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*By e-mail ([kwhite@lusd.sbcounty.gov](mailto:kwhite@lusd.sbcounty.gov)); Original to follow*

Kevin White, Senior Planner  
County of San Bernardino  
Land Use Services Department – Planning Division  
385 North Arrowhead Avenue, First Floor  
San Bernardino, CA 92415-0187

**Re: Comments on Draft Environmental Impact Report for Lazer Radio  
Broadcasting Facility**

Dear Mr. White:

The law firm of Chatten-Brown & Carstens represents Citizens for the Preservation of Rural Living (“CPRL”) on matters relating to the proposal to build a new radio broadcast facility adjacent to Wildwood Canyon State Park. CPRL is a public interest association that seeks to ensure that the open space and natural wilderness values of the Pisgah Peak and Wildwood Canyon State Park areas are preserved.

As discussed below, the Draft EIR suffers from numerous errors, flaws, and omissions resulting in a legally inadequate environmental review. Since an inadequate EIR was prepared for the Project, a revised Draft EIR must be prepared.

**Land Use / General Plan Inconsistency**

In response to Lazer’s claim in the October 2011 Initial Study and Mitigated Negative Declaration (MND) that “the project will not conflict with any applicable land use plan, policy” because the developer has agreed to provide an open space easement to the Wildwood Canyon Park and relinquish future development rights for the greater portion surrounding the parcel,” the trial court said:

However, no analysis is provided to support this conclusion in light of prior findings that made reference to General Plan Goal LU2 and Oak Glen Community Plan goals related to preserving and improving the open space corridor and scenic vista attached to the Wildwood Canyon State Park,

including Pisgah Peak. The property at issue is undeveloped land "in a pristine wilderness area." Given the prior findings, a fair argument in support of an inconsistency still exists, even if the proposed Project would "disturb only a small portion of the 38.12 acre parcel" and Lazer agrees to provide a open space easement to the Park. Construction including a monopole, equipment shelter, and fencing are proposed in the area intended to provide a "pristine wilderness experience to park visitors." Substantial evidence supports a fair argument the Project is inconsistent with the applicable General Plan and Oak Glen Community Plan policies.

(Ruling, p. 31.)

The DEIR acknowledges, "The Proposed Project is in direct conflict with the goal and policies of the County of San Bernardino General Plan and the Oak Glen Community Plan." Yet, the County claims that the impact is "less than significant" after the implementation of the following mitigation measure:

Since the Project Site is located directly adjacent to Wildwood Canyon State Park and to ensure 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 (AR 5:188:3243).

(DEIR, p. 1-20.)

The County failed to provide any substantive analysis as to why deed restricting the unused portion of the project site reduces the project's inconsistency with the Plan policies to a "less than significant" level. This omission is surprising in light of the fact that the trial court focused on the fact that no analysis was initially provided in the MND to support the same conclusion the County now makes in the Draft EIR.

### **Visual Impacts**

The trial court stated:

The facts remains that the Project site and monopole is visible from the State Park, which contradicts the State Park's goal of providing a pristine wildlife experience to users and the objective of a BLM Class 1 area: to preserve the existing character of the landscape.

(Ruling, p. 22.)

The Court of Appeal stated:

In assessing the potential significance of an impact, setting is critical ... It is undisputed the project site is undeveloped pristine ridgeline wilderness adjacent to a state wilderness park. The Lilburn studies conceded the project site must be treated as a BLM Class I Visual Resource, like National Wilderness Areas and wild sections of National Wild and Scenic Rivers, and as such an area designated for preservation of a natural landscape. Any change to the character of the landscape must be “very low and must not attract attention.”

(Opinion, p. 22.)

The DEIR does not refer to the BLM visual resource classification. Rather, the DEIR uses a different classification, focusing on the scenic value of a landscape:

The relative scenic value of a landscape is classified as: Class A - distinctive; Class B - typical; and Class C - indistinctive. The scenic attractiveness of the Project Site area set within an unincorporated area of San Bernardino County near the eastern portion of the City of Yucaipa is Class B.

(DEIR, p. 4.1-20.) The DEIR further explains:

The overall scenic integrity from the four (4) viewpoints selected and analyzed in the 2012 Scenic Report within the Wildwood Canyon State Park would not change and would remain at Moderate/Low levels for all views meeting the L[and] M[anagement] P[lan's] Aesthetic Management Standards.

(DEIR, p. 4.1-22.)

Similar to the previous simulations conducted, the photographs and simulations in the DEIR were taken from mostly distant viewpoints. These include photographs at 1.5 mile, 1.4 mile, approximately 1 mile, and approximately 1200 feet.

The DEIR states that portions of the Proposed Project would be visible along portions of trails within the Park. (DEIR, p. 4.1-2.) This is different from the MND, which said that it would be visible from 2/3 of the park.

The DEIR states that the aesthetic impacts of the project are “potentially significant” before mitigation, but “less than significant” after mitigation. (DEIR, p. 1-15.) Later, the DEIR states:

Since the Project would not have a significant number of views, would not create a significant change in the landscape and is considered a less intense land use than what could potentially be developed onsite (i.e., single- family unit and related uses), impacts are considered less than significant. However due to the sensitive receptors in the area including single-family residences and trail users, potential impacts may be considered significant and should be reduced ... In consideration of this and the alternatives analysis showing that no other feasible Project Sites could avoid such impacts, although the project is considered highly beneficial, the County determines that *the visual impact*, at least to some portion of the population, *is significant and unavoidable.*”

(DEIR, p. 4.1-25, *emphasis added.*)

After first stating that the visual impacts of the project are “less than significant” after mitigation (DEIR, p. 1-15), the EIR concludes that the visual impacts are “significant and unavoidable” (DEIR, p. 4.1-25). The DEIR fails to reconcile this disparity.

### **Alternatives**

The DEIR states:

From an FCC allocations perspective of the alternative sites evaluated, Alternative Site #2 (ASR# 1202850) is the only alternative that could potentially be acceptable. However, more than half of the City of Hemet remains shadowed (based on terrain models) from the proposed 400- foot tower that would need to be built at this location. It is clear that the proposed KXRS site location on Pisgah Peak, which has been accepted by the FCC, would provide greater coverage in both area and population over that predicted from Alternative Site #2.

(DEIR, p. 6-10)

The DEIR also states,

However the “Other Location Alternative” would not meet the Project’s objective of: 1) Contributing to the expansion of Wildwood Canyon State

Park (WCSP) through the implementation of a passive, non-active land use; and 2) Creating long term buffering of passive land uses within and adjacent to the eastern WCSP boundary through dedication of development rights and/or transfer of ownership in fee of close to four percent of the current WCSP land area.

...  
“the ‘Other Location Alternative’ although still subject to potentially greater aesthetic impacts, appears to be the environmentally superior alternative of the two considered.”

(DEIR, p. 1-14.)

The California Supreme Court has explained, “Under CEQA, the public agency bears the burden of affirmatively demonstrating that . . . the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures.” (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) “One of [an EIR’s] major functions ... is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” (Laurel Heights I, 47 Cal.3d at 400.) While “[a]n EIR need not consider every conceivable alternative to a project, ‘it must consider ‘a reasonable range of potentially feasible alternatives...’” (Guidelines § 15126.6(a).)

This EIR considers a limited range of alternatives, analyzing only two potentially feasible alternatives – a “No Project/Single-Family Residence Development” and one “Other Location Alternative.” The EIR rejects the “Other Location Alternative” on the basis that it does not meet the Project’s objectives of contributing to the expansion of the Park and creating long-term buffering of land uses near the Park. However, the EIR fails to explain how developing this Project within pristine wilderness adjacent to a State Park helps the Park expand and/or protects the Park.

### **Erosion/Safety Impacts**

The DEIR provides the following Site Standards for slopes with a weighted natural gradient of 30% - 40%:

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

(DEIR, p. 4.5-7.)

The DEIR also provides:

Review of the Project Site and project plans indicate that proposed development including construction of the equipment building, parking space and monopole would all take place on slopes that range from approximately 20.5 percent to 37.5 percent. Therefore, there are no slopes greater than 40 percent.

(DEIR, p. 4.5-10.)

The EIR's conclusion that "there are no slopes greater than 40 percent" is not supported by the evidence in the record. An EIR must disclose the evidence supporting its conclusions, thereby showing the logical path from facts to conclusions. Merely stating that a "review of the project site and project plans" confirms that the slopes are not steeper than 37.5% is not supported.

### **Growth Inducing / Cumulative Impacts**

In its ruling, the trial court explained:

With respect to growth-inducing impacts, the evidence presented demonstrate that Lazer has stated that its goal is to promote the expansion of its radio station through the implementation of "a passive - not active" land use. It stated, "As a passive land use - Broadcast Towers have been implemented in many CA State Parks." (AR 5:196:3365.) Lazer also presented evidence of such towers in other parks. (AR 4:131 :2525.)

The EIR states:

Based upon the plans, policies, and building guidelines associated with the County of San Bernardino General Plan, Development Code, and the Oak Glen Community Plan, much of the area surrounding the Proposed Project could not be developed with additional broadcast towers as steep terrain and limited access from Pisgah Peak Road becomes a development limiting factor.

(DEIR, p. 5-3.)

The DEIR assumes that up to seven (7) additional broadcast towers could be developed within the cumulative project area, even after including criteria that may apply to the land here (e.g. elimination of lands exceeding the 40 percent slope development requirements).

The DEIR also states:

In addition, project-specific mitigation measures for any other future tower development within the cumulative project impact area would ensure that any potentially significant aesthetic related impacts would be mitigated individually and therefore cumulatively. Applying the criteria listed in Section 5.2.4, no more than seven (7) towers would be constructed in the vicinity and all would be subject to potentially limiting access issues due to Pisgah Peak Road being private and due to power source availability. Therefore, cumulative impacts to aesthetic resources would not be considered significant.

(DEIR, p. 5-7.)

The EIR's claim that much of the area surrounding the Proposed Project could not be developed with additional broadcast towers due to the steep terrain and limited access from Pisgah Peak Road is belied by the project proponent's current attempt to develop a broadcast facility in an area of steep terrain with limited access to Pisgah Peak Road.

Further, seven additional towers in the vicinity would have a significant visual impact. Moreover, the County fundamentally misunderstands cumulative impacts, claiming that "project-specific mitigation measures for any other future tower development ... would ensure that any potentially significant aesthetic related impacts would be mitigated individually and therefore cumulatively." (DEIR, p. 5-7.) Even assuming that the project's impacts are mitigated (and not significant and unavoidable), a minor impact individually could have a significant impact when considering all of the projects. The term "cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.) Cumulative impact analysis "assesses cumulative damage as a whole greater than the sum of its parts." (*Irritated Residents*, 107 Cal.App.4th at p. 1403, *emphasis added*.)

**Conclusion**

Among other deficiencies, the DEIR fails to adequately analyze land impacts, including General Plan consistency; visual impacts; alternatives; erosion/safety impacts; and growth inducing impacts. A Revised Draft EIR must be prepared to correct the errors described above and examine other alternatives. Finally, this Project may not legally proceed in the present location unless the County amends its General Plan to eliminate the protections for the open space corridor and scenic vista attached to the Wildwood Canyon State Park, including Pisgah Peak (which we hope the County will not do).

Thank you for your consideration of these important issues.

Sincerely,

A handwritten signature in black ink that reads "Josh Chatten-Brown". The signature is written in a cursive style with a long, sweeping underline that extends to the left and right.

Josh Chatten-Brown  
*Attorney for Citizens for the  
Preservation of Rural Living*