

1 **I. INTRODUCTION**

2 Petitioner EMF Safety Network brings this mandamus action challenging the
3 decisions by Respondent City of Sebastopol’s (City) approval of the Crown Castle
4 Antenna Use Permit (project) including a use Permit to install additional panel antennas
5 on a monopole at a telecommunications facility on an exemption in violation of the
6 California Environmental Quality Act (CEQA).¹ There is no substantial evidence in the
7 record to support the City’s determination that the project fits into the Class 1 exemption.
8 In any event, there is substantial evidence in support of a fair argument that the project
9 may create environmental impacts and, as such, is excepted from the exemption.
10 Further, the city’s findings are not supported by substantial evidence in the record.

11 The Network requests a peremptory writ of mandate in the first instance ordering
12 the City to set aside its approvals of the project and to comply with all provisions of
13 CEQA, including the preparation of an initial study or EIR, and other applicable laws
14 including the Telecommunication Ordinance prior to further consideration of the project.²

15 **II. STATEMENT OF FACTS**

16 **A. The Project**

17 Throughout the process, the exact nature of the project remained unclear.
18 According to the application, staff reports, and Notice of Exemption, the project adds
19 three new approximately one foot by eight feet panel antennas owned by Real Party in
20 Interest GTE Mobilnet of California Limited Partnership, a California Limited Partnership

21 ¹ EMF Safety Network is a sponsored project of the Ecological Options Network,
22 a California not-for-profit organization whose purposes include advocating for
23 environmental protections and promoting education and science-based precautions for
24 electromagnetic frequency (EMF) and radio frequency (RF) technologies throughout the
25 nation.

26 ² To be sure, the Network is not challenging technical and operational standards
27 for wireless telecommunications service promulgated by the Federal Communications
28 Commission, which preemptive regulations provide that local governments have no
authority to establish or enforce technical standards for wireless service. (*New York
SMSA v. Ltd. v Town of Clarkstown*, 612 F.3d 97 (2010) (Congress has imbued the
FCC with plenary power over the technical aspects of the nation’s wireless
communications facilities development).)

1 d/b/a Verizon Wireless (Verizon) to an existing major telecommunications facility owned
2 and operated by Real Party in Interest Crown Castle GT Company LLC (Crown Castle),
3 the owner of the telecommunications facility and the applicant for the project. (ARI:2, 10,
4 15, 16, 62, 63, 68, 69.) However, according to letters from Crown Castle, the project
5 includes replacing the three existing antennas owned by Verizon and adding three new
6 Verizon antennas for a total of six new antennas. (ARI:26, 96.) It was not until the City
7 Council hearing that the matter was clarified to define the project as remounting the
8 existing three antennas and adding three new antennas. (ARI:170:3-6, 191:15-19.)

9 According to the Planning Commission staff report, the existing pole is either 100-
10 or 96-foot tall (ARI:7, 9)³ and contains three, eight feet by one and one-half feet, 850
11 megahertz (ARI:186:13-16), panel antennas owned by Verizon at a height of
12 approximately 92 feet; three, three-square feet, 2,100 megahertz (ARI:186:13-16) panel
13 antennas owned by Metro PCS mounted below Verizon's, and two smaller antennas
14 owned by the City below Metro's. (ARI:9-10, 4.) The project would add three new Long
15 Term Evolution (LTE) antennas to support 3G and 4G networks, each 11.9 inches by
16 eight feet, reconfigure the existing Verizon antennas, and install additional equipment.
(ARI:2, 10, 20, 23, 62, 63.)

17 The site use currently is a major telecommunications facility including a 96-foot tall
18 monopole with multiple antennas on it, a large emergency generator, and an equipment
19 building. (ARI:2.) According to the Planning Commission staff report, there are three
20 existing fenced equipment areas: one 300 square foot area for Crown Castle and two
21 approximately 150 square foot areas for Verizon and Metro PC (ARI:7) and a generator
22 owned by Verizon on a 11 foot by 16.5 foot concrete pad adjacent to the monopole.
23 (ARI:9.)

24 **B. The Administrative Process**

25 On September 13, 2011, the Planning Commission conducted a public hearing.
26 (ARI:7-8 (staff report), 140-149 (minutes).) The first motion – to approve the application
27

28 ³ *But see* ARI:20 (97-foot pole).

1 as submitted – failed on a 2-3-1 vote (one commissioner did not vote). (ARI:147.) The
2 second motion was to continue this application to allow the applicant to provide additional
3 information and to allow additional public comment. Several commissioners agreed that
4 more broad notification to the public and additional input from the public were warranted.
5 The motion then failed on a 3-3-1 vote. (ARI:147-148.) The third motion – to approve
6 the installation with staff findings and conditions and an additional condition providing the
7 City has the option to re-review this application should the FCC change its standards -
8 carried on a 6-1 vote. (ARI:148.) It was not, however, clear what the Planning
9 Commission actually approved.

10 As council member Sarah Gurney stated,

11 . . . I find a number of grounds for the appeal compelling. First, I think it's
12 accurate that the planning commission didn't know exactly what work was being
13 done. And when I read the staff report, that was Mr. Webster's paragraph in there,
and I went, "Uh-oh," you know, "How"-- "How come that's confusing?"

14 And I understand the applicant is saying, "I mixed that [the number of
15 panels being added] up in my later letter, and let me clarify it for you now." But that
doesn't correct what happened at the planning commission, for me.

16 (ARI:239:11-20; see also ARII:379 (“ . . . , members of the Planning Commission had
17 many questions about the information provided by Crown Castle and its ramifications. . . .
18 In spite of many unanswered questions and their lack of sufficient data or understanding
19 upon which to base their conclusion, the Commission voted to approve the project-
20 although not unanimously.”) Vice Mayor Keyes echoed, “. . . I have sort of a lot of
21 questions about what the original information that the planning commission got and what
22 the updated information that we got, as well as the contradictions that we have about the
23 cell tower power, where David Cotton says it's 3,700 watts and the local engineer says it's
24 800 watts, that this should have really been worked out at the planning commission
25 level.” (ARI:243:14-21; 244:8-9 (referring to ARI:73).)

26 The Planning Commission’s decision was memorialized in a letter to Crown Castle
27 dated September 15, 2011, which stated that the Planning Commission found that the
28 project was exempt from CEQA and set forth the finding

1 That the proposed use will not be detrimental to the health, safety, peace, comfort
2 and general welfare of persons residing or working in the neighborhood of the
3 proposed use, nor will it be detrimental or injurious to property and improvements
4 in the neighborhood or to the general welfare of the City in that the project consists
5 of minor alterations to an existing major telecommunications facility; that it
6 complies with relevant provisions of the City's Telecommunications Ordinance;
7 that by virtue of the size, materials, and height of the panel antennae, there would
8 be minimal visual impacts; and that the project conforms to relevant FCC health
9 standards.

7 (ARII:292.)

8 On September 21, 2011, the EMF Safety Network filed a timely appeal of the
9 Planning Commission's actions because, among other things, the Planning Commission
10 did not have sufficient information to approve the project; cumulative RF exposures from
11 the combined antennas were unknown; the additional wireless coverage is not necessary
12 as the City already has adequate wireless coverage; the Laguna de Santa Rosa, an
13 internationally recognized wetlands with associated species, may be affected by the
14 project. (ARI:72-93, ARII:295-316 (copy).) The appeal included studies entitled
15 *Electromagnetic pollution from phone masts. Effects on Wildlife*, by Alfonso Balmori (the
16 Balmori report); and *Bioassay for assessing cell stress in the vicinity of radio-frequency*
17 *irradiating antennas*, published in the "Journal of Environmental Monitoring" (the
18 Bioassay paper). The Balmori report concludes that

19 Electromagnetic radiation is a form of environmental pollution which may hurt
20 wildlife. Phone masts located in their living areas are irradiating continuously some
21 species that could suffer long-term effects, like reduction of their natural defenses,
22 deterioration of their health, problems in reproduction and reduction of their useful
23 territory through habitat deterioration. Electromagnetic radiation can exert an
24 aversive behavioral response in rats, bats and birds such as sparrows. Therefore,
25 microwave and radio frequency pollution constitutes a potential cause for the
26 decline of animal populations and deterioration of health of plants living near phone
27 masts. To measure these effects urgent specific studies are necessary.

25 (ARI:78.)

26 The Bioassay paper concluded that "[t]he present work makes a unique biological
27 connection between exposure to RF-EMF and real biological stress in living cells."
28

1 (ARI:92.)⁴ The Network opposes the particular location of this project and lack of
2 environmental review. (ARI:226:3-5.)

3 On December 6, 2011, the City Council held a public hearing. The City was
4 advised that the hearing was not a *de novo* hearing but an appeal such that the Council
5 was to decide whether the appellant “carried [its] burden of proof” to merit reversal of the
6 planning commission’s decision. (ARI:176:3-12.) Many spoke against the project. In
7 addition to the applicant, only one local computer repair business owner spoke in favor
8 because, among other things, it would help his business. (ARI:223:25-225:6.)⁵

9 The Council denied the appeal on a 2-2-1 vote, the result of which was to uphold
10 the Planning Commission’s actions. (ARI:168-256.) The City’s decision was
11 memorialized the minutes, the transcript, and in a letter to appellant informing it that the
12

13 ⁴ A bioassay is a method or “determination of the relative strength of a substance
14 (as a drug) by comparing its effect on a test organism with that of a standard
15 preparation.” (www.merriam-webster.com/dictionary/bioassay.) The subject bioassay
16 used etiolated (grown in continuous darkness for five months (ARI:89)) duckweed
17 plants “as a bioassay for the quick detection of biological stress caused in the vicinity of
18 RF irradiating antennas.” (ARI:93.)

19 ⁵ Although human health effects (as opposed to impacts to the physical
20 environment) may not be the subject of CEQA review due to Federal pre-emption
21 (Telecommunications Act of 1996, § 704, subd. (B)(iv); see *Primeco Personal
22 Communications, Limited Partnership, d/b/a Verizon Wireless v. City of Mequon*, 352
23 F.3d 1147, 1149 (7th Cir. 2003) *Voicestream Minneapolis v. St. Croix County*, 342 F.3d
24 818, 825 (7th Cir. 2003), many, including councilmembers, spoke to the serious health
25 effects of direct and cumulative RF exposure. (See, e.g., AR1:208:25-210:12, 213:9-
26 11, 239:23-240:7 (Councilmember Gurney: “I also am not convinced that the
27 measurements that were taken were thorough enough for the different elevations and
28 the circumstances in our community. And I am particularly moved by the comment
tonight about people in second-story buildings, . . . when you think of the students
there. I don't know that reports and the measurements have thoroughly enough
analyzed their circumstance for me to feel comfortable saying, "Whoa," you know, "Go
ahead, zap them." I mean, I don't-- I don't think that I can do that.”), 242:24-243:13
(Vice Mayor Keyes: “. . . I ran into a gentleman who was retiring from the Public Utilities
Commission, And the first thing I asked him is, ‘What about cell phone safety?’
And he said that was actually studied quite a bit, and all the results are completely
inconclusive, which means that nobody knows for sure if they're safe or not. . . .”);
ARII:352, 396.)

1 City Council denied the appeal and upheld the Planning Commission's decision.
2 (ARI:167, 255; ARII:427.) On December 7, 2011, the City filed a Notice of Exemption
3 (ARI:2, 3) and on January 11, 2012, the Network filed a timely Petition for Writ of
4 Mandate.

5 III. STANDARDS OF REVIEW

6 In deciding whether a writ should issue, the Court will review the certified record to
7 determine whether the City prejudicially abused its discretion. Abuse of discretion is
8 proven if the City did not proceed in the manner required by law, if its decision was not
9 supported by findings, or if its findings were not supported by substantial evidence. (Code
10 of Civil Procedure § 1094.5; Pub. Resources Code § 21168.)

11 When a court is interpreting the *scope* of a categorical exemption, it is considering
12 a "question of law" and, therefore the review is *de novo*. (*Save Our Carmel River v.*
13 *Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal.App.4th 677, 793.) On the other
14 hand, whether a project factually fits within an exempt category is determined by the
15 substantial evidence standard of review. (*San Lorenzo Valley Community Advocates for*
16 *Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139
17 Cal.App.4th 1356, 1382.) Substantial evidence is defined as "facts, reasonable
18 assumptions predicated upon facts, and expert opinion supported by facts." (Pub.
19 Resources Code §§ 21080, subd. (e)(1), 21082.2, subd. (c).) Importantly, substantial
20 evidence is not just any evidence:

21 ... , if the word 'substantial' means anything at all, it clearly implies that such
22 evidence must be of ponderable legal significance. Obviously the word cannot be
23 deemed synonymous with 'any' evidence. It must be reasonable in nature, credible,
and of solid value; it must actually be 'substantial' proof of the essentials which the
law requires in a particular case.

24 (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.) It is "relevant evidence that a
25 reasonable mind might accept as adequate to support a conclusion." (*County of San*
26 *Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555.)

27 Following the initial determinations of whether the project fits within the scope of the
28 exemption and whether it is factually consistent with the exemption, the low-threshold "fair

1 argument” standard is applied as to whether a project meets an exception to the
2 exemption. (*E.g., Banker’s Hill v. City of San Diego* (2006) 139 Cal.App.4th 249, 266.)
3 Thus, whenever it can be fairly argued on the basis of substantial evidence that there is a
4 reasonable possibility that a project *may* have a significant effect on the environment, an
5 exemption is not proper. (*Azusa Land Reclamation Company v. Main San Gabriel Basin*
6 *Watermaster* (1997) 52 Cal.App.4th 1165, 1198.) If there is substantial evidence that the
7 proposed project *may* have a significant environmental impact, evidence to the contrary is
8 not sufficient to support a decision to dispense with preparation of an initial study.
9 (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3^d 988, 1002.)

10 “Application of the fair argument standard of review presents a question of law, not
11 fact, and we do not defer to the agency’s . . . determinations on this issue.” [Cite.] ‘Rather,
12 we independently “review the record and determine whether there is substantial evidence
13 in support of a fair argument [the proposed project] may have a significant environmental
14 impact, while giving [the lead agency] the benefit of a doubt on any legitimate, disputed
15 issues of credibility.” [Citations.]’” (*Porterville Citizens for Responsible Hillside*
16 *Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 900.)

17 Whether the City’s findings are adequate is determined on the substantial evidence
18 standard of review. Substantial evidence is defined above. The court has “broad[]
19 responsibility to consider all relevant evidence in the administrative record, both
20 contradicted and uncontradicted. (Cites). This consideration involves some weighing of
21 the evidence to fairly estimate its worth (cite).” (*County of San Diego v. Assessment*
22 *Appeals Bd. No. 2, supra.*)

23 **IV. ARGUMENT**

24 **A. Violations of the California Environmental Quality Act**

25 The City abused its discretion and failed to act in the manner required by law by
26 approving the project based on a categorical exemption. In any event, there is a
27 reasonable possibility that the activity will have a significant effect on the environment and
28

1 as such is excepted from the exemption and requires environmental review.⁶

2 **1. The Project Does Not Fit the Exemption**

3 Class 1 projects (Guidelines (14 Cal. Code Regs.), § 15301)

4 consist[] of the operation, repair, maintenance, permitting, leasing, licensing, or
5 minor alteration of existing public or private structures, facilities, mechanical
6 equipment, or topographical features, *involving negligible or no expansion of use*
7 *beyond that existing at the time of the lead agency's determination. . . . The key*
8 *consideration is whether the project involves negligible or no expansion of an*
9 *existing use.*

10 In this case, the addition of three large LTE panel antennas for a total addition of
11 3,786 watts of power to support 3G and 4G networks and enhance the capacity of the site
12 to handle increased levels of both voice and data transmission (and possibly increase the
13 range of signals) does not comprise negligible or no expansion of an existing use. In fact,
14 although the Sitesafe and Hammett & Edison reports contradict each other, the project
15 regardless significantly *expands* the existing use. It is not clear how much wattage the
16 project will add. According to the first engineer commissioned by the applicant, the author
17 of the Sitesafe report, the project would add 3,786 watts in three directional antennas with
18 1,262 watts each. (ARI:180:24-181:9.)⁷ The engineer from the second company hired by
19 the applicant, Hammett and Edison, stated that each new antenna would add 800 watts,

20 ⁶ As a preliminary matter, the Network exhausted its administrative remedies.
21 (Pub. Resources Code § 21177, subd. (a) (“An action or proceeding shall not be
22 brought pursuant to Section 21167 unless the alleged grounds for noncompliance with
23 this division were presented to the public agency orally or in writing by any person
24 during the public comment period provided by this division or prior to the close of the
25 public hearing on the project before the issuance of the notice of determination.”) The
26 CEQA issues were raised at and before the City Council hearing (*E.g.*, ARI:75 (appeal
27 addresses effects on wildlife), 177:3-178:13, 185:13-186:10, 193:7-9, 24-194:22 (CEQA
28 issue discussed by Crown Castle’s lawyer), 202:15-203:1 (City Attorney discussing
CEQA issue), 219:1-5, 236:3-7 (Mayor acknowledging CEQA issue); ARII:415-419,
425); visual impacts were referenced in the appeal letter (ARI:73-74.)

⁷ The Sitesafe engineer, located in Virginia knew little about Sebastopol or the
terrain surrounding the tower. The report states that “[t]his analysis has been
performed with the assumption that the ground immediately surrounding the tower is
primarily flat or falling.” (ARI:29, 179:14-180:2.) The report and conclusions, therefore,
were based on objective computer modeling rather than analysis of the actual site and
terrain. (ARI:180:3-9, *see also* 182:13-23.)

1 for a total of 2400 watts. (AR1:181:3-9, 182:1-7, see also 183:1-184:11, ARI:185:19-
2 186:10, 188:11-16.)

3 Hammett & Edison took measurements from just four places including the ground
4 level of the downtown Sebastopol Massage School, the Sebastopol Independent Charter
5 School, residences on North High Street and the Senior Center. (AR:180:10-23.) The
6 report states that the current RF at the Sebastopol Massage School is 0.000027 Milli-
7 Watts per square centimeter (mW/cm^2) which, for ease of computing, translates to 0.027
8 Micro-Watts per square centimeter ($\mu W/cm^2$) and which is reported at 0.0014% of the
9 Maximum Permissible Exposure (MPE). The project will increase the levels to 0.18% of
10 the MPE, or add $3.47 \mu W/cm^2$ which means the RF levels at the Massage School will
11 increase by 129 times. The additional levels at the other locations are significantly higher.
12 The levels at the Sebastopol Independent Charter School will raise 540 times current
13 levels, the residences above North High Street will experience an increase of 692 times
14 current levels, and the levels at the Sebastopol Area Senior Center will increase by 370
15 times the current level. These increases in RF levels do not amount to a minor alteration.
16 In addition, they do not account for the project impacts in combination with other existing
17 cell towers and antennas in the City, i.e., cumulative impacts. Also, the range will be
18 increased to 700 megahertz, which covers a greater range and distance than the current
19 situation and penetrates buildings better. (ARI:34, 158, 184:3-11, 186:11-187:2.)

20 Councilmember Gurney agreed that the project is not a minor alteration.

21 And then, as we -- if -- you know, we have ten paragraphs of findings, and
22 I'm not comfortable with paragraphs one, four, five, and six, one being that this is
23 just a minor alteration, four being that this is a minor visual impact. I mean, I really
24 don't agree with that. I think it's -- it's almost like, you know-- it's a tower, and
25 instead of being an attractive tower, it's a mechanical tower with this on it.

26 Minor visual impact given the size. And I've talked about what that looks like
27 to me. Minor scope of the project. The project would have negligible impact on the
28 property improvements. I don't think that's a finding I can agree to either. I mean, I
29 think, in this more and more health-conscious world, people are looking for that --
30 those locations and trying to avoid them. So that finding doesn't work for me.

(ARI:241:3-19.)

1 “Although the Guidelines do not define a minor alteration, it has to be one that is so
2 small that it does not cross the threshold level set by the Guidelines for an exception to
3 the categorical exemptions. Thus, a “minor” alteration cannot be an activity that creates a
4 reasonable possibility of a significant environmental effect.” (*Azusa Land Reclamation*
5 *Company*, 52 Cal.App.4th at 1194.) Thus, in *County of Amador v. El Dorado County*
6 *Water Agency* (1999) 76 Cal.App.4th 931, the court found:

7 As the trial court's decision recognizes, this categorical exemption applies to a
8 simple ownership transfer of a hydroelectric project. However, that is not the
9 situation before us. Here, ownership was transferred **and** the focus of the project's
10 operation was modified to permit consumptive use of an additional 17,000 acre feet
11 of water. A project that shifts from nonconsumptive to consumptive use is not a
12 negligible expansion of current use. It is a major change in focus, and thus does
13 not fall within the *existing facilities* categorical exemption.

14 (*Id.* at 968.) In *Communities for a Better Environment v. South Coast Air Quality*
15 *Management District* (2010) 48 Cal.4th 310, the court found that a project which proposed
16 adding a new refining process to an existing facility, required the installation of new
17 equipment as well as the modification and significantly increased operation of other
18 equipment was not merely the modification of a previously analyzed project to operate
19 refinery boilers or the continued operation of the boilers without significant expansion of
20 use. (*Id.* at 326.) Likewise here, a project that shifts from 2G and 3G to 4G use and adds
21 additional wattage and megahertz does not fall within the exemption.

22 In keeping with general principles of statutory construction, exemptions are
23 construed narrowly and will not be unreasonably expanded beyond their terms.
24 (Cites.) Strict construction allows CEQA to be interpreted in a manner affording the
25 fullest possible environmental protections within the reasonable scope of statutory
26 language. (Cites.) It also comports with the statutory directive that exemptions may
27 be provided only for projects which have been determined not to have a significant
28 environmental effect. (Cites.)

29 (*County of Amador, supra*, 76 Cal.App.4th at 966.) Thus, the determination of whether a
30 project fits within the exemption is not based on “a mechanical application of the
31 exemption criteria. (Cite.)” (*San Lorenzo Valley Community Advocates for Responsible*
32 *Education, supra*, 139 Cal.App.4th at 1384.) There must be substantial evidence to

1 support the finding and, here, there is no substantial evidence that the project is a minor
2 alteration of existing facilities and will involve negligible or no expansion of an existing use.

3 **2. In Any Event, the Project is Excepted from the Exemption**

4 The California Resources Agency “is empowered to exempt only those activities
5 which *do not* have a significant effect on the environment, . . . [i]t follows that where there
6 is any reasonable possibility that a project or activity *may* have a significant effect on the
7 environment, an exemption would be improper.” (*Wildlife Alive v. Sherman Chickering*
8 (1976) 18 Cal.3d 190 at 205-206 [emphasis supplied]. Initially exempt projects may have
9 effects that would render it nonexempt due to the significant effects exception.

10 (*Communities for a Better Environment v. California Resources Agency* (2002) 103
11 Cal.App.4th 99, 104.) “Any activity that *may* have a significant effect on the environment
12 cannot be categorically exempt.” (*Mountain Lion Foundation v. Fish and Game*
13 *Commission* (1997) 16 Cal.4th 105, 124 [emphasis supplied].

14 The exemption in this case is not proper because the project meets an exception to
15 the exemption. CEQA provides that “[a] categorical exemption shall not be used for an
16 activity where there is a reasonable possibility that the activity will have a significant effect
17 on the environment due to unusual circumstances.” (Guidelines, § 15300.2, subd. (c).)

18 The test to determine whether unusual circumstances exist is satisfied where the
19 circumstances of a particular project (i) differ from the general circumstances of the
20 projects covered by a particular categorical exemption and (ii) those circumstances create
21 an environmental risk that does not exist for the general class of exempt projects. (*Myers*
22 *v. Board of Supervisors of Santa Clara County* (1976) 58 Cal.App.3d 413; *Azusa, supra*,
23 52 Cal.App.4th at 1207.)

24 In this case there is a reasonable possibility that the project will have
25 significant biological and hazards and hazardous materials impacts on the environment
26 due to unusual circumstances related to its proximity to the Laguna, an internationally
27 recognized wetlands and its location in a crowded urban area; negative aesthetic impacts
28 due to its prominent location in downtown Sebastopol; and mandatory findings of
significance based on the same circumstances.

1 There were no studies done regarding the project's impacts on the biological
2 environment, including the Laguna. "The Laguna de Santa Rosa is the largest freshwater
3 wetlands complex on the northern California coast. In a state known for extraordinary
4 biological diversity, it is located in the second-most biologically rich county, Sonoma, and
5 is a major contributor to the County's biological diversity."

6 (http://www.lagunafoundation.org/about_overview.htm)⁸ No analysis was done by the
7 applicant or the City. The Sitesafe and Hammett & Edison reports looked only at human
8 exposure to RF emissions. On the other hand, the studies submitted by the Network
9 support the need to examine this issue from a biological and hazardous materials
10 standpoint. Relying on 111 separate studies (ARI:84-86), the Balmori report first
11 recognizes the exponential increase in electro-magnetic pollution in cities and elsewhere
12 since the introduction of wireless telecommunication in the 1990's and the sources
13 "erected indiscriminately without studies of environmental impacts measuring long-term
14 effects." (ARI:78, (789 ("The effects on electromagnetic pollution on wildlife have
15 scarcely been studied.")) It then outlined the negative effects of phone mast output in
16 various parts of the world on the reproduction of white stork, low density of sparrows and
17 other urban birds, and physical and behavioral anomalies in urban birds. (ARI:79-80.)
18 The Balmori report also accounted the connection between electromagnetic radiation and
19 aversive behavior, health deterioration, and reproductive decline in mammals including lab
20 rodents, bats, domestic animals and farm animals; amphibians, and insects, including
21 bees, which are "the basis and key species of ecosystems and . . . are especially sensitive
22 to electromagnetic radiation that poses a threat to nature." (ARI:81-83.) The Balmori
23 report finally spoke to the effects of electromagnetic waves on trees and plants. (ARI:83.)
24 The report concluded that

 In the light of current knowledge there is enough evidence of serious effects from
25 this technology to wildlife. For this reason precautionary measures should be
26 developed, alongside environmental impact assessments prior to installation, and a
27 ban on installation of phone masts in protected natural areas and in places where

28 ⁸The Court can take judicial notice of this fact and reference. (Evid. C. § 452,
subds. (g), (h).)

1 endangered species are present. Surveys should take place to objectively assess
2 the severity of effects.

3 (AR:83; see also mandatory findings of significance: “The project has the potential to
4 substantially degrade the quality of the environment; substantially reduce the habitat of a
5 fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining
6 levels; threaten to eliminate a plant or animal community; substantially reduce the number
7 or restrict the range of a rare or endangered plant or animal. . . .” and/or “[t]he project has
8 the potential to achieve short term environmental goals to the disadvantage of long-term
9 environmental goals.” (Guidelines, § 15065, subs. (a)(1), (2).) The Bioassay similarly
10 concluded that there is a “unique biological connection between exposure to RF-EMF and
11 real biological stress in living cells.” (ARI:92.)

12 The visual impacts of the new addition of large antenna may be significant.

13 Councilmember Gurney agreed:

14 And then, as we -- if -- you know, we have ten paragraphs of findings, and
15 I'm not comfortable with paragraphs one, four, five, and six, one being that this is
16 just a minor alteration, four being that this is a minor visual impact. I mean, I really
17 don't agree with that. I think it's -- it's almost like, you know-- it's a tower, and
18 instead of being an attractive tower, it's a mechanical tower with this on it.

19 (ARI:241:3-10.)

20 The City further failed to consider the cumulative impacts of the project, also a
21 mandatory finding of significance. (Guidelines, § 15065, subd. (a)(3).) "Cumulatively
22 considerable" means that the incremental effects of a project are considerable when
23 viewed in connection with the effects of past projects, the effects of other current projects,
24 and the effects of probable future projects?" (Guidelines, § 15130.) There are existing
25 cell towers and antennas in the City of Sebastopol that were not considered for cumulative
26 impacts.

27 “While a fair argument of environmental impact must be based on substantial
28 evidence, mechanical application of this rule would defeat the purpose of CEQA where
the local agency has failed to undertake an adequate initial study. The agency should not
be allowed to hide behind its own failure to gather relevant data...” (*Sundstrom v. County
of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

1 **B. The Findings Are Not Supported by Substantial Evidence**

2 The City found that

3 the proposed use will not be detrimental to the health, safety, peace, comfort and
4 general welfare of persons residing or working in the neighborhood of the proposed
5 use, nor will it be detrimental or injurious to property and improvements in the
6 neighborhood or to the general welfare of the City in that the project consists of
7 minor alterations to an existing major telecommunications facility; that it complies
8 with relevant provisions of the City's Telecommunications Ordinance; that by virtue
9 of the size, materials, and height of the panel antennae, there would be minimal
10 visual impacts; and that the project conforms to relevant FCC health standards

11 As explained above, the finding that the project will not be detrimental to the health,
12 safety, peace, comfort and general welfare of persons residing or working in the
13 neighborhood of the proposed use is not supported by evidence in the record. As
14 Councilmember Gurney explained,

15 . . . I cannot adopt these findings. The first paragraph says, in the findings,
16 that, "The proposed use will not be detrimental to the health, safety, peace, and
17 comfort and general welfare of persons residing or working in the neighborhood of
18 the proposed use, nor will it be detrimental or injurious to property improvements in
19 the neighborhood or to the general welfare of the city." I can't say that. . . .

20 And I'm not willing to say, "Oh," you know, "No detriment here." I don't think
21 that's proven to us in any convincing way. I think that the evidence is just coming to
22 us, and it's coming from around the world, and we're just beginning to learn what
23 sort of situation we're in."

24 (ARI:240:11-241:2.) Likewise, as explained above, the findings that the project consists of
25 minor alterations to an existing major telecommunications facility and that there will be
26 minimal visual impacts are not supported by substantial evidence in the record.

27 Also, there is no evidence the project complies with relevant provisions of the City's
28 Telecommunications Ordinance. The Purpose statement of the Sebastopol
29 Telecommunications Ordinance, Zoning Ordinance Section 17.110, states that the " ...
30 regulations contained herein are designed to protect and promote public health, safety,
31 and community welfare while at the same time not unduly restricting the development of
32 needed telecommunications facilities and important amateur radio installations."

(Emphasis supplied.) As City Council staff stated,

1 The application states that the additional antennas are needed to ensure adequate
2 telecommunications services, given the increasing demand for such services
3 resulting from data demands from local area users of various newer wireless
4 devices including, but not limited to, smart phones and tablet devices. The
5 Ordinance affirms an intent to address communication needs within the context of
6 adopted regulations and does not seek to restrict or retard additional development
7 of *needed* telecommunications facilities and denial of applications intended to
8 provide such facilities that otherwise meet the requirements of the Ordinance would
9 be contrary to its intent.”

7 (ARI:67, *see also* 20.) Councilmember Gurney, as well as the Network, noted the lack of
8 need for the project.

9 Is this going to promote the general welfare of the city in that it will help
10 maintain adequate telecommunications services? *Well, I didn't hear*
11 *that there's something inadequate about our services.* That's why I asked
12 about local complaints, you know?

12 So, for instance, on the Coastal Commission, where we have had
13 applications for towers to be put up, co-located with light poles, the applicant who'll
14 provide the services will -- will present a map that shows covered areas -- . . . -- and
15 it's all very documented, why there is a need to put that there.

15 And -- and I've not heard any sort of urgency. *I have not heard any real*
16 *need*, other than the profit motive.

16 (ARI:239:11-242:9 (emphasis supplied); 75.) As such, the findings are not supported by
17 substantial evidence in the record.

18 **V. CONCLUSION**

19 Based on the above, the administrative record, and the files and argument and
20 evidence presented at oral argument, Petitioner requests the Court issue a Peremptory
21 Writ of Mandate, ordering respondent to set aside and void its approvals of the project
22 and to comply with all provisions of CEQA, the Telecommunication Ordinance, and other
23 applicable laws prior to further consideration of the project.

25 Dated: July 16, 2012

Law Office of Rose M. Zoia

27 _____
28 Rose M. Zoia
Attorney for Petitioner
EMF Safety Network1