

I. RESPONSES TO COMMENTS ON RECIRCULATED PORTIONS OF FEIR

The following presents written comments received pursuant to public review of the Recirculated Portions of the Lazer Broadcasting Facility Environmental Impact Report (EIR) and provides responses to those comments consistent with California Code of Regulations, title 14 (hereinafter, “CEQA Guidelines”) Sections 15089, 15132, and 15088.5. The document was circulated for public review between November 24, 2020 and January 8, 2021.

A total of six individuals and groups provided comments on the Recirculated Portions of the EIR, recirculated by the County of San Bernardino pursuant to the July 31, 2019 Ruling on Petition for Writ of Mandate, November 13, 2019 Determination re Peremptory Writ Remedies and Clarification of Ruling, and January 10, 2020 Judgment (collectively, “2020 Judgment”). In accordance with the 2020 Judgment, the County’s written responses are intended to provide a good faith, reasoned analysis of all environmental issues raised and cite to specific factual and legal support for the Recirculated Portions of the EIR’s conclusions.

The correspondence received is listed in Table 1 and are identified by a number. Individual comments within each letter are identified with a unique numeric indicator. For example, the comment letter from the Rincon Band of Luiseno Indians, is Letter 1; the letter contains three comments identified as comments 1-1 through 1-3; responses are respectively numbered Response 1-1 through Response 1-3. Commenter correspondence and correlating responses are presented subsequently. All comment letters are provided in their original form, without grammatical or typographical correction.

**Table 1
COMMENT LETTERS RECEIVED**

Letter No.	Letter Date	Author	Type
1	December 10, 2020	Rincon Band of Luiseno Indians	1-page letter
2	January 7, 2021	The Wildlands Conservancy	4-page Letter
3	January 7, 2021	Yucaipa Valley Conservancy	1-page email
4	January 7, 2021	Law Offices of Mirau, Edwards, Cannon, Lewin & Tooke, LLP representing Citizens for the Preservation of Rural Living	14-page letter with 3 attachments
5	January 8, 2021	Kristine Mohler	1-page email
6	January 8, 2021	Kathy Barton	1-page email

Letter 1

Rincon Band of Luiseño Indians, December 10, 2020

Response to Comment 1-1: This is an introductory comment. No comment on the Recirculated Portions of the EIR is made and no response is required.

Response to Comment 1-2: The Tribal Historic Preservation Officer indicates that the Project Site is not within the Band's specific Area of Historic Interest and recommends that a Tribe more closely tied be contacted. In addition to providing notice to the Native American Heritage Commission which distributed the Notice of Availability of the Recirculated Portions of the EIR, the County directly provided the Notice of Availability of the Recirculated Portions of the EIR to the San Manuel Band of Mission Indians, Morongo Band of Mission Indians, Cahuilla Band of Indians, and the Sycuan Band of the Kumeyaay Nation. No comments on the Recirculated Portions of the EIR were received from any other Tribe. No comment on the Recirculated Portions of the EIR is made and no further response is required.

Response to Comment 1-3: This is a conclusory comment. No comment on the Recirculated Portions of the EIR is made and no further response is required.

Letter 2**The Wildlands Conservancy, January 7, 2021**

Response to Comment 2-1: This is an introductory comment describing the Commenter and its mission. No comments on the Recirculated Portions of the EIR are provided and no further response is required.

Response to Comment 2-2: Commenter expresses its interest in the Project and expresses general opposition, but does not provide a comment on the Recirculated Portions of the EIR and therefore no response is required.

Response to Comment 2-3: Land use issues, including the project's compatibility with surrounding open spaces of Wildwood Canyon State Park and other nearby properties was presented in the 2016 Draft EIR, on pages 4.5-9 through 4.5-13. Please also refer to Response to Comment 3-2 in the 2017 Final EIR. The Draft EIR confirmed that, upon approval of a CUP, the Proposed Project would be consistent with the County's General Plan and Oak Glen Community Plan Land Use and Zoning designations and the Policies and Guidelines within the General Plan and Oak Glen Community Plan, and therefore would not represent a conflict. This is because radio communication facilities are *already* an allowed use under the County's General Plan and land use guidance, provided that a CUP is obtained. (2016 Draft EIR p. 4.5-2.) Further, to ensure that development of the site does not prevent the expansion of the Park to include Pisgah Peak, the Project Proponent shall be required to deed restrict the unused portion of the 38.12-acre Project Site for passive use by visitors to the Wildwood Canyon State Park. This deed restriction is required in Mitigation Measure LU-1.

Additionally, since 2011, the Proposed Project has been redesigned, with a substantial reduction in the scale and design of the antenna; it has been reduced from a 140-foot tall steel lattice tower to the currently proposed 43-foot tall monopole. The size of the Project monopole/equipment shed would also be restricted to a 425 square-foot portion of a larger 38.12-acre site, and utilities, including the installation of 6,700 linear feet of electric line, would be placed within the existing Pisgah Peak Road. The Project includes constructing the equipment building so that a portion of the structure is concealed within the hillside; working with the natural features of the Project Site to preserve the terrain and character. The monopole is proposed below the ridgeline and at a scale that would minimize to the extent possible, impacts to adjacent open space areas. Access to the site would be from Pisgah Peak Road, no additional roadways are proposed. Access to the monopole would be limited to a foot path only.

The 2020 Judgment found that rescission of Project approvals and decertification of the entire Final EIR was unnecessary, although the Court did "suspend" the approvals pending the County's compliance with the Court's direction. As land use impacts were previously analyzed in the 2016 Draft and 2017 Final EIR and were not found inadequate by the Court, land use was not one of the topics that the Court required be included in the Recirculated Portions of the EIR.

Response to Comment 2-4: Please see Response to Comment 2-3, above regarding land use compatibility. The comment provides the Commenter's opinion as to the purpose of the Project as well as the reasons for public comments. The Commenter does not provide a comment on the

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Recirculated Portions of the EIR nor raise a CEQA-related issue and no further response is required. It should also be noted that the purpose of the Project includes the provision of improved service to the Spanish-speaking community and to provide an additional means of reaching both the Spanish- and English-speaking communities via the emergency broadcast system. (E.g., 2016 Draft EIR p. 3-1; 2020 Recirculated EIR p. 1-1.).

Response to Comment 2-5: Please refer to Response to Comment 3-3 in the 2017 Final EIR, and to Response to Comment 2-3, above, regarding other reasons for the County’s conclusions that the Project is consistent with land use plans for the area. Relating to comments about the possible expansion of the State Park, the County disagrees that the Project limits the opportunity for expansion, and, in fact, results, by way of the deed restriction required by Mitigation Measure LU-1, in additional passive use of the remainder of the Project Site. At the present time, without the Project, the property is privately-owned and is not available to Park users.

The 2020 Judgment found that rescission of Project approvals and decertification of the entire Final EIR was unnecessary, although the Court did “suspend” the approvals pending the County’s compliance with the Court’s direction. As land use impacts were previously analyzed in the 2017 EIR and the analysis was not found inadequate by the Court, land use was not one of the topics included in the Recirculated Portions of the EIR.

Response to Comment 2-6: Regarding radio frequency (RF) electronic fields, please refer to Responses to Comment 3-3 in the Final EIR. Regarding the asserted “potentially dangerous” emissions from radio frequency (RF) electronic fields, and the FCC rule related to fencing properties with RF towers. The Project includes the installation of a fence around the area to be determined by FCC testing to be appropriate for eliminating non-compliant RF exposure to the public. The exact placement of the fencing will be in accordance with FCC regulations developed for the protection from any RF emissions and included on the final site plan submitted for County approval. In addition, “Radio Frequency Emissions” signs would be posted on the fence. Therefore, any “danger” of Park trail users inadvertently coming onto the area of the property that may have RF emissions would be eliminated. As provided in the Project Description in the DEIR (see Figure 1-3), “Signage” and “Security Fencing” will be installed per FCC regulations as may be required to address any possible RF conditions.

In development of the Project design, the Applicant contracted with firms with extensive expertise in radio communication facilities to ensure compliance with FCC regulations. None of these experts expressed any concern whatsoever about dangerous RF exposure to humans or to wildlife species (such as birds) being possible from the proposed Project.

There are FCC rules and regulations regarding protection of the public from possible RF radiation exposure. The failure to comply with these regulations would result in a denial of a permit from the FCC. The fact that the FCC issued a permit is clear indication that compliance with FCC rules has been accomplished.

Biological resource issues were analyzed in the 2016 Draft EIR. Regarding the effect of RF emissions on bird species migrating on the Pacific Flyway, this issue has not previously been made a part of the record for the Proposed Project and the commenter provides no data source or

substantial evidence to support this statement. (See State Guidelines 15384 [substantial evidence does not include argument, speculation, or unsubstantiated opinion].) The Superior Court found no fault with the analysis of impacts to biological resources and did not require further analysis. Accordingly, biological resources was not one of the topics included in the Recirculated Portions of the EIR.

Response to Comment 2-7: Regarding the potential use of the monopole for corvid and raptors perching and nesting habitat leading to additional predations on songbirds, reptiles, and small mammals, this issue has not previously been made a part of the record for the Proposed Project. The commenter provides no data source to support this statement. (See State Guidelines 15384 [substantial evidence does not include argument, speculation, or unsubstantiated opinion].) Further, even if the commenter is correct that the monopole improves corvid and raptor and perching opportunities, the commenter provides no evidence that any lizard or bird “prey” species are special status species, nor any evidence that such predation would rise to the level of a potentially significant impact. Biological resource issues were analyzed in the 2016 Draft EIR at Section 4.2 and through the four biological reports included as Appendices F-1 through F-4. That substantial evidence confirmed that species on and around the Project site were common species; that there was very little vegetation or ground cover suitable for nesting of smaller birds; and that the mitigation measures imposed for biology would reduce any potential biological impacts to species to less than significant levels. The Superior Court found no fault with the analysis of impacts to biological resources and did not require further analysis. Accordingly, biological resources was not one of the topics included in the Recirculated Portions of the EIR.

Response to Comment 2-8: The comment describes Commenter’s experience, but does not raise issues related to the Recirculated Portions of the EIR. No response is required as the comment is not environmental issue-related.

Response to Comment 2-9: The commenter provides no substantial evidence in support of its assertions that revegetation may cause biological impacts. (See State Guidelines 15384 [substantial evidence does not include argument, speculation, or unsubstantiated opinion].) Please refer to Responses to Comments 3-4 and 6-2 in the 2017 Final EIR. The Project design seeks to minimize impacts to existing vegetation while providing for facility installation and the required fuel modification area. The fuel modification area will require regular maintenance to deter vegetation growth, and that maintenance is required by County Fire. Mitigation Measure AES-2 and Conditions of Approval 51 and 67 require that portions of the Project Site that are currently disturbed and that may be disturbed during site construction shall be revegetated at the direction of a County-approved biologist. Section 83.10.080 of the San Bernardino County Development Code and the County’s standard practice is to require the use of locally-sourced plant species native to the site as is feasible based on availability.

The Superior Court found no fault with the analysis of impacts to biological resources and did not require further analysis. Accordingly, biological resources was not one of the topics included in the Recirculated Portions of the EIR.

Response to Comment 2-10: The comment provides conclusory remarks. No further response is required.

Letter 3

**DeDe Chudy, President
Yucaipa Valley Conservancy**

Response to Comment 3-1: This is an introductory comment describing the Commenter’s position regarding the Proposed Project. No comments on the Recirculated Portions of the EIR are provided and no further response is required.

Response to Comment 3-2: The commenter gives their opinions regarding the significance conclusions related to Project construction. The commenter provides no substantial evidence in support of the assertions, nor does the commenter identify what soil displacement, construction truck, or noise issues the commenter believes were insufficiently analyzed. (See State Guidelines 15384 [substantial evidence does not include argument, speculation, or unsubstantiated opinion].) Accordingly, a further response is not required or possible. (CEQA Guidelines Section 15003(i), 15151; *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862: “where a general comment is made, a general response is sufficient”.)

However, the County should summarize that soils are expected to balance across the site, and that the Recirculated Portions of the EIR fully analyzed construction impacts. As discussed on pages 1-5 through 1-10 and more specifically identified on pages 1-8 and 1-9, the emission calculations for the construction phase of the Project included impacts from worker vehicles and the use of the helicopter. Construction emissions were calculated to be far below South Coast Air Quality Management District (SCAQMD) daily significance threshold standards and therefore would not expose sensitive receptors to substantial pollution concentrations. The Recirculated Portions of the EIR also re-analyzed construction noise at pages 1-31 through 1-35. Construction of the Project may potentially create some elevated short-term construction noise impacts during use of a helicopter for material delivery, worker vehicles traveling to the site, and use of manual tools. However, there are no sensitive receptors within the immediate vicinity of the Project Site, and due to the existing terrain, a limited number of worker vehicles would have access to the Project Site. Construction noise is short-term and all construction activities would occur during the allowable times as described by Section 83.01.080(g)(3) of the San Bernardino Development Code. Additionally, please also refer to Response to Comment 7-30 in the 2017 Final EIR. The precise number of workers could vary somewhat from day-to-day, however, it is obvious from the minor activities required for completion of the Project that heavy equipment will not be used, either for transportation or construction. The roadway will not be burdened with large trucks or equipment, nor will there be truck routes established through neighborhoods. As set forth in the Recirculated Portions of the EIR as well as in the 2017 Final EIR, any construction-related impacts would be minimal and result in less than significant impacts.

Regarding the commenter’s assertion that the Project will “scar the land” and impact viewsheds and the “cultural resource of unhindered views,” please refer to Response to Comment 4-3 in the 2017 Final EIR and to the analysis in Section 4.1 of the 2016 Draft EIR. The County has utilized all three of the available and different federal agency-published methodologies to review and assess the visual impact of the Project. In each case, using the published methodologies, the visual impacts of the proposed Project was determined to be less than significant. In an abundance of

caution, however, the conclusion of the 2016 DEIR is that the controversy and public testimony in opposition to the Project may lead to a final determination of “significance”. The analysis within the EIR, addressed the site with a baseline of “pre-pole conditions” at a time when the entire Project Site remained undisturbed. Field notes within the earlier Visual Assessments did not use this baseline. Please also see pages 1-12 through 1-16 of the Recirculated EIR, which found no evidence of the site being part of a cultural landscape. The 2020 Judgment did not require further evaluation of aesthetics issues.

Response to Comment 3-3: Please refer to Response to Comment 4-4 in the 2017 Final EIR, to Chapter 6 of the 2017 Final EIR; and Response to Comment 4-10 below, regarding the analysis of alternatives. To summarize, the County hired a third-party independent expert in FCC regulations to review the previously prepared reports submitted by both the Applicant and commenters opposed to the Project. The 2016 DEIR conclusions related to the alternative sites were based on the peer review conducted by the County’s independent consultant. The County was also presented with extensive supplemental analysis during the public hearing process that reviewed and rejected a number of other potential alternative sites for the Project. The number of alternative sites selected for evaluation were limited by a number of siting criteria. Additionally, under Guidelines Section 15126.6(f)(1), it is beyond the scope/jurisdiction of the County of San Bernardino to weigh the merits and demerits of an alternative site/project that requires another jurisdiction’s approvals and the interpretation of another jurisdiction’s goals and policies. Ultimately, no feasible alternative location was identified for this Project. The 2020 Judgment did not require further evaluation of alternatives.

Letter 4

**Mirau, Edwards, Cannon, Lewin & Tooke, LLP, representing
Citizens for the Preservation of Rural Living
January 7, 20201**

Response to Comment 4-1: This is an introductory comment. No comments on the Recirculated Portions of the EIR are provided and no further response is required.

Response to Comment 4-2: This is an introductory comment describing the context of comments that follow and presenting the Commenter's legal opinion regarding the County's CEQA process. The County disagrees that its Recirculated EIR is inadequate, and responses to Commenter's specific points are provided in the individual responses below.

Response to Comment 4-3: Comments will be entered into County's official administrative record for the Project. No comments on the Recirculated Portions of the EIR are provided and no further response is required.

Response to Comment 4-4: This comment summarizes the 2020 Judgment and provides the Commenter's opinion of what the Recirculated Portions of the EIR should contain. No comments on the specific language of the Recirculated Portions of the EIR are provided and no further response is required.

Additionally, and contrary to the Commenter's assertion, the County notes that the 2020 Judgment did not find that the County erred in its analysis of geotechnical or biological issues, and did not require the County to effectively start from scratch with regard to CEQA. To the contrary, the 2020 Judgment states:

- "Revisions and/or recirculation of the discussion of Geology and Soils found in Section 4.3 of the Final EIR is *not* required because no remedial action to correct any deficiency in the Geology and Soils discussion was found necessary." (Judgment at 3:17-19, emphasis added.)
- "Again, Petitioner does not discuss or cite to the biological reports and demonstrate deficiencies in them. Therefore, Petitioner has not met its burden on this issue." (July 2019 Ruling at 57: 2-3, rejecting biological arguments.)
- "Therefore, the preemptory writ should provide for partial decertification of the EIR and the County should void certification of the EIR with respect to the discussion regarding Agricultural and Forestry Resources, Air Quality, Cultural Resources, Greenhouse Gases, Hydrology and Water Quality, Mineral Resources, Noise, Population/Housing, Public Services, Transportation/Traffic, and Utilities and Service Systems." (Judgment at 6:9-14.)
- "All other portions of the EIR for which the writ petition was denied, including Geology and Soils, are not affected." (Judgment at 9:25-26.)

Further, the County has not "ignored" any environmental issues. Nonetheless, the County responds to the commenter on each of its specific comments, below.

Response to Comment 4-5: This comment restates the Commenter’s position that aesthetic impacts resulting from the Project are significant and unavoidable and that the Project is not consistent with the applicable land use plans.

The 2020 Judgment found that rescission of Project approvals and decertification of the entire Final EIR was unnecessary, although the Court did “suspend” the approvals pending the County’s compliance with the Court’s direction. As aesthetics impacts and land use impacts were previously analyzed in the Draft and Final EIR and were not found inadequate by the Court, aesthetics and land use were not topics that the Court required be included in the Recirculated Portions of the EIR.

Nonetheless, and regarding the commenter’s statements concerning aesthetics, please refer to Response to Comment 4-3 in the 2017 Final EIR and to the analysis in Section 4.1 of the 2016 Draft EIR. The County has utilized all three of the available and different federal agency-published methodologies to review and assess the visual impact of the Project. In each case, using the published methodologies, the visual impacts of the proposed Project was determined to be less than significant. In an abundance of caution, however, the conclusion of the 2016 DEIR is that the controversy and public testimony in opposition to the Project may lead to a final determination of “significance”. The analysis within the EIR, addressed the site with a baseline of “pre-pole conditions” at a time when the entire Project Site remained undisturbed.

Regarding the commenter’s statements concerning an alleged land use conflict, please refer to the discussion in Response to Comment 2-3, above. Ultimately, the County found that the Project would not result in significant land use conflicts, and lead agencies are granted broad discretion to interpret their own general plans and determine consistency with the same. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.)

Regarding the commenter’s legal statements, the County’s Board of Supervisors previously adopted – and has not rescinded – a CEQA Statement of Overriding Considerations identifying its reasons for approving the Project notwithstanding the potentially significant aesthetics impact. Because that SOC remains in place and was not ordered rescinding by the Court, the commenter’s statement that the Board “would be required” to adopt a new SOC is incorrect. Further, under CEQA, an SOC is adopted to override *significant and unavoidable* impacts. (See State CEQA Guidelines 15091.) Therefore, the County’s recirculated EIR and its further discussion of the 11 resource areas involving less than significant impacts does not affect or negate the County’s existing SOC.

Similarly, the County’s Board of Supervisors previously approved the Project and issued a CUP. Those approvals have been “suspended,” but were not rescinded by the 2020 Judgment. As such, the commenter is incorrect in asserting that the Board must make a new “discretionary determination as to whether it should grant a Conditional Use Permit.”

Response to Comment 4-6: The commenter asserts that trenching in Pisgah Peak Road may result in impacts to Biological Resources and Geology and Soils.

First, the County *did* analyze and consider both biological and soils/geological impacts from the installation of electrical line in Pisgah Peak Road. As limited examples:

- The 2016 Draft EIR states, "The proposed 6,700 LF of electric service line would be installed underground in the existing Pisgah Peak Road right-of-way and would not disturb existing native vegetation." (2016 Draft EIR p. 4.2-11.)
- Additional discussion specifically related to Pisgah Peak Road work is also presented in the 2016 Draft EIR's biology analysis and the lack of habitat impacts can be found at 2016 Draft EIR p. 4.2-9.
- The 2017 Final EIR expands on these conclusions regarding biological resources to explain that installation of the line "will not require the widening of Pisgah Peak Road" and the "entire length of Pisgah Peak Road is already disturbed and denuded of vegetation." (2017 Final EIR p. 3-9.)
- The 2016 Draft EIR's geology analysis specifically addresses the disturbance and acreage of trenching of the "6,700-foot linear portion of the Project" and the "utility trench." (2016 Draft EIR p. 4.3-9.)
- Similarly, the geology analysis discusses the potential impacts of the "electrical service in Pisgah Peak Road." (2016 Draft EIR p. 4.3-10.)
- Photographs, including aerial photographs; field reviews of the area; biological technical reports included as Appendices F-1 through F-4 to the 2016 Draft EIR; geotechnical Reports and Updates included as Appendix G of the 2016 Draft EIR; and other record evidence.

Additionally, the County found that potential impacts to biological and geological resources associated with the Proposed Project's construction would be less than significant with adoption and implementation of Mitigation Measures BIO-1 [requiring daily pre-construction surveys *within the Road* and relocation requirements to prevent potential impacts to lizard and snake species]; BIO-2 [requiring nesting bird surveys and limiting construction activities *within the entire Project site* to prevent potential impacts to nesting birds]; and GS-1 through GS-5 [requiring construction techniques, Cal-OSHA compliance, NPDES permits, and other measures].

Second, the 2020 Judgment found that rescission of Project approvals and decertification of the entire Final EIR was unnecessary, although the Court did "suspend" the approvals and require recirculation of portions of the EIR pending the County's compliance with the Court's direction. As biological, geology, and soils impacts were previously analyzed in the Draft and Final EIR and were not found inadequate by the Court, these were not topics that the Court required be included in the Recirculated Portions of the EIR. Further, the Judgment Conclusion (page 9, lines 25 – 26) is that "All other portions of the EIR for which the writ petition was denied, including Geology and Soils, are not affected."

Although the Commenter correctly cites a portion of the Court's 2020 Judgment, the commenter fails to include the Court's discussion in the paragraph immediately preceding that quoted by the Commenter, which states in relevant part:

"Petitioner's argument is without support. The Petitioner 'must set forth in its brief all the material evidence on point, not merely its own evidence. [Citation.] A failure

to do so is deemed a concession that the evidence supports the finding. [Citation.]
.... This failure to present all relevant evidence on the point ‘is fatal.’” (2020
Judgment at 53:13-16.)

Response to Comment 4-7: CEQA discusses disagreement between experts and states in Guidelines Section 15151: “Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” Please refer to Response to Comment 7-6 in the 2017 Final EIR and Response to Comment 4-6 above. The comment is a restatement of arguments the Court found lacking in the 2020 Judgment. The Court recognized that “Petitioner concedes on reply that two geotechnical studies were completed. It contends that these studies have no analysis of whether erosion impacts of the utility extension that extends over one mile, without providing any citation to the administrative record in support. It argues that the Helfrich Study is the only evidence addressed to the erosion impacts of the utility extension, citing AR 159:4406-4423.” (Judgment at 52:16-20.) However, as discussed in Response to Comment 4-6 above, the Court found the Commenter did not satisfy its burden and that the basis for the argument was unclear given the Draft EIR discussion found a potentially significant impact with respect to soil erosion and implemented mitigation measures, which discussion included the off-site utility extension. (Judgment at 53:13-28 to 54:1-2.)

Response to Comment 4-8: Please see Response to Comment 7-29, Response to Comment 1-4, and Response to Comment 4-9 of the 2017 Final EIR, and Response to Comment 4-6 above with regard to a factual discussion of the County’s conclusions.

Additionally, this comment also restates an argument the Court found lacking in its 2020 Judgment. As biological impacts were previously analyzed in the Draft and Final EIR and were not found inadequate by the Court, these were not topics that the Court required be included in the Recirculated Portions of the EIR. Further, the Judgment Conclusion (page 9, lines 25 – 26) is that “All other portions of the EIR for which the writ petition was denied, including Geology and Soils, are not affected.”

Response to Comment 4-9:

None of the referenced community plans, goals and policies that CPRL has historically presented are intended to prohibit development. If the County goal were to restrict all types of development, a zoning designation of Open Space, rather than Rural Living would have been applied to this area within the referenced plans, as are the lands to the north, east, and south. The Wildwood Canyon State Park to the west is zoned by the City of Yucaipa as Institutional, not Open Space. Ultimately, the County found that the Project would not result in significant land use conflicts, and lead agencies are granted broad discretion to interpret their own general plans and determine consistency with the same. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.)

The Court specifically addressed land use consistency in its 2020 Judgment, finding that as none of the referenced community plans, goals and policies are intended to prohibit development, and

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the mitigation measure calling for the remainder of the property to be deed restricted for passive use by visitors, it is not demonstrated that substantial evidence does not support a finding of consistency with the General and Community Plans. (Judgment at 60:5-27.) As Land Use impacts were previously analyzed in the Draft and Final EIR and were not found inadequate by the Court, this was not one of the topics that the Court required be included in the Recirculated Portions of the EIR.

Please refer to Response to Comment 7-7 in the 2017 Final EIR, and to Responses to Comments 2-3 and 4-5, above, for further discussion of the factual reasons behind the County's conclusion.

Response to Comment 4-10: Please refer to Responses to Comments 4-4 and 7-26 in the 2017 Final EIR and to Chapter 6 of the 2016 Draft EIR. The County hired a third-party independent expert in FCC regulations to review the previously prepared reports submitted by both the Applicant and the Project opponents. The DEIR conclusions related to the alternative sites were based on the peer review conducted by the County's independent consultant. The County was also presented with extensive supplemental analysis during the public hearing process that reviewed and rejected a number of other potential alternative sites for the Project. The number of alternative sites selected for evaluation were limited by a number of siting criteria. More specifically, the County's EIR included a detailed alternatives analysis, supported by the third-party report, Engineering Statement for the FM Station Proposed Move to Pisgah Peak, prepared by Cavell Mertz & Associates, Inc. ("Cavell Mertz Report"). The Cavell Mertz Report included review of four documents including: (1) Engineering Analysis & Statement dated January 2009, Klein Broadcast Engineering, LLC; (2) Letter to the San Bernardino Planning Commission of October 14, 2010 from Fletcher, Heald & Hildreth, PLC counsel for Laser Broadcasting; (3) Engineering Statement dated March 2011 prepared by De La Hunt Communications Service, consultant to CPRL; and (4) Engineering Statement dated November 2012 prepared by Hatfield & Dawson, consultants for Lazer Broadcasting. Additionally, extensive additional analysis of alternatives – and the reasons for their infeasibility – were provided to the County in February 2018 by expert, Lynden L. Williams. This 40-page analysis specifically evaluated each of the seven proposed alternative locations identified in the Goldman Engineering Management Report that was referenced by CPRL. Finally, CEQA discusses disagreement between experts and states in Guidelines Section 15151: "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."

Additionally, under Guidelines Section 15126.6(f)(1), it is beyond the scope/jurisdiction of the County of San Bernardino to weigh the merits and demerits of an alternative site/project that requires another jurisdiction's approvals and the interpretation of another jurisdiction's goals and policies. Ultimately, no feasible alternative location was identified for this Project, and the 2020 Judgment did not require further evaluation of alternatives.

Response to Comment 4-11:

In response to the Court's determination, an updated Cultural Resources Report was prepared, dated October 14, 2020, by Rincon Consultants, Inc. (Rincon). The report was included for public review and circulated with the Recirculated EIR. This report was prepared to further elaborate on

the factual analysis previously provided to the County via the Rincon Consultants, Inc., January 8, 2018 report; the County's own land use plans which confirm the area is not within a cultural overlay zone; the absence of any rock outcropping on the Project site; the very small disturbance area required by the project; and other record evidence.

That October 2020 Rincon report circulate with the Recirculated EIR was prepared specifically to address comment letters from San Manuel Band of Mission Indians dated April 14, November 9, and December 11, 2017; Mirau, Edwards, Cannon, Lewin & Tooke on behalf of their client Citizens for the Preservation of Rural Living dated April 17, 2017; Chatten-Brown & Carstens on behalf of their client Citizens for the Preservation of Rural Living dated September 27, 2017; Cahuilla Band of Indians dated January 26, 2018; the Morongo Band of Mission Indians dated January 31, 2018; the Sycuan Band of the Kumeyaay Nation dated February 8, 2018; and Rincon Band of Luiseño Indians dated February 9, 2018, and the December 1, 2016 Preliminary Report on Wildwood Canyon Region Ethnographic Research, David D. Earle. The analysis prepared for the Recirculated Portions of the EIR also responds to those comments.

Additionally, Rincon prepared a Memorandum dated March 2, 2021 to further respond to comments that were submitted on cultural/archeological issues following release of the Recirculated EIR. It should be noted that of the Tribes expressing concern regarding cultural resources, none submitted comments on the Recirculated Portions of the EIR with the exception of the Rincon Band of Luiseño Indians, which stated the project was not within the Rincon Band's specific Area of Historic Interest.

As set forth in Rincon's 2020 and 2021 Reports, Rincon undertook five separate efforts to determine whether cultural/archaeological resources were present on the project site or in the area surrounding the Project, as summarized below:

- 2018 California Historical Resources Information System (CHRIS) search from the South Central Coastal Information Center at California State University at Fullerton did not identify any cultural resources on the project site (Rincon 2020).
- 2020 California Historical Resources Information System search results from the South Central Coastal Information Center at California State University at Fullerton did not identify any cultural resources on the project site (Rincon 2020).
- 2017 pedestrian survey of the project site did not identify any cultural resources on the project site (Rincon 2020).
- 2017 search of the Native American Heritage Commission's (NAHC) Sacred Lands File was negative for site specific information.
- 2020 search of the NAHC Sacred Lands File was also negative for site specific information.

First, none of Rincon's efforts resulted in information suggesting the presence of cultural resources on the project site. More specifically, and as is common throughout California, the broader *region* is known to contain archaeological resources; however, no archaeological sites have been identified within a half mile radius of the project site, nor did Rincon's 2017 pedestrian survey discover any on the project site (Rincon 2020). A 1991 survey report (Becker and Evans) covering portions of Wildwood Canyon adjacent to the project site references two prehistoric archaeological sites (CA-SBR-2631: a groundstone scatter and CA-SBR-5926: a lithic and groundstone scatter) located approximately one mile from the current project site. Neither resource is defined as a

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settlement or village. Further, no evidence of springs, trails or shrines have been found on the Project site or within a half-mile of the Project site. Accordingly, no potentially significant impacts to cultural resources are anticipated as a result of the Project.

Second, no records indicating official designation as a “cultural landscape” with any lead agencies have been identified (Rincon 2020), nor were any such records submitted to the County as part of comment letters. Moreover, as stated in Public Resources Code §21074(b) of the California Environmental Quality Act, “A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.” However, neither the Commenter – nor any other commenter on the public record, specifically defines the size and scope of the landscape in question.

Further, CEQA discusses disagreement between experts and states in Guidelines Section 15151: “Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” Here, the County has expert testimony supported by facts in the form of the Rincon reports that the Project will not result in potentially significant impacts to cultural/archeological resources.

Although the Commenter claims Rincon did not complete an exhaustive review of ethnographic notes from J.P. Harrington, Rincon did review the memoranda prepared by David Earle (2016 and 2017) who was retained by the Commenter. In September 2020, Rincon reviewed accessible notes from J.P. Harrington’s 1918 interviews with Santos Manuel (Harrington 1918) and confirmed that the Yucaipa area is generally discussed as a traditional use area of the Serrano, however a discussion of the spiritual significance of the area was not found during the review. Mr. Earle allegedly completed an extensive review of Harrington’s notes for the production of Mr. Earle’s preliminary draft memoranda, but even Mr. Earle did not identify any specific resources within the project site.

Here, the County concludes that, even if the Project Site were determined to be part of a broader “cultural landscape,” the Proposed Project would not result in significant impacts to that landscape because the Project’s footprint is far smaller than that of improvements that have already been made in the Wildwood Canyon Park, including existing communication towers, water storage facilities, electrical lines, and residences in the area.

Response to Comment 4-12: The County included the Native American Heritage Commission (NAHC) in the distribution of the Notice of Availability of the Recirculated Portions of the EIR. The State Clearinghouse Database (CEQANet) confirms that the Office of Planning and Research also submitted the Notice of Completion of Recirculated Portions of Lazer Broadcasting Facility EIR (SCH No. 2008041082) to the NAHC. Additionally, the County directly mailed the Notice of Availability to the San Manuel Band of Mission Indians, the Morongo Band of Mission Indians, the Cahuilla Band of Indians, the Sycuan Band of the Kumeyaay Nation, and Rincon Band of Luiseño Indians. In total, the County received a single comment letter in response to these notices from the Rincon Tribe (see Comment Letter 1 in this document), which stated the project was not within the Rincon Band’s specific Area of Historic Interest. Therefore, all Tribes were provided the opportunity to engage in discussion on the Recirculation Portions of the EIR.

Response to Comment 4-13: Comment is noted. The Board of Supervisors will determine whether the Recirculated Portions of the EIR is sufficient (i.e., complies with CEQA and the Court’s Writ of Mandate). Subsequently the Court will either agree or disagree based on CEQA and the Writ. After the case is returned to the Court, the Court will issue a “judgment.” Assuming the Court agrees with the County’s decision it will reinstate the approvals.

Letter 5 email

Kristine Mohler

Response to Comment 5-1: This comment essentially describes the Commenter’s opposition to the Proposed Project. Regarding the need for a “full EIR”, the 2020 Judgment found that rescission of Project approvals and decertification of the entire Final EIR was unnecessary, although the Court did “suspend” the approvals pending the County’s compliance with the Court’s direction regarding recirculation of certain portions of the EIR. As land use compatibility and aesthetics were previously analyzed in the 2016 Draft and 2017 Final EIR and were not found inadequate by the Court, those resource areas were not topics that the Court required be included in the Recirculated Portions of the EIR. Also in response to the Court’s determination, an updated Cultural Resources Report was prepared, dated October 14, 2020, by Rincon Consultants, Inc. The report was prepared specifically to address comment letters from San Manuel Band of Mission Indians dated April 14, November 9, and December 11, 2017; Mirau, Edwards, Cannon, Lewin & Tooke on behalf of their client Citizens for the Preservation of Rural Living dated April 17, 2017; Chatten-Brown & Carstens on behalf of their client Citizens for the Preservation of Rural Living dated September 27, 2017; Cahuilla Band of Indians dated January 26, 2018; the Morongo Band of Mission Indians dated January 31, 2018; the Sycuan Band of the Kumeyaay Nation dated February 8, 2018; and Rincon Band of Luiseño Indians dated February 9, 2018, and the December 1, 2016 Preliminary Report on Wildwood Canyon Region Ethnographic Research, David D. Earle. The analysis prepared for the Recirculated Portions of the EIR also responds to those comments. Rincon Consultants, Inc. has also prepared an additional Memorandum dated March 2, 2021 in response to comments submitted on the Recirculated EIR that related to Cultural Resources. Thus, Cultural Resources have not been overlooked in the County’s analysis as the Commenter suggests, and have in fact been fully analyzed.

Regarding the commenter’s statement that the Project is a “monstrous tower,” it should be clarified that the Project has been greatly reduced in size from the original lattice tower and now proposes a single, 43-foot tall, camouflaged, monopole.

Letter 6 email
Kathy Barton

Response to Comment 6-1: In response to the Court's determination, an updated Cultural Resources Report was prepared, dated October 14, 2020, by Rincon Consultants, Inc. (Rincon) in compliance with Sections 106 and 110 of the National Historic Preservation Act, and the California Environmental Quality Act. The report was prepared under the direction of Christopher Duran a Registered Professional Archaeologist with professional experience including hunter-gatherer societies, Great Basin archaeology, Mojave Desert archaeology, California archaeology, GIS, quantitative analysis, and ruins preservation. Further, the report was prepared specifically to address comment letters from San Manuel Band of Mission Indians dated April 14, November 9, and December 11, 2017; Mirau, Edwards, Cannon, Lewin & Tooke on behalf of their client Citizens for the Preservation of Rural Living dated April 17, 2017; Chatten-Brown & Carstens on behalf of their client Citizens for the Preservation of Rural Living dated September 27, 2017; Cahuilla Band of Indians dated January 26, 2018; the Morongo Band of Mission Indians dated January 31, 2018; the Sycuan Band of the Kumeyaay Nation dated February 8, 2018; and Rincon Band of Luiseño Indians dated February 9, 2018, and the December 1, 2016 Preliminary Report on Wildwood Canyon Region Ethnographic Research, David D. Earle. Rincon prepared an additional Memorandum dated March 2, 2021 to further respond to comments received on the Recirculated EIR related to cultural resources and re-confirmed the conclusions as in the October 14, 2020 Cultural Resources Report.

The analysis prepared for the Recirculated Portions of the EIR also responds to the comments discussed above. Of the Tribes that expressed concern regarding cultural resources, none of them submitted comments on the Recirculated Portions of the EIR with the exception of the Rincon Band of Luiseño Indians, which stated the project was not within the Rincon Band's specific Area of Historic Interest.

As presented on page 1-13 of the Recirculated Portions of the EIR, Rincon requested a search of the Sacred Lands File (SLF) with the Native American Heritage Commission (NAHC) on December 8, 2017. On December 20, 2017, Rincon received a response from the NAHC stating that the search results were negative. Rincon repeated its search of the SLF in 2020, again with negative results. In addition to the two SLF searches, Rincon also conducted two searches (2018 and 2020) of the California Historical Resources Information System from the South Central Coastal Information Center at California State University at Fullerton neither of which identified any cultural resources on the project site. Rincon conducted a pedestrian survey of the Project site in 2017 which also did not identify any cultural resources on the Project site.

In September 2020, Rincon reviewed accessible notes from J.P. Harrington's 1918 interviews with Santos Manuel (Harrington 1918) and confirmed that the Yucaipa area is generally discussed as a traditional use area of the Serrano, however a discussion of the spiritual significance of the area was not found during the review.

As noted on pages 1-16 through 1-17 of the Recirculated Portions of the EIR, and despite the analysis showing no potentially significant impacts to cultural/archeological resources, the Project is nonetheless subject to San Bernardino County's Standard Condition of Approval No. 34

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concerning archaeological, paleontological and/or historical resources. This condition would further reduce these less than significant impacts and requires construction to cease in the event of unanticipated cultural resources discovery; the retention of an expert to ensure proper treatment of any resources; and full compliance with Health & Code Safety Code and Public Resources Code requirements in the event of an unanticipated human remains discovery. Specifically, San Bernardino County Standard Condition of Approval No. 34 states:

If archaeological, paleontological and/or historical resources are uncovered during ground disturbing activities, all work in that area shall cease. A qualified expert (e.g. archaeologist or paleontologist), as determined by County Planning in consultation with the County Museum shall be hired to record the find and recommend any further mitigation. If human remains are uncovered during ground disturbing activities, the San Bernardino County Coroner shall be contacted within 24 hours of the find and all work shall halt until clearance is received. If the remains or cultural artifacts are determined to be of Native American origin, the local Native American representative shall be notified.

Please also see Response to Comment 4-11.

Response to Comment 6-2: The 2020 Judgment found that rescission of Project approvals and decertification of the entire Final EIR was unnecessary, although the Court did “suspend” the approvals pending the County’s compliance with the Court’s direction. Fire Safety impacts were previously analyzed in the 2016 Draft and 2017 Final EIR, which imposed Mitigation Measures HAZ-1 through HAZ-4 to ensure fire safety impacts are mitigated to less than significant levels. These measures include the application of a latex-based fire protective coating to the monopole, as well as the quarterly inspection of the fuel modification area throughout the life of the project to ensure the initial clearing area is maintained. (Draft EIR, p. 4.4-14.) As Fire Safety impacts were previously analyzed in the Draft and Final EIR and were not found inadequate by the Court, this was not one of the topics that the Court required be included in the Recirculated Portions of the EIR. Finally, it should be noted that the Project, in part, is intended to provide an additional means of transmitting emergency information (such as that related to any fire outbreaks) to the English and Spanish speaking communities in the area via the emergency broadcast system.

II. ERRATA

Based on the County’s review, text was inadvertently omitted in the table of mitigation measures and conditions of approval on page 1-46 of the Recirculated Portions of Lazer Broadcasting Facility EIR. Information added is presented below with changes shown in red underlined text (e.g., underlined text) or in a descriptive form so that the original and revised text may be compared.

Original MND Mitigation Measures	Requirements Re-Imposed Through EIR Process By:
MM AES-1	EIR MM AES-1
MM AES-2	EIR MM AES-2
MM AES-3	Condition of Approval 49
MM BIO-1	EIR MM BIO-1
<u>MM BIO-2</u>	<u>EIR MM BIO-3, Condition of Approval 64</u>
MM BIO-3	EIR MM BIO-2
MM BIO-4	EIR MM LU-1
MM GEO-1	EIR MM GS-1, GS-2 and GS-3