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Hand Delivery and Email

Mr. Kevin White, Project Manager
Department of Land Use Services
County of San Bernardino
385 North Arrowhead Avenue – 1st Floor
San Bernardino, CA 92415

RE: Lazer Radio Broadcasting Facility Project
APN: 0325-011-19-0000

Dear Mr. White:

This firm represents the Citizens for the Preservation of Rural Living (“CPRL”) and on its behalf submits the following comments to the Notice of Preparation for the above-referenced project. CPRL is a public interest association that seeks to ensure that the open space and natural wilderness values of the Pisgah Peak and Wildwood Canyon State Park areas are preserved. We have previously commented on the project applications submitted by Lazer Broadcasting, Inc., in 2008 and 2010. CPRL has been actively involved in the entitlement process for the proposed Lazer radio tower (“Project”) on an undeveloped 40-acre parcel of land in the San Bernardino Mountains.

We are in receipt of the Notice of Preparation (NOP), dated October 29, 2014, relating to the proposed Lazer radio broadcasting facility. The purpose of this letter is to comment on such NOP.

1. Purpose of Notice of Preparation.

The purpose of a notice of preparation is to solicit guidance from other agencies on the scope and content of the environmental information to be included in the EIR. Public Resources Code §21080.4 (a); 14 Cal Code Regs §15375. The notice of preparation must provide the responsible and trustee agencies with sufficient information concerning the project and its potential environmental impacts to enable them to make a “meaningful response.” 14 Cal Code

Regs §15082 (a) (1). At a minimum, the notice must contain a description of the project, the location of the project, and the project's probable environmental effects.

2. Alternatives Analysis.

A. The NOP indicates that the alternative site that will be studied in the EIR is an existing radio tower located in the Oak Glen Planning Area. The proposed alternative is identified as the KRQB tower (previously known as the KWIE tower.) However, throughout the administrative process, the attorney and consultants for Lazer have testified that the KRQB tower does not satisfy FCC requirements and would not be approved by the FCC.

Lazer's consulting engineering firm, Hatfield & Dawson, provided Engineering Statements dated October 2008 and April 2010. In the 2008 Engineering Statement, Hatfield & Dawson concludes that "co-location with KRQB is not viable." In the 2010 Engineering Statement, Hatfield & Dawson comes to a similar conclusion as follows: "I conclude that were we to submit an application to the FCC to operate KXRS at the KRQB tower site, the FCC would not approve such an application due to coverage deficiencies."

At the Planning Commission hearing on the prior project, held on May 5, 2011, Harry Martin, attorney for Lazer, testified that "the FCC would not approve us to use that location." In making that testimony, he used slides prepared by the firm Hatfield & Dawson.

At the Board of Supervisors hearing held on January 27, 2009, attorney Harry Martin testified as follows:

"My testimony deals with the reasons why this proposed site is unique in terms of its acceptability to the FCC and its service potential and why other sites in the region would not pass FCC muster, including the KRQB tower, which has been shown in the pictures."

At the Board of Supervisors hearing on November 27, 2012, Harry Martin testified that the KRQB site would not satisfy FCC requirements because "if you go farther north [where the KRQB tower is located] you go over Pisgah Peak and you can't get line of sight back to Hemet, the community of license."

Under CEQA, alternatives presented in an EIR must be potentially feasible. 14 Cal code reg §15126.6 (a). See also City of Long Beach v. City of Los Angeles Unified School District, 176 Cal App 4th 889 (2009). Because co-location on the KRQB site is not feasible according to Lazer and its engineers and attorney, consideration of the KRQB site as an alternative fails to comply with the requirements of CEQA.

The NOP also contains an alternative design of the project, namely construction of a "typical lattice style tower" with increased height. It is clear that this alternative is one that would have a greater environmental impact, rather than a lesser impact. As a result, between proposing an alternative site location that cannot be approved by the FCC and an alternative

design that has a greater environmental impact, there is no analysis whatsoever of an alternative design or alternative site that is both feasible and environmentally superior.

B. Alternative Locations that should be Considered.

During the course of hearings on the prior tower applications submitted by Lazer, three potential locations for the Lazer tower, that comply with FCC rules and requirements, have been identified. Those locations, described below, must be analyzed in the EIR as alternatives to the proposed site locations. All of these feasible alternatives are located in areas that would be environmentally superior to the Project location.

- Location 1—San Jacinto Site. On page 5 of its Engineering Statement dated April 2010, Hatfield & Dawson identifies a potential site that complies with FCC rules. The site located is on a ridge as one enters the San Jacinto Mountains and the Badlands (near the City of San Jacinto). The San Jacinto site would reach approximately 300% more listeners than the existing KXRS site operated by Lazer in Hemet, so it is both feasible and meets project objectives.
- Location 2— Beaumont Site. CPRL submitted an Engineering Statement, dated March 10, 2011, by engineering consultant Edward De La Hunt. It identified FCC Tower Registration Number 1263499 as alternative Site #1. Further information about this first alternative site is set forth on page 6 of the March, 2011 Engineering Statement.
- Location 3— Cherry Valley Site. The De La Hunt March, 2011 Engineering Statement also identified FCC Tower Registration Number 120-2850 as alternative Site #2. Further information about the second alternative site is set forth on page 7 of the De La Hunt Engineering Statement.

C. Identification of Additional Alternate Tower Sites.

Unlike most projects, identifying a feasible alternative site requires the expertise of an FCC engineer. County staff cannot identify alternative sites other than the ones that have been identified above, without retaining a consulting engineer. Without an FCC engineering statement that identifies FCC compliant sites, the alternatives analysis in the EIR will be deficient.

3. Analysis of Visual Impact of Project.

The NOP lists “aesthetics” as one possible environmental impact of the Lazer project. However, the NOP fails to adequately describe the possible aesthetic impacts so as to provide an accurate description of scope of potential impacts.

CPRL, as well as several members of the public, testified as to the likelihood that approval of the Lazer tower will set a precedent leading to future approvals of additional radio towers near the Wildwood Canyon State Park, adjacent parcels and open-space areas. The aesthetic impact should specifically include the visual impact of a multiple radio towers (a so called “tower farm”), because the existing KRQB tower and the Lazer tower would provide a precedent for future tower approvals. It is inadequate to study a single tower.

The visualization studies prepared for the 2010 approval of the tower site, which has been vacated by court ruling, utilize viewpoints for the study that were often times a mile or more away. Such a study is inadequate. Evidence has been presented that trails formally recognized by the City of Yucaipa are immediately adjacent to the Lazer property. Accordingly, the study must include visualization of the proposed tower from the terminus of the trail at the Lazer property line. The visual impacts study must also include all areas of the utility pipeline installation and brush clearance, including the access road, that will alter the existing views. The impact of other fire-control measures must also be evaluated.

CPRL has also submitted evidence that, in addition to Wildwood Canyon State Park, several local open-space nonprofit conservancies own land immediately adjacent or in the immediate vicinity of the Lazer project. CPRL itself owns two parcels of land immediately adjacent to the Lazer property. The Wildlands Conservancy owns additional properties, including property surrounding Pisgah Peak. The Yucaipa Valley Conservancy owns open-space properties in the immediate area of the proposed project. The Bureau of Land Management and the United States Forest Service also hold open-space lands in the vicinity of the proposed Lazer tower. The visualization study for the EIR should not only study views of the proposed tower from Wildwood Canyon State Park, but also views from all of the other adjacent parcels and nearby properties held by open-space conservancies and government agencies.

The NOP is misleading in that agencies reviewing the NOP would analyze the Project solely based upon a single tower. The growth inducing impacts of the project, not mentioned in the NOP, include future towers in the vicinity of the State Park and adjacent parcels and open-space properties. As a result, the NOP is inadequate to provide commenting agencies with the true scope of the potential aesthetic impacts of this project. The NOP should be revised to adequately set forth the potential growth inducing impacts of the project and the fact that those impacts must be studied in the EIR.

4. Biological Study Must be Included in EIR.

During the hearing process for the two prior tower applications, CPRL has consistently pointed out deficiencies in the biological study conducted by Lazer. The original biological survey was done in 2006, nine years before the project will be considered in 2015. At this time, the study is too stale to be relied upon for the current application. In addition, even if the study was more recent, it was deficient in many ways. As previously pointed out in our comment letter dated June 18, 2010, the deficiencies in the original study included the following [quoting from the June 18, 2010 letter]:

“While the Land Use Application Questionnaire (question 23) indicates that there are no known sensitive or protected plant or animal species on site, the Biologist Letter Report attached to the application is nothing other than a recap of prior biological information submitted in connection with the 2007-09 Lazer application. In his letter of April 14, 2010, biologist Ty M. Garrison states that “the fieldwork was conducted in 2008 prior to this proposal for a substantially larger project previously proposed on the same property.” This statement is false.

First, the 2007-09 tower application is substantially similar. The fact that the tower is shorter does not mean that the 2007-09 tower project was "substantially larger". In addition, the statement that the fieldwork was done in 2008 is blatantly false. Upon reviewing the previously submitted biological letters, it becomes clear that the biologist visited the site on June 2, 2006 to determine if there were any significant biological constraints to development in connection to the access road or the Project parcel. The biologist visited the site three more times (in December of 2006, February of 2007, and August of 2007) but in each of those cases the visit was for limited purposes and did not constitute a survey of biological restraints. This means that the survey on which this project now relies was conducted four years ago, in a drought year. During the 2009/2010 rain year, there was not a drought but rather a normal rainfall. This means that the plant species that would be located on the property as well as adjacent properties would be significantly different than in a drought year. Accordingly, the resubmission of the prior biological study which references a survey conducted four [now eight] years ago is inadequate to draw any conclusions as to whether or not there are known sensitive or protected plants located on the site or other affected areas. Increased rainfall also has a positive effect on mammal, bird and reptile populations.

Moreover, the statement is contradicted by the County's approved General Plan FEIR which indicates that the Mountain Region (where the Project site is located) sustains many unique plant associations due to the diverse geology and varied micro climates, and that, among other things, the CDFG recognizes 14 Areas of Special Biological Importance within the Mountain Region. *See* FEIR at IV-6, IV-41. Moreover, other recent studies of nearby parcels indicate that federally threatened and endangered plant and animal species have a moderate to high likelihood of occurring in this area, including Plummer's Mariposa Lily, Hall's monardella, and as many as 30 sensitive animal species. *See Exhibit 5* (EA at p. 15 and studies referenced therein). Thus, it is reasonably probable that the Project may cause significant adverse impacts to biological resources in the Project area. Thus, an EIR must be required and a site specific biological report and survey conducted in order to assess potential impacts and develop appropriate mitigation measures if necessary. Moreover, the CDFG and USFWS should be consulted since they would have jurisdiction over the biological resources on the site."

In addition, the original biologic survey failed to comply with the County Development Code. Pursuant to Development Code Section 82.11.030 (Biotic Resources Overlay), a "land-use application shall include a biotic resources report..." That code section further provides that "the biotic resources report shall identify all biotic resources located on the site and those on adjacent parcels (emphasis added) that could be impacted by the proposed development...." The Lazer project includes a utility line which runs over 6,000 feet directly affecting many adjacent parcels. The biologic study prepared by Lazer's consultant fails to study adjacent parcels. An Environmental Assessment for the then-proposed Wildlands Exchange [referred to in more detail in our June 18, 2010 letter], exists; that study shows that there are significant biological

resources that will be impacted by the proposed Project and which the County has ignored. The County has failed to comply with its own rules by proposing to prepare an EIR without first requiring preparation of a biological assessment of the Project site and adjacent parcels as required by the Development Code.

Because the biological impact of the project has never been adequately studied, and because the biological study will be nine years old in 2015, the EIR for the current tower application must include updated biological surveys and studies which comply with the County Development Code and adequately identify biological impacts of the project.

5. Fire Safety Issues.

The proposed project is located in a "Very High Fire Hazard Severity Zone" east of Wildwood Canyon State Park. The area has a history of large catastrophic wildfires, extreme weather conditions and large swathes of flammable fuels surrounding relatively isolated residential clusters. Most of the slopes in the area are over 40%, which makes firefighting extremely difficult and dangerous. Fires expand rapidly, feeding on the dense woody shrubs in the area, and are highly resistant to control by firefighters. Due to the proximity of established communities in canyons near the project site, the EIR should include a lightning risk analysis and fuel modification compliance assessment.

Despite its high-fire location, the project proposes to reduce the standard fuel modification zone from 100' to 30' around the tower and equipment shelter. The project also fails to address protections for road access, including widening the access road, brush clearance zones on both sides of the access road, construction of adequate turnouts and installation of an on-site water tank. The aesthetic and biological impacts of all of these fire-control measures must be considered in the EIR.

6. Incorporation of Administrative Record and Prior Project Records.

As stated in the NOP, the prior approval of Lazer's tower was vacated by the Superior Court of San Bernardino. That case (Case No. CIVDS 1213173) has been appealed to the Court of Appeal, and an administrative record has been prepared in connection with that appeal. CPRL hereby requests that the Administrative Record, and all prior tower entitlement records (including, but not limited to, all documents, letters, comments, protests and Planning Commission and Board of Supervisor meetings records and actions) for the prior projects be incorporated by reference into the record for Lazer's current tower project.

7. Conclusion.

The NOP contains numerous inaccuracies which would prevent responsible and trustee agencies from fully understanding the potential environmental impacts of the Lazer tower project. The proposed study of alternatives is completely inadequate and fails to comply with CEQA. The minimal discussion of aesthetic impacts fails to provide an adequate picture of the potential growth inducing impacts of the project, namely future approval of additional towers which would create a "tower farm" immediately adjacent to the state park and adjacent open-

space properties. The NOP makes no reference whatsoever to the biological impacts of the tower project.

Because of the inaccuracies set forth in the NOP, responsible and trustee agencies do not have enough information to enable them to make a "meaningful response". Accordingly, demand is made that the NOP be corrected as set forth herein and re-circulated to responsible and trustee agencies.

Very truly yours,

MIRAU, EDWARDS, CANNON,
LEWIN & TOOKE
A Professional Corporation

By:



John K. Mirau, Esq.