

Concerned Citizens for Old Rocky

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October 10, 2018

Mr. Jeremy Craig
City Manager
City Manager's Office
650 Merchant Street
Vacaville, CA 95688

RE: Drake's Point Radio Tower

Mr. Craig –

As you are aware, there is an increasing number of residents of Vacaville that have significant concerns over the radio tower currently being constructed on the summit of Old Rocky (Drake's Point Radio Tower; File No. 17-342; herein Project). We are requesting the City immediately suspend construction until our concerns can be addressed, and schedule a public meeting to promote open discussion. Ultimately, if no resolve can be found for our concerns, we will request an alternative site be identified for the City's emergency communication system.

While the City has repeatedly maintained they have conducted the appropriate environmental analysis under the California Environmental Quality Act (CEQA), provided the appropriate public outreach under CEQA, and provided compliance with all City ordinances for telecommunication facilities, we strongly disagree. We maintain the City's process in developing the Project has been deficient on multiple levels, and that they are presently proceeding in violation of their own municipal code.

The City is in violation of Vacaville Municipal Code (VMC), specifically Title 14, §14.09.125.070 (Location Criteria) and §14.09.125.090 (Design Criteria for Various Facilities). You are developing a major telecommunication facility readily visible from off-site on a site not already developed with telecommunication facilities, and you are doing so in a manner which is not "effectively unnoticeable." Furthermore, you have not demonstrated with technical evidence a clear need to locate such facility at this location, and why co-location with another facility is not feasible (per §14.09.125.070). You are developing a major telecommunications facility on a prominent point without an exception; further, per the VMC an exception could not be granted because the Project will be visible from surrounding properties or public view; the Project will not be substantially screened from the view of surrounding properties and public view and will result in an adverse visual impact; the Project is not co-locating with other telecommunication; and the Project is not in accordance with an approved master plan (per §14.09.125.090). In

addition, the code prohibits placement of major telecommunication facilities on the City's ridgelines where they will silhouette against the sky; see Figure 14.09.125-1, Ridgelines Applicable to Telecommunication Facilities. The Project meets none of the criteria where this would be allowable, and specifically, will not blend with the surrounding environment so as to have a negligible impact (per §14.09.125.070).

It is worth noting that the former single, wood pole which served to support navigational beacons for Nutree Airport, and is being replaced by the Project, was only 31 feet tall (measured precisely with a tape from ground stain to tip after removal on October 8, 2018¹). This pole was visible throughout north Vacaville typically showing 15-20 feet above the vegetation on Old Rocky's summit. The proposed tower, authorized to 60 feet and presently designed to 55 feet², will be nearly 25 feet taller and will tower over the existing vegetation by 40 feet or more.

The California Environmental Quality Act of 1970 (CEQA) as amended (Public Resources Code [PRC] §§21000 et seq.) is intended to assist California public agencies in identifying potential significant environmental effects of their actions, and either avoiding or mitigating those effects, when feasible, and to disclose those impacts to the public. In addition, the Secretary for the California Natural Resources Agency has adopted CEQA Guidelines implementing CEQA, which are codified in Title 14 of the California Code of Regulations (CCR) §§15000 et seq.

The City prepared a Mitigated Negative Declaration for the Project (Drake's Point Radio Tower Project, Initial Study, Mitigated Negative Declaration File No. 17-342, by Stantec, dated March 9, 2018; MND). Title 14 CCR § 15070 authorizes the lead agency under CEQA to prepare a negative declaration or mitigated negative declaration the "initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment" or, where the project is modified to mitigate significant effects on the environment.

The City's analysis of impacts to visual resources, stating less than significant impact, was erroneous and unsubstantiated. The Project site is a highly valued visual resource, representing the last uncluttered ridgeline in north Vacaville, visible to residents throughout the area; it is also a sought-out destination that is regularly visited by hikers to take in the sweeping vistas. Any substantial change to a resource this valuable exceeds a CEQA threshold of significance. The installation of up to a 60-foot tower, visible for miles, exposed high above the existing limited vegetation on the summit, in direct light or silhouetting, and dominating the vista from the summit, is unquestionably a significant and irreversible impact. The City provided no substantiation of a less than significant impact on visual resources and provided only indecipherable visual renderings from very limited viewpoints.

The City's analysis to open space impacts are also erroneous. The summit of Old Rocky represents a regular hiking, rock climbing, and mountain biking destination. As one of our last

1 The City has consistently and erroneously reported this pole as being 37-38 feet tall.

2 Note per VMC §14.09.125.030 and §14.09.125.090 telecommunication tower height is measured from the base at the ground to the highest point of the structure including antennas.

uncluttered summits, not a day goes by without a steady stream of visitors, many who go to take in sunrise or sunsets or for contemplative reasons. Family use is common. Any substantial change to this valuable resource represents a significant impact. Creating a massive installation that towers over visitors or clutters the summit with a building generating noise is unquestionably significant and irreversible, easily crossing the CEQA threshold of substantially degrading “the existing visual quality and character of the site and its surroundings.”

By failing to recognize significant impacts, the City was able to avoid the more rigorous environmental analysis of an Environmental Impact Report and public engagement that would have been required under CEQA, including the California Code of Regulations (CCR) Title 14, including §15083 (Early Public Consultation) and §15087 (Public Review of Draft EIR). As was conducted under the MND, the City provided extremely limited public engagement. Per the MND, residences were notified within 600 feet of the Project, which given the remote nature of the site, included very few residences. Typical public access points to the open space were not posted; on the east side where the open space is accessed, only one back, utility entrance was posted. Although the extent of impacts is broad throughout north Vacaville, major road thoroughfares into and out of the area were not posted. This is clear violation of the intent of CCR Title 14 §15201 et seq. where “wide public involvement” is required, and as stated, the public holds a “privileged position” in the process. Very few residents of north Vacaville were even aware of the Project until construction began two weeks ago!

By failing to recognize significant impacts, the City was able to avoid the more rigorous alternative analysis that would have been required under CEQA, including CCR Title 14 §15126.6 (Consideration and Discussion of Alternatives to the Proposed Project). Specifically, the regulation requires the lead agency to “consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.” The last viable alternatives analysis performed for the Drake’s Point Radio Tower that has thorough documentation by the City was conducted in 2005. While the City may have thoroughly vetted alternatives since then, it is imperative they document that process, providing suitability of alternatives in meeting Project objectives, rough order-of-magnitude cost estimates, and environmental impacts of alternatives. Alternatives of a higher cost, with less satisfactory results in communication coverage, may have far fewer environmental impacts, and rise to become the preferred alternative, particularly given the risks identified from cumulative impacts, described in the paragraph to follow.

By failing to recognize significant impacts, the City was able to avoid evaluating cumulative impacts, as required under CEQA for significant, unavoidable impacts under CCR Title 14 §15130 (Discussion of Cumulative Impacts). While the likelihood of future telecom development at Drake’s Point may seem unlikely, it is not, and the pressure to co-locate other telecom with already established sites can be substantial. We do not profess to have even a cursory understanding of California telecommunication law, but what we do understand is that existing state law requires local agencies to provide administrative approval for co-location of towers; the lack of discretionary approval requirements would avoid an environmental review process. Trends in the regulations are to wrest control of telecom approval from the local entity, stating it

to be a matter of statewide concern and not a municipal affair. In the future, the City may have little control over cell tower development on Old Rocky, if cellular companies can co-locate without interfering with the public communication system (see https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB57). We think you'll agree the development of a cluster of cell towers on Old Rocky would be devastating for the character of our City.

Considering all this, we are making the following requests of the City.

1. The City immediately suspend construction on the Drake's Point Radio Tower (Project) until the following can be done: (a) fully and completely engage residents in north Vacaville in a series of public meetings and open discussion; (b) inform them of the updated and accurate impacts of the Project for visual impacts, aesthetics, and open space (land use); (c) provide them actual visual renderings of the Project from multiple vantage points near and far, to be selected and discussed by the public; (d) provide the public clear understanding of how deficient the City's emergency communication is now and in the future; (e) provide a clear understanding on alternatives to meet the communication need, and their viability and costs.
2. The City provide an update of visual impacts analysis from the Project, and why it maintains the project would have "no" visual impact, when data strongly suggests otherwise. Provide an update of why they believe they are in full compliance with City code for location of telecommunication facilities for the Project, including but not limited to not locating on a prominence, co-locating with other facilities, locating where facilities be effectively "unnoticeable", locating where they would not produce a silhouette, and locating where "substantially screened".
3. The City disclose any and all engineering reports which promoted the design of the Project over other alternatives. If such engineering reports are lacking, or lack evaluation of obvious alternatives that may have viability, the City perform those engineering evaluations. The City document any alternative analysis process conducted informally, providing suitability of alternatives in meeting Project objectives, rough order-of-magnitude cost estimates, and environmental impacts of alternatives
4. If the above analysis identifies visual, aesthetic, and open space impacts, the City provide a cumulative impacts analysis of reasonably foreseeable projects that may further contribute to visual, aesthetic, and open space impacts. In that analysis, the City provide data on prior private telecommunication company requests for co-locating on a City prominence, how favorable the Project site for telecom tower location, the potential revenue of co-locating on City property for the Project site, the likelihood of private telecommunication requests to co-locate towers on the Project site, and implications of the current legislative climate in Sacramento and how that may affect co-location outcomes.

5. The City perform all the above in a completely transparent and open manner, involving representatives of the public at every stage.
6. If, after all the above, substantial previous undisclosed impacts from the Project have been identified, the City will amend existing environmental documents with those disclosures, and re-initiate public review, including the public comment and hearing. This may require modifying the appropriate environmental document from a Mitigated Negative Declaration to a Environmental Impact Report if newly identified impacts do not have available mitigation that may reduce them to a level below significance.
7. If, after all the above, the Project is evidentially out of compliance with Municipal Code 14.09.125.070 and 14.09.125.090, the City provide to the Public all information supporting a request for an exception, including demonstration from the applicant "with technical evidence...a clear need to locate such facility at this location and that co-locating the facility at another location is not feasible" and demonstrate how the Project can qualify for an exception such as to not be visible, be substantially screened, or other criteria.
8. The City provide the public the opportunity to perform their own technical studies to support or refute the City's findings. If the public's studies support the City's findings, and the public concurs with the need for the Project implementation, the City will agree to develop and approve municipal code requirements that no further telecommunication towers, except upgrades to the facility created by the Project, be allowed on Old Rocky (Drake's Point) for a period to be agreed by the public, but consisting of a minimum of 50 years.
9. If the City findings and the public's studies concur with a viable alternative to constructing the Project in the current location, the City will proceed with the alternative, and cancel the present construction contract after the site has been restored to original contour and damaged trails repaired or replaced.

Thank you for your consideration. I urge you again to immediately suspend construction, given the high stakes of these impacts to our City's quality of life and character, and to schedule a public meeting as soon as possible to discuss these concerns openly. Please contact me with any questions. We look forward to hearing from you and anxiously await your response.

Sincerely,

A handwritten signature in black ink, appearing to read "J. N. Gorham". The signature is fluid and cursive, with a large initial "J" and "G".

James N. Gorham, representing
Concerned Citizens for Old Rocky

c:

Len Augustine, Mayor
Curtis Hunt, Councilmember
Dilenna Harris, Councilmember
Mitch Mashburn, Councilmember
Ron Rowlett, Councilmember
Jan Aldrich, Planning Commissioner
Robert Macaulay, Planning Commissioner
Gregg Spanos, Planning Commissioner
Shelley Martin, Planning Commissioner
Brett Johnson, Planning Commissioner
Shannon Nadasdy, Planning Commissioner
Joe Niccoli, Planning Commissioner
Skip Thomson, Solano County Supervisor
John Vasquez, Solano County Supervisor
Aaron Busch, City of Vacaville
Adam Brown, City of Vacaville
John Carli, City of Vacaville
Kris Concepcion, City of Vacaville
Shawn Cunningham, City of Vacaville