

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA

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In the Matter of the Application of:

**DELTA GROUP ENGINEERING and
CTI TOWERS**

for a Conditional Use Permit and Variances

Premises: 186 Summit Drive, Santa Cruz, CA 95060

Application Nos.: 221049, REV221042, REV221043

Parcel No.: 080-062-02

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MEMORANDUM IN OPPOSITION

Respectfully Submitted,

Tim Richards – 531 Summit Drive
Chelsea Brady – 531 Summit Drive
Rodney Cahill – 120 Summit Drive
Julie Cahill – 120 Summit Drive
Brian Smith – 125 Summit Drive
Naomi Murphy – 125 Summit Drive
JoAnn Pullen – 405 Summit Drive
William Pullen – 405 Summit Drive
Jerry Jenkins – 219 Summit Drive
Alexis Jenkins - 219 Summit Drive
Mary Coyle – 250 Upper Summit Drive
Andy Fox – 250 Upper Summit Drive
Deborah Richards – 531 Summit Drive
Mark Richards – 531 Summit Drive
Sara Blackstorm Atton - 305 Summit Drive
Bob Atton - 305 Summit Drive
Allison Pullen - 405 Summit Drive
Bill Pullen - 405 Summit Drive
Leif Holtermann - 714 Summit Drive
Christian Harris - 93 Summit Drive

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Preliminary Statement

Delta Group Engineering/CTI Towers (hereinafter “*CTI*”) has filed an application for a Special Use Permit to install a one hundred fifty foot (15 story high) wireless communication facility (“WCF”) to be located on the property known as 186 Summit Drive, Santa Cruz, CA. In addition, *CTI* seeks an exception for height requirements in order to accommodate its proposed one hundred fifty foot WCF.

This Memorandum is submitted in opposition to *CTI*’s application.

As set forth below, *CTI*’s application should be denied because:

- (a) *CTI* has failed to establish that granting the application would be consistent with smart planning requirements of the Santa Cruz County Code (the “Code”);
- (b) granting the application would violate both the Code and the legislative intent of the Code;
- (c) the applicant has failed to establish that the proposed facility: (i) is actually necessary for the provision of personal wireless services within the City or (ii) that it is necessary that the facility be built at the proposed site;
- (d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the Code was enacted to prevent.

As such, we respectfully submit that *CTI*’s application be denied in a manner that does not violate the Telecommunications Act of 1996.

POINT I

Granting *CTI* Permission to Construct a Wireless Telecommunications Facility at the Location It Proposes Would Violate Both the Requirements Under the Code and the Legislative Intent Based Upon Which Those Requirements Were Enacted by the County

As set forth below, *CTI*'s application should be denied because granting the application would violate the *requirements* of the Code as well as the *legislative intent* behind those requirements.

As is explicitly set forth within its text, the very purpose for which the County enacted Chapter 13.10.660 *et seq.* of its Code (which deals specifically with Wireless Telecommunications Facilities) was, among other things, to “assure, by the regulation of siting of wireless communications facilities, that the integrity and nature of residential, rural, commercial, and industrial areas are protected from the indiscriminate proliferation of wireless communication facilities...” and “to locate and design wireless communication towers/facilities so as to minimize negative impacts, such as, but not limited to, visual impacts, agricultural and open space land resource impacts, impacts to the community and aesthetic character of the built and natural environment, attractive nuisance, noise, falling objects, and the general safety, welfare and quality of life of the community.”¹

Further, §13.10.661 requires that “[a]ll wireless communications facilities ... are subject to Level V review (Zoning Administrator public hearing pursuant to Chapter 18.10 SCCC)...” and pursuant to § 13.10.661(A), “shall be subject to a commercial development permit ... [and] a building permit will be required for construction of new wireless communication facilities.”

¹ See §13.10.660 (A) of the Santa Cruz County Code.

As set forth below, and as established by the admissible evidence being submitted herewith, if the County were to issue *CTI* a permit, the irresponsible placement of a wireless telecommunications facility at the location proposed would inflict upon the nearby homes and residential community the precise types of adverse impacts which Chapter 13.10.660 *et seq.* of the Code was specifically enacted to prevent.

A. *CTI's Application Does Not Comply With the Requirements of Chapter 13.10 of the Municipal Code*

A review of the record reflects that *CTI's* application must be denied because such application and all of its supporting submissions wholly fail to establish compliance with the requirements and limitations of Chapter 13.10 of the Code regarding wireless telecommunication facilities.

As set forth above, the express purpose of Chapter 13.10 of the Code is, among other things, to protect the “integrity and nature” of residential areas from the “indiscriminate proliferation of wireless communication facilities.” In furtherance of this purpose, the Code contains a list of Restricted Areas in which “[n]on-co-located wireless communication facilities are discouraged.” Among them is the Rural Residential (RR) Zoning District.²

Applicants seeking to build a new wireless communication facility in one of the restricted zoning districts, such as the RR Zoning District at issue here, must prove that:

- (a) The proposed wireless communication facility would eliminate or substantially reduce one or more significant gaps in the applicant carrier’s network; and
- (b) There are no viable, technically feasible, and environmentally (e.g. visually) equivalent or superior potential alternatives (i.e., sites and/or facility types and/or designs) outside the prohibited and restricted areas ... that could eliminate or substantially reduce said significant gaps.³

² See § 13.10.661(C)(1)

³ See § 13.10.661(C)(3)

CTI's application fails to meet the above requirements. Moreover, *CTI* has failed to provide a shred of probative evidence to establish that the proposed wireless telecommunications facility is actually necessary in order to provide personal wireless service in the community or that the facility is not injurious to the community, such that a denial of its application would constitute an "effective prohibition" of personal wireless services.

(i) *CTI's Irresponsible Placement of Its Proposed Wireless Facility Will Inflict Substantial Adverse Impacts Upon the Aesthetics and Character of the Area*

The proposed wireless facility will inflict dramatic and wholly unnecessary adverse impacts upon the area's aesthetics and character. Recognizing the likely adverse aesthetic impacts which an irresponsibly placed wireless telecommunications facility would inflict upon nearby homes and residential communities, the County focused extensively on aesthetic impacts when enacting its Code, specifically §13.10, where the majority of the County's intent was to minimize, if not wholly avoid, any negative adverse aesthetic impacts on neighboring properties.

Specifically, § 13.10.661(F) requires that wireless communication facilities *shall be sited* in the least visually obtrusive location that is technically feasible, unless such site selection leads to other resource impacts that make such a site the more environmentally damaging location overall." § 13.10.661(G) encourages "co-location of new wireless communication facilities into/onto existing wireless communication facilities and/or existing telecommunication towers ... if it does not create *significant visual impacts*." (Emphasis added.)

Here, however, *CTI's* application blatantly disregards the aesthetic concerns expressed in the Code. The proposed facility will be directly in the line of sight of numerous adjacent properties, thereby creating an extremely displeasing aesthetic. The proposed placement of this

facility violates the Code because it is not in any way being placed in a location that would minimize the aesthetic impact on the community. This means that *CTI* has failed to comply with both the requirements and intent of the Code.

There doesn't appear to be even the slightest attempt by *CTI* to place the facility in a location where the adverse aesthetic impact on the community is minimal. Moreover, *CTI* didn't bother to present to the County any data demonstrating that the proposed facility is even necessary, let alone that the proposed location is the best possible location to remedy any gap in coverage *CTI* is claiming exists.

Furthermore, federal courts around the country, including the United States Court of Appeals for the Ninth Circuit, have held that significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for the construction of a wireless telecommunication facility. For example, the United States Court of Appeals for the Ninth Circuit determined that "California law, as predicted by the district court, does not prohibit local governments from taking into account aesthetic considerations in deciding whether to permit the development of wireless telecommunications facilities (WCFs) within their jurisdictions." *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Ests.*, 583 F.3d 716 (9th Cir. 2009).

In *Palos Verdes Ests.*, the Court reasoned "that the proposed WCFs would adversely affect its aesthetic makeup was supported by 'substantial evidence' under the Telecommunications Act, where the city council reviewed propagation maps and mock-ups of the proposed WCFs and a report that detailed the aesthetic values at stake, and had the benefit of public comments and an oral presentation from the provider's personnel." *Id.*

“[T]he City may consider a number of factors including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that *these are legitimate concerns for a locality*.” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009) (emphasis added). *See also, Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008) (stating that the zoning board may consider “other valid public goals such as safety and aesthetics”); *T-Mobile Cent., LLC v. Unified Gov’t of Wyandotte County, Kan.*, 546 F.3d 1299, 1312 (10th Cir.2008) (noting that “aesthetics can be a valid ground for local zoning decisions”); and *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) (recognizing that “aesthetic concerns can be a valid basis for zoning decisions”).

Additionally, as is set forth below, *CTI* has failed to provide a shred of probative evidence to establish that the wireless communications facility is not injurious to the neighborhood and is actually necessary to provide personal wireless coverage in the area.

(ii) Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Facility Would Inflict Upon the Nearby Homes

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts, which an irresponsibly placed wireless telecommunication facility would inflict upon homes in close proximity to the proposed facility, are the homeowners themselves.

Consistent with this logic, the United States Court of Appeals for the Second Circuit has recognized that when a local government is considering a wireless facility application, it should

accept, as direct evidence of the adverse aesthetic impacts that a proposed facility would inflict upon nearby homes, statements and letters from the actual homeowners, since they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005).

Federal courts have consistently held that adverse aesthetic impacts are a valid basis upon which to deny proposed wireless facilities applications. *Id. See also, American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1055-56 (9th Cir. 2014); and *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 995 (9th Cir. 2009).

Annexed collectively hereto as **Exhibit “A”** are letters from homeowners whose homes are situated adjacent to, and/or in close proximity to, the site upon which *CTI* seeks to install its proposed wireless telecommunications facility.

Within each of those letters, the homeowners personally detail the adverse aesthetic impacts that the proposed facility would inflict upon their respective homes. They have provided detailed and compelling descriptions of the dramatic adverse impacts their properties would suffer if the proposed installation of a wireless telecommunication facility were permitted to proceed.

Detailed descriptions of the adverse aesthetic impacts which *CTI*'s proposed facility would inflict upon adjacent, adjoining, and nearby homes include letters from:

Tim Richards – 531 Summit Drive
Chelsea Brady – 531 Summit Drive
Rodney Cahill – 120 Summit Drive
Julie Cahill – 120 Summit Drive
Brian Smith – 125 Summit Drive
Naomi Murphy – 125 Summit Drive
JoAnn Pullen – 405 Summit Drive
William Pullen – 405 Summit Drive

Jerry and Alexis Jenkins – 219 Summit Drive
Mary Coyle – 250 Upper Summit Drive
Andy Fox – 250 Upper Summit Drive
Deborah Richards – 531 Summit Drive
Mark Richards – 531 Summit Drive
The Blackstorm Atton Household – 305 Summit Drive
Allison and Bill Pullen - 405 Summit Drive
Leif Holtermann - 714 Summit Drive
Christian Harris - 93 Summit Drive

Significantly, as is set forth above, all of the adverse aesthetic impacts the proposed wireless facilities would inflict upon these homes are entirely unnecessary because *CTI* does not need the proposed facility in order to provide wireless services within the County.

The specific and detailed impacts described by the adjacent and nearby property owners constitute “*substantial evidence*” of the adverse aesthetic impacts they stand to suffer because they are *not* limited to “generalized concerns” but instead contain *specific*, detailed descriptions of how the proposed facility would dominate the views from their bedroom windows, living rooms, kitchens, front yards, decks, bathrooms, front yards, backyards, and “from all over” their properties, and “from every angle” therefrom.

As detailed therein, the substantial adverse aesthetic impacts the proposed wireless facility’s irresponsible placement would inflict upon the nearby homes are the precise type of injurious impacts that the Code was specifically enacted to prevent.

Accordingly, *CTI*’s application should be denied in its entirety.

(iii) *CTI*’s Visual Assessment is Inherently
Defective and Should be Disregarded Entirely

Although *CTI* attempts to convince the County that the installation of the proposed wireless facility *would not* inflict a severe adverse aesthetic impact upon the adjacent homes, *CTI* has failed to submit any meaningful or accurate visual impact analysis.

As is undoubtedly known to *CTI*, the visual impact analysis presented is inherently defective because it does not serve the purpose for which it has been purportedly offered – to provide the County with a clear visual image of the *actual* aesthetic impacts that the proposed installation will inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions by *deliberately omitting* from any such photo simulations, any images *actually taken from* the nearby homes that would sustain the most severe adverse aesthetic impacts.

In *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d 529 (2nd Cir. 2005), the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions wherein they “omit” any images from the actual perspectives of the homes which are in closest proximity to the proposed installation, such presentations are inherently defective, and should be disregarded by the respective government entity that received it.

As was explicitly stated by the federal court: “the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . *the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows*” *Id.*

It is clear from the record that *CTI* has failed to submit a meaningful visual impact analysis. *CTI* does not include a single image taken from *any* of the nearby homes that will sustain the most severe adverse aesthetic impacts from the installation of the wireless facility, which *CTI* seeks to construct in such close proximity to those homes.

This, of course, includes a complete absence of any photographic images taken by CTI from any of the homes belonging to the homeowners whose adverse aesthetic impact letters are collectively annexed hereto as Exhibit “A.”

Instead, it contains only photos taken from public roads, from perspectives selected to minimize the appearance of the adverse aesthetic impact, and it in no way accurately depicts the images those homeowners will see, each and every time they look out their bedroom, kitchen, or living room window, or sit in their backyard.

This is the exact type of “presentation” which the federal court explicitly ruled to be defective, and not worthy of consideration in *Omnipoint*.

As such, in accord with the federal court’s holding in *Omnipoint*, *CTI’s* visual impact analysis should be recognized as inherently defective and disregarded in its entirety.

(iv) The Proposed Installation Will Inflict Substantial
and Wholly Unnecessary Losses in the Values
of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the area at issue, such an irresponsibly placed wireless facility in such close proximity to nearby residential homes would inflict upon such homes a severe adverse impact upon the actual value of those residential properties. This is common sense, as aesthetics is an important factor in any homebuyer’s decision to buy a home.

As established by the evidence submitted herewith, if *CTI* is permitted to install the wireless facility it proposes in such close proximity to nearby homes, it would inflict upon those homes, dramatic losses in property value and the homeowners would suffer significant losses in the values of their residential properties.

It is a common misconception that a reviewing authority, like the Santa Cruz County Planning Department, may not consider property values when making its determination on wireless telecommunications facility applications. This is not true and is contrary to established precedent in the federal courts. *See Omnipoint, supra*.

Across the entire United States, both real estate appraisers⁴ and real estate brokers have rendered professional opinions that simply support what common sense dictates. When wireless facilities are installed unnecessarily close to residential homes, such homes suffer material losses in value, typically ranging from 5% to 20%.⁵ In the worst cases, facilities built near existing homes have caused the homes to be rendered wholly unsaleable.⁶

⁴ See e.g. a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a Wireless Facility in close proximity to a home had reduced the value of the home by more than 10%, go to <http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values>

⁵ In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Wireless Facility in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Wireless Facility reduced price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Wireless Facility reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a Wireless Facility would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

⁶ Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a Wireless Facility. See HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a Wireless Facility was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. See, e.g. October 2, 2012 Article “. . . Cell Tower is Real Estate Roadblock” at <http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-home--172366931.html>.

As set forth above, federal courts have acknowledged that it is perfectly proper for a local zoning authority to consider as direct evidence of the reduction in property values that an irresponsibly-placed wireless facility would inflict upon nearby homes, the professional opinions of licensed real estate brokers (as opposed to appraisers) who provide their *professional* opinions as to the adverse impact upon property values that would be caused by the installation of the proposed wireless facility. See *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d 529 (2nd Cir. 2005). This is especially true when they possess years of real estate sales experience within the community and the specific geographic area at issue. The oft-repeated claim by applicants that letters from local, professional realtors are merely “personal” opinions is nonsense. The opinions expressed by these realtors are based on their *professional* experiences over the course of many years of interactions with prospective home buyers.

As evidence of the adverse impact that the proposed facility would have upon the property values of the homes that would be adjacent and/or in close proximity to it, annexed hereto as **Exhibit “B”** are letters setting forth the *professional* opinions of licensed real estate professionals, who are familiar with the specific real estate market at issue, that the installation of the proposed facility would cause property values of the affected homes to be reduced by fifteen to twenty-two percent (10% to 20%) (or more), and would make those homes more difficult to sell, even at reduced purchase prices.

Given the significant reductions in property values that the proposed installation would inflict upon the nearby homes, the granting of *CTI’s* application would inflict upon the residential neighborhood the very type of injurious impacts that the Code was intended to prevent. Accordingly, *CTI’s* application should be denied.

POINT II

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow *CTI* to Increase the Height of the Proposed Facility Without Further or Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed facility were constructed as currently proposed, *CTI* could later unilaterally choose to increase the height of the facility by as much as twenty (20) feet. The County would be legally prohibited from stopping them from doing so due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding Section 704 of the Telecommunications Act of 1996 or any other provision of law, a state or local government may not deny, and *shall approve*, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a) (emphasis added).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower.

The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, *whichever is greater*." (Emphasis added.)

Simply stated, under the FCC's regulation, if this facility were to be built on existing or entirely new poles, *CTI*, at any time thereafter, could unilaterally increase the height of any such



Wellesley, MA January 2009

facility by as much as an additional twenty (20) feet, and there would be no way for the County to prevent such an occurrence.

Considering the even more extreme adverse impacts which an increase in the height of the facilities would inflict upon the homes and communities nearby, *CTI's* application should be denied, especially since, as set forth above, *CTI* doesn't actually *need* the proposed facility in the first place.

POINT III

CTI Has Failed to Proffer Probative Evidence Sufficient to
Establish a Need for the Proposed Wireless Facility at the Location
Proposed, or That the Granting of Its Application Would Be Consistent
With the Smart Planning Requirements of the County Code

The apparent intent behind the provisions of the County Code, specifically Chapter 13.10.660 *et seq.* of the Code, which deals with Wireless Telecommunication Facilities, was to promote “smart planning” of wireless infrastructure within the County.

Smart planning involves the adoption and enforcement of zoning provisions that require wireless telecommunication facilities be *strategically placed* so that they minimize the number of facilities needed while saturating the County with complete wireless coverage (*i.e.*, leaving no gaps in wireless service) and avoiding any unnecessary adverse aesthetic or other impacts upon homes and communities situated in close proximity to such facilities.

Entirely consistent with that intent, §13.10.661 states that “All wireless communication facilities shall comply with all applicable goals, objectives and policies of the General Plan...” Further, §13.10.661(A) sets forth the requirement that “all new wireless communication facilities shall be subject to a commercial development permit...” § 18.10.230(A) then sets forth the

required findings for a development permit. Specifically, the approving body must find:

(1) That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be *materially injurious* to properties or improvements in the vicinity.

(2) That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

(3) That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

(4) That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

(5) That the proposed project *will complement and harmonize with the existing and proposed land uses in the vicinity*, and will be *compatible with the physical design aspects*, land use intensities, and dwelling unit densities of the neighborhood.

In order to determine if a proposed wireless telecommunications facility would be consistent with smart planning requirements, and would meet the requirements for approval, sophisticated municipal boards require wireless carriers and/or site developers to provide direct evidentiary proof of:

(a) the *precise locations, size, and extent of any geographic gaps in personal wireless services* that are being provided by a specifically identified wireless carrier, which provides personal wireless services within the respective jurisdiction, *and*

(b) the *precise locations, size, and extent of any geographic areas* within which that identified wireless carrier suffers from a capacity deficiency in its coverage.

The reason that local zoning boards invariably require such information is that without it, the boards are incapable of knowing: (a) if, and to what extent a proposed facility will remedy any actual gaps or deficiencies which may exist, and (b) if the proposed placement is in such a

poor location that it would all but require that more facilities be built because the proposed facility did not fully cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in wireless facilities within the municipality.

In the present case, *CTI* has wholly failed to provide any hard data to establish that the proposed placement of its facility would, in any way, be consistent with smart planning. By virtue of same, it has failed to provide actual probative evidence to establish: (a) the *actual location of gaps* (or deficient capacity locations) in personal wireless services within the County, and (b) why or how their proposed facility would be the best and/or least intrusive means of remedying those gaps. Moreover, as will be further discussed below, *CTI* failed to present any hard data and, as such, has failed to present any useful data at all.

A. The Applicable Evidentiary Standard

To the extent that applicants seeking to build wireless facilities seek to have their applications reviewed as public utilities, they must meet the “Public Necessity” standard established in *Consolidated Edison Co. v. Hoffman*, 43 N.Y.2d 598 (1978). As such, the applicant must prove that the new wireless telecommunication facility it proposes is “a public necessity that is required to render safe and adequate service” and that there are compelling reasons why their proposed installation location is more feasible than at other locations. *See also, T-Mobile Northeast LLC v. Town of Islip*, 893 F.Supp.2d. 338 (2012).

Within the context of zoning applications, such as the current application which has been filed by *CTI* herein, the applicant is required to prove [1] that there are ***significant*** gaps⁷ in a its

⁷ It should be noted that establishing a gap in wireless services is *not* enough to prove the need for a wireless facility; rather, the applicant must prove that “a significant gap” in wireless service coverage exists at the proposed location. *See, e.g., Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 50 (1st Cir. 2009); *MetroPCS, Inc. v.*

own wireless service, [2] that the location of the proposed facility will remedy those gaps, and [3] that the facility presents a “minimal intrusion on the community.” *Id.*

More importantly, the Ninth Circuit has set forth the following requirements, which all applicants seeking to install wireless facilities must prove. The test articulated by the Ninth Circuit requires *CTI* to demonstrate that (i) the proposed facility is required in order to close a significant gap in service coverage; (ii) that the proposed facility is the least intrusive means of remedying the significant gap in service coverage, and (iii) some inquiry as to why the proposed facility is the only feasible alternative. *See Am. Tower Corp. v. City of San Diego*, 763 F.3d 1035 (9th Cir. 2014).

Specifically, the United States Court of Appeals for the Ninth Circuit states in *Am. Tower Corp. v. City of San Diego*, “[w]hen determining whether a locality has effectively prevented a wireless services provider from closing a significant gap in service coverage, as would violate the Federal Telecommunications Act (TCA), some inquiry is required regarding the feasibility of alternative facilities or site locations, and a least intrusive means standard is applied, which requires that the provider show that the manner in which it proposes to fill the significant gap in services is the least intrusive on the values that the denial sought to serve.” *Id.* *See also, T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987 (9th Cir. 2009).

City and County of San Francisco, 400 F.3d 715, 731 (9th Cir.2005). Here, *CTI* failed to proffer substantial evidence that a gap in wireless services exists—let alone that this purported gap is “significant” within the meaning of the TCA and established federal jurisprudence.

B. CTI Has Failed To Submit Any Probative Evidence To Establish the Need For the Proposed Facility At the Height and Location Proposed

CTI has failed to meet its burden of proving that: (a) its proposed facility is a Public Necessity, (b) as proposed, its facility would present a minimal intrusion on the community, (c) its proposed placement would minimize its aesthetic intrusion within the meaning of the applicable sections of the County Code, and (d) the denial of its applications would constitute a “prohibition of personal wireless services” within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

Glaringly absent from CTI’s application is any “*hard data*,” which could easily be submitted by the applicant, as *probative evidence* to establish that: (a) there is an actual Public Necessity for the facility being proposed, which (b) necessitates the installation of a new facility, (c) requires it to be built at the specifically chosen location, and (d) on the specifically chosen site (as opposed to being built upon alternative, less-intrusive locations).

Thus, CTI has failed to prove that the proposed location is the best possible location to remedy a significant gap in personal wireless service because no significant gap in service even exists.

Without any data whatsoever, it is impossible for the County to comply with the smart planning requirements set forth in its own Code and General Plan. Furthermore, without any data, the County cannot ascertain that the proposed location is the least intrusive means of providing personal wireless service to the community because they have no idea where any possible significant gaps may or may not exist. It would be entirely irresponsible and illogical for the County to grant applications for the installation of wireless telecommunications facilities without even knowing where such facilities are actually needed.

(i) FCC and California Public Utilities Commission

Recently, both the FCC and the California Public Utilities Commission have recognized the ***absolute need*** for hard data rather than the commonly submitted propagation maps, which can easily be manipulated to exaggerate need and significant gaps.

As is discussed within the FCC’s July 17, 2020, proposed order, FCC-20-94, “[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (*i.e.*, both mobile and stationary drive-test data) as an additional method to verify mobile providers’ coverage maps.”⁸ The FCC defines drive tests as “tests analyzing network coverage for mobile services in a given area, *i.e.*, measurements taken from vehicles traveling on roads in the area.”⁹ Further within the FCC’s proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) “City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers’ coverage data...;”¹⁰ (ii) California PUC asserted that ‘drive tests [are] the most effective measure of actual mobile broadband service speeds’;¹¹ and (iii) “CTIA, which opposed the mandatory submission of on-the-ground data, nonetheless acknowledged that their data ‘may be a useful resource to help validate propagation data...’”¹²

⁸ See page 44 paragraph 104 of proposed order FCC-20-94.

⁹ See page 44 fn. 298 of proposed order FCC-20-94.

¹⁰ See page 45 fn. 306 of proposed order FCC-20-94.

¹¹ *Id.*

¹² *Id.*

California PUC has additionally stated that “the data and mapping outputs of propagation-based models will not result in accurate representation of actual wireless coverage” and that based on its experience, “drive tests are required to capture fully accurate data for mobile wireless service areas.”¹³

Moreover, proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data. Specifically, the FCC states:

“The Mobility Fund Phase II Investigation Staff Report, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The Mobility Fund Phase II Investigation Staff Report recommended that the Commission require providers to “submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.”

(Emphasis added.)

Most importantly, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires “[a]ffirmation that the coverage model has been validated and calibrated at least one time using on-the-ground testing and/or other real-world measurements completed by the provider or its vendor.”

The mandate requiring more accurate coverage maps has been set forth by Congress. “As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps.”¹⁴ “The Broadband Deployment Accuracy and Technological

¹³ <https://arstechnica.com/tech-policy/2020/08/att-t-mobile-fight-fcc-plan-to-test-whether-they-lie-about-cell-coverage/>

¹⁴ <https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/>

Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to ‘establish a process to verify the accuracy of such data, and more.’”¹⁵

“The project – required by Congress under the Broadband DATA Act – is an effort to improve the FCC’s current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate.”¹⁶

If the FCC requires further validation and more accurate coverage models, there is no reason Sant Cruz County should not do the same. For the foregoing reasons, dropped call records and drive test data are both relevant and necessary.

(ii) Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install wireless facilities provide local governments with *hard data*, as both: (a) actual evidence that the facility they seek to build is actually necessary and (b) actual evidence that granting their application would be consistent with smart planning requirements.

The most accurate and least expensive evidence used to establish the location, size, and extent of both *significant gaps* in personal wireless services, and areas suffering from *capacity deficiencies*, are two specific forms of *hard data*, which consist of: (a) dropped call records and (b) actual drive test data. Both local governments and federal courts in California consider hard data in order to ascertain whether or not a significant gap in wireless coverage exists at that exact location.

¹⁵ *Id.*

¹⁶ <https://www.lightreading.com/test-and-measurement/CTI-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329>

In fact, unlike “expert reports,” RF modeling and propagation maps, all of which are often manipulated to reflect whatever the preparer wants them to show, *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy.

Dropped call records are generated by a carrier’s computer systems. They are typically extremely accurate because they are generated by a computer that already possesses all of the data pertaining to dropped calls, including the number, date, time, and location of all dropped calls experienced by a wireless carrier at any geographic location and for any chronological period.

With the ease of a few keystrokes, each carrier’s system can print out a precise record of all dropped calls for any period of time, at any geographic location. It is highly unlikely that someone could enter false data into a carrier’s computer system to materially alter that information.

In a similar vein, actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in “computer modeling,” the creation of hypothetical propagation maps, or “expert interpretations” of actual data, all of which are so subjective and easily manipulated that they are essentially rendered worthless as a form of probative evidence.

Actual *raw* drive test data consists of actual records of a carrier’s wireless signal’s actual recorded strengths at precise geographic locations.

As reflected in the record, *CTI* has not provided either of these forms of *hard data* as probative evidence, nor has it presented any form of data whatsoever, despite being in possession of such data.

(iii) *CTI's Provided Analysis Regarding AT&T's Wireless Coverage is Contradicted By AT&T's Own Actual Coverage Data*

CTI's application states that it has a lease agreement with AT&T for AT&T to use the proposed tower for its wireless service. But AT&T's own data contradicts *CTI's* claim that a coverage gap exists in AT&T's service in the Bonny Doon area. As is a matter of public record, AT&T maintains an internet website at the internet domain address of <http://www.att.com>. In conjunction with its ownership and operation of that website, AT&T maintains a database that contains geographic data points that cumulatively form a geographic inventory of AT&T's *actual current* coverage for its wireless services.

As maintained and operated by AT&T, that database is linked to AT&T website at <https://www.att.com/maps/wireless-coverage.html> and functions as the data-source for an interactive function, which enables users to access AT&T's own data to ascertain both: (a) the existence of AT&T's wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

AT&T's interactive website translates AT&T's *actual coverage data* to provide imagery whereby areas that are covered by AT&T's service are depicted in shades of blue, including 5G+, 5G and 4G.

The website further translates the data from AT&T's database to specify the *actual* coverage at any specific geographic location. **Exhibit "C,"** which is being submitted together

with this Memorandum, is a true copy of a record obtained from AT&T's website¹⁷ on October 13, 2023. The proposed location is circled in red.

This Exhibit is AT&T's own depiction of its actual wireless coverage at 186 Summit Drive, Santa Cruz California, that being the specific geographic location at which *CTI* seeks to install its proposed facility under the claim that AT&T "needs" such facility to remedy a gap in its personal wireless service at and around such location.

As shown in **Exhibit "C,"** AT&T's own data reflects that there is no coverage gap *at all* in AT&T's service, including 5G, at that precise location or anywhere around or in close proximity to it. To the extent that *CTI* claims that the data available on AT&T's website is not accurate, it demonstrates how easily data can be manipulated to suit a particular purpose – when selling its service to the consuming public, the coverage is excellent, but when selling a proposed tower to a municipality, the coverage is almost non-existent. Only the hard data on which the representations are based can resolve the discrepancy. But neither *CTI* nor AT&T will provide it, claiming that it is proprietary information they cannot share with the public.

CTI's submissions are entirely devoid of any hard data or probative evidence that establishes that AT&T *needs* the proposed facility. AT&T's data affirmatively contradicts what *CTI* states in its application. As such, *CTI* has wholly failed to "demonstrate and prove" that *CTI's* proposed facility is necessary for it to provide personal wireless services within the City.

For the foregoing reasons, *CTI's* application should be denied.

¹⁷ <https://www.att.com/maps/wireless-coverage.html>

POINT IV

CTI's Application Must Be Denied Because the Proposed Location Will Be at a Heightened Risk of Fire

Monopoles, such as the one being proposed by *CTI*, are, *by far*, the most susceptible to fires and collapse due to fire. *See* Exhibit “D,” which includes a sampling of images of monopoles that suffered fires. *At least* once per month, a monopole cell tower somewhere in the U.S will experience a fire, and an unspecified number of them will, thereafter, collapse in a flaming heap.

The most notorious example was a monopole cell tower in Wellesley, MA, which erupted into flames on a main thoroughfare, and the entire tower proceeded to collapse in flames. Meanwhile, hundreds of drivers drove past it.¹⁸

Exhibit “D” is just a small sampling of well-documented monopole cell tower fires. Given the already high risk of fire in Santa Cruz County, the above situations should be considered in connection with the health and safety, and material injury to property concerns expressed in the County Code in connection with wireless telecommunication facilities.

POINT V

To Comply With the TCA, CTI's Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

¹⁸ To watch a color video of that event, simply follow this link:
https://youtu.be/0cTcXuyiYY?si=u6D7aoBy_5GWfZXG
A more recent example from 2021 in Gulf Shores, Alabama can be viewed here:
<https://youtu.be/7EN3Z4C8550?si=x9RvjGeGLN6GhtYb>

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715, 721 (9th Cir. 2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. “Substantial evidence” means “less than a preponderance, but more than a scintilla.” *Id.* at 725.

Review under this standard is essentially deferential, such that Courts may neither engage in their own fact-finding nor supplant a local zoning board’s reasonable determinations. *Id.*

To ensure that a legal challenge to the County’s decision under the Telecommunications Act of 1996 will not succeed, it is respectfully requested that the County deny *CTI’s* application in a written decision wherein the County cites the substantial evidence submitted herewith (and profound lack of evidence from the applicant in support of its proposed tower) upon which it based its determination.

C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers like *CTI* seek to intimidate local zoning officials with either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, more bark than bite.

This is because, even if the applicant files a federal action against the County and wins, the Telecommunications Act of 1996 does not entitle the applicant to recover compensatory damages or attorneys' fees, even when they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.¹⁹

This means that if the applicant sues the County and wins, the County does not pay anything in damages or the applicant's attorneys' fees under the TCA. Typically the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last only months rather than years.

As a result of the brevity and relative simplicity of such cases, the attorneys' fees incurred by a local government are typically quite small, compared to virtually any other type of federal litigation—as long as the local government's counsel does not try to "maximize" its billing in the case.

¹⁹ See *City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

Conclusion

In view of the foregoing, it is respectfully submitted that *CTT's* application for a Development Permit be denied in its entirety.

Dated: Santa Cruz, California
October 13, 2023

Respectfully Submitted,

Tim Richards – 531 Summit Drive
Chelsea Brady – 531 Summit Drive
Rodney Cahill – 120 Summit Drive
Julie Cahill – 120 Summit Drive
Brian Smith – 125 Summit Drive
Naomi Murphy – 125 Summit Drive
JoAnn Pullen – 405 Summit Drive
William Pullen – 405 Summit Drive
Jerry Jenkins – 219 Summit Drive
Alexis Jenkins - 219 Summit Drive
Mary Coyle – 250 Upper Summit Drive
Andy Fox – 250 Upper Summit Drive
Deborah Richards – 531 Summit Drive
Mark Richards – 531 Summit Drive
Sara Blackstorm Atton - 305 Summit Drive
Bob Atton - 305 Summit Drive
Allison Pullen - 405 Summit Drive
Bill Pullen - 405 Summit Drive
Leif Holtermann - 714 Summit Drive
Christian Harris - 93 Summit Drive

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA

-----X
In the Matter of the Application of:

**DELTA GROUP ENGINEERING and
CTI TOWERS**

for a Conditional Use Permit and Variances

Premises: 186 Summit Drive, Santa Cruz, CA 95060

Application Nos.: 221049, REV221042, REV221043

Parcel No.: 080-062-02
-----X

EXHIBITS IN OPPOSITION

Respectfully Submitted,

Tim Richards – 531 Summit Drive
Chelsea Brady – 531 Summit Drive
Rodney Cahill – 120 Summit Drive
Julie Cahill – 120 Summit Drive
Brian Smith – 125 Summit Drive
Naomi Murphy – 125 Summit Drive
JoAnn Pullen – 405 Summit Drive
William Pullen – 405 Summit Drive
Jerry Jenkins – 219 Summit Drive
Alexis Jenkins - 219 Summit Drive
Mary Coyle – 250 Upper Summit Drive
Andy Fox – 250 Upper Summit Drive
Deborah Richards – 531 Summit Drive
Mark Richards – 531 Summit Drive
Sara Blackstorm Atton - 305 Summit Drive
Bob Atton - 305 Summit Drive
Allison Pullen - 405 Summit Drive
Bill Pullen - 405 Summit Drive
Leif Holtermann - 714 Summit Drive
Christian Harris - 93 Summit Drive

Exhibit List

- A Adverse Aesthetic Impact Letters
- B Real Estate Professional Opinion Letters
- C *AT&T* Coverage Map for the Proposed Location
- D Photos of Cell Tower Fires

EXHIBIT A

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EXHIBIT 4H

The Blackstorm Atton Household
305 Summit Drive
Santa Cruz, CA
95060

10/8/2023

Sheila McDaniel
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor

RE: Visual Impact of proposed Cell Tower at 186 Summit Drive

APN: 080-062-02, Application: 221049

Sheila,

My husband and I fell in love with the property we own on 305 Summit Drive 12 years ago. It is quiet, peaceful and beautiful. Unfortunately, we lost our home to the CZU wildfires in 2020. We have made the decision to build our dream home out of the disaster, designed by us to fit into the stunning aesthetics of the mountain landscape.

Our house was halfway through completion when we learned of the 170 foot proposed cell tower. We are dismayed and upset to find out about this eyesore right across the street from the dream home that we are building after losing so much to the fires. We will see the monstrosity from all of our outside property, including our bedroom and kitchen windows.

To say nothing of the lights and noise from a generator and tower. Our street is quiet, dark at night and peaceful, with this proposed cell tower the dark, quiet and peace of our mountain home would be destroyed. This tower would be a blight to the view from our home. We have lost so much due to the fire, we do not want to lose the beauty of our new mountain home because of a gigantic cell tower obstructing the landscape.

We are knee deep in the cost of construction on the new home, and we will be saddled with a large mortgage at the end of it, then come to find out our property value will decrease if the proposed tower is installed. This is unacceptable. We are deeply saddened and upset by the proposal of a cell tower at 186 Summit Drive.

Thank you,

Sara Blackstorm Atton

Bob Atton

10/12/2023

Sheila McDaniel

Santa Cruz County Planning Department

701 Ocean Street, 4th Floor

Santa Cruz CA 95060

sheila.mcdaniel@santacruzcounty.us

RE: Visual Impact of Cell Tower proposed at 186 Summit Drive immediately next door to me - draft

APN: 080-062-02, Application: 221049

Sheila,

I live immediately next door and only 180 feet from the proposed 150 to 170 feet tall gigantic cell tower and the visual impact of this development is overwhelming. The cute farm house appeal of our home will be damaged severely with an incompatible industrial device that is severely out of character and gravely out of scale with the natural landscape of our home.

The giant tower will be highly visible out of our bedroom window and will dominate the view from all parts of our yard including our entrance, our driveway, our backyard patio, our garden, and our living room! This money-making monstrous machine will reap profits for at&t by destroying the beautiful rural family friendly character of our home. The prospect of the constant ugly sight of this tower out of our bedroom window causes us great anxiety and distress. We moved here because we want to see nature the first thing when we wake up and the last thing we see at night, not massive commercial transmitters. This tower would obliterate my property's natural aesthetic value.

This commercial development will tower over us like a smoke stack in a residential neighborhood. The developers want to erect large electrical equipment, high powered antenna arrays, cables, metallic conduits, raceways, lights, wires, dishes, struts, arms, frames, and other ugly contraptions suspended from it in an industrial fashion. The 12-story tall ghastly structure will tower above the height of the trees and be visible from far and wide. The 'co-location' tower is industry-speak for a tower that will rent space for any and all large wireless companies to build additional antennas and accumulate more and more equipment on the tower, furthering the size and mass of the tower and the number of objects suspended 150 feet overhead. These money-making monoliths are a symbol of the industrialized City and are dramatically inappropriate 180 feet from my little residence. At a minimum, towers are required to provide a setback of 5x the tower height as required by the County Code.

The tower will be so high that it will stick up over five times the height of my house! Flashing lights that will destroy the quiet and dark peaceful night time atmosphere of our neighborhood. Instead of sitting out back enjoying the sounds of the crickets and the birds we will be getting flashed by lights and alarmed by this red menacing beacon. Our property is a quiet, dark, peaceful, rural residential area and no flashing disturbing lights are tolerable.

We have all seen the fake tree cell towers and let's be honest, they look like Frankenstein with a Hawaiian shirt on. The ridiculous camouflage is so obtrusive it doesn't fool anyone who has ever seen what a real tree looks like. They are just a dishonest disguise of an industrial machine.

CTI has owned the property for 6 years and I expect the current pattern of careless absentee property management to continue. CTI has over 1,000 towers under its management across the US, and they exist solely for rapid deployment of massive towers to make money. For them, this development is purely a money-making device. Unsurprisingly the property is ugly and run down and is a sign of things to come. The building eaves are sagging and the gutters are always full to overflowing with pine needles. Grass and weeds grow up around the ugly building and the rusty chain link fencing has not been replaced since the CZU fire. Half of the plastic slats in the front fence are still left in place, partially burned and a reminder to the community that the interstate corporate owners don't care about being a good neighbor. Random junk equipment and out of date parts are left to rot in the yard as the fallen branches build up and add to the overall decrepit scene. In the four years I have lived next door, I have never seen the property mowed or cleaned. Obviously this carelessness is reckless given the dangers of fuel buildup and fires. It will be business as usual if it is built and I can foresee the poor condition of the tower and the tacked on camouflage pieces as windstorms and heavy weather take their toll in the years ahead.

The neighborhood was burned over in the August 2020 CZU Lighting Complex Fire and about 20 of the 40 homes on the street were destroyed. I extinguished several fires burning around the tower during the fire including one that burned half of the fence down due to lack of yard maintenance and zero housekeeping. I called the number for CTI on the gate and they were totally clueless about what to do. It took months for them to send someone, who then showed up for one day of tree trimming and was never seen again. The tower developers have proposed a huge 30kW Automatic Diesel Generator. That is enough power for an 8,000 square foot home, and will add more noise, heat, and fire danger. These generators get extremely hot and loud and they stink, and when left unattended to run on automatic, they are very hazardous. The building and generator are a fire hazard in violation of the Wildland Urban Interface building code and the National Fire Protection Act.

As you know, Santa Cruz is a very difficult place to find affordable housing, and is one of the most expensive places in the world for working families to afford due in part to its rare natural beauty. After over 20 years of renting and saving and at great personal financial risk we took out a very large mortgage to afford to buy our first family home. What made all the work and risk worthwhile was the subtle beauty and natural character of the home, and the wonderful views of the lovely environment, surrounded by trees gently swaying in the breeze, the quiet sounds of birds, and the fragrance of a plethora of native flora. This visually beautiful and fragile natural environment would be shattered by the construction of yet another massive invasive industrial facility and would unfairly force me to pay the price for the drastic destruction of our environment while the Cell Tower corporations make millions.

Thank you,

Rodney Cahill
120 Summit Drive
Santa Cruz, CA 95060

Julie Cahill
120 Summit Dr
Santa Cruz CA 95060
408 718 7108

October 12, 2023

Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
sheila.mcdaniel@santacruzcounty.us

RE: Visual Impact of Cell Tower proposed at 186 Summit Drive

APN: 080-062-02

Application: 221049

To Whom it may concern,

We are immediate neighbors to the proposed 150+ foot cell tower directly north of us which means we will have full view of the tallest faux tree in all of Bonny Doon. Perhaps we can charge a viewing fee to offset the massive hit our property value will take as you'll be able to view it from anywhere in our yard, even our own master bedroom. In addition to it towering over our tallest natural tree by 50+ feet, not swaying naturally in the wind like all the other trees around it or having any form of a natural structure to it, it will be surrounded with three strands of barb wire on top of a six foot chain link fence according to their plans. It will be like living next to a prison with a shining search tower above all the tree line if they include the warning lights too as required by the FAA on any ridge line. There goes our nighttime viewing of the milky way and stars from our jacuzzi at night.

What began as a sweet home surrounded by nature & trees with not a neighbor in sight has now turned into a fish bowl due to the fire. On top of the struggles of rebuilding fences, homes and privacy hedges, we are now being bombarded with this massive metal structure and a never ending stream of random workers next door testing generators and servicing one of the three proposed carriers. Our own neighbors have not even rebuilt yet. Many regret rebuilding and say they would have sold and moved if they knew this was in the future. It's heartbreaking to think that many's number one investment, their home will be greatly demised, especially for the who went through the deep process to decide if they even wanted to rebuild.

While I can appreciate the need for more cellular service in our area for both daily function and in times of emergency such as the one we just survived, I am keenly aware that towers fall over. Second to our property value and the unsightly man-made structure not suiting our neighborhood, this tower poses two major danger due to the deadly combination of tripling the height and reducing the set back to less than two times it's height when it is a recommended five times. These two dangers are in the towers fall zone: blocking the roadway and hitting power lines. Furthermore, CTI has been grossly negligent of their property thus far and have not upheld the counties standing requirements for previously issued permits in addition to us having to contact them multiple time to remedy any down tree, remove obsolete equipment or request they contribute to our private road fund which they have not. I shutter at the thought of approving them more permits when they can not even properly manage their current property. Lastly, their vague propagation map lacks any concrete evidence that any significant gap will be improved in comparison to FCC and AT&T's online coverage maps. I implore you to request further evidence of coverage in addition to exploring in greater depth a quality of service comparison with DAS or small cell technology.

Kindly,

Julie Cahill

Brian Smith and Naomi Murphy

125 Summit drive, Santa cruz Ca 95060

To Whom It May Concern,

Over 2 years ago, my wife and I were looking for our forever home. We wanted somewhere not in town, with space, and a great view. We had been looking in the Bonny Doon area for some time. When we found our home here on Summit drive, we fell in love. This home had everything on our list and more. We wanted to get away from the hustle and bustle of the city to live more rural for the quite days and night. We also loved the vies in all directions that we have from our property. It is truly beautiful being able to see the ocean from your own home and have many clear unobstructed nights of stargazing. We had been saving our money for some time to invest in our forever home. When we heard that a giant eye sore was proposed to be installed in our neighborhood, we were extremely saddened. Many of our neighbors have come to this area for its tranquillity and beauty. We did not come to up to the area to have a cell tower and city life come with us.

Realtors have visited our area and commended us on the upgrades we have done to our property. When hearing that a cell tower is proposed, said Realtors have stated that our property value will go down substantially. If we sold our property would sit on the market longer and there are not many people who want a cell tower across the street from their home to always stare at from their front yard. All our hard work could be for nothing if this cell tower is approved.

We already have a basically vacant building across the street. The land is not kept up during the year. The property is overgrown, no one is seen doing building maintenance, or landscaping. The building is already an eye sore in our community. I urge you to please preserve the beauty that is left in our neighborhood.

Sincerely,

Brian Smith and Naomi Murphy

September 11, 2022

Shiela McDaniel
Planning Department, Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, Ca 95060

Dear Ms. McDaniel,

My husband and I purchased the land at 405 Summit Dr. over 6 years ago. We should have been retiring then but instead fell in love with this land that had no house on it but flat space enough to have room to build our house and also a ADU house for our son and now newlywed wife. The Dream of a family compound was now born.

The house for our son was completed in 2019 and is about 450 feet from the proposed tower in the middle of our beautiful residential neighborhood. We will be able to see this tower from the front windows, front doors, front patio, and bathroom windows all of which were designed to take advantage of the view of the trees across from us.

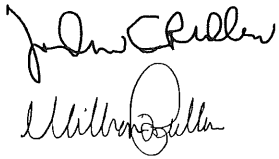
The front yard was designed to have a garden and also a children's play area over time all of which will look directly at the tower. I believe we will see the top of the tower from the back deck as well which is used every morning to have coffee and to see the birds and other wildlife.

This tower seems very ugly to me and aesthetically unappealing and will so ruin the careful design that was just completed. One of the beauty of this house is the view of the nighttime sky they can be seen best just out of the garage door which will now have a cell tower in it!

My husband and I are still working hard at our professions to afford to properly build the second house on the property which will start soon. This has been an incredible but very difficult journey building our dream compound in the Santa Cruz Mountains. Our ADU house survived the fire. The beauty of our neighborhood diminished somewhat but is returning. It doesn't seem fair to have to go have another aesthetic blight after all we've gone through with the fire.

Please block this ugly tower in our neighborhood!

Sincerely yours,

Handwritten signatures of JoAnn Pullen and William Pullen. The first signature is 'JoAnn Pullen' and the second is 'William Pullen'.

JoAnn and William Pullen

October 4, 2023
Chelsea Marie Brady
531 Summit Drive
Santa Cruz, CA 95060

Sheila McDaniel
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA

Dear Ms. McDaniel,

Two years ago on 10/8/21 my family and I purchased our property on Summit Drive after a long slew of housing struggles. We moved 7 times in the first year and 1/2 of our daughter's life due to the impacted Santa Cruz housing market caused by the pandemic, wildfires, and black mold issues and all we could find were short term sublet situations.

We fell in love with the community and natural setting in this remote location. It checked all our boxes for the type of environment we wanted to raise our family and we were hoping to make this our "forever home."

We had plans in motion for rebuilding a home on foundation to house our growing family (I am 12 weeks pregnant), but have put them all on pause since finding out about the proposed cell tower. We wish to continue building our life up here and do not wish to move again, but would inevitably choose to relocate should this tower be constructed.

There are 3 main reasons I am in opposition to this tower being constructed:

1. Aesthetic impact
2. Noise of generators when power goes out/ regular testing of generators
3. Wildfire concerns.

1. Anytime I tend my garden, play outside with my daughter, entertain friends, or stroll to our neighbor's house, this tower will be looming over us. It will impact the sense of peace I feel in being surrounded by nature that led us to choose this remote location for our home.
2. We have frequent power outages year round. In Summer, PG&E will often shut off power when there are high winds to reduce chances of wildfires. In Winter there are many power outages due to trees falling on power lines, storms, etc.

When power goes out, we have been informed that the tower will be generating power using multiple high powered generators. These generators will also need to be frequently tested. I hold many concerns for the level of noise that this will cause.

I am both a massage therapist that sees clients in my space and a musician that requires quiet space for recording. I am concerned that the noise of the generators will impact my work. Part of the reason I wanted to live in a remote location is to have peace and quiet.

Before this tower is constructed, I would like to request that just as they constructed a mock tower to give homeowners a sense of the visual impact, there be some kind of trial of the auditory impact that the generators will have on our peaceful soundscape.

3. We are in an extremely sensitive area for wildfires. Three years ago this entire area was engulfed in flames. This is what opened the door for us to be able to purchase the property we are on now. We want to do everything possible to minimize the chances of this neighborhood being burned again. In a simple google search of "cell towers causing fires" there are a plethora of news articles as evidence to suggest that cell phone towers present a risk of fire danger.

I urge you, Ms. McDaniel, to please preserve the safety, beauty, and peace and quiet of my family home, and the homes of our fellow neighbors and community members by denying the permit application for this tower.

Sincerely,
Chelsea Brady

@Chelsea_music_and_soul

chelseamusicandsoul.com

facebook.com/chelseamusicandsoul

October 12, 2023

Sheila McDaniel
Santa Cruz County
Office of Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Dear Ms. McDaniel,

My family and I love living in my peaceful mountain neighborhood on Summit Drive. I co-own land here with my parents Mark and Deborah Richards. I live here with my partner Chelsea Brady, our daughter Runa Bhu Richards, and our baby boy who is 13 weeks in development inside of Chelsea's womb.

We moved here two years ago to escape the stress and hustle bustle of the grid. We came here because Rural Residential zoning in the mountains is our ideal place to live: "One single-family dwelling, one second dwelling unit, home occupations, and horses with a use approval."

We love waking up and enjoying the far-reaching views to distant summits to the east, as well as a large swath of the Monterey Bay. The pristine view-shed is what makes our home psychologically calming, aesthetically pleasing, and financially valuable. We love seeing the stars in the night sky in all directions. It's what brought us to spend our life's savings to buy this \$439,000 parcel at 2 acres with no buildings on it after they were all razed to the ground and to set out to develop from the ground up. We intended to build our forever home here.

Last fall, we were all horrified to learn that there was a massive 150 ft industrial cell tower proposed just 1,000 ft from our halcyon mountain homestead. No longer would our viewsheds be pristine - at night, we would see tower lights rather than stars blinking. Our neighborhood walks to see the sunset and visit our neighbors would be soiled with the eyesore of an industrial facility looming large over all of us, completely out of place and out of character for our zoning.

Reading through all the material about what is proposed, the appropriate zoning to describe such an industrial facility in my opinion could only be considered "M-2" Heavy Industrial.

We learned that most non-residential uses are allowed only with a commercial development permit, approved by the County, as well as several exceptions to height and to setbacks, and a waiving of the obviously appropriate California Environmental Quality Act (CEQA).

I write today to present to you ten legitimate reasons why you should absolutely deny a development permit and height and setback exemptions, and require California Environmental Quality Act (CEQA) for this Heavy Industrial zoning in the middle of our Rural Residential neighborhood with young growing families like ours:

- 1) Summit Drive is actually a formal subdivision, which should enjoy the protections of other residential neighborhoods and be protected by the zoning laws meant to ensure quality of life for citizens in this county. We never would have moved here if we knew that an industrial facility was in the works. We learned from a local realtor that others who were looking at buying 500 Summit Drive dropped the deal once they learned about the tower proposal. We would have done the same.
- 2) We submitted architectural plans to the county to rebuild under the RPC process. These plans ground to a halt once we learned about the tower. We will be forced to abandon the plans we spent over \$30,000 dollars to generate and sell our property if the development permit is granted, if anyone is willing to buy it.
- 3) Our realtor Ace Estess mentioned we will take a 15-20% hit on our property value if the tower proposal goes through. That's not the fate we want the property that we've liquidated our nest egg to endure. Our lives and livelihoods are fully invested here.
- 4) The county stands to make far more money from us and everyone else in the neighborhood if we all rebuild and increase the values of our property and the amount of property tax we are collectively paying. If the county approves the tower, every property in our neighborhood will suffer a 15-20% value reduction, meaning that county property tax revenues will also decrease in kind. That leaves less money to support county staff salaries and much-needed cost of living increases for county staff as well.
- 5) CEQA requires public agencies to "look before they leap" and consider the environmental consequences of their discretionary actions. CEQA is intended to inform government decision makers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage.
 - a) Summit Drive is home to several Native American artifact sites, as evidenced by the grind stones you can find on lower Summit Drive.
 - b) Cell phone towers disguised as trees are known to cause microplastics pollution problems. Cell tower microplastic pollution will contaminate the land and water, as evidenced by peer reviewed research around the monopine towers in the Lake Tahoe basin. Our watershed drains to the Monterey Bay that we see sparkling below us. We do not want to pollute our federally protected marine sanctuary with plastics from this holistically unnecessary tower.
- 6) My family and I are extremely sensitive to noise, and the lack of noise here is another key reason why we moved here. The CTI Towers neighborhood meeting informed us that there will be mandatory generator tests every month, as well as several large generators running whenever the power goes out, which is dozens of times per year.
- 7) The tower is unnecessary to increase cell service. All of our neighbors on the drive have cell service coming either from Scotts Valley or the tower near Braemoor, but we never even have to use it because we have incredibly fast internet over which we enjoy calling and texting. Our neighbor Scott Martin did a test drive with cell service measuring throughout Bonny Doon and found coverage all along Empire Grade where the company is claiming a coverage gap.
- 8) Even if we did need better cell service, which we don't, there are far superior technological alternatives to provide evenly distributed service throughout a much broader area without all the negative impacts on neighbors and the environment, namely

the Distributed Antenna Systems (DAS) like they did in both the south county along Freedom Blvd and north county along Highway 1 to Davenport. Starlink is also a wonderful option.

- 9) Danger of cell towers catching fire, which my father and others have detailed. The last thing we need is a repeat of the 2020 CZU fires that brought this entire area to its knees, and the monopine tower would be a strong match to light another conflagration, with our homes and properties being in the first line of danger.
- 10) Waiving development requirements for a non-local corporation trying to build a place-inappropriate tower while long-time local residents struggle to get rebuild permits is tone deaf. At least a third of our neighborhood is consumed by the emotional, mental, and financial burdens of rebuilding where about 40% of homes burned. Adding this to our list of worries is adding insult to injury.

I hope you hear my family's voices and the dozens of other Summit Drive neighborhood residents who are united in opposition to this proposal. It's the wrong thing at the wrong time that benefits none of the stakeholders involved in any way, except the financial interests of several out-of-state corporations.

Thanks,

Tim Richards
831-515-8041

To: Sheila McDaniel
Santa Cruz Planning Department
701 Ocean Street, 4th floor
Santa Cruz, CA 95060

From: Mary Coyle, Andy Fox
250 Upper Summit Drive
Santa Cruz, CA 95060

October 12, 2023

Dear Sheila,

This letter is regarding the proposed radio tower project at 186 (Upper) Summit Drive, Santa Cruz.

Andy and I have lived at 250 Upper Summit Drive for over 20 years and regard it as a very special tranquil place. We both cherish and enjoy the rural setting.

I have worked hard over 30 years of teaching in Half Moon Bay to purchase my house and create a peaceful place to enjoy my recent retirement: gardening, painting and enjoying the quietness of the area. That enjoyment of course, was upended with the CZU fire 3 years ago. Not only did our lovely quiet neighborhood lose many houses and supporting structures, we had to endure over two years in the aftermath of toxic soils endangering pets and ourselves. In addition, that was followed by years of heavy trucks constantly on our small neighborhood funded paved road as friends who lost their homes struggled with the county and the trauma of losing everything to rebuild. Finally we are closer to getting the neighborhood back to what it was.

The proposed radio tower is adjacent to my property that I share with Andy, 250 Summit Drive. The construction of the massive 150 foot tall radio tower will be an ugly addition and is directly within the field of view of my property. The natural environment where I live is extremely precious to me. A synthetic, man-made 150 foot tower is the antithesis to the lovely gardens, the lovely redwoods, sequoias, and fir trees which Andy and I have chosen as our home. Additionally, the development of the tower will lower the property value of my primary asset by 10 percent. Furthermore, the tower is so close to my property and the access road that should it fall, as one did on Patrick road during the fire, it could cause damage and possibly human injury. As of now, we are not convinced that setbacks for the proposed tower meet safety standards to protect my property or family.

Finally, on Summit drive there is perfectly good high speed internet (connected to fiber optic cables) which provides all the communication bandwidth I need (my cell phone has a wifi feature) so the tower is not needed by me or my local neighbors who all have good internet access. As I have tried to stress, our neighborhood greatly suffered after the CZU fire. I am sure my Summit drive neighbors will agree, we want and long to get back to the neighborhood we had before the fire, our neighborhood!

Please take this letter as my formal opposition to the radio tower. Having recently lost my rental unit and every storage unit on my property to the CZU fire, I have suffered enough without the further pain of the negative aesthetic and property value reduction consequent from this proposed unnecessary radio tower.

Thank you,

Sincerely,

Mary Coyle and Andy Fox

Mary Coyle

Andrew - J - Fox

October 11, 2023

Sheila McDaniel
Santa Cruz County
Office of Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Dear Ms. McDaniel:

Our family was searching for a home for our son and his family for over two years until we found the beautiful 2-acre homesite located at 531 Summit Drive in Santa Cruz and co-signed with our son to buy the property.

The property has a beautiful view of the Monterey Bay. It is landscaped with many beautiful flower gardens and trees. The property is an excellent place to raise their family: 3 year old daughter Runa and baby boy in utero at only 13 weeks.

I am very concerned about the proposed cell phone tower that will be close to his home. It will adversely affect the property value of his home. In addition, it will be an eye sore to the lovely neighborhood. Another concern is the potential for fire and fall hazards in the community.

Thank you for your time. I can be reached at 301-471-3355 if you have any questions.

Sincerely,

Deborah A. Richards

October 11, 2023

Sheila McDaniel
Santa Cruz County
Office of Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Dear Ms. McDaniel:

I am writing with serious concerns regarding the proposed 150-170 foot AT&T cell tower that is being proposed only 1,000 feet from when I co-own property with my wife Debbie and my son Tim Richards at 531 Summit Drive in Santa Cruz.

I am a retired career Assistant Fire Chief with 38 years of service. Cell towers have a well-documented history of going up in flames, as a simple Google search will show. Given this propensity for burning, they could easily ignite a wildfire when situated in the middle of a forest that has already endured a wildfire.

A 150 foot cell tower in a residential neighborhood that is subject to wildfires such as the August 2020 CZU fire would be a foolish and dangerous venture in a known wildfire fire zone. Many homes and large trees were destroyed in the CZU fires.

Should another fire occur, intense and prolonged heat to large, long burning trees presents a significant collapse hazard for a 150 foot or taller cell tower being subjected to the prolonged heat of another raging wildfire. Patrick Rd already witnessed this with a tower there during the CZU fire.

The cell tower should NOT be located in an area in which tall trees with the significant potential of wildfire exposure exists.

The cell tower SHOULD be located in a grassy field that does not generate a high burning hazard with tall, sap filled trees that burn significantly hotter and also burn for prolonged periods of time, often measured in days and weeks.

I can be reached at 301-639-9874 if you would like to discuss my concerns.

Sincerely,

Mark Richards

October 13th, 2023

To Whom It May Concern:

My name is Jerry Jenkins. My wife Alexis and I live at 219 Summit Drive (across from the proposed tower site). We have lived here for the past 46 years, and we are emphatically opposed to the proposed new eye sore tower site.

Here are just a few reasons why we are opposed to the proposed 150 ft to 170 ft tower.

- Like I mentioned above, I have lived up here for the past 46 years. My home that I raised my two sons in was completely burned down in the CZU fire. I have redesigned and built my wife and I a new home with decks 365 degrees around the house so we can sit out and enjoy the beautiful scenery of our mountain community. We just moved back this past April. We were not told that there was going to be a new giant tower across the street. This added hardship, along with losing everything I have ever owned is almost unbearable.
- **It will be an unbearable eyesore.** I will be looking at it anytime I am out sitting on my new deck. A tower that looks like a fake tree with (Xmas) lights on it, is like putting lipstick on a pig. It is still a pig. This is not what I signed up for.
- **Loss of property value.** As you all know, the cost to rebuild a home up here now is astronomical, anywhere from \$500 to \$800 per square foot just for an average house, nothing special. I have neighbors right now that cannot sell their home because of the tower just being proposed. I can't imagine what it will do for property values if the tower is actually built. If I ever had to move because of health reasons (I am 71 years old now) I would hope I will at least recover my building costs. From what I hear that could be in jeopardy.
- **Bad neighbor.** I am not all that familiar with CTI. But historically everyone that has owned that property has not followed up with promises to maintain the property all the way back to the original cable company. There was to be one large (approximately 50 ft in diameter) satellite dish that they were going to disguise with plants and fencing etc. That never happened.

Then they added approximately 5 to 10 smaller dishes, still no disguise. When they decided the dishes were obsolete for better technologies, they abandoned the dishes to just sit there for about 10 years before they finally got cleaned up. Somewhere in all that process Comcast came in and built a small tower without any neighborhood input. They just did it.

Now CTI is coming in and promising to do all the same things the other companies promised with a bad history for maintaining that property for fire or tree hazards. There

has been no mention of what would happen if a 170-foot tower should fall and what that impact would have on the immediate neighbors. All this being said, none of these companies has ever contributed to the building or maintenance of Summit Drive, a private road maintained by the adjacent homeowners, even after being asked.

I understand people in Bonny Doon would appreciate better cell service (I would also), but not at the expense of a complete neighborhood. Other neighbors have mentioned other sites where a tower could be built with less impact on neighbors. My opinion is not to pass the problem we have to other people in Bonny Doon.

Especially when I know tower technology is on the way out. Like in Santa Cruz, you do not see large towers. There is much better technology out there that does not impact the people that would live around those towers for cell service. This is where the future of cell service is going. I would be willing to bet the owner or president of CTI does not live next door to one of their cell towers.

Jerry and Alexis Jenkins
Concerned Summit Drive neighbors.
219 Summit Drive

To: Sheila McDaniel,
Santa Cruz, Planning Dept,
701 Ocean Street, 4th Floor,
Santa Cruz, CA 95060.

A Fox,
88 Patrick Road,
Santa Cruz,
CA 95060.
Oct 11th 2023
831 621 0999

Dear Sheila,

This letter is lodge my objection on aesthetic and technical grounds to the unsightly proposed radio tower for 186 Summit.

The Summit Subdivision, where I have two properties (APNs 08004115,08004114), is a delightful rural place. I choose to live here because of its bucolic nature and beautiful trees (I have an orchard on one property and a garden on another, all within sight of the proposed development). The imposition of a 150 radio tower will disrupt that ambiance.

Moreover I am told that the radio tower development will reduce my property values by approximately 10%. Should the tower development go through, I would expect my property tax base to be reflected accordingly, after a re-appraisal is performed.

From a technical point of view it is puzzling to me why a large base station needs to be installed in the Summit Tract where we already have very good internet connections (all my own telecommunications, including cell phone, go through that connection). There is optical fiber routed to the Summit Tract. The base station will offer only "line of sight" of site connectivity yet Bonny Doon is a hilly terrain with canyons and peaks. A preferred modern technical solution for Bonny Doon is a network of small "pico" base stations (a so called Distributed Antenna System) on the utility poles which "distributes" the coverage locally thereby improving coverage over 1 big tower. A particular advantage of the distributed system is that the canyons and hilly terrain of rural Bonny Doon will be served. I believe this technical alternative should be properly explored.

Please take this as a formal objection to the proposed base development on aesthetic reasons, property reduction value and the presence of a good alternative.

Please feel free to call me on 831 621 0999 with any questions.

Yours faithfully,

Andy Fox.

Andrew W-Fox
=

October 12, 2023

Santa Cruz County Planning Department
Shiela McDaniel
701 Ocean Street, 4th Floor
Santa Cruz, CA. 95060
APN: 080-062-02
Application: 221049

RE: Visual Impact of Cell Tower Proposed at 186 Summit Drive

Dear Ms. McDaniel,

My husband and I live on our family compound at 405 Summit Dr. which is directly across the street from 186 Summit Dr. where the proposed tower will go. When this property was purchased in 2016 the vision was to have two homes built where Bill and I would raise our family in the ADU, and my In-Laws would retire to the main home from the noisy hustle and bustle of LA to a quiet and peaceful Bonny Doon life. Together we will fulfill a common goal of working together to create a beautiful, quiet, and peaceful environment for us to raise our family on while tending to this sacred land together.

The reason this property was picked for purchase over any other that was viewed was because of the rural environment full of trees and animals. Another major plus was the caring and quiet neighbors who all share a common goal of giving back to the land. When the building location was picked, it was carefully selected based on numerous factors but a major one being the beautiful nature surrounding us that we would be lucky enough to wake up to daily. The three bedrooms in our home were placed in such a way that all we would see when looking out our windows was nature. Now we find ourselves in an awful situation where our new view might be a horrendous 150'+ faux tree tower with a six-foot chain-link fence with 3 strands of barb wire on top of it. Are we living next to a jail? Worst of all, the direct view from our future child's nursery is merely 400' from this monstrosity. Heartbreaking.

When our house was built, my In-Laws were sure to put as many windows as possible in the house because of the beauty that surrounds us. If this tower goes up, we will be forced to cover our windows with blinds to hide the hideous tower that we will see from every single room in our entire house along with our front yard, front patio, and driveway. If this tower indeed goes up, we will be forced to completely redesign and move the vision that we have created for this land to avoid the eye sore that will now be forced to see every single day. What is currently a beautiful and inviting outdoor space for us may quickly become deserted. A true shame.

My husband is a Paramedic Firefighter who has studied wildfires in detail and feels that there is great concern in having a 150'+ faux tree cell phone tower structure in the middle of our small neighborhood. The setback for this tower is supposed to be 5x's the height yet the

proposed plan isn't even 2x. How is that? An enormous, loud, and unsightly generator next to the tower will cause a constant buzzing while in use adding to the chaos of 186 Summit Dr. When the next wildfire occurs, the danger that a 150'+ tower would pose on not only all of our power poles/lines and communication lines but if the tower fell, would block road access to the firefighters coming to help save our neighborhood and lives.

Sadly, our neighborhood is no stranger to wildfires as the CZU fire blazed through our street destroying and taking many of the homes, garages, outhouses, barns, fences, animals, and landscape that stood in its way. The beauty of Summit Dr. as we knew it was taken away from us in the blink of an eye. As a neighborhood, we now find ourselves in a time of rebuilding and growth. The last thing that this neighborhood needs right now or ever is to spend our time, resources, and money on fighting against having a 150'+ tower install that we all know has no business being on our quiet and rural street to begin with. What once was a street only occupied by friendly neighbors has turned into a major construction zone as all the rebuilds are taking place post CZU. Everyone happily welcomes the workers on our street rebuilding the burnt down homes but there is simply no space here for unnecessary construction workers and construction to take place on this tower.

Relocate this tower to a location that won't decrease the property value of all the homes on the street. CTI, owners of the tower property, have proven time and time again of their poor management skills and lack of neighborly conduct. They don't maintain their land which poses a fire risk to everyone on the street. The neighbors of Summit work tirelessly day in and day out to maintain their land in hopes of keeping it fire safe. It's a shame that CTI doesn't reciprocate. Not only is their land an eye sore but looks as though it has rarely been weed whacked, trimmed, or maintained. It is common knowledge amongst mountain residents that you must keep your property properly maintained due to fire risk which is something that CTI has proven to know nothing about. As a direct neighbor of 186 Summit Dr., this not appreciated.

We ask that the County of Santa Cruz please defend their residents and **deny** the Summit Dr. tower proposal.

Thank you,

Allison Pullen
Bill Pullen

405 Summit Dr.
Santa Cruz, CA. 95060
(831)334-5856

Sheila McDaniel-Santa Cruz County Planning Department
Financial and Visual Impact of proposed Cell Tower at 186 Summit Drive
APN: 080-062-02, Application: 221049
Sheila,

My name is Leif Holtermann. I have excavated to re-build my burnt down home from the CZU fire at 714 Summit Dr. 8 properties away from 186 Summit Dr. I have lived here for 10 years and am in disbelief that this new 170' cell tower might be allowed to be put in any residential neighborhood, let alone mine. This behemoth should only be allowed in industrial, commercial or other non-residential areas. This is the whole point of zoning; to not mix residential areas with industrial/commercial areas because they negatively impact each other causing ripple effects across many aspects of life.

Personally, I can't afford the financial hit that will come from this tower: From decreased property values; decreased borrowing power for construction loans and 2nd mortgages and reverse mortgages; decreased future rental income; an exponential decrease in future appreciation value, which will affect my retirement; and overall wealth and well-being!

This 170' cell tower will immediately decrease my property value and drastically lowers borrowing power and with today's construction cost, this truly might make it so I can't get the money I need to rebuild! Also, with these high construction costs, partially renting my place might be necessary for me to afford to rebuild. And having this 170' cell tower viewable whenever anyone looks north will significantly affect what I can charge to rent it for. And there is nothing I can do to block the view of this looming ugly tower. It will forever be a plague to my otherwise beautiful forested scenic neighborhood. The CZU fire burnt down my house, but it is this 170' cell tower that is threatening my financial ability to rebuild and threatening the natural beauty of my neighborhood.

Thank you for your consideration.
Leif Holtermann -714 Summit Dr

Mr. Justin Cummings
3rd District Supervisor -County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Dear Supervisor Cummings,

My name is Christian Harris and I live at 93 Summit Drive in Bonny Doon within your district. I'm writing you today to voice deep concern regarding the proposed cell tower at 186 Summit Drive.

We are a local family that recently purchased a fire burned acre to build a home with the goal of staying in the County we've lived in our entire lives. We've always loved and appreciated the scenic beauty and rural characteristics of the Bonny Doon community and have chosen to put our life savings into this project which is currently under construction. Our property is located three lots down from the proposed cell tower location and we would very much be affected by the tower installation. The possibility of this tower was not disclosed when we purchased this property, and we would not have done so had we known a tower of this magnitude would be considered.

Our concerns are primarily two-fold and involve the overall aesthetic of the tower as well as impact on our property values. When looking east towards the subject property we currently see a tall row of Douglas Fir trees. I've frequently commented to my family on the beauty of these trees and noted that they may very well be tallest trees on the entire ridge. The proposed tower would be centered in this grove of trees and would have a reported height of 150 feet, approximately 50 feet higher than adjacent treetops. My understanding is that if approved, the tower could be raised an additional 20 feet at the owner's discretion. This extension would no doubt benefit the tower owner and leave us with a tower over one and a half times and approaching twice the height of adjacent trees. In short this would be impossible to miss, and regardless of the proposed Monopine design, would be a massive eye sore. This would very significantly alter and change the current aesthetic and natural characteristic of the adjacent land.

In addition to the very real visual impact of the tower, we fear this installation would have a detrimental impact to our property value. As noted above, we have invested our entire life savings to building a family home at 93 Summit Drive. It has been proven that proximity of a cell tower has a direct and negative impact to adjacent property values. We feel this is insult to injury to a neighborhood that has lost so much due to the CZU fires and are in the middle of a hopefully once in a lifetime rebuild.

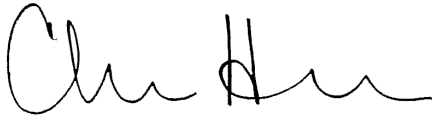
We understand cell coverage given the remote nature of this area is a real concern to ourselves and many neighbors. I would challenge however, the actual gain in coverage that would be achieved by this aging technology. Many up here use Wi-Fi service for cell coverage and fiber has been brought to our neighborhood. The City of Santa Cruz has moved forward with alternate technologies and why can't we? We share the goal of safety and access with our neighbors but feel there are other options that don't negatively impact aesthetics and property values that achieve equal or better outcomes.

We understand that the applicant has held a neighborhood meeting to discuss the proposed tower and we received no noticing for this meeting. We've been told that they were only required to notice neighbors within 300 feet of the subject property. This neighborhood is zoned Rural Residential, and each parcel is a minimum acre in size. We are currently just outside of that radius, but I challenge anyone to come onto my property and tell me with a straight face that we wouldn't be directly affected by the proposed tower installation. The 300-foot radius is laughable in our neighborhood and is telling that the developer had no real interest in informing neighbors and was rather just checking a box to aid in their application.

As our Supervisor, we feel it is important to voice our strong opposition to this project and let you know that our family and vast majority of adjacent neighbors are very much against this application proceeding. We hope that you will support the Summit Drive community in opposing this project, which would require several variances to meet current County code.

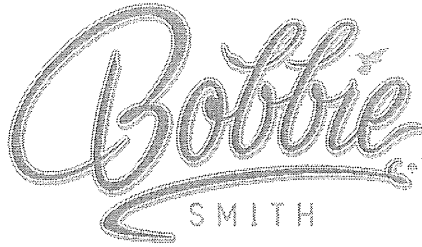
Your consideration and hopeful support to our stance is very much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christian Harris', with a stylized, cursive script.

Christian Harris
93 Summit Drive
Santa Cruz, CA 95060

EXHIBIT B



September 2, 2022

TO WHOM IT MAY CONCERN

I am a local Licensed Realtor with David Lyng Real Estate, Santa Cruz, California. The primary focus of my business has been Santa Cruz County. I am a native of Santa Cruz and I am familiar with the Summit Road Area including general market conditions and issues that concern many prospective home buyers and sellers.

In my experience, prospective buyers care about the proximity of their homes to cellular transmission equipment and prefer homes that are not located near cell towers. Thus there are fewer buyers for homes near transmission facilities. This often causes two problems: (1) it takes longer to sell a house; and (2) such sales are at materially lower prices than homes not located near transmission equipment. In my experience homes that are adjacent to cellular transmission equipment sell for 10 - 15% less than homes that are not located near that equipment. In addition, due to fewer buyers interested in homes adjacent to cellular transmission equipment, those homes tend to stay on the market longer.

Thus based on my experience, it is my professional opinion that the placement of a cellular transmission node adjacent to a home in Summit Road area will substantially decrease the value of that home and I expect that it will take many additional months to close a sale of that home, even at a reduced price.

Very truly yours,

Bobbie Smith,
Realtor

A handwritten signature in cursive script that reads "Bobbie".

1041 41st Avenue, Santa Cruz, California 95062-831.566.1024-Lic#01496977-bobbie@bobbiesmith.org





Justin McNabb
Realtor & Owner of Ethos Real Estate
1360 41st Avenue, Capitola, CA 95010
831-334-4727

Dear Rodney Cahill,

In response to your inquiry about the home valuation impact of a newly installed cell tower near your home, I can provide the following guidance. It is clear, both in national data and in local experience, that we have seen a devaluation of homes in and around cell towers, especially the new 5G towers. Whether this concern of the public is justified or not, seems to be irrelevant. The perception is regularly impacting sale prices negatively. Homes near cell towers generate less interest and have smaller buyer pools of willing buyers. These cell towers have similar market impact on sales as homes near high voltage power lines/towers or busy freeways.

There is little doubt of the negative impact to nearby home values, but the specific devaluation will depend on distance to the tower, visibility of the tower from the home/property, and the perception of the local community. In your situation, the distance to the tower is quite near and will inevitably raise concerns/questions for most buyers. Visibility will depend on construction style and attempts to disguise the tower, but even some visibility will impact the value. And perhaps most important for your particular area is the relative perception of tower intrusion to a rural property in Bonny Doon. Bonny Doon residents choose that location and neighborhood for its privacy, seclusion, beauty, rural environment and often particularly for the purpose of removing oneself from the urban environment with all its noise, visual, environmental and radio/electromagnetic pollution. A cell tower here would have a disproportionate impact on the neighborhood directly diminishing the value points that otherwise would draw people to the neighborhood.

It is my professional opinion, with 10 years of experience in the area and in the top 1% of realtors in our county for sales production, that your home at 120 Summit Drive would sustain a direct and immediate devaluation of anywhere from 12-20%, depending on the final construction appearance of the tower. In this market, for your home, that devaluation would most certainly be over \$100,000 and could even be as much as \$200,000 or more.

Sincerely,

Justin McNabb

A handwritten signature in black ink, appearing to read "Justin McNabb", followed by a date "9/5/22" written vertically.



August 30, 2022

Dear Tim Richards,

As you know, I have been a top licensed agent in Santa Cruz County for over 5 years and own two local real estate companies - Dream Catch Properties and Revest Homes, Inc. I am the 2022 Women's Council of Realtors President and run a team of 10 producing Realtors and mortgage lenders. I am also a Santa Cruz County native and second generation Realtor locally. My team helped you search for your dream rural property in nature in the mountains for over 3 years, which we finally found together at 531 Summit Drive, and which we helped you successfully purchase.

You inquired as to the impact on your property value at 531 Summit Drive if AT&T's proposed 150-foot cell tower were to be installed at 186 Summit Drive. In my professional opinion, this tower could directly reduce the value of your property by 10-20% and also could impact the marketability of your property to future buyers (even at the reduced price). Decreased marketability means a smaller buyer pool, a longer listing period ("days on market"), and higher associated holding costs, if you were to sell as a result of this tower being installed, which you stated you would be forced to.

Like yourself, many people choose to live in the beautiful Santa Cruz Mountains because they are looking to get away from the hustle, bustle, gadgets, and eyesores associated with urban life. Unobstructed natural beauty being surrounded by nothing but trees, clean air, fresh water, and peace and quiet are all considerations for your prospective buyer pool in a rural residential zoned setting like the Summit Drive neighborhood.

In my experience, property and homebuyer perception of a nearby cell tower is resoundingly negative and your property value will suffer. I have seen the same concerns arise with buyers for properties near high-voltage power lines and other cell towers throughout Santa Cruz County - all with the same result: reduced prices and decreased marketability.

Please let me know if you have any additional questions.

Sincerely,

Ace Woods
Realtor + Founder
Dream Catch Properties
105 Stockton Ave, Capitola CA 95010
831.419.5852
ace@dreamcatchproperties.com



September 10, 2022

To Whom it May Concern:

For over 25 years, I have been a high producing real estate broker selling properties in and around Santa Cruz County. I've been involved in over 400 transactions, many of them in rural areas. In my experience, a property's close proximity to a cell tower complex has always been perceived by home buyers as detrimental. Utility installations, particularly those that can be seen from any distance like substations and towers of any kind, do not enhance the desirability of a neighborhood. While everyone appreciates the conveniences afforded by these installations, I've never encountered anyone who suggested that such an installation near a property increases the value of that property. The reality is that home buyers reduce the perceived value of properties they see in close proximity to any utility.

In the case of the AT&T proposal on Summit Drive, the properties on Upper Summit will all suffer a reduction in their value. Some studies show that reduction in value will likely be between 15% and 20%. Not only is the likely value of the property reduced, but the time it takes to sell the property will also be affected. As a case in point, the property at 500 Summit Dr., which is only two parcels away from the AT&T parcel at 186 Summit Dr., is currently being sold. That parcel is owned by a licensed real estate agent and was offered for sale by word of mouth in March of 2022. It received two offers; my clients were the successful buyers. We went into escrow with a sale price of \$1,196,000 and an all cash sale (thus required no appraisal). We were set to close escrow on May 2, 2022. On April 19, 2022, the seller informed us of the AT&T plan to develop the parcel at 186 Summit. My clients immediately decided they no longer to purchase the property, thus they canceled the contract on 4/20/2022. They were no longer interested in purchasing the property, even at a reduced price. The seller put the property on the MLS for \$1,199,000 after her tenants left in June. She was forced to reduce her price on 8/3/2022 to \$1,173,000. Then, after 71 days on market, she accepted an offer. We won't know what the final contract price is until escrow closes, however we do know that the previous sale was agreed to with no exposure on the MLS, and this sale took over 2 months to come together, with a 23-day escrow period on top of that. The market value of 500 Summit Dr. was affected by the AT&T plan, and the time on the market was also greatly affected. Extended time on the market involves extended carry costs and uncertainties about when, or even if, the property will sell. The lost value and the extended market times all create issues for the seller.

It is my considered opinion that the AT&T plan will absolutely affect market values in the neighborhood, as well as increase the difficulty of selling properties, even at reduced values.

Thank you,

Frank Murphy
Broker Associate
Keller Williams Realty Santa Cruz
DRE #01014048
831-234-4343
Frank@FrankMurphy.net

EXHIBIT C

I'm looking for...



Support

Wireless coverage map



186 Summit Dr
CA 95060
5G, 4G LTE
Coverage



5G+ locations



5G+



5G



4G LTE



Partner Coverage



686

EXHIBIT 4H



- Deals
- Wireless
- Internet
- Accessories
- Prepaid
- Business

I'm looking for...



Support

My AT&T

Find a store
Veren español

Wireless coverage map



5G+ locations



5G+



5G



4G LTE



Partner Coverage



186 Summit Dr

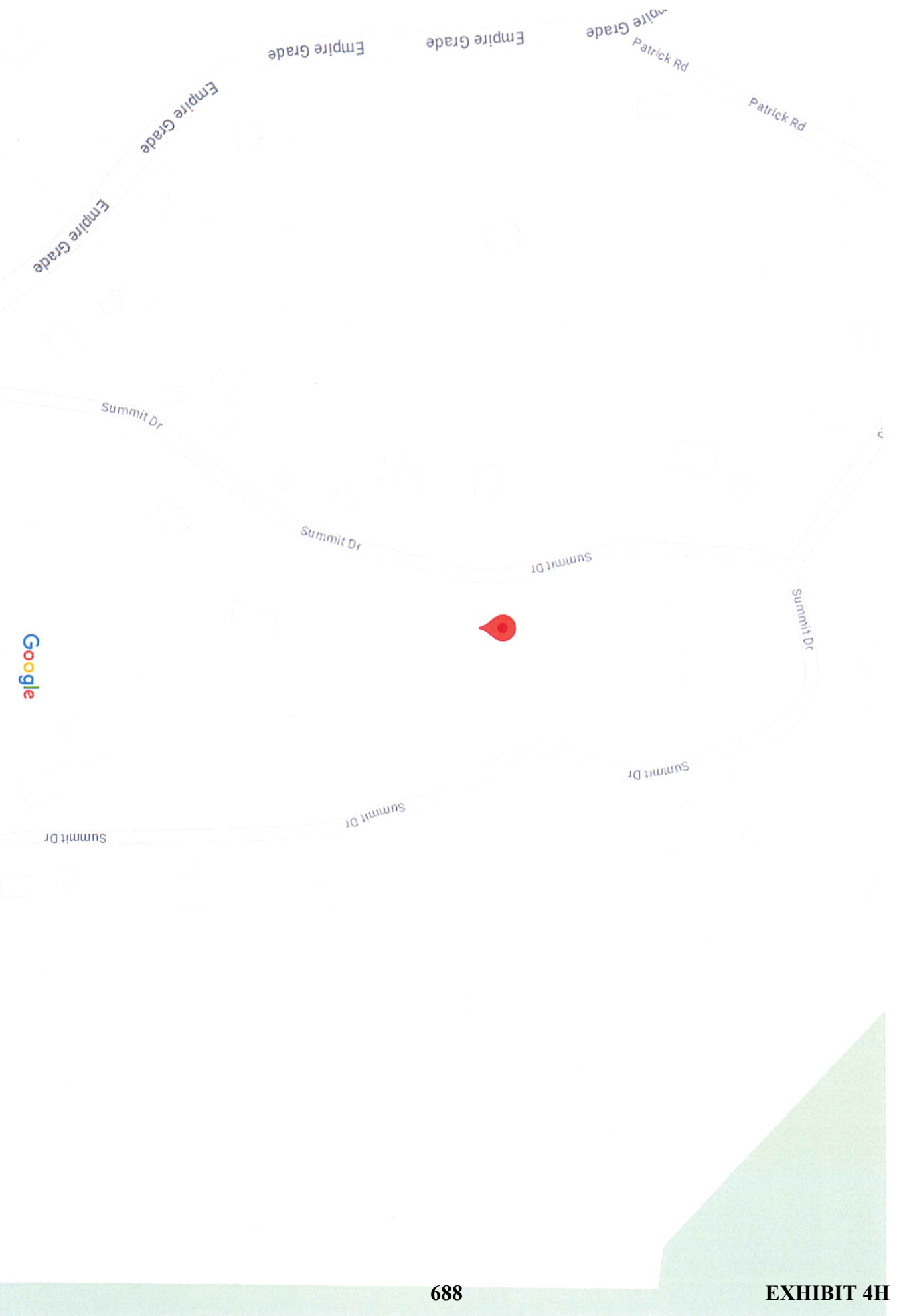


EXHIBIT D



Philadelphia, PA June 2013



Newport, VA June 2015



Lilburn, GA December 2011



Greenville TN November 2014



Montgomery MD June 2015



Wellesley, MA January 2009

January 17, 2024

VIA EMAIL

Ms. Jocelyn Drake
Zoning Administrator
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Jocelyn.Drake@santacruzcounty.us

Re: Application #221049
186 Summit Drive
Zoning Administrator Agenda for January 19, 2024; Agenda Item #4

Dear Ms. Drake:

This law firm has been retained by Bonny Doon Residents for Responsible Cell Coverage, a group of residents opposed to the above referenced project. We submit this letter opposing this project on behalf of our client.

The project does not comply with the California Environmental Quality Act (CEQA). Therefore, the project should be denied.

B. The Project is Not Exempt From CEQA

CEQA mandates that “the long term protection of the environment... shall be the guiding criterion in public decisions.” (Pub. Resources Code § 21001(d).) The foremost principle under CEQA is that it is to be “interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) An agency’s action violates CEQA if it “thwarts the statutory goals” of “informed decisionmaking” and “informed public participation.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) While certain classes of projects that do not result in significant effects on the environment are categorically exempt from CEQA, “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” (*Id.* at 125.) As such, “a categorical exemption should be interpreted narrowly to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Los Angeles Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1040.)

The burden is on the County to demonstrate that the exemption applies.

“[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386....) “[T]he agency invoking the [categorical] exemption has the burden of demonstrating” that substantial evidence supports its factual finding that the project fell within the exemption. (*Ibid.*)

(*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 710-712.)

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. (14 Cal. Code Regs. §15002(k); *Committee to Save Hollywoodland v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 86; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal. App. 4th 1356, 1372-1374 (*San Lorenzo Valley*).) First, if a project falls into an exempt category, no further agency evaluation is required. (*Id.*) Second, if there is a possibility a project will have a significant effect on the environment, the agency must perform a threshold initial study. (*Id.*; 14 Cal. Code Regs. § 15063(a).) If the initial study indicates that there is no substantial evidence that a project may cause a significant effect on the environment, then the agency may issue a negative declaration. (*Id.*; 14 Cal. Code Regs. §§ 15063(b)(2), 15070.) However, if a project may have a significant effect on the environment, an environmental impact report is required. (14 Cal. Code Regs. § 15063(b); *San Lorenzo Valley, supra*, 139 Cal. App. 4th at 1373-1374.) Thus, the analysis begins with whether the claimed exemptions apply.

Categorical exemptions are found in the CEQA Guidelines and include certain classes of projects which are exempt from CEQA based on the California Resources Agency's determination that such projects do not have a significant impact on the environment. (Pub. Resources Code § 21084; 14 Cal. Code Regs. §§ 15300 - 15354.) However, “[t]he [Resources Agency's] authority to identify classes of projects exempt from environmental review is not unfettered ... ‘[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.’” (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster Azusa* (1997) 52 Cal.App.4th 1165, 1191 (quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206).) Indeed, “a categorical exemption should be construed in light of the statutory authorization limiting such exemptions to projects with no significant environmental effect.” (Remy, et al., *Guide to CEQA* (11th ed. 2006) p. 136.)

The County should be aware of how the courts would interpret the claimed exemptions. Where the specific issue is whether the lead agency correctly determined that a project fell within a categorical exemption, the court “must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency's factual finding

that the project fell within the exemption.” (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185-186.) A court’s initial determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. “[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’ [Citations.]” (*San Lorenzo Valley, supra*, 139 Cal. App. 4th at 1375, 1382.) As noted *supra*, “Because the exemptions operate as exceptions to CEQA, they are narrowly construed. [Citation.]” (*San Lorenzo Valley, supra*, 139 Cal.App.4th at 1382.) According to the California Supreme Court, CEQA exemptions must be narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” (*Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 125; *San Lorenzo Valley, supra*, 139 Cal.App.4th at 1382. see also, *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1148.) Erroneous reliance by an agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. (*Azusa, supra*, 52 Cal.App.4th at 1192; *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 705.) This office litigated the *Save Our Big Trees* matter on behalf of the prevailing party and, thus, understands the limited scope of exemptions and their application.

The first step in determining whether a categorical exemption applies is a facial analysis of the language of the exemption to determine whether the project falls within the “scope” of the activity intended for exemption. (*San Lorenzo Valley, supra*, 139 Cal. App. at 1375, 1382.) Here, the County is proposing to exceed the scope of the exemptions by applying them to the proposed Project here.

The staff report and Notice of Exemption included in the agenda packet erroneously claims that the project is exempt under the Class 2 exemption for replacement or reconstruction (14 Cal. Code Regs. Section 15302) and Class 3 exemption for new construction or conversion of small structures (14 Cal. Code Regs. section 15303). The new tower will be 140 feet high, the equivalent of 14 stories, and will protrude above the existing tree line as shown in simulations in the agenda packet and as admitted in the October 20, 2023 staff report.

1) The Class 2 Exemption Does Not Apply

The project is not within the scope of the claimed Class 2 exemption, which states a follows:

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and ***will have substantially the same purpose and capacity as the structure replaced***, including but not limited to:

- (a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;
- (b) ***Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.***
- (c) ***Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.***
- (d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.”

(14 Cal. Code Regs. § 15302, emphasis added.)

First, the structure proposed is a commercial structure, hence the need for a commercial development permit, that will be twice the height of the existing 70-foot lattice tower onsite. It cannot be argued by any stretch of the imagination that the doubling of an existing structure, which will be 14 stories high, is substantially the same. Second, even if the County deemed the project replacement of an existing utility system, it does not involve negligible or no expansion of capacity. The County has been vague about the existing use of the project site. The staff report states that the existing use consists of a television booster station and telecommunications equipment including a satellite dish. What is proposed is an entirely new type of use, a wireless facility, that has nothing to do with the existing use. This is not a co-location of a wireless facility as purported, but is instead a completely new use and purpose that exceeds the capacity of the existing use. The new use does not have the “same purpose and capacity as the structure replaced.” In fact, the staff report is unclear whether the existing facility is still in use in any event. But, based on our own independent investigation, it is clear that the facility is no longer in use, which makes sense given that it is being removed. Therefore, the project is not within the scope of the Class 2 exemption.

2) The Class 3 Exemption Does Not Apply

The project is not within the scope of the Class 3 exemption because the project, at 140 feet high, cannot qualify as a “small” structure or involve minor modification to an existing structure. “Class 3 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.***” (14 Cal. Code Regs. § 15303, emphasis added.)

First, the project, at 14 stories or the doubling of the height of the existing structure to be replaced, cannot be deemed a “small” structure. To argue otherwise stretches the Class 3

exemption beyond absurdity. The caselaw that upholds the use of this exemption for wireless facilities involve the installation of wireless devices on existing poles that are not doubled in size (*Robinson v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012), the addition of microcell facilities to existing utility poles (*Aptos Residents Ass'n v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039), or the development of a 30-foot high cell tower disguised as a tree (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338). None of the cases find an absurdly tall tower, that exceeds the normal 75-foot limit in the County Code by 65 feet,¹ to be a "small" structure. Second, since the staff report tries to characterize this project as a replacement, the project does not involve a minor modification of an existing structure since it doubles the height of the existing structure.

For the foregoing reasons, the project is not exempt from environmental review. The failure of the County to address environmental concerns is a violation of CEQA and thwarts the very purpose of the statute.

The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." [Citation]. Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citation]. ***The EIR process protects not only the environment but also informed self-government.***

Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392, emphasis added; see also *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 554; 14 Cal. Code Regs. § 15003.

Finally, Pursuant to Public Resources Code § 21167(f), I am requesting that the County forward a Notice of Exemption to this office if the project is approved. That section provides:

If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

For the foregoing reasons, we request that you deny approval of the Project. Thank you for your consideration.

¹ See, Santa Cruz County Code § 13.10.660(G)

Zoning Administrator
Re: 186 Summit Drive (Application #221049)
January 17, 2024
Page 6

Very truly yours,
WITTWER PARKIN

/s/

William P. Parkin

cc: Client
Sheila McDaniel (sheila.mcdaniel@santacruzcounty.us)

January 31, 2024

VIA HAND DELIVERY

Santa Cruz County Planning Commission
c/o Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: Application #221049
186 Summit Drive

Dear Members of the Commission:

We, Bonny Doon Residents for Responsible Cell Coverage, an unincorporated association of residents, hereby appeal the January 19, 2024 decision of the Zoning Administrator regarding the above referenced project, and enclose herewith the required appeal fee. Notably, the Zoning Administrator's decision to exempt the project from environmental review under the California Environmental Quality Act (CEQA) was erroneous.

A. The Project is Not Exempt From CEQA

CEQA mandates that "the long term protection of the environment... shall be the guiding criterion in public decisions." (Pub. Resources Code § 21001(d).) The foremost principle under CEQA is that it is to be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) An agency's action violates CEQA if it "thwarts the statutory goals" of "informed decisionmaking" and "informed public participation." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) While certain classes of projects that do not result in significant effects on the environment are categorically exempt from CEQA, "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*Id.* at 125.) As such, "a categorical exemption should be interpreted narrowly to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Los Angeles Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1040.)

The burden is on the County to demonstrate that the exemption applies.

"[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386....) "[T]he agency invoking the [categorical] exemption has the burden of demonstrating" that substantial evidence supports its factual finding that the project fell within the exemption. (*Ibid.*)

(*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 710-712.)

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. (14 Cal. Code Regs. §15002(k); *Committee to Save Hollywoodland v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 86; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal. App. 4th 1356, 1372-1374 (*San Lorenzo Valley*).) First, if a project falls into an exempt category, no further agency evaluation is required. (*Id.*) Second, if there is a possibility a project will have a significant effect on the environment, the agency must perform a threshold initial study. (*Id.*; 14 Cal. Code Regs. § 15063(a).) If the initial study indicates that there is no substantial evidence that a project may cause a significant effect on the environment, then the agency may issue a negative declaration. (*Id.*; 14 Cal. Code Regs. §§ 15063(b)(2), 15070.) However, if a project may have a significant effect on the environment, an environmental impact report is required. (14 Cal. Code Regs. § 15063(b); *San Lorenzo Valley, supra*, 139 Cal. App. 4th at 1373-1374.) Thus, the analysis begins with whether the claimed exemptions apply.

Categorical exemptions are found in the CEQA Guidelines and include certain classes of projects which are exempt from CEQA based on the California Resources Agency's determination that such projects do not have a significant impact on the environment. (Pub. Resources Code § 21084; 14 Cal. Code Regs. §§ 15300 - 15354.) However, "[t]he [Resources Agency's] authority to identify classes of projects exempt from environmental review is not unfettered ... '[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.'" (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster Azusa* (1997) 52 Cal.App.4th 1165, 1191 (quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206).) Indeed, "a categorical exemption should be construed in light of the statutory authorization limiting such exemptions to projects with no significant environmental effect." (Remy, et al., *Guide to CEQA* (11th ed. 2006) p. 136.)

The County should be aware of how the courts would interpret the claimed exemptions. Where the specific issue is whether the lead agency correctly determined that a project fell within a categorical exemption, the court "must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency's factual finding that the project fell within the exemption." (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185-186.) A court's initial determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. "[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] Thus, for example, interpreting the scope of a CEQA exemption presents 'a question of law, subject to de novo review by this court.' [Citations.]" (*San Lorenzo Valley, supra*, 139 Cal. App. 4th at 1375, 1382.) As noted *supra*, "Because the exemptions operate as exceptions to CEQA, they are narrowly construed. [Citation.]" (*San Lorenzo Valley, supra*, 139 Cal.App.4th at 1382.) According to the California Supreme Court, CEQA exemptions must be narrowly construed and "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 125; *San Lorenzo Valley, supra*, 139 Cal.App.4th at 1382. see also, *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136,

1148.) Erroneous reliance by an agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. (*Azusa, supra*, 52 Cal.App.4th at 1192; *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 705.) This office litigated the *Save Our Big Trees* matter on behalf of the prevailing party and, thus, understands the limited scope of exemptions and their application.

The first step in determining whether a categorical exemption applies is a facial analysis of the language of the exemption to determine whether the project falls within the “scope” of the activity intended for exemption. (*San Lorenzo Valley, supra*, 139 Cal. App. at 1375, 1382.) Here, the County is proposing to exceed the scope of the exemptions by applying them to the proposed Project here.

The staff report to the Zoning Administrator and Notice of Exemption erroneously claims that the project is exempt under the Class 2 exemption for replacement or reconstruction (14 Cal. Code Regs. Section 15302), the Class 3 exemption for new construction or conversion of small structures (14 Cal. Code Regs. section 15303), and the commonsense exemption (14 Cal. Code Regs. §15061(b)(3).) The new tower will be 140 feet high, the equivalent of 14 stories, and will protrude above the existing tree line as shown in simulations in the agenda packet and as admitted in the October 20, 2023 staff report. Moreover, under the federal Telecommunications Act, colocation up to an additional 20 feet in height could result in the tower being 16 stories high after the structure is erected.

1) The Class 2 Exemption Does Not Apply

The project is not within the scope of the claimed Class 2 exemption, which states a follows:

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and ***will have substantially the same purpose and capacity as the structure replaced***, including but not limited to:

- (a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;
- (b) ***Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.***
- (c) ***Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.***
- (d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.”

(14 Cal. Code Regs. § 15302, emphasis added.)

First, the structure proposed is a commercial structure, hence the need for a commercial development permit, that will be twice the height of the existing 70-foot lattice tower onsite. It cannot be argued by any stretch of the imagination that the doubling of an existing structure,

which will be 14 stories high, is substantially the same. Second, even if the County deemed the project replacement of an existing utility system, it does not involve negligible or no expansion of capacity. The County has been vague about the existing use of the project site. The staff report states that the existing use consists of a television booster station and telecommunications equipment including a satellite dish. What is proposed is an entirely new type of use, a wireless facility, that has nothing to do with the existing use. This is not a co-location of a wireless facility as purported, but is instead a completely new use and purpose that exceeds the capacity of the existing use. The new use does not have the “same purpose and capacity as the structure replaced.” In fact, the staff report to the Zoning Administrator was unclear whether the existing facility is still in use in any event. But, based on our own independent investigation, it is clear that the facility is no longer in use, which makes sense given that it is being removed. Therefore, the project is not within the scope of the Class 2 exemption.

2) The Class 3 Exemption Does Not Apply

The project is not within the scope of the Class 3 exemption because the project, at 140 feet high, cannot qualify as a “small” structure or involve minor modification to an existing structure. “Class 3 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.*” (14 Cal. Code Regs. § 15303, emphasis added.)

First, the project, at 14 stories or the doubling of the height of the existing structure to be replaced, cannot be deemed a “small” structure. (Again, the federal Telecommunications Act could result in the structure being 16 stories tall, or 160 feet.) To argue otherwise stretches the Class 3 exemption beyond absurdity. The caselaw that upholds the use of this exemption for wireless facilities involve the installation of wireless devices on existing poles that are not doubled in size (*Robinson v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012), the addition of microcell facilities to existing utility poles (*Aptos Residents Ass’n v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039), or the development of a 30-foot high cell tower disguised as a tree (*Don’t Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338). None of the cases find an absurdly tall tower, that exceeds the normal 75-foot limit in the County Code by 65 feet,¹ to be a “small” structure. Second, since the staff report tries to characterize this project as a replacement, the project does not involve a minor modification of an existing structure since it doubles the height of the existing structure.

3) The Common Sense Exemption Does Not Apply

At the January 19, 2024 hearing on the project, and obviously in response to our attorney’s letter regarding the inapplicability of the Class 2 and Class 3 exemptions, the staff stated that the common sense exemption also applies. This was not only a last minute change to the exemption, but an erroneous application of the exemption.

The common sense exemption is found in the CEQA Guidelines: “Where it can be seen

¹ See, Santa Cruz County Code § 13.10.660(G)

with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” (14 Cal. Code Regs. § 15061(b)(3) (emphasis added).) The common sense exemption can be used “only in those situations where its absolute and precise language clearly applies.” (*Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425.) “If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt.” (*Davidon Homes v. City of San Jose (Davidon Homes)* (1997) 54 Cal.App.4th 106, 117.) An agency abuses its discretion if there is no basis in the record for its determination that the exemption applies. (*Id.* at 114; *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1149 (overruled on other grounds).) The agency has the burden of showing that the project is exempt. (*Davidon Homes, supra*, 54 Cal.App.4th at 116.) “Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would frustrate CEQA’s fundamental purpose of ensuring that government officials ‘make decisions with environmental consequences in mind.’” (*Id.*, citing *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.)

In *Davidon Homes*, the court held that lead agency did not meet its burden to produce substantial evidence to support the categorical reasoning that:

the city’s action was supported only by a *conclusory recital* in the preamble of the ordinance that the project was exempt under Guidelines section 15061, subdivision (b)(3). There is no indication that any preliminary environmental review was conducted before the exemption decision was made.... We conclude the agency’s exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.
Id. 116-117 (emphasis added).

The Zoning Administrator’s findings for the project were simply conclusory statements without any factual support.

The commonsense exemption is “reserved for those ‘obviously exempt’ projects, ‘where its absolute and precise language clearly applies.’” (*Id.* at p. 117, quoting *Myers v. Board of Supervisors, supra*, 58 Cal. App. 3d 413, 425.) The lead agency has the burden to show the project comes within the commonsense exemption. (*Davidon Homes, supra*, at p. 116.)

(*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 194.) The court also stated that a party challenging a common sense exemption, “unlike a party asserting an exception to a categorical exemption, need only make a ‘slight’ showing of a reasonable possibility of a significant environmental impact.” (*California Farm Bureau Federation v. California Wildlife Conservation Bd., supra*, 143 Cal.App.4th at 195, citing *Davidon Homes, supra*, 54 Cal.App.4th at 117.) We have clearly made a “slight” showing that at 14-story tower, that will be above other trees, in a rural area will have significant impacts. Moreover, because FCC rules under the federal Telecommunications Act allow co-location with up to an additional 20 feet, the tower will likely ultimately be 16 stories, or 160 feet.

For the foregoing reasons, the project is not exempt from environmental review. The failure of the County to address environmental concerns is a violation of CEQA and thwarts the very purpose of the statute.

The EIR is also intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” [Citation]. Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citation]. *The EIR process protects not only the environment but also informed self-government.*

Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392, emphasis added; see also *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 554; 14 Cal. Code Regs. § 15003.

B) The Conditions of Approval Regarding the Improvement of a Road Near the Proposed Tower Cannot be Met Because it Requires a Road Maintenance Agreement.

Condition of Approval II.A.9 provides as follows:

The applicant shall join the road maintenance association and include provisions to pave the road surface along the eastern property frontage prior to final of the building permit. The applicant shall provide a copy of the road maintenance association agreement to the project planner. The pavement shall be an "all weather" surface. "All Weather Surface" is defined as a minimum 6" of compacted aggregate base rock, Class II or equivalent and certified in writing by a licensed engineer to 95% compaction for grades up to and including 5%.

However, there is no maintenance agreement nor maintenance association for this road.

The applicant should be required to improve the road per the specifications in the Conditions of Approval regardless of whether there is a road maintenance agreement or road association. Therefore, Condition of Approval II.A.9 should be revised to require the applicant to pave the road surface no matter what.

C) Once approved, CTI would be allowed to Increase the Height of the Proposed Facility Without Further or Prior Zoning Approval according to § 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012.

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed facility were constructed as currently proposed at 140 feet, CTI could later unilaterally choose to increase the height of the facility by as much as twenty (20) feet to 160 ft. The County and the residents of the Summit Drive neighborhood would be legally prohibited from stopping them from doing so due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012. Considering the even more extreme adverse impacts which an increase in the height of the facilities would inflict that has not yet been presented in either the project plans or as a proper demonstration of it at this maximum height, this project should be denied.

The Zoning Administrator failed to consider that 160 ft will be the actual constructed height of the approved 140 ft tower, as the applicant's lawyer stated in writing in late mail that 150 ft was the minimum height they needed, as did Scott Crisler, the COO of CTI in person at both Zoning Administrator's hearings.

C) CTI Failed to Erect a Mock-up as Requested by the Zoning Administrator

At the October 20, 2023 hearing on the Project, Zoning Administrator requested that the applicant erect a mock-up demo of the tower before the January hearing. CTI failed to erect the demo as requested. This was required by the Zoning Administrator because CTI failed to erect it the first time for the minimum amount of time required, as stated in the staff report to the Zoning Administrator on page 129.

More importantly, no one has seen a mockup of a 160 ft tower, which is the real height that this tower will become despite it only being approved for 140 ft. The neighborhood and public must be given the chance to see the true eventual 160 ft height of the tower, despite what is purported to be approved at only 140 ft.

D) The Data Provided in the Recent Alternatives Analysis Of 125 Patrick Road Proves Patrick Road Site is "The Best Solution For The Community" at This Time. SCCC 13.10.660 (C)(4). Consequently, This New Data Disqualifies the Proposed Facility Site Based on the Following County Codes.

1. Patrick Road site can be "co-located" onto an existing pole and will provide "substantially similar coverage" as required by SCCC 13.10.660 (E)(1)
2. Patrick Road site will "minimize adverse visual and operational effects" to the area as the tower is already built. 13.10.660 (A)
3. Patrick Road site is not located at the top of Summit Drive, or ridgeline or hilltop where the proposed facility is located. 13.10.660 (E)(3)
4. Patrick Road site is in accordance with SCCC 13.10.660 (C)(4)(b)
 - a. a technically feasible option
 - b. located on the least intrusive site
 - c. will allow for placement of antennas onto an existing structure which is made of solid rod.

E) No Alternatives Analysis was Performed at 333 Robles Drive, an Existing PG&E Substation.

The applicant should be required to assess all other alternative sites in the geographic area, including 333 Robles Drive.

1. The site has plenty of available space.
2. PG&E Substations are examples of existing infrastructure where towers are frequently collocated.
3. Not in a densely packed residential neighborhood.
4. Already light industrial in nature.
5. Both towers and substations require perimeter security, which is already in place at this site.
6. Best to consolidate & co-locate such facilities to one site.

Finally, we submitted two thoroughly researched and very detailed Memorandums in Opposition, one for the 10/20/23 hearing, and a second Supplemental Memorandum for the 1/19/24 hearing, neither of which were addressed by the Zoning Administrator in writing, as we requested twice, nor were they addressed in person at the hearing as promised over email in response to our submissions.

We attached excerpts of our briefing to the zoning administrator for your convenience. We request that the Planning Commission carefully consider these documents in our appeal, which contain much relevant precedent and caselaw.

For the foregoing reasons, we request that you grant the appeal and overturn the Zoning Administrator's approval of the project. Thank you for your consideration.



Signed: Tim Richards

On behalf of Bonny Doon Residents for Responsible Cell Coverage

Preliminary Statement

Delta Group Engineering/CTI Towers (hereinafter "*CTI*") has filed an application for a Special Use Permit to install a one hundred fifty foot (15 story high) wireless communication facility ("WCF") to be located on the property known as 186 Summit Drive, Santa Cruz, CA. In addition, *CTI* seeks an exception for height requirements in order to accommodate its proposed one hundred fifty foot WCF.

This Memorandum is submitted in opposition to *CTI*'s application.

As set forth below, *CTI*'s application should be denied because:

- (a) *CTI* has failed to establish that granting the application would be consistent with smart planning requirements of the Santa Cruz County Code (the "Code");
- (b) granting the application would violate both the Code and the legislative intent of the Code;
- (c) the applicant has failed to establish that the proposed facility: (i) is actually necessary for the provision of personal wireless services within the City or (ii) that it is necessary that the facility be built at the proposed site;
- (d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the Code was enacted to prevent.

As such, we respectfully submit that *CTI*'s application be denied in a manner that does not violate the Telecommunications Act of 1996.

POINT I

Granting *CTI* Permission to Construct a Wireless
Telecommunications Facility at the Location It
Proposes Would Violate Both the Requirements Under the
Code and the Legislative Intent Based Upon Which
Those Requirements Were Enacted by the County

As set forth below, *CTI*'s application should be denied because granting the application would violate the *requirements* of the Code as well as the *legislative intent* behind those requirements.

As is explicitly set forth within its text, the very purpose for which the County enacted Chapter 13.10.660 *et seq.* of its Code (which deals specifically with Wireless Telecommunications Facilities) was, among other things, to “assure, by the regulation of siting of wireless communications facilities, that the integrity and nature of residential, rural, commercial, and industrial areas are protected from the indiscriminate proliferation of wireless communication facilities...” and “to locate and design wireless communication towers/facilities so as to minimize negative impacts, such as, but not limited to, visual impacts, agricultural and open space land resource impacts, impacts to the community and aesthetic character of the built and natural environment, attractive nuisance, noise, falling objects, and the general safety, welfare and quality of life of the community.”¹

Further, §13.10.661 requires that “[a]ll wireless communications facilities ... are subject to Level V review (Zoning Administrator public hearing pursuant to Chapter 18.10 SCCC)...” and pursuant to § 13.10.661(A), “shall be subject to a commercial development permit ... [and] a building permit will be required for construction of new wireless communication facilities.”

¹ See §13.10.660 (A) of the Santa Cruz County Code.

As set forth below, and as established by the admissible evidence being submitted herewith, if the County were to issue *CTI* a permit, the irresponsible placement of a wireless telecommunications facility at the location proposed would inflict upon the nearby homes and residential community the precise types of adverse impacts which Chapter 13.10.660 *et seq.* of the Code was specifically enacted to prevent.

A. *CTI's Application Does Not Comply With the Requirements of Chapter 13.10 of the Municipal Code*

A review of the record reflects that *CTI's* application must be denied because such application and all of its supporting submissions wholly fail to establish compliance with the requirements and limitations of Chapter 13.10 of the Code regarding wireless telecommunication facilities.

As set forth above, the express purpose of Chapter 13.10 of the Code is, among other things, to protect the “integrity and nature” of residential areas from the “indiscriminate proliferation of wireless communication facilities.” In furtherance of this purpose, the Code contains a list of Restricted Areas in which “[n]on-co-located wireless communication facilities are discouraged.” Among them is the Rural Residential (RR) Zoning District.²

Applicants seeking to build a new wireless communication facility in one of the restricted zoning districts, such as the RR Zoning District at issue here, must prove that:

- (a) The proposed wireless communication facility would eliminate or substantially reduce one or more significant gaps in the applicant carrier’s network; and
- (b) There are no viable, technically feasible, and environmentally (e.g. visually) equivalent or superior potential alternatives (i.e., sites and/or facility types and/or designs) outside the prohibited and restricted areas ... that could eliminate or substantially reduce said significant gaps.³

² See § 13.10.661(C)(1)

³ See § 13.10.661(C)(3)

CTI's application fails to meet the above requirements. Moreover, *CTI* has failed to provide a shred of probative evidence to establish that the proposed wireless telecommunications facility is actually necessary in order to provide personal wireless service in the community or that the facility is not injurious to the community, such that a denial of its application would constitute an "effective prohibition" of personal wireless services.

(i) *CTI's* Irresponsible Placement of Its Proposed Wireless Facility
Will Inflict Substantial Adverse Impacts Upon
the Aesthetics and Character of the Area

The proposed wireless facility will inflict dramatic and wholly unnecessary adverse impacts upon the area's aesthetics and character. Recognizing the likely adverse aesthetic impacts which an irresponsibly placed wireless telecommunications facility would inflict upon nearby homes and residential communities, the County focused extensively on aesthetic impacts when enacting its Code, specifically §13.10, where the majority of the County's intent was to minimize, if not wholly avoid, any negative adverse aesthetic impacts on neighboring properties.

Specifically, § 13.10.661(F) requires that wireless communication facilities *shall be sited* in the least visually obtrusive location that is technically feasible, unless such site selection leads to other resource impacts that make such a site the more environmentally damaging location overall." § 13.10.661(G) encourages "co-location of new wireless communication facilities into/onto existing wireless communication facilities and/or existing telecommunication towers ... if it does not create *significant visual impacts*." (Emphasis added.)

Here, however, *CTI's* application blatantly disregards the aesthetic concerns expressed in the Code. The proposed facility will be directly in the line of sight of numerous adjacent properties, thereby creating an extremely displeasing aesthetic. The proposed placement of this

facility violates the Code because it is not in any way being placed in a location that would minimize the aesthetic impact on the community. This means that *CTI* has failed to comply with both the requirements and intent of the Code.

There doesn't appear to be even the slightest attempt by *CTI* to place the facility in a location where the adverse aesthetic impact on the community is minimal. Moreover, *CTI* didn't bother to present to the County any data demonstrating that the proposed facility is even necessary, let alone that the proposed location is the best possible location to remedy any gap in coverage *CTI* is claiming exists.

Furthermore, federal courts around the country, including the United States Court of Appeals for the Ninth Circuit, have held that significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for the construction of a wireless telecommunication facility. For example, the United States Court of Appeals for the Ninth Circuit determined that "California law, as predicted by the district court, does not prohibit local governments from taking into account aesthetic considerations in deciding whether to permit the development of wireless telecommunications facilities (WCFs) within their jurisdictions." *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Ests.*, 583 F.3d 716 (9th Cir. 2009).

In *Palos Verdes Ests.*, the Court reasoned "that the proposed WCFs would adversely affect its aesthetic makeup was supported by 'substantial evidence' under the Telecommunications Act, where the city council reviewed propagation maps and mock-ups of the proposed WCFs and a report that detailed the aesthetic values at stake, and had the benefit of public comments and an oral presentation from the provider's personnel." *Id.*

“[T]he City may consider a number of factors including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that *these are legitimate concerns for a locality.*” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009) (emphasis added). *See also, Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008) (stating that the zoning board may consider “other valid public goals such as safety and aesthetics”); *T-Mobile Cent., LLC v. Unified Gov’t of Wyandotte County, Kan.*, 546 F.3d 1299, 1312 (10th Cir.2008) (noting that “aesthetics can be a valid ground for local zoning decisions”); and *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) (recognizing that “aesthetic concerns can be a valid basis for zoning decisions”).

Additionally, as is set forth below, *CTI* has failed to provide a shred of probative evidence to establish that the wireless communications facility is not injurious to the neighborhood and is actually necessary to provide personal wireless coverage in the area.

(ii) Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Facility Would Inflict Upon the Nearby Homes

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts, which an irresponsibly placed wireless telecommunication facility would inflict upon homes in close proximity to the proposed facility, are the homeowners themselves.

Consistent with this logic, the United States Court of Appeals for the Second Circuit has recognized that when a local government is considering a wireless facility application, it should

accept, as direct evidence of the adverse aesthetic impacts that a proposed facility would inflict upon nearby homes, statements and letters from the actual homeowners, since they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005). Federal courts have consistently held that adverse aesthetic impacts are a valid basis upon which to deny proposed wireless facilities applications. *Id. See also, American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1055-56 (9th Cir. 2014); and *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 995 (9th Cir. 2009).

(iii) CTI's Visual Assessment is Inherently Defective and Should be Disregarded Entirely

Although CTI attempts to convince the County that the installation of the proposed wireless facility *would not* inflict a severe adverse aesthetic impact upon the adjacent homes, CTI has failed to submit any meaningful or accurate visual impact analysis.

As is undoubtedly known to CTI, the visual impact analysis presented is inherently defective because it does not serve the purpose for which it has been purportedly offered – to provide the County with a clear visual image of the *actual* aesthetic impacts that the proposed installation will inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions by *deliberately omitting* from any such photo simulations, any images *actually taken from* the nearby homes that would sustain the most severe adverse aesthetic impacts.

In *Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005), the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions wherein they “omit” any

images from the actual perspectives of the homes which are in closest proximity to the proposed installation, such presentations are inherently defective, and should be disregarded by the respective government entity that received it.

As was explicitly stated by the federal court: “the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . *the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows*” *Id.*

It is clear from the record that *CTI* has failed to submit a meaningful visual impact analysis. *CTI* does not include a single image taken from *any* of the nearby homes that will sustain the most severe adverse aesthetic impacts from the installation of the wireless facility, which *CTI* seeks to construct in such close proximity to those homes.

This, of course, includes a complete absence of any photographic images taken by *CTI* from any of the homes belonging to the homeowners.

Instead, it contains only photos taken from public roads, from perspectives selected to minimize the appearance of the adverse aesthetic impact, and it in no way accurately depicts the images those homeowners will see, each and every time they look out their bedroom, kitchen, or living room window, or sit in their backyard.

This is the exact type of “presentation” which the federal court explicitly ruled to be defective, and not worthy of consideration in *Omnipoint*.

As such, in accord with the federal court’s holding in *Omnipoint*, *CTI*’s visual impact analysis should be recognized as inherently defective and disregarded in its entirety.

POINT II

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012
Would Allow *CTI* to Increase the Height of the Proposed
Facility Without Further or Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed facility were constructed as currently proposed, *CTI* could later unilaterally choose to increase the height of the facility by as much as twenty (20) feet. The County would be legally prohibited from stopping them from doing so due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding Section 704 of the Telecommunications Act of 1996 or any other provision of law, a state or local government may not deny, and *shall approve*, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a) (emphasis added).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower.

The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, *whichever is greater*." (Emphasis added.)

Simply stated, under the FCC's regulation, if this facility were to be built on existing or entirely new poles, *CTI*, at any time thereafter, could unilaterally increase the height of any such facility by as much as an additional twenty (20) feet, and there would be no way for the County

to prevent such an occurrence.

Considering the even more extreme adverse impacts which an increase in the height of the facilities would inflict upon the homes and communities nearby, *CTI's* application should be denied, especially since, as set forth above, *CTI* doesn't actually *need* the proposed facility in the first place.

POINT III

*CTI Has Failed to Proffer Probative Evidence Sufficient to
Establish a Need for the Proposed Wireless Facility at the Location
Proposed, or That the Granting of Its Application Would Be Consistent
With the Smart Planning Requirements of the County Code*

The apparent intent behind the provisions of the County Code, specifically Chapter 13.10.660 *et seq.* of the Code, which deals with Wireless Telecommunication Facilities, was to promote "smart planning" of wireless infrastructure within the County.

Smart planning involves the adoption and enforcement of zoning provisions that require wireless telecommunication facilities be *strategically placed* so that they minimize the number of facilities needed while saturating the County with complete wireless coverage (*i.e.*, leaving no gaps in wireless service) and avoiding any unnecessary adverse aesthetic or other impacts upon homes and communities situated in close proximity to such facilities.

Entirely consistent with that intent, §13.10.661 states that "All wireless communication facilities shall comply with all applicable goals, objectives and policies of the General Plan..." Further, §13.10.661(A) sets forth the requirement that "all new wireless communication facilities shall be subject to a commercial development permit..." § 18.10.230(A) then sets forth the required findings for a development permit. Specifically, the approving body must find:

(1) That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be *materially injurious* to properties or improvements in the vicinity.

(2) That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

(3) That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

(4) That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

(5) That the proposed project *will complement and harmonize with the existing and proposed land uses in the vicinity*, and will be *compatible with the physical design aspects*, land use intensities, and dwelling unit densities of the neighborhood.

In order to determine if a proposed wireless telecommunications facility would be consistent with smart planning requirements, and would meet the requirements for approval, sophisticated municipal boards require wireless carriers and/or site developers to provide direct evidentiary proof of:

(a) the *precise locations, size, and extent of any geographic gaps in personal wireless services* that are being provided by a specifically identified wireless carrier, which provides personal wireless services within the respective jurisdiction, *and*

(b) the *precise locations, size, and extent of any geographic areas* within which that identified wireless carrier suffers from a capacity deficiency in its coverage.

The reason that local zoning boards invariably require such information is that without it, the boards are incapable of knowing: (a) if, and to what extent a proposed facility will remedy any actual gaps or deficiencies which may exist, and (b) if the proposed placement is in such a poor location that it would all but require that more facilities be built because the proposed

facility did not fully cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in wireless facilities within the municipality.

In the present case, *CTI* has wholly failed to provide any hard data to establish that the proposed placement of its facility would, in any way, be consistent with smart planning. By virtue of same, it has failed to provide actual probative evidence to establish: (a) the *actual location of gaps* (or deficient capacity locations) in personal wireless services within the County, and (b) why or how their proposed facility would be the best and/or least intrusive means of remedying those gaps. Moreover, as will be further discussed below, *CTI* failed to present any hard data and, as such, has failed to present any useful data at all.

A. The Applicable Evidentiary Standard

To the extent that applicants seeking to build wireless facilities seek to have their applications reviewed as public utilities, they must meet the “Public Necessity” standard established in *Consolidated Edison Co. v. Hoffman*, 43 N.Y.2d 598 (1978). As such, the applicant must prove that the new wireless telecommunication facility it proposes is “a public necessity that is required to render safe and adequate service” and that there are compelling reasons why their proposed installation location is more feasible than at other locations. *See also, T-Mobile Northeast LLC v. Town of Islip*, 893 F.Supp.2d. 338 (2012).

Within the context of zoning applications, such as the current application which has been filed by *CTI* herein, the applicant is required to prove [1] that there are **significant** gaps⁴ in a its

⁴ It should be noted that establishing a gap in wireless services is *not* enough to prove the need for a wireless facility; rather, the applicant must prove that “a significant gap” in wireless service coverage exists at the proposed location. *See, e.g., Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 50 (1st Cir. 2009); *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 731 (9th Cir.2005). Here, *CTI* failed to proffer substantial evidence that a gap in wireless services exists—let alone that this purported gap is “significant” within the meaning of the TCA and established federal jurisprudence.

own wireless service, [2] that the location of the proposed facility will remedy those gaps, and [3] that the facility presents a “minimal intrusion on the community.” *Id.*

More importantly, the Ninth Circuit has set forth the following requirements, which all applicants seeking to install wireless facilities must prove. The test articulated by the Ninth Circuit requires *CTI* to demonstrate that (i) the proposed facility is required in order to close a significant gap in service coverage; (ii) that the proposed facility is the least intrusive means of remedying the significant gap in service coverage, and (iii) some inquiry as to why the proposed facility is the only feasible alternative. *See Am. Tower Corp. v. City of San Diego*, 763 F.3d 1035 (9th Cir. 2014).

Specifically, the United States Court of Appeals for the Ninth Circuit states in *Am. Tower Corp. v. City of San Diego*, “[w]hen determining whether a locality has effectively prevented a wireless services provider from closing a significant gap in service coverage, as would violate the Federal Telecommunications Act (TCA), some inquiry is required regarding the feasibility of alternative facilities or site locations, and a least intrusive means standard is applied, which requires that the provider show that the manner in which it proposes to fill the significant gap in services is the least intrusive on the values that the denial sought to serve.” *Id.* *See also*, *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987 (9th Cir. 2009).

B. *CTI* Has Failed To Submit Any Probative
Evidence To Establish the Need For the Proposed
Facility At the Height and Location Proposed

CTI has failed to meet its burden of proving that: (a) its proposed facility is a Public Necessity, (b) as proposed, its facility would present a minimal intrusion on the community, (c) its proposed placement would minimize its aesthetic intrusion within the meaning of the applicable sections of the County Code, and (d) the denial of its applications would constitute a “prohibition of personal wireless services” within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

Glaringly absent from *CTI*’s application is any “*hard data*,” which could easily be submitted by the applicant, as *probative evidence* to establish that: (a) there is an actual Public Necessity for the facility being proposed, which (b) necessitates the installation of a new facility, (c) requires it to be built at the specifically chosen location, and (d) on the specifically chosen site (as opposed to being built upon alternative, less-intrusive locations).

Thus, *CTI* has failed to prove that the proposed location is the best possible location to remedy a significant gap in personal wireless service because no significant gap in service even exists.

Without any data whatsoever, it is impossible for the County to comply with the smart planning requirements set forth in its own Code and General Plan. Furthermore, without any data, the County cannot ascertain that the proposed location is the least intrusive means of providing personal wireless service to the community because they have no idea where any possible significant gaps may or may not exist. It would be entirely irresponsible and illogical for the County to grant applications for the installation of wireless telecommunications facilities without even knowing where such facilities are actually needed.

(i) FCC and California Public Utilities Commission

Recently, both the FCC and the California Public Utilities Commission have recognized the *absolute need* for hard data rather than the commonly submitted propagation maps, which can easily be manipulated to exaggerate need and significant gaps.

As is discussed within the FCC’s July 17, 2020, proposed order, FCC-20-94, “[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (*i.e.*, both mobile and stationary drive-test data) as an additional method to verify mobile providers’ coverage maps.”⁵ The FCC defines drive tests as “tests analyzing network coverage for mobile services in a given area, *i.e.*, measurements taken from vehicles traveling on roads in the area.”⁶ Further within the FCC’s proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) “City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers’ coverage data...;”⁷ (ii) California PUC asserted that ‘drive tests [are] the most effective measure of actual mobile broadband service speeds’;⁸ and (iii) “CTIA, which opposed the mandatory submission of on-the-ground data, nonetheless acknowledged that their data ‘may be a useful resource to help validate propagation data...’”⁹

California PUC has additionally stated that “the data and mapping outputs of

⁵ See page 44 paragraph 104 of proposed order FCC-20-94.

⁶ See page 44 fn. 298 of proposed order FCC-20-94.

⁷ See page 45 fn. 306 of proposed order FCC-20-94.

⁸ *Id.*

⁹ *Id.*

propagation-based models will not result in accurate representation of actual wireless coverage” and that based on its experience, “drive tests are required to capture fully accurate data for mobile wireless service areas.”¹⁰

Moreover, proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data. Specifically, the FCC states:

“The Mobility Fund Phase II Investigation Staff Report, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The Mobility Fund Phase II Investigation Staff Report recommended that the Commission require providers to “submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.”

(Emphasis added.)

Most importantly, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires “[a]ffirmation that the coverage model has been validated and calibrated at least one time using on-the-ground testing and/or other real-world measurements completed by the provider or its vendor.”

The mandate requiring more accurate coverage maps has been set forth by Congress. “As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps.”¹¹ “The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where

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<https://arstechnica.com/tech-policy/2020/08/att-t-mobile-fight-fcc-plan-to-test-whether-they-lie-about-cell-coverage/>

¹¹ <https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/>

coverage is provided and to ‘establish a process to verify the accuracy of such data, and more.’”¹²

“The project – required by Congress under the Broadband DATA Act – is an effort to improve the FCC’s current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate.”¹³

If the FCC requires further validation and more accurate coverage models, there is no reason Sant Cruz County should not do the same. For the foregoing reasons, dropped call records and drive test data are both relevant and necessary.

(ii) Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install wireless facilities provide local governments with *hard data*, as both: (a) actual evidence that the facility they seek to build is actually necessary and (b) actual evidence that granting their application would be consistent with smart planning requirements.

The most accurate and least expensive evidence used to establish the location, size, and extent of both *significant gaps* in personal wireless services, and areas suffering from *capacity deficiencies*, are two specific forms of *hard data*, which consist of: (a) dropped call records and (b) actual drive test data. Both local governments and federal courts in California consider hard data in order to ascertain whether or not a significant gap in wireless coverage exists at that exact location.

In fact, unlike “expert reports,” RF modeling and propagation maps, all of which are

¹² *Id.*

¹³

<https://www.lightreading.com/test-and-measurement/CTI-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329>

often manipulated to reflect whatever the preparer wants them to show, *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy.

Dropped call records are generated by a carrier's computer systems. They are typically extremely accurate because they are generated by a computer that already possesses all of the data pertaining to dropped calls, including the number, date, time, and location of all dropped calls experienced by a wireless carrier at any geographic location and for any chronological period.

With the ease of a few keystrokes, each carrier's system can print out a precise record of all dropped calls for any period of time, at any geographic location. It is highly unlikely that someone could enter false data into a carrier's computer system to materially alter that information.

In a similar vein, actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in "computer modeling," the creation of hypothetical propagation maps, or "expert interpretations" of actual data, all of which are so subjective and easily manipulated that they are essentially rendered worthless as a form of probative evidence.

Actual *raw* drive test data consists of actual records of a carrier's wireless signal's actual recorded strengths at precise geographic locations.

As reflected in the record, *CTI* has not provided either of these forms of *hard data* as probative evidence, nor has it presented any form of data whatsoever, despite being in possession

of such data.

(iii) CTI's Provided Analysis Regarding AT&T's Wireless Coverage is Contradicted By AT&T's Own Actual Coverage Data

CTI's application states that it has a lease agreement with AT&T for AT&T to use the proposed tower for its wireless service. But AT&T's own data contradicts CTI's claim that a coverage gap exists in AT&T's service in the Bonny Doon area. As is a matter of public record, AT&T maintains an internet website at the internet domain address of <http://www.att.com>. In conjunction with its ownership and operation of that website, AT&T maintains a database that contains geographic data points that cumulatively form a geographic inventory of AT&T's *actual current* coverage for its wireless services.

As maintained and operated by AT&T, that database is linked to AT&T website at <https://www.att.com/maps/wireless-coverage.html> and functions as the data-source for an interactive function, which enables users to access AT&T's own data to ascertain both: (a) the existence of AT&T's wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

AT&T's interactive website translates AT&T's *actual coverage data* to provide imagery whereby areas that are covered by AT&T's service are depicted in shades of blue, including 5G+, 5G and 4G.

The website further translates the data from AT&T's database to specify the *actual* coverage at any specific geographic location. **Exhibit "C,"** which is being submitted together with this Memorandum, is a true copy of a record obtained from AT&T's website¹⁴ on October 13, 2023. The proposed location is circled in red.

¹⁴ <https://www.att.com/maps/wireless-coverage.html>

This Exhibit is AT&T's own depiction of its actual wireless coverage at 186 Summit Drive, Santa Cruz California, that being the specific geographic location at which *CTI* seeks to install its proposed facility under the claim that AT&T "needs" such facility to remedy a gap in its personal wireless service at and around such location.

As shown in **Exhibit "C,"** AT&T's own data reflects that there is no coverage gap *at all* in AT&T's service, including 5G, at that precise location or anywhere around or in close proximity to it. To the extent that *CTI* claims that the data available on AT&T's website is not accurate, it demonstrates how easily data can be manipulated to suit a particular purpose – when selling its service to the consuming public, the coverage is excellent, but when selling a proposed tower to a municipality, the coverage is almost non-existent. Only the hard data on which the representations are based can resolve the discrepancy. But neither *CTI* nor AT&T will provide it, claiming that it is proprietary information they cannot share with the public.

CTI's submissions are entirely devoid of any hard data or probative evidence that establishes that AT&T *needs* the proposed facility. AT&T's data affirmatively contradicts what *CTI* states in its application. As such, *CTI* has wholly failed to "demonstrate and prove" that *CTI's* proposed facility is necessary for it to provide personal wireless services within the City.

For the foregoing reasons, *CTI's* application should be denied.

POINT IV

***CTI's* Application Must Be Denied Because the Proposed Location Will Be at a Heightened Risk of Fire**

Monopoles, such as the one being proposed by *CTI*, are, *by far*, the most susceptible to

fires and collapse due to fire. *See* Exhibit “D,” which includes a sampling of images of monopoles that suffered fires. *At least* once per month, a monopole cell tower somewhere in the U.S will experience a fire, and an unspecified number of them will, thereafter, collapse in a flaming heap.

The most notorious example was a monopole cell tower in Wellesley, MA, which erupted into flames on a main thoroughfare, and the entire tower proceeded to collapse in flames. Meanwhile, hundreds of drivers drove past it.¹⁵

Exhibit “D” is just a small sampling of well-documented monopole cell tower fires. Given the already high risk of fire in Santa Cruz County, the above situations should be considered in connection with the health and safety, and material injury to property concerns expressed in the County Code in connection with wireless telecommunication facilities.

POINT V

To Comply With the TCA, CTT's Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing court to

¹⁵ To watch a color video of that event, simply follow this link:
https://youtu.be/0cTcXuyiYY?si=u6D7aoBy_5GWfZXG
A more recent example from 2021 in Gulf Shores, Alabama can be viewed here:
<https://youtu.be/7EN3Z4C8550?si=x9RvjGeGLN6GhtYb>

evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715, 721 (9th Cir. 2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. “Substantial evidence” means “less than a preponderance, but more than a scintilla.” *Id.* at 725.

Review under this standard is essentially deferential, such that Courts may neither engage in their own fact-finding nor supplant a local zoning board’s reasonable determinations. *Id.*

To ensure that a legal challenge to the County’s decision under the Telecommunications Act of 1996 will not succeed, it is respectfully requested that the County deny *CTI*’s application in a written decision wherein the County cites the substantial evidence submitted herewith (and profound lack of evidence from the applicant in support of its proposed tower) upon which it based its determination.

C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers like *CTI* seek to intimidate local zoning officials with either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, more bark than bite.

This is because, even if the applicant files a federal action against the County and wins, the Telecommunications Act of 1996 does not entitle the applicant to recover compensatory damages or attorneys' fees, even when they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.¹⁶

This means that if the applicant sues the County and wins, the County does not pay anything in damages or the applicant's attorneys' fees under the TCA. Typically the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last only months rather than years.

As a result of the brevity and relative simplicity of such cases, the attorneys' fees incurred by a local government are typically quite small, compared to virtually any other type of federal litigation—as long as the local government's counsel does not try to "maximize" its billing in the case.

Conclusion

In view of the foregoing, it is respectfully submitted that *CTT's* application for a Development Permit be denied in its entirety.

Dated: Santa Cruz, California
October 13, 2023

Respectfully Submitted,

Bonny Doon Residents for Responsible Cell Coverage

¹⁶ See *City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

Please accept this Supplement to the original Memorandum submitted in opposition to *CTI's* application.

The Applicant Has Not Provided the Requested Raw Drive Test Data

As set forth below, *CTI's* application should be denied because the applicant has failed to provide the requested raw data. Instead, *CTI* submits more maps without the data in which they are based. Exhibit 2, "Drive Test RSRP" consists of various representations of what *CTI* claims is signal strength at various points near the proposed tower site. However, Exhibit 2 omits significant information, without which the map is useless. First, there is no indication of the frequency tested. This is important because AT&T operates its wireless service on seven different frequencies. Where one may be weak, another may be strong. To fully understand what is depicted in the Exhibit, the Zoning Administrator must be able to see what frequency was tested, when it was tested, and the signal strength for each frequency used by AT&T. What *CTI* has provided in response to the Zoning Administrator's request is merely another colorful map devoid of any information. It represents only a result, not the data on which that result was based, without which it is meaningless.

The Zoning Administrator requested the drive test data, not an interpretation of the drive test data. *CTI's* new submission does nothing to illuminate whether there is a need for its service, or where it is needed. As such, the propagation maps allegedly based on the "information" provided in Exhibit 2 are as useless as they were before.

**The Application Is Not Entitled To a Categorical
Exemption From Further Environmental Review**

In addition, *CTI* continues to mischaracterize its application as a “modification” of an existing structure. However, the proposed structure does not meet the requirements set forth in the CEQA sections cited by *CTI* in support of its contention that the application is entitled to an exemption from further environmental review.

CTI cites to Section 15302 – Replacement or Reconstruction – of Article 19 of the California Environmental Quality Act, “Categorical Exemptions,” which reads as follows:

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaces.

Examples of a Class 2 Categorical Exemption are then listed in subparagraphs (a) through (d). The only example that is reasonably close to what is proposed here is subparagraph (b), “Replacement of a commercial structure with a new structure of *substantially the same size, purpose and capacity*.” Here, the proposed structure is a cell tower, nearly twice the height of the original lattice tower, making it substantially *different* in size, not substantially the *same*. As for purpose, the existing tower is for cable television, according to the County website. In addition, the FAA has determined that there are “no frequencies being transmitted or received by CTI Towers” at the proposed location.¹ Therefore, the proposed tower would *not* serve the same purpose as the existing tower. As for capacity, the applicant argues elsewhere in its application (everywhere but here) that it will dramatically improve the capacity near the existing structure. It is the primary reason given for why the applicant needs to place its tower at that location.

¹ <https://oecaaa.faa.gov/oecaaa/external/searchAction.jsp?action=displayOECCase&oeCaseID=311515843&row=0>

Since the proposal includes a *new* purpose for the site, a drastic increase in capacity as compared to the existing structure and the proposed tower would not be substantially the same size, the proposed tower is not entitled to a categorical exemption under Section 15302.

Further, *CTI* asserts that its proposed tower is entitled to a categorical exemption pursuant to Section 15303 – New Construction or Conversion of Small Structures. However, this section refers to the conversion of an existing small structure from one use to another “where only minor modifications are made in the exterior of the structure.” Here, it cannot rationally be argued that the proposed 140-foot cell tower, with an array of fake tree branches, constitutes only a minor modification to the exterior of the 70-foot lattice tower structure. The application is not entitled to this categorical exemption either.

Conclusion

Accordingly, it is requested by the undersigned group that this application be denied. First, *CTI* has failed to provide the information requested. Second, the nature of the proposal has been deliberately and wildly mischaracterized to avoid additional environmental review. The applicant is pulling the wool over your eyes. This is unacceptable.

Dated: Santa Cruz, California
January 18, 2024

Respectfully Submitted,

Bonny Doon Residents for Responsible Cell Coverage

The Initial Study/Mitigated Negative Declaration does not Analyze the Impacts of CTI's ability to Increase the Height of the Proposed Tower Without Further or Prior Zoning Approval according to § 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012.

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed facility were constructed as currently proposed at 151.1 feet, CTI could later unilaterally choose to increase the height of the facility by as much as twenty (20) feet to 171.1 ft. without further environmental review. The County and the residents of the Summit Drive neighborhood would be legally prohibited from stopping them from doing so due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012. The Initial Study/Mitigated Negative Declaration ("MND") does not consider the foreseeable impacts of a height increase to an abominable height of 171.1 feet in a residential neighborhood. Considering the even more extreme adverse impacts which an increase in the height of the facilities would inflict that has not yet been presented in either the project plans or as a proper demonstration of it at this maximum height, this project should be denied. Because the Negative Declaration failed to consider these impacts, it is fatally flawed. Appellants here need only make a fair argument of a significant impact.

This project requires an EIR because a fair argument exists that the project may have a significant effect on the environment, specifically aesthetic impacts. *See League for Protection of Oakland's Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75. "There is 'a low threshold requirement for preparation of an EIR', and a 'preference for resolving doubts in favor of environmental review.'" *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332. Courts have repeatedly affirmed that the fair argument standard is a "low threshold test." *The Pocket Protectors v. City of Sacramento* ("Pocket Protectors") (2004) 124 Cal.App.4th 903, 928; *No Oil Inc. v. City of Los Angeles, supra*, 13 Cal.3d at 86; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123-1126. "[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1113. A "negative declaration is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis." *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406.

An MND is proper "only if project revisions would avoid or mitigate the potentially significant effects identified in an initial study 'to a point where clearly no significant effect on the environment would occur, and ... there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.'" *Mejia v. City of Los Angeles, supra*, 130 Cal.App.4th at p. 331 (emphasis added). Whether the administrative record contains "substantial evidence" in support of a "fair argument" sufficient to trigger a mandatory EIR is a question of law, not a question of fact. *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905; *Architectural Heritage Association v. County of Monterey*

(2004) 122 Cal.App.4th 1095, 1122 (overruled in part on other grounds in *Friends of Willow Glen Trestle v. City of San Jose* (2016) 2 Cal.App.5th 457, 460). Therefore, under the fair argument standard, “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” *Sierra Club v. County of Sonoma* (1992) 6 Cal App 4th 1307, 1318; see also, *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597 (rejecting an approval of a Negative Declaration prepared for a golf course holding that “[a]pplication of [the fair argument] standard is a question of law and deference to the agency’s determination is not appropriate.”) Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402. Instead, substantial evidence to support a fair argument simply means “information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” 14 Cal. Code Regs. § 15384; *Pocket Protectors, supra* 124 Cal.App.4th at 927-928; *League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland, supra*, 52 Cal.App.4th at 905. Here, the MND is not an adequate environmental document because it fails to provide adequate analysis of and mitigation for environmental impacts “to a point where clearly no significant effect on the environment would occur.”

“The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena.” *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1341. Additionally, the MND fails to provide adequate mitigation measures for significant environmental impacts of the Project and thus the conclusion that significant environmental impacts have been properly mitigated is incorrect as a matter of law: “[I]mpermissible deferral of mitigation measures occurs when [the agency] puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described....” *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281. Crucially, the MND here does not even try to analyze the impacts of the additional height that CTI will be able to add once the tower is constructed. An “agency should not be allowed to hide behind its own failure to gather relevant data.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408. An “agency should not be allowed to hide behind its own failure to gather relevant data.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408. Here, a foreseeable consequence of project approval is a 171.1 foot high tower that was not analyzed in the MND.

For these reasons, the MND fails to provide the requisite environmental data for the Project and substantial evidence supports a fair argument that the Project may have a significant environmental impact. Thus, an EIR must be prepared. *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 503.

Preliminary Statement

This Supplemental Memorandum is submitted in further opposition to the application of Delta Group Engineering/CTI Towers (hereinafter “*CTI*” or the “Applicant”) for a Special Use Permit to install a one hundred forty foot (14 story high) wireless communication facility to be located on the property known as 186 Summit Drive, Santa Cruz, CA. In addition, *CTI* seeks an exception for height requirements in order to accommodate its proposed one hundred forty foot wireless communications tower.

The undersigned residents of Summit Drive have suggested that co-location on an existing tower at an alternative location on Patrick Road would be a viable option, being only 1,000 feet away from the proposed location on Summit Drive, and would avoid the substantial adverse impacts the proposed tower would inflict on the community. As requested, *CTI* has submitted “apples to apples” propagation maps purporting to show coverage in the proposed location as opposed to the 125 Patrick Road location. Despite the inherent unreliability of propagation maps like those submitted here, the propagation maps submitted by *CTI* show a negligible difference between coverage at the Summit Drive location and at the Patrick Road location. The alternative site 1,000 ft away would provide apples to apples coverage.

Naturally, *CTI* has no interest in co-locating on the existing tower on Patrick Road. This is because, as set forth in the Memorandum in Opposition submitted on October 13, 2023 for a public hearing held on October 20, 2023 (the “October 13, 2023 Memo”), *CTI* is not a provider of wireless services. Rather, it is a site developer that supplies and installs *towers* on which to lease space to wireless service providers. Co-location would deprive *CTI* of a financial opportunity.

On its website, *CTI* describes itself as “one of the largest private tower companies in the U.S.” and states that it “operates over 1,800 wireless communications towers across 48 states in the continental US and leases tower space to major wireless carriers, which include AT&T, DISH, T-Mobile, and Verizon as well as broadcasters, utility companies, internet service providers, and government entities.” *See* Exhibit E, hereto.

So, while it is in the best interest of the community for a wireless service provider to co-locate on the existing Patrick Road tower, it is decidedly not in the interest of *CTI*. This is because *CTI* does not own the Patrick Road tower and as such, cannot lease space on it to wireless service providers. What is good for *CTI* is directly at odds with what is good for Santa Cruz County.

As set forth in the October 13, 2023 Memo, *CTI*'s application should be denied because *CTI*'s proposed tower would violate the County Code, as well as its legislative intent.

Accordingly, it is respectfully submitted that *CTI*'s application be denied, and that such denial conform to the requirements of the Telecommunications Act of 1996.

POINT I

GRANTING *CTI* PERMISSION TO CONSTRUCT A WIRELESS FACILITY AT THE LOCATION IT PROPOSES WOULD VIOLATE THE CODE AND THE LEGISLATIVE INTENT UPON WHICH IT IS BASED

As set forth in the October 13, 2023 Memo, granting *CTI*'s application would violate the *requirements* of the Code as well as the *legislative intent* behind those requirements. The reasons for denying *CTI*'s application are set forth in the October 13, 2023 Memo. Specifically, the irresponsible placement of a wireless facility at the location proposed would inflict upon the residential community the precise types of adverse impacts which Chapter 13.10.660 *et seq.* of

the Code was specifically enacted to prevent.

A. *CTI's* Failure to Meet the Requirements of Chapter 13.10 of the Municipal Code

CTI has failed to establish compliance with the requirements and limitations of Chapter 13.10 of the Code regarding wireless telecommunication facilities.

Pursuant to the Code, applicants must prove, among other things, that the proposed wireless facility would eliminate or substantially reduce one or more significant gaps in the applicant carrier's network. Again, *CTI* is not a carrier with a network. Rather, *CTI* proffers data purporting to relate to AT&T, *CTI's* proposed "tenant." Nevertheless, *CTI* has failed to present any reliable evidence at all to support its claim that there is a significant gap at all in AT&T's wireless service, and that the one-hundred fifty foot (150') tower, as it is proposed, is the least intrusive location and is the minimum height necessary to remedy that gap.

In addition, *CTI* has failed to prove, as it is required to do under the Code, that there are no viable, technically feasible, and environmentally (*e.g.* visually) equivalent or superior potential alternatives (*i.e.*, sites and/or facility types and/or designs) outside the prohibited and restricted areas ... that could eliminate or substantially reduce said significant gaps.¹ Indeed, *CTI* has not provided a coherent explanation as to why the already existing tower on Patrick Road, only one thousand feet away from *CTI's* proposed site, is not a feasible alternative on which wireless service providers, like AT&T, may co-locate in order to eliminate any purported service gaps. The propagation maps submitted by *CTI*, inherently unreliable as they are,² do not show any appreciable difference between the coverage that would be provided by *CTI's* proposed tower and coverage provided by having AT&T co-locate on the existing tower on Patrick Road.

¹ See § 13.10.660(C)(4)(a)

² See October 13, 2023 Memo, Point III, subpoint B.

As we discuss below, AT&T's own coverage maps show coverage not only at the tower site, but also throughout the region in which the propagation maps show the opposite: no coverage for the same carrier. No drive test data or other standard-bearing data was provided to confirm this. The experience of the residents in this region is that there is reliable coverage, which accords with AT&T's coverage maps available to the public.

CTI has failed to provide any probative evidence to establish that the proposed wireless facility is actually necessary in order to provide personal wireless service in the community or that the facility is not injurious to the community, such that a denial of its application would constitute an "effective prohibition" of personal wireless services.

B. Co-location on the Patrick Road Tower Would Obviate the Substantial Adverse Impacts *CTI*'s Proposed Tower Would Inflict Upon the Aesthetics and Character of the Area

As discussed in detail in the October 13, 2023 Memo, the proposed wireless facility will inflict dramatic and wholly unnecessary adverse impacts upon the area's aesthetics and character. It is clear from §§13.10.661(F) and (G) that the County's intent was to minimize, if not wholly avoid, any negative adverse aesthetic impacts on neighboring properties.³ Again, as set forth in the October 13, 2023 Memo, *CTI* has failed to provide a shred of probative evidence to establish that the wireless communications facility is not injurious to the neighborhood and is actually necessary to provide personal wireless coverage in the area.

C. *CTI*'s Visual Assessment Remains Inherently Defective and Should be Disregarded Entirely

Although *CTI* makes the demonstrably absurd claim that the installation of the proposed

³ See October 13, 2023 Memo, Point I, subpoint A(i).

one hundred-fifty foot wireless facility *would not* inflict a severe adverse aesthetic impact upon the adjacent homes, *CTI* has still failed to submit any meaningful or accurate visual impact analysis.⁴ There are still no photographic images taken by *CTI* from any of the homes belonging to the homeowners whose adverse aesthetic impact letters are collectively annexed to the October 13, 2023 Memo as Exhibit “A.”⁵

POINT II

IF APPROVED, *CTI* COULD UNILATERALLY INCREASE THE HEIGHT OF THE PROPOSED FACILITY WITHOUT FURTHER OR PRIOR ZONING APPROVAL

CTI clearly has an interest in renting out as much space on its proposed tower as possible, allowing as many wireless carriers as it can to add antennas to the tower. As discussed in Point II of the October 13, 2023 Memo, once approved, *CTI* could, at any time, unilaterally increase the height of the facility by as much as twenty (20) feet and the County would be legally prohibited from stopping it.⁶

CTI's application should be denied, especially since, as set forth above, *CTI* doesn't actually *need* the proposed facility in the first place and there is a viable alternative location for providers of personal wireless services, like AT&T, to co-locate their antennas. Also, we know from public record testimony during multiple hearings by *CTI* that they prefer a tower 150 ft or taller, so it's not a question of whether, but when they would increase the height. Finally, as we detail below, the increased height was not addressed in the CEQA review, which was an oversight that requires an EIR.

⁴ See October 13, 2023 Memo, Point I, subpoint A(iii).

⁵ *Id.*

⁶ § 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012

POINT III

CTI'S CLAIM THAT AT&T NEEDS TO LOCATE AT THE PROPOSED SITE IS CONTRADICTED BY AT&T'S OWN ACTUAL COVERAGE DATA

CTI claims that a coverage gap exists in AT&T's service in the Bonny Doon area, and that the alternative site for co-location at 125 Patrick Road is not viable. As set forth in the October 13, 2023 Memo, this is patently untrue.⁷

AT&T maintains and operates a database, which is linked to AT&T website at <https://www.att.com/maps/wireless-coverage.html>. It serves as the data-source for an interactive function, which enables users to access AT&T's own data to ascertain both: (a) the existence of AT&T's wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

AT&T's interactive website translates AT&T's *actual coverage data* to provide imagery whereby areas that are covered by AT&T's service are depicted in various shades of blue, including 5G+, 5G and 4G.

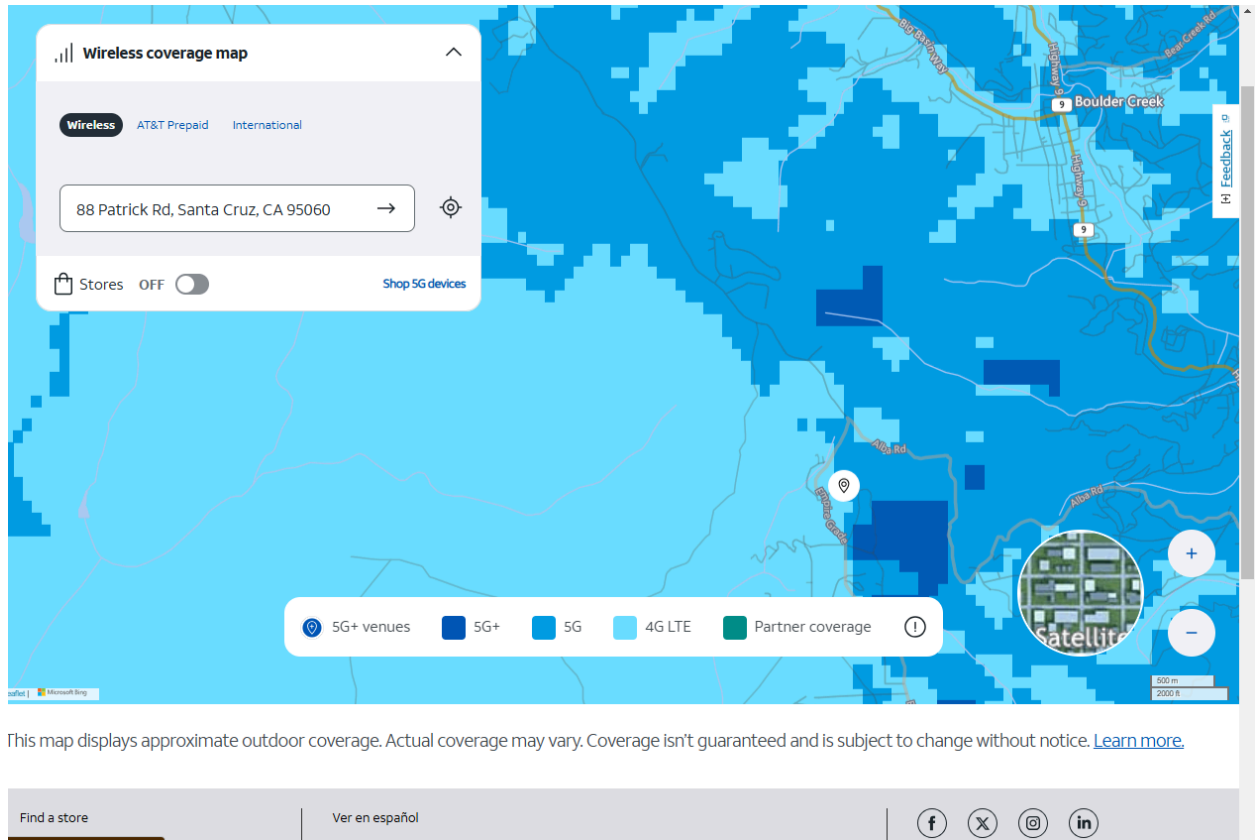
The website further translates the data from AT&T's database to specify the *actual* coverage at any specific geographic location.

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⁷ See the October 13, 2023 Memo, Point III, subpoint B(iii).

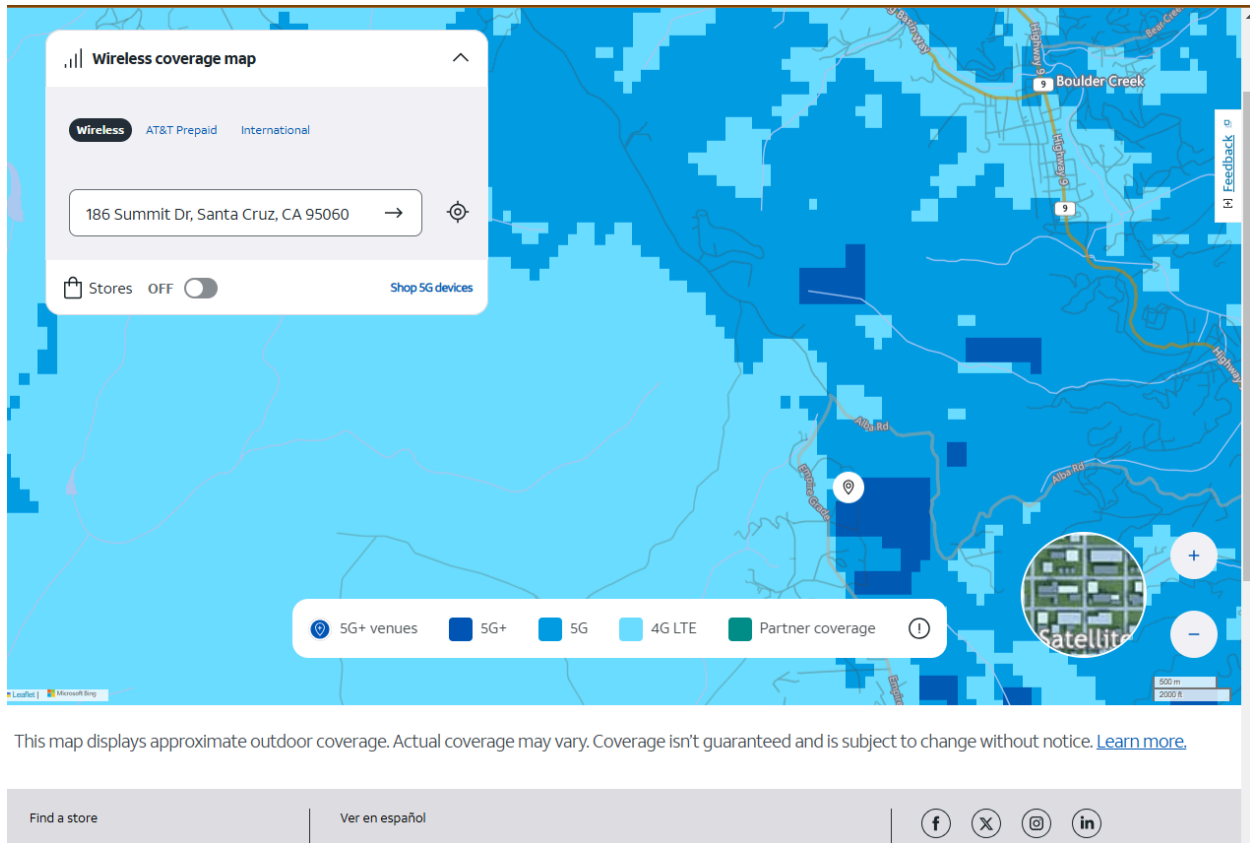
Below are true copies of screen shots of AT&T's coverage maps for the 125 Patrick Road
and 186 Summit Drive locations:

125 Patrick Road

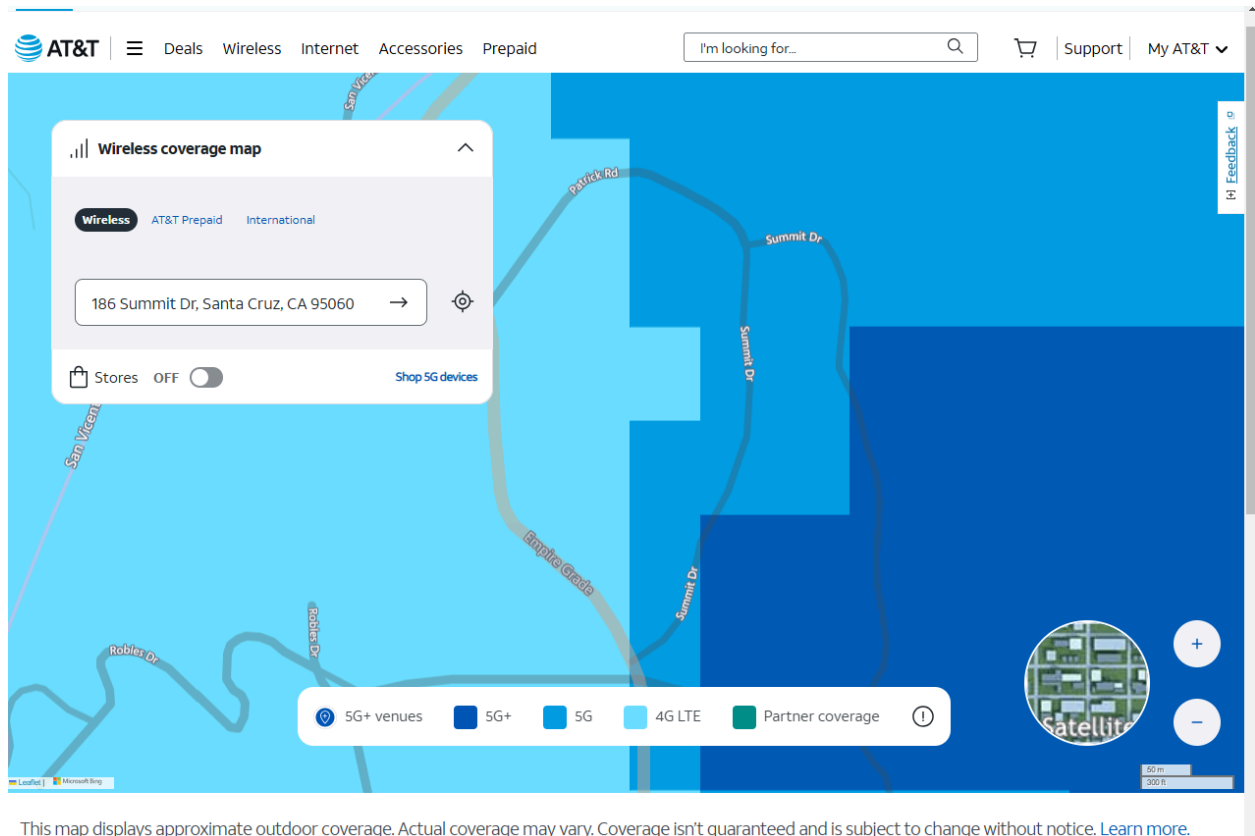


(The remainder of this page is intentionally left blank.)

186 Summit Drive



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A closeup of the same area.

Obviously, AT&T's own data reflects that there is no coverage gap *at all* in AT&T's service at that precise location or anywhere around or in close proximity to it. In addition, it demonstrates that there is no appreciable difference in coverage between the two locations.

Any claim by *CTI* or AT&T that the data available on AT&T's website is not accurate just demonstrates how easily data can be manipulated to suit a particular purpose – when selling its service to the consuming public, the coverage is excellent, but when selling a proposed tower to a municipality, the coverage is almost non-existent. Only the hard data on which the representations are based can resolve the discrepancy. But there is no such hard data in *CTI*'s application.

Given the inherent unreliability of propagation maps without hard data, like the ones submitted by the Applicant, there is no substantial evidence to support an approval of the proposed tower at the proposed location. This is especially true where, as here, there is an existing tower, with room to co-locate, only 1,000 feet away on Patrick Road. The Applicant has not provided any coherent, non-self-serving explanation, supported by actual evidence, as to why the Patrick Road location would not be a suitable place for AT&T to install its antennas.

Point IV

The Initial Study/Mitigated Negative Declaration does not Analyze the Impacts of CTI's ability to Increase the Height of the Proposed Tower Without Further or Prior Zoning Approval according to § 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012.

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed facility were constructed as currently proposed at 151.1 feet, CTI could later unilaterally choose to increase the height of the facility by as much as twenty (20) feet to 171.1 ft. without further environmental review. The County and the residents of the Summit Drive neighborhood would be legally prohibited from stopping them from doing so due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012. The Initial Study/Mitigated Negative Declaration ("MND") does not consider the foreseeable impacts of a height increase to an abominable height of 171.1 feet in a residential neighborhood. Considering the even more extreme adverse impacts which an increase in the height of the facilities would inflict that has not yet been presented in either the project plans or as a proper demonstration of it at this maximum height, this project should be denied. Because the Negative Declaration failed to consider these impacts, it is fatally flawed. Appellants here need only make a fair argument of a significant impact.

This project requires an EIR because a fair argument exists that the project may have a significant effect on the environment, specifically aesthetic impacts. *See League for Protection of Oakland's Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75. “There is ‘a low threshold requirement for preparation of an EIR’, and a ‘preference for resolving doubts in favor of environmental review.’” *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332. Courts have repeatedly affirmed that the fair argument standard is a “low threshold test.” *The Pocket Protectors v. City of Sacramento* (“*Pocket Protectors*”) (2004) 124 Cal.App.4th 903, 928; *No Oil Inc. v. City of Los Angeles, supra*, 13 Cal.3d at 86; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123-1126. “[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.” *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1113. A “negative declaration is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406.

An MND is proper “only if project revisions would avoid or mitigate the potentially significant effects identified in an initial study ‘to a point where clearly no significant effect on the environment would occur, and ... there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.’” *Mejia v. City of Los Angeles, supra*, 130 Cal.App.4th at p. 331 (emphasis

added). Whether the administrative record contains “substantial evidence” in support of a “fair argument” sufficient to trigger a mandatory EIR is a question of law, not a question of fact. *League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905; *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1122 (overruled in part on other grounds in *Friends of Willow Glen Trestle v. City of San Jose* (2016) 2 Cal.App.5th 457, 460). Therefore, under the fair argument standard, “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” *Sierra Club v. County of Sonoma* (1992) 6 Cal App 4th 1307, 1318; see also, *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597 (rejecting an approval of a Negative Declaration prepared for a golf course holding that “[a]pplication of [the fair argument] standard is a question of law and deference to the agency’s determination is not appropriate.”) Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402. Instead, substantial evidence to support a fair argument simply means “information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” 14 Cal. Code Regs. § 15384; *Pocket Protectors, supra* 124 Cal.App.4th at 927-928; *League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland, supra*, 52 Cal.App.4th at 905. Here, the MND is not an adequate environmental document because it fails to provide adequate analysis of and mitigation for environmental impacts “to a point where clearly no

significant effect on the environment would occur.”

“The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena.” *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1341. Additionally, the MND fails to provide adequate mitigation measures for significant environmental impacts of the Project and thus the conclusion that significant environmental impacts have been properly mitigated is incorrect as a matter of law: “[I]mpermissible deferral of mitigation measures occurs when [the agency] puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described....” *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281. Crucially, the MND here does not even try to analyze the impacts of the additional height that CTI will be able to add once the tower is constructed. An “agency should not be allowed to hide behind its own failure to gather relevant data.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408. An “agency should not be allowed to hide behind its own failure to gather relevant data.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408. Here, a foreseeable consequence of project approval is a 171.1 foot high tower that was not analyzed in the MND.

For these reasons, the MND fails to provide the requisite environmental data for the Project and substantial evidence supports a fair argument that the Project may have a significant environmental impact. Thus, an EIR must be prepared. *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 503.

Point V

The Findings for the Proposed Height Exception Cannot be Made

In accordance with the County Code, “All towers shall be designed to be the shortest height technically feasible to minimize visual impacts....” (County Code § 13.10.660(G)(1).) The maximum facility/antenna heights allowed in the Residential and Timber Production Zone District is 75 feet high for free-standing structures. (Id.) Exceptions to these height limitations are permitted but have limitations. “Any applications for facilities of a height more than the allowed height for facilities in each zone district per subsection (G)(1) of this section must include a written justification proving the need for a facility of that height and comply with subsections (C)(4)(a) and (b) of this section.” (County Code § 13.10.660(G)(2).)

Subsections (C)(4)(a) and (b) state as follows:

- (a) The proposed facility eliminates or substantially reduces one or more significant gaps in the applicant carrier’s network; and
- (b) The proposed facility is located on the least visually obtrusive site and least visually obtrusive portion of the site, where the applicant provides substantial evidence that it chose the best solution for the community after a meaningful comparison of alternative sites and designs, including but not limited to considering less sensitive sites, alternative system designs, alternative tower designs, placement of antennas on existing structures, and other viable, technically feasible, and environmentally (i.e., visually) equivalent or superior potential alternatives.

The Planning Commission needs to make both of these findings.

Notably, the County must review the evidence and make its own independent judgment about the accuracy of the evidence. It cannot defer its responsibilities to the applicant. We asked the

Planning Commission for an independent alternative site analysis at the March 27th 2024 hearing, and this request has not been granted.

As to subsection (a), as noted the proposed facility fails to eliminate or substantially reduce the coverage gap for two reasons:

- 1) There is no coverage gap, according to AT&T's own publicly available data on their website, which shows 4G and 5G coverage in the entire area, including the purported gaps it would fill in the propagation maps. This is easy to verify in real life by making phone calls from the site and the region around the site, which the Summit Drive neighborhood residents do all the time.
- 2) The applicant CTI is not a carrier with a network. Rather, CTI proffers data purporting to relate to AT&T, CTI's proposed "tenant." Nevertheless, CTI has failed to present any probative evidence to support its claim that there is a significant gap at all in AT&T's wireless service, and that the one-hundred fifty foot (150') tower, as it is proposed, is the least intrusive location and is the minimum height necessary to remedy that gap. In fact, there is a less obtrusive alternative site at 125 Patrick Road, which the Summit Drive neighborhood unanimously supports for collocation.

As to subsection (b), the applicant's comparison of alternative sites and designs showed that the existing 150 ft tower in the neighborhood located at 125 Patrick Rd provides equal coverage to the proposed tower at 186 Summit Drive, meaning that the least obtrusive option for the neighborhood.

Notably, the proposed facility at 186 Summit Drive is twice the applicable height limit for the zone district, and could be extended an additional 20 feet in height which the County cannot deny. Given these findings, the height exemption cannot be granted.

The findings proposed before the Zoning Administrator include finding number 2:

The proposed facility is located on the least visually obtrusive site and least visually obtrusive portion of the site, where the applicant provides substantial evidence that it chose the best solution for the community after a meaningful comparison of alternative sites and designs, including but not limited to considering less sensitive sites, alternative system designs, alternative tower designs, placement of antennas on existing structures, and other viable, technically feasible, and environmentally (i.e., visually) equivalent or superior potential alternatives.

The applicant provided an alternative analysis noting that no other alternative site is available to fill the identified gap, including microcell sites, which are incapable of filling the gap due to a line-of-sight requirement to fill the gap in coverage. The existing WCF co-location sites, including Patrick Road, identified in the area are not capable of filling the gap due to the significant distance from the service area. The subject property contains an existing communication facility on site since 1969 that is located in the dense forest and provides the least obtrusive means of providing the applicant's coverage by largely screening the proposed replacement colocation facility within the forest canopy, camouflaging the monopine as a pine tree, and otherwise providing landscape screening for understory views from adjacent residences and additional a trees to screen the top of

the tree canopy from ground level. A maximum height of 140 feet (with 130-foot antenna centerline) is the lowest height capable of substantially filling the wireless coverage gap as determined by the alternative analysis; and therefore, the least obtrusive height.

This finding does not cover all the issues raised in the code. Crucially, the findings must be viewed in the context of the overarching requirement that “All towers shall be designed to be the shortest height technically feasible to minimize visual impacts....” (County Code § 13.10.660(G)(1).) Again, the proposed tower is twice the height of what is normally permitted in the zone district. The proposal is not so much an exception than it is a complete abrogation of the height limitation.

Importantly, the exceptions are a form of variance from the normal standards. Courts can only review matters if findings are complete. The California Supreme Court in *Topanga Assn. For a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 520, held:

courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations]. If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests. (*Id.* at 517-518; see also, *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 923-924 (“Abdication by the judiciary of its responsibility to examine

variance board decision-making when called upon to do so could very well lead to such subversion...”).)

Conclusion

In view of the foregoing, it is respectfully submitted that *CTT's* application for a Special Use Permit be denied in its entirety.

Dated: Santa Cruz, California
February 6, 2025

Respectfully Submitted,

Tim Richards – 531 Summit Drive
Chelsea Brady – 531 Summit Drive
Deborah Richards – 531 Summit Drive
Mark Richards – 531 Summit Drive
Runa Richards – 531 Summit Drive
Gavin Richards – 531 Summit Drive
Rodney Cahill – 120 Summit Drive
Julie Cahill – 120 Summit Drive
Brian Smith – 125 Summit Drive
Naomi Murphy – 125 Summit Drive
JoAnn Pullen – 405 Summit Drive
William Pullen – 405 Summit Drive
Allison Pullen – 405 Summit Drive
Alexis Jenkins – 219 Summit Drive
Jerry Jenkins – 219 Summit Drive
Mary Coyle – 250 Upper Summit Drive
Andy Fox – 250 Upper Summit Drive
Andy Fox – 88 Patrick Road
Bob Atton – 305 Summit Drive
Sara Blackstorm Atton – 305 Summit Drive
Richard Jay Moller, Attorney – 714 Summit Drive
Leif Moller – 714 Summit Drive
Rachel Moller – 714 Summit Drive
Milly Moller – 714 Summit Drive
Deborah Teixeira – 185 Summit Drive
Tony Molino – 185 Summit Drive
Gennevie Herbranson – 529 Summit Drive
James Terrill – 529 Summit Drive

Ann McKenzie – 665 Summit Drive
Don Roberts – 665 Summit Drive
Meg Roberts – 663 Summit Drive
Will Roberts – 663 Summit Drive
Shanna Kuempel – 98 Summit Drive
Pat Sutliff – 265 Summit Drive
Maureen Huber – 265 Summit Drive
Paul (Daniel) Gutierrez – 511 Summit Drive
Judith Howser – 426 Summit Drive
Tom Howser – 426 Summit Drive
Scott Martin – 343 Summit Drive
Scott Martin – 347 Summit Drive
Christian Harris – 93 Summit Drive
Denby Adamson – 10629 Empire Grade