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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FIBER FIRST LOS ANGELES, MOTHERS OF EAST LA, UNION BINACIONAL DE ORGANIZACIONES DE TRABAJADORES MEXICANOS EXBRACEROS 1942-1964, BOYLE HEIGHTS COMMUNITY PARTNERS, UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, CALIFORNIA FIRES & FIREFIGHTERS, MALIBU FOR SAFE TECH, EMF SAFETY NETWORK, CALIFORNIANS FOR SAFE TECHNOLOGY, 5G FREE CALIFORNIA, and CHILDREN'S HEALTH DEFENSE,

Petitioners and Plaintiffs,

v.

COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, COUNTY OF LOS ANGELES REGIONAL PLANNING COMMISSION, COUNTY OF LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS, and DOES 1-10, inclusive,

Defendants, Respondents, and Real Parties in Interest.

CASE NO.: 23STCP00750

PETITIONERS' OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[Filed concurrently with Petitioners' Request for Judicial Notice in support of Petitioners' Opening Memorandum of Points and Authorities in support of Petition for Writ of Mandate and Complaint]

Petition Filed: March 7, 2023

Trial Date: March 12, 2024
Time: 1:30 p.m.

Assigned for all purposes to the Honorable James C. Chalfant, Department 85

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION[1]

Petitioners, a broad coalition of eleven grassroot community groups, non-profit organizations and a Cherokee tribe ("Petitioners") challenge Respondent County of Los Angeles *et al*. ("County") adoption of an ordinance amending Title 16 and Title 22 of the Los Angeles County Code ("Project" or "Ordinance"). The Ordinance establishes a largely ministerial permitting process for the installation, operation, and modification of wireless facilities in the County. The Petition alleges that the Ordinance was adopted in violation of the California Environmental Quality Act, Cal. Pub. Res. Code §21100 *et seq* ("CEQA"), Planning and Zoning Law, Cal. Gov. Code ("Gov. Code") §65000 *et seq* ("Planning and Zoning Law"), Los Angeles County Code ("County Code"), and the California Constitution.

II. FACTUAL BACKGROUND

A. The Project

The Project is an Ordinance amending Title 16 (Highways) and Title 22 (Planning and Zoning) of the County Code to establish permitting requirements for wireless telecommunications facilities. (AR 16-60.) The Ordinance establishes ministerial and discretionary permitting processes for small cell facilities ("SCF"), eligible facilities requests ("EFR") (i.e. the installation of wireless facilities on existing towers and bases), wireless facilities on private lands, temporary wireless facilities, and large macro-wireless facilities. (AR 16-17.)

The Ordinance does not provide any estimate or limitation on the number or concentration of SCFs or macro towers throughout the County or at any location, including in a highway designated as a Scenic Highway in the County General Plan or within the boundaries of a Significant Ecological Area, Significant Ridgeline, or Coastal Zone. (AR 18-59, esp. 24 and 40 [ministerial permitting, except for facilities in the Specific Plan Zone within a local coastal program].) It allows new towers and support structures to be installed on the grounds of listed or eligible California *historical resources* and makes historic site assessments *optional* at the Director's discretion, while not requiring mitigation. (AR 50.)

This Ordinance applies to all highways and private property in the unincorporated areas of Los Angeles County (AR 17), except if within a specific plan zone, community standards district, or local implementation program, where existing standards take precedence (AR 43, 45). Notably, it will control and allow *ministerial* processing of not only 4G/5G but also 6G facilities, "even though the newer technologies are even "more dangerous." (AR 4709; see also, 3617 & 8493.) Lastly, the Ordinance will severely affect disadvantaged communities. (AR 8020-21.)

[1]Petitioners file this brief in compliance with CRC Rule 2.108(1), allowing lines to "be one and one-half spaced." (*Tiffany v. State Farm Mut. Auto. Ins. Co.* (1993) 14 Cal.App.4th 1763, 1767-1768 [37 lines].)

1. Small Cell Facilities under the Ordinance

An SCF is a wireless facility mounted on a structure of 50 feet or less in height (including antennas), or that is mounted on a structure and extends no more than 10 percent taller in height above other adjacent structures, whichever is greater. (AR 33-34.) Antennas associated with SCFs are no more than three cubic feet in volume, while other associated wireless equipment is no more than 28. (*Id.*)

The Ordinance establishes permitting procedures and requirements for SCFs and eligible EFRs within County highways and on County-owned infrastructure; authorizes the Road Commissioner ("Commissioner") (AR 22)—broadly defined at Section 16.36.120 to include Commissioner and sometimes a state commission, board, or officer—to adopt a design standards checklist and permit conditions that implement the Ordinance's mandates; and provides for a permit approval process that meets the FCC and applicable legal requirements. (AR 16.) The Commissioner's decision is a ministerial non-appealable final action. (AR 33.)

Ministerial Site Plan Review is required for the authorization to install and operate an SCF located on private property and public property that is not a public right-of-way. (AR 47.) The Ordinance empowers the "Director" (defined in §22.14.040.D) to modify the Land Use Application Checklist SCFs, Collocation EFRs, and Zoning Permit Instructions and Checklist (§22.140.760.D.4). (AR 48-49.) The Ordinance provides that if a zone or land use category within a Specific Plan is silent about wireless facilities, the Director may accept an application for such a facility if he/she determines it is similar to another use permitted within such zone of land use category (§22.26.030.B.3). (AR 43.) Further, if the Director determines that a wireless facility complies with Section 22.140.760.D.1, he/she may accept a Ministerial Site Plan Review application (Chapter 22.186) (§22.26.030.B.3.a). (AR 43.)

2. Existing Facilities Requests under the Ordinance

An EFR, as defined in Section 22.14.230(W), comprises a request for modification of an existing qualifying tower or base station pertaining to an SCF that does not substantially change the physical dimensions of that tower or base station, and involves collocation, removal, or replacement of transmission equipment. (AR 19-20, 32.)

3. Temporary Wireless Facilities under the Ordinance

The Ordinance also allows the permitting of temporary wireless facilities, including cells on wheels, sites on wheels, or other similar wireless facilities, that can stand as high as 200 feet in height provided that the wireless provider provides notice to the Federal Aviation Administration, be in place for no more than six months, and excavate no deeper than 24 inches below the ground. (AR 35.)

4. Macro-Wireless Facilities under the Ordinance

The Ordinance mandates a Conditional Use Permit ("CUP") for the installation and operation of

a new macro facility not installed on an existing base station or tower and any type of wireless facility that requires a waiver from the Section 22.140.760(E) design standards. (AR 48.) A macro facility is a wireless facility that does not meet the requirements of an SCF or EFR. (AR 33.) The County's Draft Environmental Impact Report ("DEIR") of the Climate Action Plan 2045 references the Ordinance (AR 6040) and admits that "[m]acro towers are *large* independent structures" and "*large* mono-towers that are either in the public right-of-way or are on private or public property." (AR 6031, emphs. added.)

Modifications to an existing macro facility may be eligible for a Ministerial Site Plan Review if the facility is redesigned with shorter mounting equipment that extends no more than two feet from the structure, or with the removal of any existing mounting equipment, and with additional screening techniques, that conforms to all standards in Section 22.140.760(E), and does not require a waiver. (AR 47, 54.) On the other hand, a Revised Exhibit "A" application is required to collocate a facility on an existing base station or tower with an approved and unexpired discretionary permit that hosts another macro facility, to modify an existing facility with an approved and unexpired discretionary permit, to modify a facility that will not bring it into conformity with Section 22.140.760(E), and for a facility that requires a waiver. (AR 48, 55.) A macro facility that requires a waiver from the design standards specified in Section 22.140.760(E) also requires a CUP. (AR 48.)

Waivers from one or more development standards may be granted by the Commissioner or Hearing Officer upon finding that denial of an application will "[p]rohibit or effectively prohibit the provision of personal wireless services," "[v]iolate applicable laws or regulations," or "[r]equire a technically infeasible design or installation of a wireless facility." (AR 57-58.) Thus, new macro towers *may* be ministerially approved. (AR 7156 [20-feet height increase].)

Wireless facilities can extend up to 75 feet high in industrial, rural, agricultural, open space, resort-recreation, and watershed zones, and up to 200 feet high if temporary for six months. (AR 50, 35.) They can be placed in residential zones no closer than *five feet* from a common property line shared with adjoining lots. (AR 49-50.) The Ordinance sets no distance limits from private properties, leaving the issue open to the discretion of the non-elected officials. (AR 18-59.) Distance limits appear in Design Checklists, which, per the Ordinance, will be set by the Commissioner and amended by the Commissioner or Director (AR 16, 22, 48), and which were developed *along with* the Ordinance but in concert with the wireless industry, yet publicly revealed only *after* Ordinance approval. (Compare initial drafts and Verizon's 02/21/2022 comments at AR 27364-65; Mot. Aug. Exh. 12, pp. 006-010 ["Not in front of windows (20 feet distance in a 180-degree plane)" & "discouraged" within "20 feet from the nearest residential window in any 180-degree angle" & Verizon requesting to add "horizontal"]; with the later 02/72023 version, adding "horizontal" at AR 7635). Notably,

"[d]iscouraged does not mean prohibited." (AR 7258.) Hence, SCFs *may* be approved *ministerially* (without notice) near private properties or homes. (AR 47.)

Unlike prior wireless facilities, 5G facilities are more massive, yet the Ordinance merely "encourages" "if feasible" concealment involving sizeable environmentally adverse faux trees and rocks. (AR 118-25, 1582-86; 56, 122-23, 1479-80, 9718-19, 9724, 10330-10358.)

B. The County's Decision to Exempt the Project from CEQA Review.

On March 23, 2022, the Planning Commission ("Commission") exempted the Ordinance's Title 22 amendments under the Class 1 (existing facilities) and Class 3 (limited number of small new facilities) exemptions, narrowly describing those as "modifications to *existing* facilities as well as for *minor alterations* to land with the construction or conversion of small structures"—the Ordinance involved far more. (AR 1 [Notice], 67, 102-105, emph. added; cf. Section II.A, *supra*). Based on that description, the County found those "actions will not have a significant effect." (AR 1.)

On January 10, 2023, the Board adopted the Commission's noted CEQA determination and extended it not only to Title 22, but also to Title 16. (Compare AR 1 with AR 2412.) The County disregarded all public controversy and evidence of hazards. (AR 362-387; 1582-2080, 2083-2117; 10885-10891, 3732-38, 3762-64 [impacts on human health, wildlife, wildfires, earthquakes, flooding, cumulative impacts]; 4452-54, 7519 [fire hazards]; 1622, 8209-8212, esp. 8211, & 15778, fn. 46 [5G densification]). It ignored CEQA's exceptions to exemptions. (AR 1, 1561-69.) It disregarded the fact that the Federal Appeal Court in *Env't'l Health Trust v. FCC,* 9 F.4th 893, 903 (D.C. Cir. 2021) ("*EHT v. FCC*") found the FCC capriciously failed to "respond to record evidence that exposure to RF radiation at levels below the Commission's current limits may cause negative health effects[.]" (AR 3732, 3762-64.)

C. The Project's Timeline and Administrative Process.

On March 5, 2019, the County's Board of Supervisors ("Board") instructed the Director of Regional Planning to prepare an ordinance defining and establishing standards for the location, height, and design of wireless facilities; conduct outreach to residents, wireless service providers, and other interested parties; and present the Ordinance and the appropriate environmental documents to the Commission and the Board. (AR 142, 7099.)

On March 23, 2022, Regional Planning presented Title 22 amendments to the Commission, suggesting that the latter adopt a resolution recommending that the Board approve those, as well as find such amendments exempt from CEQA under Class 1 and Class 3 exemptions. (AR 61, 67, 102-103, 105, 359, 1448-452.) Title 16 amendments or CEQA determinations were not agendized. (AR 1244-46.)

On November 15, 2022, County staff presented Ordinance amendments to the Board and included not only Title 22 (reviewed by the Commission) but also Title 16. (AR 1308-09, 1401-02.)

On December 6, 2022, the Board discussed the Project with County staff and received public comment. (AR 2412, 2437; 2480-3104, 3309.) The hearing was continued to January 10, 2023. (AR 3263-3389, esp. 3385-86.)

On January 3, 2023, the County proposed massive revisions (AR 3478-3522 [Certified Ordinance]), 3523-3566 [Revised Ordinance]): (1) §16.25.030.B.2 *authorized* Commissioner to *amend* design checklists and permit conditions, and *added* a vague and ineffective "notification" requirement (AR 3484); (2) §16.25.040.E *required* SCF permit-holders to comply with all *applicable* safety rules and *prohibited* operating in excess of FCC radio-frequency ("RF") human exposure limits (AR 3487; cf. 8209-8212 [FCC standards set inefficient thresholds]); (3) §16.25.050.I *required* all SCFs to be designed and installed to ensure "minimum standards" for public safety and to be maintained to prevent electrical and fire hazards (AR 3490); (4) §22.140.760.D.4 *required* applicants to provide public notification and submit the information required by applicable yet-to-be-developed design checklists, which may be "periodically modified by the Director" (AR 3555-56); (5) §22.140.760.D.5 was added to encourage pre-application consultations to discuss the proposed facility and impacts (AR 3556); (6) §22.140.760.E.1.b.v was added to require the "least aesthetically intrusive location" (AR 3557); (7) §22.140.760.E.1.e.i was added to require "minimum standards for public safety" and compliance "with all applicable legal requirements" as if such legal compliance was otherwise optional (AR 3559); (8) §22.140.760.E.1.e.ii was added solely to ask that no facility or combination thereof shall produce RF emissions that exceed the FCC standards (AR 3559); (9) §22.14.760.M was added for termination of facilities abandoned for 90 days, unless the "Director determines" the facility "resumed operations" "or an application has been submitted to transfer" to another operator (AR 3655-56.)

This revised Ordinance was not presented to or recommended by the Commission (Certified AR Index, p. 2; #8-12) but the Board adopted it anyway on January 10, 2023. (AR 60; 4746.) *After* adoption of the Ordinance, the Planning Department released an SCF Design Checklist dated "1/12/2023." (AR 7629-7634.) Later, it issued an SCF self-assessment checklist, a "Land Use Application Checklist," and waiver forms—without public input. (AR 7635-7640, 47992-98; 7163-68.)

D. Petitioners Exhausted Administrative Remedies.

Petitioners objected to the County's Ordinance and offered proposed revisions. (AR 9705-10632, 10867-11015, 11016-11206; 4399-4403; 10685, 2628; 2629-2631; 2581-82; 2632-2633; etc.)

III. ARGUMENT

A. The County Unlawfully Exempted the Ordinance from CEQA Environmental Review.

The County unlawfully exempted the Ordinance from CEQA environmental review under the Class 1 (existing facilities) and 3 (structures) categorical exemptions as the Ordinance permits far more

than just existing facilities or small structures. Categorical exemptions are reserved for classes of projects determined to not have a significant environmental impact and are therefore narrowly construed as to afford the greatest protection for the environment. (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.) The scope of a categorical exemption from CEQA is determined as a matter of law by the Court and no deference is owed to an agency's interpretation of the scope of the categorical exemption (*Los Angeles Dept. of Water & Power v. Cnty. of Inyo* (2021) 67 Cal.App.5th 1018, 1040-41.) While agencies are allowed to layer multiple exemptions onto a single project, as the County has, agencies may only do so if such exemptions apply to the entire project. (*Cal. Farm Bureau Fed. v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 191.)

The County exempted the Ordinance under the Class 1 and 3 categorical exemptions. CEQA's Class 1 Categorical Exemption exempts the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities . . . involving *negligible or no expansion* of existing or former use" from CEQA environmental review. (CEQA Guidelines §15301, [emph. added].) The Class 3 exemption exempts "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." (CEQA Guidelines §15303 [emph. added].)

1. The Ordinance Exceeds the Scope of the Class 1 and 3 Categorical Exemptions.

Even taken together, the scope of the Ordinance vastly exceeds the scope of the Class 1 and 3 exemptions. It creates a permitting scheme not only for existing facilities and small structures, but also for, among other things, macro towers up to 75 feet in height and temporary wireless facilities standing up to 200 feet in height requiring notice to the Federal Aviation Administration. (*Supra,* II.A).

First, as noted above, Class 1 applies to *existing* facilities and requires "negligible or no expansion of use." (CEQA Guidelines §15301.) Yet, the Ordinance manifestly contemplates *new* structures. (AR 47-48.) The County ignores that very fact in its NOE, claiming that "[t]he Ordinance will apply to future projects that involve existing wireless facilities, . . . [and that] any such modifications or upgrades to existing facilities will be minor in nature and will not increase the on-the-ground footprint[.]" However, even if the Ordinance was limited to existing facilities, which it isn't, the Ordinance permits significant increases in the height of towers, for example, permitting an EFR to increase a 50-foot tower by 20 feet and thus reach 70 feet height. (AR 7156; 18-59.)

Similarly, the Ordinance exceeds the scope of the Class 3 exemption. Class 3 applies to "construction and location of *limited* numbers of new, *small* facilities or structures." (CEQA Guidelines §15303.) Yet, the Ordinance's enabled structures are not aimed to be *limited*. (AR 15778, fn. 46 [5G

aims for and needs 3 to 10 times more structures]; 8211 [800,000 SCFs to be deployed by 2026].) The Ordinance sets no limit and does not account for the fact that purportedly "[t]he small cells required for the 5G network to properly function causes another issue of waste with the new network. Because of the weak nature of the millimeter waves used in the 5G technology, *small cells* will need to be placed around *250 meters apart* to insure continuous connection." (AR 1622, emph. added.) Hence, the Ordinance's structures are not *limited* for Class 3 qualification.

Neither are *all* of the Ordinance's proposed structures "small," as required by Class 3. First, the Ordinance enables SCFs (standing up to 50 feet tall), EFRs, temporary wireless facilities (standing up to 200 feet tall), and macro towers (standing up to 70 feet tall), where, as the County admits, macro towers are *large* and EFRs allow significant deviations, including up to 20 feet height increases. (AR 6031; 7156.) Second, as noted earlier the list of examples in CEQA Guidelines §15303(a)-(c) shows that its reference to "small" focuses on *impacts* rather than *physical size*. (See Section IVA.2.a, *supra.*)

Also, notably, the Ordinance does not provide the accurate size of all its allowed facilities. Instead, it refers to §22.14.230(W) for the height and size of SCFs (AR 54), and while §22.14.230(W) lists various structures, such as associated equipment, antenna facility, architectural tower, base station, collocation facility, EFR, faux rock outcroppings, faux trees, macro facility, personal wireless services facility, it has *no* height/size requirements (AR 31-33). The Ordinance also provides only the SCF sizes and in relative dimensions. (AR 33-34 ["facility is mounted on a structure up to *50 feet* in height...*or* is mounted on a structure and extends no more *than 10 percent* in height *above other adjacent structures*, *whichever is greater*"; each *antenna* "is no more than *three cubic* feet in volume"; and "[a]ll other wireless equipment associated with the structure… is no more than *28 cubic feet* in volume"].) It is also unclear how *cubic feet* is measured where a facility includes many attachments on a pole (e.g., AR 4417-4420; 1583.) As the record shows, actual structures may be 95 feet. (AR 1889.)

Notably, it defines "macro" towers vaguely by method of exclusion as a facility not qualifying as either an SCF or EFR. (AR 33.) Hence, its enabled facility may be 50 to 70 feet high or extend 10% higher than existing structures in all dimensions and qualify as an SCF and not macro, despite its large size. Further, while the County "discourages" bulky facilities, it does not prohibit those under the Ordinance. (AR 118-19, 121-25, 1881, 4417-20.) Moreover, the Ordinance allows for ministerial processing of temporary (six months) 200-foot-high structures in rural areas. (AR 35, 47.) Lastly, the Ordinance fails to note that wireless technology has an impact radius far greater than that of the physical structure because RF energy is projected outward over a wide area. (AR 1595, 1598.) As such, the relevant structures are neither "limited" nor "small" as required for Class 3.

2. The Ordinance is Ineligible to be Categorically Exempted from CEQA.

Even assuming Class 1 and/or 3 exemptions apply to the Ordinance, the Ordinance still does not qualify for such exemptions considering the County's admitted individual and cumulative significant and unavoidable impacts from wireless facilities, and exceptions under CEQA Guidelines §15300.2.

First, "[a]n activity that may have a significant effect on the environment cannot be categorically exempt." *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 124 (*"Mountain Lion"*). Here, the County *admitted* that relocation and construction of wireless facilities may have significant, unavoidable individual and cumulative impacts and fire hazards. (AR 6031, 6042, 6046, 7519.) As such, under *Mountain Lion, supra,* the enabled actions or structures cannot be exempt.

Second, as articulated in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114-1117 (*"Berkeley Hillside"*), whether unusual circumstances exist is a factual inquiry, reviewed for substantial evidence. However, "if 'unusual circumstances' are established, an agency should apply the *fair argument* standard in determining whether there is 'a reasonable possibility' that those circumstances will produce 'a significant effect' within the meaning of CEQA. (Guidelines, §15300.2, subd. (c).)" (*Id.* at 1117 [emph. added].) "A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a *reasonable possibility* of a significant effect due to that unusual circumstance. Alternatively, … a party may establish an unusual circumstance with evidence that the project will have a significant environmental effect." (*Id*. at 1105 [emph. added]; *see also Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 819-820.)

The *location* exception is subject to the above-noted *Berkeley Hillside's* bifurcated standard. (*Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 890.) The "cumulative impacts" and "historical resource" exceptions are reviewed for *fair argument*. (*Aptos Resident Assn. v. Cnty. of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1052; *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1117.)

The fair argument standard is a 'low threshold' test for requiring the preparation of an EIR. (*See Stanislaus Audubon Society, Inc. v. Cnty. Of Stanislaus* (1996) 42 Cal.App.4th 144, 151.) It is a question of law whether a fair argument exists, and the courts owe no deference to the lead agency's determination. "Review is de novo, *with a preference for resolving doubts in favor of environmental review*." (*Aptos Council v. Cnty. of Santa Cruz* (2017) 10 Cal.App.5th 266, 289 (emph. orig.).)

Unusual Circumstances, CEQA Guidelines §15300.2(c): This exemption applies in light of the undisputed unusual nature and size of the Project. (See Section II.A-B, *supra*.) The Ordinance enables an unlimited number of structures, including SCFs, EFRs, and macro towers, which may rise

up to 200 feet high, including in residential areas, without any limitation as to distance from private properties. (*Id.*) The Ordinance's structures also have a wider radius of RF emissions and—unlike other facilities—may cause more adverse impacts on the environment, including on human health. (*Id.*)

The County is aware that SCF network topologies mandate densification and large numbers of towers. (AR 15769 [Email from Verizon].) What it refuses to confront is that the Ordinance's wireless networks—*unlike* other communications facilities like fiber—require, use, and waste far more energy, produce far more heat and greenhouse gas ("GHG") emissions, require many more structures and bulky visual items—and hence have far more impacts on the environment. (*See* AR 10306-10327; *see also* Sections II.A-B & IV.2(a)-(b).) To wit, "[t]he Small Cell Forum predicts the installed base of small cells to reach 70.2 million in 2025 and the total installed base of 5G or multimode small cells in 2025 to be 13.1 million." (AR 10306.) "A 5G base station is generally expected to consume roughly three times as much power as a 4G base station. And more 5G base stations are needed to cover the same area." (*Id.*) "A lurking threat behind the promise of 5G delivering up to 1,000 times as much data as today's networks is that 5G could also consume up to 1,000 times as much energy." (AR 10307.) "5G technology could add between 2.7 to 6.7 million tonnes of CO2 equivalents per year by 2030." (AR 10311.) "Because of the weak nature of the millimeter waves used in the 5G technology, small cells will need to be placed around 250 meters apart to insure continuous connection…. Implementing these small cells into large cities where they must be placed at such a high density will have a drastic impact on technology waste." (AR 1612-1636, esp. 1622.) The unusual nature of the Project is undisputed.

In light of its unusual nature, there is a fair argument that the Ordinance, with its unlimited hazardous enabled structures, may have significant aesthetic, energy, GHG, biological, water, hazards (fire, flood, earthquake), and human health impacts. (AR 10885-10891 [various impacts]; AR 4452-54 [firefighters' comment on 5G fire hazards]; 9705-10632, esp. 9717, 10157-59 & 10160-10206 [Malibu Fire in 2007 and Woolsey Fire in 2018, both caused by structural overloading of utility poles, which are used for wireless facilities]; 10208-10211 [Silverado Fire].) The scope of this fair argument is further enlarged by the fact that the Ordinance fails to set any meaningful distance limitation for the placement of such structures in residential areas or public sites. (AR 49 ["no further than *five* feet" from any common areas adjoined by lots].) The Ordinance acknowledges the potential of those impacts by noting fire/safety (AR 28), RF emissions (AR 48 [individually & cumulatively]), aesthetic (AR 44), human exposure, and yet makes most permit processing *ministerial* and allows non-elected officials to develop or amend design checklists (AR 16, 22, 48) or grant waivers (AR 57-58). Worse yet, the County chose not to prohibit or restrict placement in high fire hazard severity zones or allow public review, reasoning that the "concern should be on whether the SCF is fire-safe, which requires technical expertise, and

should not be subject to community input." (AR 7519.)

Lastly, while RF and electromagnetic frequency ("EMF") emissions impact all people similarly, the Ordinance will most grievously impact the County's 383,000 estimated population in disadvantaged communities (AR 5157, 5390-91)—also defined in Gov. Code §65302(h)(4)) as "low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation"—who will have no notice or opportunity to challenge the proposed facilities nor means to relocate. (AR 217, 227-28; 533-37, 688-89.)

Cumulative Impacts, CEQA Guidelines §15300.2(b): For similar reasons, the cumulative impacts exception applies, since there is a *fair argument* the Ordinance may have cumulative impacts. First, the County admitted that the construction or relocation of telecommunication facilities will have "significant and unavoidable" impacts, both individually and cumulatively. (AR 6042, 6046.)

Second, the Ordinance enables densification. (See, Sections II.A & IV.A.2.a-b, *supra*.) Yet the County fails to consider the impacts of the "whole" of its action and contemplates ministerial or illusory future CEQA review of permits, without setting any limits to the placement of facilities. (*Id.*)

Third, the Ordinance allows collocation (placement) of new wireless facilities on *existing* utility poles, which may lead to fire hazards due to overburdening, as in Malibu and Woolsey Fires. (AR 10157-59 & 10160-10206.) Under CEQA, cumulative impacts are impacts of "closely related past, present, and reasonably foreseeable probable future projects." (CEQA Guidelines §15355.) There is a fair argument that the new facilities proposed both *at* the existing facilities and new locations may have significant cumulative impacts, including aesthetic, energy, GHG, biological, water impacts, hazards impacts (fire, flood, earthquake), and human health impacts. (AR 10885-91.)

Location and Historical Resource Impacts, CEQA Guidelines §15300.2(a)&(f): These exceptions apply to the Ordinance as well, since the Ordinance does not limit the placement of wireless facilities placement in any mapped area of critical concern or on the *grounds* of the historical resources. (AR 16-59, 48, 50.) First, as required for the location exception to apply under CEQA Guidelines §15300.2(a), the County has many mapped environmentally sensitive areas, such as parts of the Coastal Zone and the Santa Monica Mountains, all of which are identified in the General Plan. (AR 9720.) Several of those areas are also mentioned in §16.25.040.A.1-2 and 22.140.760.E.1.b.iii, such as Significant Ecological Areas ("SEA"), Significant Ridgeline, Coastal Zone, US National Park Service. (AR 50, 24.) SEA Program is a component of the County Conservation/Open Space Element. (AR 9720.) SEAs are mapped as "[l]and identified as holding important biological resources representing the wide-ranging biodiversity of Los Angeles County, based on the criteria for SEA designation established by the General Plan and as mapped in the adopted SEA Policy Map." (AR 5164.)

There is a fair argument the mapped areas will be affected by the Ordinance's enabled unlimited and hazardous facilities. (See also, AR 7644-47 [Resource Conservation District of the Santa Monica Mountains, Environmental Review Board, comment on the Ordinance's aesthetic/visual impacts, fire, sensitive biological impacts, watershed restoration impacts, Caltrans environmental corridor impacts].)

Second, there is a fair argument the Ordinance may adversely affect the County's historical resources. While §22.140.760.E.1.b.iv prohibits wireless facilities *on* such resources, it allows *ministerial* review for placement on the *grounds* of such resources and further makes any historic site assessment optional "at the discretion" of the Director. Yet, impacts on historical resources are not determined by whether a structure is placed *on* the resource or the *grounds* thereof, but rather by whether the Ordinance "may cause a substantial adverse change in the *significance* of a *historical* resource." (PRC §§21084(e), 21084.1; CEQA Guidelines §15064.5(b) [demolition or alteration].) There is a fair argument the Ordinance may have fire and other impacts on historical resources.

Scenic Highways and Hazardous Sites, CEQA Guidelines §15300.2(d)&(e): First, as explained above, there is a fair argument that the Ordinance may have impacts on *scenic* highways. While the Ordinance provides for "Regional Planning" review, it is notably only for an "SCF on a new support structure[.]" (AR 24.) It further fails to define what such review entails and who will be deciding. (*Id.*) It allows, and yet is silent on *all other* SCFs and macro facilities in scenic highways: "Wireless facilities shall be located and designed to *minimize visual* impacts to vistas from adopted *scenic* highways[.]" (AR 55, [emph. added].) Second, there is a fair argument that the Ordinance may have hazards impacts since it does not limit the placement of SCFs and macro facilities on any hazardous site. (AR 18-59.) Instead, it allows such facilities anywhere if "the location of the [new] facility is the least intrusive feasible and does not create a safety hazard." (AR 57; see also, AR 28.)

3. The Project May Have Cumulative Impacts and Adverse Impacts on Human Beings, Requiring Mandatory Findings of Significance and an EIR.

For all reasons stated in Sections IV.A.2-3, *supra,* the Project may have cumulative impacts and adverse impacts to human beings, both requiring *mandatory findings* of significance and an *EIR* under CEQA Guidelines §15065(a)(3)-(4). Also, under PRC §21082.2, there is significant public controversy *and* evidence as to the human health impacts of wireless facilities, both individually and cumulatively, especially for the disadvantaged communities of the County. (See, Sections II.A-B & IV.A.2-3, *supra.*) The County's Class 1 and 3 exemptions are improper as a matter of law. A Program EIR is required.

B. The Ordinance Is Inconsistent with *State* Law Mandates for Colocation Facilities.

Both CCP §§1085 and 1094.5 require legal compliance. "There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part

of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty." (*Cal. Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where...the claim is that an agency has failed to act as required by law." (*Id.* at 705.) Similarly, CCP §1094.5 substantial evidence and abuse of discretion review. The County's Ordinance violates state law.

California Government Code §65850.6(a) allows a *new* colocation[2] facility as a permitted use not subject to discretionary permit only if: (1) it comports with mandates of Gov. Code §65850.6(b); (2) the *prior* colocation facility on which the *new* one is proposed has been subject to CEQA review through an EIR, Negative Declaration ("ND") or Mitigated Negative Declaration ("MND"); and (3) the *new* facility incorporates the mitigation measures of the prior CEQA documents. Gov. Code §65850.6(b), in turn, requires that the *prior* colocation facility be subject to a "discretionary permit issued on or after January 1, 2007" and "comply with all of the" *four* requirements, including CEQA (Gov. Code §65850.6(b)(4)) by having an adopted EIR, ND, or MND. An EIR, ND, or MND constitutes *third tier* review, where the *first* is about whether an activity is a "project," and the *second* is about whether it is *exempt.* (*Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com.* (2007) 41 Cal.4th 372, 379-380.)

Specifically, the Ordinance violates Gov. Code §65850.6(a)-(b), since—contrary to the state law's clear mandate that the prior colocation facility must have been subject to CEQA—the Ordinance contains no such term and instead allows non-elected officials to *ministerially* use the design standard checklists issued by the Commissioner and modifiable by Director to adjudicate a permit. (AR 48, 16, 22.) Neither does the Ordinance require a prior colocation facility to be subject to a discretionary permit issued on or after January 1, 2007, as required by Gov. Code §65850.6(b). (AR 18-59, esp. 48, 16, 22.)

Notably, under the Ordinance, the collocation facility may include not only SCFs, but also EFRs (AR 32), allowing deviations of development standards, such as 20-foot height increases. (AR 7156.) It provides for *ministerial* processing for all SCFs and EFRs (AR 47) and hence precludes CEQA review.

By definition, the *design* standard checklists—the sole guide for the Director to adjudicate the permits under the Ordinance—are about *design* and unrelated to *CEQA*. (AR 7629-7634 & 7635-7640 [1/12/2023 & 2/7/2023 Checklists for SCFs and EFRs in public right-of-way and highway].) Neither does the Ordinance provide for any CEQA review for the development of design standard checklists by the Commissioner or their amendment by the Commissioner or Director. (AR 48, 16, 22.) Indeed, the

[2] While California law spells "colocation" with only *one* "l" (Gov. Code §65850.6(d)), federal law and the Ordinance spells it with *double* "ll" as in "collocation" (47 C.F.R. §1.6100(b)(2), AR 20, 32). Despite some important definitional differences all generally refer to mounting additional equipment on a pre-existing structure. (*Ibid.*).)

County's development and circulation of such design standards after the Ordinance's approval involved no CEQA process. (See, the Certified AR Index, esp. p. 7, items 90-91.) As such, the Ordinance's categorical designation of *first-* or *second-tier* ministerial review for permits for colocation, SCFs, and EFRs—without conditioning such permits on state law requirements, including on *third-tier* CEQA review of the prior colocation facility—violates the clear mandates of Gov. Code §65850.6(a)-(b).

Separately, Gov. Code §65850.6(c) requires at least one public hearing to have taken place and respective public notice before permitting a new colocation facility under Gov. Code §65850.6(b). Yet, the Ordinance provides for no such public hearing, other than compliance with a *last-minute* added and vague *notification* requirement to be set forth in the design standards checklists. (AR 48-49, 3484.) It is unclear what purpose, if at all, that notification serves. The design standards checklists, in turn, do not mention any hearing, but only a vague *notification* requirement. (AR 7629-40.)

C. The County Violated the County Code and State Law in Adopting the Ordinance.

Under Gov. Code §65853, a zoning ordinance or amendment to it, which changes any property from one zone to another or imposes any regulation listed in Gov. Code §65850 not theretofore imposed or otherwise removes or modifies any such regulation, must be adopted pursuant to Gov. Code §§65854 to 65857. Gov. Code §65850(a) applies to the Ordinance here, regulating the use of structures and land.

In turn, Gov. Code §65854 requires that the Planning Commission hold a public hearing on the proposed zoning ordinance or amendment. Notice of the hearing shall be given pursuant to Gov. Code §65090 and, if the proposed ordinance or amendment thereof affects the permitted uses of real property, notice shall also be given pursuant to Gov. Code §65091. The Commission shall render its decision by a written recommendation to the legislative body in the form and manner specified by the legislative body (Gov. Code §65855), which shall include the reasons for the recommendation and the relationship of the changes with all applicable plans. (*Ibid.*) Upon receipt of the recommendation of the Planning Commission, the legislative body shall notice and hold a public hearing. (Gov. Code §65856.)

Gov. Code §65857 provides that the legislative body—here, the Board—may approve or modify the Commission's recommendation, if it *first* refers such modifications to that Commission.

Similarly, County Code §22.244.010 provides that an ordinance amendment may be initiated to impose regulations not previously imposed or remove or modify any regulation already imposed by Title 22. County Code §22.244.030 states that ordinance amendments must be processed in compliance with Chapter 22.232. In turn, County Code §22.232 requires the Commission to review the legislative application for an ordinance amendment at a public hearing and make a recommendation to the Board. If the Commission recommends approval, the Board must review the application at a public hearing. (*Id.*) Critically, for an ordinance amendment, any modification of the Commission's recommendation by the

Board that was not considered by the Commission at its hearing shall first be referred to the Commission for recommendation. (County Code §22.232.040.B.2.a.)

The County violated County Code §§22.244.030 & 22.232.040.B.2.a since the Ordinance was not approved with a due public hearing and notice under County Code section 22.23, and the County failed to present the revised Ordinance to the Commission before adopting it. Specifically, the Commission's agenda of March 23, 2022, was limited to *Title 22* amendments and did not include *Title 16* amendments or *CEQA* exemptions. (AR 100-03, 1244-46.) Yet, on November 15, 2022, the Board adopted the Ordinance amendments to *both* Title 16 *and* Title 22. (AR 1308-09, 1401-02.)

On December 6, 2022, the Board considered the Ordinance for Title 16 and 22 amendments. (AR 2412, 2437; 2480-3104, 3309.) The hearing was continued to January 10, 2023. (AR 3263-3389, esp. 3385-86.) On January 3, 2023, County staff *revised* the Ordinance. (AR 3456; 3523-3566 [Revised Ordinance].) The revised Ordinance was not presented to or recommended by the Commission. (See, AR Index, esp. pp. 2-3, Items 8-15.) Yet, on January 10, 2023, the Board adopted it. (AR 60; 4746.)

As such, the County violated the *County Code* by: (1) failing to duly notice and place on the agenda *all* the Ordinance amendments for the Commission hearing to secure the Commission's recommendation on March 23, 2022; (2) subsequently *expanding* the scope of the Ordinance by adding Title 16 amendments on November 15, 2022; and (3) *revising* and finally adopting the draft Ordinance on January 10, 2023, without first presenting it to the Commission. The County violated Gov. Code §65853, since amendments to Titles 16 and 22 under the Ordinance were not adopted under Gov. Code §§65854 to 65857, i.e., with the Commission's review.

D. The County Unlawfully Categorically Designated Most Permits Ministerial.

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. (CEQA Guidelines §15369.) The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. (*Id*.) A ministerial decision involves only the use of fixed objective standards, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. (*Id*.) Designation of a project or activity as "ministerial" precludes it from CEQA review. (CEQA Guidelines §15002(i)(1).) Yet, where a project involves an approval that contains *both* ministerial and discretionary action, the project must be deemed discretionary and subject to CEQA. (CEQA Guidelines §§15268(d), 15378(c)); *Mountain Lion, supra,* 16 Cal.4th at 119.)

Where an agency improperly labels permits as ministerial, it violates CEQA and declaratory relief is proper. (*Protecting Our Water & Environmental Resources v. Cnty. of Stanislaus* (2020) 10 Cal.5th 479, 497.) Such designation is also prejudicial. First, as a ministerial action, it is not subject to

CEQA review and evades public scrutiny. Second, such designation effectively bars the County's right to compel mitigation or shape the project in any way. (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 266-267.)

The Ordinance designated most permits "ministerial" (AR 47, 54-55), despite contemplating discretion in their processing. First, the Ordinance incorporates by reference many discretionary provisions. For example, §16.25.030.B.6 provides: "An application shall be processed within the time period as specified by applicable law, including any FCC-issued order(s), in accordance *with all applicable requirements* and *procedures* for a *permit* identified in Title 16 -Highways - *Division 1* (*Highway Permits*)." (AR 23 [emph. added].) As such, the Ordinance incorporates *all* of Division 1 in terms of "applicable requirements and procedures." That includes discretion to make changes or additions to permit applications (§16.08.040), add requirements (§16.08.050), or "refuse to issue a permit if he finds that it is not in the best interest of the general public to do so" even if the application fully complies with requirements. (§16.08.080). (Pet. Request for Judicial Notice ("RJN"), **Exhibit A.**)

Second, the Ordinance grants discretion to the Commissioner and Director. For example, for any SCF to be placed on County infrastructure, §16.25.050.C requires a structural analysis of the effect of such placement to be provided for Commissioner approval to ensure there is no over-burden. (AR 26.) Yet, the Ordinance fails to provide any guidelines for the Commissioner's said approval.

Similarly, §22.26.030.B.3 provides that if a zone or land use category within a Specific Plan is silent about wireless facilities, the Director *may accept* an application for a wireless facility *if* the Director *determines* that a wireless facility is *similar* to another use permitted within such zone of land use category. (AR 43.) The Director's determination of whether a facility is similar to another permitted one, or its decision ultimately to accept such application, involves subjective judgment.

Also, §22.140.760.D.1 provides that a Ministerial Site Plan Review application is required to authorize the installation and operation of a *macro facility* on an *existing base* station or tower that meets all standards in §22.140.760.E (AR 47), which, in turn, contains various discretionary provisions. For example, §22.140.760.E.1.b.iv provides that a historic resource assessment, "prepared to the satisfaction of the Director," "may" be required for a facility to be located on a site containing an eligible resource to identify impacts to historic resources and their mitigation. (AR 50.) This confers "ministerial" discretion upon the Director: (1) to compel a historic resource assessment; and (2) to "shape" the project through mitigation that meets his/her "satisfaction." Further, §22.140.760.E.1.b.v states that placement of new facilities must take into consideration the "least aesthetically intrusive" location. (AR 50.) Similarly, §22.140.760.E.1.e.i states that all wireless facilities must be designed to "meet *minimum standards* for public safety," but provides no objective measure to determine *what* those standards are. (AR 52.)

Third, and compounding the problem, the Ordinance makes the permitting process discretionary by subjecting it to the design standards checklists adopted or amended by the Commissioner or Director at their own discretion and choice. For example, §16.25.030.B.2 allows the Commissioner to adopt and amend design standards checklists and permit conditions to adjudicate SCFs and EFRs, without setting the process for it. (AR 22.) The Commissioner retains discretion to decide *when, what,* and *how* to amend those standards. This is *legislative,* not *ministerial* power. Similarly, §16.25.030.B.3 requires that, before permit issuance, the Commissioner approve engineered plans for SCFs that are to be mounted on new or replacement County infrastructure. (AR 22.) The Ordinance fails to prescribe *how* the Commissioner should approve such plans, and *what* elements must be included or omitted in such plans. (*Id.*) Also, §16.25.030.B.7 requires the Commissioner to grant a permit when "satisfied" that the SCF or EFR meets all requirements (AR 23), which contemplates the exercise of subjective judgment.

The above-noted examples in the Ordinance are akin to those qualified as "relatively general" and found to be discretionary in *Friends of Westwood*, *supra*, 191 Cal.App.3d at 271-272, because they involve relatively personal decisions depending on the sound judgment and enlightened choice of the Director or Commissioner. These decisions may have great environmental significance relative to one physical site, and negligible significance in another. Inevitably they evoke an admixture of discretion.

Based on the margin notes in documents the County asserted privilege to, and to the extent the redacted material shows, the County was aware of many discretionary provisions in the Ordinance, but left them in. (*Compare* AR 23, 25, 44, 52, 57 *with* Mot. to Augment, Exhibit 10-024 ["all applicable"]; AR 54 & Mot. to Augment, Exhibit 2 - AR 7393 [shall "conceal" objects].) Although under *Friends of Westwood, supra*, the County's designation of permits as ministerial is not "conclusive," it nonetheless violates CEQA by being inconsistent with the definition of "ministerial" under CEQA Guidelines §§15369 and 15002 and by foreclosing CEQA review of actions that the County admits, and the record evidence shows, may have severe impacts, including on human health. (See, Section IV.A.2-3, *supra*.)

As a corollary, categorical designation of permits as ministerial under the Ordinance violates CEQA's prohibition against *precommitment*, since the County will be legally compelled to approve permits without any legal right to compel mitigation. It is a "general principle that before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.'" (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138; CEQA Guidelines §15004(b)(2)(B).) Unlawful precommitment, or approval of the project before the review of its impacts, may be found based on the totality of circumstances even where the final action includes a condition granting discretion over CEQA matters. (*RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170

Cal.App.4th 1186, 1211-1212 [agency's announcements, actions,…its willingness to bind itself...all demonstrate that ''City committed itself to a definite course of action regarding the project before fully evaluating its environmental effects. That is what sections 21100 and 21151 prohibit."].)

Separately, the County's categorical designation of wireless facility permits as "ministerial" and hence not subject to CEQA—as distinct from *categorical exemptions* (CEQA Guidelines §§15002(i)(1), 15300.1)—violates CEQA as it improperly and prematurely finds such permits will have no impacts, despite ample evidence to the contrary. (See, Section II.A & IV.A.2-3.) Yet, ["[i]f the proposed activity is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment, some type of environmental review is justified." (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197-1198)

For all the above-noted reasons, "[P]laintiffs are entitled to a declaration that County's blanket ministerial categorization is unlawful." (*Protecting Our Water, supra,* 10 Cal.5th at 501.)

E. The Ordinance Is Facially Unconstitutional and Violates Due Process.

A person may not be deprived of life, liberty, or property without due process of law. (U.S. Const. amend. XIV; Cal. Const., art. I, §7.) Due process requires that deprivation of property by adjudication be preceded by notice and opportunity for hearing. It also requires reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. Cnty. of Ventura* (1979) 24 Cal.3d 605, 612 [*citing North Georgia Finishing, Inc. v. Di-Chem, Inc.* (1975) 419 U.S. 601, 605-606].) Principles of due process apply where the Ordinance affects substantial property interests. (*Cook v. City of Buena Park* (2005) 126 Cal.App.th4th 1, 6 ("*Cook*").)

The Ordinance undoubtedly affects substantial private interests. First, it may affect private property rights of people by allowing *ministerial* placement of numerous hazardous wireless structures *on* or *up to five feet* from private properties and residences, but without any due process or hearing. (AR 18-5959 [no distance limitation for private properties]; 49-50 [within *five feet* of common areas in residential zone;]; see also, Sections II.A & IV.B, *supra.*) These structures may admittedly and reportedly cause fire and hence affect and destroy private properties. (AR 4452-54, 9717). Yet, the County purposely chose to preclude public input deeming such hazards a technical issue. (AR 7519.)

Second, and for similar reasons, the Ordinance and its enabled structures at or near private properties and homes and without any distance limitations may deprive people of their lives, including due to fire hazards, as well as human health impacts. (See, Section II.A & IV.A, *supra*.) The Ordinance may also affect human lives and health by ministerially placing wireless structures at or near schools, recreational areas, and hospitals (AR 232, 247 [5G impacts on schools and other agencies' adopted

limitations to prevent such impacts]; 151 [County's 2010 Memo acknowledging such impacts]), since the Ordinance contains no restrictions or distance limits to such placement. (AR 18-59.) These impacts will be more severe to the County's disadvantaged communities. (AR 5390-91)

The Ordinance provides no public review or notice opportunity to allow people to review and challenge the placement of numerous hazardous structures at or near their properties, including under CEQA, by labeling most permits ministerial. (AR 18-59; (AR 18-59; Section IV.A.2-3 & B, *supra*.)

Where, as here, substantial private interest is established and the Due Process clause applies, "the question remains what process is due," and an essential principle is "that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 541-542 ("*Loudermill"*). "[D]ue process…calls for such procedural protections as the particular situation demands." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 481.) Under both Federal and California law, "identification of the specific dictates of due process generally requires consideration of *three* distinct factors: *first*, the private interest that will be affected by the official action; *second*, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and *finally*, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335; *Cook*, *supra*, 126 Cal.App.4th at 6-8.)

Here, based on *Mathews v. Eldridge* factors, as reiterated by *Cook, supra,* the *private interest* that will be affected is significant: it is people's homes, private properties, and people's lives. (See, Sections II.A & IV.A, esp. AR 7519 [fire]; 3732-38 [scientists' opinion]; 3762-64 [*EHT v. FCC*].) The *risk* of an erroneous deprivation of such private interest is huge: such hazardous facilities will be placed without any distance limitations from private properties, within as little as five feet from common areas surrounded by private areas in residential zones (AR 18-60, esp. 49-50), in unlimited numbers and within every 250 meters (AR 15778, 1622), and upon ministerial process. (*See*, Section IV.D.) As for the *Government's interest*, including the fiscal and administrative burdens, there is no evidence the County will be greatly affected fiscally by holding a public hearing before allowing placement of hazardous and numerous facilities at or near private homes. Moreover, the County can transfer such costs onto the permit Applicants, as it does with its notification requirement. (AR 7629, 7635.)

As evidenced by the above balancing of three competing interests, without some form of hearing before wireless structures are permitted at or near private properties or public places, including schools, parks, or hospitals, the Ordinance violates due process under state and federal Constitutions. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333 [essence of due process is notice and the opportunity to be heard at

a meaningful time and manner]; see also, *Horn v. Cnty. of Ventura* (1979) 24 Cal.3d 605, 616-619; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 548-550.)

F. The County Unlawfully Delegated Legislative Authority to Non-Elected Officials.

Legislative bodies have limited authority to delegate their legislative powers to administrative bodies and must provide ascertainable standards and safeguards. (*State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.* (1953) 40 Cal.2d 436, 448; *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548.)

The Ordinance delegates legislative powers to non-elected Commissioners and Directors to issue and amend design standards checklists to process wireless facility permits. (AR 22, 48.) Yet, it fails to set ascertainable standards or safeguards, including CEQA review for those or a public hearing and opportunity to review or challenge such checklists (AR 18-60.) The Ordinance also categorically designates all permits ministerial, leaving their adjudication to the discretion of non-elected officials (AR 33 [final action]). (See, Section IV.A & D.)

Separately, the above-noted delegation of the legislative power to develop or modify design standards checklists to non-elected officials–along with the fact that the Ordinance categorically designates most permits ministerial, leaves their final adjudication to non-elected officials and further strips that adjudication process from CEQA or opportunity to seek review by the legislative body (see, Section II.A, *supra*)–violates the non-delegation provisions and related due process safeguards under CEQA. (CEQA Guidelines §15025(a).) Specifically, CEQA Guidelines §15025(a) allows delegation of specific functions to the staff, where such functions include determinations of whether the project (here, development or modification of design checklists or adjudication of permits) is exempt from CEQA. However, CEQA Guidelines §15025(b) precludes delegation for approvals of an EIR or MND. Further, while CEQA Guidelines §15025(a)(1) allows staff to determine whether the project is CEQA exempt, CEQA Guidelines §15061(e) requires such determinations to be appealable to the elected body. Under CEQA's broad definition of a project and approval, the development or amendment of design standards checklists by the Commissioner or Director qualifies as both a project and approval since the application of such checklists in ministerially adjudicating hazardous wireless facility permits may have significant impacts. (See, Section II.A.2-3). Hence, it must be subject to CEQA and require a CEQA determination. To the extent such CEQA determination may be an EIR or MND, it may not be made by the Commissioner or Director under CEQA Guidelines §15025(b). If such CEQA determination is an exemption, that determination must be appealable to the Board. (CEQA Guidelines §15061(e).) As a result, the County unlawfully delegated the legislative authority, including under CEQA.

G. The County Violated the Planning and Zoning Law.

State Planning and Zoning Law requires that all approved projects be consistent with the

applicable local general plan both vertically (Gov. Code §65860 [any zoning ordinance) and horizontally or internally (Gov. Code §65300.5). "The general plan is the charter to which the ordinance must conform*."* (*Napa Citizens for Honest Gov. v. Napa Cnty. Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 389.) A project's inconsistency with even one basic and clear General Plan policy is sufficient and may scuttle the project. (*Families Unafraid to Uphold Rural El Dorado Cnty. v. El Dorado Cnty. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-1342.) Separately, for the general plan to serve its function as a charter, adequate notice is required to the public where any inconsistent decisions are made. (*City of Santa Ana* v. *City of Garden Grove* (1979) 100 Cal.App.3d 521, 532).

The Ordinance violates the County's General Plan ("GP") and hence the Planning and Zoning Law since it frustrates numerous GP policies. GP Policy C/NR 13.1 "[p]rotect[s] scenic resources through land use regulations that mitigate development impacts." (AR6916.) GP Policy C/NR 13.2 "[p]rotect[s] ridgelines from incompatible development that diminishes their scenic value." (AR6916.) GP Policy C/NR 14.1 "[m]itigate[s] all impacts from new development on or adjacent to historic, cultural, and paleontological resources to the greatest extent feasible." (AR6921.) GP Policy C/NR 14.2 "[s]upport[s] an inter-jurisdictional collaborative system that protects and enhances historic, cultural, and paleontological resources." (AR 6921.) GP Policy C/NR 14.6 "[e]nsure[s] proper notification and recovery processes are carried out for development on or near historic … resources." (AR 6921.) The Ordinance frustrates these policies.

In contravention of the County GP, the Ordinance sets no limit as to the number or location of wireless facilities that can be built within a single area, including in scenic rural areas. (AR 55 [no limit]; AR 24 [only limits in scenic *highways* where "Regional Planning" approves in an unknown process].) It fails to limit the placement of wireless structures at or near historical resources or to require a historic resource assessment. (AR 50.) It contains no mitigation measures to protect paleontological or cultural resources. (AR 18-59.) Critically, the Ordinance's enabled structures will be placed at high densities of 3-10 times more than the existing facilities, at 250 meters apart, because of required densification. (AR 15778, fn. 46; 1622.) It precludes public participation in the legislation or adjudication of hazardous permits by categorically designating most permits "ministerial" and failing to provide an opportunity to challenge those. (See, Sections IV.D-E, *supra*.)

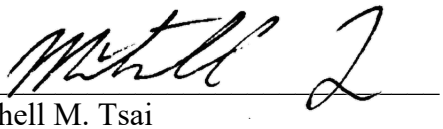
IV. CONCLUSION

For all of the above-noted reasons, Petitioners respectfully request that the Court grant a Writ of Mandate and judgment in favor of Petitioners, declare that the County's adoption of the Ordinance unlawful, and issue a writ ordering the County to vacate the Ordinance.

Respectfully submitted,

DATED: January 19, 2024

MITCHELL M. TSAI LAW FIRM

By: 

Mitchell M. Tsai
Naira Soghbatyan
Reza Mohamadzadeh
Attorneys for Petitioners and Plaintiffs
FIBER FIRST LOS ANGELES et al.

PROOF OF SERVICE

I, Steven Thong, declare that:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of 18 years and am not a party to the within entitled action. My business address is 139 South Hudson Avenue, Suite 200, Pasadena, California 91101. I served this list of persons with the following document on January 19, 2024:

PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The document was served on:

Roland Trinh
Office of the County Counsel
500 West Temple Street #648
Los Angeles, CA 90012
Em: rtrinh@counsel.lacounty.gov

Gail Karish
Alisha Winterswyk
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X by electronic service, via either electronic transmission or notification consistent with California Code of Civil Procedure 1010.6.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct. Executed on January 19, 2024, in Pasadena, California.

Steven Thong