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August 16, 2011

Ms. Dena M. Smith, Director
San Bernardino County Land Use Services Department
Planning Division
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182

**RE: Project No. P201000215/CF - Radio Tower Application
Lazer Parcel - APN 0325-011-19-0000
Visualization Study—GPS Locations for Visualization Study**

Dear Ms. Smith:

This firm represents the Citizens for the Preservation of Rural Living ("CPRL"). CPRL is a public interest association that seeks to ensure that the open space and natural wilderness values of Wildwood Canyon State Park and the Pisgah Peak areas are preserved. We have previously submitted comments to the project application submitted by Lazer Broadcasting, Inc., which proposes the construction of a 43-foot tall radio tower ("Project") on an undeveloped 40-acre parcel of land in the San Bernardino Mountains.

1. Visualization Study.

One of the major issues raised by the proposed construction of the Lazer radio tower is the significant adverse visual impact on the adjacent Wildwood Canyon State Park (WCSP). At the Planning Commission meeting held on May 5, 2011, CPRL presented a visualization of a radio tower which included a fence around the tower and antenna facilities. A copy of that visualization is enclosed. We request that the CPRL visualization also be presented to the Planning Commission at its next meeting at which they consider the Lazer tower.

At the last Planning Commission meeting at which this project was considered, the CPRL visualization study was questioned by the consultant for Lazer. Without ever reviewing it, he stated that the fence should not be included in a visualization study, and he also took the position that the visualization study was not to scale. Both of those criticisms are invalid. Pursuant to a prior letter sent to you dated August 12, 2011, we set forth the Federal Communication Commission authorities that require a fence to be placed around the tower as well as up the slope behind the tower to prevent harm to humans arising from radiofrequency radiation. With respect to the scale of the visualization, the visualization was based upon an actual photograph taken of the park from one of the trails within the park. The visualization was prepared by an architect, who superimposed the proposed Laser tower, antenna, and equipment building exactly to scale. In fact, the CPRL visualization is exactly what the entire laser tower and facilities would look like from that point of view on a trail within Wildwood Canyon State Park.

2. New Visualization Study to be Prepared by County Consultant.

The County of San Bernardino has issued a request for proposal, dated July 20, 2011, to the Lilburn Corporation and URS Consultants. Pursuant to the request for proposal, the visualization study would include simulations from at least three key observation points within Wildwood Canyon State Park.

As you know, Laser Broadcasting submitted a so-called visualization study in connection with its application that was denied in 2009. Our prior letters pointed out the major problems with that visualization study. In that study, the viewpoints selected from which to visualize the tower were so far away that the visualization study concluded that there was no visual impact on the park, despite the fact that the proposed tower, antennas and equipment building are located immediately adjacent to the park and within clear view of approximately 65% of the park.

Unless the proposed new visualization study is taken from appropriate viewpoints within the park, the new visualization study will be no more valuable than the previously submitted Laser visualization studies. The first study was designed to show that there was no visual impact on the park from points over a mile away. What it did not do is provide a visualization of what an active user within the park would see when they ride bikes or horses or hike along existing trails within the park.

3. WCSP is an active park used by visitors who ride horses, mountain bikes and hike on established trails within the Park.

Wildwood Canyon State Park is not a passive park where people drive to park their cars and sit in designated areas to have a picnic or to read a book. The park is comprised of approximately 900 acres of land with trails designated for use by hikers, mountain bikers and horseback riders. It is an active Park used by thousands of active participants every year. Use of the park is organized and encouraged by the Supporters of Wildwood Canyon State Park, the Yucaipa Equestrian Arena Committee and the Trails and Open Space Committee of the City of Yucaipa. The trails map of the City of Yucaipa (Yucaipa General Plan) includes trails that are

immediately adjacent to the location of the tower. One of the trails is located on the boundary line between the Lazer parcel and the State Park.

The problem with the Lazer visualization studies prepared in 2007 and 2010 is that they treat the park as if it were a place in which visitors would drive a SUV up the main road to the old farmhouse located in the park. The pictures taken show the park from adjacent roads and highways and from areas of the park that are so far from where the tower, antennas and building will be located that they could not be seen. The problem with that approach is that the park is not used by passive participants who use cars to come to the park and then sit or lounge around at conveniently located areas within the park which can be accessed by vehicles.

In fact, there is a staging area on the south side of Wildwood Canyon Road where users of the park can park their cars, unload horses etc. There is a gate at the entrance of the park which prevents anyone from driving a motorized vehicle within the park. The park is designed, and intended for, visitors who actively participate in horseback riding, mountain biking and hiking. Accordingly, the only type of visualization study that is relevant to determine the visual impact of the tower, antennas and building on visitors in the park is one in which the viewpoints from which the visualization is conducted are along trails and areas within the park that will be viewed by the active participants who visit the park.

4. New Visualization Study should not duplicate studies submitted by Lazer in 2007 and 2010.

There is no need, and it would serve no purpose for the new visualization study to provide visualization of viewpoints that have already been submitted by Lazer and its consultant Moss and Associates.

Lazer submitted Photographs and Photosimulations, dated May 1, 2007, prepared by David Moss & Associates, Inc., Lazer's consultant who processed the first land use application for the tower, antennas and building. That study included pictures of the following views: (i) View 1 facing West from Oak Glen Road, approximately 5,700 feet from the proposed tower site, (ii) View 2 facing northwest from Oak Glen and Wildwood Canyon Road, approximately 7,700 feet from the proposed tower site, (iii) View 3 facing north from Wildwood Canyon Road and Morningside Drive approximately 7,200 feet away from the proposed tower site, (iv) View 4-A facing northwest from Wildwood Canyon Road and Wildwood Park approximately 9,000 feet away from the proposed tower site, and (v) View 4-B facing northeast from Wildwood Canyon Road and Wildwood Park approximately 9,000 feet from the proposed tower site.

Lazer also submitted a second Visual Study and Photosimulations study prepared by David Moss and Associates dated approximately May 5, 2010. This study also contained various views of the tower from Oak Glen Road, Wildwood Canyon Road, Poplar Street, etc. The only picture from within the park is from View SP-4 which is an out of focus picture "looking east from a WCSP trail." The study admits that the "43 ft tall tower is visible below the Ridgeline, with mountain terrain as background". The second study does not indicate how far from the

proposed tower site the pictures were taken from, but it is clear that most of them were taken from a mile or further away.

Because the prior studies have submitted pictures from viewpoints outside the park and sometimes more than a mile away, those viewpoints should not even be considered in the new visualization study. Rather, the study should focus on viewpoints from within the park on trails that active users of the park travel on and from which the proposed tower will be viewed.

4. CPRL has obtained GPS locations from within the Park that should be utilized in the visualization study.

CPRL has gathered viewpoints (within WCSP) from horse riders and hikers from which the tower and antennas will be viewed on a regular basis by active users of WCSP. Those park visitors used GPS equipment to obtain the coordinates of those viewpoints. All of these viewpoints are from active trails located within the WCSP, and are used on a regular basis by visitors to the park.

Enclosed with this letter is a map showing four GPS points, GPS-A through GPS-D. CPRL suggests that, if the visualization study is limited to three points, then GPS-A through GPS-C be used for the three visualization view points. If the study is expanded to four points, then it should include GPS-A through GPS-D.

The coordinates for GPS-1 through GPS-D are as follows:

1. GPS-A	34° 01.855N	116° 59.205W	Elevation 3677
2. GPS-B	34° 01.637N	116° 59.314W	Elevation 3493
3. GPS-C	34° 01.740N	116° 59.768W	Elevation 3363
4. GPS-D	34° 01.855N	116° 59.457W	Elevation 3472

5. Conclusion.

In order for the visualization study to be meaningful, the GPS locations described herein should be viewpoints from which the consultant selected to do the visualization study should prepare visual simulations.


In addition, as set forth in our letter of August 12, 2011, the visualization needs to include fencing around the tower and antennas as well a fence around the utility building. Lastly, the visualization needs to actually show the tower with the four antennas that Lazer plans to install. The visualization should not simply show a tower because that is not what will be seen from the park if Lazer's tower project is approved.

We at CPRL appreciate your consideration, and reserve all of our rights. Please feel free to call me with any questions or comments you may have.

Very truly yours,

MIRAU, EDWARDS, CANNON,
LEWIN & TOOKE

By:



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Cc w/out Encl: Supervisor Neil Derry
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LAND USE SERVICES DEPARTMENT

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COUNTY OF SAN BERNARDINO

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1. Visualization Study: Safety of tower and antennas.

One major issue raised by the proposed construction of the Lazer radio tower is the significantly adverse visual impact and public safety concerns affecting the adjacent Wildwood Canyon State Park. At the Planning Commission meeting held on May 5, 2011, CPRL presented a visualization of a radio tower which included a fence around the tower and antenna facilities.

Staff indicated that they were not certain as to whether or not a fence was required. The applicant gave no clear response as to whether or not it was required.

The purpose of this letter is to set forth authorities which make it clear that FCC rules and regulations require a fence around the tower and antenna facilities. This is important both for the purposes of determining the visual impact of the tower and antenna, as well as the safety of the facility. The safety concern in this case is magnified by the steep incline that rises behind the 43-foot tower so that a person standing on the up-slope immediately behind the tower can easily be on the same level and within relatively close range of the radiating antenna.

2. FCC rules and regulations require a fence around the tower and antennas.

FCC rules and regulations contain specific rules relating to protection of the public against radio frequency radiation. Those rules specifically acknowledge that exposure to radio frequency radiation (RFR) can be dangerous to the health of persons who have exposure above a certain maximum permissible exposure (MPE). The FCC limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86.

FCC Rule 1.1310 (47 C.F.R. Section 1.1310) establishes maximum exposure limits for radio frequency radiation applicable to facilities, operations or transmitters. Guidance on evaluating compliance with these limits may be found in the FCC's OST/OET Bulletin Number 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation." Failure to comply with the maximum exposure limits subjects the licensee to fines and forfeitures imposed by the FCC upon a finding of violation of the MPE limits.

The FCC rules regarding protection of the public from RF radiation were recently applied to a fact situation similar to the proposed Lazer tower in an FCC ruling entitled "In the Matter of Frandsen Media Company, LLC", File No. EB-09-DV-0090. The facts in that ruling were as follows. Frandsen operated a radio transmitter with no perimeter fence at the base of the hill on which it was located. Access to the site was available from a one mile dirt road and from the base of the hill by four-wheel drive all-terrain vehicles or by hiking. The antennae structure and building were inside a secure chain link fence, measuring approximately 22 feet by 12 feet. No signs were posted warning the public of radio frequency radiation. During an inspection, FCC agents identified and marked a 500 square foot rectangular area of potentially high RFR levels outside of the fenced area. Tests determined that RFR MPE levels were exceeded in areas tested.

The FCC described its rules regarding protection of the public from RFR radiation as follows:

"Section 1.1310 of the Rules requires licensees to comply with RFR exposure limits. Table 1 in Section 1.1310 of the Rules provides that the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 30 MHz to 300 MHz is 0.200 m/W/cm. The general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure. Licensees can demonstrate compliance by restricting public access to areas where RFR exceeds the public MPE limits."

After analyzing the facts, the FCC made a finding that Frandsen violated RFR limits as follows:

"Frandsen bears the responsibility to restrict access to the noncompliant area that exceeds the RFR limits or to modify the facility and operations so as to bring the station's operation within the RFR exposure limits prior to public or worker access to the impacted area. The Denver agents observed no RFR caution or warning signs at or near the Station KGNT site, particularly in the easily accessible areas of concern, in which the RFR levels ranged between 130% and 350% of the public MPE limits. We therefore find that Frandsen's operation of Station KGNT exceeded the public RFR MPE limits in a large, publicly accessible area and violated section 1.1310 of the Rules."

In footnote 16, the FCC cited OET Bulletin 65, quoting language from Bulletin 65 as to the methods of compliance with RFR exposure limits as follows:

"Restricting access is usually the simplest method of controlling exposure to areas where high RF levels may be present. Methods of doing this include fencing and posting such areas or locking out unauthorized persons in areas such as rooftop locations, where this is practical. There may be situations where RF levels may exceed the MPE limits for the general public in remote areas, such as mountain tops that could conceivably be accessible but are not likely to be visited by the public [Emphasis added]. In such cases, common sense should dictate how compliance is to be achieved. If the area of concern is properly marked by appropriate warning signs, fencing or the erection of other permanent barriers may not be necessary."

3. Application of FCC Ruling to Lazer Tower site.

In order to determine the need for a fence around a tower and antenna facility, the key issues to analyze under the Frandsen ruling is the accessibility of the site by the public and the level of radiation emitted from the antennas on the site.

In terms of accessibility of the tower site to the general public, the facts of this case are even more compelling than the facts in the Frandsen ruling. The tower is located immediately adjacent to the Wildwood Canyon State Park. The park is used by thousands of users every year. The park is regularly used by hikers, mountain bike cyclists and horseback riders. Use of the park is organized and encouraged by the Supporters of Wildwood Canyon State Park, the Yucaipa Equestrian Arena Committee and the Trails and Open Space Committee of the City of Yucaipa.

The trails map of the City of Yucaipa (Yucaipa General Plan) includes trails that are immediately adjacent to the location of the tower. One of the trails is located on the boundary line between the Lazer parcel and the State Park.

The location of the tower is easily accessible from the trails within the State Park. It is also accessible from Pisgah Peak Road. Under the Frandsen ruling, use of warning signs rather than fencing is permitted only if the site is “not likely to be visited by the public”. It is not reasonable to take the position that the Lazer tower is located in a remote area in which it is not likely to be visited by the public. Lazer has proposed that the land surrounding the tower be utilized for open space, accessible by the general public. The tower location is on a small flat area at the bottom of a steep slope. Radiation from the antenna will radiate in all directions, including toward the sloping ground immediately behind the tower. High radiofrequency radiation levels are predicted to occur at ground level, producing a significant RFR risk on that slope. Accordingly, the fence would need to go up the slope behind the tower and antennas as shown in the visualization that CPRL presented to the Planning Commission, which is enclosed with this letter. Indeed, positioning a fence only around the base of the Lazer tower would invite a situation not unlike Frandsen where the area of high RFR danger was located *outside* of the fenced-in area, thus leading the public to believe that an area is safe when it is not.

4. Conclusion.

Prior to proceeding ahead with the visualization study, there needs to be a resolution of the issue of the requirement of a fence around the tower and antennas. If this issue is not resolved, and direction is not given to the consultant that the visualization study must include fencing around the tower and antennas as well as the maintenance building, the visualization study will be fatally flawed and will have little value in determining the visual impact of the tower and antennas on the adjacent Wildwood Canyon State Park.

We at CPRL appreciate your consideration, and reserve all of our rights. Please feel free to call me with any questions or comments you may have.

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By letter dated June 18, 2010, CPRL commented on the Project citing concerns with the Project, including the following:

- A. Inaccuracy of the Project description and inaccuracies within the revised application for the Project;
- B. Based on the standards set forth in California law and the County Development Code, findings required to support a Conditional Use Permit or a variance cannot be made because the facts surrounding the application cannot support such findings;
- C. The findings of fact made in connection with the denial of the 2007-09 Lazer radio tower application are res judicata with respect to the current application, meaning that the findings adverse to the Project made by the Board of supervisors in 2009 are applicable to the current radio tower application;

- D. The proposed Project causes significant negative impacts on open space and conservation resources within the Pisgah Peak and Wildwood Canyon State Park areas;
- E. The Project causes significant adverse impacts to the environment (including but not limited to biological impacts, aesthetic impacts, land use impacts, construction impacts and cumulative impacts), thus requiring a full environmental impact report under CEQA; and
- F. The Project increases fire safety risks. The lattice tower and tower antenna will contribute to this increased risk by adding a new source of electricity and new structures which could attract lightning during storms.

In addition to the comments previously submitted with respect to the project, CPRL makes the following comments and protests to the Project:

1. Significant Community Opposition to Project.

The Project has been very controversial since it was first proposed in 2007. Between 2007 and 2009 when the Board of Supervisors denied the first application for this Project, the communities of Oak Glen and Yucaipa have consistently and vocally opposed this Project. In connection with the prior application for a radio tower, over 2,000 protests were lodged with the County. In addition, the Project was opposed by the City of Yucaipa and by all of the environmental and open space organizations in the community. The Planning Commission hearing as well as the Board of Supervisors hearing was long and contentious with most segments of the surrounding communities voicing opposition to the Project. Despite the community opposition, Lazer made the decision to apply for the same project in 2010 (with minor changes) fully knowing that the communities impacted by the radio tower still overwhelmingly opposed their project. They have refused to listen to the local communities and thus we are here again to oppose their radio tower project.

Since Lazer refiled its application for a radio tower, over 7,000 protests have been filed with the County in opposition to the Project. In addition, the City of Yucaipa held a hearing on September 27, 2010 to obtain community input regarding the Project. After hearing testimony which was mostly opposed to the Project, the City of Yucaipa voted to send a letter to the County opposing the Project due to its adverse environmental impacts, focusing on the adverse visual and aesthetic impacts on Wildwood Canyon State Park and adjacent open space lands.

2. Project Inconsistent with Oak Glen Community Plan.

At its recent Stakeholders meeting (which was held in San Bernardino rather than in Yucaipa or Oak Glen which are the communities impacted by the Project), Lazer made the argument that the radio tower Project is consistent with the Oak Glen Community Plan. The sole basis for this position is that Lazer, after it has ruined the pristine view from Wildwood Canyon State Park, promises not to build any more towers on its land. In fact the opposite is true—the Project is inconsistent with the Community Plan.

Contrary to Lazer's statements at the Stakeholder's meeting (and in its application) that the project is consistent with the General Plan and the goals of the Oak Glen Community Plan for Wildwood Canyon State Park, the very organizations whose purposes and goals are to protect and preserve the Park and adjacent wilderness areas (Friends of Wildwood Canyon State Park, Yucaipa Valley Conservancy, The Wildlands Conservancy and CPRL) continue to assert that the radio tower will have a substantial adverse impact on the park due to the significant adverse impact on the aesthetics and views from the park and other adverse environmental impacts as previously cited.

In addition, in denying the 2007-09 Lazer application, the Board of Supervisors specifically found that the tower project was not consistent with the goals, maps, policies and standards of the General Plan and Oak Glenn Community Plan. In connection with denial of the 2007-09 Lazer application, the Board of Supervisors specifically found that the tower "would negatively impact on the preservation of the natural conditions of the open space corridor and the maintenance of the scenic vistas from Wildwood Canyon State Park."

3. Portion of Lazer Project Built on Exclusive Private Easements.

By letter dated January 10, 2011, CPRL made comments to the proposed construction of an 18,000 ft.² single family residence on the Lazer parcel. It is our understanding that Lazer has since withdrawn that application. The January 10 letter is still relevant to the tower project, however, since it sets forth CPRL's position regarding the application of the county Hillside Grading Standards (Development Code Section 83.08.020, et seq.) to the Lazer Parcel.

In that letter, CPRL commented that there was very little flat property on the Lazer parcel adjacent to Pisgah Peak Road that would allow for a buildable site. Attached is a partial copy of a topographical map (**Exhibit "A"**) submitted by Lazer in connection with its CUP application for the radio tower. The slope analysis set forth on the map summarizes that .4% of the parcel (5,935.77 sf) has a slope ranging from 0 to 15% slope, 2% of the parcel (32,712.60 sf) has a slope between 15% and 30% grade, and 97.6% of the parcel (1,621,834.01 sf) has a slope of 30% or greater.

Since that time, CPRL representatives have visited the proposed site by traveling along Pisgah Peak Road to the hairpin turn near which the Lazer parcel is located. It is this portion of Pisgah Peak Road that Lazer has claimed provides access to their parcel. Access was created pursuant to that certain Declaration of Easement-- Pisgah Peak, dated January 8, 1980, recorded on January 14, 1980 as Instrument No. 80-011369 (the "Road Easement"). A copy of the Road Easement is enclosed for your reference (**Exhibit "B"**).

Upon review of the Road Easement, you will note that there is a main Pisgah Peak Road easement that is specifically identified with markers (labeled Station Nos. 1 – 113 and A - T), and a dotted line between the markers, that identify the exact centerline of this portion of Road Easement. This main Pisgah Peak Road easement provides access to most of the parcels which were owned by Dickinson at the time of recordation of the Road Easement. However, because Pisgah Peak Road does not provide direct access to each of the governmental parcels within the

Dickinson property, there are seven sub-easements that start at points upon the main Pisgah Peak easement and go out to parcels that otherwise would not have direct access to the main easement.

The Road Easement which provides access to the Lazer parcel is 60 feet in width (see page 1 of Exhibit B to the Easement). The Road easement is therefore 30 feet on either side of the center point of Pisgah Peak Road. Upon recently visiting the site, it was clear that the 30 foot easement area on the north side of the centerline of Pisgah Peak Road extends beyond and includes 100 percent of the flat area of the property located on the Lazer parcel adjacent to Pisgah Peak Road. The slope immediately north of the Pisgah Peak Road easement has a grade of 45 degrees to 60 degrees.

Development Code Section 83.08.020, et seq, sets forth the County Hillside Grading Standards. Table 83-8 sets forth site standards for different slope categories, depending upon whether the slope is 15 to 30%, 30 to 40%, or greater than 40%. For grading on slopes of 40% or greater, the following standard applies:

“This is an excessive slope condition. Pad grading shall not be allowed. Grading for driveways and roads shall be reviewed through the Minor Use Permit application process.”

Application of this rule to the slope and property north of Pisgah Peak Road means that grading in that area is absolutely prohibited by the Development Code. With respect to the tower application, there is no flat area available for parking or for construction of the proposed equipment building. It will be necessary for Lazer to grade slopes that are between 45 degrees and 60 degrees in order to create a pad for the proposed equipment building and also for parking, but as set forth above, the development code prohibits grading of those slopes to create a pad.

In connection with Lazer’s current proposed site plan, both the parking space and the 100 square foot equipment building are located in the road easement area. The Easement specifically provides that the easement area must be used “exclusively” for easement and utility purposes. Thus, location of the parking space and equipment building on the easement area is in direct breach of the terms of the Easement agreement to which Lazer is bound.

4. Alternative Sites are Available for Lazer Radio Tower; Lazer is demanding a “Super Tower” to Maximize Profits Ignoring its Adverse Environmental Impacts.

At the Planning Commission hearing on November 6, 2008, Lazer representatives asserted that the proposed Project site on Pisgah Peak road was the *only* place the Project could be located due to the site’s unique features, elevation and FCC requirements. Lazer has attached an “RF Engineering Statement”, dated April 2010, prepared by Hatfield & Dawson to its current application. The essence of that Engineering Statement, again, is that the proposed project site is the only place in the world **acceptable to Lazer** in which they can locate a new radio tower for the Lazer radio station, KXRS .

However, in this case there is a more detailed analysis, and now Lazer admits (for the first time) that there is an alternative location at which it can build a radio tower in full compliance with FCC rules and regulations. On page 5 of the Hatfield & Dawson Engineering

Statement (dated April 10), Lazer's own consultants admit that there is a location on a ridgeline as one enters the San Jacinto mountains and the Badlands that would comply with FCC rules and regulations. The report states as follows: "From a location on this ridgeline, assuming that the land were available for sale or lease, operation of KXRS from a 105 foot tower would provide service to 652,218 persons within this 60 dBu contour."

Despite the admission that this site would comply with FCC rules, Lazer's engineer rejects this site because it would only increase the radio station listener base from 190,495 listeners to 652,218 listeners, which is in excess of a 300% increase over the current KXRS location.

CPRL has engaged Edward Paul De La Hunt, a former FCC employee, electrical engineer and radio tower expert to review the Lazer Report and advise if there were any other locations to which Lazer could relocate its tower and still meet applicable Federal Communications Commission ("FCC") requirements. The Engineering Statement prepared by De La Hunt Communications Service "De La Hunt Report") is attached as **Exhibit "C"** for your review.

As discussed in detail in the De La Hunt Report, the "Area to Locate" (the funnel shaped area) in which a tower site could be found is over *over 73 square miles* in size. The De La Hunt Report identifies two areas, one in Cherry Valley and one in the Beaumont area, in which a tower could be located that satisfies the FCC requirements. In fact, in 2000, a radio operator applied for and obtained a CUP for a 400 foot tower on one of the parcels (APN 401-050-007) in the Cherry Valley area (copy of application and record of approval are attached as **Exhibit "D"**). The fact that another operator located a site, found an owner willing to sell or lease the site, and actually obtained all necessary entitlements for a 400 foot tower in the very area which could adequately serve Lazer's community of license (Hemet) provides potent evidence that Lazer has failed to seek alternative sites to relocate its radio tower.

Given the identified alternative sites (including one identified by Lazer's own engineer) and the potential for additional ones where Lazer could locate and expand its operations without creating *any* new environmental impacts, there is simply no reason why the County should permit the construction of the proposed 43-foot tower adjacent to the Wildwood Canyon State Park in the Pisgah Peak open space area.

5. Denial of Project with Prejudice.

In 2009, the Board of Supervisors denied the Lazer tower project "with prejudice." Pursuant to Development Code Section 86.06.080(a)(2), a denial with prejudice prevents the land use applicant from re-applying for the same project for a period of one year. Request is made that, assuming that the Planning Commission denies the Project, that such denial be made "with prejudice." Accordingly, request is made that the resolutions prepared by planning staff specifically include "denial with prejudice" language.

The Planning Commission should deny the Project with prejudice to ensure that it does not have to consider this same Project again in the near future. With its filing of a second

substantially similar application in 2010, Lazer has dragged the Yucaipa and Oak Glen communities through a second, unnecessary battle to protect the community's natural resources and open space. If there is any procedure possible that prevents further applications for this Project in the future, that procedure should be utilized so that the Planning Commission, Board of Supervisors and the community are not forced through a similar battle in the future. At some point, Lazer needs to respect the wishes of the community and locate its tower where there will not be substantial damage to the environment.

In summary, there are alternative sites in which Lazer can relocate its radio tower, but it is insisting on its right to have a "super tower" that reaches the maximum amount of potential listeners so that it can make a maximum amount of money.

CPRL is not opposed to Lazer expanding its business, but believes that there can and should be a compromise that allows it to expand without damaging San Bernardino's precious open spaces in the process.

* * *

Thank you for this opportunity to comment on the proposed Project. Please keep us informed of any actions on the matter, and keep us on the mailing list for any notices associated with the preparation of any environmental documents for the Project and the County's consideration of the Project. We also request, pursuant to the California Public Records Act, copies of any additional documents of any kind submitted by the applicant related to the Project and any documents created by the County related to the Project.

Very truly yours,


John K. Mirau

Enclosures

Cc: Supervisor Neil Derry
San Bernardino County Planning Commissioners
Mayor Dick Riddell, Yucaipa
Mr. David Myers, Wildlands Conservancy
Mr. Frank Sissons, Yucaipa Valley Conservancy

JOHN K. MIRAU*
MARK C. EDWARDS
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January 10, 2011

Ms. Dena M. Smith, Director
San Bernardino County Land Use Services Department
Planning Division
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182

**RE: 18,000 sq. ft. SFR on APN 0325-011-19-0000
Application for Single Family Residence;
Project No. P201000215/CF - Radio Tower Application
Lazer Parcel - APN 0325-011-19-0000
Application for Temporary Use Permit**

Dear Ms. Smith:

This firm represents the Citizens for the Preservation of Rural Living ("CPRL"). 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 submitted comments to the project application submitted by Lazer Broadcasting, Inc., which proposes the construction of a 43-foot tall radio tower ("Project") on an undeveloped 40-acre parcel of land in the San Bernardino Mountains.

1. Requests for Information regarding Lazer Parcel.

CPRL has been monitoring the proposed Lazer Broadcast radio tower on property located in the Oak Glen area of the county for the last two years. CPRL has worked closely with the City of Yucaipa, The Wildlands Conservancy, Yucaipa Valley Conservancy, Crafton Hills Conservancy, and thousands of citizens opposed to the Lazer radio tower.

CPRL has made written and oral requests for information on the status of Lazer's project on a continual basis since approximately May of 2010. CPRL has continued to closely monitor the Lazer project because of the significant adverse impact the Lazer radio tower project would have on the open space surrounding the proposed project site.

The week before Christmas, I sent my paralegal, Diane Sanchez, to the Planning Department counter at the County Government Center to review the status of the Lazer tower application. By talking to the clerk at the counter, she discovered that Lazer had also filed an application to construct an 18,000 square foot residence on the same site as the proposed tower project. Needless to say, I am disappointed and dismayed that, after weekly requests as to the status of the Lazer project, my requests were interpreted as solely relating to the tower project. It appears that staff intentionally failed to disclose to me the fact that Lazer was also processing an application to build an 18,000 sf single-family residence on its property.

I do not expect the County to act impartially on my behalf. However, I do expect fair treatment and transparent government so that when specific requests are made for information they are not narrowly interpreted to keep secret a development plan on the very property that I have been monitoring for the last several years.

Request is made that in the future when requests for information are made, they be complete and accurate without misleading omissions.

2. Single Family Residence (SFR) Application not a Good Faith Application for a SFR.

It is clear that Lazer's application to construct an 18,000 square foot home on Pisgah Peak Road is not based upon a desire to build or live in a massive residence on that site, but rather is a strategy in connection with its attempt to obtain approval of a radio tower on the same parcel of property.

Pisgah Peak Road is a fire road that is barely passable much of the year. In winter rainy season, a four wheel drive Jeep has a difficult time navigating Pisgah Peak Road to the area in which the proposed home is to be built. In addition, construction of an 18,000 square foot home on such a site is clearly proposed in retaliation for the community opposition to the radio tower. In essence, Lazer is telling the community it must support its tower or it will destroy the view from the adjacent Wildwood Canyon State Park to punish the community for its opposition to the radio tower. We do not believe that Lazer will spend \$2-\$3 million to build this home, but rather is using the application for a single-family residence as a stalking horse for obtaining approval to grade the site which will later be used for the radio tower if they can get it approved.

The radio tower project and the purported single-family residence project are closely tied together in many ways. First, they are both located on the same single parcel. Access to both projects will be from Pisgah Peak Road. In addition, because 98% of the proposed site has slopes greater than 30%, there are only small areas of the parcel that are flat and buildable. There is one area immediately adjacent to and North of Pisgah Peak Road which is approximately 2,000 to

3,000 square feet in size that is proposed for both the footprint of the single-family residence as well as the exact same site slated for the equipment building to service the proposed radio tower. It is not possible to build both facilities on the same site, unless a portion of the single family residence or garage is to be used as the equipment building for the radio tower. If the single-family residence is constructed as proposed, it will be physically impossible to maintain the proposed radio tower except by going through the yard and driveway surrounding the single-family residence from Pisgah Peak Road to the radio tower site. Electricity brought to the project site would be jointly shared by the single-family residence and the radio tower.

In summary, the two applications are so intertwined that they must be treated as a single project, composed of a residential building and a commercial use.

3. Land Use Approvals are Required to construct the Proposed SFR

When I visited the county's land-use counter a week or so ago, I discussed the proposed single-family residence with the planning staff. They informed me it was their opinion that, because the proposed site has a land-use designation of RL-20, Lazer has a right to build the 18,000 square foot home as a matter of right because Lazer is merely proposing the construction of a single-family residence in a rural living land-use zone.

There are several reasons why this analysis is incorrect. First, because of the size of the home, and the fact that 99.6% of the proposed site has slopes in excess of 15%, it will be necessary to significantly grade the property including the grading of slopes in excess of 15%. As a result, the county hillside ordinance (Development Code Chapter 83.08 Hillside Grading Standards) requires submittal of various maps and other materials (discussed below) and a discretionary grading review.

Secondly, due to the fact there are concurrent applications for a proposed radio tower and a single-family residence on the same site, the combined project constitutes a "dwelling use in conjunction with a commercial use." Under the definitions of the Development Code, a "Dwelling Use in Conjunction with Commercial Use" is defined as follows: "one or more dwelling units developed along with one or more commercial uses in a mixed-use project." It is clear that the joint application for a single-family residence and the application for a radio tower fall within this definition. Accordingly, the use is no longer a single-family residence by itself and does not fall within the rules permitting construction of a single-family residence without a discretionary planning approval.

4. Applicability of Hillside Grading Ordinance.

The Hillside Grading Standards are set forth in Chapter 83.08 of the Development Code. Development Code Section 83.08.020 provides that the Hillside Grading Standards are applicable as follows:

"(a) Slope gradient of 15 percent or greater. The standards contained in this Chapter apply to all uses and structures within areas having a natural slope gradient of 15% or greater over the area being graded and requiring a Grading Permit....

(b) Site conditions requiring Hillside Grading Review. If the slope gradient is 15 percent or greater and if any one of the following thresholds applies on a particular site meeting the criteria set forth in subsection (a) above, a full analysis and compliance with this Chapter shall be required and a Hillside Grading Review shall be conducted in compliance with Section 83.08.030 (Hillside Grading Review):

(1) The volume of proposed grading is more than 500 cubic yards per lot or more than a total of 2,000 cubic yards for the total project.

(2) If retaining walls or the proposed cut or fill slopes greater than 15 feet in height will be visible and exposed to permanent public view or will be adjacent to designated open space or public lands.

(3) The width of proposed cut or fill slopes is greater than 75 feet in the Valley and Mountain Regions and 150 feet in the Desert Region as measured at the widest point of the slope.

(4) The area of proposed disturbance is more than 50 percent of the site area, or the proposed disturbed area exceeds 10,000 square feet, whichever is less."

Attached is copy of a topographical map submitted by Lazer in connection with its CUP application for a radio tower. The slope analysis set forth on the map summarizes that .4% of the parcel (5,935.77 sf) has a slope ranging from 0 to 15% slope, 2% of the parcel (32,712.60 sf) has a slope between 15% and 30% grade, and 97.6% of the parcel (1,621,834.01 sf) has a slope of 30% or greater.

The single-family home proposed to be built by Lazer meets two of the criteria set forth above. First, the grading plan indicates that the volume of grading will be 2,500 cubic yards, greater than the requirement of paragraph (b)(1) set forth above. In addition, the grading plan calls for retaining walls in excess of 15 feet in height. Accordingly, the Hillside grading standards set forth in Chapter 83.08 of the Development Code apply to the single-family residence proposed by Lazer.

Development Code Section 83.08.030 sets forth the procedure for the Hillside grading review. Paragraph (b) requires submittal of a natural features map, a grading plan (which must include details as to drainage, elevations, a separate map with proposed fill colored green and cut areas colored red, and contours for existing natural conditions and proposed work), a drainage map, a slope analysis map, and slope profiles. When I reviewed the file for the single-family residence, there was simply a conceptual grading plan which did not meet the requirements for a grading plan set forth in Development Code Section 83.08.030 (d)(2). In addition, none of the

other submittals required by Development Code Section 83.08.030 had been submitted. Accordingly, the grading plan application submitted by Lazer is incomplete and cannot be acted upon by the County.

There are many standards set forth in the Hillside grading ordinance designed to preserve the natural topography and to discourage development that will create or disproportionately increase fire, flood, slide or other safety hazards to the public health, welfare and safety. The standards include, but are not limited to, the following:

1. Table 83-8 sets forth site standards for different slope categories, depending upon whether the slope is 15 to 30% slope, 30 to 40% slope, or greater than 40% slope. It is clear from the topographical map that some of the graded areas will fall within the 30 to 40% slope category, and possibly in the 40% or greater category. A complete application must provide this information. With respect to the 30 to 40% slope category, the following standard applies:

“Development within this category shall be restricted to those sites where it can be demonstrated that safety will be maximized while environmental and aesthetic impacts will be minimized [Underline added]. Use of large parcels, variable setbacks, variable building structural techniques (e. g. stepped foundations) shall be expected. Extra erosion control measures may be included as conditions of approval.

For grading on slopes of 40% or greater, the following standard applies:

“This is an excessive slope condition. Pad grading shall not be allowed. Grading for driveways and roads shall be reviewed through the Minor Use Permit application process.”

2. Development Code Section 83.08.040(a)(2)(A) provides as follows: "All manufactured cut and fill slopes exceeding 15 feet in height, which will be either exposed to permanent public view or adjacent to environmentally sensitive areas, shall be designed with features characteristic of natural slope so that their ultimate appearance will resemble a natural slope. This shall include slopes along streets and highways, slopes adjacent to parks, schools, open spaces and other public facilities, and other prominent and highly visible slopes." [Underline added] Because the proposed site for the single-family residence is immediately adjacent to and visible from Wildwood Canyon State Park, this grading standard is particularly relevant and must be complied with.
3. Section 83.08.040(c)(1)(A) provides that "cut and fill slopes shall not be created greater than 50 percent (2:1)."
4. Section 83.08.040(c)(1)(F). "Grading operations shall be prohibited during the rainy season, October 15 to April 15, unless adequate erosion control measures are

implemented as approved by the Director to control run-off and retain sediment on-site."

5. Section 83.08.040(c)(1)(G). "Retaining walls associated with lot pads shall not exceed four feet in height, where they will be visible to the public. Where an additional retained portion is necessary due to unusual or extreme conditions (i.e., parcel configuration, steep slope, or road design), the use of terraced retaining structures shall be considered on an individual parcel basis and shall only be allowed where landscaping is provided between the walls to soften the overall appearance. Terraced walls shall be separated by a minimum of three feet with appropriate landscaping. No more than three terraced or stepped walls shall be permitted without obtaining a Variance for more. Terraced retaining walls shall not be used as a typical solution within a development and shall be limited to the minimum required subject to approval of the Director." This standard is also particularly relevant, since the grading plans seem to indicate a retaining wall 20 to 35 feet in height.
6. Section 83.08.040(c)(2)(C). "Building Permits and Grading Permits shall not be issued for construction on any site without an approved location for disposal of runoff waters, (i.e., a drainage channel, public street or alley, or private drainage easement)."
7. Section 83.0 8.040(c)(3)(B). "Where retaining walls are necessary adjacent to roadways or within street setbacks, they shall be limited to three feet in height where they will be visible from the street in order to avoid obstruction of motorists' and pedestrians' field of view and to create an aesthetically pleasing streetscape. No more than four terraced or stepped retaining walls shall be utilized. Walls shall be separated by a minimum of three feet and include appropriate landscaping."

Because Lazer is proposing to build an 18,000 sf home on a 40 acre parcel with slightly more than 5,000 sf of level area, many of these standards come into play and will impact how and what can be built on the proposed site.

5. Soil Erosion and Sediment Control Plans/Permits.

Development Code Section 8.13.080 sets forth rules and regulations relating to preparation of soil erosion and sediment plans to control runoff, etc. Section (a) of that section, relating to applicability states as follows: "The regulations in this Section apply to all areas within Fire Safety (FS) Overlays, except ministerial projects within the FS2 Areas, and ministerial projects in FS3 Areas that are located on parcels that are less than 1 acre and have a slope of less than 10 percent."

The Lazer parcel is located within Fire Safety Overlay Area 1, which means that Development Code Section 82.13.080 is applicable to this project. Accordingly, the soil erosion and sediment control plan must be submitted and approved before the issuance of a grading

permit. When I reviewed the file a week or so ago, it did not include a soil erosion and sediment control plan.

6. Fire safety, access and utilities and height restrictions.

Because Lazer has applied to build an 18,000 sq. ft. home on a site with minimal access within Fire Safety Overlay Area 1, there are significant public safety issues as well as issues relating to access to the property and the ability to provide utilities.

Development Code Section 84.21.030 sets forth infrastructure requirements for construction of single-family residences. Physical access to the site of the home is one of the requirements. Generally, the requirement is physical access on a road which is traversable in a standard (two-wheel drive) sedan. That clearly is not true with respect to the Lazer site. If the general standards are not satisfied, the Director has the discretion to waive the requirements for legal access, conditional upon the owner executing an agreement acknowledging inadequate access and agreeing to provide subsequent owners notice thereof.

A second significant requirement relates to the provision of water. Generally there must be a substantiated water well. There is nothing in the Lazer file which indicates the existence of a substantiated water well. Pursuant to this Development Code section, hauled water is not allowed without approval from the Division of Environmental Health Services. Again, there is no indication that such approval has been required.

There is no sewer provider in the remote area in which the house is proposed to be built. Accordingly, there must be a septic system or holding tanks. Pursuant to this Development Code section, septic systems are allowed only "in compliance with the local Regional Water Quality Control Board regulations." Again, the file does not contain any proof that a septic system is feasible or that the water quality control board regulations have been complied with.

Development Code Section 84.21.030 also requires "adequate fire flow in compliance with the Uniform Fire Code and with Section 23.018 (Amendments to the Uniform Fire Code) of the County Code." Again, there are no water lines that reach this remote site. Accordingly, water must be provided by a substantiated well if there is one available. Even if there is an available well, it is likely that in order to provide adequate fire flow for a four-story 18,000 sf home it would be necessary to install some sort of a water tank or reservoir at a height above the height of the home. Again, there is no indication that this requirement has been addressed or analyzed.

Lastly, Table 82-9A provides that, within the rural living land-use zone, residential structures cannot exceed 35 feet in height. Calculation of the height restriction is in accordance with Development Code Section 83.02.040. Because only a conceptual grading plan was available for review, we have not yet been able to determine if the proposed four-story structure exceeds the 35 foot height limitation.

7. Applicability of CEQA.

Normally, the California Environmental Quality Act (CEQA) would not apply to construction of a single-family residence. However, it is impermissible under CEQA to segment a single project into component parts and approve a portion of the project as ministerial. In this case, there are concurrent applications for a single-family residence and for a radio tower. Those projects are so intertwined as to constitute a single project. It is not permissible to treat construction of the single-family as the ministerial project, and then treat phase 2 of the project (building a radio tower) as a discretionary project.

In Orinda Ass's v. Board of Supervisors (1986) 182 CA3d 1145, the court held as follows:

A public agency is not permitted to subdivide a single project into smaller individual sub-projects in order to avoid the responsibility of considering the environmental impact of the project as a whole. "The requirements of CEQA, 'cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.' [Citation.]" (Topanga Beach Renters Assn. v. Department of General Services (1976) 58 Cal.App.3d 188, 195-196, 129 Cal.Rptr. 739.) "[T]he term 'project,' ... means the *whole of an action* which has a potential for physical impact on the environment, and ... '[t]he term "project" refers to the underlying activity and not the governmental approval process.' [Citation.]" (Natural Resources Defense Council, Inc. v. Arcata Nat. Corp. (1976) 59 Cal.App.3d 959, 969, 131 Cal.Rptr. 172, emphasis added by the *Natural Resources* court.) "It is, of course, too late to argue for a grudging, miserly reading of CEQA.... [T]he Legislature intended CEQA 'to be interpreted in such manner as to afford the *fullest possible protection* to the environment within the reasonable scope of the statutory language.' (Italics added.) ...

As discussed above, construction of the radio tower and the single-family residence are integrally tied together due to the fact they will be built on the same site, they will share access and provision of utilities including water and electricity. Because they are so closely tied together, they are in essence a single project and it is impermissible under CEQA to treat the grading permit and construction of a single-family residence as a ministerial project, and then treat construction of the radio tower as a discretionary project. Now that Lazer has applied for the single-family residence, a new environmental impact report must be prepared which takes into account the construction of the radio tower as well as construction of the single-family residence, and analyze the environmental impact of the entire integrated project.

Issuance of a grading permit is also oftentimes treated as a ministerial act. However, in some circumstances issuance of a grading permit is discretionary in nature, constitutes a discretionary approval, and thus an environmental impact report must be prepared. In Day v. City of Glendale (1975) 51 Cal 3817, the court held that issuance of a grading permit is discretionary if the agency must not only determine whether technical requirements are met but

also make judgments, such as whether recommendations in the grading plan should be approved, what condition should be imposed, and whether to deny the permit based on geological or flood hazards.

Pursuant to Development Code Chapter 83.08, Hillside Grading Standards, there are numerous discretionary decisions that must be made by the Planning Department. Section 83.08.040 sets forth the hillside grading standards, which require discretionary approvals as to the design of the building pad and revegetation standards. Table 83-8 provides that, with respect to grading in areas of 30% to 40% slope, "development within this category shall be restricted to those sites where it can be demonstrated that safety will be maximized while environmental and aesthetic impact will be minimized." The determination as to whether that standard has been satisfied is discretionary. In Section 83.08.040(c)(2)(C), the Development Code provides that "Building Permits and Grading Permits shall not be issued for construction on any site without an approved location for disposal of runoff waters, (i.e., a drainage channel, public street, alley, or private drainage easement). Again, this is a discretionary approval whereby the application of standards set forth in the Development Code must be applied to a particular project.

In summary, the issuance of a grading permit in this case is not ministerial. Significant portions of the hillside grading ordinance require discretionary approvals, thus making granting of the grading permit a discretionary act which requires an environmental impact report under CEQA.

8. Conclusions.

Based on the foregoing, CPRL's position regarding the combined residential and commercial project is as follows:

- a. Lazer does not have a good faith intent to construct an 18,000 sf single family residence. Rather, the single family residence application is a strategy to obtain approval of its radio tower application.
- b. The Hillside Grading Standards apply to the proposed single family residence. The application filed by Lazer is incomplete and cannot be acted upon until the submittal requirements of Development Code Chapter 83.08 have been satisfied. In addition, application of the Hillside Grading Standards appear to prevent the grading, retaining walls and construction proposed by Lazer.
- c. Development Code requirements relating to fire safety, access, utilities and height restrictions have not been addressed in any way. Neither approval of the single family residence nor the grading permit can be considered until Lazer submits data and documents that show that these requirements have been satisfied.
- d. The Radio tower application and single family residence application constitute a single project. Because the project is a combined residential and commercial project, the two applications must be processed together and are subject to a CUP

for the radio tower and a full CEQA review of both projects. The grading plan itself is subject to CEQA due to the discretionary determinations that must be made under the Hillside Grading Standards.

- e. To date, no environmental review of the single family residence has been done. Because the environmental review for the radio tower project fails to analyze the environmental impact of construction of the single family residence along with the impacts of the radio tower, the environmental review for the tower is inadequate and must be redone. Because the project has a significantly greater impact on the environment (including grading and even greater visual and aesthetic impacts due to the visibility from the State Park), a full environmental impact report for the combined project must be completed before consideration of the project by the Planning Commission or the Board of Supervisors.

Demand is made that the grading permit for the proposed single family residence not be issued without full compliance with the Development Code and CEQA requirements described above.

In addition, demand is hereby made that CPRL receive notice of all filings, administrative determinations and all other actions relating to the radio tower application and/or the single family residential application.

We at CPRL appreciate your consideration, and reserve all of our rights. Please feel free to call me with any questions or comments you may have.

Very truly yours,

MIRAU, EDWARDS, CANNON,
LEWIN & TOOKE

By:


John K. Mirau, Esq.

Cc w/out Encl Supervisor Neil Derry
 Mayor Dick Riddell
 Mr. Bill Collazo
 Mr. Kevin White
 Mr. David Myers, The Wildlands Conservancy
 Mr. Frank Sissons, Yucaipa Valley Conservancy

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June 7, 2010

S2197-002

First Class Mail
Department of Land Use Services
County of San Bernardino
385 North Arrowhead Avenue – 1st Floor
San Bernardino, CA 92415

RE: Project No.: P201000215
APN: 0325-011-19-0000

RECEIVED
JUN 08 2010
LAND USE SERVICES DEPT.
ADVANCE PLANNING DIVISION


To Whom It May Concern:

On behalf of Citizens for Preservation of Rural Living, please add our name to your notice and distribution list for the above-referenced project. Please provide us with the acceptance notice of the application, final deadline for comments, notices of hearings or determinations, staff reports or other written documentation, the project notification list and a complete copy of the accepted application and all related documentation. Please contact my paralegal, Diane Sanchez, to arrange for pick up of the requested information, or send it to us at the following address:

Citizens for Preservation of Rural Living
c/o Mr. John K. Mirau, Esq.
Mirau, Edwards, Cannon, Lewin & Tooke
P. O. Box 9058
Redlands, CA 92375

Thank you for your attention to this request.

Very truly yours,
MIRAU, EDWARDS, CANNON,
LEWIN & TOOKE
A Professional Corporation

By: 
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December 20, 2010

Ms. Dena M. Smith, Director
San Bernardino County Land Use Services Department
Planning Division
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182

**RE: Project No. P201000215/CF - Radio Tower Application
Lazer Parcel - APN 0325-011-19-0000
Application for Temporary Use Permit**

Dear Ms. Smith:

This firm represents the Citizens for the Preservation of Rural Living ("CPRL"). 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 submitted comments to the project application submitted by Lazer Broadcasting, Inc., which proposes the construction of a 43-foot tall radio tower ("Project") on an undeveloped 40-acre parcel of land in the San Bernardino Mountains. We also submitted objections to the granting of a Temporary Use Permit.

We are writing to formally express our serious concerns and register our objections regarding the recent granting of a Temporary Use Permit Application allowing Lazer Broadcast Corporation ("Lazer") to install a "wooden pole mock-up to show visible implications of a proposed 43-ft broadcast tower, proposed under CUP Project Application No. 201000215."

As we have previously indicated, in a letter dated September 30, 2010, the standards set forth in the Development Code have not been satisfied in connection with Lazer's application to install the wooden pole. Installation of the pole is inconsistent with adjacent land uses, including hiking, biking and horseback riding in the Wildwood Canyon State Park. In addition, the

granting of the permit, after Lazer had already illegally installed a pole, rewards illegal behavior and encourages future violations of the Development Code by Lazer as well as others.

Despite the fact that the temporary use permit has been improperly granted, CPRL has made a determination not to file a formal appeal regarding the grant of the Temporary Use Permit, based upon our express understanding that the Temporary Use Permit will be strictly construed and limited to the exact scope set forth therein. Accordingly, CPRL specifically understands and hereby confirms our understanding of the following with respect to the implementation of the Temporary Use Permit:

- A. Lazer will not be permitted to utilize the pole, or construct any other structures pursuant to the temporary use permit, to operate a radio station from the site. CPRL continues to oppose the installation of the Lazer radio tower which is adjacent to the State Park and will have an adverse visual and scenic impact on the park;
- B. Granting of the Temporary Use permit will have no precedential effect in connection with the future consideration by the Planning Commission and the Board of Supervisors of the CUP and Major Variance that will be necessary to install the lattice radio tower; and
- C. Lazer will be required to strictly comply in all respects with the stated terms and scope of the Temporary Use Permit.

If our understanding of the scope of the uses and activities permitted under the Temporary Use Permit is incorrect in any respect, please advise immediately as CPRL will wish to review its options for taking action regarding this matter.

Please note that the basis for the position that a Temporary Use Permit may not be utilized as a means to authorize operation of a radio station is set in numerous provisions, including Development Code Section 85.15.010 which specifically provides that the chapter "establishes procedures and standards for the granting of Temporary Use Permits for allowed short-term activities [emphasis added]. Operation of a radio station is clearly not a "short-term activity."

Development Code Section 85.15.080 sets forth allowed short-term activities, including batch plants, construction yards, events such as arts and crafts exhibits, model homes, seasonal sales lots, etc. None of the activities permitted as short-term activities under this Development Code section are in any way similar to operation of a radio station. The reason why a conditional use permit is required for a radio station is because special issues arise and special conditions need to be imposed before a radio station can be permitted.

The project description for which the Temporary Use Permit was granted is as follows: "Temporary Use Permit for a 43 foot tall Wooden Pole Mock-up to show the visual implications of a Proposed 43 foot Broadcast Tower on 38.12 acres." We assume that the project description must be strictly followed by Lazer. However, the original pole installed by Lazer was a PVC

pole. On Thursday of this last week, we could see (from Wildwood Canyon State Park) that a pole is now installed on the site. It is not clear whether the pole is the original pole or a new wooden pole that complies with the terms and conditions of the Temporary Use Permit. When the current rain ceases, we will travel to the site to determine the nature of the pole that has been installed. We assume that the Land Use Department will strictly enforce the terms of the permit.

Condition 11 of the Temporary Use Permit allowing installation of the pole is that Lazer "obtain approval of building permits for any building, sign or other structure to be constructed or located on the project site." We called the County Building Department on Thursday, December 16, 2010 and were informed that as of that date Lazer had not been granted a building permit. If that information is inaccurate, please provide a copy of the building permit with the date of issuance. If the information provided to us is correct, Lazer has not yet complied with the requirements of the temporary use permit. Lazer should not be provided the benefits of the Temporary Use Permit unless and to the extent Lazer fully complies with each and every requirement set forth therein and also complies with the terms of governing laws, rules and regulations.

CPRL also objects to the granting of the permit because the very reason for the permit is to deceive the Planning Commission, Board of Supervisors, and citizens of the County as to the nature of the radio tower that Lazer plans to build pursuant to its CUP application. Lazer's application clearly provides that it wishes to build a 43 foot lattice-style radio tower at the subject site. The purported purpose of granting a Temporary Use Permit was to allow Lazer to install a pole which is a "mock-up to show the visual implications" of the radio tower that Lazer proposes to build. In fact, the Temporary Use Permit allows Lazer to install a 43 foot pole that in no way resembles the tower that Lazer actually wishes to construct as set forth in its CUP application. This is sleight-of-hand. Lazer is attempting to show through the use of this temporary that the Lazer radio tower, when constructed in accordance the CUP application, will not be visible. By granting the permit, the Land Use Department has permitted Lazer to engage in this attempted manipulation of the public by falsely claiming that the lattice radio tower is visually similar to the 43 foot tall pole that was installed for the purpose of falsely minimizing the visual impact of the tower that will actually be built.

It is clear from the photo simulation study filed by Lazer itself that the radio tower will be visible from within the State Park. At a minimum, in order to cause the so-called "mockup tower" to have any use whatsoever in connection with the application for the lattice tower, Lazer should be required to place balloons or flags on the temporary pole so that citizens who view it can clearly see where the lattice tower will be visible from within the State Park. Even if that were done, anyone viewing the pole would not be able to visualize what the lattice-style tower will look like from the State Park. Therefore, we trust that the permission granted under the terms of the current Temporary Use Permit will be limited in accordance with its express terms and will not facilitate the use of the "mock up pole" for any other purpose. Further, we trust that due consideration will be given to the fact that the mock up does not in fact reflect the true visual impact and environmental impact of the structure Lazer ultimately wishes to build.

We at CPRL appreciate your consideration, and reserve all of our rights. Please feel free to call me with any questions or comments you may have.

Very truly yours,
MIRAU, EDWARDS, CANNON,
LEWIN & TOOKE

By:


John K. Mirau, Esq.

Cc: Supervisor Neil Derry
Mayor Dick Riddell
Mr. Bill Collazo
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