

## **Attachment C**

Notice of Appeal by Jameson Halpern,  
Esquire, filed with the Clerk of the Board on  
October 8, 2012



## NOTICE OF APPEAL

RECEIVED  
MONTEREY COUNTY

OCT -8 AM 11:41

CLERK OF THE BOARD

*g* DEPUTY

*Monterey County Code*  
*Title 19 (Subdivisions)*  
*Title 20 (Zoning)*  
*Title 21 (Zoning)*

*No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before* \* (10 days after written notice of the decision has been mailed to the applicant).  
*Date of decision* \* .

1. Please give the following information:

- a) Your name Jameson Halpern, Esquire
- b) Address 4067 Sunset Lane City Pebble Beach Zip 93953
- c) Phone Number 831-625-6530

2. Indicate your interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) Attorney

3. If you are not the applicant, please give the applicant's name:

Monterey County, California American Water Company

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

5:

- |      | File Number       | Type of Application  | Area  |
|------|-------------------|--|---|
| ->a) | <u>PLN-100516</u> | <u>Coastal Development Permit</u>                                  | <u>Huckleberry Hill</u>                       |
| b)   |                   | <u>Mitigated Negative Declarion (Coastal Part)</u>                 |   |
| c)   |                   | <u>RES #12-042, RES #12-039 (Coastal Part)</u>                     |   |
| d)   |                   | <u>Combined Development Permit, Coastal Development Permit for</u> | <u>Ridgeline Development, Design Approval</u> |

5. What is the nature of your appeal?

a) Are you appealing the approval  or the denial  of an application? (Check appropriate box)

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).  
Appealing the entire Approval and Certification

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

Please See Attachment

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

Please See Attachment

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee \$ 0.00 and stamped addressed envelopes.

APPELLANT SIGNATURE Juanita Kulpas ESO DATE Oct 7, 2012

ACCEPTED \_\_\_\_\_ DATE \_\_\_\_\_  
(Clerk to the Board)

# APPEAL TO MONTEREY COUNTY BOARD OF SUPERVISORS

OCTOBER 5<sup>th</sup> 2012

## **NOTICE AND STATEMENT OF APPEAL**

FIFTEEN (15) PAGES

RESOLUTION #12-039 (Coastal Part)

RESOLUTION #12-042 (Coastal Zone) (Huckleberry Hill Site)

PLN-100516 (Coastal Part)

MITIGATED NEGATIVE DECLARATION (Coastal Part)

MITIGATION MONITORING AND REPORTING PLAN (Coastal Part) (Perhaps None)

NGEN PROJECT (Huckleberry Hill Site) (Coastal Zone)

All Coastal Development Permits

Monterey County Planning Commission September 26<sup>th</sup> 2012 Hearing Findings (Coastal Zone)

Appeal by Jameson Halpern, Esquire, Alan Turpen, and Sal Cardinale

Residents and Homeowners of Sunset Lane, Del Monte Forest

All references in bold herein refer to the **Monterey County Coastal Zoning Ordinance, Title 20**, unless otherwise noted. No fee required as per **20.86.030** and the Regulations of the California Coastal Commission.

This Appeal incorporates by reference the Formal Objection (40 Pages) submitted by Jameson Halpern, Esquire to the Planning Department during the CEQA review period and prior to the Planning Commission Hearing for this Project (September 26<sup>th</sup> 2012). This Appeal also incorporates by reference all other written and oral Objections to the Project (Huckleberry Hill Coastal Zone Site). These Objections include objections made prior to or during the June 21<sup>st</sup> 2012 DMFLUAC Hearing, the July 19<sup>th</sup> 2012 DMFLUAC Hearing, the September 26<sup>th</sup> 2012 Planning Commission Hearing, and any other Objections made at other times. These Objections include statements from residents and homeowners of Sunset Lane, El Bosque Drive, Costado Place, and other parts of the Del Monte Forest. "Application" refers to the Coastal Development Permits, MND (Coastal Part), Initial Study, Staff Report, and all other documents associated with the NGEN Project Huckleberry Hill Site.

**Honorable Supervisors,**

BRIEF STATEMENT OF APPEAL

**20.86.040(C) and 20.86.040(E)**

The Board of Supervisors should revoke the Planning Commission Approval of the Coastal Development Permits and revoke the Certification of the Mitigated Negative Declaration for all of these reasons:

**20.86.040 (C)(1) Hearing Not Fair**

The Planning Commission Hearing of September 26<sup>th</sup> 2012 did not provide a fair and impartial hearing of these issues. The Application for the Coastal Development permits lists California American Water Company as Applicant. California American Water Company does own or will soon own the land under the Huckleberry Hill Tower Site. However, the County of Monterey itself intends to build and operate the Communications Tower at the Huckleberry Hill Site. The County of Monterey intends to use the Tower at the Huckleberry Hill Site for its NGEN Communications Network and also possibly for private commercial antenna licenses. The County Planning Department prepared the Application and the County Planning Department reviewed the Application. Therefore the County of Monterey actually constitutes the Applicant-in-Fact as well as the reviewing Authority.

At the Planning Commission Hearing of September 26<sup>th</sup> 2012 an Agent of the County mislead the Planning Commission when that Agent stated that she or he lived "nearby" the Huckleberry Hill Site and supported the Tower Project at that Site. That particular Agent of the County does not live or work in the neighborhood that surrounds the Huckleberry Hill Site. All of the Residents of the Neighborhood that surrounds the Huckleberry Hill Site who spoke at the Hearing or submitted written comments opposed the Project. Other Agents of the County misstated the requirements of the Monterey County Coastal Zoning Ordinance. Other Agents of the County misrepresented the availability of Alternatives to the Huckleberry Hill Site. A member of the Planning Commission aggressively advocated in favor of the NGEN Tower at the DMFLUAC. That same Planning Commissioner then participated in the Planning Commission Hearing for the NGEN Tower, and voted for Approval of both the Coastal Development Permit and Certification of the MND. This Appeal does not disclose the identities of any of these Agents. At least one of these Agents works for a law enforcement agency within the State of

California, and the **California Penal Code** prohibits disclosure of the residency and other information for that Agent.

The County has responsibility for the actions of all of these Agents. Since the County of Monterey has both applied for and reviewed the Application, this Appeal refers to the actions of these Agents simply as the actions of "The County." The Agents of the County engaged in these actions at the direction of the County. Therefore, the County, and not its Agents, has full responsibility for the lack of a Fair Hearing.

#### **20.86.040 (C)(2) Lack of Substantial Evidence**

A number of the Findings made by the Planning Commission lack the support of Substantial Evidence. The Planning Commission did not have necessary photographic and visual studies to make findings as to the Visual Impact and significant Aesthetic Environmental Impact upon the Neighborhood and Environment that surrounds the Huckleberry Hill Site. The Planning Commission did not have the necessary technical and logistical information to make findings as to the existence or appropriateness of substitution of the Huckleberry Hill Site with Alternative Tower Locations. The Planning Commission did not have accurate information as to the Land Use Requirements for the Tower Project located at the Huckleberry Hill Site. The Planning Commission did not have the results of an actual physical Field Test for the Tower Project at Huckleberry Hill Site and therefore could not make a Finding that the Tower would actually work at the 111 Foot Height (with Antenna).

The County ignored evidence that shows that the Project will cause a Significant Environmental Impact. The County made no analysis of the diminution in use, enjoyment, and property value of nearby Neighbors and to the Environment that surrounds the Huckleberry Hill Site. The County did not consider evidence of Visual Environmental Impact, Significant Aesthetic Environmental Impact, or violations of Land Use Policies and Plans that result in Significant Impact to the Environment that surrounds the Huckleberry Hill Site.

The County made a paltry analysis of the Visual Impact that the Huckleberry Hill Site NGEN Tower would cause to Scenic Resources. The County made no analysis of the Visual Impact that the NGEN Huckleberry Hill Site Tower would cause to the Neighborhood or the General Environment that surrounds the Neighborhood. This constitutes an egregious violation of the California State Law requirement that the County analyze the diminution in use, enjoyment, and value of the surrounding homeowners and residents prior to issuance of a Discretionary Conditional Use Permit (Coastal Development Permit in this case). This also constitutes an egregious violation of the CEQA Requirement that the County consider

Substantial Evidence of the Impact upon the Environment that surrounds the NGEN Project Tower.

**20.86.040 (C)(3) Contrary to Law**

The Planning Commission Decision violates The Monterey County Coastal Zoning Ordinance, DMFCIP, DMFLUP, CEQA, LCP and the California Coastal Act. The Mitigated Negative Declaration omits any serious Mitigation as to the Huckleberry Hill Site. Furthermore, due to Visual Impact, Significant Aesthetic Environmental Impact, and Significant Environmental Impact from violation of Land Use Policies and Plans, the Huckleberry Hill Site NGEN Project Tower requires a full Environmental Impact Report (EIR), and the County did not prepare and EIR for this Project.

The Planning Commission Decision violates Monterey County Regulations, the California Government Code, the California Public Resources Code, the Constitution of California, and the Constitution of the United States of America.

Since the County never properly noticed, disclosed, or submitted this Project to the DMFLUAC, the Decision of the Planning Commission violates **Monterey County Resolution #08-338**, the **Del Monte Forest Coastal Implementation Plan Part Five (DMFCIP)**, and the **Del Monte Forest Land Use Plan (DMFLUP)**. The Planning Commission did not properly have administrative jurisdiction to consider the NGEN Project Coastal Development Permit Application. The Huckleberry Hill NGEN Tower Project includes Two (2) Coastal Development Permit Applications, one for the Tower and one for Ridgeline Development. The County has yet to submit any Coastal Development Permit for Ridgeline Development to the DMFLUAC. The County did not submit this Project to the DMF ARB.

**20.64.310(C)(5)** requires that the County perform a Photographic Study of the Residential Area that surrounds the Huckleberry Hill Site. The County must provide photos of the "proposed wireless communication facility" (WCF) "from the nearest residential neighbors." The County has not done so. In fact, the County produced Photos of a Single (1) Near Residential Neighbor from a Single (1) Public Street, Sunset Lane. The County should have produced Photos of All or Substantially All the Nearest Residential Neighbors. Since this Code Section concerns Visual Impact, the County should have produced Photos of the proposed WCF from all or substantially all of the Several Dozen (72 or more) Nearest Residential Neighbors that would have visibility of the new NGEN Tower. Obviously, this provision of the Zoning Ordinance exists to protect the Neighborhood and the Environment around the proposed WCF and the County essentially ignored it. The County produced no Photos from either El Bosque

Drive or from Costado Place, and large parts of both of these Public Streets have visibility of the Two Existent 80 Foot Towers.

The Huckleberry Hill Site consists of at least Four (4) parcels owned or controlled by Pebble Beach Community Services District (PBCSD) (2 Parcels) and California American Water Company (Cal-Am) (2 Parcels). The NGEN Project proposes to add a NGEN Tower to one of the Parcels. The PBCSD then plans to transfer its parcels to Cal-Am. Throughout the NGEN Project, the County has consistently refused to consider the Visual Impact of the NGEN Project on any Residential Neighbors except for a Single (1) Neighbor on Sunset Lane.

As a matter of fact, Seven (7) Single Family Homes and One (1) Vacant Residential Lot directly adjoin the lot line of the Huckleberry Hill Site. Private Homeowners own each of these Residential Parcels. These privately owned parcels include 4055 Sunset Lane, 4035 Sunset Lane, 4032 El Bosque Drive, 4036 El Bosque Drive, 4044 El Bosque Drive, 4048 El Bosque Drive, 4052 El Bosque Drive, and 1 Private Vacant Residential Lot located on El Bosque Drive and not owned by PBCSD or Cal-Am. In fact, Seventy-Five Percent (75%) of the privately owned Residential Parcels that directly adjoin the lot line of the Huckleberry Hill Site also adjoin El Bosque Drive, but not Sunset Lane. However, the County produced no Photographic Studies whatsoever of the Nearest Residential Neighbors on El Bosque Drive.

Coincidentally, at the July 19<sup>th</sup> 2012 DMFLUAC Hearing, Jameson Halpern, Esquire made both an oral and written request to a Planning Department Official for this Photographic Study. The Planning Department maintains the written request in its records. The August 17<sup>th</sup> 2012 NGEN Initial Study, published almost a month later, does not include any such Photographic Study. The County deliberately refused to produce this Photographic Study since it would clearly evidence the massive Visual Impact of the NGEN Tower upon the Neighborhood and Environment that surrounds the Huckleberry Hill Site. This fact also goes to the issue of **20.86.040(C)(2) Lack of Substantial Evidence.**

The County may have confused some or all of the Four (4) or more PBCSD/Cal-Am Lots with the Eight Private Residential Lots. The County does zone the Four (4) Lots as Residential and only allows the WCF as a conditional use. This may explain why the County did not produce the necessary Photographic Studies. This fact also goes to the issue of **20.86.040(C)(2) Lack of Substantial Evidence.**

The NGEN August 17<sup>th</sup> 2012 Initial Study and NGEN Staff Report do not properly consider the Cumulative Impacts of the Two Existent Towers, the 800,000 Gallon Water Tank Project that consumes Seventy-Four (74) Trees, and the Additional NGEN Tower.

**DMFCIP 20.147.070(A)(1) PAGE 29** requires that the County place poles and flags upon the Huckleberry Hill Site to accurately indicate the dimensions and visual impact of the NGEN



Tower. The County has not done so. The County also did not perform a Balloon Study, post Story Poles, Flag, Stake, or Net the NGEN Tower Project. In enforcement of Private Projects, the County requires all Private Developers to perform these Visual Studies with Nets, Flags, or Balloons of a prominent bright orange color. The County did not perform these Visual Studies since they would (1) Constitute a Temporary Public and Private Nuisance, as well as a Temporary adverse Significant Environmental Impact, (2) Attract the attention Neighbors and Visitors and create opposition to the NGEN Project Tower at the Huckleberry Hill Site, (3) Demonstrate that the NGEN Tower itself would cause a Permanent Public and Private Nuisance, as well as a Permanent adverse Significant Environmental Impact.

The NGEN Tower Project constitutes a Light Industrial Use. The County has effectively illegally "spot-rezoned" the Residential Parcels at the Huckleberry Hill Site as Light Industrial. The NGEN Tower violates the Character of the Semi-Rural Coastal Forest MDR/4-D(CZ) Residential Neighborhood, both as to Type of Use and as to Intensity of Use. The NGEN Project includes Four (4) Tower Plans, a 150 Foot Monopole (1<sup>st</sup> Tower Plan), a 120 Foot Monopole (2<sup>nd</sup> Tower Plan), a 100 Foot Double Lattice Platform Tower (3<sup>rd</sup> Tower Plan), and finally a 100 Foot Monopole (4<sup>th</sup> Tower Plan) disclosed on September 24<sup>th</sup>, 2012, two days prior to the September 26<sup>th</sup> 2012 Planning Commission Hearing for the NGEN Project.

The **NGEN Initial Study, PAGE 78, PART VII** refers to the Two Existent 80 Foot Towers and claims, "these towers do not significantly affect the scenic character of their sites." **NGEN Initial Study, PAGE 78, PAGE 56** itself shows a significant visual environmental impact from the Two Existent Towers. These Two Existent Towers severely Visually Impact the Visual Character of the Site. The **NGEN Initial Study** neglects to adequately consider the Visual Impact of the Two Existent Towers upon their Adjacent Neighbors, Sunset Lane, El Bosque Drive, Costado Place, the Neighborhood that surrounds the Huckleberry Hill Site, the Environment that surround the Site, the Del Monte Forest, Scenic 17-Mile Drive, Scenic Outlook #2, the Coastline, and other Public Areas.

The **NGEN Initial Study, PAGE 78, PART VII** claims that "The proposed monopole would be only 20 feet higher than the existing towers and would be a thin element added to the overall visibility." The **NGEN Initial Study, PAGE 54, Figure L** depicts the Two Existent Towers and shows that they extend about 15 Feet above the Tree Line. Since these Two Existent Towers stand at 80 Feet, the Tree Line rises to about 65 Feet. Therefore, the new NGEN Tower will extend 35 Feet above the Tree Line. This means that the new NGEN Tower would extend more than twice the distance above the Tree Line as the combination of the Two Existent Towers extends above the Tree Line.

The **NGEN Initial Study, PAGE 57** refers to the 3<sup>rd</sup> Embodiment NGEN Tower and claims that "... its development would not significantly affect the on-site scenic resources due minimal visibility and minimal additional height compared to the height of the existing towers." The

County, however, has no Flag, Stake, Net, Pole, or Balloon Study to prove this. The **NGEN Initial Study, PAGE 53** refers to the 1<sup>st</sup> Tower Plan 150 Foot High Tower and states "its visibility from nearby areas could result in significant impacts on the aesthetic value of the scenic resources and the visual character of the site and the area." The 100 Foot high Tower has the same Potential and thus this Project certainly requires an EIR.

The **NGEN Initial Study, PAGE 79** states that:

"The monopole would be visible only from the same vantage points as the existing towers. Based on the short time of the visibility of the existing towers and proposed monopole, and on that the monopole would not be visible from additional vantage points or designated scenic vista points, the cumulative impact would not be considered significant."

Since the new Tower of the NGEN Project would extend 35 feet above the Tree Line, twice as much as the combination of the Two Existent Towers, it would have visibility in a 360 Degree Arc all around the Site. The Height, Width, Bulk, Glare, Antenna Clutter, Extension above the Tree Line, and the fact that most if not all of the NGEN Tower's Fifteen (15) Antennas only operate above the Tree Line indicate that the 100 Foot NGEN Tower will in fact have visibility from additional vantage points. The 100 Foot NGEN Tower will likely have visibility from additional scenic vista points, just as the NGEN Initial Study admits the 1<sup>st</sup> NGEN Tower Plan would have had. Since the 100 Foot NGEN Tower creates several times the Visual Impact of either of the Two Existent Towers, the Cumulative Impact the NGEN Tower certainly creates a Significant Environmental Impact. The County must prepare an EIR.

**20.64.310(J)(2)** requires that the County demonstrate the Huckleberry Hill Site provides the only possible site for the NGEN Tower. The County has not done so. To do so, the County would have to provide a specific LIST of the frequencies available in Monterey County, the COST of license of these frequencies, and the NUMBER of frequencies necessary to utilize Alternative Tower Locations. The County has not done so. It appears from the County's Alternatives Analysis that the County has only considered Alternative Locations with pre-existent Tower Facilities or parcels owned by the County or a Public Utility.

The County did consider to some extent Jack's Peak Park as an Alternative Site, but the Jack's Peak / Aguajito Area has at least two other Hills that the County should have considered. In particular, the County has not considered an Alternative Tower Site located in the Aguajito Area, at (36-33.999N, 121-53.814W), possibly known as "Devil Hill" on certain maps. This particular Hill may have an ominous name, but it consists of open space parcels far away from residential parcels, and both the site itself and the adjacent Aguajito Road have ample commercial power lines and power polls. The Site has a Height equal to or greater than the Huckleberry Hill Site.

The County also has not considered Alternatives that allow the County to substitute the Huckleberry Hill Site with Two new NGEN Towers, both located in Non-Residential areas. In particular, the County should analyze in detail an Alternative that includes a Tower in the Jack's Peak / Aguajito (Non-Residential Part) Area, and another tower at the Pebble Beach Corporate Yard, both Non-Residential Open Space Areas.

The County should analyze in detail all Hills within the Monterey Peninsula as Alternatives to the Huckleberry Hill Site. The County should also analyze in detail each of these Hills as a "Simulcast" Site, since a Simulcast Site has a much larger geographic coverage than an ordinary Tower Site in the NGEN System. The Alternatives displayed to the Planning Commission only included Single Tower Non Simulcast Sites. This fact also goes to the issue of **20.86.040(C)(2) Lack of Substantial Evidence.**

**20.64.310(C)(4)** and **20.64.310(H)(1)(a through d)** require that the County locate all Wireless Communications Facilities (WCF) in such a manner as to minimize Visual Impact to the WCF's Neighbors, Scenic Areas, and General Environment. The County has not done so. In fact, the County has chosen a location, Huckleberry Hill, that maximizes the Visual Impact to the Neighborhood, Scenic Areas, and General Environment.

The County published its NGEN Initial Study August 17<sup>th</sup> 2012 and did not "discover" the County's "error" on PAGE 56 of that Study until after September 20<sup>th</sup> 2012. PAGE 56 discloses a Double Lattice Platform Tower (3<sup>rd</sup> Tower Plan) instead of a Thin Element Monopole (4<sup>th</sup> Tower Plan). Coincidentally, the County received the Formal Objection (40 Pages) to the NGEN Project from Jameson Halpern, Esquire on September 20<sup>th</sup> 2012. On September 24<sup>th</sup> 2012 the County publicly revealed for the first time its 100 Foot Thin Monopole Plan (4<sup>th</sup> Tower Plan) at a Public Informational Meeting held at the PBCSD offices in the Del Monte Forest. The County apparently did not notice the "error" on PAGE 56 of the NGEN Initial Study for over a month.

The August 17<sup>th</sup> 2012 NGEN Initial Study included only a single computer photo simulation of the NGEN Tower Proposal. This Study, on PAGE 56, shows a 100 Foot High Double Lattice Platform Tower (3<sup>rd</sup> Tower Plan) that creates a much larger Visual Impact than the 100 Foot High Thin Monopole Tower (4<sup>th</sup> Tower Plan). The NGEN Initial Study contains only a single such computer photo simulation of the NGEN Tower. Due the vociferous opposition the County received at the June 21<sup>st</sup> 2012 and July 19<sup>th</sup> 2012 DMFLUAC Hearings, the County certainly had an awareness that the Public strongly opposed the NGEN Tower for the Huckleberry Hill Site. Yet the County somehow managed to make an "error" in its one depiction of that Tower in the NGEN Initial Study.

**20.64.310(F)(12)** defines "Monopole" as "A structure erected on the ground to support wireless communication antennas and connecting appurtenances." Although clearly an mistake

in the Coastal Zoning Ordinance, the definition in **20.64.310(F)(12)** theoretically includes both a Thin Element Monopole as well as the actual Double Lattice Platform Tower disclosed on PAGE 56 of the NGEN Initial Study. **20.64.310(F)(12)** actually defines the word "Tower." However all but one of the several Public Notices that the County mailed and posted, the Notices refer to the August 17<sup>th</sup> 2012 Tower as a "thin element monopole." One Notice mailed by the County simply refers to a "Tower." Did the County of Monterey plan to exploit the mistake in the definition of the term "monopole" in **20.64.310(F)(12)** to Notice a "thin element monopole" in its NGEN Initial Study, as well as in the Notices that the County posted and mailed? Did County plan to actually switch this bait "thin element monopole" with the Double Lattice Platform actually disclosed on PAGE 56 on the NGEN Initial Study? Did the County plan to then build and operate a Double Lattice Platform Tower (3<sup>rd</sup> Tower Plan) instead of the Noticed Thin Element Monopole (4<sup>th</sup> Tower Plan)?

At the very first Public Hearing on the NGEN Huckleberry Hill Tower, the June 21<sup>st</sup> 2012 DMFLUAC Hearing, the County claimed that it "absolutely needed" a 150 Foot Tower (1<sup>st</sup> Tower Plan) located at the Huckleberry Hill Site to allow the entire NGEN System to work. The County claimed at that Hearing that any shorter Tower would not have the Antenna Capacity necessary to operate the complex and powerful NGEN System. Does the County of Monterey actually need the Capacity of a 150 Foot Tower (1<sup>st</sup> Tower Plan) in order to operate its NGEN System? Did the County play switch and bait with the mistake in the definition of the term "monopole" **20.64.310(F)(12)** in order to give the County more space for its Fifteen (15) NGEN Antennas planned for the Huckleberry Hill Site?

The original 150 Foot Tower (1<sup>st</sup> Tower Plan) included a massive number of Private Commercial Antenna Attachment Licensees. The August 17<sup>th</sup> 2012 NGEN Initial Study and Public Notices state that the new NGEN Tower Plan would only include Non-Commercial public user antennas. However, at the September 24<sup>th</sup> 2012 PBCSD Public Information Meeting, the County claimed that the County would pay Cal-Am Corporation rent for its Ground Lease on a basis of a "revenue share" of Antenna Licenses. Since the County certainly does not intend to pay rent to itself, who else could comprise the Licensees of the NGEN Tower other than Private for profit Commercial Telecomm Carriers?

Does the County need the Height and Antenna Capacity of a much larger tower than the 100 Foot Thin Element Monopole (4<sup>th</sup> Tower Plan) in order to operate its NGEN System?

Andrew Parker, P.E., MSEE, a Naval Post Graduate School Instructor of Electrical Engineering submitted a Two (2) Page Written Analysis of the Huckleberry Hill NGEN Tower Plan to the Planning Commission on September 26<sup>th</sup> 2012. Andrew Parker has expertise in Wireless Communications Networks and Antenna Location Analysis. This Wireless Communications Expert made at least Six (6) legally cognizable points of fact:

1. The County did not consider Multi Site Tower Alternatives to the Huckleberry Hill Site
2. Multi Site Tower Alternatives would provide superior performance especially as to coverage and redundancy.
3. A Two Tower Site Alternative that utilizes the Non-Residential part of Jack's Peak and the Non-Residential Pebble Beach Corporate Yard exists, the County has not considered this Alternative, and the County should consider this Alternative.
4. The NGEN System, and especially the Huckleberry Hill Site, has had no Field Test whatsoever, and will likely suffer from serious problems if built. In particular a 100 Foot Tower at Huckleberry Hill (111 Foot With Antennas) will not work and will require more Height to operate.
5. Relocation of the NGEN Tower to the middle of the Huckleberry Hill Site would increase performance and would decrease interference.
6. Disguise of the Tower as a Fake Tree with Fiberglass would increase performance and reduce rust.

Given the History of the NGEN Project, does the County actually intend to build the Project that the September 26<sup>th</sup> 2012 Planning Commission approved, and then increase the Height, Width, Bulk, Glare, and Antenna Clutter of the Project? Does the County actually intend to remove more and more trees from around the 111 Foot Monopole in order to increase access to Line-of-Sight Communications? In the recent past, the County and Cal-Am have both increased the Height, Width, Bulk, Glare, and Antenna Clutter of the Two Existent Towers as well as deforested the Huckleberry Hill Site.

The vast majority of the Fifteen (15) Antennas for the Huckleberry Hill NGEN Tower require Line-of-Sight Communication. Unlike the Analog Radio System employed by the CDF and CHP, most of the transmission waves in the NGEN System cannot bend around trees. For this reason, the County cannot actually Mitigate the NGEN Tower with a Pine Tree Visual Screen. In fact the County and Cal-Am have recently removed trees necessary for the new Water Tank at the Huckleberry Hill Site, and also removed several trees unnecessary for the new Water Tank but adjacent to one of the Two Existent Towers at the Huckleberry Hill Site (The Cal-Am Tower). The County also refuses to Mitigate the NGEN Huckleberry Hill Tower with a Fake Tree Disguise or even to paint the Tower any color other than metallic gray.

For all of these reasons, the County has not Mitigated the Negative Declaration. Furthermore, Significant Environmental Impacts exist and the Project requires and EIR.

The County should decertify the Negative Declaration and revoke the Approval of the Coastal Development Permit.

Several Questions about the NGEN Project Huckleberry Hill Site Tower Remain:

Did the County actually consider Alternatives such as Multi Site Alternatives? If so, what Frequencies did the County consider for this Alternative? The FCC lists several Frequencies, in 12.5 KHz bands, available for use exclusively or preferentially by Public Safety Organizations. These occur in Multiple Megahertz Blocks, with 80 Bands per Megahertz:

420-470 MHz, 763-775 MHz, 793-805 MHz, 806-809 MHz, 809-849 MHz, 851-854 MHz, and 854-894 MHz

The County should consider all of these Frequencies and publish publicly its consideration of the Frequencies.

SUMMARY OF OBJECTION TO FINDINGS

**20.86.040(D)**

Resolution 12-039

Finding (1) Substantial Evidence exists to support a Finding that the NGEN Project will have a Significant effect on the Environment as to Visual Impact, Aesthetics, and Land Use Plans and Policies.

Finding (1)(b) The Initial Study and Administrative Record for PLN-100516 DOES NOT provide Substantial Evidence that the Project would “not have a significant effect on the environment.” PLN-100516 omits necessary Photographic Studies, other necessary Visual Studies, and does not consider the Impact of PLN-100516 upon the Visual Environment in General that surrounds the Huckleberry Hill Site.

Finding (1)(c) Draft MND not in accordance with CEQA

Finding (1)(d) MND does not properly consider Aesthetics or Land Use / Planning

Finding (1)(i) The County has not properly considered all of the Evidence in the Administrative Record

Finding (1)(k) The County has not properly considered Public Comments

Resolution 12-042

Finding (1) The Project does not have Consistency with applicable Plans and Policies. The Project in fact violates at least one part of every Plan or Policy that applies to the Project and to the Huckleberry Hill Site.

Finding (1)(a) The County has Evidence before it that multiple Conflicts with Plans and Policies exist. The County received voluminous communications that indicate inconsistencies with Plans and Policies.

Finding (1)(b) The Project is not an allowed use since the Coastal Development Permit for the Project violates the General Plan, CEQA, and Coastal Act. The Project also does not conform to the specific requirements for a Coastal Development Permit specified in the Monterey County Coastal Zoning Ordinance and LCP.

Finding (1)(c) The Project violates several subsections of **20.64.310** The Project violates **20.64.310** in general.

Finding (1)(d) The Project would be visible from El Bosque Drive, Costado Place, and other Areas. The Project affects the Public Viewshed and violates the Neighborhood Character as to Type of Use and Intensity of Use.

Finding (1)(e) The Revised Project, just like the Original Project, cannot operate below the Tree Line due to its Line-of-Sight Operational Requirements. Therefore, Trees will not conceal the top part of the Project, and the Project will impact Public Viewsheds and Protected Areas identified in Figure 3 of the DMFLUP. The Revised Project would protrude 35, not merely 20, Feet above existing trees. The light gray metallic color of the Revised Project obviously increases, not decreases, its visibility against a background of green and brown trees. The light gray metallic color does not mingle with the Scenic Character of the Site. The light gray metallic color results in Significant Adverse Impacts on the Viewshed.

Finding (1)(f) The County and the NGEN System LOS Requirement prevent a Pine Tree Visual Screen and the Project has a Visual Impact on the Scenic 17-Mile Drive. The Project violates **DMFCIP 20.147.070(B)(1)** since the Project does not protect, preserve, or enhance scenic resources. In fact, the Project causes a serious detriment to Scenic 17-Mile Drive, Huckleberry Hill Outlook #2, and views of the Del Monte Forest and the Coastline available from the Neighborhood that surrounds the Huckleberry Hill Site. The Project also violates existent Scenic Easements for these Scenic Resources. The Project violates **DMFCIP 20.147.070(B)(3)** since the new structure, metallic grey, will not harmonize with the Del Monte Forest or what remains of the Forest at the Huckleberry Hill Site. The Project detracts from the scenic values of the Forest, Ridgeline, and Shoreline. The light metallic grey color of the Project does not blend into

its Forest environment. In fact, it would produce a prominent metallic anomaly to the Forest with all of its Glare, Antenna Clutter, Metallic Structures, and Metallic Grey Paint.

Finding (2) The Site does not allow good Line-of-Site Coverage for the NGEN System proposed by the County. The Site suffers from problems with Weather (Fog), Topography (Hills), and Foliage (Trees). Superior Sites exist within the County and within the Monterey Peninsula.

Finding (2)(a) The County has not properly reviewed the Site for NGEN Project suitability.

Finding (2)(b) Environmental Constraints on the Site include Visual Impact, Aesthetics, and Violation of Land Use Plans and Polices that protect the Environment.

Finding (3) The Project will cause a detriment to the peace, comfort, and general welfare of persons that reside or work in the Neighborhood since the Project would create a Visual Menace. The Project will cause a detriment to Recreational Visitors to the Neighborhood due to the Project's Visual Menace. The Site will cause a detriment to the use, enjoyment, and value of all Private Residences in the Neighborhood.

Finding (3)(c) Preceding findings from PLN-100516 lack Substantial Evidence.

Finding (4) The County and Cal-Am have violated the County's own Regulations as to Tree Removal. This also violates CEQA and the Coastal Act.

Finding (4)(b) The County has ignored violations of Tree Removal Requirements.

Finding (5) Ample Evidence, even in the County's own Initial Study and Staff Report, indicates that Substantial Evidence exists to show that the Project as designed, conditioned, and mitigated will have a significant effect on the Environment. Environmental Impacts include Visual, Aesthetic, and Violation of Land Use Polices and Plans.

Finding (5)(b) The NGEN Initial Study grossly violates CEQA. The NGEN Initial Study and the Administrative Record provides Substantial Evidence that PLN-100516 would affirmatively have a Significant Impact on the Environment.

Finding (5)(c) The Draft MND violates CEQA.

Finding (5)(d) The Revised Project would cause Significant Effects on Visual Resources.

Finding (5)(e) The Project lacks serious Mitigation Measures. The Project cannot utilize a Pine Tree Visual Screen. The Project has no Tree Disguise for the Tower. The Project Paint Color of Metal exacerbates the Visual Effects of the Project. The Project lacks changes necessary to avoid Significant Effects on the Environment.



Finding (5)(f) The MND does not properly or seriously analyze Aesthetics or Land Use / Planning

Finding (5)(i) The County has ignored Public Comments.

Finding (6) The Project interferes with Coastal Recreation and Scenic Views, and grossly violates the LCP.

Finding (7) The Project would create Substantially Adverse Visual Impacts when viewed from 17-Mile Drive, Huckleberry Hill Outlook #2, the Neighborhood that surrounds the Project Site, Del Monte Forest, the Coastline, and other Common Viewing Areas.

Finding (7)(a) The Project would protrude 35 Feet, not 20 Feet, above the Tree Line. The Project will have visibility from Public Viewsheds and Protected Areas (Figure 3 DMFLUP). The Metallic Gray color of the Project increases its visibility against the Scenic Forest Character of the Site, Neighborhood, and Del Monte Forest. The Project would result in adverse impacts on the Viewshed.

Finding (8) The Project significantly affects a designated public viewing area, Huckleberry Hill Scenic Outlook #2. The Project significantly affects a scenic corridor, Scenic 17-Mile Drive. The Site has numerous problems for the Project. This Project at this Site will pose serious performance issues, create Environmental Problems, and cause a diminution in the use, enjoyment, and value of Property for Residents and Visitors alike. The County should consider Non-Residential Alternative Locations for the Project.

The FCC does not require the provision of the services contemplated by the Applicant (Cal-Am, actually the County). The FCC merely requires that the County discontinue its Wideband Communications System. The FCC would allow the County to replace its Wideband Communications System with (1) No System at All (Not a Good Choice for Public Safety), (2) an NGEN System with Alternative Locations and no PLN-100516 Project, (3) an Alternative System such as the excellent CDF/CHP System Narrowband FCC Complaint since 2003.

The Site suffers from Physical Problems. The Site does not allow good Line-of-Site Coverage for the NGEN System proposed by the County. The Site suffers from problems with Weather (Fog), Topography (Hills), and Foliage (Trees). Superior Sites exist within the County and within the Monterey Peninsula.

The Project Wireless Communications Facility grossly violates **20.64.310**, CEQA, and the Coastal Act. The Huckleberry Hill Site currently violates Monterey County Regulations for Tree Removal, Tree Maintenance, and Forest Management Plan.

Finding (8)(a) Especially the Top Portion of the NGEN Project Tower, but also much of the entire Tower will have Visibility from Sunset Lane, El Bosque Drive, and Costado Place. This Visibility will severely Impact the Neighborhood for Residents and Visitors alike.

Finding (8)(b) The County has not seriously considered Alternative Sites for the Project. The County has not provided Substantial Evidence that the Huckleberry Hill Site provides the most adequate Site for the Project. The County should consider Non-Residential Alternative Locations for the Project.

Finding (8)(c) Development of the Project at the Huckleberry Hill Site would cause Significant Visual Environmental Impacts. The Zoning Ordinance prohibits development of the Project at the Huckleberry Hill Site since the Zoning Ordinance prohibits Co-Location whenever Co-Location would increase Visual Impact. The combination of the Project with the 74 Trees Removed from the recent Water Tank Project, as well as with the Two Existent Towers, leads to and obvious cumulative increase in Adverse Visual Impact upon the Environment.

Finding (8)(d) The Condition of Metallic Grey Paint exacerbates, and does not mitigate, the Visual Impact of the Project. The Project does not include a Tree Disguise and cannot include a Pine Tree Visual Screen due to its technical requirements.

Finding (8)(g) Staff Photos do not comply with the Requirements of the Monterey County Coastal Zoning Ordinance.

Duly Submitted,

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