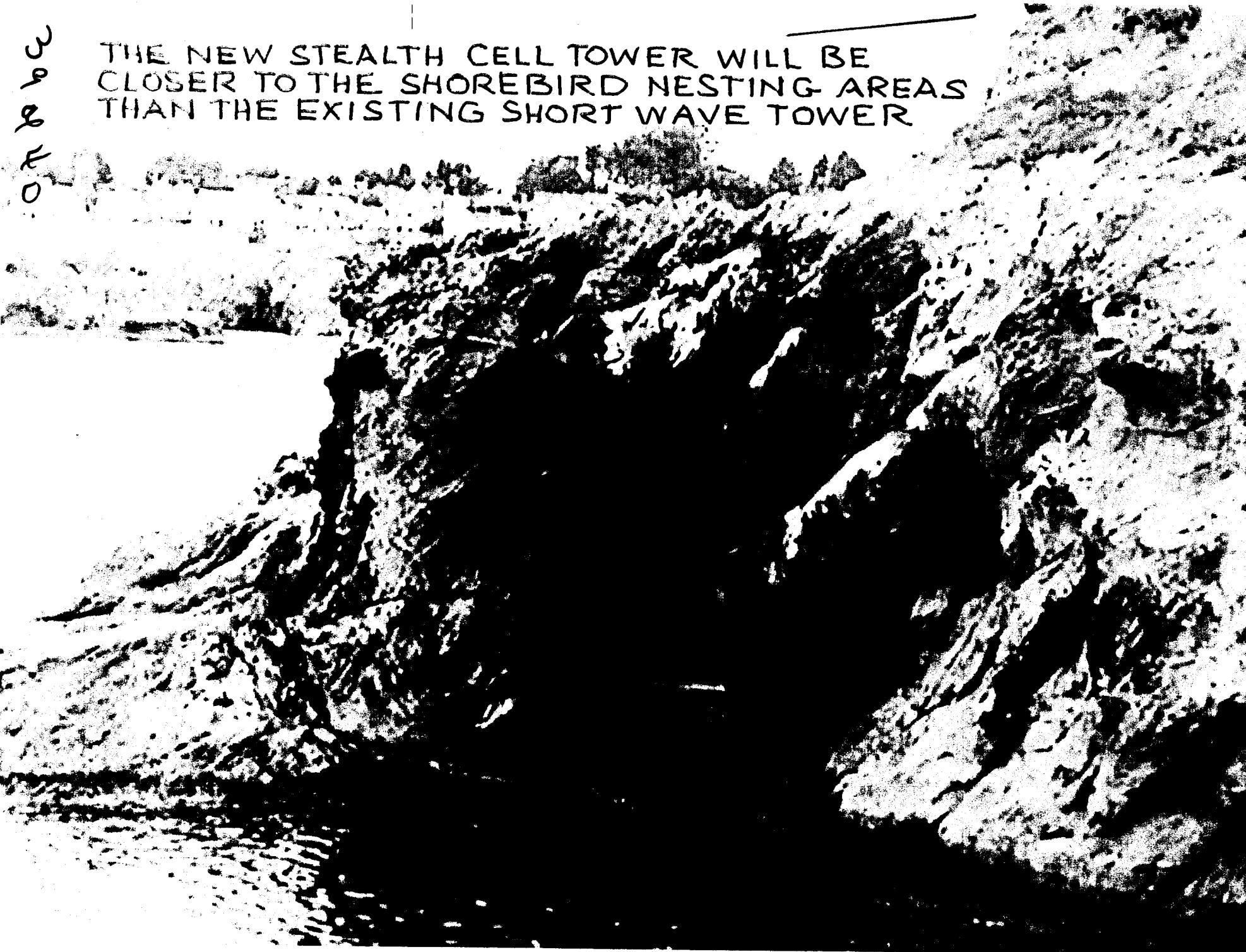


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NO. 2 OF 3

THE NEW STEALTH CELL TOWER WILL BE
CLOSER TO THE SHOREBIRD NESTING AREAS,
THAN THE EXISTING SHORT WAVE TOWER

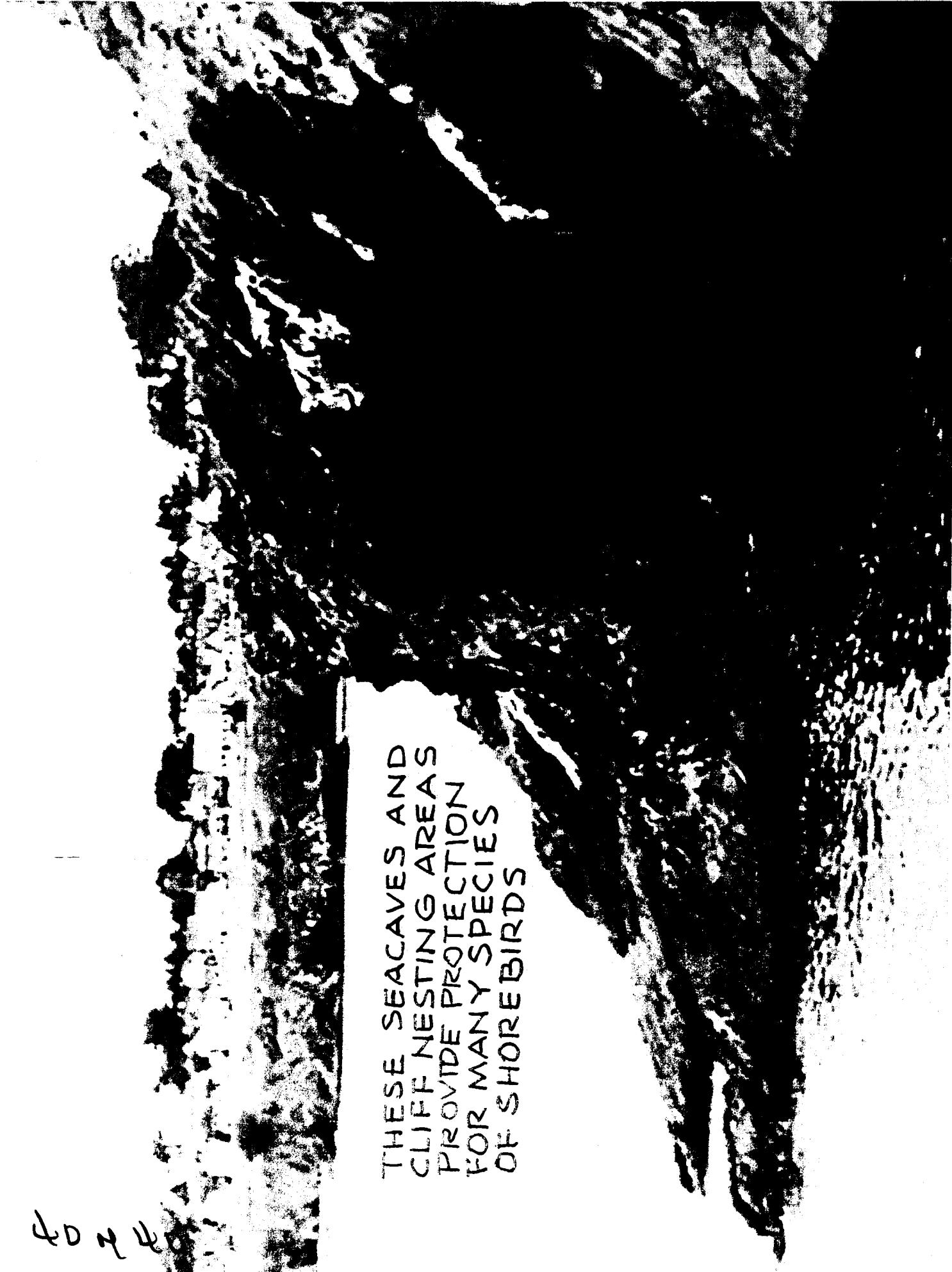
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NO. 3 OF 3

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THESE SEACAVES AND
CLIFF NESTING AREAS
PROVIDE PROTECTION
FOR MANY SPECIES
OF SHORE BIRDS

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

RECEIVED

AUG 14 2003

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTCALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

Arthur Firstenberg

P.O. Box 1337

Mendocino, CA 95460

(707) 937-3990

Zip

Area Code

Phone No.

SECTION II. Decision BeingAppealed

1. Name of local/port

government: County of Mendocino

2. Brief description of development being appealed:

A wireless telecommunications facility consisting of an antenna concealed below the deck of an existing residence, plus associated electrical and radio equipment.

3. Development's location (street address, assessor's parcel no., cross-street, etc.): 9950 Road 500B; AP# 119-310-09; 3/4± mile south of the Town of Mendocino, 0.2± mile southwest of the intersection of Highway 1 and Comptche-Ukiah Road, between Road 500B and the Pacific Ocean.

4. Description of decision being appealed

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-1-MEN-03-052DATE FILED: 8/14/03DISTRICT: North Coast**EXHIBIT NO. 6****APPLICATION NO.**

A-1-MEN-03-052

EDGE WIRELESS

APPEAL #2 (FIRSTENBERG,
ARTHUR (1 of 31))

APPEAL FROM COASTAL PERM. DECISION OF LOCAL GOVERNMENT (Page 2)

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

- a. Planning director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: July 22, 2003

7. Local government's file number (if any): # CDU 1-2003

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Edge Wireless LLC
600 SW Columbia, Suite 7200
Bend, OR 97702

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Charles & Pamela King
PO Box 1004
Mendocino, CA 95460
- (2) Jim & Bettilou Lovera
PO Box 712
Mendocino, CA 95460
-
- (3) Frieda Feen
PO Box 988
Mendocino, CA 95460
- (4) Antonia Lamb
PO Box 395
Mendocino, CA 95460

(continued on page 4)

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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APPEAL FROM COASTAL PERM DECISION OF LOCAL GOVERNMENT (Page 5)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

This development is not the principal permitted use in this Rural Residential zone, and it does not conform to the certified local coastal program. In addition, it is located between the sea and the first public road paralleling the sea, and does not comply with shoreline erosion and geologic setback requirements. I set forth these reasons in detail on the continuation pages 5-8.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

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

Arthur Finstenberg
Signature of Appellant(s) or
Authorized Agent

Date August 12, 2003

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

SECTION VI. Agent Authorization

I/We hereby authorize _____ to act as my/out representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

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Appeal of Arthur Firstenberg
page 4

Additional interested parties:

Joan Curry
PO Box 457
Mendocino, CA 95460

Naomi Jarvie
PO Box 1285
Mendocino, CA 95460

Bruce Hering
18201 Hutsell Road
Boonville, CA 95415

Glenn and Suzanne Schein
PO Box 910
Mendocino, CA 95460

John Gallo, M.D.
Sabre Gallo, R.N.
32771 Navarro Ridge Road
Albion, CA 95410

Ken Rice
PO Box 816
Mendocino, CA 95460

Sheresa Price
9268 Kelsey Creek Dr.
Kelseyville, CA 95451

Barbara Reed
PO Box 127
Mendocino, CA 95460

Jade Pier
PO Box 915
Mendocino, CA 95460

Zac Zachary
PO Box 1134
Mendocino, CA 95460

Eva Bortnick
PO Box 704
Mendocino, CA 95460

John Trefil
PO Box 399
Albion, CA 95410

Virginia Cross
PO Box 575
Mendocino, CA 95460

Karin Uphoff
PO Box 978
Mendocino, CA 95460

Beth Bosk
PO Box 702
Mendocino, CA 95460

Mona Lisa Perez
31631 N. Mitchell Creek Dr.
Fort Bragg, CA 95437

Christy Wagner
PO Box 1628
Mendocino, CA 95460

Julie Drucker
PO Box 1217
Mendocino, CA 95460

Lillia Davidson
PO Box 1677
Mendocino, CA 95460

Al Beltrami
145 Mendocino Place
Ukiah, CA 95482

Betty Deutsch
42280 Comptche-Ukiah Road
Mendocino, CA 95460

Liz West
PO Box 463
Albion, CA 95410

Mary Jane Devore
PO Box 363
Mendocino, CA 95460

Francesca Campbell
9350 N. Highway 1
Mendocino, CA 95460

Donna Schuler
PO Box 1627
Fort Bragg, CA 95437

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(This list includes all who testified at the Board of Supervisors hearing for whom I have addresses.)

REASONS FOR THIS APPEAL

1. Violation of Federal Law, and therefore of Sec. 20.304.020 of the Mendocino County Coastal Zoning Code.

The proposed facility exceeds the Federal Communications Commission's public exposure limits for radio frequency radiation, in areas that are accessible to the public. See Exhibit A, letter of Dr. Duane Dahlberg. See also Exhibit B, report of Sage Associates and Broadcast Consultant Gerald L. Moore.

This application is for an 800-watt antenna placed 4 feet above ground level, underneath the deck of an existing residence. There is currently only 4 feet of space, total, under the deck. There would be radiation in excess of FCC limits (a) underneath the deck; (b) standing beside the house to the north, in an area up to 15 or 20 feet away from the house; and most probably (c) on top of the deck. The radiation intensity on top of the deck, directly above the antenna, has not been evaluated; however, this is the near field zone, where the field is distorted and not easy to predict. Metallic objects, such as lawn chairs, would produce a magnified, re-radiated field atop the deck. Aside from legality, the implications for the occupants, and any visitors they may have (including possible trespassers, which also must be taken into account according to the FCC's Bulletin 65) are apparent. Access below the deck for necessary maintenance and cleaning by the occupants would also not be possible.

2. The Permit Was Obtained by Fraud. Fraud is grounds for revocation, Sec. 20.536.030(A)(1) of the Zoning Code.

Compare Exhibit C, from the fraudulent FCC compliance report done for Edge Wireless by engineering consultant William Hammett, with Exhibit D, from an honest FCC compliance report done by the same William Hammett for a US Cellular application recently filed in a nearby location. See also Exhibit E, my complaint to the California Department of Consumer Affairs, Board for Professional Engineers and Land Surveyors. As this is being written, Ed Mantiply of the FCC's Radio Frequency Safety Program at the Office of Engineering and Technology has also been contacted to investigate this application.

This applicant submitted a fraudulent engineering report in order to falsely demonstrate compliance with FCC exposure limits. Any mitigations approved by the Board of Supervisors in the way of fencing and signage were added with the fraudulent data in mind, and are wholly inadequate to mitigate the effects of the true exposure conditions on-site.

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3. Violation of CEQA. Sec. 20.532.040 of the Zoning Code.

In light of the above violation of federal radiation limits on the ground, the environmental review for this project (Exhibit F) is flawed with regard to Human Health, and also Animal Life. Both ground animals and birds are at risk, particularly as the project is next to Big River State Park and the antenna would sit atop a bluff harboring bird rookeries.

4. Existing Code Violations on the Property.

The existing ham radio antenna has been operating for 2½ decades in flagrant disregard of County height regulations, and of the height restrictions imposed by the Coastal Commission in response to neighbors' complaints (permit # 79-A-106). It is an eyesore in one of the most scenic points on the coast, North Brewery Gulch Road. See Policy 4.7-10 of the General Plan, Coastal Element. One of the conditions of the new permit is to remove the ham radio antenna. But, as Supervisor Colfax said at the July 22 hearing, that would be rewarding 25 years of violation. (Supervisor Colfax was one of two opposing votes.)

The existing deck, to which the antenna would be attached, is neither safe nor up to code. Bringing the deck up to code was another condition of the permit which is under appeal here.

The house itself has been under construction for three decades, is still unfinished, and has never been finalized by a building inspector. The Board of Supervisors has not required the Kings to finalize this structure and demonstrate that it is safe.

Finally, the house is already an eyesore in a scenic corridor. Does the house, still unfinished today, conform to the conditions which may have been set by the Coastal Commission as part of permit # 73-CC-049? Previous efforts by coastal residents to obtain a copy of this permit from the Coastal Commission have been unsuccessful. Do those records still exist?

5. The Development Does Not Comply With Shoreline Erosion and Geologic Setback Requirements.

The LCP requires new development to be set back from the edges of bluffs to ensure their safety from bluff erosion for 75 years. Sec. 20.500.020(B)(1) of the Zoning Code. The

Kings' house was permitted in 1973, and thus pre-dates this provision and is a legal non-conforming structure. However, Sec. 20.480.010 lists the conditions under which non-conforming structures may be continued. Addition of new use types is not one of those conditions. A coastal development permit for a new antenna to be located on a deck already extending over the edge of an eroding bluff should not be permitted.

6. Lack of Public Notice. Secs. 20.536.005(D)(4) and (6) of the Zoning Code.

A 50-foot fence was approved at the last minute by the Board of Supervisors on the subject property, (a) with no advance public notice; (b) with no public discussion or input; (c) with almost no discussion by the Board of Supervisors itself. The fence was approved in disregard of Planning staff's own repeated warnings about noticing requirements. I quote from the Planning Commission hearing of April 17, 2003 on this application, when the Commission was considering asking the applicant to add a new fence to the application (the applicant did not do so; up until the end of the Board of Supervisors hearing, the conditions added to the project only included filling in the gaps in the existing fence):

FRANK LYNCH (Senior Planner): Since we may be including a fence as mitigation, it's kind of one of the absurdities of the Coastal Act, because that is development, that it might require an amended notice.

I quote also from the Board of Supervisors hearing of July 22:

SUPERVISOR WAGENET: I'm wishing for language to incorporate [an emergency generator] if I can get Board support on that.

LYNCH: My concern, Supervisor, is that that generator was not noticed, nor was the noise assessed as far as this project.

WAGENET: I defer to the staff's greater wisdom here.

LYNCH: One other case where they have brought in a temporary generator, for example, at the Spanish Mountain tower they couldn't get power to the site because PG&E couldn't get out there so they brought in a temporary generator, which did generate some controversy, because it had not been noticed.

WAGENET: Okay, well I see I stepped in that one.

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Yet, a new fence, perpendicular to the existing one, was added by the Board of Supervisors only minutes before the end of the July 22 hearing on the application and it was approved with no public notice, no public input, and almost no discussion.

7. An Americans With Disabilities Act Request Was Ignored.

A request for accommodation under the ADA was made to the Board of Supervisors, which improperly neither discussed, nor responded to the request before voting on the application. See letter of Gail Flatt, Esq., Exhibit G.

Mendocino County Board of Supervisors
501 Low Gap Road, Room 1090
Ukiah, CA 95482

Dear County Board:

In the matter of Use permit #CDU 1-2003, I would like to respond to the radiation levels of the proposed "stealth" antenna on Brewery Gulch Drive.

According to FCC OET Bulletin No. 65 the equation for calculating the power density in the far field is:

$S = 4 \times 1.64 \times \text{ERP} \div 4\pi D^2$, where ERP is the effective radiated power in milliwatts, D is the distance from the antenna in centimeters, and S is power density at the distance, D, from the antenna. There is also a directional factor in the equation, but since the measurements were made directly in front of the antenna, one can assume the directional factor to be one. The number 4 in the equation is necessary because of reflection. Although the number 2.56 has been assumed by EPA, it is of value to use 4 as a worst case scenario. Using 800 watts as the ERP, one can calculate power densities at various distances from the antenna.

At one meter, $S = 41.8 \text{ mW/cm}^2$

At two meters, $S = 10.4 \text{ mW/cm}^2$

At three meters, $S = 4.64 \text{ mW/cm}^2$

At four meters, $S = 2.61 \text{ mW/cm}^2$

At five meters, $S = 1.67 \text{ mW/cm}^2$

At six meters, $S = 1.16 \text{ mW/cm}^2$

At seven meters, $S = 0.85 \text{ mW/cm}^2$

FCC exposure limits have been established for protecting people from thermal damage, only, and for the frequency of the proposed system that public limit is 1.00 mW/cm². The distance at which this limit is equaled for this antenna is 6.46 meters or 21.2 feet.

This limit applies only to thermal effects. For a number of years scientists have turned their attention to non-thermal effects--those effects related to the direct interaction of microwave radiation with the cellular structure of the body. From the research papers and books that discuss some of the non-thermal effects, it is clear that these effects can occur at levels far below the FCC limits. In fact a better measurement metric may be the electric field associated with the radiation rather than

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power density. Some Eastern European countries have set limits in the range of 0.1 to 1.0 microwatt/cm² (0.0001 to 0.001 mW/cm²). If a limit of 0.001 were used, the distance from the antenna where that limit would be reached is 204 meters or 670 feet.

Federal agencies in our country have not yet addressed non-thermal effects associated with micro and radiowave exposures.

Sincerely,

Duane A. Dahlberg, Ph.D.
Consultant
The Electromagnetics Research Foundation, Inc.

Duane A. Dahlberg, Ph.D.
Consultant
The Electromagnetics Research Foundation, Inc.
1317 6th Ave. N.
Moorhead, MN 56560

218 233-8816

10431

7/21/03 10:13 AM



S A G E
Associates

AGRICULTURAL AND ENVIRONMENTAL CONSULTANTS

B

Radiofrequency Radiation
Computer Modeling Report for the Proposed
Edge Wireless PCS Antenna Installation,
9950 Road 500B
Mendocino, CA

Prepared for

Mr. Arthur Firstenberg

Prepared by

Sage Associates
1396 Danielson Road
Santa Barbara, CA. 93108
(805) 969-0557

July 2003

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Introduction

Sage Associates was retained by Mr. Arthur Firstenberg to document potential radiofrequency radiation (RFR) levels at and around area related to the proposed Edge Wireless antenna site, Mendocino, CA. Computer modeling was performed for Sage Associates by Gerald L. Moore, Broadcast Consultant, Modesto, California. Information on the proposed power output and radiation pattern, the antenna radiation height, tower height and other technical information was provided in the Edge Wireless application.

The antenna is proposed to transmit at a maximum ERP of 800 watts of power at around 1950 MHz frequency. The mounting location is under a single family home south of the town of Mendocino at the edge of an ocean-front bluff. The FCC standard for exposure of the public (the uncontrolled public limit) is 1000 microwatts/centimeter squared ($\mu\text{W}/\text{cm}^2$).

The objective of this report is to calculate the distance from the antenna transmitter at which the FCC limit for uncontrolled public access (1000 microwatts/cm²) is reached at operational capacity of 800 watts ERP.

Methodology

The analysis of the RFR environment in and around the proposed site used the FCC method of assessment described in OST Bulletin 65, Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation. The FCC OST Bulletin states, "(F)or a truly worst-case approximation, 100% ground reflection should be assumed resulting in a potential doubling of predicted field strength and a four-fold

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increase in (far-field equivalent) power density. The formulas used are provided in Appendix A.

Results of RF Computer Modeling

Computer modeling results indicate that the FCC limit of 1000 microwatts/cm² for uncontrolled public access is reached directly in front of the main beam (340 degrees) at 21.2 feet from the transmitting antenna.

At 355 degrees (or 15 degrees east of the main beam direction) the FCC limit of 1000 microwatts/cm² for uncontrolled public access is reached at 20 feet from the transmitting antenna.

At 360 degrees (or 20 degrees east of the main beam direction) the FCC limit of 1000 microwatts/cm² for uncontrolled public access is reached at 18.3 feet from the transmitting antenna.

These areas adjacent to the single family home will exceed federal safety standards under full power operating conditions as predicted by the FCC OET Bulletin 65 formula calculations.

The report prepared by Hammett & Edison, Inc. dated November 27, 2002 states under the Recommended Mitigation Measures section that:

"In order to comply with FCC public exposure guidelines, it is recommended that access to the area within 2 1/2 feet of the antenna be precluded for all unauthorized persons."

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This is reported to be based on a measurement conducted at the site on November 22, 2002 by Hammet & Edison, Inc.:

"in which a temporary antenna installation revealed the power density level to be below the public limit for distances more than 2 1/2 feet in front of the proposed antenna."

There is no information provided in the Hammett & Edison, Inc. report to determine at what power output the measurements were made, or what other factors might influence the spot measurements.

Spot measurements are an inadequate basis for a site application approval. Site measurements are only good for a point in time, do not usually reflect a "reasonable worst case condition" with respect to weather, re-radiation, reflectivity of the ground conditions, location or other pertinent factors. RF power density levels differ greatly depending on where and when the reading is taken, what equipment is used, whether there is variation that day in power output, and so on. Spot measurements do not justify a finding that there will be no exceedance of the FCC limit anywhere in the uncontrolled public access areas if they are not all tested over time and over various locations. Computer modeling can give predictions that are meaningful for all areas the public uses. Because the FCC OET Bulletin 65 formulas have some safety factor for thermal injury built into them, the formulas should be used as the reliable guide to conformance with FCC standards.

RF power density projections may rise and fall before they fall continuously at distance at $1/R^2$ or one over R squared. Far-field calculations for broadcast antenna power density normally show variability with distance. Within a few hundred or more feet, the power density levels can rise and fall to some degree as you move further away from the source.

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Another circumstance where distance from the source is not an absolute predictor of power density is in an area known as the "near-field". The near-field condition is an area near to the transmitting antenna where the transmission has not yet developed a coherent pattern, and the power density is generally unpredictable. Power density in the near-field can be very much higher or lower than RF fields at further distance away in the far-field. One could measure in the near-field and have little or no field detected under the right conditions. The far-field, on the other hand, begins at that distance or sufficient number of wavelengths from the antenna for the pattern to have formed and become coherent, and the power density can be predicted from that point outward with certainty under FCC OET Bulletin 65 formulas.

Under Conclusions, the Hammett & Edison, Inc. report states that:

"Based on the information and analysis above, it is the undersigned's professional opinion that the base station proposed by Edge Wireless at 9950 Road 500B in Mendocino, California, can comply with the prevailing standards for limiting human exposure to radiofrequency energy and, therefore, need not for this reason cause a significant impact on the environment."

The conclusion in the Hammett & Edison, Inc. report that only a 2 1/2 foot buffer around the transmitting antenna is required for compliance with the FCC limit for uncontrolled public access appears to be unsupported by actual computer modeling. The FCC limit of 1000 microwatts/cm² for PCS frequency wireless antennas is exceeded at three locations calculated in accordance with the prevailing FCC OET Bulletin 65 formulas specified for use in calculating power density for such facilities.



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Associates

AGRICULTURAL AND ENVIRONMENTAL CONSULTANTS

Recommendation

The City of Mendocino should decide the merit of this application by applying best available computer modeling of the proposed antenna at the site, in accordance with FCC OET Bulletin 65 calculations. Spot measurements should not be the sole basis for judging compliance with FCC limits for uncontrolled public access where a facility has not yet been constructed.

Whether the City has sufficient information to approve this application is doubtful since there is a significant disparity between what the applicant's engineer has submitted (based on a mock-up and spot measurements) and what has been presented in this report based on FCC OET Bulletin 65 computer modeling that is specified for use by the FCC to estimate power density levels for wireless communications sites.

Submitted by,

Cindy Sage

Sage Associates

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Radiofrequency Radiation Modelling Report

by Gerald L. Moore

July 2003

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6

Gerald L. Moore

APPENDIX A

Broadcast Consultant

July 28, 2003

Phone: 571-0449 (Area 209)
Fax: 571-0676 (Area 209)

Cindy Sage

1101 N. Rosemore Avenue
MODESTO, CALIFORNIA
95358-1203

Sage Associates
1396 Danielson Road
Santa Barbara, CA

Fax: (805) 969-5003

Dear Cindy;

This firm Gerald L. Moore Broadcast Consulting was retained by Sage Associates to make an independent assessment of the RF environment resulting from the PCS facilities of Edge Wireless. The assessment has been made of the RF environment in front of the installation and to the side 10 and 20 degrees of the main beam at 340° True.

The assessment consisted of analysis using the FCC method of assessment described in Office of Engineering and Technology (OET) Bulletin 65, Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, August 1997. The FCC OET Bulletin 65 states, "For a truly worst-case prediction of power density at or near a surface, such as at ground-level or on a rooftop, 100% reflection of incoming radiation can be assumed, resulting in a potential doubling of predicted field strength and a four-fold increase in (far-field equivalent) power density." Equation (6) provides that worst-case approximation.

The ANSI/IEEE/FCC standards are expressed in terms of power density, electric field strength squared and magnetic field strength squared. The power density S can be calculated per equation (6), page 20 FCC Office of Engineering and Technology (OET) Bulletin 65 as follows:

$$S = EIRP/(p \times R^2), \text{ where}$$

S is - the calculated power density from a RF antenna in $\mu\text{W/cm}^2$.

EIRP is - Effective Radiated Power (ERP) referenced to an Isotropic radiator

$$= \text{ERP (watts)} \times 1.64 \times 10^6 \text{ (micro-watts/watt)} \times \text{Gain(A)}$$

Gain(A) the radiated energy adjusted per the vertical antenna pattern

$$p = 3.142$$

R is - the line of site distance from the antenna in centimeters

In this case the center of radiation is at 4 feet above ground level. Therefore the body will be in the main beam of the antenna and there is no reduction in the signal due to the vertical pattern of the antenna.

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Facilities Studied

Edge Wireless Facility Parameters

✓ Maximum Total ERP	800 watts
✓ Frequency	1950 MHz
✓ FCC Standard	1000 μ W/cm ²
✓ Center Line of Emissions	4 feet Above Ground (AGL)
✓ Direction of the sectorized antenna	340° True
✓ Antenna Manufacturer	EMS Wireless
✓ Antenna Model Number	RR65-1800DP
✓ Downtilt	0°

Assumptions

- Ground is level to 200 feet from the antenna
- Predicted Power Densities are at 4 feet AGL

The predictions at 4 feet AGL represent the body of any person standing in front of the antenna. The field will decay as a function of the square of the distance from the antenna per the equation above. Calculations were made to predict the distance from the antenna where the field will be at or below the FCC limit of 1000 μ W/cm² in the main beam at 340° True and at 10 and 20 degrees to the side of the main beam.

Conclusions

Location of prediction	Distance to the FCC limit	ERP in watts	Horizontal attenuation
340° True	21.2 feet	800	0 dB
350° or 330° True	20.0 feet	713	-0.5 dB (87 watts)
0° or 320° True	18.3 feet	593	-1.3 dB (207 watts)

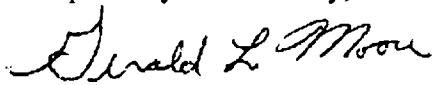
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Statement of Qualifications

The forgoing statement and related data therein, have been prepared myself, the undersigned, Gerald L. Moore, Broadcast Consultant, with offices at 1101 N. Rosemore Avenue, Modesto, CA 95358-1203.

The education of the undersigned includes degrees of BSEE from the University of the Pacific at Stockton, Ca. and MBA from the University of Santa Clara at Santa Clara, CA. Experience includes thirty-five years employment involving research and technical projects at Stanford Research Institute, the Ampex Corporation, the Lockheed Corporation, broadcast engineering and in Radio-Frequency Radiation measurements and analysis.

Respectfully submitted by,



Gerald L. Moore
Broadcast Consulting

Dated at Modesto, California
July 28, 2003



**Edge Wireless • Proposed Base Station (S. No. CA-122)
9950 Road 500B • Mendocino, California**

horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that the power level from an energy source decreases with the square of the distance from it (the "inverse square law"). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

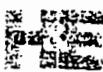
Based upon information provided by Edge Wireless, it is proposed to mount one EMS Model RR6518-00DP directional panel antenna within a new fiberglass cylinder below the deck of the dome-shaped house located at 9950 Road 500B in Mendocino. The antenna would be mounted at an effective height of about 4 feet above ground and would be oriented towards 340°T. The maximum effective radiated power in any direction would be 800 watts, representing four channels operating simultaneously at 200 watts each. Presently located on the property is an antenna for use in amateur ("ham") operations.

Measurements conducted at the site by the undersigned engineer, on November 22, 2002, with a temporary antenna installation revealed the power density level to be below the public limit for distances more than 2 $\frac{1}{2}$ feet in front of the proposed antenna. Measurements were also made of the amateur operation, and levels in all publicly accessible areas complied with the FCC standard. The measurement equipment used was a Wandel & Goltermann Type EMR-300 Radiation Meter (Serial No. P-0008) with a Type 8 Isotropic Electric Field Probe (Serial No. P-0036). Both meter and probe were under current calibration by the manufacturer.

Recommended Mitigation Measures

In order to comply with the FCC public exposure guidelines, it is recommended that access to the area within 2 $\frac{1}{2}$ feet of the antenna be precluded for all unauthorized persons.

To prevent occupational exposures in excess of the FCC guidelines, no access within 1 foot directly in front of the antenna itself should be allowed while the base station is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting



**HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO**

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Page 2 of 3

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**US Cell • Proposed Base Station (Site . 568367)
44850 Comptche Ukiah Road • Mendocino, California**

horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodology, which reflects the fact that the power level from an energy source decreases with the square of the distance from the source (the "inverse square law"). The computerized technique for modeling particular sites is also described, and the conservative nature of this method for evaluating expected exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by US Cellular, including drawings by J. E. Schuricht & Associates, dated April 14, 2002, it is proposed to mount up to four Antel Model BXA-80063-4 directional panel antennas within existing chimneys above the roof of the two-story lodge building located at 44850 Comptche Ukiah Road in Mendocino. The antennas would be mounted at an effective height of about 20^{1/2} feet above ground, 10 feet above the second floor balcony, and would be oriented towards 310°T. The maximum effective radiated power in any direction would be 200 watts, representing one RF channel. There are reported no other wireless telecommunications base stations installed nearby.

Study Results

The maximum ambient RF level anywhere at ground level due to the proposed US Cellular operation is calculated to be 0.0012 mW/cm², which is 0.76% of the applicable public exposure limit. The maximum calculated level on the second floor balcony of the subject building is 12% of the public exposure limit. It should be noted that these results include several "worst-case" assumptions and therefore are expected to overstate actual power density levels.

Recommended Mitigation Measures

Since they are to be mounted within a chimney near the edge of the building, the US Cellular antennas are not accessible to the general public, and so no mitigation measures are necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures in excess of the FCC guidelines, no access within 5 feet in front of the antennas themselves, such as might occur during building maintenance activities, should be allowed while the site is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting explanatory



BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Mailing Address: P. O. Box 349002, Sacramento, CA 95834-9002
 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833-2944
 (916) 263-2222 fax: (916) 263-2246
www.dca.ca.gov/pels



CONSUMER COMPLAINT

1. SUBJECT (Engineer or Land Surveyor)

William F. Hammett E-13026/M-20676

Name of individual and license/registration number, if known

PO Box 280068

Street Address

San Francisco, CA 94128

City, State, Zip Code

(707) 996-5200

Daytime Telephone FAX Number

Pager Number Cellular Phone Number

Home or evening telephone

2. COMPLAINANT (Person filing complaint)

Arthur Firstenberg

Your name

Business name, if any

PO Box 1337

Street Address

Mendocino, CA 95460

City, State, Zip Code

(707) 937-3990

Daytime Telephone FAX Number Pager Number

Evening Telephone Cellular Phone Number

your e-mail address

3. SUBJECT PROPERTY ADDRESS (if different from answer # 2) and/or description of property location. Include city and/or county.

9950 Road 500B, Mendocino, California 95460

PLEASE COMPLETE QUESTIONS 4 AND 5 AND DECLARATION ON NEXT SHEET

<<<<<<< Section for office use only — Please do not write below this line >>>>>>

Case No. _____

Class Code _____

Source Code _____

Date Opened _____

Date Closed _____

Closure Code _____

Lic/Reg No./Exp. Date _____

Organization Record Yes No

Previous Cases: _____

4. DESCRIBE YOUR COMPLAINT: Be specific. What happened? Who else is involved (names, addresses, phone numbers)? City or county? Give dates and details. Include copies of plans, maps, contracts, etc. If there is no written contract, write down the details of the agreement. (Attach extra pages as required — be as complete as possible. See "How to File a Complaint" for more details.)

The firm of Hammett & Edison, Inc., was retained by Edge Wireless

to evaluate a proposed PCS base station for compliance with FCC

guidelines limiting exposure to radio frequency radiation. A copy

of Mr. Hammett's report is attached, and dated November 27, 2002.

A subsequent report by the same Mr. Hammett, evaluating a proposed

US Cellular base station across the street at 44850 Comptche-Ukiah

Road in Mendocino, dated June 26, 2003, is also attached. They

cannot both be correct. Specifically, the US Cellular facility,
(continued on attachment page "A")

5. WHAT DO YOU WANT THE BOARD TO ACCOMPLISH IN RESOLVING YOUR COMPLAINT?

(1) Investigate the complaint and communicate its findings to the
Mendocino County Board of Supervisors, 501 Low Gap Road, Room 1090,
Mendocino, CA 95460; (2) Take appropriate disciplinary action
against this consultant.

6. DECLARATION

I declare, under penalty of perjury, that the information contained in this complaint, including any attached pages, is true and correct to the best of my knowledge and belief.

Signature

Arthur Firstenberg

Date

July 30, 2003

Please let us know how you obtained this form. This information will help us evaluate the effectiveness of the different methods we use to inform consumers of the services provided by the Board for Professional Engineers and Land Surveyors. Thank you.

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Continuation page "A"

4. (continued)

compared to the Edge Wireless facility, is stated to be one quarter as powerful (200 watts vs. 800 watts), yet be out of compliance at five times the distance from the antenna (5 feet vs. 1 foot for occupational exposure).

I retained Sage Associates, and Broadcast Consultant Gerald L. Moore, to model the exposure levels of the Edge Wireless facility. A copy of this report is also attached. It reveals that the buffer required around the transmitting antenna for compliance with the FCC limit for uncontrolled public access is up to 21.2 feet, and not the 2½ feet as stated by Mr. Hammett. It also reveals portions of the property owner's land to be out of compliance that were found in compliance by Mr. Hammett. Reliance upon this fraudulent information caused the County of Mendocino, at a hearing conducted July 22, 2003, to approve a permit for this application. The County relied on the safety, not just of the Edge Wireless application, but of future additional co-located antennas, which clearly will put the area in question further out of compliance with public exposure standards of the FCC. Mr. Hammett's figures for the US Cellular site across the street are honest and fully consistent with Gerald Moore's calculations.

The difference between the two sites is that the US Cellular site is a normal location, on top of a structure, while the Edge Wireless site has the antenna's center of

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Continuation page "A-2"

radiation only 4 feet above the ground, underneath the deck of a residence which is being lived in! The beam is stated to be aimed at 340° T, at the edge of the headland over water, but the cliff runs close to due north, and so the beam is directed only 20° or less off the edge of the cliff and the owner's property line. The beam width (to the -3dB points) was stated at the hearing to be 65° . It appears to me that Mr. Hammett and Edge Wireless have cooperated in a fraudulent report in order to conceal non-compliance with FCC limits for such a bizarrely situated antenna, putting the property owners, and any visitors they may have, and potentially other members of the public, at grave risk.

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below the 25 foot contour to be within a tsunami zone, however, the project site is at an elevation of 52 feet above sea level. The site is not subject to flooding.

Plant Life (Items 4A through 4D): The site has been previously developed with a residence and garage. There are no trees on the site. Neither the County Biological Resources Map nor the California Natural Diversity Data Base Maps indicate any sensitive plant species on the site. A minor amount of grass will be disturbed by trenching, but will quickly reestablish itself. No significant impacts are anticipated.

Animal Life (Items 5D – Habitat): No wildlife habitat will be affected by the project. No towers or guy wires are proposed that might be hazardous to birds. Staff recommends that the Planning Commission find the project to be "de minimis" and therefore, exempt from the Department of Fish and Game Section 711.4 wildlife habitat loss mitigation fee. (See Condition Number 1)

Noise (Item 6A through 6B): The only noise to be generated by the project will result from construction activity and vehicles. Once construction is completed there will be no noise generated by the facility. No permanent emergency generator is proposed, however, during periods of power outages, a temporary portable generator may be used. Except for the landowner's residence, there are no nearby dwellings. The nearest neighboring residence is approximately 500 feet to the south.

Light and Glare (Item 7): No lighting is proposed as part of the project.

Land Use (Item 8): The Coastal Plan land use classification for parcel is Rural Residential – 5 acre minimum (RR-5). The same classification also applies to the parcels to the north and south of the site, as well as to the east beyond the Highway 1 and County Road 500B corridors. Within the RR-5 classification public facilities and utilities are a conditional use, subject to approval of a use permit. The proposed wireless facility is consistent with the planned use of the area.

Natural Resources (Item 9A): The site is not a source of natural resources, and the project will not consume any significant quantities of natural resources.

Population (Item 10): The facility will provide no local jobs or have any other attribute that would affect population distribution.

Housing (Item 11): The project will neither provide additional housing nor generate demand for additional housing.

Transportation/Circulation (Item 12): Access to the site from Highway 1 is provided by County Road 500B. The project will generate a minor amount of additional traffic in conjunction with the construction of the facility. After construction is complete, traffic to the site will consist of one or two visits per month necessary to maintain the facility. The Department of Transportation reviewed the application and offered the following comments:

Access to the subject property is from County Road 500B. As determined from our site review, there are currently two unimproved driveway approaches onto the County road. Since we expect negligible traffic impacts from the proposed use permit, no conditions are recommended to improve the driveway approaches. To address the proposed underground utility services in the County road right-of-way, we recommend the following condition of approval:

Prior to any work within the County road right-of-way, including the installation of underground utility services, applicant shall obtain an encroachment permit from the Mendocino County Department of Transportation.

The Department of Transportation's recommended condition is included as Condition Number 5.

Public Services (Item 13A): The project will have no direct impact on public facilities. By providing wireless telephone service in an area where it has been previously unavailable, emergency communications may be facilitated, allowing more prompt response by emergency service providers in times of emergency. The California Department of Forestry and Fire Protection reviewed the application and determined the project was exempt from

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fire safe regulations. No response was received from the Mendocino Fire District or the Mendocino Unified School District.

Energy (Items 14A through 14B): A new electrical service will be installed from the existing electrical distribution lines along County Road 500B to accommodate Edge Wireless as a customer separate from the landowner, and not because the facility is a significant consumer of electrical energy. No alterations to generation or transmission infrastructure are required.

Utilities (Item 15A): The proposed facility will neither consume water nor generate sewage. Energy is addressed in the previous paragraph.

Human Health (Item 16): The Federal Communications Commission (FCC) has set maximum permissible exposure limits for radio frequency transmitters, and the Telecommunications Act of 1996 prohibits local governments from regulating wireless service facilities based on environmental effects of radio frequency emissions so long as the facilities comply with FCC regulations for emissions. Local governments may require applicants to show that proposed facilities comply with FCC regulations, and Edge Wireless has provided an evaluation prepared by Hammett & Edison, Inc. (See Attachment A.) The H&E report examines both the proposed facility and the private ham radio antenna operated on the site by the landowner, and finds that the radio frequency emissions from the two sources, both individually and together, will be in compliance with FCC requirements provided that access to the area within 2½ feet in front of the proposed antenna is restricted. The report states that posting of warning signs in the vicinity of the proposed antenna in compliance with American National Standards Institute (ANSI) conventions would be sufficient to meet FCC guidelines. A typical warning sign is 10 by 14 inches, with a black symbol and lettering on a yellow background. Condition Number 6 is recommended to require that signs consistent with FCC and ANSI regulations be displayed in close proximity to the antenna. This condition may not be enforceable due to the exemption provided by Code Section 20.476.035, which exempts signs required by State or Federal law, however, it is included to express the County's desire to maintain the scenic character of the coast, with the expectation that the applicant will be willing to cooperate.

The proposed antenna will be located at the northwest corner of the owner's residence, underneath the deck, on the far side of the house from County Road 500B. The antenna will be approximately 85 feet from the County road, 130 feet from the south property line, and 500 feet from the north property line. The antenna is not in a location likely to be accessed by anyone other than the landowner or maintenance personnel. The nearest neighboring residence is on the Lovera property, approximately 500 feet south of the King residence. The antenna will be aimed to the north, away from the Lovera property, with the King's garage and higher ground in between. To the northeast the nearest residence is approximately 2,000 feet away, on the west side of Highway 1, across from the Stanford Inn. Again, intervening higher ground obstructs a direct line between the antenna and the residence.

Aesthetics (Item 17): Due to its design and location, very little of the facility, will be visible. New utility services to the site to serve the facility will be installed underground from existing utility lines along County Road 500B. The radio equipment will be housed within an existing garage. The coaxial cable connecting the radio equipment to the antenna will be underground, and the antenna will be located underneath the deck of an existing residence and contained within a composite shell designed to look similar to the concrete posts supporting the deck. The location of the antenna shell under the deck limit its visibility from public locations, and its distance from public locations will make it difficult to identify the shell as anything other than a support post for the deck. The radio frequency warning signs required by Condition Number 6 may be visible from public locations, however, the condition requires that the signs be installed in the least visible location consistent with applicable regulations.

In the event that use of the facility should cease, it is recommended that Conditions Number 7 and 8 be imposed, requiring that all portions of the facility above ground level be removed from the site, and the site be restored to a natural condition.

Recreation (Item 18): The project will not cause any increased demand on recreational facilities. The site is located between the nearest public road and the shoreline, and therefore, must be consistent with Coastal Plan policies designed to protect and enhance public access to the shoreline. At the project site, there is no beach. The rocks along the shoreline drop nearly vertically into the ocean. Also, an easement to or along the top of the bluff would serve little purpose as County Road 500B is itself perched on the bluff edge just north of the landowner's residence.

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ATTORNEYS AT LAW
DOUGLAS B. PROVENCHER
CAIL F. FLATT

OF COUNSEL

JANIS HARWOOD GRATTAN
TADDEO C. ALONA
DAVID M. REYNOLDS
JENNIFER M. HAINSTOCK

July 30, 2003

Hal Wagenet
Mendocino County Board of Supervisors
P.O. Box 422
Willits, CA 95490

Re: Edge Wireless Appeal Hearing

Dear Mr. Wagenet:

I spoke at public hearing on the Edge Wireless Appeal on July 22, 2003. I made a request, on behalf of my clients, for a reasonable modification to the County of Mendocino's zoning policies and procedures pursuant to Title II of the Americans with Disabilities Act ("ADA"). I have no doubt that you listened to my statement, so I will not repeat it here.

I understand that after I left the hearing, Supervisor David Colfax posed a question regarding how the ADA and its impact on the placement of cell phone towers. Specifically, Mr. Colfax questioned (1) whether the ADA would prohibit the placement of cell phone towers in the Village of Mendocino and (2) whether the ADA would impact cell towers in other places in the County.

It is my further understanding that Edge Wireless' counsel, Kevin Tyler attempted to answer these questions by stating in substance that any radio frequency ("RF") emissions concerns under the ADA would need to be addressed to the FCC. Mr. Tyler's statement is incorrect. While he conceded that Title II of the ADA applies to the County's planning and zoning functions, he added that it did not apply to regulation of RF emissions, which are exclusively within the purview of the FCC.

First of all the ADA does not apply to the federal government. My clients cannot simply go the FCC and request a reasonable modification under the ADA. The FCC as an agency of the federal government is not subject to the ADA.

More importantly, Mr. Tyler confuses the nature of the ADA requirements and FCC control. Clearly the Telecommunications Act gives the FCC power to

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Hal Wagenet

July 30, 2003

Page 2

establish generally acceptable levels of RF emissions. The FCC is charged with making national policy.

The ADA on the other hand was passed in 1990 to guarantee disabled access to public buildings, services, programs and activities. It **requires** public entities to make reasonable modifications to their policies and practices to allow qualified individuals with disabilities access to county services, programs and/or activities or to avoid discrimination against those individuals. It necessarily involves case-by-case determinations based on the individuals' disabilities and the modifications requested. Reasonable modifications may only be denied if they would fundamentally alter the nature of the program or activity or result in an undue hardship for the public entity.

My clients are a group of individuals living in and around the Village of Mendocino who have all been diagnosed with electrical hypersensitivity. The FCC pronouncements about generally safe levels of RF emissions really have no relevance to them because of their disability. While the levels of RF emissions sanctioned by the FCC may be safe for the general population, they are debilitating and even deadly for someone with electrical hypersensitivity. In other words, it is precisely because of their disability that my clients have the right to come to the Board of Supervisors to request reasonable modification to your zoning policies and practices. Others in Mendocino County who are not so disabled but oppose the placement of the Edge Wireless cell phone tower do not have that right.

To answer Supervisor Colfax' questions directly, the County of Mendocino as a public entity has an obligation to make reasonable modifications to its zoning polices and procedures on the request of qualified individuals with a disability in order to provide access to the county's services, programs and activities and to prevent discrimination against those individuals. It is our position that the requested modification, requiring Edge Wireless to site its cell tower outside of the area in and around the Village of Mendocino is such a reasonable modification. Unless the County of Mendocino can establish that making such a modification would fundamentally alter the nature of the county's zoning process or result in an undue hardship for the county, the modification must be given.

The ADA would not necessarily impact the placement of cell towers in other parts of the county. In order to trigger the county's obligation to make reasonable modification, there must first be a request from a qualified

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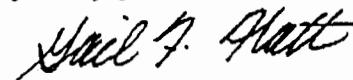
Hal Wagenet
July 30, 2003
Page 3

individual with a disability. In the case of the placement of cell phone towers, this would have to be done at the planning/zoning stage rather than after the cell tower was in place. In this instance, there is a group of people who have been diagnosed with electrical hypersensitivity who live in and around the Village of Mendocino because it is a refuge. These people do not seek the relocation of existing cell towers in other parts of the county or seek this same type of modification for prospective cell towers in other parts of the county. They are asking only that there be a small part of the county where they can live relatively normal lives and avail themselves of the county's services, programs and activities without risking their lives.

On behalf of my clients I requested a reasonable modification in your zoning policies and practices on July 22, 2003. Requiring Edge Wireless to site their cell phone tower somewhere other than the area on the coast around the Village of Mendocino is, in fact, a reasonable modification of your zoning practices. Making this modification would not fundamentally alter your zoning practices and procedures. Nor would it impose an undue hardship on the County. It does not appear to me after reviewing the transcript of the proceeding on July 22, 2003 that the Board of Supervisors voted on the request for reasonable modification. I ask that you do so.

I ask that you vote to reconsider the Edge Wireless appeal solely on the issue of whether it should be denied in order to provide a reasonable modification to my clients.

Very truly yours,



Gail F. Flatt

cc: J. David Colfax
Patricia Campbell

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EXHIBIT NO. 7

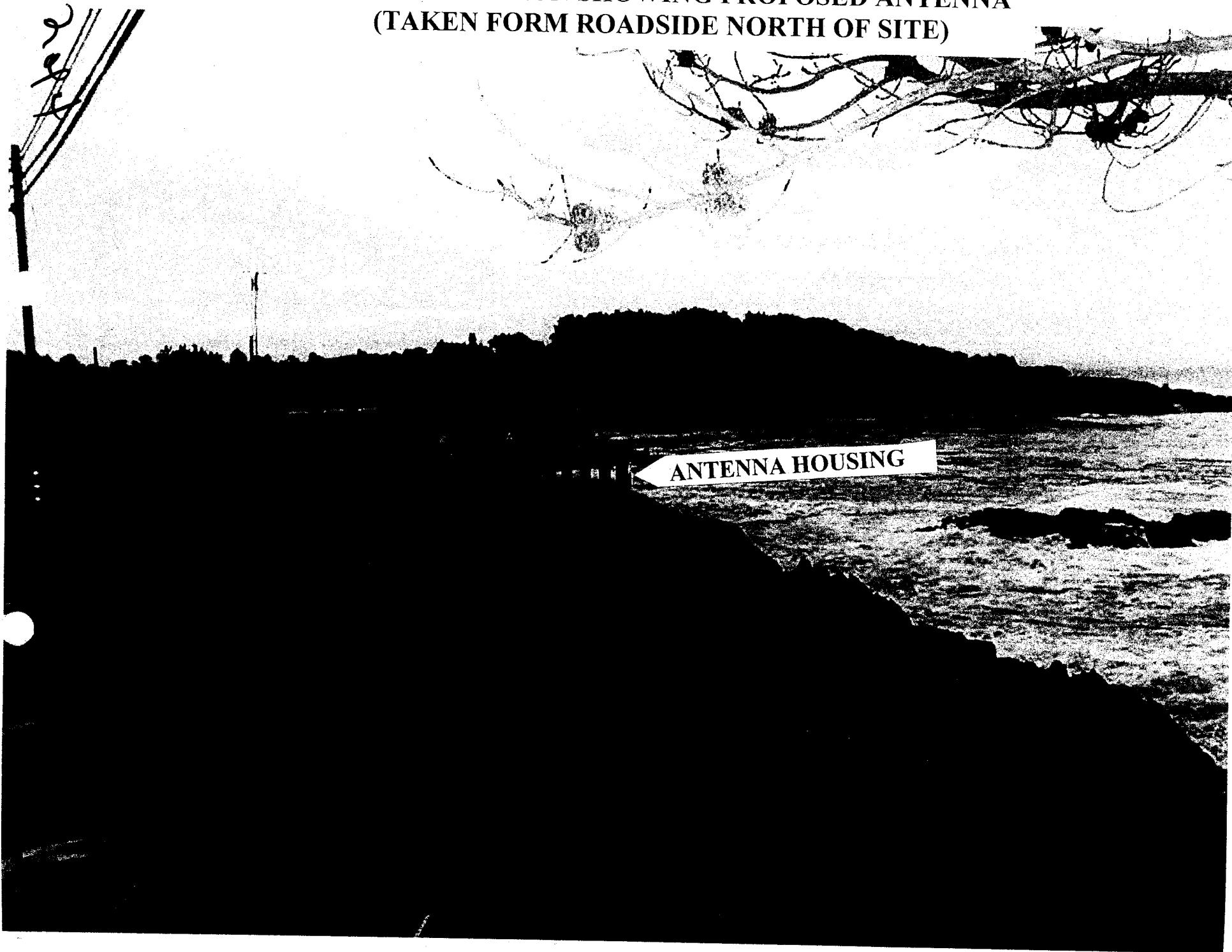
APPLICATION NO.

A-1-MEN-03-052

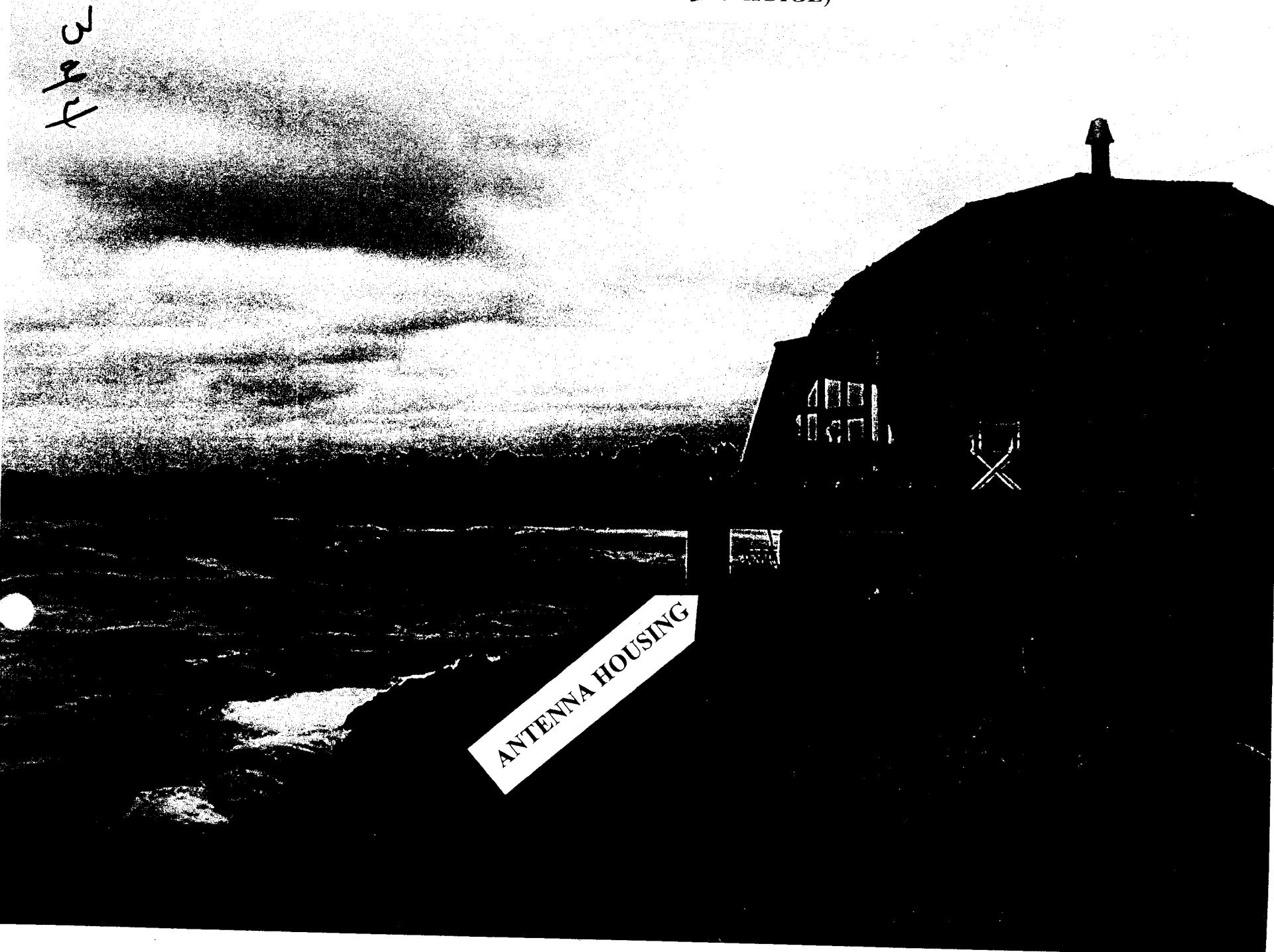
EDGE WIRELESS

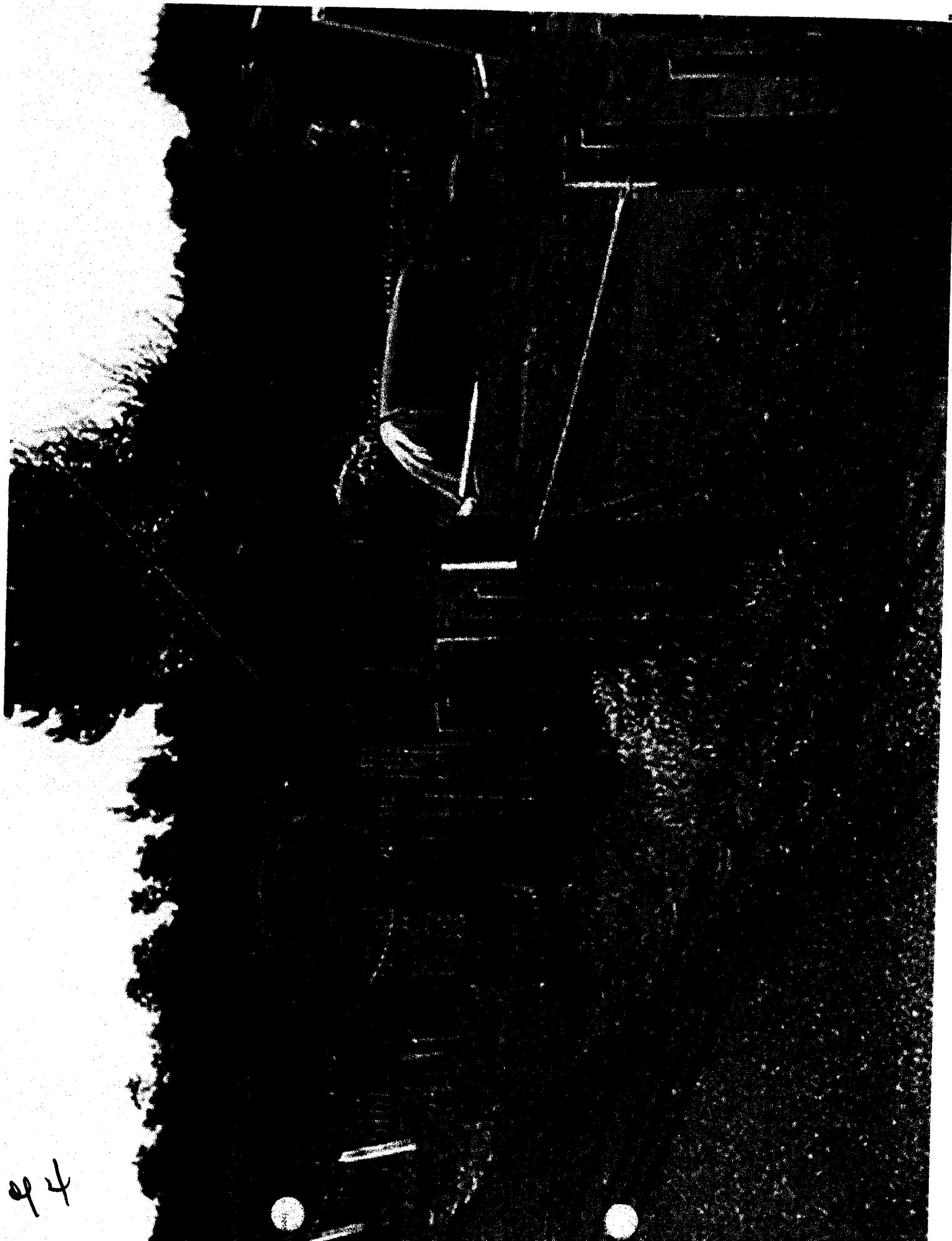
PHOTOGRAPHS (1 of 4)

**PHOTOSIMULATION SHOWING PROPOSED ANTENNA
(TAKEN FORM ROADSIDE NORTH OF SITE)**



**PHOTO SIMULATION SHOWING PROPOSED ANTENNA
(TAKEN FROM BEHIND GARAGE)**





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CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
North Coast Region
1656 Union Street - Room 150
P.O. Box 4946
Eureka, California 95501
707-443-1623

M

June 25, 1973

Charles King
733 Shell Blvd.
Foster City, Ca. 94404

Re: Permit Number: NCR-CC-73-049

Dear Mr. Charles King:

Attached is an executed resolution and permit approved by the North Coast Region Commission at its regular meeting on June 14, 1973.

Please read the resolution and permit contents carefully, sign and return the original of this letter if the contents are fully understood. A copy is enclosed for your file.

Charles King

Permittee

6/26/73 date 1973

This acknowledgement should be returned within ten (10) working days of permit issuance.

Sincerely yours,

John W. Lahr
John W. Lahr
Executive Director

JWL: jp
Enclosures

EXHIBIT NO. 8

APPLICATION NO.
A-1-MEN-03-052
EDGE WIRELESS
CDP FOR EXISTING
HOUSE (1 of 8)

RESOLUTION/ORDER GRANTING/~~DENYING~~ APPLICATION

1. Application Number: NCR-73-CC-049 Date Filed: 5-22-73
2. Name of Applicant: Charles King

3. Permit Type: Standard.
 Administrative:
 Repair or improvement to existing structures not in excess of \$25,000
 Other development not in excess of \$10,000
 Emergency.

4. Development Location: South of Big River on Brewery Gulch Road.

5. Development Description: A single Family Residence.

6. Findings and Determinations. The proposed development:

A. Will/Will not have a substantial adverse environmental or ecological effect in that:
The proposed development because of site location would have no adverse affect on beaches, scenic resources or any such environmental or ecological aspects in the Coastal Zone.

B. Is/Is not consistent with the findings and declarations set forth in Public Resources Code sections 27001 and 27302 in that:
The development of this residence will have a minimal affect on the existing public services and facilities ie: streets, utilities and does not constitute a commitment to undesirable further growth. The residence would establish no precedent that would in any way adversely affect preparation of the Coastal Zone Plan.

C. Is subject to the following other applicable statutory provisions and policies:
NONE

D. Is/Is not consistent with the aforesaid other statutory provisions and policies in that:

Not applicable

E. The following language and/or drawings clarify and/or facilitate carrying out the intent of these findings and determinations:

Not applicable

7. Terms and conditions of the permit herein authorized and granted: NONE

8. Resolution. The North Coast Regional Coastal Zone Conservation Commission has given written public notice of the nature of the proposed development and has held a public hearing and otherwise complied with the provisions of the California Coastal Zone Conservation Act of 1972 and the regulations of the California Coastal Zone Conservation Commission. Said public hearing commenced on June 14, 1973 and concluded on June 14, 1973. In accordance with said public hearing and the record herein this commission hereby:

- A. Adopts as its findings and determinations the matters, facts, and determinations set forth herein;
- B. Further finds and determines that this resolution requires a majority/two thirds affirmative vote of its total authorized membership in that Public Resources CodeSection 27401 is not applicable to the proposed development. ;
- C. Approves/~~Disapproves~~ the application for permit subject to the terms and conditions set forth above.

DATED: June 14, 73.

W.F. Grada

CHAIRMAN

Votes on resolution:

Yes: 11
No: 0
Abstain: 0

Absent 1

9. Said terms and conditions shall be perpetual and bind all future owners and possessors of the property or any part thereof unless otherwise specified herein.
10. Section 560 of the Regulations of the California Coastal Zone Conservation Commission specifies that no structure or area of land or water shall be used or occupied in the manner authorized by the permit or in any other manner until the Executive Director has issued a Certificate of Compliance with the terms and conditions of the permit.
11. The grant of this permit is further made subject to the following:
 - A. This permit shall not become effective until a copy thereof has been returned to the Central Coast Regional Conservation Commission upon which copy all permittees have acknowledged that they have received a copy of the permit and understood its contents. Said acknowledgment should be returned within ten working days following issuance of this permit.
 - B. Upon completion of the activity authorized by this permit the permittee(s) shall promptly complete the "Notice of Completion" and file it with the Executive Director of this regional commission.

- C. Said development shall be commenced on or before
No time limit specified
and shall be completed on or before
No time limit specified.
12. The development hereby authorized is subject to the rights and obligations of parties under private agreements and to the laws and regulations of all applicable public agencies.
13. This permit shall not be assigned except upon express written assumption by the assignee of the permittee's obligations under this permit and the California Coastal Zone Conservation Act of 1972.
14. Therefore, in accordance with the above findings and determination said Permit (Standard, Administrative, Emergency) Number NCR-73-CC-049 is hereby granted/denied for the above described development only, subject to the above terms and conditions and subject to all other terms and provisions hereof.
15. Notice. An applicant whose application for a permit has been denied or who challenges conditions imposed on a permit issued, or any person aggrieved by the approval of a permit by a regional commission may appeal to the California Coastal Zone Conservation Commission. Such appeal shall be filed with the California Coastal Zone Conservation Commission within ten (10) days following final action on the application by the regional commission and otherwise in accordance with the rules and regulations of the California Coastal Zone Conservation Commission.

The filing of any appeal upon any order or decision of a regional commission granting a permit shall suspend the operation and effect of such order, decision, and permit until final action on the appeal by the California Coastal Zone Conservation Commission. Pending such appeal, no development pursuant to any such appealed from order, decision, or permit shall take place.

Executed at Pismo Beach, California,
on behalf of the Central Coast Regional Conservation Commission
on January 31, 1973.

John W. Salter

EXECUTIVE DIRECTOR

5 of 8

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
NORTH COAST REGION
1656 Union Street - Room 150
P.O. Box 4946
Eureka, California 95501
707-443-1623

SUMMARY SHEET

1. Application: Standard, Exemption, Administrative,
 Emergency

A. Received: 5-22-73 D. Filing Fee \$50.00
B. Filed: 5-28-73
C. Number: NCR-CC-73-049

2. Location:

Assessor's Parcel Number: 19-310-09
County: Mendocino
City or Geographic description:

South of Big River on Old Highway 1, on Brewery Gulch Road.

3. Proposed Development:

A single family residence

4. Conformity to local permit requirements and plans:

Building permit issued
Septic tank permit issued

5. Application is/~~is not~~ consistent with the findings and declarations set forth in Public Resources Code Sections 27001 and 27302 in that: The proposed development would have no adverse effect on beaches, marine life, scenic resources or any other such environmental aspect in the Coastal Zone. The proposed building is consistent in the type, and size with other buildings in the immediate vicinity. The proposed building will have a minimal affect on existing service in the area-streets, sewer lines, etc.-and does in no way constitute a commitment to further growth in the area. The proposed building if approved would establish no precedents that would in any way adversely affect preparation of the Coastal Zone Plan.

6. Proposed development is subject to the following statutory provisions and policies:

Public Resources Code Section 27401, 27402, and 27403.

See attached.

Section 27401

The development does not proposed to dredge, fill or alter any bay, estuary, etc., nor reduce the size of any beach, or other area useable for public recreation, or affect access to any submerged lands, beaches, etc., nor affect the line of site toward the sea for the nearest state highway, nor affect water quality, areas of potential commercial or sport fishing or use of agriculture land on the effective date of this division.

Section 27402

The development will not have any substantial adverse environmental or ecological effect.

Section 27403

All permits shall be subject to reasonable conditions to ensure, access to public owned or used beaches and recreational areas by appropriate dedication, that recreational life preserves are reserved, that provisions are made for solid and liquid waste treatment, disposition and management which will minimize adverse effects on the Coastal Zone Resources, that alterations to existing land forms and vegetations and construction of structures shall cause minimum adverse effect to scenic resources and minimum danger of flood, landslide, erosion, siltation, or failure in the event of earthquake.

7 of 8

SUMMARY SHEET (continued)

7. Staff Comments:

The site was visited and the planned residence is located between the old Highway and the coastline. The residence will be located on approximately a 5 acre parcel. The new freeway is about 300 feet away and all of the land between the building site and the freeway is in Highway Right of Way.

In reviewing the application in relation to the appropriate Public Resources Code Section 27001, 27302, 27401, 27402, and 27403. I find that the application is in order.

8. Findings:

Staff recommends that the permit be granted.

Date: 6-3-83

Robert Tagh
Permit Analyst

Concur:

John W. Tamm
Executive Director

8 of 8



October 7, 2003

EXHIBIT NO. 9

APPLICATION NO.
A-1-MEN-03-052
EDGE WIRELESS
APPLICANT'S
CORRESPONDENCE
(1 of 21)

Randall Stemler
California Coastal Commission
710 E. Street, Suite 200
Eureka, CA 95501

Re: Commission Appeal No. A-1-MEN-03-052

RECEIVED

OCT 08 2003

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Stemler:

Edge Wireless would like to respond to issues raised in the above-referenced appeal. For the reasons set forth below, Edge does not believe that the decision of the Mendocino County Board of Supervisors is inconsistent with the Mendocino County Local Coastal Program (the "LCP") or the public access policies of the California Coastal Act.

Mendocino County's LCP was certified by the Commission in 1992. After certification of an LCP, action taken by the local government on a coastal development permit application may be appealed to the commission for certain enumerated types of developments. (Cal. Pub. Res. Code § 30603.) Because the facility in question is located between the sea and the first public road paralleling the sea, it is subject to the Commission's appellate jurisdiction. (Cal. Pub. Res. Code § 30603, subdivision (a)(1).) Grounds for an appeal are "limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in [the California Coastal Act]." (Cal. Pub. Res. Code § 30603, subdivision (b)(1); 14 Cal. Code Regs. § 13113).

The project that is being appealed involves the installation of a fiberglass cylinder under an existing deck at the King residence, 9950 Road 500B, south of the Town of Mendocino. The cylinder will be made to look like one of the existing concrete piers that support the existing deck, and will be suspended from the deck. Our antenna will be enclosed in the false pier, and our radios and other equipment will be enclosed in the existing garage. A small non-structural concrete pad will be installed at the base of the false pier to keep wind from moving or damaging the pier, and our coaxial cable will be suspended from the deck to the edge of the house, where it will run underground to the garage. Thus, other than very minor ground preparation for the concrete pad, there will be no excavation or disturbance of soils near the edge of the bluff. The project is designed to have minimal visual and physical impact on the coastal environment. The Mendocino County Board of Supervisors correctly found that the project complies with the LCP.

The appellants allege numerous grounds for appeal, few of which relate to alleged noncompliance with the LCP or the public access policies of the California Coastal Act. The following is a discussion of those grounds for appeal that could conceivably be construed as raising an issue of public access or non-compliance with LCP standards:

1. The project is not a principal permitted use in the RR-5 zone.

The coastal zoning ordinance allows both "major impact services and utilities" and "minor impact services and utilities" in the RR-5 zone with a coastal development permit. (Mendocino Coastal Zoning Code 20.644.015(A)) The facility in question falls within the minor impact category. (Mendocino Coastal Zoning Code 20.620.065)

2. The project may affect a recreational hiking trail.

There is no beach at the project site, nor is there public access to the ocean through the site. The rocks along the shoreline drop nearly vertically to the ocean. There are points of public access both north and south of the site. The presence of Edge's antenna will not affect public access.

3. Existing ham radio antenna at the site is illegal, deck does not comply with the building code, and there has not been a final inspection on the house.

These issues were carefully considered by the Planning Commission and the Board of Supervisors, and conditions were imposed to mitigate these concerns. One condition is that the existing ham radio tower be removed prior to activation of wireless service at the site. A second condition requires that the applicant obtain a building permit for the deck and perform the work necessary, if any, to bring it up to code. Planning staff addressed the issue of the house itself in a May 15, 2003 memorandum to the Planning Commission, and concluded that due to the age of the structure, the negligible impact the project will have on the structure, and the lack of County records regarding inspections, it would be inequitable to require that the entire house be brought up to current codes. The Board of Supervisors agreed and required only that the deck be brought up to code.

The Board of Supervisors determined that it was preferable to add conditions that will insure these issues are remedied rather than to deny the application based on the alleged violations. It recognized that this application presented an opportunity to obtain voluntary removal of the ham radio tower where enforcement has not been successful. Rather than being contrary to the LCP, this decision helps further its goals.

4. The installation is near shorebird roosting and resting area.

No wildlife habitat will be affected by the project. No towers or guy wires are proposed that might be hazardous to birds. Staff recommended that the project's impact on wildlife habitat be considered "de minimis", and that the project be exempt from the Department of Fish and Game wildlife habitat loss mitigation fee. While there was some public testimony regarding the impact on wildlife, it focused on birds killed by towers and guy wires and the perceived effect of radio frequency ("RF") emissions. Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996 (the

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"TCA") provides that no State or local government may regulate the construction of a wireless facility based on the environmental effects of RF emissions to the extent such facility complies with the FCC regulations.

5. The installation does not comply with shoreline erosion and geologic setback requirements.

Planning staff determined that a geotechnical report would not be required for the following reason: "The site is underlain by solid rock visible along the westerly bluff face. The area of construction lies within the area already developed with the existing residence and garage. The earthwork involved with the project is not significant, consisting of minor trenching and a hole of approximately 3 cubic feet. The project will impose no significant structural loads on the ground or alter drainage patterns. The geologic bore holes necessary to prepare a full geotechnical report would constitute a disturbance to the site of nearly the same magnitude as the work proposed in association with the project." April 17, 2003 Staff Report at p. 2. The setback requirements of Coastal Zoning Code Section 20.500.020 (B)(1), cited by the appellants, apply to new structures. The attachment of an antenna under an existing deck is not a new structure.

The remaining grounds raised by appellants do not involve issues of non-compliance with the LCP, or affect policies of public access. We will, however, address them below.

6. The installation is too close to the bluff.

The site is underlain by solid rock visible along the westerly bluff face. The area of construction lies within the area already developed with the existing residence and garage. The earthwork involved with the project is not significant, consisting of minor trenching and a hole of approximately 3 cubic feet. The project will impose no significant structural loads on the ground or alter drainage patterns. This objection is general in nature and does not relate to compliance with the LCP or coastal access.

7. The requirement of keeping the gates closed at all times cannot be monitored.

This objection goes to the enforcement of the conditions of approval and not compliance with the LCP or coastal access. Thus it is not a basis for appeal to the Commission.

8. The proposed facility exceeds the FCC's public exposure limits for RF emissions.

The FCC has set maximum permissible exposure limits for radio frequency transmitters. The TCA prohibits local governments from regulating wireless service facilities based on environmental effects of radio frequency emissions so long as the facilities comply with FCC regulations for emissions. Edge Wireless submitted a RF

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Randall Stemler
California Coastal Commission
October 7, 2003
Page 4 of 6

exposure study conducted by William Hammett of Hammett & Edison, Inc., which established that the project will be in compliance with FCC regulations. Mr. Hammett is an expert in RF exposure guidelines and a licensed California engineer. The Planning Commission and the Board of Supervisors accepted his report as credible. Ongoing compliance with FCC regulations is required both by federal law and by the condition of the permit that requires compliance with applicable federal law. The regulation of RF emissions is a federal matter and is not within the purview of the LCP. Coastal Zoning Code Section 20.304.020 contains a general statement that nothing in the Coastal Zoning Code shall be interpreted to legalize any use or structure that is constructed or maintained in violation of any Federal, State or County law. This section does not support the appellants' arguments, nor does it make the LCP applicable to RF emissions.

9. The permit was obtained by fraud.

The study prepared by William Hammett and submitted by Edge to Mendocino County is accurate and the facility will fully comply with FCC regulations. Enforcement of the FCC's RF exposure guidelines is within the exclusive jurisdiction of the FCC.

10. Violation of CEQA.

See the response to paragraphs 8 and 9 above. RF emissions are governed by federal law and not by CEQA.

11. Lack of proper notice.

In response to the opponents' concerns about unauthorized access onto the King's property and exposure to RF emissions expressed at the April 17, 2003 Planning Commission hearing, the Planning Commission suggested that the existing fence be extended and a gate be installed at the driveway entrance. The Planning Commission continued that hearing for the express purpose of permitting Edge to propose a plan to extend the fence and install a gate. The fence and gate, as well as the continuance, were discussed in detail during the public hearing, which was attended by an overcapacity crowd at the Casper Community Center, including appellants. While Senior Planner Frank Lynch did raise the issue of notice at that meeting, staff and County Counsel subsequently determined that extending an existing fence and installing a gate did not require a new notice.

The continued hearing was held in Ukiah on May 15, 2003. Chairman McCowen opened the meeting by suggesting that public testimony be limited to the fence and gate. The minutes of that meeting summarize what happened next as follows: "Brief discussion followed with Ms. Frieda Feen as well as other unrecognized members of the audience objecting to the Commission restricting additional public testimony. About 20 members of the public came forward in a body and made clear by their

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comments and demeanor that they were determined to address any aspect of the project they wished.” After this interaction the hearing was recessed. When it reconvened Edge’s representative presented a plan to extend the existing four-foot high fence approximately 50’ to the south property corner and installing a gate at the driveway, both of which would match the existing fence. Edge’s representative then answered the Commissioners’ questions about the design. The minutes of that meeting reflect that 18 members of the public spoke in opposition to the application, including the applicants, and not one of them commented on the fence or objected to a lack of adequate notice. Staff concluded that a new notice was not necessary, and none of the appellants were prejudiced this determination.

The Planning Commission did not have enough affirmative votes to approve the application and therefore the application was deemed denied. Edge Wireless appealed the denial to the Board of Supervisors. The appeal was properly noticed after the fence and gate had been added to the application. Thus, even if there was any question of a defect in notice at the Planning Commission stage, there was clearly none with respect to the decision that is under appeal.

12. No showing that a significant service gap exists and must be filled.

The LCP does not require a showing of a significant gap in service as a prerequisite to approval of a wireless facility. This standard arises out of federal case law, and describes one of the elements a service provider must prove to overturn a local government’s denial of an application based on the TCA’s prohibition against local governments “effectively denying” the provision of wireless service.

13. Failure to adequately explore less intrusive/ more suitable alternative sites.

As with paragraph 12 above, there is no requirement under the LCP that an applicant for a wireless facility exhaustively explore less intrusive sites. This standard also arises out of federal case law and is another element a service provider must prove to overturn a local government’s denial. Not only is this standard wholly inapplicable to this project, it is hard to imagine a less intrusive site.

14. The project fails to adhere to Planning Commission Wireless Facility Guidelines.

In November 2001, the Planning Commission adopted guidelines for the consideration of applications for wireless facilities; Planning Commission Resolution No. 2001-02. The guidelines have not been adopted by the Board of Supervisors and are not part of the LCP. Nevertheless, the project fully complies with the guidelines. The Guidelines establish the following order of priority of preference for the location of wireless facilities: First, facilities that co-locate on an existing facility; second, facilities located on existing buildings or structures; and third, stealth facilities. Guidelines Sec.

Randall Stemler
California Costal Commission
October 7, 2003
Page 6 of 6

(B)(1)(a). There are no existing facilities in or around the Town of Mendocino, so it is not possible to satisfy the highest priority. The project does satisfy both the second and third priorities. While the Guidelines discourage "highly visible sites and sites near or within residential areas or schools", it is clear from the language that the goal of this restriction is to avoid visual impacts. Edge Wireless' facility will have little or no visual impact on surrounding properties.

15. Project diminishes the value of adjacent property owner resulting in a "taking".

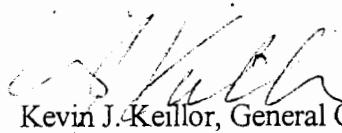
This is not an allegation that the approval fails to comply with the LCP or coastal access policies. A similar claim of taking was rejected by the California Court of Appeals in *Oliver v. AT&T Wireless Services, Inc.*, 76 Cal. App. 4th 521 (1999).

16. Violation of the Americans With Disabilities Act.

Again, this is not an allegation that the approval fails to comply with the LCP or coastal access policies. It is clear that under TCA state and local governments have no authority to deny the construction of a wireless facility based on health effects to the extent the facility complies with FCC RF guidelines. Thus, the Board of Supervisors had no authority to grant the appellant's request for accommodation even assuming the ADA otherwise applies.

As discussed above, few of the appellants' grounds for appeal are based on noncompliance with the LCP or coastal access policies. This project is an excellent example of a wireless communications facility that will have a negligible impact on the coastal environment and coastal zone resources. A review of the record will disclose that the appellants' overriding concern is their belief RF emissions are hazardous to human health even at levels below the FCC's RF exposure guidelines. While the appellants are entitled to this belief, federal law has preempted the field in order to ensure the availability of wireless communications on a nationwide basis, and to avoid inconsistent standards from state to state, county to county and city to city. Edge believes that the County has appropriately applied the LCP and there are no substantial issues that would warrant a hearing on this appeal.

Sincerely,



Kevin J. Keillor, General Counsel

c. Frank Zotter, Mendocino County Counsel

Jim King, Esq.

Roy Willy

6 of 21



October 20, 2003

Randall Stemler
California Coastal Commission
710 E. Street, Suite 200
Eureka, CA 95501

Re: Commission Appeal No. A-1-MEN-03-052

Dear Mr. Stemler:

This letter supplements my letter to you dated October 7, 2003. Enclosed is a copy of William Hammett's response to Arthur Firstenberg's complaint to the California Board for Professional Engineers and Land Surveyors. Although the issue of compliance with FCC guidelines for RF emissions is within the exclusive jurisdiction of the FCC, and thus is not an appropriate ground for appeal to the Coastal Commission, I am providing this information to you in response to Mr. Firstenberg's allegation of fraud. This issue, like most if not all of the issues raised by the appellants in this matter, does not form the proper basis of an appeal to the Commission. I did not, however, want Mr. Firstenberg's attack on Mr. Hammett's credibility to go unanswered.

Sincerely,

Kevin J. Keillor, General Counsel

c. Frank Zotter, Mendocino County Counsel
Jim King, Esq.
Roy Willy

RECEIVED

OCT 21 2003

CALIFORNIA
COASTAL COMMISSION

7421

HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
RADIO AND TELEVISION

WILLIAM F. HAMMETT, P.E.
DALE E. ERICKSEN, P.E.
STANLEY SALEK, P.E.
ROBERT D. WELLER, P.E.
MARK D. NEUMANN, P.E.
ROBERT P. SMITH, JR.
RAJAT MATHUR

ROBERT L. HAMMETT, P.E.
1920-2002
EDWARD EDISON, P.E.

BY COURIER

October 10, 2003

Ms. Jacqueline Jenkins
Enforcement Analyst
Board for Professional Engineers and Land Surveyors
2535 Capitol Oaks Drive, Suite 300
Sacramento, California 95833-2926

COPY

Re: Case #2003-08-212

Dear Ms. Jenkins:

Thank you for the opportunity to respond to the allegations made by the complainant in this case, Mr. Arthur Firstenberg. In his efforts to delay or prevent the proposed Edge Wire base station construction, Mr. Firstenberg has attacked my credibility due to my involvement as an independent expert hired to evaluate the project for compliance with the prevailing standards limiting human exposure to RF energy.

By education, licensure, and experience, I am one of the most able practitioners in this field today. My firm is a named contributor to the development of the FCC's OET Bulletin No. 65, the authoritative document for establishing compliance with the FCC guidelines, and McGraw-Hill published in 1997 the book I authored on this very topic, Radio Frequency Radiation – Issues and Standards. As a routine part of my firm's practice, I prepare predictive studies of RF exposure conditions at or near radio transmitting facilities, as well as recommend mitigation measures, when necessary, and certify compliance, when warranted. My firm provides expert consultation to radio and TV stations, to cellular and PCS carriers, to landlords, and to cities and counties. As engineers, our role is to evaluate the RF power density levels against the prevailing standards, and the results do not depend on who has retained us. I like to remind people who would question our integrity that our computer does not know for whom the report will be written, and our meter does not know who holds it. We seek and report the objective truth of the matter, as best we understand it.

The complainant's basic allegation is that two reports I prepared for proposed base stations near Mendocino cannot both be correct, since their findings are not identical. Complete copies of the reports are attached to this letter, and it can be seen that they do not contradict one another. First, the two sites are not "across the street," as the complainant suggests. Figure 1 attached shows their approximate locations, over 2,000 feet apart, and the single direction of service from each site, toward the town of Mendocino.

e-mail: bhammett@h-e.com
US Mail: Box 280068 • San Francisco, California 94128
Delivery: 470 Third Street West • Sonoma, California 95476
Telephone: 707/996-5200 San Francisco • 707/996-5280 Facsimile • 202/396-5200 D.C.

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Ms. Jacqueline Jenkins, page 2
October 10, 2003

Second, each report is correct in and of itself. The situations being studied are not identical, so one would not expect identical results, in any case. Moreover, the two studies reflect different analysis techniques: measurements at the Edge site, and calculations at the US Cellular site. The complainant explicitly accepts the analysis for the latter site, while questioning only my use of measurements at the former. It is, however, an accepted principle in engineering that measurements are more accurate than predictive calculations, since all significant factors may not be accounted for in the calculations, and this is borne out by the specifics in this case.

My measurements were conducted in accordance with industry-accepted practices and with the normal care exercised by other professionals in this field. They were performed with the test antenna temporarily mounted at the actual position proposed and operated at a known power. The measurements of power density in nearby areas were taken with a Wandel & Goltermann EMR-300 Broadband Exposure Meter with Type 8 probe (Serial No. P-0036) under current calibration by the manufacturer. The measured peak values were scaled up from the single-channel power level measured to represent the four-channel operating power level proposed, and those results were evaluated against the prevailing standards. I have every expectation that the measurement results are repeatable, the hallmark of solid experimental work, and that the results fairly represent the actual operating conditions that would pertain, were the base station to be constructed as proposed.

"Moore" Consultant Report, dated July 28, 2003

Mr. Moore, who is not a Registered Professional Engineer, has performed very simple calculations using the Inverse Square Law, computing the distance to the FCC public limit for a person directly in front of the antenna and at $\pm 10^\circ$ and $\pm 20^\circ$ to the side. He states his assumption that "Ground is level to 200 feet from the antenna," while, of course, the Edge proposal is clear that the antenna is to be mounted at the top of a steep drop down to the Pacific Ocean. This means that Moore's far-field calculations, although correct mathematically, are of little relevance for the specific situation in question. Further, it is noted that he makes no mention whatsoever of either of my reports.

"Sage" Consultant Report, dated July 2003

Ms. Sage, who also is not a Registered Professional Engineer, references the results from Mr. Moore's study and asserts that "Spot measurements are an inadequate basis for a site application approval" and that "FCC OET Bulletin 65 computer modeling ... is specified for use by the FCC to estimate power density levels for wireless telecommunications sites." The latter assertion is not correct, as the FCC clearly acknowledges (see Figure 2) the propriety of measurements as a method for establishing compliance. Sage's first assertion is non-technical, appearing instead to deny the ability of the permitting jurisdiction to rely upon my statement that the Edge Wireless base station could comply with FCC guidelines, since I had used measurements to determine the distance at which the public limit would be exceeded. It is again noted that this consultant does not question the accuracy of my measurements or the validity of my conclusion, much less make any mention of fraudulent conduct.

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Ms. Jacqueline Jenkins, page 3
October 10, 2003

Finally, the complainant alleges that I have intended to "conceal non-compliance with FCC limits, putting the property owners, and any visitors they may have, and potentially other members of the public, at grave risk." The complainant and his consultants may not be aware of the Code of Professional Conduct to which I, as a Registered Professional Engineer, submit; that Code is intended "To protect and safeguard the health, safety, welfare, and property of the public." As a member of the National Society of Professional Engineers, I must adhere to that organization's Code of Ethics, the first Fundamental Canon of which states that, "Engineers, in the fulfillment of their professional duties, shall: 1. Hold paramount the safety, health and welfare of the public." I take these over-riding obligations seriously and would never knowingly take any action as an engineer that would jeopardize the public.

In summary, the complainant provides no support for his allegation that fraudulent conduct has occurred, and it is respectfully requested that this complaint be dismissed. Should amplifying information be sought on any aspect of this case, please do not hesitate to contact me again. Thank you for your attention to this matter.

Sincerely yours,



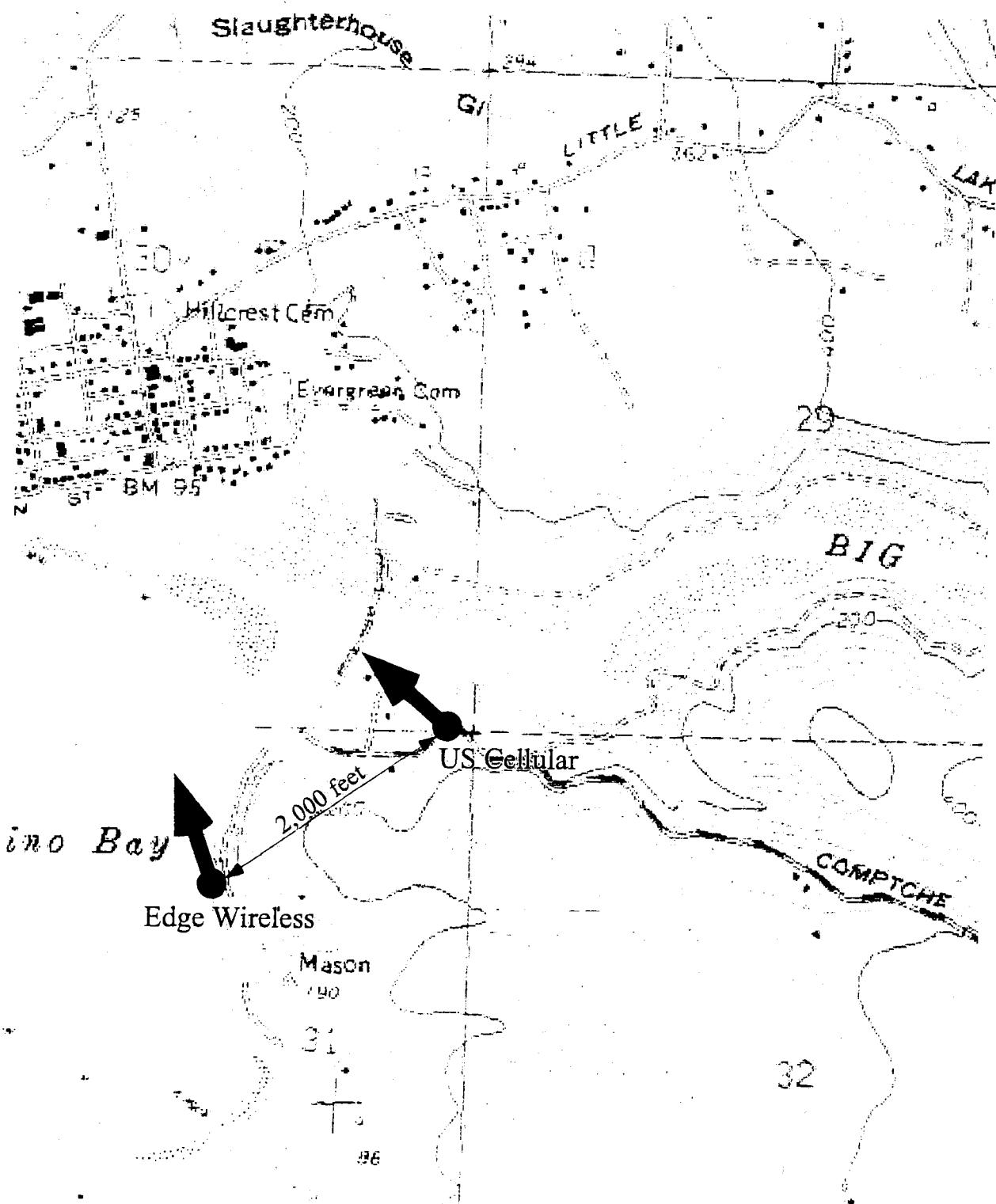
William F. Hammett

ms

Enclosures

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10 of 21

Approximate Locations of Proposed Base Stations
and Orientations of Proposed Antennas



1:24,000 USGS base map from topozone.com



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

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Regulatory Acceptance of Measurements

The Federal Communications Commission ("FCC") is the federal agency responsible for establishing guidelines limiting human exposure to radio frequency ("RF") energy and for enforcing compliance with those guidelines for radio services authorized by the FCC. To inform licensees and the public, the FCC Office of Engineering Technology released Bulletin No. 65 in August 1997, and that Bulletin is the definitive document for establishing compliance with the FCC guidelines.

At page 19 in the Bulletin, the FCC says,

Calculations *can* be made to predict RF field strength and power density levels around typical RF sources. For example, in the case of a single radiating antenna, a prediction for power density in the far-field of the antenna can be made by use of the general Equations These equations are generally accurate in the far-field of an antenna but will over-predict power density in the near field [close to antenna], where they could be used for making a "worst case" or conservative prediction.

Emphasis was added above to show that calculations are not mandatory. In fact, the Bulletin (at page 44) states that "Measurements may also be desired for cases in which predictions are slightly greater or slightly less than the threshold for excessive exposure" Precisely such a case exists whenever one is determining the distance to the exposure limit.

When measurements are to be made, the Bulletin 65 (at page 44) provides recommendations for measurement techniques to be utilized in determining compliance with FCC exposure guidelines, stating,

Two excellent references in this area have been published by the IEEE and by the NCRP. The ANSI/IEEE document (ANSI/IEEE C95.3-1992) is entitled, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields - RF and Microwave," ... and the NCRP publication (NCRP Report No. 119) is entitled, "A Practical Guide to the Determination of Human Exposure to Radiofrequency Fields" Both of these documents contain practical guidelines and information for performing field measurements in broadcast and other environments, and the FCC strongly encourages their use.

Of note, Bulletin No. 65 also provides for the use of spatial averaging of field strength measurements over an area approximating the human body for determining compliance with exposure guidelines. Spatial averaging is generally accomplished by measurement only and has no practical computational analog.

Lastly, the FCC has continued to support, both in review and in conducting its own field work, that measurements shall be used as the final arbiter in determining compliance with RF exposure guidelines.

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**Edge Wireless • Proposed Base Station (Site No. CA-122)
9950 Road 500B • Mendocino, California**

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Edge Wireless, a personal wireless telecommunications carrier, to evaluate the proposed PCS base station (Site No. CA-122) located at 9950 Road 500B in Mendocino, California, for compliance with appropriate guidelines limiting exposure to radio frequency electromagnetic fields.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. In Docket 93-62, effective October 15, 1997, the FCC adopted the human exposure limits for field strength and power density recommended in Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent Institute of Electrical and Electronics Engineers ("IEEE") Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes nearly identical exposure limits. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

The most restrictive thresholds for exposures of unlimited duration to radio frequency ("RF") energy for several personal wireless services are as follows:

Personal Wireless Service	Approx. Frequency	Occupational Limit	Public Limit
Personal Communication ("PCS")	1,950 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Cellular Telephone	870	2.90	0.58
Specialized Mobile Radio	855--	2.85	0.57
[most restrictive frequency range]	30-300	1.00	0.20

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called "radios" or "cabinets") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units. The transceivers are often located at ground level and are connected to the antennas by coaxial cables about 1 inch thick. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the

**Edge Wireless • Proposed Base Station (Site No. CA-122)
9950 Road 500B • Mendocino, California**

horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that the power level from an energy source decreases with the square of the distance from it (the "inverse square law"). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by Edge Wireless, it is proposed to mount one EMS Model RR6518-00DP directional panel antenna within a new fiberglass cylinder below the deck of the dome-shaped house located at 9950 Road 500B in Mendocino. The antenna would be mounted at an effective height of about 4 feet above ground and would be oriented towards 340°T. The maximum effective radiated power in any direction would be 800 watts, representing four channels operating simultaneously at 200 watts each. Presently located on the property is an antenna for use in amateur ("ham") operations.

Measurements conducted at the site by the undersigned engineer, on November 22, 2002, with a temporary antenna installation revealed the power density level to be below the public limit for distances more than 2 $\frac{1}{2}$ feet in front of the proposed antenna. Measurements were also made of the amateur operation, and levels in all publicly accessible areas complied with the FCC standard. The measurement equipment used was a Wandel & Goltermann Type EMR-300 Radiation Meter (Serial No. P-0008) with a Type 8 Isotropic Electric Field Probe (Serial No. P-0036). Both meter and probe were under current calibration by the manufacturer.

Recommended Mitigation Measures

In order to comply with the FCC public exposure guidelines, it is recommended that access to the area within 2 $\frac{1}{2}$ feet of the antenna be precluded for all unauthorized persons.

To prevent occupational exposures in excess of the FCC guidelines, no access within 1 foot directly in front of the antenna itself should be allowed while the base station is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting

**Edge Wireless • Proposed Base Station (Site No. CA-122)
9950 Road 500B • Mendocino, California**

explanatory warning signs* at the antenna, such that the signs would be readily visible from any angle of approach to persons who might need to work within that distance, would be sufficient to meet FCC-adopted guidelines.

Conclusion

Based on the information and analysis above, it is the undersigned's professional opinion that the base station proposed by Edge Wireless at 9950 Road 500B in Mendocino, California, can comply with the prevailing standards for limiting human exposure to radio frequency energy and, therefore, need not for this reason cause a significant impact on the environment. This finding is consistent with the measurements of actual exposure conditions taken of other operating base stations.

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2005. This work has been carried out by him or under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett, P.E.

November 27, 2002

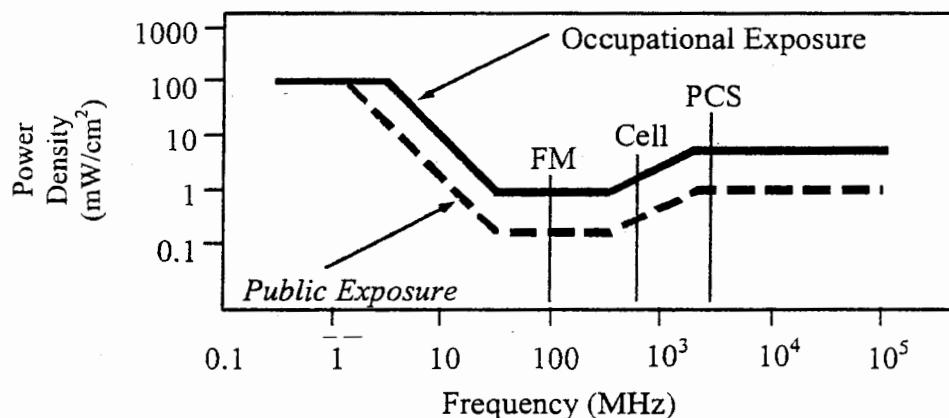
* Warning signs should comply with ANSI C95.2 color, symbol, and content conventions. In addition, contact information should be provided (e.g., a telephone number) to arrange for access to restricted areas. The selection of language(s) is not an engineering matter, and guidance from the landlord, local zoning or health authority, or appropriate professionals may be required.

FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements, which are nearly identical to the more recent Institute of Electrical and Electronics Engineers Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

<u>Frequency</u>	<u>Electromagnetic Fields (f is frequency of emission in MHz)</u>					
Applicable Range (MHz)	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm ²)	
0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 – 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f ²	<i>180/f²</i>
30 – 300	61.4	27.5	0.163	0.0729	1.0	0.2
300 – 1,500	3.54√f	<i>1.59√f</i>	√f/106	<i>√f/238</i>	f/300	<i>f/1500</i>
1,500 – 100,000	137	61.4	0.364	0.163	5.0	1.0



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.

**US Cellular • Proposed Base Station (Site No. 568367)
44850 Comptche Ukiah Road • Mendocino, California**

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of US Cellular, a cellular telecommunications carrier, to evaluate the base station (Site No. 568367) proposed to be located at 44850 Comptche Ukiah Road in Mendocino, California, for compliance with appropriate guidelines limiting human exposure to radio frequency electromagnetic fields.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. In Docket 93-62, effective October 15, 1997, the FCC adopted the human exposure limits for field strength and power density recommended in Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent Institute of Electrical and Electronics Engineers ("IEEE") Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes nearly identical exposure limits. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

The most restrictive thresholds for exposures of unlimited duration to radio frequency ("RF") energy for several personal wireless services are as follows:

Personal Wireless Service	Approx. Frequency	Occupational Limit	Public Limit
Personal Communication ("PCS")	1,950 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Cellular Telephone	870	2.90	0.58
Specialized Mobile Radio	855	2.85	0.57
[most restrictive frequency range]	30-300	1.00	0.20

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called "radios" or "cabinets") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units. The transceivers are often located at ground level and are connected to the antennas by coaxial cables about 1 inch thick. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the

**US Cellular • Proposed Base Station (Site No. 568367)
44850 Comptche Ukiah Road • Mendocino, California**

horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodology, which reflects the fact that the power level from an energy source decreases with the square of the distance from the source (the "inverse square law"). The computerized technique for modeling particular sites is also described, and the conservative nature of this method for evaluating expected exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by US Cellular, including drawings by J. E. Schuricht & Associates, dated April 14, 2002, it is proposed to mount up to four Antel Model BXA-80063-4 directional panel antennas within existing chimneys above the roof of the two-story lodge building located at 44850 Comptche Ukiah Road in Mendocino. The antennas would be mounted at an effective height of about 20^{1/2} feet above ground, 10 feet above the second floor balcony, and would be oriented towards 310°T. The maximum effective radiated power in any direction would be 200 watts, representing one RF channel. There are reported no other wireless telecommunications base stations installed nearby.

Study Results

The maximum ambient RF level anywhere at ground level due to the proposed US Cellular operation is calculated to be 0.0012 mW/cm², which is 0.76% of the applicable public exposure limit. The maximum calculated level on the second floor balcony of the subject building is 12% of the public exposure limit. It should be noted that these results include several "worst-case" assumptions and therefore are expected to overstate actual power density levels.

Recommended Mitigation Measures

Since they are to be mounted within a chimney near the edge of the building, the US Cellular antennas are not accessible to the general public, and so no mitigation measures are necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures in excess of the FCC guidelines, no access within 5 feet in front of the antennas themselves, such as might occur during building maintenance activities, should be allowed while the site is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting explanatory

**US Cellular • Proposed Base Station (Site No. 568367)
44850 Comptche Ukiah Road • Mendocino, California**

warning signs* on the face of each chimney housing the antennas, such that the signs would be readily visible from any angle of approach to persons who might need to work within that distance, would be sufficient to meet FCC-adopted guidelines.

Conclusion

Based on the information and analysis above, it is the undersigned's professional opinion that the base station proposed by US Cellular at 44850 Comptche Ukiah Road in Mendocino, California, can comply with the prevailing standards for limiting human exposure to radio frequency energy and, therefore, need not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations.

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2005. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett, P.E.

June 26, 2003

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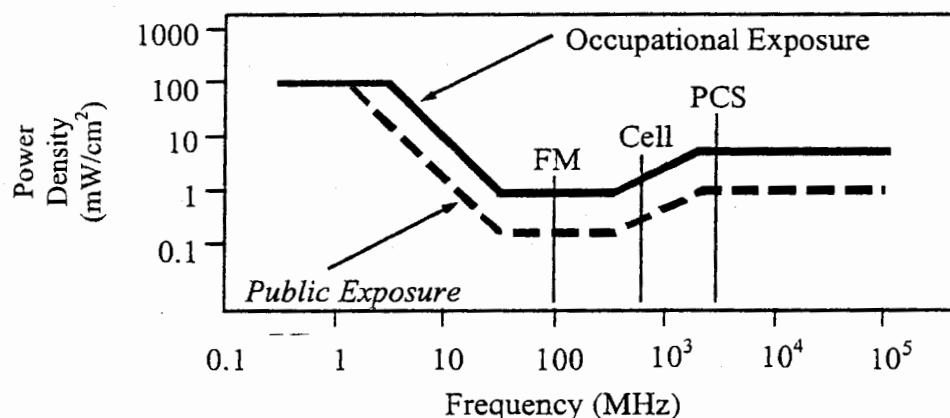
* Warning signs should comply with ANSI C95.2 color, symbol, and content conventions. In addition, contact information should be provided (e.g., a telephone number) to arrange for access to restricted areas. The selection of language(s) is not an engineering matter, and guidance from the landlord, local zoning or health authority, or appropriate professionals may be required.

FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements, which are nearly identical to the more recent Institute of Electrical and Electronics Engineers Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

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0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 – 30	<i>1842/f</i>	<i>823.8/f</i>	<i>4.89/f</i>	<i>2.19/f</i>	<i>900/f²</i>	<i>180/f²</i>
30 – 300	61.4	27.5	0.163	0.0729	1.0	0.2
300 – 1,500	<i>3.54\sqrt{f}</i>	<i>1.59\sqrt{f}</i>	<i>\sqrt{f}/106</i>	<i>\sqrt{f}/238</i>	<i>f/300</i>	<i>f/1500</i>
1,500 – 100,000	137	61.4	0.364	0.163	5.0	1.0



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.

RFR.CALC™ Calculation Methodology Assessment by Calculation of Compliance with Human Exposure Limitations

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements, which are nearly identical to the more recent Institute of Electrical and Electronics Engineers Standard C95.1-1999, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits.

Near Field. Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications cell sites. The near field zone is the distance from an antenna before which the manufacturer's published, far field antenna patterns have formed; the near field is assumed to be in effect for increasing D until three conditions have been met:

$$1) D > \frac{2h^2}{\lambda} \quad 2) D > 5h \quad 3) D > 1.6\lambda$$

where h = aperture height of the antenna, in meters, and
 λ = wavelength of the transmitted signal, in meters.

The FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives this formula for calculating power density in the near field zone about an individual RF source:

$$\text{power density } S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}, \text{ in mW/cm}^2,$$

where θ_{BW} = half-power beamwidth of antenna, in degrees, and
 P_{net} = net power input to the antenna, in watts.

The factor of 0.1 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates the distances to the FCC public and occupational limits.

Far Field. OET-65 gives this formula for calculating power density in the far field of an individual RF source:

$$\text{power density } S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}, \text{ in mW/cm}^2,$$

where ERP = total ERP (all polarizations), in kilowatts,
 RFF = relative field factor at the direction to the actual point of calculation, and
 D = distance from the center of radiation to the point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 ($1.6 \times 1.6 = 2.56$). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of uneven terrain at the site, to obtain more accurate projections.

