

# LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

August 17, 2012

County of Santa Barbara  
Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101

*By hand delivery and by email to  
[sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)*

RE: Appeal of Montecito Planning Commission's Approval of 12CUP-00000-00007 - Verizon Wireless Telecommunications Facility Relocation – 512 Santa Angela Lane

Dear Chair Farr and Members of the Board,

This office represents Appellants Mary E. Goolsby and Martha Goolsby Kay in this matter (“Appellants”). Appellants appealed the Planning Commission’s approval of a Conditional Use Permit (“CUP”) allowing Verizon Wireless to install and operate a “macro-cell site” consisting of a nine-panel cellular antenna facility with a detached structure housing cooling equipment at the Montecito Switch Station building on the corner of Santa Angela Lane and East Valley Road (“the Project”).

Appellants and other area residents believe that the expansion of industrial uses on the Switch Station building and new uses to be located within the zoning setback areas is inconsistent with the sensitive land uses surrounding the Project site including the El Montecito Presbyterian Church and ELMO preschool, as well as residential uses.

Prior to approving a conditional use such as the proposed project, the County is required to find that the “proposed project will not be detrimental to the comfort, convenience, general welfare, health and safety of the neighborhood and will be compatible with the surrounding area.” (MLUDC § 35.472.060.E.1.e). This finding cannot be made. El Montecito Preschool is a long established community treasure, serving at any one time over 60 children, ranging in age from 2 ½ to 5 years. Parents of these preschool children have indicated that if the proposed CUP is granted, that they will withdraw their children from the school. Inducing the potential closure of ELMO school is one reason why approving this conditional use would have a detrimental effect on the general welfare of the neighborhood. .

We recognize that you may not prohibit telecommunications facilities; your Board does have power to insist that their siting is appropriate, and meets the needs of the telecommunication carrier in “the least intrusive means” (MLUDC § 35.444.010.G). This location, across the street from a highly sensitive user, is clearly not the “least intrusive means”, and why we urge the Board to grant our appeal and direct Verizon to find a more suitable site.

As part of Verizon's application for this CUP, they stated that they conducted a survey of other possible sites and that none were available. We have recently learned that this survey of possible sites was extremely limited and conducted over five years ago.

We have been encouraged in the past 10 days that Verizon is listening to the community and appears willing to revisit the question of more appropriate alternative sites. We request that your board grant our appeal, based on the inability to make the required findings of neighborhood compatibility, ***or that you continue the hearing for two to three months to allow Verizon to work with the community to find an appropriate location*** which meets the definition of "least intrusive means," and does not require modifications of the reasonable, standard setbacks and other provisions of the zoning ordinance to be implemented.

In the event that the Board will not continue the hearing, the following letter details the reasons why the Board should grant the appeal and not approve Verizon's CUP at this time. .

1. The Project Is Not Exempt from CEQA

The Findings approved by the Planning Commission (and those proposed for approval by the Board) include that the Project is exempt from environmental review pursuant to CEQA Guidelines sections 15301 and 15303. (Finding 1.1.1). CEQA "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal. App. 4th 896, 904-905). Here, environmental review is warranted for several reasons, discussed below.

a. The Project Description is Inadequate.

For an accurate assessment of a project's potential to cause significant environmental impacts, it is essential that the "whole of the action" which has the potential to impact the environment is fully described (*see* CEQA Guidelines § 15378 (a)). "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 192-193).

The project description contained in the Staff Report, and used as the basis for the conclusion that no environmental review is warranted, does not describe the whole of the project. Specifically, Condition #10(c) allows for the "addition/replacement of equipment which has the potential to increase RF emission at any public place beyond that estimated in the initial application, but within the scope of the project description" to be permitted administratively - up

to the maximum of 80% of FCC rules [per condition 10(b)], with no notice or additional public review. The project description which only describes the facility as to

include nine panel antennas, three antennas for three sectors at 120, 220 and 310 degrees (from north). The antennas would be operating in the cellular, PCS and LTE bandwidths. The proposed facility would cover most of Montecito.

However, no specific equipment is specified. There is no guarantee that the very specific equipment tested by Hammett & Edison to generate the RF report is that which will be installed or operated for the life of the CUP. Nor does condition #10 allow the County any future enforcement of project conditions that will run with the life of the project. As we have already seen with the existing 47 year old Verizon CUP, much has changed in the telecommunications industry and changes are being made every day. The project description must be more specific to protect the public from future changes.

b. Claimed Exemptions Do Not Apply

“Exemption categories are not to be expanded beyond the reasonable scope of their statutory language.” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal. 4th 105, 125). In determining whether a categorical exemption applies to a project, “a term that does not have a clearly established meaning . . . should not be so broadly interpreted so to include a class of businesses that will not normally satisfy the statutory requirements of a categorical exemption” even if the project “might otherwise come within the vague concept” contained in the categorical exemption. (*Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4<sup>th</sup> 1165, 1192-1193).

The two exemption classes that the Planning Commission applied to the Project include the “Class 1” exemption for “existing facilities”

which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, ***involving negligible or no expansion of use*** beyond that existing at the time of the lead agency’s determination.

(CEQA Guidelines § 15301). The Project involves a substantial expansion of use beyond the existing use of the Santa Angela facility – namely the new major macrocell installation producing over 4,900 watts of effective radiated power - and as such the Class I exemption is not available (*See Mountain Lion*, 16 Cal. 4th at 125, *Azusa*, 52 Cal. App. 4<sup>th</sup> at 1192-1193). Further illustrating the inapplicability of this exemption, none of the examples enumerated in this Guideline section bears any resemblance to the Verizon Project, which includes constructing a new nine-panel cellular antenna facility that will cover most of Montecito adjacent to a residential neighborhood.

The second claimed exemption is the “Class 3” exemption for the “new construction or conversion of small structures, which

consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

(CEQA Guidelines § 15303). The nine-panel cellular antenna facility, designed to cover most of Montecito, is not a small facility, and none of the examples of this exemption class are analogous to the Project. This site is one of three sites for the location of macrocell antennae in Montecito, and the project proposes to triple the number of antennae on the site, from three to twelve. Six of these antenna will be located within the zoning setback area. A second equipment building will be installed within the zoning setback area, doubling the size and number of such structures, and requiring a zoning modification. Accordingly, the Class 3 exemption does not apply. (*See Mountain Lion*, 16 Cal. 4th at 125, *Azusa*, 52 Cal. App. 4th at 1192-1193).

c. Exceptions to the Exemptions Apply

Categorical exemptions do not apply if the project is located in a particularly sensitive environment, results in significant cumulative impacts, or there is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances. (CEQA Guidelines § 15300.2). Each of these exceptions to the categorical exemptions apply here, and accordingly the County is obligated to perform CEQA review for the Project.

First, the Project is located in a particularly sensitive environment. Specifically, surrounding the Project site is a preschool, church, and residential neighborhood, each recognized as “noise-sensitive land uses” (MLUDC Definitions – N.1; *see also* Comprehensive Plan Noise Element Policy 2, p. 64). Second, the Project results in potentially significant cumulative impacts from the combined effect of multiple carriers collocating their cellular antennae and support structures at the Santa Angela site. The new facility would join an existing Cingular facility already operating from the Switch Station rooftop. Included in the CUP is a condition requiring that Verizon “avail its facility and site to other communication carriers and, in good faith, accommodate all reasonable requests for collocation in the future” (Condition 12, Tel-10 Collocation). With the impending closure of the QAD facility, it is reasonably foreseeable that AT&T and others will seek to move their facilities to the Santa Angela building in the near future. The statement in the May 2, 2012 Hammett & Edison report (p. 3) that “the maximum calculated cumulative level at ground for the simultaneous operation of both carriers is projected to be 9.5% of public exposure limit, since the maximum levels from the two carriers do not coincide”. From this statement it appears that in fact the 9.5% exposure limit is not based on the worst-case scenario resulting from the simultaneous operations of the

Cingular and Verizon facilities. Verizon has not adequately explained why it is the case that the maximum levels of both carriers do not coincide, and moreover even assuming it is reasonable to assume that the maximum levels do not coincide, there are numerous additional questions regarding the adequacy of the data provided by Verizon (*see* Cindy Sage letter 6/12/12). Mr. Kramer does not this issue in his August 10, 2012 letter. Moreover, the Cingular and Verizon facilities would operate under separate CUPs, undermining the ability of the County to enforce the levels in a cumulative fashion. This problem would only be compounded when additional carriers collocate at the Santa Angela facility pursuant to Condition 12.

Third, unusual circumstances exist where some feature of the project distinguishes it from the typical circumstances of typical projects in the exempt class that creates a reasonable possibility of significant environmental effects. (*San Lorenzo*, 139 Cal. App. 4th at 1394; *see Azusa*, 52 Cal. App. 4th 1165). Here, both the scope and nature of the Project (4,910 watt cellular facility), and its proximity to sensitive land uses, distinguish the Project from typical projects in the exemption classes (note, discussed above, the Project is not even remotely analogous to any listed example in the two claimed exemption classes (*see* CEQA Guidelines §§ 15301, 15303)). Additionally, the land uses and commercial activities in buildings surrounding and near the site, such as day care and pre school centers, salons and health spas, spiritual and religious sanctuaries, gourmet restaurants, and luxury goods shopping require the image of a safe and pristine setting for success. Regardless of the actual health effects, the perception of an area bombarded by high-energy sources interferes with the public's image of the upper village and the viability of some of its businesses. Thus, in this case there is a reasonable possibility that the Project will have a significant negative effect on the environment due to unusual circumstances.

There are several potential significant impacts resulting from the unusual circumstances applicable to this Project. First, the Project conflicts with minimum setback requirements in the MLUDC, established in part to reduce environmental impacts related to land use conflicts. Specifically, the MLUDC requires that structures be set back a minimum of 50' from the centerline of Santa Angela (MLUDC §§ 35.444.010.D.1.a; 35.423.050, Table 2-10), however the equipment shelter is located a mere 35' from the centerline of Santa Angela. The Planning Commission Staff Report justified this reduced setback for the equipment shelter stating that the 1965 CUP modified the side-setback, however the 1965 modification should not apply to entirely new structures such as the equipment shelter. The Board Letter prepared for the August 21<sup>st</sup> Board Hearing on our appeal accepts that a modification is required to adjust the setbacks for the Project notwithstanding the 1965 CUP, acknowledging that the Project as proposed does not comply with applicable setbacks.<sup>1</sup> Significantly, the Staff Report distinguishes the Switch Station CUP from the instant Project, stating no modification of the 1965 CUP is required, admitting that the earlier CUPs did not contemplate or authorize the uses or approvals associated

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<sup>1</sup> The findings required to approve the modification are not supported by substantial evidence in the record, and accordingly as discussed in section 4, below, the Board may not approve the modification,

with the Verizon Project, which does require a modification. Staff Report at page 6. The violation of existing setbacks relates to the possibility of significant environmental impacts because conflicts with adopted plans and policies designed at least in part to protect the environment constitutes substantial evidence supporting a fair argument of a potentially significant land use impact. (*Pocket Protectors*, 124 Cal.App.4th at 930; CEQA Guidelines, App. G, § IX (b)).

Setbacks, the minimum required distance that a structure must be located from any property line or street center line, among other things, serve to ensure compatibility of different uses and avoid nuisances (MLUDC Definitions, "Setback"; *see* MLUDC § 35.423.070.C)). Locating structures too close together, particularly where they involve different uses (e.g. residential and industrial), can cause substantial land use impacts.

The location of the Verizon equipment shelter within the setback is significant, because the equipment shelter would contain two HVAC air-conditioning units to cool the cellular equipment, and would necessitate an emergency generator to maintain power to the facility during power failures. There are no restrictions on the use or potential noise levels associated with the HVAC air-conditioning units or emergency generator (*see* Conditions of Approval).

The new Project emergency generator noise impacts will add to an already noisy environment. Verizon has a backup generator for the landline switching equipment that is extremely loud and operated remotely. Accounts from neighbors describe a recent incident in which this extremely noisy emergency generator associated with existing equipment on the Verizon site ran continuously for three full days before they could even reach anyone at Verizon to respond, rendering the quiet residential neighborhood into an industrial site with 24/7 noises. These uncontrolled noise sources, when added to Project noise, creates an excessively loud environment preventing quiet enjoyment of nearby residences and causing significant impacts to the health, safety, and welfare of surrounding neighbors (*see Pocket Protectors*, 124 Cal. App. 4th at 928 ("[r]elevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument."))

An additional potentially significant impact resulting from the Project concerns its visibility from the alleyway to the east. The PC Staff Report unequivocally states that the equipment shelter is not visible to the public (*see e.g.* p. 16), however as the attached photo makes clear, the existing equipment shelter *is visible* from the adjacent alleyway traversed by the public including to enter and exit Montecito Village shopping center, and the proposed equipment shelter would similarly be visible (*see* Attachment 1).<sup>2</sup> Condition 12 (Tel-10

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<sup>2</sup> To the extent the County has discounted views from this alleyway on the ground that it is not a public viewing place, the image in Attachment 2 makes clear that the alleyway is open to the public and not marked private or restricted in any way, but rather is analogous to any other public road.

Collocation) requires that Verizon accommodate future requests to collocate additional cellular facilities at the Project site. The existing Cingular facility currently includes an equipment shelter within the 50' setback that includes equipment similar to that proposed within the new Verizon equipment shelter. The visual impacts, as well as noise impacts and neighborhood incompatibility associated with these two equipment shelters will be compounded if additional equipment shelters are constructed onsite, constituting a significant cumulative impact.

2. The Project Fails to Comply with Applicable Code Requirements

a. MLUDC § 35.444.010.D.1.a

MLUDC § 35.444.010.D.1.a requires that telecommunication facilities comply with the setback requirements of the zone in which the facility is located. Pursuant to this code section the equipment shelter must comply with setback requirements unless a modification to the setback is granted (*see Id.*, subd. 3). The equipment shelter is within the setback, located 35' from the centerline of Santa Angela as opposed to the 50' required by the MLUDC (§35.423.050, Table 2-10). Staff is recommending that your Board approve a modification, however the basis for this is that there is an existing encroachment on the setback from another CUP. This only exacerbates the problem for neighbors who are already inconvenienced by the existing CUP, particularly from the noise associated with the support facilities and emergency generator. We respectfully disagree with staff's analysis that reducing the setbacks for the equipment shed or the equipment located on the roof is appropriate. The fact that the setback was modified to accommodate existing structures on the property does not mean those modified setbacks automatically apply to new structures authorized pursuant a new CUP. .

With respect to the antennas, the MLUDC provides that "Antennas may only be located within the setback area without approval of a modification if it is installed "on an existing, operational, public utility pole, or similar existing support structure." (*Id.*, subd. 1). The Switch Station building however cannot reasonably be described as an "existing operational utility pole or similar existing support structure" and accordingly must comply with applicable setbacks unless a modification is sought. The Verizon antennas encroach into both the 50' setback from Santa Angela Lane and into the 10' setback from the eastern property boundary. Per the MLUDC, all equipment must be located outside the setback.

b. MLUDC § 35.444.020.H.3

The equipment shelter that would be constructed in the Switch Station parking lot to accommodate the HVAC units is a "prefab" rectangular building that resembles a storage pod or temporary building that is out of character with the aesthetic and architectural landscape of Montecito. The Director relied on the assumption that the equipment shelter was not visible to the public to avoid design review otherwise required by MLUDC § 35.444.020.H.3 (*see PC Staff Report § 6.5.*, p. 16, "the proposed equipment shelter would be located on the west side of the

property where it would be screened from public view by the existing perimeter wall and mature vegetation. Therefore the proposed project was determined by the Director to be exempt from Design Review under MLUDC Section 35.472.070.C.6.”) However the existing equipment shelter is visible from the adjacent alleyway traversed by the public including to enter and exit Montecito Village shopping center, and the proposed equipment shelter would similarly be visible (*see* Attachment 1). It was error for the Director to have exempted the Project from design review on the incorrect premise of invisibility, and the Project should be submitted to the Montecito Board of Architectural Review for review and approval.

c. MLUDC § 35.444.010.D.2.d

Where support facilities, such as the equipment shelter, are “visible from public viewing areas (e.g., public road, trails, recreational areas)” they must be located underground unless infeasible. (MLUDC § 35.444.010.D.2.d). Discussed above, the equipment shelter will be visible from the adjacent alley to the east (*see* Attachment 1). The alleyway, depicted in Attachment 2, is open to the public and not marked private or restricted in any way, and is analogous to any other public road for purposes of MLUDC § 35.444.010.D.2.d. Accordingly, the Board should direct the Applicant to undertake an evaluation of the feasibility of undergrounding the equipment shelter. Undergrounding the equipment shelter in this case not only would address visibility concerns, but also would reduce the potentially significant noise impacts from the HVAC equipment.

3. The Project is Inconsistent with the Montecito Community Plan

The Montecito Community Plan (“MCP”) endeavors to preserve Montecito’s semi-rural character and quality life, which is reflected by limited commercial and infrastructure development, among other things (*see* MCP 26). One of the key goals and objectives articulated in the MCP is to “Maintain and preserve the residential, low intensity, semi-rural character of Montecito (Goal G-M-1, p. 45). Goal LU-M-1 further provides “in order to protect the semi-rural quality of life, encourage excellence in architectural and landscape design. Promote area-wide and neighborhood compatibility . . .” (p. 46). Further Goal LUG-M-1 provides that “infrastructures and services planning shall respect the need to preserve the community’s existing quality life and community character” (p. 49). Locating a “macro-cell” wireless antenna facility adjacent to a church, preschool, residences, and other sensitive land uses, and installing a ‘prefab’ equipment shelter unit visible from the adjacent public accessway, clearly does not comport with these goals and their implementing policies contained in the MCP.

Moreover, Policy LU-M-2.3 prioritizes the undergrounding of utilities along East Valley Road to preserve community character (*see* MCP p. 48). This policy, together with MLUDC § 35.444.010.D.2.d, dictate that the equipment shelter should be located underground, or at least that Verizon should demonstrate whether undergrounding of the equipment shelter is feasible (*see* above).

4. The County cannot make Findings of Approval for the CUP

Pursuant to MLUDC § 35.472.060.E.1.e, the Board cannot approve the CUP for the Project unless it finds that the “proposed project will not be detrimental to the comfort, convenience, general welfare, health and safety of the neighborhood and will be compatible with the surrounding area.” As outlined earlier in this letter, there is a real potential that the perceived threat associated with the installation of a major cellular facility at the Santa Angela/East Valley Road intersection will induce parents of the ELMO preschool to withdraw their children from that facility, threatening its viability as a valued community business and resource, this is one major reason that the Montecito Association is supporting this appeal. Inducing the potential closure of ELMO school, as well as other area businesses, is detrimental to the general welfare of the neighborhood such that required findings cannot be made.

MLUDC § 35.444.010.G. requires that the Board find the “applicant has demonstrated that the proposed facility design and location is the least intrusive means feasible for the carrier proposing the facility to provide the needed coverage.” This location, across the street from a highly sensitive user, is clearly not the “least intrusive means” of locating the facility to provide the needed coverage. Discussed in section 6, below, Verizon has not conducted an exhaustive search of potential alternative sites, and apparently has not exhausted its opportunities for extending its lease at the current QAD site. We’ve heard that in the last few days that the owner of QAD facility would be willing to discuss an extension of the existing Verizon lease to accommodate the search for an alternative location. (See Attachment 4, Bob Hazard Editorial). We urge the Board to continue this matter to allow this and other potentially fruitful communications to occur, which would potentially moot this appeal.

To modify the setbacks that apply to this Project, the Board must find, pursuant to MLUDC § 35.472.060.I.1, that the modification is justified and consistent with the Comprehensive Plan and the intent of other applicable regulations and guidelines. Modifying the side setback from Santa Angela from 50’ to 35’ represents more than a 20% reduction in the setback, and hence is contrary to MLUDC § 35.472.120.B.3.a which fixes a maximum setback reduction of 20 percent. A 20 percent reduction in the setback equates to a 40’ setback, 5’ more than the requested setback of 35’. Accordingly the Board cannot find that the modification is consistent with other applicable regulations and guidelines.

5. Project Conditions are Inadequate

Project conditions must be expanded to address several Project impacts. As noted above, the building is a non-conforming industrial facility located on residentially zoned land. The building is non-conforming as to setbacks, and the Project involves adding six new antennae in the setback on top of the building, and a new equipment building in the setback of the northerly lot. The County can and should require this expansion of use to comply with all applicable

requirements of the zone district, including the side setbacks (50' from the centerline of Santa Angela on the west side of the building, and 10' from the property line on the east side). The enforcement of existing applicable code with fully within the County's authority and jurisdiction as it does not prohibit use of the site or unreasonably discriminate among providers. The 2002 Cingular facility involves a small fraction of the number of antennas proposed by Verizon, and much lower visual profile.

Similarly, the equipment shelter should be undergrounded, in accordance with MPC and County policy, and moved outside the setbacks. As proposed, the equipment shelter is visible from the east, where a public alley and public parking area is screened only by a chain link fence.

Condition #5 allows that in the event of a power failure, a generator may be used on the site to provide back-up power. However, the condition is silent on any restrictions on noise generated by the use of a generator. As noted above, the neighborhood has recently been subjected to three days of loud generator noise. This condition should be modified to restrict the noise allowed by the generator. The section allowing for the monthly "exercise" of the generator for up to 30 minutes should be eliminated since the equipment will be brought to the site on an as-needed basis and does not need to be exercised on this site. Maximum noise levels, the vintage and ratings of allowable equipment, and model numbers should be specified to ensure both generators and HVAC equipment will meet applicable standards and be as low emission (noise and air pollutant) as feasible.

Appellant offers a number of other clean up modifications to conditions in Attachment 4 hereto. Conditions for modeling and monitoring RF emissions should be strengthened so the County may independently verify that emissions are as projected and remain at or below the projected "worst case" levels as predicted by the Applicant's consultants. Monitoring should occur without notice and during normal operating conditions, since operators can remotely change antenna tilt and power to mask actual emissions.

## 6. Alternative Sites

The search for a suitable alternative site has not been exhaustive or sufficient. Montecito needs a macro-cell antenna site that is not in the midst of population centers and can accommodate anticipated co-location requests. AT&T will likely expand its facilities at the Santa Angela site when the QAD site is shuttered, but there is no application pending. Other wireless carriers have expressed interest in participating in a macro-cell site in the Project vicinity. Santa Angela is not an appropriate site for all this activity and an alternative site needs to be identified. We have been encouraged in the past 10 days that Verizon is listening to the community and appears willing to revisit the question of more appropriate alternative sites. We request that your board grant our appeal, based on the inability to make the required findings of neighborhood compatibility, or that you continue the hearing for two to three months to allow Verizon to work with the community to find an appropriate location which meets the definition

of “least intrusive means,” and does not require modifications of the reasonable, standard setbacks and other provisions of the zoning ordinance to be implemented.

The Board should consider directing Verizon to use a temporary, trailered facility at an appropriate location that does not impact ELMO to meet immediate needs if the QAD lease cannot be extended while an alternative site is located and permitted.

7. Conclusion

For the reasons stated above, and the additional reasons stated the Appeal letter filed on June 1, 2012, we urge you to grant our appeal and deny 12CUP-00000-00007, and direct Verizon to work collaboratively with County staff and the community in finding a more appropriate alternative site, or at the very least impose additional conditions on the Project to move the equipment shelter and antennas out of the MLUDC mandated setbacks, submit the equipment shelter design to MBAR for review and approval, and place enforceable limits on noise from the HVAC units and emergency back-up generator to make the facility more compatible with the surrounding community.

Sincerely,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo  
Ana Citrin

For Martha Goolsby Kay and Mary E. Goolsby

Attachment 1: Photo of Project Site from Alleyway to the East

Attachment 2: Google earth street view of alleyway entrance

Attachment 3: Montecito Journal, Bob Hazard Editorial

Attachment 4: Appellant's Revised Conditions



View of Switch Station parking lot with existing Cingular equipment shelter from alleyway to the east.



Google earth





Mr. Hazard is an Associate Editor of this paper and a former president of Birnam Wood Golf Club

## The Proposed Verizon Antennas Should Be Moved

Verizon Wireless is asking the County Board of Supervisors (BOS) to approve the installation of nine Verizon wireless panel antennas on the roof of a Verizon switching station located at 512 Santa Angela Lane, just off East Valley Road, as a replacement site for the expiring lease on a wireless antenna located on the QAD campus above Ortega Ridge. The new panel antennas will be mounted behind a parapet wall alongside an existing Cingular Wireless antenna, across the street from El Montecito Early School, where some 70 children aged 2½ through pre-kindergarten spend their days with ten teachers. *Once approved, Verizon could invite additional cellular carriers to join these rooftop installations.*

The Montecito Planning Commission (MPC) approved the Verizon application on May 23, despite the health concerns of neighbors. The 1996 Telecommunications Act prohibits local agencies from denying wireless facility applications on the basis of RF (radio frequency) emissions when the applicant conclusively demonstrates the project is in compliance with Federal Communication Commission (FCC) limits. MPC chair **Sue Burrows** told concerned residents that the MPC's jurisdiction only includes aesthetic considerations. The MPC approval is being appealed before the County Board of Supervisors on August 21 by a coalition of neighbors, led by **Martha Kay**.

### Non-Compatibility with the Montecito Community Plan

A successful BOS appeal would have to be based on local control of land use in a community with a consistent pattern of limited street lights, wooden street signs, foot paths instead of sidewalks and a long history of preserving its community character and semi-rural lifestyle. Supervisors would have to find that the installation of the Verizon cell tower at this location is inconsistent with the Montecito Community Plan.

Appeals based on preservation of community character and protection of a residential way of a life have had some limited success in incorporated towns like Palos Verde Estates, which won a ruling from the Ninth Circuit Court of Appeals that upheld the authority of local government to decide where to locate wireless antennas, based on aesthetic considerations.

### A Compromise Solution

It is unlikely the County BOS, fearful of a lawsuit for unreasonable denial or delay, will support the appeal of residents so long as RF emissions fall below FCC guidelines. However, the BOS could deny Verizon's approval based on non-conformance with the Montecito Community Plan.

In search of a compromise, the Board of Supervisors could ask Verizon to voluntarily relocate its nine antennas to a site not directly across from El Montecito Early School.

In September 2010, NextG Networks of California, Inc. successfully won a two-year fight for approval from BOS to install eight new cell phone antennas on existing poles in Montecito. NextG voluntarily agreed to relocate two low-level, pole-mounted antennas next to Montecito Union Elementary School as a good faith community effort. Verizon Wireless should make a similar goodwill gesture to the Montecito community.

The quid pro quo would be that BOS would pro-actively work with Verizon Wireless to identify and approve a more suitable site away from school children that meets all four of Verizon's criteria: 1) a site that improves Verizon cell phone coverage in the upper village; 2) a willing property owner; 3) a site that can be easily permitted under the existing code, and 4) a site with minimum NIMBY (Not-in-My-Backyard) objections.

### Alternative Sites Exist

Verizon executives **Ed Godfrey** and **Peter Maushardt** have expressed a willingness to meet with Supervisor **Salud Carbajal** and interested alternative site owners to find a less controversial site that could be operational by October 31, 2012, the expiration date of the Verizon lease at the QAD site. **Kent Harris** at locally-based QAD has indicated QAD would be willing to discuss an extension of the existing Verizon lease if necessary, to accommodate the search for an alternative location.

We hope Supervisor Salud Carbajal can convince his fellow supervisors, the County legal team, and Verizon Wireless to do the right thing and relocate its proposed cell tower antenna to a more appropriate location. There are a number of places in Montecito that are more acceptable to neighbors and removed from schoolchildren that could benefit from an approximate \$18,000 annual land lease payment.

*MJ*

ATTACHMENT B: CONDITIONS OF APPROVAL

**1. Proj Des-01 Project Description.** This Conditional Use Permit is based upon and limited to compliance with the project description, the hearing exhibits marked A-Plans dated March 22, 2012 and as modified on date XXX, B-Photosimulations, and all conditions of approval set forth below, including mitigation measures and specified plans and agreements included by reference, as well as all applicable County rules and regulations. The project description is as follows:

The project is a request by the agent, Jay Higgins of SAC Wireless, for the applicant, Verizon Wireless, for a Major Conditional Use Permit to allow construction and use of an unstaffed telecommunications facility under provisions of County code zoning requirements for property zoned 20-R-1. The facility would be located in a 500-square foot lease area at 512 Santa Angela Lane, Assessor Parcel Nos. 011-200-015 and -016.

The applicant is proposing to construct a collocated wireless facility on the existing switch station building, which currently holds antennas for Cingular's wireless telecommunications facility on the rooftop behind a parapet wall. The Verizon Wireless facility would include nine panel antennas, three antennas for three sectors at 120, 220 and 310 degrees (from north), each observing MLUDC setbacks of fifty (50) feet from the centerlines of Santa Angela Lane and East Valley Road and ten (10) feet from the eastern property line. The antennas would be operating in the cellular, PCS and LTE bandwidths. The proposed facility would cover most of Montecito.

All support equipment for the facility would be located in a new 11'8" x 16' 0" x 12' prefabricated equipment shelter located in a position setback fifty (50) feet from near the western property center line of Santa Angela Road. The equipment shelter would be undergroundedplaeed on a concrete slab with a new electrical pedestal and would have two GPS antennas mounted above-groundon its side. The equipment would be cooled by two 2012 or later model

HVAC air-conditioning units located above on the shelter operating intermittently as needed and not exceeding XX dB at the source [insert manufacturer's specifications]. The equipment shelter would be undergroundedpainted to match the existing switch station building but would be screened by the existing concrete retaining wall and mature vegetation along the western property line

. The facility would be serviced by Southern California Edison and Verizon California Inc. via underground connection to existing utilities onsite. The proposed facility would not require grading other than trenching associated with the utility connections and excavation for the equipment shelter. In the event of a power failure, a low noise, low emission generator would be brought from off-site and temporarily installed to maintain power to the facility.

Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above

[Type text]described approval will constitute a violation of permit approval.

**2. Proj Des-02 Project Conformity.** The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of the structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval thereto. All plans (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County. \_

**3. Noise-02 Construction Hours.** The Owner /Applicant, including all contractors and subcontractors shall limit construction activity, including equipment maintenance and site preparation, to the hours between 7:00 a.m. and 4:00 p.m., Monday through Friday. No construction shall occur on weekends or State holidays. Non-noise generating construction activities such as interior plumbing, electrical, drywall and brush painting (~~depending on compressor noise levels~~) are not subject to these restrictions. Any subsequent amendment to the Comprehensive General Plan, applicable Community or Specific Plan, or Zoning Code noise standard upon which these construction hours are based shall supersede the hours stated herein.

**PLAN REQUIREMENTS:** The Owner/Applicant shall provide and post two signs stating these restrictions at construction site entries. **TIMING:** Signs shall be posted prior to commencement of construction and maintained throughout construction. **MONITORING:** The Owner/Applicant shall demonstrate that required signs are posted prior to grading/building permit issuance and pre-construction meeting. Building inspectors and permit compliance staff shall spot check and respond to complaints.

**4. Parking-02 Onsite Construction Parking.** All construction-related vehicles, equipment staging and storage areas shall be located onsite and outside of the road and highway right of way. The Owner/Applicant shall provide all construction personnel with a written notice of this requirement and a description of approved parking, staging and storage areas. The notice shall also include the name and phone number of the Owner/Applicant's designee responsible for enforcement of this restriction.

**PLAN REQUIREMENTS:** Designated construction personnel parking, equipment staging and storage areas shall be depicted on project plans submitted for Zoning Clearance. **TIMING:** A copy of the written notice shall be submitted to P&D permit processing staff prior to issuance of Zoning Clearance. This restriction shall be maintained throughout construction. **MONITORING:** P&D permit compliance and Building and Safety shall confirm the availability of designated onsite areas during construction, and as required, shall require re-distribution of updated notices and/or refer complaints regarding offsite parking to appropriate agencies.

5. **EM-01 Emergency Generator.** In the event of a power failure, a generator may be used on the site to provide backup power. Any generator on site shall be properly muffled and comply with all applicable noise standards for residential areas in the Montecito Community Plan and MLUDC, and comply with then-current CARB emissions limits for new generators at the time of use. A generator is allowed for emergency backup electrical purposes only and shall only be continuously operated during an event of interruption of standard electrical service as provided by the local electrical utility company to the subject parcel. ~~Pursuant to the manufacturer's routine maintenance recommendations, the generator may be exercised on a monthly basis for a period not to exceed 30 minutes. The exercise period shall be limited to the hours between 7:30 a.m. and 4:30 p.m., Monday-Friday only & shall not occur on State holidays (e.g., Thanksgiving, Labor Day, etc.).~~ Non-emergency operation beyond 30 minutes per month shall be prohibited. Additionally, Air Pollution Control District (APCD) permits are required for diesel-powered emergency standby generator engines rated at 50 BHP (brake-horsepower) or greater.

**PLAN REQUIREMENTS:** The Permittee shall restate the provisions for compliance on all building plans. **TIMING:** Permittee shall obtain an APCD Authority to Construct permit prior to engine installation, and an APCD Permit to Operate prior to engine operation. All necessary APCD permits shall be obtained prior to Final Building Inspection Clearance.

6. **Tel-03 Colors and Painting.** All exposed equipment and facilities (i.e., antennas, support structure, equipment cabinets, etc.) shall be finished in non-reflective materials (including painted surfaces) and shall be painted and finished to match the existing switch station building.

**PLAN REQUIREMENTS:** Color specifications shall be identified on final zoning plans submitted by the Permittee to the County prior to issuance of Zoning Clearance, as well as on final building plans. **MONITORING:** P&D compliance monitoring staff shall conduct a Project Compliance Inspection prior to Final Building Inspection Clearance.

7. **Tel-05 Exterior Lighting.** Except as previously permitted on the switch station building, the antenna support structure and equipment shelter shall not be lighted. The leased premises shall likewise be unlit except for a manually operated light which limits lighting to the area of the equipment in the immediate vicinity of the antenna support structure and equipment shelter. The light fixture shall be fully shielded, full cut off and downcast so as to avoid spillage onto adjacent areas and shall be kept off except when maintenance personnel are actually present at night.

**PLAN REQUIREMENTS:** The Permittee shall restate the lighting limitations on the construction plans. Plans for exterior lighting, if any are provided, shall be submitted to the County for review and approval. **TIMING:** This condition shall be satisfied prior to issuance of Zoning Clearance. **MONITORING:** P&D compliance monitoring staff shall conduct a Project Compliance Inspection prior to Final Building Inspection Clearance and respond to any complaints.

**8. Tel-06 Underground Utilities.** Except as otherwise noted in the Project Description and development plans, all utilities necessary for facility operation, including coaxial cable and the equipment shelter, shall be placed underground. Conduit shall be sized so as provide additional capacity to accommodate utilities for other telecommunication carriers should collocation be pursued in the future.

**PLAN REQUIREMENTS:** The Permittee shall restate the provisions for utility undergrounding on all building and grading plans. **TIMING:** This condition shall be satisfied prior to issuance of Zoning Clearance. **MONITORING:** P&D staff shall check plans prior to issuance of Zoning Clearance.

**9. Tel-07 Vegetation Protection.** Existing vegetation should be preserved and protected to the maximum extent feasible throughout construction activities. Underground lines serving the facility shall be routed to avoid damage to tree root systems and any trenching required within the dripline or sensitive root zone of any specimen tree shall be done by hand. Trees or shrubs which are significantly damaged or subsequently die as a result of construction activities shall be replaced with those of a comparable size, species and density as approved by P&D staff. Graded areas, including trench routes, shall be reseeded with matching plant composition. Permittee shall inspect all landscape vegetation not less than every six (6) months and shall maintain the health and appearance of all such vegetation, including the prompt replacement of any injured, diseased, dead or dying plants.

**PLAN REQUIREMENTS:** The Permittee shall restate the requirement for vegetation protection and maintenance on the construction plans. **TIMING:** Fencing shall be installed prior the pre-construction meeting, and shall be in place during all ground disturbance and construction activities. **MONITORING:** P&D compliance monitoring staff shall confirm fencing installation at the pre-construction meeting.

**10. Tel-08 FCC Compliance.** The facility shall be operated in strict conformance with: (i) all rules, regulations, standards and guidance published by the Federal Communications Commission ("FCC"), including but not limited to, safety signage, Maximum Permissible Exposure ("MPE") Limits, and any other similar requirements to ensure public protection or (ii) all other legally binding, more restrictive standards subsequently adopted by federal agencies having jurisdiction. Compliance shall be governed by the following:

- a. Permittee-County shall hire a qualified professional acceptable to the County (wholly independent of Permittee), to perform radio frequency ("RF") field test that measures actual RF electromagnetic exposure at the site property lines. This RF field-testing shall measure all ambient sources of RF energy at the site during documented normal operating conditions & report the cumulative RF exposure, including contributions from the site together with other sources of RF energy in the environment as a whole at the points of maximum RF emissions for each antenna at the corresponding property lines and at each residence and business location identified on Figure 3 of the May 2, 2012 Hammett & Edison report submitted for the Project. Measurements shall be made by the responsible professional who will author the report to the County that will be publicly available and submitted under the certification of being true and correct under penalty of perjury. Report of the results and the author's/professional's findings with respect to compliance with federally established MPE standards shall be submitted to the County within 30 days of Final Building Clearance. Permittee shall pay-reimburse County for the cost of the field measurements and preparing the report. The facility shall cease & desist

commercial operations at any time until it complies with, or has been modified to comply with, applicable RF standards.

b. Every 5 year<sup>1</sup>s, Permittee shall hire a qualified professional acceptable to the County to perform RF field testing to evaluate compliance with current federally established MPE standards at the locations identified in Condition 10(a). In the event the adopted RF standards change, or any additional equipment or other operational change is made at the site that may increase radiated power, Permittee shall submit a report with calculations of the maximum potential public RF exposure from the Project with respect to the revised RF public exposure standards, w/in 90 days of the date the change becomes effective. If calculated levels exceed 8050% of the applicable RF standards, Permittee shall notify the County and submit a MPE compliance verification report with the results from current RF field-testing at the site. Permittee shall pay for the cost of preparing the reports. For joint-carrier sites, cumulative reporting may be delegated to one carrier upon the agreement of all carriers at the site. Procedures, penalties & remedies for non-compliance with these reporting requirements shall be governed by the provisions of the Telecom Ordinance & FCC regulations.

c. Prior to the addition/replacement of equipment or the commencement of operational changes (such as alteration of the tilt angle of any antenna) which has the potential to increase RF emissions at any public location ~~the property line~~ beyond that estimated in the initial application and is w/in the scope of the project description, Permittee shall submit a report providing the calculation of predicted maximum effective radiated power including the new equipment as well as the maximum cumulative potential public RF exposure expressed in absolute terms and as a percentage of the public MPE limit attributable to the site as a whole at the property line and at each location identified in Figure 3 of the May 2, 2012 Hammett & Edison report. Once the new equipment has been installed or operational change implemented, Permittee shall perform Initial Verification as stated in "a" above. Permittee shall notify County in advance of any operational changes which have the potential to increase RF emissions.

**PLAN REQUIREMENTS:** All building plans shall include provisions for MPE compliance.

**TIMING:** Initial verification of compliance with RF public MPE standards shall be accomplished no later than 30 days following Final Building Clearance. Continued verification of compliance with MPE requirements shall be accomplished by RF field test reports submitted every 5-years not later than at permit anniversary following initial verification.

**MONITORING:** P&D planner shall review all RF field test reports and estimated maximum cumulative RF exposure reports providing calculations of predicted compliance with the public MPE standard. P&D planner shall monitor changes in RF standards, as well as equipment modifications, additions & RF exposures at the site as reported by the Owner/Applicant that might trigger the requirement for field-testing at intervening times between regular test periods.

**11. Tel-09 Project Review.** Five years after issuance of the Zoning Clearance for the project and no more frequently than every five years thereafter, the Director of P&D may undertake inspection of the project and require the Permittee to modify its facilities subject to the following parameters:

a. **Modification Criteria.** Modifications may be required if, at the time of inspection it is determined that: (i) the Project fails to achieve the intended

purposes of the development standards listed in the Telecommunications Ordinance for reasons attributable to design or changes in environmental setting; or (ii) more effective means of ensuring aesthetic compatibility with surrounding uses become available as a result of subsequent technological advances or changes in circumstance from the time the Project was initially approved.

- b. **Modification Limits.** The Director's decision shall take into account the availability of new technology, capacity and coverage requirements of the Permittee, and new facilities installed in the vicinity of the site. The scope of modification, if required, may include, but not be limited to a reduction in antenna size and height, collocation at an alternate permitted site, and similar site, increased or modified landscape features and architectural design changes. However, the Permittee shall not be required to undertake changes that exceed ten percent (10%) of the total cost of facility construction unless the site construction costs have been 50% depreciated (or 12.5 years, whichever is sooner), at which point the Permitted shall not be required to undertake changes that exceed fifty percent (50%) of the total cost of facility construction. The decision of the Director as to modifications required herein shall be deemed final unless appealed in compliance with the provisions of the County Code.

**PLAN REQUIREMENTS:** The Permittee shall restate the provisions for emissions compliance on all building plans. **TIMING:** Building permit valuation data shall be used for the purpose establishing the estimated cost of installing the facility. At the time of subsequent inspection and upon reasonable notice, the Permittee shall furnish supplemental documentation as necessary to evaluate new technology, capacity and coverage requirements of the Permittee. **MONITORING:** P&D compliance monitoring staff shall conduct periodic inspections and ascertain whether more effective mitigation is available with regard to design and technology. In the event of violation, the permit shall be referred to Zoning Enforcement for abatement.

**12. Tel-10 Collocation.** The Permittee shall avail its facility and site to other telecommunication carriers and, in good faith, accommodate all reasonable requests for collocation in the future subject to the following parameters: (i) the party seeking the collocation shall be responsible for all facility modifications, environmental review, Mitigation Measures, associated costs and permit processing, including RF exposure modeling and verification; (ii) the Permittee shall not be required to compromise the operational effectiveness of its facility or place its prior approval at risk; (iii) the Permittee shall make its facilities and site available for collocation on a non-discriminatory and equitable cost basis; and (iv) the County retains the right to verify that the use of the Permittee's facilities and site conforms to County policies and projected RF emissions levels.

**13. Tel-11 Transfer of Ownership.** In the event that the Permittee sells or transfers its interest in the telecommunications facility, the Permittee and/or succeeding carrier shall assume all responsibilities concerning the Project and shall be held responsible by the County for maintaining consistency with all conditions of approval. The succeeding carrier shall immediately notify the County and provide accurate contact and billing information to the County for remaining compliance work for the life of the facility.

**PLAN REQUIREMENTS:** The Permittee shall notify the County of changes in ownership to any or all of the telecommunications facility. **TIMING:** Notification of changes in facility ownership shall be given by the Permittee and/or succeeding carrier to the County within 30 days of such change.

**14. Tel-12 Site Identification.** The Permittee shall clearly identify each piece of equipment installed at a site with the Permittee's name and site number to distinguish from other telecommunication carriers' equipment, including but not limited to: antennas, ~~microwave dishes,~~ GPS equipment, equipment shelters, support poles, generators, HVAC and cabinetry. The Permittee shall be responsible for clearly marking with permanent paint, tags, or other suitable identification all facility equipment belonging to the Permittee as stated on the site plans.

**TIMING:** This condition shall be satisfied prior to Final Building Inspection Clearance.  
**MONITORING:** P&D permit processing planner shall check plans and P&D compliance monitoring staff shall conduct compliance inspections as needed to ensure permit compliance.

**15. Tel-13 Facility Maintenance.** The facility shall be maintained in a state of good condition at all times. This includes, but is not limited to: painting; landscaping; site identification; equipment repair; and keeping the facility clear of debris, trash, and graffiti.

**16. Tel-15 Agreement to Comply.** The facility owner and property owner shall sign and record an agreement to comply with the project description and all conditions of approval on a form acceptable to P&D. Such form may be obtained from the P&D office prior to issuance of zoning clearance. The Owner/Applicant shall provide evidence that he/she has recorded the Agreement to Comply with Conditions. \_

**17. Tel-16 Abandonment-Revocation.** The Permittee shall remove all support structures, antennas, equipment and associated improvements and restore the site to its natural pre-construction state within ~~one year~~ three (3) months of discontinuing use of the facility or upon permit revocation. Should the Permittee require more than three (3) months ~~one year~~ to complete removal and restoration activities the Permittee shall apply for a one-time time extension. In the event the Owner requests that the facility or structures remain, the Owner must apply for necessary permits for those structures within three (3) months ~~one year~~ of discontinued use. Compliance shall be governed by the following provisions: \_

Prior to issuance of Zoning Clearance, the Permittee shall post a performance security. The security shall equal 10 percent of the installation value of the facility as determined at the time of granting the building permit. The performance security shall be retained until this condition is fully satisfied.

Prior to demolition of the facility, the Permittee shall submit a restoration plan of proposed abandonment to be reviewed and approved by a County approved biologist.

- c. If use of the facility is discontinued for a period of more than ~~three (3) months one year~~ and the facility is not removed the County may remove the facility at the Permittee's expense.

**18. Rules-01 Effective Date-Not Appealable to CCC.** This Conditional Use Permit shall become effective upon the date of the expiration of the applicable appeal period provided an appeal has not been filed. If an appeal has been filed, the planning permit shall not be deemed effective until final action by the final review authority on the appeal. No entitlement for the use or development shall be granted before the effective date of the planning permit. [MLUDC §35.472.020].

**19. Rules-03 Additional Permits Required.** The use and/or construction of any structures or improvements authorized by this approval shall not commence until the all necessary planning and building permits are obtained. Before any Permit will be issued by Planning and Development, the Owner/Applicant must obtain written clearance from all departments having conditions; such clearance shall indicate that the Owner/Applicant has satisfied all pre-construction conditions. A form for such clearance is available from Planning and Development.

**20. Rules-05 Acceptance of Conditions.** The Owner/Applicant's acceptance of this permit and/or commencement of use, construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the Owner/Applicant.

**21. Rules-12 CUP Expiration.** The Owner/Applicant shall obtain the required Zoning Clearance within 18 months following the effective date of this Conditional Use Permit. If the required Zoning Clearance is not issued within the 18 months following the effective date of this Conditional Use Permit, or within such extended period of time as may be authorized in compliance with Section 35.474.030 of the Montecito Land Use and Development Code, and an application for an extension has not been submitted to the Planning and Development Department, then Conditional Use Permit shall be considered void and of no further effect.

**22. Rules-17 CUP-Void.** This Conditional Use Permit shall become void and be automatically revoked if the development and/or authorized use allowed by this Conditional Use Permit is discontinued for a period of more than 12 months, or within such extended period of time as may be authorized in compliance with Section 35.474.030 of the Montecito Land Use and Development Code. Any use authorized by this Conditional Use Permit shall immediately cease upon expiration or revocation of this Conditional Use Permit. Any Zoning Clearance approved or issued pursuant to this Conditional Use Permit shall expire upon expiration or revocation of the Conditional Use Permit. Conditional Use Permit renewals must be applied for prior to expiration of the Conditional Use Permit. [MLUDC §35.472.060 & 35.474.060].

**23. Rules-22 Leased Facilities.** The Operator and Owner are responsible for complying with all conditions of approval contained in this Conditional Use Permit. Any zoning

violations concerning the installation, operation, and/or abandonment of the facility are the responsibility of the Owner and the Operator.

**24. Rules-23 Processing Fees Required.** Prior to issuance of Zoning Clearance, the Owner/Applicant shall pay all applicable P&D permit processing fees in full as required by County ordinances and resolutions.

**25. Rules-30 Plans Requirements.** The Owner/Applicant shall ensure all applicable final conditions of approval are printed in their entirety on applicable pages of grading/construction or building plans submitted to P&D or Building and Safety Division. These shall be graphically illustrated where feasible.

**26. Rules-31 Mitigation Monitoring Required.** The Owner/Applicant shall ensure that the project complies with all approved plans and all project conditions including those which must be monitored after the project is built and occupied. To accomplish this, the Owner/Applicant shall:

– Contact P&D compliance staff as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities;

– Pay fees prior to approval of Zoning Clearance as authorized by ordinance and fee schedules to cover full costs of monitoring as described above, including costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the Owner/Applicant shall comply with P&D recommendations to bring the project into compliance. The decision of the Director of P&D shall be final in the event of a dispute;

– c. Note the following on each page of grading and building plans “This project is subject to Condition Compliance Monitoring and Reporting. All aspects of project construction shall adhere to the approved plans, notes, and conditions of approval”;

– d. Contact P&D compliance staff at least two weeks prior to commencement of construction activities to schedule an on-site pre-construction meeting to be led by P&D Compliance Monitoring staff and attended by all parties deemed necessary by P&D, including the permit issuing planner, grading and/or building inspectors, other agency staff, and key construction personnel: contractors, subcontractors and contracted monitors among others.

**27. Rules-32 Contractor and Subcontractor Notification.** The Owner/Applicant shall ensure that potential contractors are aware of County requirements. Owner / Applicant shall notify all contractors and subcontractors in writing of the site rules, restrictions, and

Conditions of Approval and submit a copy of the notice to P&D compliance monitoring staff.

**28. Rules-33 Indemnity and Separation.** The Owner/Applicant shall defend, indemnify and hold harmless the County or its agents or officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of this project. In the event that the County fails promptly to notify the Owner / Applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

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**29. Rules-34 Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought in the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the review authority and no approval shall be issued unless substitute feasible conditions/measures are imposed.

**30. Rules-37 Time Extensions-All Projects.** The Owner / Applicant may request a time extension prior to the expiration of the permit or entitlement for development. The review authority with jurisdiction over the project may, upon good cause shown, grant a time extension in compliance with County rules and regulations, which include reflecting changed circumstances and ensuring compliance with CEQA. If the Owner / Applicant requests a time extension for this permit, the permit may be revised to include updated language to standard conditions and/or mitigation measures and additional conditions and/or mitigation measures which reflect changed circumstances or additional identified project impacts.