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VIA E-MAIL

Chair Lavagnino and Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
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Re: Crown Castle: Administrative Appeal re 13 CUP-00000-00009, 00010 and 14 CDP-000000-00009 (Montecito Proposed Distributed Antenna System)

Dear Chair Lavagnino,

This office continues to represent Crown Castle NG West LLC (“Crown”) with respect to the above-referenced matters (“Applications”). This letter accompanies Crown’s administrative appeals of the Montecito Planning Commission’s (“MPC”) May 21, 2014, denial of the Applications (“Appeal”). Specifically, this letter updates and supplements Crown’s June 25, 2014, appeal letter by presenting a brief summary of events that have transpired since the Board’s July 1, 2014, hearing.¹

Crown has explored and responded to the latest round of revisions suggested by the MPC on July 24, 2014. The latest changes generally consisted of shifting equipment from the pole to the ground, or vice-a-versa, with a trade-off as to whether to incur impacts to aesthetics or to resources impacted by undergrounding. Another recent revision was to change out larger battery back-up units for smaller ones, again with a trade-off of addressing perceived aesthetic impacts by reducing the profile of the batteries at the cost of a shorter battery lifespan in the event of power outages.

From the extensive MBAR review process to the latest review by the MPC, Crown has engaged in a good faith effort to achieve the best aesthetic solution for its proposed distributed antenna network while still being able to meet its network service objectives. At the end of this long road, Crown is pleased to present this latest version of its Project for approval by the Board.

¹ This letter supplements the May 30, 2014, appeal letter of Sharon James to the County Board of Supervisors and Crown’s June 25, 2014, appeal letter. Both of those letters are incorporated herein by this reference.

THE BOARD'S JULY 1, 2014, APPEAL HEARING AND SUBSEQUENT EVENTS.

1. The Board's July 1, 2014, Hearing on the Appeal.

On July 1, 2014 the Board of Supervisors convened to consider the Appeal. Deliberations followed a report from staff, remarks from Crown's representatives and extensive public comment. The Board then unanimously approved a two-part motion as follows: (a) to adopt findings of denial of the Appeal; or, alternatively, (b) upon a fourth extension of the federal Shot Clock by Crown, send the matter back to the MPC for further review of revisions made by Crown subsequent to the MPC's May 21, 2014, recommendation of denial.

2. In Lieu of Taking a Denial, Crown Extends the Shot Clock a Fourth Time and Goes Back to the MPC.

To avoid a denial by the Board -- and in furtherance of its demonstrated good faith efforts to work with the County in addressing aesthetic concerns -- Crown agreed to a fourth extension of the Shot Clock to August 20, 2014.² The fourth Shot Clock extension would allow the Board to continue the Appeal hearing to its August 19, 2014, meeting and, in the interim, allow the MPC also to meet to consider Crown's latest Project revisions.

On July 24, 2014, the MPC met to consider the revisions Crown made to the Project after the MPC's May 21, 2014, denial. In addition to reviewing the changes that Crown made to the Project to address the concerns that led to the MPC's May 21, 2014, recommendation of denial, the MPC took the opportunity of further review to recommend a slate of additional changes.

3. Crown's Further Revisions to the Project to Address the Latest Concerns Raised at the July 24, 2014, MPC Meeting.

The changes recommended by the MPC at the July 24, 2014, meeting largely centered on concerns about the size of the pole-mounted battery backup boxes ("BBUs"). BBUs are necessary to deliver battery power to the DAS nodes in the event of a power outage arising from such emergency situations as a brush fire. Crown reviewed the MPC's additional requests and determined that it could replace the currently proposed BBU with a "slimline" BBU at many of the node sites.

The slimline BBU would reduce the profile of the originally proposed BBU, but not without a cost. The originally proposed BBUs could supply power to the facilities for approximately four hours. With the reduced profile, slimline BBU requested by the MPC, aesthetics may improve as a result of the reduced profile, but the battery life diminishes significantly, going from approximately four hours to 1.5 hours. Crown nevertheless determined that it can install the

² On November 18, 2009, the Federal Communications Commission adopted the "Shot Clock" Rule, placing strict time limits on local governments to act on applications for the siting of wireless telecommunications facilities. The Shot Clock Rule was intended to "promote[] deployment of broadband and other wireless services" by "reducing delays in construction and improvement of wireless networks." See Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance (Federal Communications Commission, Nov. 18, 2009) WT Docket No. 08-165 (referred to herein as the "Shot Clock").

slimline BBUs at many of the sites where the commissioners expressed concerns regarding the size of the originally proposed BBUs.

A node-by-node summary of the MPC's comments and Crown's responses are set forth in the following table:

SITE	SUMMARY OF MPC COMMENT	CROWN'S RESPONSE
MON01	Residents near the pole (Carrington) object to it and want to know why we cannot move to pole across the street and behind the wall of the golf course, near the corner of Sheffield/Valley. Four of five commissioners okay with this site.	No change made. Moving node to corner negates the RF coverage objectives. . Also, Crown has no regulatory right to site an antenna on private property.
MON02	No comment.	No change made.
MON03	Concerns regarding size of BBU. Commissioners want the BBU in a vault or smaller BBU on the pole or none at all.	Slimline BBU on pole. This is a three-carrier site and there is no room for placing the BBU in the vault.
MON05	4 of 5 commissioners are okay with this site. Commissioner Brown wants the power pedestal closer to existing power pedestal.	No change made: SCE restrictions preclude moving power pedestal closer to existing power pedestal.
MON06	Commissioner Overall wants custom vault for the BBU. Commissioners Brown and Burrows want MBAR to consider sleeve that covers all equipment on pole.	Slimline BBU on pole. Vaulting is infeasible since this is a three-carrier site and we cannot make room for BBU in the vault.
MON07	Commissioners Overall and Brown want underground BBU or eliminate it. Commissioner Overall wants fiber placed underground.	Slimline BBU on pole. Undergrounding infeasible due to oak tree impacts and sloping topography.
MON08	Commissioner Overall wants BBU vaulted or eliminated. All other commissioners agree. They also want to know if Crown can micro trench and put fiber in ground. The equipment is currently screened by foliage.	Slimline BBU on pole. Undergrounding infeasible due to oak tree impacts.

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MON09	Commissioner Overall wants smaller BBU or vaulted or eliminated.	Slimline BBU on pole. Vaulting infeasible due to need for retaining wall and proximity to cultural resource impacts.
MON11	Commissioner Overall wants smaller BBU or vaulted or eliminated. Brown okay with vault but does not want trees damaged	Slimline BBU on pole. Vaulting will impact oak trees.
MON13	Commissioner Overall wants smaller BBU or vaulted or eliminated.	Alternative site for pedestal down and across street that will accommodate the BBU.
MON14	Commissioner Overall wants fiber placed underground. BBU is already in existing design for vault.	Undergrounding of fiber will be considered only in conjunction with any future project or district that requires all similarly situated utilities to underground. Until that time Crown exercises its rights under Public Utilities Code section 7901 and 7901.1 to be treated without discrimination regarding its placement of overhead fiber.
MON15	Commissioner Overall wants BBU slimmed down. Fiber in roadway if possible.	Slimline BBU on pole. Environmentally sensitive habitat in this area precludes undergrounding.
MON16	Commissioner Overall wants BBU vaulted and plant screening around pole	Slimline BBU on pole. Existing landscaping already screens site.
MON17	Site withdrawn due to significant objection from residents.	n/a
MON18	Commissioner Overall wants BBU vaulted or slimmed down BBU or eliminated. Otherwise all other commissioners ok. Design was revised to remove pedestal and add low voltage converter with BBU on pole	Slimline BBU on pole. Oak tree impacts preclude vaulting.
MON19	Commissioner Overall wants BBU vaulted or slimmed down or eliminated. Otherwise all other commissioners ok.	Slimline BBU on pole. Slopping topography renders vaulting infeasible.
MON20	All commissioners okay with this site but would like undergrounding of fiber.	No change made.

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MON21	Commissioner Overall wants BBU vaulted or slimmed down or eliminated.	Slimline BBU on pole. Existing fire main and other utilities render undergrounding infeasible.
MON22	Site withdrawn due to significant objection from residents.	n/a
MON23	Commissioners Overall wants BBU to be placed in meter pedestal.	If we change this to an L shaped pedestal we can place the BBU inside it.
MON24	No issues with design.	No change made.
MON25	Commissioner Overall wants BBU vaulted, slimmed down or eliminated.	Slimline BBU on pole.
MON26	No issues with design.	No change made.
MON27	No issues with design but resident expressed concern that high winds could cause the pole to fall.	No change made.
MON28	Commissioner Overall wants BBU in pedestal. There is thick screening by vegetation.	If we make this an L shaped pedestal site all equipment could go internal. There is heavy vegetation here to partly shroud it.
MON29	Overall wants BBU vaulted or slimmed down or eliminated. All others agree.	Slimline BBU on pole. If we make this an L shaped pedestal site all equipment could go internal.

MON30	Commissioner Overall wants BBU slimmed down or eliminated.	Slimline BBU on pole.
MON31	Eliminate BBU or slimline. Public right-of-way too small for vault	Slimline BBU on pole or if we make this an L shaped pedestal we can put all equipment internal.
MON32	No design issue since BBU is in vault.	No change made.

SUMMARY OF ALL OTHER REVISIONS TO THE PROJECT

The above revisions to the Project represent the latest round of revisions in addition to the following:

- (a) **Crown Revised Its Applications Three Times in Response to Staff Recommendations Before Its Applications Were Even Deemed Complete:** Even before it filed its Applications, Crown expended significant resources and eight months of delay in responding to repeated design changes suggested by the County planning staff. Crown advanced three successive proposals before the County finally accepted the Applications on December 24, 2013. Crown submitted the Applications despite holding to the position that it is not legally required to submit to a local discretionary land use approval process due to its vested rights under Public Utilities Code section 7901.
- (b) **Crown Submitted to Seven MBAR Hearings over a Span of Three Months:** Even after modifying the Applications in response to substantial comments from the planning staff, Crown submitted its proposed designs to further, rigorous review by the MBAR -- the special body charged with making aesthetic recommendations concerning the Project. The MBAR reviewed the project at seven different hearings over the course of three months.
- (c) **Crown Made 144 Total Revisions to Its Project in Response to Input by MBAR, the Staff, and the Public Works Department:** Throughout the protracted MBAR review process Crown willingly adopted *all* of the recommendations of the planning staff, the MBAR, and the Public Works Department, that were technically feasible, resulting in a total of *132 changes*. After the May 21, 2014, MPC denial, Crown implanted additional revisions to the project, resulting in a total of *144 changes*.

- (d) **Crown Willingly Extended Its Shot Clock Rights Four Times:** As a result of the extensive community input, the County delayed its action on Crown's Applications -- well beyond what the FCC deems to be a "reasonable period of time," under section 332(c)(7)(B)(ii). Crown nevertheless agreed to extend enforcement of its right to a timely decision under the Federal "Shot Clock" four times to allow for input from the decision-makers and the community.
- (e) **Crown Submitted the Project to Extensive CEQA Review, Despite the PUC's Determination that Its Project Is Exempt under CEQA:** Crown submitted to further delay and additional extensive County review under the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) ("CEQA") even though the PUC -- which is lead agency under CEQA -- already deemed the project to be "exempt" from CEQA review. Because the lead agency already undertook formal review of the Project, no further CEQA analysis was required under CEQA. (See CEQA Guidelines, §§ 15050, subd. (c), 15052, subd. (d), 15096, subds. (e), (f); Pub. Resources Code, § 21080.1.)
- (f) **Crown Achieved Recommendations of Approval by Staff and the MBAR, in Addition to a Conclusion of "No Significant Impact" under CEQA:** Crown's good faith efforts to collaborate with the County planning staff and the community ultimately resounded with the community and resulted in a recommendation of conceptual approval by the MBAR, a thorough mitigated negative declaration (the FMND) with incorporated mitigation measures to reduce all purported environmental impacts to a less-than-significant level, and a thorough staff report recommending approval of the Applications.
- (g) **Crown Submitted Extensive Substantial Evidence of "Least Intrusive Means" and "Significant Gap in Service":** Crown submitted evidence, in the form of hard data prepared by RF engineers, which establishes the need for the Project to fill a significant gap in service caused by critical capacity needs.
- (h) **Crown Worked with the SCE to Reduce Offending Power Meter Pedestals:** The MPC findings rested in part on objections to the number and size of the power pedestals in the ROW. The design and need for meter pedestals is within the sole purview of Southern California Edison ("SCE"), not Crown. Crown nevertheless was able to work with SCE to identify alternative power meter designs. On the basis of that work, a number of power pedestals may be removed by "low vaulting" the power from a single pedestal to power up to three node sites. Crown's work with SCE resulted in a design that significantly reduces the number of pedestals that were of concern to the MPC in its "blight" findings. Notably, since the pedestals are not part of Crown's equipment, Crown had no ability to propose this change before the MPC's May 21, 2014, denial.
- (i) **Undergrounding of MON01:** With input from the planning staff, Crown explored additional areas where it can vault (underground) radio boxes to further

minimize above-ground equipment. Crown identified one node site, MON01, as a candidate for vaulting. Crown originally proposed an L-shaped box (above ground cabinet) for this site to avoid minor impacts to trees, but -- assuming staff determine that potential impacts to trees are not significant -- Crown proposes a vault at this node site.

- (j) **Withdrawal of MON17 and MON22:** Lastly, Crown withdrew node sites MON17 and MON22 from the Applications, since the designs of these two sites proved to be problematic and controversial. Crown will explore providing coverage for these areas by alternate means or designs at a later date.

APPLICABLE LEGAL STANDARDS

1. **Crown Has Exhausted Project Alternatives, Thereby Establishing Least Intrusive Means.**

In *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, the Ninth Circuit Court of Appeals set forth a two-step analysis for determining whether a local government's denial has the effect of prohibiting the provision of wireless telecommunications services in violation of Section 332(c)(7)(B)(i)(II) of the Telecommunications Act of 1996.³ In the first step, the applicant must make a showing of a "significant gap" in service. (*Id.* at p. 995.) In the second step, the applicant must demonstrate it has selected the "least intrusive means" to fill that gap in service. (*Ibid.*)

To establish least intrusive means, the applicant establishes a "prima facie showing of effective prohibition by submitting a comprehensive application, which includes consideration of alternatives, showing that the proposed [wireless communications facility] is the least intrusive means of filling a significant gap." (*Id.* at p. 995.) After that, the burden shifts to the local government: "When a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives." (*Id.* at p. 998.) The court further explained that the applicant then has an opportunity to "dispute the availability and feasibility of the alternatives favored by the locality." (*Ibid.*)

In this case, Crown has amply demonstrated that it has chosen the least intrusive network design. It has engaged in exhaustive -- if not sometimes grueling -- rounds of investigations of alternatives raised from all sides, including the community, MBAR, the Planning Staff, the MPC, and the Board. It is important to note that the Ninth Circuit does not mandate a demonstration that the proposed site is the only feasible alternative, but rather requires a good faith effort to identify and evaluate less intrusive alternatives in a process that

³ As noted in Crown's June 25, 2014, letter, the section 332(c)(7)(B)(i)(II) prohibits state and local governments from regulating the placement, construction or modification of wireless service facilities in a manner that prohibits, or has the effect of prohibiting, the provision of personal wireless services (47 U.S.C. § 332(c)(7)(B)(i)(II).)

allows for a meaningful comparison of alternative sites before the siting application process is needlessly repeated. It also gives providers an incentive to choose the least intrusive site in their first siting applications, and it promises to ultimately identify the best solution for the community, not merely the last one remaining after a series of application denials.

(*Id.* at p. 995 [quoting *MetroPCS, Inc. v. City of San Francisco* (9th Cir. 2005) 400 F.3d 715, 734-735].) The record establishes that Crown has gone beyond the required legal standard for proving least intrusive means.

2. Crown Has Established the Need for the Project: Significant Gap in Service.

Crown also demonstrated its need for the Project at the July 1, 2014, appeal hearing before the Board and in its June 25, 2014, letter, which it has incorporated herein by reference. That demonstration explained that network “capacity” -- not just “coverage” -- is an essential criterion to establishing the need for a project. While a network may supply basic coverage, exponentially increasing data demands in an area will create greater burdens on the existing network, eventually rendering the network wholly inadequate to accommodate demand. In the meetings before the MPC and the Board, concerns were raised about whether capacity issues are sufficient to justify a need for the Project. Notably, the Santa Barbara County Code of Ordinances itself identified capacity has an essential criterion for determining need for a project. (See, e.g., Montecito Land Use and Development Code, § 35.444.010(G); see also County of Santa Barbara Land Use Development Code, § 35.44.010(G).) Recent case law is in accord. (See, e.g., *MetroPCS Inc. v. City and County of San Francisco*, *supra*, U.S. Dist. LEXIS 43985; *T-Mobile Central, LLC v. Unified Government of Wyandotte County* (D.Kans. 2007) 528 F.Supp.2d 1128.) Crown therefore has proved its need for the Project.

3. Singling Out Crown to Underground Its Fiber Runs Conflicts with Crown’s Rights under State Law.

Where the public rights-of-way already feature overhead utilities, Crown proposes to place its fiber runs along with other utility lines mounted to existing wooden utility poles. Such existing overhead utilities include power and cable television lines. Additionally, at some node locations, Crown already has existing overhead fiber in place, which can service some of the nodes proposed as part of the Project. Crown’s use of existing lines, or its placement of lines in areas that already feature above-ground utilities, qualifies as the least intrusive alternative for several reasons, including, but not necessarily limited to, the following:

- (a) It avoids the temporary construction impacts to the public rights-of-way use associated with trenching and boring;
- (b) It avoids potential impacts to native oaks and other trees;
- (c) It avoids potential impacts to archaeological resources; and

- (d) It results in minimal, if not negligible, aesthetic impacts, since the public rights-of-way in these areas are already developed with existing, above-ground utilities.

Notwithstanding the above, some members of the MPC and the planning staff have made inquiries into requiring Crown to underground its fiber lines in areas where existing utilities already are located above-ground. Aside from the potentially increased environmental impacts, requiring Crown to underground its fiber lines has the effect of singling out one utility among others to bear the disproportionate burden of undergrounding its facilities. State law prohibits local governments from imposing such discriminatory treatment on utilities in the public rights-of-way. Specifically, Public Utilities Code section 7901.1 provides that

It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

The control, to be reasonable, shall, at a minimum, be applied to *all entities in an equivalent manner*.

(Pub. Util. Code, § 7901.1, emphasis added.) To require Crown to underground its fiber lines -- when the County has not imposed such burdens on other similarly situated utilities -- conflicts with the section 7901.1 prohibition on discrimination. In part to such unequal burdens, the Public Utilities Commission promulgated Tariff Rule 20, which establishes a detailed procedure for establishing utility undergrounding districts. Rule 20 requires, among other things, noticed hearings and adoption of certain findings. In the absence of such a procedure, it is unlawful to impose a disproportionate burden on Crown to underground utilities in Montecito.

CONCLUSION

For all of the above-mentioned reasons, Crown respectfully requests that the Board uphold Crown's appeal and approve the Project.

Very truly yours,



Michael W. Shonafelt

MWS:mws

cc: (via email)

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