

Rincon Band of Luiseño Indians

CULTURAL RESOURCES DEPARTMENT



One Government Center Lane | Valley Center | CA 92082
(760) 749-1051 | Fax: (760) 749-8901 | rincon-nsn.gov

December 10, 2020

Sent via email: Heidi.duron@lus.sbcounty.gov

Heidi Duron
County of San Bernardino
Land Use Services Department – Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187

Re: Lazer Radio Broadcasting Facility Project #P20100215

Dear Ms. Duron,

This letter is written on behalf of Rincon Band of Luiseño Indians, (“Rincon Band” or “Band”), a federally recognized Indian Tribe and sovereign government. | 1

The Band has received the notification for the above referenced project. The location identified within project documents is not within the Band’s specific Area of Historic Interest (AHI). | 2

At this time, we have no additional information to provide. We recommend that you directly contact a Tribe that is closer to the project and may have pertinent information. | 3

Thank you for submitting this project for Tribal review. If you have additional questions or concerns, please do not hesitate to contact our office at your convenience at (760) 297-2635 or via electronic mail at crd@rincon-nsn.gov. | 3

Thank you for the opportunity to protect and preserve our cultural assets.

Sincerely,

Deneen Pelton

Administrative Assistant to
Cheryl Madrigal
Tribal Historic Preservation Officer



Letter 2

THE WILDLANDS CONSERVANCY

Behold the Beauty

January 7, 2021

Heidi Duron, Planning Director
County of San Bernardino
Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187

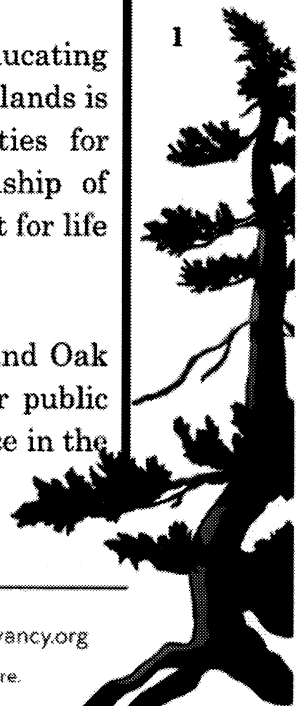
RE: Project No. P20100215 - Lazer Radio Tower Broadcasting Facility
Recirculated EIR - SCH No. 2008041082

Dear Heidi Duron:

Founded in 1995, The Wildlands Conservancy is dedicated to preserve the beauty and biodiversity of the earth and to provide programs so that children may know the wonder and joy of nature. In working to achieve this mission, we have established the largest nonprofit nature preserve system in California, comprised of twenty-one preserves encompassing 156,000 acres of diverse mountain, valley, desert, river, and oceanfront landscapes. These preserves are open to the public free of charge for passive recreation including camping, hiking, picnicking, birding, and so much more.

Ultimately, saving our treasured landscapes from development means educating and instilling a love for nature in future generations. For this reason, Wildlands is also the state's leader in providing free outdoor education opportunities for California youth. Through these programs and our reverent stewardship of preserves, visited by 1.2 million people annually, we foster a love and respect for life in all of its magnificent forms.

Wildlands has been active for over twenty-five years in the Yucaipa and Oak Glen communities promoting conservation values and purchasing land for public enjoyment and open-space issues. We are frequently recognized as a resource in the community relating to open-space issues. In 2013, we led a campaign to



save Oak Glen and the Yucaipa Ridge from the construction of 200 foot tall, 500kv transmission line towers by the Los Angeles Department of Water and Power. The public submitted over 50,000 comments opposing the lines resulting in LADWP backing out of the project.

1 cont.

Last month, Wildlands expanded our Oak Glen Preserve with the acquisition of Pisgah Peak. The acquisition protects sensitive habitat home to rare, endemic plants new to the scientific community and acts as an important wildlife corridor for bears, deer, mountain lions, coyotes, and more. By the close of 2021, we will open Pisgah Peak to the public for hiking, picnicking, and breathtaking 360° views of southern California including views of Mt. San Antonio, Mt. San Jacinto, Mt. San Gorgonio, Santiago Peak, and beyond. Our long term vision is to protect in perpetuity the entire Pisgah Peak ridge area and create new passive recreation opportunities that connect Oak Glen Preserve to Wildwood Canyon State Park and the scattered National Forest lands in the area.

Our hard work and dedication to protecting the region's wild landscapes resulted in Wildlands being mentioned explicitly in the Oak Glen Community Plan policies and goals:

- Policy GO/OS 1.2: County is committed to supporting and actively pursuing the expansion of WCSP, including cooperation with open space community groups such as The Wildlands Conservancy and Yucaipa Valley Conservancy.

With our recent acquisition of Pisgah Peak, our long-term vision to protect the entire Pisgah Peak ridgeline, and continued support for the expansion of Wildwood Canyon State Park, we have a keen interest in the Lazer radio tower project that may be constructed immediately adjacent to state park lands.

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As one of the two Conservancy's specifically mentioned in the Oak Glen Community Plan policy OG/OS 1.2, Wildlands feels an obligation to comment and oppose the construction of the Lazer radio tower. The radio tower is incompatible with the surrounding open spaces of Wildwood Canyon State Park, as well as other lands owned by open-space conservancies including The Wildlands Conservancy. It is apparent that the goal of the project is to expand coverage of Lazer's radio station, regardless of broad and vast community opposition to the project where over 17,000 citizens wrote letters or signed petitions in opposition to this radio tower project. The project represents urban encroachment into one of Southern California's premiere scenic destinations enjoyed by hundreds of thousands of

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visitors each year. Simply put, the local community is worried this project will lead to degradation of the values that are fundamental to the area's businesses and way of life.

4 cont.

We do not believe Lazer's business desire is to expand the audience of its radio tower into a supported goal of expanding Wildwood Canyon State Park. It is clear that rather than facilitating the expansion of the park, the radio tower will prevent it. It is our understanding that Yucaipa Valley Conservancy and Citizens for the Preservation of Rural Living own property in the surrounding area, which they intend to eventually dedicate as open space and incorporate into the Wildwood Canyon State Park. However, the construction of a radio tower, equipment shed, fencing, and parking space in the middle of these open-space lands will mar the expansion of the park. It is inconceivable to understand how Lazer and/or the County could take the position that constructing a radio tower and associated facilities in any way helps to expand Wildwood Canyon State Park. The fact that Lazer is proposing to provide an open-space easement over the area of their property surrounding the radio facilities does not in any way facilitate the expansion of the park. The radio tower emits radio frequency waves, which are known to affect both wildlife and humans, and has no place in or near protected state parks. Radiofrequency waves are known to disrupt the magnetic orientation of migrating birds causing them to be disoriented, confused, and lost. This will add additional stress and impacts for bird species migrating north and south on the Pacific Flyway. Additionally, towers provide perching and nesting habitat for corvids and raptors in high can cause additional predation on songbirds, reptiles, and small mammals in the vicinity. The EIR fails to address this impact and provide mitigation measures to reduce these impacts.

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The Wildlands Conservancy has protected over 1,250 square miles of open space land and manages more than 300 square miles of land through California. We have been involved in extensive projects involving the restoration of deserts, wetlands, rivers, forests, and other sensitive wildlife habitats. Because of this extensive work involving the restoration of a wide variety of habitats, we have become experts in analyzing effective versus ineffective restoration of damaged habitats. Protecting local plant communities are vital to preserving the biodiversity of the region. Mitigation Measure AES-2 does not address that revegetation efforts must be done using local, native plants sourced from locally collected seeds. Bringing in plants from other regions can be disastrous to the local plant communities; especially the rare, endemic plants found only on Pisgah Peak ridge and surrounding areas.

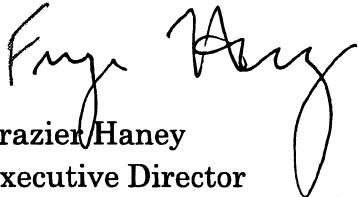
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The Wildlands Conservancy continues to oppose the Lazer Radio Tower project alongside the thousands of residents, tourists, the City of Yucaipa, Yucaipa Valley Conservancy, and the Citizens for the Preservation of Rural Living.

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Sincerely,



Frazier Haney
Executive Director

Cc: Supervisor Dawn Rowe, Third District - County of San Bernardino
Citizens of the Preservation of Rural Living

Letter 3

From: [Duron, Heidi - LUS](#)
To: [Cheryl Tubbs](#); [Charity Schiller](#); [Natalie Patty](#)
Cc: [Rahhal, Terri](#); [Brizzee, Bart](#)
Subject: FW: Lazer Broadcasting tower
Date: Thursday, January 7, 2021 8:37:22 AM

From: DeDe Chudy <dedechudy@yahoo.com>
Sent: Thursday, January 7, 2021 7:14 AM
To: Duron, Heidi - LUS <Heidi.Duron@lus.sbcounty.gov>
Subject: FW: Lazer Broadcasting tower

Dear Heidi Duron,

I am writing on behalf of the Yucaipa Valley Conservancy in our opposition to the Lazer tower proposed for the ridge above Wildwood Canyon State Park. | 1

The recirculated portions of Lazer's EIR leave a lot to be studied. The soil displacement, the trucks driving up during construction and for maintenance of site, noise from the construction, stating that these are less than significant is wrong. This will leave a scar on the land and set a precedent for others to develop the same area with more poles. This will leave a larger scar on the land that will be very significant! Our cultural resource of unhindered views can not be brought back. | 2

We oppose this review and the building of the tower in any form. There are other areas available for them to build as has been proposed in passed reviews. | 3

DeDe Chudy
President
Yucaipa Valley Conservancy
10211 Bryant Outer Hwy
Yucaipa, CA 9299
Email: info@YucaipaValleyConservancy.org
Website: YucaipaValleyConservancy.org

Sent from [Mail](#) for Windows 10

Total Control Panel

[Login](#)

To: cheryl@lilburncorp.com [Remove this sender from my allow list](#)

From:
heidi.duron@lus.sbcounty.gov

You received this message because the sender is on your allow list.

LAW OFFICES OF

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January 7, 2021

S2197-007

Heidi Duron, Planning Director
San Bernardino County
Land Use Services Department
385 N. Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0182

**RE: Project No. P201000215/CF – Lazer Radio Tower Application
Lazer Parcel - APN 0325-011-19-0000
Recirculated Portions of EIR (SCH No. 2008041082)**

Dear Planning Staff:

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

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As you know, we submitted a comment letter on the Project’s Draft Environmental Impact Report (“DEIR”) on July 21, 2016, noting several aspects of the DEIR that were inadequate. We now have reviewed the Recirculated Portions of the Environmental Impact Report, which was recirculated pursuant to order of the San Bernardino Superior Court of California which found various aspects of the EIR previously approved by County as inadequate and in violation of the California Environmental Quality Act (CEQA). As detailed below, the Recirculated EIR fails to cure the deficiencies in the FEIR, is inadequate and does not comply with the requirements of CEQA.

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Please enter these comments in the official administrative record for this Project, and keep us notified of any proceedings related to the Project’s and the Recirculated EIR’s consideration by the County. Please note that we reserve the right to supplement these comments, particularly

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should any additional information be submitted by the applicant related to the Project or additional analysis prepared by the County. **3 Cont.**

1. Final Judgment by Superior Court.

In its final judgment, the court held as follows:

“The Final EIR failed as an informational document because it misled the public by including statements to the effect that, as a result of the prior writ proceedings and the issuance of the January 7, 2014 Peremptory Writ (“Original Peremptory Writ”), particular issues were either adjudicated or considered waived, and that the scope of the Final EIR and its review were limited to four topics: aesthetics, land use, hazards (fire safety), and recreation.” [Bold Added]

The court further found that the Final EIR failed as an informational document with respect to cultural resources. As a result of these holdings, the Recirculated EIR should consider all significant impacts to the environment, including issues previously raised by CPRL and ignored by County as having been waived or limited by the courts prior judgment. **4**

As a result of this holding, the EIR must address all significant impacts on the environment. That includes a full and complete analysis of Indian cultural resources, biological impacts of the one-mile extension of Pisgah Peak Road, and the erosion and geotechnical impacts of constructing an underground electric extension along the one mile Pisgah Peak Road.

2. Significant and Unavoidable Aesthetic Impacts of Tower Project.

Since 2008, Lazer and its consultants have consistently claimed that construction of the proposed radio tower would not have a significant adverse impact on aesthetics, or pristine vistas from the Park. CPRL has consistently provided evidence to the contrary; namely, that the Project will have significant and unavoidable impacts on the view shed from the Park. In the FEIR, the consultants for the County and Lazer continue to take the position that the tower will not have a significant impact on the environment, yet the FEIR still concludes in the end that the aesthetic impact will be significant and unavoidable. Therefore, in order to approve the Project, the Board of Supervisors (“BOS”) would be required to adopt a Statement of Overriding Considerations under CEQA. **5**

The finding of significant and unavoidable aesthetic impacts not only impacts the CEQA analysis, but also provides the context in which the BOS makes the discretionary determination as to whether it should grant a Conditional Use Permit (CUP), and also in making the determination as to whether the Project is consistent with the goals and objectives of the Oak Glen Community Plan (“OGCP”).

A more comprehensive discussion of inconsistency with the Community Plan Goals and Objectives is set forth in our July 21, 2016 letter. But it is worth revisiting the goals and objectives of the Community Plan in light of the County’s conclusion that the Project will have unavoidable adverse impacts on aesthetics.

The introduction to the OGCP, OG I .3, Community Character (Page 12) provides a discussion of the importance of the rural character of the Oak Glen area. The introduction includes the following discussions, which must inform the BOS' decision as to the appropriateness of this Project for the community:

“A primary concern is the preservation of the rural agricultural character of Oak Glen. The...abundant open-space and wildlife are valued highly by residence as well as by visitors who frequent the area.”

“Maintain the elements that contribute to the area’s rural character and lifestyle; natural resources, **scenic vistas**, open space and agricultural.” [Bold Added]

“Consequently, residents of the Oak Glen community suggest that the primary land-use concern in the Oak Glen community is that the rural agricultural character of the community is preserved by creating standards for development and **limiting land uses, particularly the type of commercial land uses, to those compatible with the character they wish to sustain.**”[Bold added]

This last quote from the OGCP specifically references limiting land uses of a commercial nature to those which are compatible with the rural nature of the community that the residents of Oak Glen desire to maintain; therefore, the policy should lead to the decision to prohibit a commercial land-use in an area immediately adjacent to the Park because an industrial-type facility, including a tower and antenna, equipment building and fencing, simply is not compatible with the Park and the adjacent open-space Conservancy areas. Consequently, the BOS cannot make the necessary finding to overcome the significant and unavoidable impacts to aesthetics, because the Project is not consistent with the OGCP’s goals and objectives for the community’s rural character.

The Response to Comments makes the argument that the goals and objectives of the OGCP Plan relating to maintaining the rural and agricultural nature of the area was not intended to prevent construction of a radio tower because it is permitted under the applicable zoning designations with a conditional use permit. We agree that the goals and objectives of the OGCP do not constitute an absolute prohibition against construction of commercial or industrial facilities in areas in which they are a conditional use. Rather, the goals and objectives of the OGCP must be implemented on a case-by-case basis, taking into account the nature of the adjacent properties, as well as the impact of a project on those properties. In this case, a determination has been made by the County itself that the Project will have significant, adverse, unavoidable impacts on aesthetics. Given the fact that the Project is immediately adjacent to a state park, a highly sensitive land-use that is protected under the goals and objectives of the OGCP, the BOS should weigh those significant, adverse, unavoidable impacts and make a determination that this particular location is not appropriate for approval of a conditional use because of the adverse impacts on a sensitive land-use.

3. Failure of FEIR to Adequately Analyze One-mile Utility Extension.

One of the main defects of the FEIR is its failure to recognize the significance of an almost one-mile utility extension along Pisgah Peak Road that will provide electricity to the Project site. In the DEIR's Project Description, this one-mile extension is described in a single sentence. But the FEIR defends the lack of analysis by explaining that, because the utility extension will be along Pisgah Peak Road, which is a dirt road, there will be minimal impact on the environment. This response is both conclusory and dismissive—it has no factual basis and is not supported by substantial evidence.

The Recirculated EIR does not in any way cure this defect. In its Judgment, the court did not find that the EIR analysis of the one-mile utility extension violated CEQA, but also did not indicate that this issue should not be addressed by County. Rather, the court simply found (Judgment, p. 53) that CPRL did not adequately analyze the entire record relating to geotechnical impacts. The court held as follows:

“Petitioner does not discuss the geotechnical reports attached to the EIR and demonstrate deficiency with respect to consideration of erosion impacts. It is not this court’s burden to independently review the record to make up for Petitioner’s failure to carry its burden. (Tracy First v. City of Tracy (2009) 177 Cal. App. 4th 912, 934-935 (Tracey First).) The basis for Petitioner’s argument also is unclear given the DEIR discussion found a potentially significant impact with respect to soil erosion and implemented mitigation measures, which discussion included the off-site utility extension.”

The court’s ruling occurred because CPRL focused on other issues and did not use its limited briefing space to flesh out this issue. But that does not mean that, if fully explained and briefed to a court, the significant erosion impacts of the project will not be found by a court to be a failure of the EIR to adequately analyze these significant impacts on the environment.

A. Geotechnical Report

By way of background, the County did not require, as it should have, any geotechnical studies of the one-mile utility extension along Pisgah Peak Road. Thus, all of the FEIR’s conclusions relating to the one-mile utility extension were made without any studies or surveys of the utility extension. As a result, there is no substantial evidence in the record that supports any of the conclusions in the FEIR relating to soils and geologic impact of the one-mile utility extension.

At CPRL’s request, Helfrich-Associates (“Helfrich”), a reputable engineering and construction consulting firm, reviewed documentation regarding the Project, performed a survey of Pisgah Peak Road, documented the current level of erosion of the road, and analyzed the level of compaction required for the proposed one-mile utility trench. A copy of the geotechnical evaluation report (“Helfrich Report”) and the resume and qualification of Helfrich are enclosed with this letter. The following briefly highlights several FEIR errors identified in the Helfrich Report.

1. Two thresholds of significance for impacts on geology and soils would be exceeded: (a) Result in substantial soil erosion or the loss of topsoil; and (b) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. (CEQA Guidelines, Appendix G.) The approximate one-mile extension will result in substantial soil erosion and the digging of the trench will cause the roadbed to become unstable as a result of utility trench construction.

2. The method of construction described in the FEIR is not feasible¹. Dozers or other heavy equipment will be necessary to break up rock formations along Pisgah Peak Road. Hand-controlled compactors will be inadequate to compact the fill dirt within the utility trench to the necessary 90% compaction factor. In addition, fill dirt will be required to adequately compact the trench, resulting in the import of materials and export of unusable rock and other materials removed from the trench, which will require truck on- and off-haul that has not been analyzed.

Moreover, the Helfrich Report provides analysis of impacts on geology and soils and photographic documentation of the existing erosion of the utility alignment along Pisgah Peak Road, as follows:

- Significant surface erosion of the roadway and adjacent slopes was noted in many of the steeper portions of the roadway;
- Erosion channels crossing the roadway were over one foot in depth in certain specified areas and over two feet in depth in other specified areas;
- The worst erosion was found along the utility alignment occurred in fill soils at the outside edge of the road near the ridgeline. Portions of the road are nearly impassible with even four-wheel vehicles;
- For most of the utility alignment, large amounts of eroded materials washed down and off the road into adjacent natural gullies and canyons;
- Generally, erosion is a major concern that will need to be evaluated and mitigated;
- In the Northern half of the utility alignment, most of the utility trench will be excavated into existing, native soils, which have poor cohesion and already have experienced serious erosion damage. In these areas, the trench backfill will likely be more readily eroded than natural soil, because artificially compacted soil is often less consolidated than natural soils that have been in place for hundreds to thousands of years;
- All trench backfill must be adequately compacted to prevent settlement and increased erosion, with 90 percent compaction recommended. The smallest piece of equipment likely to be able to produce adequate and consistent compaction is a backhoe or tracked excavator with a compaction attachment.

¹ The Comments and Responses, state (pp. 3-7):
Approximately 25 days of construction over and eight-week period;
No use of heavy equipment on-site (IPE period dozers, loaders, or graders);
Trenching by small hand-controlled ditch digger, backfilled by hand and compacted by a hand-controlled compactor; no excess trenching material is expected;
Any construction -related impact would be minimal and cause no impact even temporarily.

The Helfrich Report's concludes: "The proposed utility trench will have significant impacts on the erosion of the existing road, and surrounding property. The proposed trench will exacerbate the existing erosion that has occurred in the road and has caused some parts of the road to be impassable using conventional four-wheel drive vehicles."

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The Recirculated EIR fails to remedy the failure of the FEIR to analyze the geotechnical impacts of the one-mile utility extension.

B. Biological Impact of Utility Extension.

With respect to biological impacts, the FEIR includes no analysis or meaningful data with respect to the impact on biological resources of the one-mile of trenching along Pisgah Peak Road. None of the biological surveys, including the most recent one prepared by Biological Assessment Services, dated August 17, 2015, ("BAS Report") surveys the biological impacts of the one-mile trench along Pisgah Peak Road.

In reviewing the BAS report, it is clear that the scope of work assigned to BAS did not include surveying fauna or flora along Pisgah Peak Road or adjacent parcels. Under the title "field surveys," the report states that "Ms. Kirtland surveyed 100% of the proposed tower area, access road, equipment shed and parking/turnaround area, documenting the biological resources and habitat conditions." Section 4.3 of the BAS report describes the areas which were subject to the biological survey, including the radio tower area, the equipment shed, the parking/turnaround site. It is clear that the almost one-mile length of Pisgah Peak Road, on which the trench for electrical service will be dug, was not included within the survey. In addition, the pictures included in the BAS Study only depict the areas subject to the biological survey, which fail to include the almost one-mile length of Pisgah Peak Road on which the trench will be constructed.

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Rather than conduct a biological survey of Pisgah Peak Road, the Response to Comments explains the source of information utilized to determine that there would be no biological impacts resulting from the one-mile trench, as follows (FEIR Page 3-3 and 3-9):

"Response to Comment 1-4: No protected species or their habitat were found during any surveys of the Project area (conducted in 2006, 2007, 2009, 2010, 2012, and 2015). Recent photographs (**including aeri**als) of Pisgah The Road were obtained in addition to field review of the Project Area. No permanent impacts to specific flora or fauna, or their habitat would occur." [Bold Added]

"Response to Comment 4 – 9; as discussed in Comment 4 – 7, the proposed Project will not require the widening of Pisgah Peak Road. **The entire length of Pisgah Peak Road is already disturbed and denuded of vegetation.** A review of recent photographs (**including aeri**als) of that road was conducted in addition to a field review of the Project area. The trenching for utility installation will be a **temporary impact with no native vegetation removal.** Backfilling of the trench will result in the return of the road to its pre—construction condition. No permanent impacts to flora or fauna, or their habitat would

occur. The commentator does not provide any evidence to support his assertion that biological resources would be impacted.” Page 3-9, FEIR, Response to Comment 4-9.” [Bold Added]

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Cont.

This response admits that the biological survey only included the Project area, which did not include Pisgah Peak Road. The County’s attempt to survey Pisgah Peak Road with aerial photographs (that are not provided as evidence in the FEIR) falls woefully short of the detail necessary to inform an adequate biological survey as to the potential impacts to fauna and flora on Pisgah Peak Road.

County Development code section 82.19.030 requires that a biologic report be prepared for the entire project area as well as adjacent impacted parcels as follows:

“(a) Report content. If a biotic resources report is required, it shall identify all biotic resources located on the site and those on adjacent parcels that could be impacted by the proposed development and the impacts on the area as a wildlife corridor. If another special report is required, it shall identify all resources that are sensitive and need protection. The report shall also identify mitigation measures designed to reduce or eliminate impacts to the identified resources, and shall be submitted along with the application for the proposed development.”

CPRL has pointed out this deficiency in the EIR from its original draft. The county continues to ignore its own development code section which requires that a biological report be prepared on adjacent parcels as well as those impacted by the proposed development. By definition, the one-mile extension of utilities is part of the definition of “project”, and parcels adjacent to the project site and Pisgah Peak Road are adjacent parcels that must be analyzed with a qualified biologic report pursuant to code section 82.19.030.

4. Land Use/ General Plan Inconsistency.

CPRL has consistently pointed out for years that the proposed tower is inconsistent with the County General Plan and the OGCP. The specific General Plan goals and policies, and the OGCP goals and policies relating to open space and scenic vistas are set forth in our July 21, 2016 letter (contained in the FEIR). Those discussions will not be repeated, but are incorporated herein by reference. In summary, those policies and goals are designed to minimize impacts on open space corridors, support and actively pursue the expansion of the Park in cooperation with other community conservation groups, protect linkage values, and preserve unique environmental features of Oak Glen, including native wildlife, vegetation and scenic vistas.

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5. Alternative sites.

CPRL has previously submitted the following analyses prepared by qualified FCC engineers: (1) Engineering Analysis & Statement dated January 2009 prepared by Klein Broadcast Engineering (“Klein Report”), and (2) Engineering Statement dated March 2011 prepared by De

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La Hunt Communication Services (De La Hunt Report"). Such reports are incorporated herein by this reference. Both of these engineers are highly qualified. De La Hunt worked for the FCC for many years in the department which made determinations as to whether or not proposed tower locations were compliant with FCC rules and regulations, including spacing and line of sight requirements. Both of these engineers concluded that a site in Beaumont, California (ASR #1263499) (Site 1) and a site located in Cherry Valley, California (ASR #1202850) (Site 2) qualified under all FCC rules and requirements.

In prior applications and hearings, Lazer, its engineers and attorneys have consistently taken the position that the proposed Oak Glen site, located adjacent to the Park, was the only site in the entire region that would satisfy both FCC requirements and Lazer's business objectives. Now, an engineering firm (Cavell Mertz and Associates, Inc.) has been hired to provide another engineering statement ("CMA Report").

The CMA Report includes a discussion of alternate sites, but makes a major error in its analysis. Rather than reviewing all possible sites that meet the FCC requirements for locating an FM radio tower, the CMA Report only analyzes sites for which there currently exist Antennae Structure Registrations ("ASR"). The ASR System is an online system that stores the location, height, marking and lighting, and other information on all antenna structures that are registered with the FCC.

The myopic focus on sites with only with ASR ignores a large portion of the area which could be analyzed as alternate sites. The approach also is inconsistent with the fact that the Project site, adjacent to the Park, was not an ASR at the time the property was identified and purchased by Lazer. Rather, Lazer did a complete analysis of sites within the "area to locate" and found a site that worked for them. Had they limited their search to sites with ASR as the CMA Report does, they would never have identified the Project site.

The Engineering Statement (Goldman Report) prepared by Goldman Engineering Management, LLC, dated July 20, 2016 (Goldman Report) and a second report dated March 6, 2018, have previously been submitted as a CPRL comment in connection with the July 21, 2016 letter. FCC engineer Bert Goldman has also analyzed the "area to locate" in which the FCC spacing and interference requirements are satisfied for the location of a radio tower. That area constitutes 36.3 mi.². Attached to this letter is a copy of Bert Goldman's power point presentation dated February 13, 2018, including a reverse shadow map which shows the areas in which FCC spacing rules would be satisfied that provide large areas within both Riverside County, as well as San Bernardino County, where the FM radio tower could be located.

Lazer has failed to analyze any of these areas, except the Project location and locations with an ASR. Failure to analyze alternate sites within the "area to locate" does not constitute a good faith attempt to find an alternative location in which FCC spacing rules, as well as Lazer's business goals, would be satisfied. Rather, Lazer has adopted the strategy of claiming that there is only one site "in the world" that works, namely the Project site immediately adjacent to the Park.

In connection with review of the FEIR, CPRL asked Goldman to conduct an additional review of potential alternative sites. Although there are many potential sites within the 36.3 sq km "area to locate", the following seven sites have been specifically identified by Goldman as sites that will comply with FCC spacing and interference rules:

<u>Alternate Site</u>	<u>Population Covered</u>
Yucaipa A	3,116,383
Yucaipa B	2,948,364
Yucaipa C	2,834,814
Calimesa A	2,763,052
Calimesa B	3,150,286
Beaumont	2,555,945
Gilman Hot Springs	1,727,699

In response to suggested alternatives that comply with FCC spacing and interference rules, the Response to Comments (page 3-12), responds as follows:

"Under Guidelines Section 15126.6 (f) (1), it is beyond the scope/jurisdiction of the County to weigh the merits and demerits of an alternate site/project that involves another jurisdiction's goals and policies."

This response is repeated several times to justify the County's refusal to consider alternative sites located within the County of Riverside. This is a fatal defect in the alternatives analysis because it fails to comply with California law. The County's position that CEQA Guidelines section 15126.6 (f) (1) categorically excludes alternatives in another jurisdiction in all circumstances does not accurately reflect the law.

CEQA Guidelines Section 15126.6 (f) (1) provides as follows:

"(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire,

control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).”

By its own terms, the cited rule states a “rule of reason”. The rule states that among the factors that may be taken into account are jurisdictional boundaries; however, the guideline also state that “projects with a regionally significant impact should consider the regional context”.

In California Environmental Quality Act, Stephen L Kostka and Michael H Zischke, §1532, jurisdictional boundaries, the authors provide as follows:

“The location of an alternative site beyond the territorial jurisdiction of the lead agency is a factor the lead agency may consider in determining whether the site is a feasible alternative. 14 Cal Code Regs §15126.6(f)(1). In *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 575, 276 CR 410, the court noted that an EIR need not undertake a review of alternatives “which cannot be reasonably realistically considered and successfully accomplished,” and held that a lead agency could properly find that a site was a feasible alternative when it was beyond its jurisdiction. 52 Cal 3d at 575. **The court also explained, however, that jurisdictional boundaries do not establish an ironclad limit on feasible off-site alternates, and are instead a factor to consider among others in assessing whether another site might be a feasible alternative.**” [Bold Added]

The purported rule cited by the County in the FEIR, that alternatives in another jurisdiction need not be considered, is incorrect. Under the above-cited guideline, CEQA establishes a rule of reason as to alternatives (including those in another jurisdiction) that should be considered. In this case, the County has completely ignored the fact that, pursuant to federal law, Lazer is required to provide service to the City of Hemet, which happens to be located in the County of Riverside. So, because of these FCC spacing and interference limitations (and contrary to the County’s position), most alternative sites would need to be located within the County of Riverside because 80% of the city of Hemet must be provided service pursuant to federal law. Therefore, in light of the FCC requirement, it is unreasonable and inappropriate to suggest that sites within the County of Riverside (where services are required by federal rule) are categorically excluded and need not be considered within the range of alternatives.

Another factor that comes into play is the regional nature of the Lazer tower. In *Banning Ranch Conservancy the City of Newport Beach (Newport Banning Ranch LLC, et al., Real Parties in Interest)* (2017) ___ Cal. 5th ___ (published March 30, 2017), the court addressed the issue of project alternatives in the context of a regionally significant project. In that case, the city of Newport Beach argued that it was not required to analyze environmentally sensitive habitat areas

because that was within the jurisdiction of the California Coastal Commission, citing CEQA Guideline §15126.6. On this issue, the Supreme Court ruled as follows:

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Cont.

“The Guidelines specifically call for consideration of related regulatory regimes, like the Coastal Act, when discussing project alternatives. An EIR must “describe a range of reasonable alternatives to the project,” or to its location, that would “feasibly attain” most of its basic objectives but “avoid or substantially lessen” its significant effects. (Guidelines, § 15126.6, subd. (a).) Among the factors relevant to the feasibility analysis are “other plans or regulatory limitations, [and] jurisdictional boundaries (**projects with a regionally significant impact should consider the regional context**).” (*Id.*, subd. (f)(1).) By definition, projects with substantial impacts in the coastal zone are regionally significant.” [Page 20 of Opinion] [**Bold Added**]

Decisions as to the feasibility of alternatives and mitigation measures are subject to a rule of reason. (*Goleta Valley, supra*, 52 Cal.3d at p. 565; *Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal.3d at p. 407 (*Laurel Heights I*); see Guidelines, § 15126.6, subd. (f)(1).) No one factor establishes a categorical limit on the scope of reasonably feasible alternatives to be discussed in an EIR. (*Goleta Valley*, at p. 566; Guidelines, § 15126.6, subd. (f).) Here, however, the City’s EIR omitted *any* analysis of the Coastal Act’s ESHA requirements. It did not discuss which areas might qualify as ESHA, or consider impacts on the two ESHA delineated in the Coastal Commission’s consent orders. As a result, the EIR did not meaningfully address feasible alternatives or mitigation measures.² Given the ample evidence that ESHA are present on Banning Ranch, the decision to forego discussion of these topics cannot be considered reasonable. [Pages 20, 21 of opinion]

[W]here comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*” (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842; accord, *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 (*Concerned Citizens*)). Rather than sweep disagreements under the rug, the City must fairly present them in its EIR. [Page 25 of opinion]

The Project clearly is regional in nature. The radio tower will reach broad areas within the counties of San Bernardino and Riverside County and possibly Los Angeles County, as well. While the proposed tower is located in San Bernardino County, the community of service technically is the City of Hemet in the County of Riverside. The technical rules governing where

the tower can be located (including spacing and interference rules) are adopted by the FCC. The rule of reason set forth in CEQA Guideline §15126 can only be interpreted as requiring that the Project's alternatives analysis include feasible locations within the County of Riverside. The County fails to do that and, in fact, takes the contrary position that there is an ironclad (yet unspecified) rule that it has no obligation to do so. As a consequence, the County's alternatives analysis is fatally defective because the DEIR and the FEIR fail to analyze feasible, FCC compliant alternatives suggested by CPRL (through the three engineering statements submitted), which are located in the County of Riverside.

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5. Historic/Archeological/Paleontological Impacts.

CPRL retained David Earle ("Earle") for the purpose of conducting a study of Indian history and cultural resources located in the Wildwood Canyon area. Earle is an ethnographer in the Department of Anthropology at Antelope Valley College, who has spent decades studying Indian history in Southern California, as well as other areas of the country.

Earle completed a study entitled "Preliminary Report on Wildwood Canyon Region Ethnographic Research ("Earle Study"). A summary of the findings is set forth below:

- A. Wildwood Canyon is a "cultural landscape" as defined by the National Park Service and the Advisory Council on Historic Preservation;
- B. Native settlements occurred in the Pisgah Peak mountain and Wildwood Canyon areas.
- C. Springs fed by water flow from upslope areas were an important factor in native settlement of the Wildwood Canyon Region; such springs were considered sacred by the local Indian tribes;
- D. Trails were an important element of the native cultural landscape. Sources suggest that the trail ascended Water Canyon and then across the Ridge to the north to connect with the West End of Potato Canyon. Native trails often featured shrines (conical mounds of stone) that were gifts to the supernatural).
- E. Santos Manuel and John Harrington visited Wildwood Canyon in 1918. Santos Manuel identified this as an area where were bears (humans that were grizzly bears in form) were found.
- F. The mountain ridge bounding Water Canyon on the west was recalled by Santos Manuel as being called Ahenemenat. He noted that the name was derived from the Serrano term for Eagle indicating the potential religious aspect of the area.

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The County has failed to study in any way the important Indian history associated with Wildwood Canyon and the surrounding hillsides as part of the Cultural Resources analysis in the FEIR and DEIR. The Rincon study does not in any way cure that deficiency. The Earle Study shows that there was an Indian village immediately adjacent to the Project site, which requires further evaluation under CEQA. Therefore, the Recirculated EIR fails to properly analyze the

impact of a radio tower visible to the immediately adjacent areas where there were Indian villages and significant findings of religious and daily activities by local Indian tribes.

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The Recirculated EIR states that County has retained Rincon Consultants, Inc. ("Rincon"). Rincon prepared a report dated October 14, 2020. The report included a study of various data bases, which Rincon reports indicated an absence of records showing cultural resources. However, with respect to the sacred lands file search, the response specifically states that "the absence of site-specific information in the SLF does not indicate the absence of cultural resources in any project area."

As explained above, CPRL did extensive study as to the cultural resources in the Wildwood Canyon area, including the project site. Those studies were prepared by David Earle, an expert who did extensive research into the writings of historic ethnographer John Peabody Harrington. The Rincon report basically states that they had access only to Harrington notes in their original handwritten format, which they indicate are "outside the scope of this study" and Rincon was unable to verify whether the spiritual significance of the Wildwood Canyon area is discussed elsewhere in the notes. Rincon comes to this conclusion despite the fact that several local Indian tribes, including the San Manuel Band of Indians, sent letters confirming the conclusions by David Earle.

Rincon did not contact David Earle. As a result, the Rincon report in no way invalidates or even submits evidence inconsistent with the conclusions in the David Earle reports. Instead, the Rincon report simply states that the Harrington notes were outside the scope of their report and they find no other third-party verifications of the conclusions by David Earle. In essence, Rincon did not spend the time or effort to study this issue and comes to the conclusion that there are no significant cultural resources because they are not listed in various data bases utilized by Rincon. Rincon does nothing more than report that there are no other third-party reports available from available data search websites.

Page 6 of the Rincon report states as follows:

"Thus, Rincon's analysis is based on existing data that does not include a formal concurrence of the cultural landscape, and compliance with CEQA, lead agencies are required to engage in public outreach with interested parties for each project. **Therefore, Rincon assumes the lead agency and any interested parties including representatives from Native American Groups will engage in discussions to determine if significant impacts would occur to traditional cultural properties including cultural landscapes.**" [BOLD ADDED]

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There is no indication whatsoever in the Recirculated EIR that the county reached out to Native American groups and engaged in the discussion that Rincon's cultural study assumes will occur. This is a major defect in the study, admitted by the county's own consultant.

6. **Recirculated EIR is Inadequate Under CEQA and Must Be Rejected.**

For the reasons stated above, the Recirculated EIR is inadequate under CEQA for its failure to properly analyze all of the Project's potentially adverse impacts to the environment. These defects in the environmental analysis also render the County's CEQA Findings and Statement of Overriding Considerations fatally flawed, as well.

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We at CPRL appreciate your consideration, and reserve all of our rights. We ask that the BOS reject this ill-advised Project once and for all.

Please feel free to call me with any questions or comments you may have.

Very truly yours,

MIRAU, EDWARDS, CANNON,
LEWIN & TOOKE

By:


John K. Mirau, Esq.

Cc w/out Encl: Board of Supervisors

Letter 5

From: Duron, Heidi - LUS
To: Cheryl Tubbs; Natalie Patty; Charity Schiller; Amanda Daams; Brizzee, Bart; Rahhal, Terri
Subject: FW: Lazar Tower
Date: Friday, January 8, 2021 3:52:09 PM

-----Original Message-----

From: Kristine Mohler <kkmohlermom@msn.com>
Sent: Friday, January 8, 2021 3:46 PM
To: Duron, Heidi - LUS <Heidi.Duron@lus.sbcounty.gov>
Subject: Lazar Tower

To SB Board of Supervisors,

My name is Kristine Mohler, I am the Chairman of Yucaipa's Trail and Open Space committee for years. Please trust me when I say that I am 100% positive that the tower is this location is WRONG!!

I am OPPOSED to the Lazar Tower Project!

This has been a on going mess for over 15 years.

The Supervisor Court ruling required a full EIR, nothing had changed.

The fact that Cultural resources have been completely overlooked is just one reason to insist on a NEW full EIR.

Yucaipa has changed since the Lazar Tower first proposed their monstrous tower.

We are in the process of receiving a viticulture designation, as well as a Mt. Bike Course very near this tower.

No! Heck No!! Please do not ruin the most pristine and gorgeous vista in Yucaipa and California's newest State Park!

Kristine Mohler
R. E. Broker
BRE # 00985170
909.648.5897
kkmohlermom@msn.com

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Letter 6

From: Duron, Heidi - LUS
To: Cheryl Tubbs; Charity Schiller; Natalie Patty; Amanda Daams; Brizzee, Bart; Rahhal, Terri
Subject: FW: Laser Broadcasting EIR (recirculated portions)
Date: Friday, January 8, 2021 4:22:15 PM

-----Original Message-----

From: Kathy Barton <kathybarton71@yahoo.com>
Sent: Friday, January 8, 2021 4:19 PM
To: Duron, Heidi - LUS <Heidi.Duron@lus.sbcounty.gov>
Subject: Laser Broadcasting EIR (recirculated portions)

Thank you for the opportunity to comment on the recirculated portions of the EIR for this proposed project.

In my opinion, the section on cultural resources does not adequately address the presence or lack of presence of Native American cultural resources on and near the proposed site. The entire Wildwood Canyon area is well established as a traditional site for the Serrano Indians. I strongly feel that the environmental assessment should include review of the 1918 notes of J.P. Harrington to ascertain the spiritual significance of the area. Additional effort should be undertaken to contact the UC Davis Department of Native American Studies for review of the digital archives of these notes before the EIR is considered complete. 1

While not part of the recirculated portions of the EIR, I have grave concerns about the fire hazard associated with any development in the Pisgah Peak area and therefore oppose the project on this basis. We were reminded this summer of the fire danger in the area of Wildwood Canyon. The Apple Fire and El Dorado Fire both threatened Wildwood Canyon, which remains at significant risk. This area is home to a large stand of coast live oaks, many of which are several centuries old. This area is prized by conservationists and recreational trail users. It is imperative this unique resource be preserved. 2

Thank you,
Kathy Barton
36876 Oak View Rd., Yucaipa, CA 92399
951-202-4638

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