

March 13, 2020

To the City of Monterey

Appeal of 23625 Holman Highway UP-20-0039; Applicant Ben Hackstedde Sequoia Deployment Services; Owner: Montage Health – Community Hospital of Monterey Peninsula

On March 11, the Planning Commission approved a new Verizon facility at Community Hospital of Monterey Peninsula.

I appeal that decision and request the city council's denial of the project.

My grounds for appeal include:

- applicant's incomplete application
- applicant's certified misrepresentation about service
- applicant's product has a known inherent defect
- errors, omissions, and false statements in applicant's RF and noise reports
- applicant's inability and unwillingness to answer PC questions
- Planning Commission negligence
- city staff and consultant errors, omissions, and misrepresentations
- improper CEQA exemption
- non-compliance with California Building Code provisions on accessibility
- incomplete city consultant CTC RF report
- non-compliance with California and federal laws and Constitutions
- non-compliance with ADA and Fair Housing rules
- obstruction of and interference with the public rights of way
- impact on open space and conservation easements
- Verizon's uncertain financial ability to assure project compliance or completion
- Verizon's uncertain insurability and ability to pay out claims

Due to these more than substantial grounds, the project should be denied.

Applicant's incomplete application

The city should have denied this application and allowed the applicant to resubmit per the wireless ordinance. Instead, the city accepted this application as if it were complete.

Required documents missing from the project application public documents include:

- RF exposure charts
  - “A clear identification of areas, both vertically and horizontally, where exposure levels will exceed FCC standards for general public and occupational exposures. Please note that applicant's analysis must show that it has appropriately taken cumulative exposures into account, and should show exposures based on “worst case” scenarios.” (from “Use Permit Application – Personal Wireless Facility

Submittal Checklist”)

- Authorization letter from Community Hospital of the Monterey Peninsula – Montage Health  
“A. Signed proof that applicant is authorized by the owner of the structure and/or property to install and operate the proposed wireless communication facility.”  
(from Checklist)  
Only an authorization to file paperwork signed by Community Hospital personnel was made available to the public. Assurances given at the Planning Commission hearing did not specify authorization for installation and operation.
- Accurate photo simulations  
“Visual impact demonstrations - ... Visual impact demonstrations shall include accurate scale and color of the proposed facility, as it would be seen from surrounding properties.” (from Checklist)  
The photos provided were poor quality with equipment barely visible.

Applicant’s certified misrepresentation about service

Applicant claimed:

“The hospital currently has no service indoors and poor service outdoors.”

Tests were conducted at the hospital on all floors found that phone calls, texting and video downloading could be accomplished and even in the underground garage. Patients, staff, and visitors also have access to the Wi-Fi network and landline phones throughout the facility for telecommunications needs. Applicant admitted at the hearing that there was reception of some quality.

From Checklist:

“CERTIFICATION

I (we) hereby certify under penalty of perjury that (1) after diligent investigation, the information provided pursuant to this Submittal Checklist is true, accurate, and complete to the best of my (our) knowledge and belief, and that before commencing, during performance of, and (2) upon completion of the work proposed, the permitted wireless communication facility will comply with all applicable laws, regulation, practices or other requirements under federal, state or local law, including, but not limited to, building and electrical codes, the FCC’s radio frequency emissions standards, and the requirements of the Americans with Disabilities Act.”

This is signed by the applicant.

Since the applicant signed a sworn statement that the information it submitted was correct, for that reason alone, this application should be denied. By lying about coverage, the applicant misrepresented and mischaracterized service, such that they may have perjured themselves and may have committed fraud on the public.

Verizon also misrepresented coverage in Monterey in its application to build 13 small cell towers. Despite this history, city staff and consultant Jerry Hittleman accepted applicant’s statement as factual without investigation.

Applicant's product has a known inherent defect

The applicant is pushing a product with inherent defects as declared by federal agencies and the California legislature.

The U.S. Access Board

There are a significant number of people who are sensitive to chemicals and electromagnetic fields...

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

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

Electromagnetic fields and radiofrequencies can jeopardize the functioning and safe access of electromagnetically sensitive individuals...<sup>i</sup>

The U.S. Department of Labor

But, there is a downside to many new technologies; many of the new technologies give off electromagnetic radiation. This radiation may come from ultraviolet emanating from cheap light sources, computer monitors, and plasma TV's; wireless devices giving off radio waves and microwaves, and wired/electronic appliances giving off radio-frequency electromagnetic fields. For some people who are hypersensitive to these forms of radiation, exposure can mean anything from migraines to gastrointestinal symptoms to lapses in concentration and memory, among other things.<sup>ii</sup>

The Social Security Administration has given SSDI to individuals with electromagnetic sensitivity.

The California legislature gave an exemption from cellular facility collocation and small cell towers to firefighters in SB 649 and AB 57 on health grounds, acknowledging their dangerous nature.<sup>iii</sup> The legislature further gave disabled accommodation to people with electromagnetic sensitivity, and a state judge also did so recently. Boston and Philadelphia in 2013 comments to the FCC warned about a percentage of the population that is gravely affected by this radiation.

The dockets here have been updated with massive additional evidence of the crippling effects of RF radiation on an admitted minority – but a suffering minority – of U.S. citizens. The FCC and its sister regulatory agencies share responsibility for adherence to the ADA and should replace promises with serious attention to a

serious medical problem. This is one area where the FCC could lead in advice to electrosensitive persons about prudent avoidance.<sup>iv</sup>

Applicant makes known false statements about its product, despite that it is known to sicken a percentage of the population from 3-50%. This could be considered fraud.

The IARC declared radiofrequency electromagnetic radiation to be a possible carcinogen in 2011. The industry IEEE magazine has published several articles acknowledging the health risks of exposure to this product.

This product also has an operational and administrative defect. Despite that there was a less intrusive means to operate its products, its signaling doesn't comply with locally enforced ADA and Fair Housing rules. The public is not a homogenous group, but the applicant rejects the existence of the disabled class of electromagnetically sensitive people. As a result of these defects, applicant cannot comply with the law, which is a fraud on the public.

#### Errors, omissions, and false statements in applicant's RF and noise reports

Engineer William Hammett provided the RF report for the applicant.

Problems in this report include:

- Health statements he's not qualified to make as an engineer and that are false:
  - p. 1 "prudent margin of safety for all persons"
  - p. 4 "need not for this reason cause a significant impact on the environment"
  - Figure 1 statements include "intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health."

He hasn't provided any evidence for his claim of "safety for all persons". "All" equals 100%. I'm told the engineering paradigm works in tolerances and never deals in 100%.

- AT&T and T-Mobile antennas are "assumed to be" certain makes and models. This is inadequate for the purposes of accurate required assessment of cumulative effects.

- p. 3, #3 He did not provide as required

"A clear identification of areas, both vertically and horizontally, where exposure levels will exceed FCC standards for general public and occupational exposure" (from Checklist)

Figure 3 only has limited horizontal information. The city's consultant CTC provided a model of emissions but only the pattern, not the radiation levels or distance at which radiation exceeds FCC limits

- It doesn't appear that he actually measured current onsite outdoor or indoor RF exposure levels to provide current cumulative levels or to demonstrate that there is "no service" in the hospital or "poor service" on the grounds.
- He doesn't include hospital Wi-Fi, other wireless technology on site, and emergency communication antennas in his non-measured calculations.
- He gave maximum RF exposure of 0.16 mW/cm<sup>2</sup>, or 29% of public exposure limit for proposed operation, but he did not state whether this proposed operation is

100% of capacity of the radio and antenna units. When asked at the PC hearing, the applicant asserted it was. For another Sequoia Deployment Services/Verizon project in Pacific Grove, he did not disclose in the RF report that the exposure calculations for “proposed” operation were based on operating at 50% capacity nor did the applicant disclose this until the hearing.

- Are the “maximum” exposure levels calculated as an average or as maximum peak levels?
- He calculated maximum ground level exposure at 29% of FCC limit for just Verizon and 30% of FCC limit for all three carriers cumulatively. That’s not logical.
- He said “power level from an energy source decreases with square of the distance”. There are other factors as well that complicate that calculation which he did not mention including metal surfaces, reflection, and hotspots, and these antennas will be adjacent a great of metal ductwork, conduits, and structural components. It is also unclear if he is talking about wattage or emissions levels.

#### Problems in noise study

- He didn’t base his study on actual fans but on ones he “assumed to be” the correct ones.
- He didn’t note that fans are located near rooms and will have vibration as well as noise operating at maximum of Monterey limit. 65 dB is the day and night limit outside residential zone. Nighttime noise is different than daytime noise, and carries much further in the quiet.
- He didn’t note that this is in proximity to a nursing home.

This engineer has provided reports for past projects with omissions and false statements as well. He has violated his engineering professional code of ethics, spoken outside his area of expertise in his official capacity, misrepresented IEEE C.95 standards, and has a known bias and a conflict of interest as evidenced by documents in the public record.

#### Applicant’s inability and unwillingness to answer questions

Sequoia could not answer many questions posed by the Planning Commission and had the same excuse, “I’m not an RF engineer, or expert” or “I don’t know”. One question was how antennas mounted on the outside of the building facing outward could provide indoor coverage. Verizon did not send any representative to the hearing. Community Hospital/Montage sent a Vice President not listed on Montage Health or Community Hospital’s administration roster instead of a long-time administration official who could answer questions. He spoke out-of-order in the hearing. When asked if he knew of any studies about the health consequences of a cell tower placed on a Hospital, he gave the "I'm not an RF Engineer, or expert" answer, instead of responding, yes he was aware of studies on the topic, or no he wasn't. The public and the city have a right to these answers. This decision will have significant ramifications for years to come.

#### Planning Commission negligence

Commission members professed irritation at the lack of answers and noted that this was a recurring situation with this type of application. However, they refused to deny the project or even postpone the hearing until they had sufficient answers, despite the lack

of time pressure. They ignored the ADA, Fair Housing rules, and accessibility requirements, ignored California Building Code rules, and the errors, misrepresentation, and missing information by the applicant. The Commission even allowed the Community Hospital representative to speak during public comments after being coached by a city staff member. It was negligent for the Commission to approve this project when there were many unanswered questions and the applicant was poorly prepared, because this is an indication of the level of professionalism, attention to detail, compliance, safety review, and care that would take place in the project build.

City staff and consultant errors, omissions, and misrepresentations

Staff reviews and authorizes the reports submitted to the Planning Commission.

Problems in agenda report from Kimberley Cole, prepared by Rincon Consultant Jerry Hittleman:

- 1) T-Mobile and AT&T information are incorrect – the 2017 projects were equipment upgrades/replacements.
- 2) Analysis identified “primary objective” of the project, but what are the other objectives?
- 3) He quoted as fact Verizon’s claim of “no service indoors and poor service outdoors” without identifying it as a claim, and he did not evaluate this claim.
- 4) He claimed the “Zoning ordinance requires approval of a use permit for new PWS projects”. This is false. The project must comply with local, state and federal laws. A plain reading of the Telecommunications Act shows it preserves local power in decisions.

(7) PRESERVATION OF LOCAL ZONING AUTHORITY

(A) General authority

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

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof— ...

(iii)

Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. (emphasis added) – Telecommunication Act, 47 USC 332.c.7.A and B.I and iii

- 5) He claimed, “Planned Community is preferred location”. This is false. Residential districts are discouraged locations, and commercial districts (“General Plan designation of commercial”) are the least preferred on the “preferred location” list.
- 6) He made statements about RF impacts that are outside his apparent area of qualification (he did this also for past projects) –

- a. "would not have a significant impact on the environment due to unusual circumstances such [as] radio frequency (RF) impacts to the general public, building tenants, or maintenance workers."
  - b. "Federal Communications Commission (FCC) RF regulations, which ensure the safety of persons in the vicinity of the proposed PWS"
  - c. "potential health concerns from RF emissions which are regulated by the FCC would not be significant" (p. 1-2)
- 7) He did not mention reflection or conduction of radiation by metal or metal surfaces or conduits, especially those on the roof and in proximity to antennas, related exposures and hotspots within the hospital, including the hospital dome structure over the fountain atrium, or penetration through windows and skylights.
- 8) He did not evaluate noise impacts on hospital patients or on adjacent nursing home.

#### Improper CEQA exemption

- 1) City staff and Rincon consultant Jerry Hittleman exempted the project from CEQA. However
- a. There must be a CEQA review if there will be future collocations– Gov. Code 65850.6.  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65850.6](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65850.6)  
 2017 T-Mobile and AT&T upgrades were exempt from CEQA. Were their original approvals reviewed under CEQA.
  - b. CEQA exemption doesn't apply because this isn't a small facility  
**18.36.050 Class 3—New construction or conversion of small structures (CEQA Guidelines, Section 15303).**  
 "Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure."  
 Definition of "facility"  
 "something that is built, constructed, installed or established to perform some particular function or to serve or facilitate some particular end." --Webster's 3rd New International Dictionary  
 The facility is very large as shown by applicant's coverage map. The facility includes the radiation. There is at least 1-2 square miles of new radiation sufficient to increase phone coverage.
  - c. If exemptions are allowed, exceptions do apply:
    - (a)- location is in a sensitive pine forest
    - (b) - cumulative exposure is at a hospital and near a rest home. In addition, CTC misstates (b), because there is a proliferation at that site.
    - (c) - significant effect would happen due to unusual circumstances such as a cybersecurity event.
  - d. He claimed this project is exempted from CEQA because of the wireless

ordinance, but wireless ordinance itself was exempted from CEQA, so no CEQA review has been done.

“WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305, Class 5) because the project consists of a zoning ordinance amendment to modify existing regulations affecting personal wireless facilities, which would not result in any changes in density or traffic patterns...Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.” 2018 wireless ordinance revision.

#### Non-compliance with California Building Code provisions on accessibility

Applicant says it has to comply with California Administrative Code including Title 24 and 25. Then it claims exemption from California Building Code and Title 24 access requirements, and that handicapped access doesn't apply.

“Therefore, per 2016 California Building Code 1105B.3.4 and/or 11B-203.5 of 2016 California Building Code, Exception 1, this facility shall be exempted from all Title 24 requirements.”

“General Notes: This facility is unmanned and not for human habitation.

Handicapped access requirements are not required in accordance with the 2016 California Building Code” (Page 1)

This is false; hospitals are covered under the California Building Code and required to provide “barrier-free design”. Applicant's facility intermingles with and permeates the Community Hospital building as admitted by the applicant -- “this project will provide very good service at the hospital”. And the public does have access to this facility. Therefore, requirements including barrier-free design do apply. This facility blocks access for many disabled people.

#### Incomplete city consultant CTC RF report

- 1) CTC was tasked with assessing applicant's RF report, but went outside its mandate to contradict the consultant report's classification of the project.
- 2) CTC contradicted itself on p.2, saying FCC limits are exceeded at 160 feet and 400 feet. Which is true?
- 3) CTC claimed radiation is suppressed from going downward. How does a signal then get to phones? Is the facility actually for the surrounding area, instead of for the hospital? Two antennas are on building edge pointing away, and only one is over one portion of the hospital.
- 4) CTC provided a chart of vertical and horizontal spread for only one signal, not all of them. These are not plotted by location on the building. Charts should have been in the Hammett paperwork. Chart is in dB and unexplained, with no emission levels.
- 5) CTC did not provide emission numbers in relation to FCC limits.

#### Non-compliance with California and federal laws and Constitutions

Applicant describes proposed facility as “Good In-Building, Good In-Vehicle” coverage on its map. This could be considered trespassing and home invasion and

would seem to be violate California and U.S. protections of private property and civil rights.

FCC rules that deprive the city of its regulatory authority would seem to be commandeering, in violation of the 10<sup>th</sup> amendment. This was not raised during the hearing.

#### Taking of air rights

This project would also take property owners' air rights for applicant's commercial purposes and without informed consent. I understand that air rights, even in a time of war, must be compensated for if they are violated.

#### Non-compliance with ADA and Fair Housing rules

This project violates ADA and the Fair Housing Act, as well as state-equivalent rules, and discriminates against me. It is a personal nuisance and a pernicious and pervasive toxin. It would block my access to use and enjoy my home, my use of adjacent roads, including Highway 68 and Highway 1 which access my grocery store, and it further block my access to Community Hospital.

In my request for your denial of this project, I am not requesting that you regulate or control or change everything. I'm asking for you to make a decision regarding (Telecommunications Act, 47 USC 332.c.7.A and B.iii).

#### Obstruction of and interference with the public rights of way

As noted above, this facility, which includes its physical emissions, extends across Highway 68 and Highway 1, discriminating against me and interfering with my access to these state highways and which I need for access to my grocery store and other essential services.

#### Impact on open space and conservation easements

Community Hospital has an open space easement and an open space conservation easement. There wasn't any evaluation of how this project would or would not comply with easement restrictions. Antenna sectors A & B impacts the easement; to a lesser extent, sector D (#10 triangles on project docs, p. 2 plan). The county prohibits wireless facilities on scenic easements. What are the limitations on open space and open space conservation easements? The facility of equipment and emissions would extend onto the easement.

#### Verizon's uncertain financial ability to assure project compliance or completion

Verizon's Security and Exchange Commission 2019 statement, filed 2/20, states:

“Verizon has significant debt, which could increase further if Verizon incurs additional debt in the future and does not retire existing debt. As of December 31, 2019, Verizon had approximately \$99.1 billion of outstanding unsecured indebtedness.”

With its indebtedness, there is no guarantee that Verizon will be able to do what they are required to, including maintenance, monitoring, and appropriate signage.

Verizon's uncertain insurability and ability to pay out claims

Verizon's SEC statement also says:

"We are subject to a significant amount of litigation, which could require us to pay significant damages or settlements...In addition, our wireless business also faces personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements."

It is not clear that Verizon has liability insurance to cover claims including due to EMF/RF. Together with Verizon's indebtedness, it is unclear that Verizon would be able to pay out claims arising from its construction, operation, maintenance, and compliance of this project.

In view of these and other significant problems, I request that you deny this project.

Sincerely,

Nina Beety

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<sup>i</sup> <https://www.access-board.gov/research/completed-research/indoor-environmental-quality>

<sup>ii</sup> <http://askjan.org/ENews/2015/Enews-V13-I2.htm>

<sup>iii</sup> Letter of Attorney Harry Lehmann to Assembly Appropriations Committee, July 19, 2017

<sup>iv</sup> <https://ecfsapi.fcc.gov/file/7520958706.pdf>