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September 21, 2023

Ventura County Board of Supervisors
Supervisor Matt LaVere, Board Chair
Hall of Administration
800 South Victoria Avenue
Ventura, CA 93009

***RE: BOARD OF SUPERVISORS' SEPTEMBER 26, 2023 MEETING
ITEM # 76, Proposed Amendment to T.O. Area Plan Policy -22.3***

Dear Chair LaVere and Supervisors:

I represent U4EA Ranch Enterprises and the Rasnow Family in the matter of their application for a Minor Modification of CUP 4577 for the Rasnow Peak Wireless Communication Facility, located at 1000 S. Ventu Park Road, Newbury Park. The purpose of the Minor Modification is simply to extend the permit for another ten years, consistent with the County's requirement, as set forth in Section 8107-45.12 of the Non Coastal Zoning Ordinance.

Rasnow's Wireless Communication Facility has operated since 1980 when the first CUP was approved for telecommunications on Rasnow Peak. The existing CUP was first approved in 1990, and renewed two times. The Rasnow Peak telecommunications facility and towers, which range in height from 40 to 150 feet, have not significantly changed since CUP 4577 was first approved in 1990. Historically, the facility has been home for a whole host of public safety uses by both government (Ventura County Fire, Sheriff, and Information Technology Services, Ventura County Office of Education, the U.S. Secret Service and the Coast Guard), and the private sector (Southern California Gas Company, Amgen Security, Education Media (KYRA), XM Satellite Radio, local radio stations, internet providers, and cell phone companies). Additionally Rasnow Peak continues to host numerous local amateur Ham Radio Clubs (to whom gratis rent has always been given on the 60 and 150 foot towers because of the vital public safety role they play

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during disasters when regular communications systems are down).

In December 2022, Rasnow filed an application for a minor modification to continue operating. We opined that the facility meets the Public Safety height exception set forth in Section 45.4f(5)© of the Zoning Code. On May 16, 2023, we were advised by Mindy Fogg, Manager of the Commercial and Industrial Permits Section of the Ventura County Planning Division that the Rasnow Peak Communication Facility is non-conforming with the Thousand Oaks Area Plan Policy TO-22.3 because the existing towers are higher than 40 feet.¹

I am writing this letter in support of Supervisor Gorell's Recommendation to direct the Planning Department to set for study, hearing, and recommendation, an amendment to the Thousand Oaks Area Plan Policy TO-22.3 (Wireless Communications Facility Height Restriction) to except existing Wireless Communications Facilities that are necessary for public safety from the 40 foot tower height restriction.

I wish to state for the record that it is my legal opinion that the County already has the authority and duty to approve the minor modification applied for by my client. By letter dated March 28, 2023, I provided Ms. Fogg and the Planning Division with an analysis of the reasons why the Rasnow application for a minor modification to continue operating the existing facility is not subject to the Thousand Oaks Area Plan Policy TO-22.3. In a nutshell, the reasoning is very simple:

The scope of the TO-22.3 height restriction applies to applications for
“*discretionary development permits* for wireless communication facilities.”

Rasnow did not apply for a “discretionary development permit.” A minor modification of an existing permit is distinct and different from a development permit. The County is duty bound to interpret the Thousand Oaks Area Plan policy in accordance with normal

¹. TO- 22.3 states:

“The County shall require discretionary development permits for wireless communication facilities to limit the height of such facilities, with the exception of monopole whip-type antennas, to 40 feet. Several shorter facilities are preferable to one large facility.”

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legal principles and consistent with the zoning ordinance and the overall intent of the Ventura County 2040 General Plan, including the Public Facilities, Services, and Infrastructure Element.

It is clear after review of the goals and policies outlined in the Public Facilities Element of the County's 2040 General Plan, that the Thousand Oaks Area Plan Policy TO-22.3 cannot be read or interpreted in a vacuum, but must instead be read in conjunction with the goals and policies contained in the Public Facilities Element of the General Plan, including the County's vision of the quality of life for all residents of the County. In other words, an area plan cannot be read so strictly that it would limit or deprive the residents of other areas of the County from access to telecommunication services that emanate from a facility located within the Thousand Oaks Area Plan.²

It is also clear that in order to protect the public through effective law enforcement, disaster preparedness and emergency services, the County must not read its General Plan and zoning ordinances so narrowly that it would not only have the effect of inhibiting or denying some of its residents access to broadband, radio, cellular mobile communications, cable television and other wireless telecommunications services, but also such a strict reading of the General Plan and the Thousand Oaks Area Plan would hamstring the

². The County of Ventura's Background Report on Telecommunications reveals that with respect to Consumer Wireline and Wireless Broadband availability, "[N]early all the County is categorized as underserved, with some areas of the northern half and southern border between Ventura and Los Angeles Counties identified as unserved areas with households." [See General Plan Background Report, Section 7.4: Utilities, page 7-56]. If the towers on Rasnow Peak were limited to 40 feet, two wireless broadband service providers, currently operating on the 60' and 150' towers would be significantly impacted. Additionally, the coverage area for FM radio at K-LOVE/KYRA (92.7MHz), would be reduced by two-thirds, resulting in the loss of reliable emergency radio broadcast for 75,000 Ventura County households. A 40 foot tower height limit would also result in the elimination of radio services for many outlying communities far from the site, like Fillmore, Pt. Mugu and Hidden Hills, areas that would entirely lose signal. [See Attachment A to Rasnow Appeal of Determination of Application Incompleteness Rasnow Peak Wireless Communication Facility CUP, p.8].

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police, fire and ham radio public safety network in Ventura County.³

The County never responded to the legal points raised in my March 28, 2023 letter, nor gave me any indication that staff disagreed with them. They simply ignored them, apparently treating TO-22.3 as superior to the County's own General Plan and Zoning Code.

Thus, it is apparent that Supervisor Gorell's recommendation is necessary because the Planning Staff has chosen not to interpret the Thousand Oaks Policy in the context of the overall public safety needs of the County and its residents, as outlined in the General Plan Goals and Policies.

Thank you for your consideration and support of Supervisor Gorell's recommendation.

Sincerely,



Barbara Macri-Ortiz

³. The 40 feet height limit would result in the dismantling of the police, fire and ham radio public safety network in Ventura County. All of the Ham Radio antennas on Rasnow Peak are located on the towers at heights of between 60 feet and 150 feet. As explained by Steven Leong, Ventura County Sheriff, Office of Emergency services, who has operated a Ham radio repeater on a 60' tower on the site for over 30 years:

"... the system has provided critical communication links throughout the county during our many emergencies, natural and made-made. Its ability to maintain reliable communications from hand-held and mobile radios in most areas of the county is based to a high degree upon excellent antenna elevation. Lowering the antenna to an elevation of 40-feet would decrease real coverage of this system by an estimated 30-40 percent."
[emphasis added].

[See Attachment A to Rasnow Appeal of Determination of Application Incompleteness Rasnow Peak Wireless Communication Facility CUP, p.8].