Attachment B

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November 9, 2020

Appeal to the Monterey County Board of Supervisors
PG&E (AT&T Mobility) - PLN200128; Zoning Administrator Resolution No. 20-041

Appeal grounds:

- There was a lack of fair and impartial hearing
- The findings and decision are not supported by the evidence
- The decision was contrary to law.
  Specifically,
- The project, county findings, and due process do not comply with ADA/ADAA
- The findings of approval have substantial errors.
- Evidence in the record was mischaracterized, and legal duties were evaded.
- The project application documents themselves have substantial errors/ inaccuracies and omissions.
- The findings were based on mischaracterizations and omissions of the record.
- This facility is a large physical structure, is an element of a county-wide project, uses a new pattern of EMF emissions, and is a new network system that will substantially change the human environment. It therefore must undergo CEQA environmental review and doesn't fall under any exempt class.

I ask the Board of Supervisors to grant my appeal, overturn the Zoning Administrator approval, and deny this project. I ask for disabled accommodation.

RESPONSES FROM COUNTY:

Master Response No.1: The Federal Telecommunications Act (TCA) specifically provides: "no State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (47 U.S.C. § 332 (c)(7)(B)(iv).) The TCA does not include any exemption from this edict, either for the ADA or any other state or federal law. Further, assuming for sake of argument that Ms. Beety had presented substantial evidence that the facilities at issue directly impacted her, the ADA does not authorize the County to regulate a private activity that arguably has a greater impact on persons with disabilities. The transmission of wireless signals is private activity. The ADA does not apply to private activity regulated by the County under its zoning laws. Additionally, the TCA was enacted after the ADA. Had the federal Congress wished to, it could have excepted RF emissions from this section, but it did not. Finally, Ms. Beety is not without a remedy. The TCA merely prohibits state and local governments from regulating in this area; it gives plenary regulatory authority to the FCC. Consequently, the FCC is the appropriate body to address Ms. Beety's concerns. Monterey County Code section 20.64.210, "Regulations for the Siting, Design, and Construction of Wireless Communication Facilities," adheres to TCA limits. Moreover, even if the TCA did not prohibit the County from regulating in this area, Ms. Beety has not produced substantial evidence of either legal thresholds applicable for electromagnetic frequency emissions (EME) for sensitive groups or that the specific wireless communication facilities at issue should be regulated for distance accommodate for people with RF (aka EME) sensitivities. Substantial evidence of both points is, at a minimum, necessary to meet Ms. Beety's burden on appeal.

Master Response No. 2: County's review and recommendation for approval of the project stems from careful review of the site plan, elevations, photo simulations, RF report, and analyses of such in relation to the zoning district, Zoning Code, Noise Ordinance, and the North County Land Use Plan. As to the zoning district in general, the development is allowed with a Coastal Development Permit. Further, the project conforms to each requirement of the relevant section of the Monterey County Code, i.e. sections 20.16.050 and .060 and section 20.64.310. As to the North County Land Use Plan, the project meets its Visual Resources Policies; no other Coastal policies relate to the project's location or design. The project is consistent with the County noise ordinance and the 1982 General Plan. Views from State Route 1 (a scenic highway) are protected, consistent with the North County Land Use Plan and MCC section 20.64.310. The visual impact of the co-location on the rear steel lattice tower on parallel PG&E power lines was assessed by staff and the North County LUAC and found to be insignificant. County staff found the company name chosen for the Planning project name satisfactory, understanding that County has effective administrative and legal procedures in place to identify permit holders and signatories of indemnification agreements. (See Resolution Finding 2 Consistency for specific code sections and consistency.)

Master Response No. 3: The appellant contends this project is not categorically exempt from CEQA because it is large (as measured by the emissions area), rather than small and meeting Class 3 exemption status. Ms. Beety further contends that the project does not fall within one of the exceptions from categorical exemptions set forth in CEQA Guideline section 15300.2 due to the project's potential impacts to the environment. As to the former contention, CEQA Guidelines section 15303, the Guideline upon which the County relies, expressly applies to small *structures*. There is no indication in that section that the purported size of a project's *emissions area* is relevant to the determination whether an exemption applies. Ms. Beety has produced no evidence to rebut the County's conclusion that the project is a "small structure" within the meaning of CEQA Gudelines. As to the latter claim, the project will not have a significant effect on the environment. The RF report that was prepared meets FCC standards and was signed by Michael McGuire, a certified electrical engineer. Pursuant to MCC section 20.64.310.C, *Regulations for the Siting, Design and Construction of Wireless Communication Facilities,* County found that the project would comply with applicable FCC rules, regulations, and standards. The project's RF report, which the County accepts as persuasive evidence, indicates that the proposed project would not have a significant impact on human health. The project is consistent with all County zoning regulations. As discussed in more detail in the Resolution Findings, The incremental effect of this project is not "cumulatively considerable" as defined in section 15065(a)(3) of the CEQA Guidelines, there are no historical resources and no hazardous waste sites involved. There is no reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.

Master Response No. 4: To demonstrate prejudicial bias under applicable law, Ms. Beety would need to show either actual bias, based on clear evidence, or an unacceptable probability of actual bias on the part of the Zoning Administrator. (*Petrovich Development Co., LLC v, City of Sacramento* (2020) 48 Cal.App.5th 963, 973-974.) Ms. Beety has not provided substantial evidence on either point. Ms. Beety has not produced the necessary "concrete facts" demonstrating a conflict of interest or personal bias of the Zoning Administrator with respect to either her or her condition. Similarly, Ms. Beety has not shown that this situation resulted in an intolerable probability of actual bias on the part of the Zoning Administrator. Moreover, the Zoning Administrator provided Ms. Beety with a full and fair opportunity to appear at the hearing and present her arguments, both orally and in writing. County noticed all public hearings on this project. Further, the Zoning Administrator invited public comment in written and oral form. Those comments were presented to the decisionmaker. Indeed, Ms. Beety testified at the September 24th and

October 29th, 2020 hearings and Ms. Beety's September 23 and 30, 2020 emails were attached to the October 29 staff report as Exhibit H. Additionally, Staff responded to written comments in writing and as part of the staff presentation at the hearings. The Zoning Administrator indicated that he seriously considered the evidence presented, indicating that he "weighed heavily on this ADA issue" but, without substantiating evidence, he could not find any reason to deny the project.

ADA/ADAA AND DISABLED ACCESS

I am disabled by electromagnetic sensitivity. This facility would create a barrier blocking my access to the public's rights-of-way, to my health professionals, and to the ocean. Due to the new signal characteristics for this facility and any proposed future additions, it would have unknown worsening effects to my medical condition, blocking my ability to use the roads in the vicinity.

See Master Response (MR) No. 1.

This would also forever block any possibility of access to low income housing which I am qualified for and interested in obtaining, in violation of FHA/FHAA.

Response: By adhering to TCA statutes on local land use decisions on wireless communication facilities, County does not block access to any individual interested in obtaining low income housing.

This was no fair or impartial hearing. County staff falsified my statements in the record and mischaracterized them in their responses. References to ADA/ADAA, disability, discrimination, and disabled accommodation were redacted by the Zoning Administrator and staff.

See Master Response (MR) No. 1 and No. 4. County did not falsify statements, but produced them in the record as Exhibit H to the project staff report on October 29, 2020. The hearing was fair and impartial – it was duly noticed, public comment was accepted and acknowledged and, to the best ability of County, addressed in the hearing. To the extent Ms. Beety felt that any characterization of her arguments or paraphrasing was incorrect, she had a full and fair opportunity to explain these points to the Zoning Administrator.

Planner Mary Israel wrote me right before the October 29 hearing: "Monterey County takes all comments seriously and we have discussed the applicability of the American's with Disabilities Act (ADA) as it relates to the proposed wireless communications tower.

As discussed in the staff report, the County is precluded from regulating wireless facilities on the basis of radio frequencies…"

By taking this position, the county is violating and challenging the Americans with Disabilities Act/ADA Amendments Act and state equivalent laws as well as California Civil Code 54.1 and Public Utilities Code 7901, and federal telecommunications rules which I provided to county counsel including Section 414 which specifically states that "nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." The county is also frustrating the goals of these laws.

No consideration was given to the least intrusive means standard that would not interfere with my access, such as signal boosters for those who want improved service, People don't typically connect to cell towers while home, using their Wi-Fi network instead for phones and wireless devices. Applicant's statement of projected needs is simply a marketing statement. The Telecommunications Act doesn't guarantee applicants' business plans.

See Master Response No. 1. County correctly adhered to TCA statutes on local land use decisions on wireless communication facilities. County read the section that the appellant refers to here, and "but the provisions in this chapter" refer directly to (47 U.S.C. § 332(c)(7)(B)(iv)), which prohibits local governments from regulating the placement, construction, and/or modification of personal wireless service facilities based upon the environmental effects of RF emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

No information was reported that the surrounding neighborhoods were canvassed or provided due process notification in case people disabled by electromagnetic sensitivity or other EMF-sensitive medical conditions including cancer, medical implants, metal implants, or nerve damage live, work, or travel in the vicinity per the FHA and the Fair Housing Amendments Act. I gave you notice in 2017 that people in the county are disabled by EMS, and the county agreed with me that inclusionary policies should be adopted. Additionally, the county is discriminating against disabled people in its land use policies affecting private property, by providing 1500' notification for healthy landowners in some areas of the county but only 300' for others.

See Master Response No. 1. County correctly adhered to TCA statutes on local land use decisions on wireless communication facilities. County was not required by local ordinance or other applicable law to canvas the neighborhood. Furthermore, such information could not inform the County decision on the project due to (47 U.S.C. § 332(c)(7)(B)(iv)), which prohibits local governments from regulating the placement, construction, and/or modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

FINDINGS IN ERROR:

Finding #1 Project Description: Application is incomplete and incorrect

A) Incorrect name for applicant – the wireless carrier

At least five different names are given in application materials and county documents for the applicant. I raised the issue of the correct name to the Zoning Administrator.

- Project plans give the applicant name as AT&T mobility corp (sic) and AT&T Mobility. There are no such companies registered with the Secretary of State to do business in California.

- The site coverage map has the name AT&T. There are 16 registered corporate names and 20 registered LP/LLCs that have AT&T and/or AT&T Mobility in the name.

- The project RF report has the name AT&T Mobility, LLC. AT&T Mobility LLC without a comma is registered with the state of California.

- The application project description by the contractor uses the name New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T"). This New Cingular name without the DBA is registered with the state of California.

- In a 10-29 letter to me, the county planner used AT&T Mobility (New Cingular).

- The signed resolution by the Zoning Administrator uses AT&T Mobility.

Which is the correct name of the applicant that is registered to do business in California with the Secretary of State? There can be no legal application by entity AT&T Mobility.

Which company would provide the wireless services to customers from this site, pay the bills, and defend the county in any court proceedings? What is a limited liability company?

The Zoning Administrator did not address this confusion over the wireless carrier.

Does the county regularly check names on applications to make sure they are registered to do business in the state of California and are not shell corporations, and also that applications, representations, and indemnification agreements are signed by the correct parties with legal responsibility? I included additional questions in my letter dated 10/28/20.

Response: County has effective administrative and legal procedures in place to identify permit holders and signatories of indemnification agreements.

B) The applicant's photo simulations are not for this project. They are for another transmission tower where a different carrier is located. This error was not spotted by county staff. As a result, there are no photos sims for this project in the application.

Response: Unfortunately, the short turn-around required for wireless communication facility project review, in combination with glitches in the roll out of on-line project application submittal as part of County Planning's response to COVID-19 left a very short window for completeness review. Although staff noticed the slight misrepresentation of the project co-location after the first completeness letter was issued, staff did not deem it a significant barrier to its understanding of the visual impact of the project, which is the main objective of photographic simulations. However, giving the time to prepare for an appeal hearing, the applicant submitted updated photographic simulations which are presented as Attachment D to the project staff report for the appeal hearing.

C) RF report problems:

- The RF report does not provide any estimated exposures off-site at the PROW or at nearby buildings, roads, homes or second story levels. It only provides on-site percentages at utility line level and on site below the antennas.

Response: There are no buildings or homes near the project. The analyst started with ground level at and near the structure location as the first point of modelled exposures. The proposed project was found compliant with FCC exposure limits at that location, so there more extended measurements were unnecessary.

- Estimated exposures at ground levels appear to have been calculated in the null zone of least signal intensity under the facility. The RF report clearly and repeatedly states the calculated levels are on the ground on the site – i.e. on the site of the cell tower – that is, directly underneath the tower.

Response: The report considered the entire ground level plain in the vicinity of the tower.

"…there are no modeled exposures on any accessible utility line level and ground walking/working surface related to ATT's proposed antennas that exceed the FCC's occupational and/or general public exposure limits at this site." p. 1

"Based on worst-case predictive modeling, there are no modeled exposures on any accessible utility line level and ground walking/working surface related to ATT's proposed

antennas that exceed the FCC's occupational and/or general public exposure limits at this site." p. 5

Based on worst-case predictive modeling, there are no areas at ground/street level related to the proposed AT&T antennas that exceed the FCC's occupational or general public exposure limits at this site. At ground/street level, the maximum power density generated by the antennas is approximately 0.2 percent of the FCC's general public limit (0.04 percent of the FCC's occupational limit)."p. 6

- The RF report also does not provide data on effective radiated power from each antenna and for each direction – eg. 20° azimuth has two antennas and therefore, more ERP in that direction..

Response: Such data are not standard in RF Reports to County, and FCC regulations do not require it.

- The RF report is not prepared by an RF engineer. The preparer has unknown number of hours of study or classes, and unknown certification. An RF engineer only reviewed the report.

Response: County confirmed that the preparer's certification is included in the RF report and that the report was reviewed by professional engineer for accuracy; this is industry standard.

- Errors include the statement that the signal is propagated best on "line of site" paths. This may be a mistake for "line of sight". A claim of "low power" is not made in relation to any biological standard. The report claims "there are no microwaves installed at this site". Microwave radiation, commonly defined as 300 MHz to 300 GHz, is the nature of what this facility does. What is the report writer believe they are transmitting if not microwaves?

Response: Microwave dish antennas are designed for point-to-point operations at the height of the installed equipment rather than ground-level coverage. There are no microwave dish antennas in this project. The radiofrequencies used by AT&T in this area operate within a frequency range of 700-1900 MHz (EBI Consulting, RF-EME Compliance Report for this project, Attachment C). Microwave frequencies are a shorter-wavelength subset of radiofrequency (Environmental Health and Safety website, https://ehs.lbl.gov/resource/documents/radiation-protection/non-ionizing-radiation/radiofrequency-and-microwave-radiation/).

- Another very significant error is “There are no other wireless carriers with equipment installed at this site”. Immediately adjacent to this site is another PG&E transmission tower with wireless facilities. This was discussed in testimony and project plans.

Response: County has required the applicant to update the RF Report to account for this issue and to confirm that the co-location wireless communication facility on a nearby PG&E lattice tower is included in the site assessment. The updated RF Report is attached to this staff report.

- No cumulative exposure was assessed with the adjacent tower and other neighborhood microwave sources.

Response: Cumulative exposure modelling is part of standard RF reports and was included in the report for this project.

- No actual on-site visit or measurements were made. Preparer states this was theoretical modeling and she relied on AT&T representations. Therefore, this report cannot be relied on for accurate calculations or measurements of RF levels.

Response: Onsite measurement to confirm exposures are at acceptable levels will be performed and is included in a standard County wireless communication facility, Condition No. 9.

- The preparer made statements she is unqualified to make: “MPE limits are designed to provide a substantial margin of safety. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.” These are claims made by entities with no medical or biological expertise, and they have been debunked by experts including those at the EPA. “MPE limits” do not apply to disabled people like myself.

Response: These statements are derived from FCC’s OET 65 Bulletin which sets guidelines for human exposure to radio frequency electromagnetic fields. See also Master Response No. 2

Finding #2 Consistency: Project is inconsistent.

The project is not consistent with county rules and zoning nor is it appropriate, because it does not comply with various state and federal laws, including Public Utilities Code 7901, the ADA/ADAA, FHA/FHAA, California Civil Code 54.1, and the federal Migratory Bird Act.

The North County Land Use Plan states:

The [Coastal] Act established a framework for resolving conflicts among competing uses for limited coastal lands.

The highest priority is placed upon the preservation and protection of natural resources including environmentally sensitive habitat areas, i.e., wetlands, dunes, and other areas with rare, endangered, or threatened plant and animal life.

……However, much of North County is not appropriate for such development due to the sensitivity of its natural resources which may not tolerate continued encroachment of residential development. Policies set forth in this plan are intended to protect the vast resources of this area through sensitive and responsive land use, development, and conservation.1 [emphasis added]

Response: There is no evidence that the project, which is a small structural development as a co-location of wireless communication facilities and small support ground-based structures, would encroach on residential development or have a use that would conflict with the preservation and protection of natural resources such as the wetlands, dunes, and other areas with rare, endangered, or threatened plant and animal life. See also Master Response No. 2 and 3.

As I provided to the Zoning Administrator and County Counsel, the Telecommunications Act Section 601(c)(1) – no implied effect -- and 47 U.S.C. § 414 – remedies in this Act not exclusive – protect other local, state, and federal laws. This is what an ordinary person like me can find in the laws. This information was rebuffed.

Response: County has not located any "Section 601(c)(1)" of the TCA. 47 U.S.C. section 601 has only subdivisions (a) and (b). Those subdivisions relate to the Interstate Commerce Commission and Postmaster General, they are not relevant here. 47 U.S.C. section 414 provides that nothing in the TCA "shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies." Ms. Beety does not explain how this provision applies here. She does not identify of what remedies she is speaking, making a complete response untenable. Regardless, the TCA's express prohibition on regulation of the placement, construction, and/or modification of personal wireless service facilities based upon the purported environmental effects of RF emissions controls here. That prohibition does not relate to remedies. Rather, it bars the County from regulating specific behavior. To the extent that any conflict between these provisions arguably exists, "it is a commonplace of statutory construction that the specific governs the general. . ." (Morales v. TWA (1992) 504 U.S. 374, 384 [112 S.Ct. 2031, 2037, 119 L.Ed.2d 157, 168].) Consequently, TCA section 332(c)(7)(B)(iv), which provides clear direction on a specific regulatory topic, the environmental effects of RF transmissions stemming from personal wireless facilities, governs the more general terms in TCA section 414. Please also refer to Master Response No. 4.

c) states “The project will not result in any impacts to biological or archaeological resources.” This is false. This project is commercial encroachment. County staff ignored the nearby sloughs including the Moro Cojo Slough and the migratory bird flightpaths through the area. (also see below)

The county controls the public’s rights-of-way (PROW) and must make sure that uses of the PROW do not incommode the public, per PUC Section 7901. The California Supreme Court recently opined:

The parties also agree that the franchise rights conferred are limited by the prohibition against incommoding the public use of roads, and that local governments have authority to prevent those impacts.

… Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. But travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel. (T-Mobile West, at pp. 355-356.) For example, lines or equipment might generate noise, cause negative health consequences, or create safety concerns. All these impacts could disturb public road use, or disturb its quiet enjoyment. (p. 8-9) 2

This tower at this location intrudes onto the PROW and incommodes me as a disabled person, with known and unknown exacerbation effects to my disability due to new signal characteristics and frequencies.

Response: The appellant again attempts to refute Finding 2. However, her arguments erroneously assume that County can regulate the siting of wireless communication facilities based on RF emissions. The TCA preempts any authority that County might otherwise have to regulate RF emissions based upon environmental concerns. (47 U.S.C. § 332(c)(7)(B)(iv).)

“No conflicts were found to exist” is false. Additional information is in the attached letters The General Plan, Zoning Ordinance, North County Land Use Plan, and all county rules must be consistent with state and federal rules and therefore 2a) is incorrect, and this project is inconsistent with county rules and in conflict.

See Master Response Nos. 2 and 3. County disagrees. Staff review found no such inconsistency. The appellant’s contrary statement is not supported by substantial evidence. Further, the County is precluded by the TCA from regulating RF emissions based upon environmental concerns. (47 U.S.C. § 332(c)(7)(B)(iv).) Any such issues are properly within the FCC’s, not the County’s, purview.

Finding #3 Suitability: Site is not suitable.

California Supreme Court opinion, T-Mobile West LLC et al. v City and County of San Francisco et al, April 4, 2019, p. 7, 9

The ZA stated that the site is physically suitable, also saying “b) “Staff identified no potential impacts to… Biological Resources or environmental constraints that would make the site unsuitable for the proposed wireless communication facility.”.

This is false. The site is immediately adjacent to the public rights-of-way and near homes. The county did not mention or appear to investigate the impacts of this facility on migratory birds, despite the federal Migratory Bird Act. It is near the Moro Cojo Slough and the network of sloughs that include Elkhorn Slough and the path of migratory birds. Burrowing owls live in this area and possibly on the applicant’s site.

Response: As conditioned, the project will have no potential impacts to Biological Resources at the site. MCC Title 20 does not require review of co-location projects in relation to the Migratory Birds Act. See also Master Response Nos. 2 and 3.

1 http://www.co.monterey.ca.us/planning/docs/plans/NC_LUP_complete.PDF p. 27, 30

2 https://www.courts.ca.gov/opinions/documents/S238001.PDF

See the Department of Interior 2014 comments on bird injuries and deaths caused by telecommunication towers to the Department of Commerce on FirstNet communication towers -- http://www.ntia.doc.gov/files/ntia/us_doi_comments.pdf

These comments also stated “…the electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today.”

Response: This co-location project is not a new tower, and any harm to birds due to RF emissions will be regulated by the FCC. After review of the project, the County concludes that the project would comply with FCC RF emissions standards. See also Master Response Nos. 2 and 3.

Finding #4 Health and Safety: Project is a public health nuisance and has safety impacts.

a) Departments reviewed the project "to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood", but ignored substantial evidence presented to the county. The County Health Officer made no review on record, and a representative from the office made errors in her comments and ignored ADA/ADAA. County counsel did not provide any written comments for the record and only second-hand or third-hand comments were made which challenged ADA/ADAA and other federal and state rules that this ordinary person raised.

Would the county redline these housing areas and say that people such as me cannot live there or visit there, in violation of FHA/FHAA?

The county is implicitly restricting access to public roads, in violation of state rules, and directly challenging California Civil Code 54.1.

Response: The RF Report for the project concluded that there is no danger of adverse health, safety, and welfare of the general population. County Health Planning, Evaluation and Policy Manager Krista Hanni gave testimony in the October 29, 2020 Zoning Administrator hearing that she conducted a literature review and that two reports, one systematic review in 2011 and another specific paper in 2019, showed no basis for a connection between wireless communication facilities on towers and electromagnetic sensitivities. Therefore, there is no reason for County to "redline" the housing development in the area of Dolan Road. Krista Hanni was not asked to address the ADA compliance question. County Counsel did review the access to the public road question and informed staff that access to the County ROW is not restricted by this project as the project review is limited by the TCA: ""no State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (47 U.S.C. § 332(c)(7)(B)(iv).) See also Master Response Nos. 1, 2, 3 and 4.

c) The RF report is not an "engineering analysis" because it was not prepared by an engineer. It was missing data and had errors. See discussion of Finding 1 (C).

Response: County confirmed with the applicant that all the wireless carriers near the project site were included in the modelled cumulative RF. County confirmed that the report was reviewed and certified by a licensed RF engineer, which is industry standard. See also Master Response No. 3.

d) "Regulating" – A plain reading by an ordinary person like myself of the federal telecommunications provisions including 332(c) discovers that the authority of local governments is preserved in decisions. My request was and is that the county makes a decision on this site. I am not requesting that the county to remove all cell towers. I am asking for this decision. A decision is not a regulation. A decision is for this project.

Section 332(c)(7)(A) and (B) of the Telecommunications Act, under "preservation of local zoning authority" states

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.(emphasis added)

What I am requesting is not restricted or preempted, according to a plain reading of 332(c)(7)(B). Wireless service exists in the county and in this area. A denial is not a prohibition or denial of service. The county has not responded to this law.

Response: The TCA section Ms. Beety refers to states ". . . no State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (47 U.S.C. § 332(c)(7)(B)(iv).) *and therefore the County is prohibited from applying local or state laws to regulate RF emissions on the basis of their purported environmental effects. Please also refer to Master Response No. 4.*

Congress stated that the first factor the FCC must consider is whether actions will promote the safety of life and property.

47 U.S. Code § 332 - Mobile services

(a) Factors which Commission must consider In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will—

(1)

promote the safety of life and property;

This project does not promote the safety of my life. But the county ignored Congressional intent and federal laws in making this decision.

Response: The question what factors the FCC must consider in regulating certain actions is not pertinent here. This appeal is of a County action.

e) Here again, the Zoning Administrator mischaracterized and reworded the issues I raised as "concerns" and "perceptions", instead of ADA/ADAA issues and requests for ADA accommodation:

"shared concern for health of persons with electromagnetic sensitivity passing by the wireless communications facility…"

"the concerns stated in the letters do not provide substantial evidence for denial of the project"

"the member of the public was concerned with a perceived limited access to the roadway"

He censored my repeated statements about ADA/ADAA, disability, and discrimination issues in his response. By doing so, he blocked the assertion of my disabled rights.

What he has done is unlawful and might be illegal.

Response: The Zoning Administrator did not censor any statements, although he may have rephrased some statements and it was neither ill-intended nor unlawful to do so. Instead, he referred to the in-hearing testimony of the Monterey County Health Office Representative, Krista Hanni, as the County's address of the health and safety issues that were raised, and the staff report's reference to County Counsel's response to ADA regulation as it pertains to County road access. See also Master Response No. 4.

Contrary to the Zoning Administrator allegations, I provided substantial evidence for denial of this project in three separate letters that are attached and in testimony at county hearings. He denies evidence regarding ADA access issues and state and federal rules pertaining to that access, as well as other substantial grounds. I also sent a copy of one of my letters to county counsel.

The Zoning Administrator falsely stated: "The project is not in County right-of-way" when it is clearly so. This is proven by the purpose of the project and by the coverage map. If the project did not extend into the PROW and was strictly sited only on the proposed building site, the public would not be able to receive "in-vehicle" coverage as they are driving in the

PROW on Dolan Road or other roads in the area or in homes that are on the other side of multiple PROWs from the project site. That clearly means PROW location as well as onto other private property. To assert otherwise is absurd and denies the project's purpose. By so intruding onto the PROW, it blocks my access.

Response: The Zoning Administrator did not find the arguments made by the public to have sufficient grounds. Ms. Beety failed to present relevant ADA regulations specific to cell towers. Similarly, Ms. Beety did not present any FCC regulation that contradicts the express preemption of the TCA over local authority concerning the placement, construction, and/or modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions. See also Master Response Nos. 1 and 4.

In addition, he denied what is plainly apparent in the U.S. Access Board NIBS report, claiming: "The report did not make recommendations pertaining to the installation of wireless communication facilities on towers". The report clearly says:

Electromagnetic Fields

For people who are electromagnetically sensitive, the presence of cell phones and towers, portable telephones, computers, fluorescent lighting, unshielded transformers and wiring, battery re-chargers, wireless devices, security and scanning equipment, microwave ovens, electric ranges and numerous other electrical appliances can make a building inaccessible.

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Recommendations for Future Actions

… The Committee acknowledges that while the scientific evidence may be inconclusive about whether ambient electromagnetic fields pose a substantial health risk to the general population, the presence of EMF is an access barrier for people who are electromagnetically sensitive. Therefore, the Committee recommends that measures be taken to reduce EMF whenever possible in order to increase access for these individuals as well as taking a precautionary approach to protecting the health of all.

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Appendix 1 - Site Selection: Potential Sources of Pollutants and EMF.

The Committee recognizes that few, if any, building sites are likely to be free of all the pollutant sources listed below. The recommendation is to minimize proximity to as many of these sources as possible in order to maximize outdoor environmental quality and hence indoor environmental quality.

EMF:

Substations

Cell phone towers Radio towers

…

The Zoning Administrator read the text. I have no explanation except deliberate bias. His findings are not the objective and careful evaluation of project merits and problems, evidence, and laws required of a public official.

Response: County reviewed the NIBS report. The conclusions for protection of individuals who are sensitive to electromagnetic fields was to 1) designate an area in a building where no cellular phones or are to be utilized, allow occupants to unplug computers in that area, and 2) provide signage that cell phones are not allowed in that specific area. There were no recommendations of changes to wireless communication facility placement in the conclusions, and even if there were, consideration and/or implementation of those changes would be within the FCC's, not the County's, purview. See also Master Response No. 4.

Furthermore, the Zoning Administrator did not read the RF report carefully. Under discussion of Finding #1 (C) are the errors I found.

He failed to investigate my statement about ground level calculations being made in the null zone directly under the antennas. He did not require calculations at Dolan Road or at nearest residences including 2nd floor levels as it commonly done in other jurisdictions. Regarding applicant claims about RF exposure, I provided testimony from another similar facility -- photo attached. What is in question is the accuracy of the RF report, not whether the exposure exceeds FCC limits. Due to its errors and omissions, the RF report conclusions should be disregarded.

Further, the RF report did not model cumulative exposure with the adjacent wireless facility, falsely reporting "[t]here are no other wireless carriers with equipment installed at this site". But the Zoning Administrator claimed that it did.

Per the RF report, the worst-case predictive models predicted there are no areas at ground/street level that exceed the FCC's occupational or general public exposure limits at this site, including the proposed AT&T antennas combined with an existing facility on a nearby tower.

He did not require cumulative exposure for these two facilities.

Response: County confirmed with the applicant that all the wireless carriers near the project site were included in the modelled cumulative RF in the report attached to this Board of Supervisors staff report. County confirmed that the report was reviewed for accuracy by a licensed RF engineer, which is industry standard. The modelled data is theoretical. Consequently, the applicant agreed to site-specific testing as a project condition of approval number 9. See also Master Response No. 2.

The FCC limits, as the Zoning Administrator himself stated, are for the general public. I am not the general public. I am a disabled person. And he and the county appear to stand between me and the Department of Justice, Congress, the state of California, and my doctor to deny me my civil rights.

Response: The FCC regulations of radio frequency emissions and their effect on public health are beyond the jurisdiction of the County. The Zoning Administrator addressed the RF report within the narrow confines of his jurisdiction, which is to attest that the reports and documentation show that the applicant will adhere to FCC regulations. See also Master Response Nos. 1, 2, 3 and 4.

f) The applicant recognized some effects to workers.

The subcontractor inappropriately inserted himself into this topic but himself admitted health effects to some workers, saying there's always "one-offs".

When the Zoning Administrator opines on health, he is speaking outside his qualifications. I am not aware that he is a doctor or an expert in FCC rules. The findings state: "The limit is for continuous exposure, not for short windows of time as would be experienced by a walker or driver on the adjacent roadway." The Zoning Administrator ignores that FCC limits are based on short term exposure, and he ignores my disability.

h) Here again, the Zoning Administrator falsified my comments:

"Testimony concerning health and safety received during the Zoning Administrator Meeting on September 24th and October 29th, 2020".

I testified about my disability and the blocked access that would result from this project in violation of ADA and state rules, and also requested disabled accommodation

See Master Response Nos. 1 and 4.

Finding #5 Violations: This property is not in compliance.

The owner/landlord of the subject property has a current tenant that is obstructing the PROW and is a public health nuisance. If this present project is approved, the owner/landlord will have a second non-compliant tenant that is a public health nuisance and will also obstruct the PROW. This property owner is violating my civil rights and state law, and the county is allowing it to do so.

Response: The property is in compliance with all zoning for its district. The RF emissions of the co-located wireless communication facility already on the property are not obstructing the public right of way. Neither the previously-approved project nor the purported behavior of a third-party landlord is not at issue in this appeal. See also Master Response Nos. 1 and 4.

Finding #6 CEQA: This project has adverse environmental effects and is not exempt from CEQA due to new substantial change in the human environment.

The Zoning Administrator states: “California Environmental Quality Act (CEQA) Guidelines §15303 categorically exempts the construction and location of new, small facilities or structures.”

But this is a very large physical facility as shown on the coverage map. This physical facility with coherent signal reception is at least a square mile, and likely larger.

This facility is also an element of a new county-wide project – 5G -- and sets precedent for building that project. It uses a new pattern of over-the-air emissions, and as a new network system, will substantially alter the county’s human environment which includes my environment and my access to critical spaces. It is also a public health nuisance.

5G has new signal characteristics that have not been safety tested. The FCC is currently reviewing exposure guidelines for 5G frequencies, and is being sued by consumer groups for various approval aspects regarding 5G. It is premature to approve 5G or 5G ready projects in the county.

Due to all these features, this facility doesn’t fall under any exempt class, unless cellular/wireless facilities have been specifically exempted under some state rule with which I am not familiar.

California Government Code Section 65850.6(b)(4) also "requires that new facilities that may later have facilities collocated with them [] must undergo CEQA review consisting of the adoption of a negative declaration or mitigated negative declaration, or certification of an environmental impact report."3

Finally, Brandon Swanson informed me that "minor" changes to facilities do not require county review or permit. This is a complete abdication of the authority delegated by Congress to the county, and it blocks the public from noticing and due process. It also means that "today's" project approval effectively approves any and all future changes and additions, and carriers are under an honor system to self-police to not exceed "minor" changes, which may not be minor at all to the human environment.

In light of all of these issues, this facility is not exempt and must have CEQA environmental review.

Response: The project was not measured by range of the service it provides, but by its material development on the land. County does not have jurisdiction over the emissions of wireless communication facilities. County may only regulate the project's is physical co-location and the immediate area of the parcel. County reviewed the project in connection with relevant portions of the MCC (specifically, sections in Title 10 and 20), the North County Land Use Plan, and the 1982 General Plan and found the project to be both compliant and consistent with applicable laws and policies, as conditioned. Moreover, County reviewed the project using its in-house CEQA checklist and determined that the project is small-scale development that qualifies for a Class 3 categorical exemption as described in section 15303 of the CEQA Guidelines. Additionally, none of the exceptions under CEQA Guidelines section 15300.2 apply to this project. The project is not located on a hazardous waste site, near a scenic highway or historical resource. The incremental effect of this project is not "cumulatively considerable" as defined in section 15065(a)(3) of the CEQA Guidelines. This project, given its minimal impacts, will not contribute a significant incremental effect in connection with the effects of other past, current or probable future projects. See also Master Response No. 3.

a) The Zoning Administrator excluded all mention of the physical emissions from the facility and the extent of a coherent signal to devices in the surrounding region.

3 http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65850.6

b) The findings state: “No adverse environmental effects were identified during staff review” even though evidence was put in the record that this facility would be a public health nuisance.

As previously stated, the Zoning Administrator ignored the adjacent wireless facility that would “contribute to a cumulative effect.”

Response: The project is not measured by range of the service it provides, but by its material development on the land. County’s task is to review the project within the scope of County analysis. Impacts from emissions are regulated by the FCC. See also Master Response Nos. 2, 3 and 4.

Finally, the facility would be near Highway 1 which is a scenic highway, and would be an access barrier to my use of that scenic highway.

Response: The project was not measured by range of the service it provides, but by its material development on the land. County does not have jurisdiction over the emissions of wireless communication facilities. The review of consistency with the County Code includes scenic highways. However, this project is not close enough to Highway 1 to impact that viewshed. Access to County roads is still allowed under the ADA, as this development is not in the County ROW. See also Master Response Nos. 1 and 2.

Finding #7 Wireless Communications Facilities: This project is not compliant.

g) Noise -- In addition to other noncompliance issues previously discussed, generator noise was downplayed and not sufficiently investigated. Generators have to be tested regularly, for several hours at a time. There is no calculation of what the sound will be like at nearby homes or even at the street. It is unknown if noise levels will comply with the 45 dB night limit. This was not pursued at the hearing, and the findings don’t include compliance with the nighttime limit.

Response: The Zoning Administrator discussed night time noise limits at the October 29, 2020 hearing. Based on the project agent’s testimony, the sound limit was anticipated to be less than 45 dB at the nearest parcel line that included a residence. There are currently no residences within 50 feet of the project. The project will conform to the noise ordinance.

All seven project findings are false.

The paperwork submitted by the applicant is sloppy and gives no confidence on the project. The contractor's WTF report on the project is nearly word-for-word identical to the WTF report submitted on the Tassajara Road cell tower for the same carrier. Casual cookie cutter reports may be appropriate for some simple land use projects in a similar locale and terrain. They are inappropriate for this type of complex project which is completely different in location and tower construction.

It's not clear what the correct applicant name is, no clarification on what company is responsible, or what LLC means in relation to indemnification or county liability.

Another issue is that the servicing crew appears to be located far away in San Ramon in the congested SF Bay region. If so, there is no guarantee how quickly they would respond, if at all, in an emergency.

Attached are my three letters to the Zoning Administrator with additional information and questions, most of which were ignored.

Finally, I request disciplinary action against County Zoning Administrator Mike Novo and the county staff members who falsified the public record and public testimony, blocked my civil rights, ignored evidence in the record, and/or failed in their official duties. By taking these actions, the county evades its duties under state and federal rules. This was no fair or impartial hearing. The public can have no confidence of a fair hearing when staff distorts testimony words into different meanings or censors them outright, or when county officials will not enforce rules. The only possible conclusion is that these actions were to benefit the applicant. It is shameful and outrageous conduct, and an absolute breach of the public trust.

There are substantial grounds for denial including the biased behavior of Mike Novo and other county staff in prejudicial consideration of this project.

Response: Ms. Beety has presented no evidence that the record was falsified. Further, County complied with all noticing and hearing requirements as imposed by applicable law. Finally, although the County takes such allegations seriously and strives to ensure a fair and open

process, which the record indicates occurred here, this appeal is not the appropriate forum to request disciplinary action.

This has been a difficult process. I am very ill due to RF radiation exposure. I have done my best to provide you with specific, accurate, and substantial grounds for my appeal. I apologize for any inadvertent errors.

The project cannot comply with various local, state and federal rules without alteration. I ask the Board of Supervisors to grant my appeal, overturn the Zoning Administrator approval, and deny this project.

Sincerely, Nina Beety

Attached:

Letters to Monterey County Zoning Administrator

Photo of RF exposure from antennas on transmission tower