AGENDA NO. 7

PLANNING COMMISSION STAFF REPORT

DATE: February 9, 2009 (Item continued from the November 17, 2008 Planning Commission meeting)

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF A VARIANCE (V-14-07) TO EXCEED THE MAXIMUM HEIGHT LIMIT FOR A 75-FOOT TALL GROUND MOUNTED HAM RADIO ANTENNA LOCATED AT 142 CAREY ROAD – KRUGER VARIANCE – APPLICANT: ROBERT W. KRUGER**

RECOMMENDATION

Staff recommends that the Planning Commission, by motion:

(1) Adopt Planning Commission Resolution No. 2009-P08 denying Variance (V-14-07) with findings attached herein

PROJECT DESCRIPTION AND BACKGROUND

Background: The project was continued from the November 17, 2008 Planning Commission Hearing date by the owner. This continuance was intended to enable Mr. Kruger an ample concerning amount of time to provide more information to Staff and the Commissioners the Variance request. Staff has met with Mr. Kruger at the project site on December 4, 2008, where he explained how the site topography enabled him to construct the subject antenna at the proposed height.

Mr. Kruger has not submitted any additional information to Staff regarding the Variance for the antenna since the project was continued from the November 17, 2008 Planning Commission Hearing.

The subject 8,050-square foot property exists with a 1,264-square foot single-family residence that was constructed in 1960. On October 18, 2007 a complaint was filed with the City of Oceanside's Code Enforcement Division for an unpermitted 75-foot HAM radio antenna erected within the back yard of the single-family residence located at 142 Carey Road. On October 25, 2007 the homeowner was issued a citation from the City of Oceanside's Code Enforcement Division for a reception antenna that exceeds the

maximum allowable height of 12 feet for ground mounted reception and transmission antennas, and the base district height of 36 feet. On December 10, 2007 the homeowner submitted an application for a Variance to exceed the maximum allowable height of the residential base district for the ground mounted reception antenna.

Site Review: The site is located at 142 Carey Road and within the Loma Alta neighborhood, and is zoned RS (Single-Family Residential District). Surrounding the subject site are single-family residential units to the north, south, east and west.

Project Description: The requested Variance is to exceed the maximum height of 36 feet in the single-family residential district and to exceed the requirement of the maximum allowable height of 12 feet for ground mounted reception antennas as per Oceanside Zoning Ordinance 3025(c) Reception Antennas. The Oceanside Zoning Ordinance allows for ground mounted reception antennas to be constructed above 12 feet with the City Planner's approval of an Administrative Conditional Use Permit. The existing unpermitted antenna exists at 54 feet above existing grade, and can be adjusted or raised to a height of 75 feet. In order to bring the unpermitted antenna into conformance with the requirements of the Oceanside Zoning Ordinance, the applicant has submitted a Variance request to exceed the maximum allowable height of 36 feet and permit the existing 54-foot HAM reception antenna that can possibly be raised to a height of 75 feet.

The project application is comprised of one component as follows:

Variance (V-14-07) represents a request for the following:

(a) To exceed the Development Standard height limit of 36 feet pursuant Section 1050 of the Oceanside Zoning Ordinance; and

The project is subject to the following Ordinances and City policies:

1. Zoning Ordinance
2. General Plan Land Use Element

ANALYSIS

KEY PLANNING ISSUES

1. General Plan Compliance

The General Plan Land Use Map designation on the subject property is EB-R (Estate B Residential). The proposed project is not consistent with this designation or the goals and objectives of the City's General Plan as follows:

A. Land Use Element

Goal 1.2: Site Design

Objective: To provide high-quality site design, all proposed land development project shall take advantage of natural or manmade environments to maximize energy conservation, natural air circulation, public safety, visual aesthetics, private and common open space, privacy, and land use compatibility.

Policy C: New Development or land uses shall provide coordinate site design whenever possible with existing or proposed adjacent land uses to provide complimentary site design, unified circulation access, and joint use of ancillary facilities.

This antenna will result in a more intense use of the subject property that will not be consistent with the surrounding neighborhood and may set precedence for other height variances in the surrounding area. The 75-foot height proposal is not consistent with the surrounding building's and structure's heights in the neighborhood and allowing the antenna to remain would set precedence and would put the property out of character with the surrounding properties. This design of the proposed antenna would not provide high-quality visual aesthetics.

2. Zoning Compliance

This project is located in the RS zone (Single-Family Residential District) and does not comply with the requirements of that zone in regards to the proposed height. The following table summarizes the minimum required development standards for the project site and what actually exist:

	MINIMUM REQUIRED	EXISTING
MINIMUM LOT SIZE	6,000 sq. ft.	8,050 sq. ft.
FRONTYARD SETBACK	20 feet	20 feet
SIDEYARD SETBACK	7.5 feet	7.5 feet
REARYARD SETBACK	15 feet	15 feet
BUILDING HEIGHT	Max. 36 feet	Approx. 17 feet (Home) 54 feet and can be adjusted to 75 feet (Existing Unpermitted Antenna)

The project does not meet the development standards for the maximum building height. The Variance for the proposed 75-foot tall antenna is not warranted due to lack of physical constraints placed by the topography of the site. The property possesses no unique

characteristics to allow the height of the antenna to be built at 75 feet height and would establish a precedent to maximum heights allowed within the Loma Alta Neighborhood District.

DISCUSSION

Issue: Land Use Consistency with Findings for Granting Variance.

Recommendation: In reviewing the application for a Variance, the Planning Commission must make all of the following findings:

1. That because of special circumstances or conditions applicable to the development site, including size, shape, topography, location or surroundings strict application of the requirements of the Zoning Ordinance deprive such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

2. That granting the application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare.

3. That granting the application is consistent with the purposes of the Zoning Ordinance and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.

In evaluating this Variance request, Staff has determined that the property does not possess a special or unique circumstance warranting approval of a Variance. The subject property slopes down gradually to the east and the owner has explained that the height of 54 to 75 feet is necessary to obtain the reception that is needed to operate a private HAM radio for hobby purposes. The applicant has not submitted sufficient technical or professional information that provides the appropriate heights needed to operate a HAM radio for this subject property. The required 36-foot height limit will not deprive the property of an adequate reception area to perform the homeowner's hobby within a quarter-mile radius according to the Federal Communications Commission. The applicant contends that because the site is in a valley the 75 feet height is required to fully operate the HAM radio.

ENVIRONMENTAL DETERMINATION

Per the California Environmental Quality Act Section 15378 (CEQA) the Variance denial is not considered a project that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, so the Variance

denial does not require CEQA approval. However, in the event that staff's recommendation is overturned and the project is approved, a Class 3 categorical exemption pursuant to Article 19 Categorical Exemptions, Section 15303 New Construction or Conversion of Small Structures, of the California Environmental Quality Act would apply.

PUBLIC NOTIFICATION

Legal notice was published in the North County Times and notices were sent to property owners of record within a 300-foot radius of the subject property, individuals and/or organizations requesting notification, applicant and other interested parties. As of January 28, 2009, no communication supporting or opposing the request has been received.

SUMMARY

There are no unique physical constraints about the applicant's property that would warrant a height variance. Therefore, Staff recommends that the Planning Commission deny the project. The Commission's action should be:

-- Move to deny Variance (V-14-07) and adopt Planning Commission Resolution 2008-P70 as attached.

PREPARED BY:

Scott Nightingale
Planner II

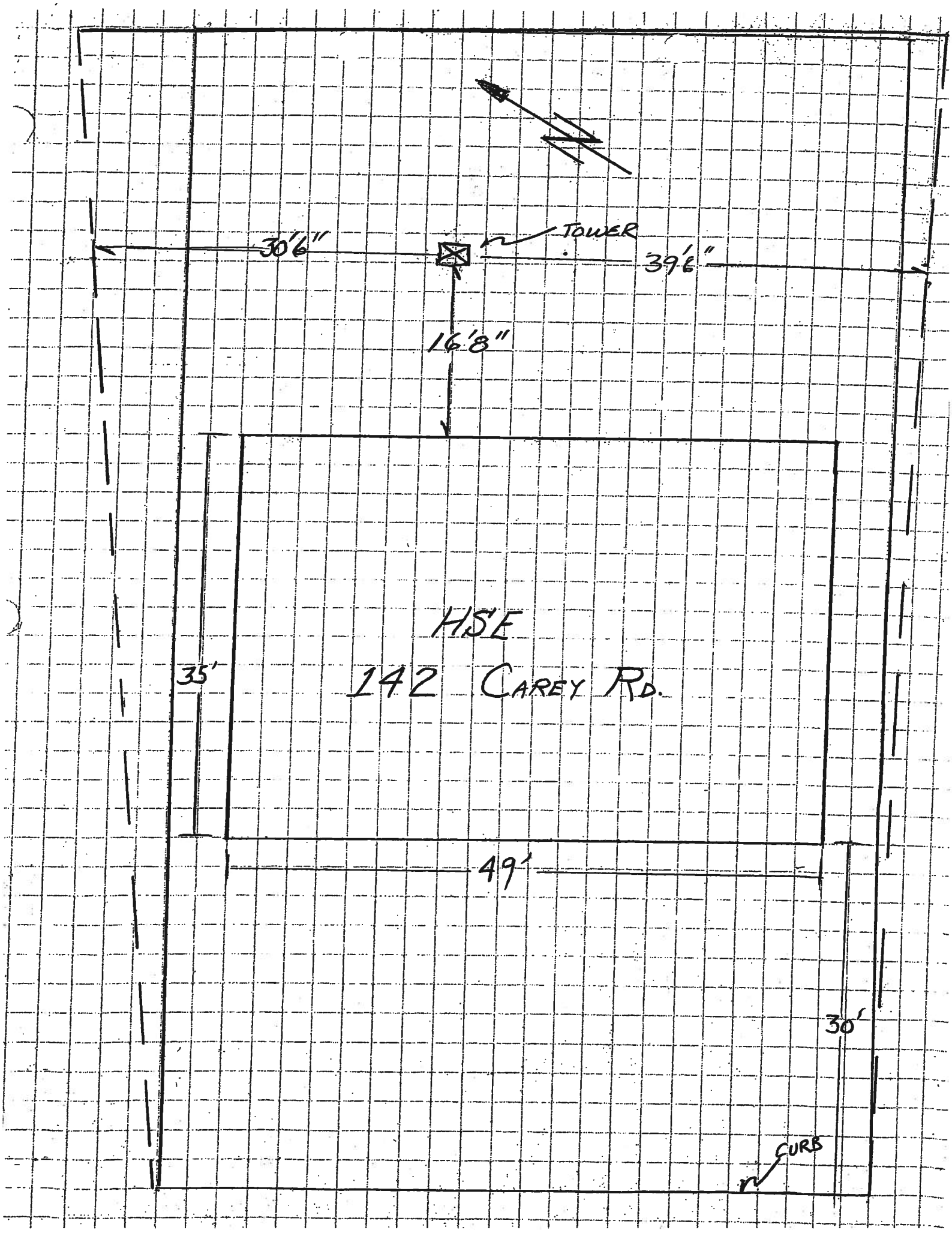
SUBMITTED BY:

Jerry Hittleman
City Planner

REVIEWED BY:
Richard Greenbauer, Senior Planner

JH/SN/fil

Attachment:
1. Site Plan, Elevations
2. Planning Commission Resolution No. 2009-P08
3. Letters of support from neighbors
4. Pictures of the property and the antenna
5. Proof of Amateur Radio License
6. Copy of Bill AB:1228


N
TOWER
30'6"
39'6"
16'8"
HSE
142 CAREY RD.
35'
49'
30'
CURB

PLANNING COMMISSION
RESOLUTION NO. 2009-P08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DENYING A VARIANCE ON CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

APPLICATION NO: V-14-07
APPLICANT: Robert W. Kruger
LOCATION: 142 Carey Road

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms prescribed by the Commission requesting a Variance under the provisions of Articles 10 & 43 and 41 of the Zoning Ordinance of the City of Oceanside to permit the following:

to exceed the 36-foot maximum height limit for a 54-foot to a 75-foot tall reception tower and antenna;

on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 9th day of February, 2009 conduct a duly advertised public hearing as prescribed by law to consider said application.

WHEREAS, the Applicant is an FCC-licensed Amateur Radio Operator, and the proposed tower and antenna are for the amateur radio use.

WHEREAS, the City of Oceanside is subject to California Government Code 65850.3 and the FCC PRB-1 rule regarding the proposed tower and antenna that requires that the City not preclude amateur radio service communications, and that the City reasonably accommodate amateur radio service communications, and that the City's regulation of this type of tower and antenna constitute the minimum practicable regulation to accomplish the City's legitimate purpose.

WHEREAS, the City's legitimate purposes are to reasonably accommodate amateur radio communications based on a demonstrated need for a particular antenna tower and antenna height based on reasonable and commonly available antenna modeling technical information; and that the City ensure that such towers, antennas, foundations, and related equipment are installed and

maintained in a safe manner and conditioned to protect the public health and welfare, including where the antenna tower and antenna height could result in the antenna tower and antenna falling or in some other way failing.

WHEREAS, the City requested that the Applicant provide objective and commonly used technical transmission information about the proposed antenna and height versus performance data, commonly known as a NEC Antenna Modeling or similar modeling to permit the City to develop the minimum practical regulations in response to the Applicant's antenna tower and antenna height request.

WHEREAS the Applicant, having been given more than sufficient time to provide the City with the requested antenna modeling information, failed to provide the information to the City.

WHEREAS the Applicant's failure to provide the antenna modeling information makes it impossible for the City to develop the minimum practical regulations in response to the Applicant's antenna tower and antenna height request.

WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

WHEREAS, studies and investigations made by this Commission and in its behalf reveal the following facts:

FINDINGS:

For denying the Variance:

1. There may be special circumstances or conditions under Government Code 65850.3 and the FCC PRB-1 rule applicable to this FCC-licensed applicant that warrant the granting of a variance for an approximate 54-foot to 75-foot high reception antenna for private purposes that exceeds the maximum 36-foot height limit for structures in the Loma Alta Neighborhood as stipulated in the development standards of the Zoning Ordinance. However, the applicant has not provided any technical evidence in response to a written City request that the applicant explain the minimum height requirements needed for operating an amateur radio for this location and area supported by commonly-used antenna modeling data. Without such technical information, staff is unable to determine whether the strict application of the height requirements of the Zoning Ordinance would deprive the applicant of privileges accorded amateur radio operators under Government

Code 65850.3 and the FCC PRB-1 rule, or how to develop the minimum practical regulations in response to the applicant's antenna tower and antenna height request in light of the size, shape, topography, location and surroundings of the subject parcel.

2. Absent the technical data to substantiate the applicant's proposed antenna tower and antenna height, the proposed increase in structure height makes the property or use out-of-character with property improvements in the vicinity. All structures in the vicinity of the subject property conform to the Zoning Ordinance and are under 36 feet. Accordingly, permitting a 54-foot to 75-foot reception antenna would visually put the subject property out of character with all properties in the neighborhood without evidence that the particular structure and height is needed for legitimate amateur radio operation purposes.

3. The increase in the antenna tower and antenna height is inconsistent with the existing residences, and non-residential structures in the surrounding neighborhood, and would be a grant of special privilege inconsistent with limitations on those existing residences. Staff recognizes that the federal and state governments require local zoning authorities to "reasonably accommodate" legitimate amateur radio operators in recognition of the crucial services they provide. However, the state and federal preemption is limited. Applicants are not free to disregard health, safety and aesthetic regulations, nor are they free to construct radio towers or other structures without obtaining building permits. In this case, the applicant constructed a radio tower which exceeds the maximum allowable height in the zoning designation by at least 18 feet. The structure was constructed without building permits and without inspection by City safety inspectors. Accordingly, staff is unable to determine whether the structure was constructed utilizing the correct safety standards, whether the foundation is adequate to support the structure, and whether the underlying soils are sufficiently stable to uphold the large and heavy structure. There are several neighboring residences, including applicant's own residence, that are located within 75 feet of the structure. This creates a serious health and safety risk to the adjoining properties. Additionally, applicant has failed to provide adequate technical information, including but not limited to, the requested antenna modeling information showing the need for an antenna of the height, size and scale requested by the applicant. Without this information, staff was unable to determine the appropriate level of CEQA

review, or the appropriate manner in which the City may develop the minimum practical regulations in response to the Applicant's antenna tower and antenna height request to conform with Government Code 65850.3 and the FCC PRB-1 rule.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby deny Variance (V-14-07).

PASSED AND ADOPTED Resolution No. 2009-P08 on February 9, 2009 by the following vote, to wit:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

Claudia Troisi, Chairperson
Oceanside Planning Commission

ATTEST:

_____

Jerry Hittleman, Secretary

I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that this is a true and correct copy of Resolution No. 2009-P08.

Dated: February 9, 2009

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

RECEIVED
MAY 01 2008
Planning Department

March 24, 2008

Stephen and Vivian Morris
133 Carey Road
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

____ No, I do not support

Stephen D Morris
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Virginia Cunha
134 Carey Road
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

____ No, I do not support

Virginia A. Cunha
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Pearl Velasquez
138 Carey Road
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

____ No, I do not support

Pearl Velasquez
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Robert Pratt Trust
815 Civic Center Drive
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

X Yes, I do support

_____ No, I do not support

Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Bonita L. Lang
147 Carey Road
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

_____ No, I do not support

Bonita Lang

Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Matthew and Tammie Lavoice
152 Carey Road
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

____ No, I do not support

Tammie J. LaVoice
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Carol A. Fehner
158 Carey Road
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

X Yes, I do support

____ No, I do not support

Carol Fehner
Your signature

B. Fehner KK6IB

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Marcial and Aracely Nuno
134 Cregar Street
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

_____ No, I do not support

Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Jose Lopez
130 Cregar Street
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

✓ Yes, I do support

____ No, I do not support

Jose Lopez
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Melecio Rios
142 Cregar Street
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

__X__ Yes, I do support

_____ No, I do not support

M R

Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Robert and Willie Moore
145 Cregar Street
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

__✓__ Yes, I do support

____ No, I do not support

Robert T. Moore
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Rodolfo and Esther Sotelo
154 Cregar Street
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

Robert W. Kruger

Robert W. Kruger

_____ Yes, I do support

_X_ No, I do not support

Esther Sotelo
Your signature

Robert W. Kruger
142 Carey Road
Oceanside, California 92054
K6DEX

March 24, 2008

Nancy Holbrook
146 Cregar Street
Oceanside, Ca 92054

Dear Neighbor,

I have lived at this address for 20 years and am asking for your help. I am an amateur radio (HAM) operator/enthusiast and erected an antenna tower in my backyard. Because I believe communications are very important in times of emergency, I am asking for your support, allowing me to keep the antenna radio tower.

Sincerely,

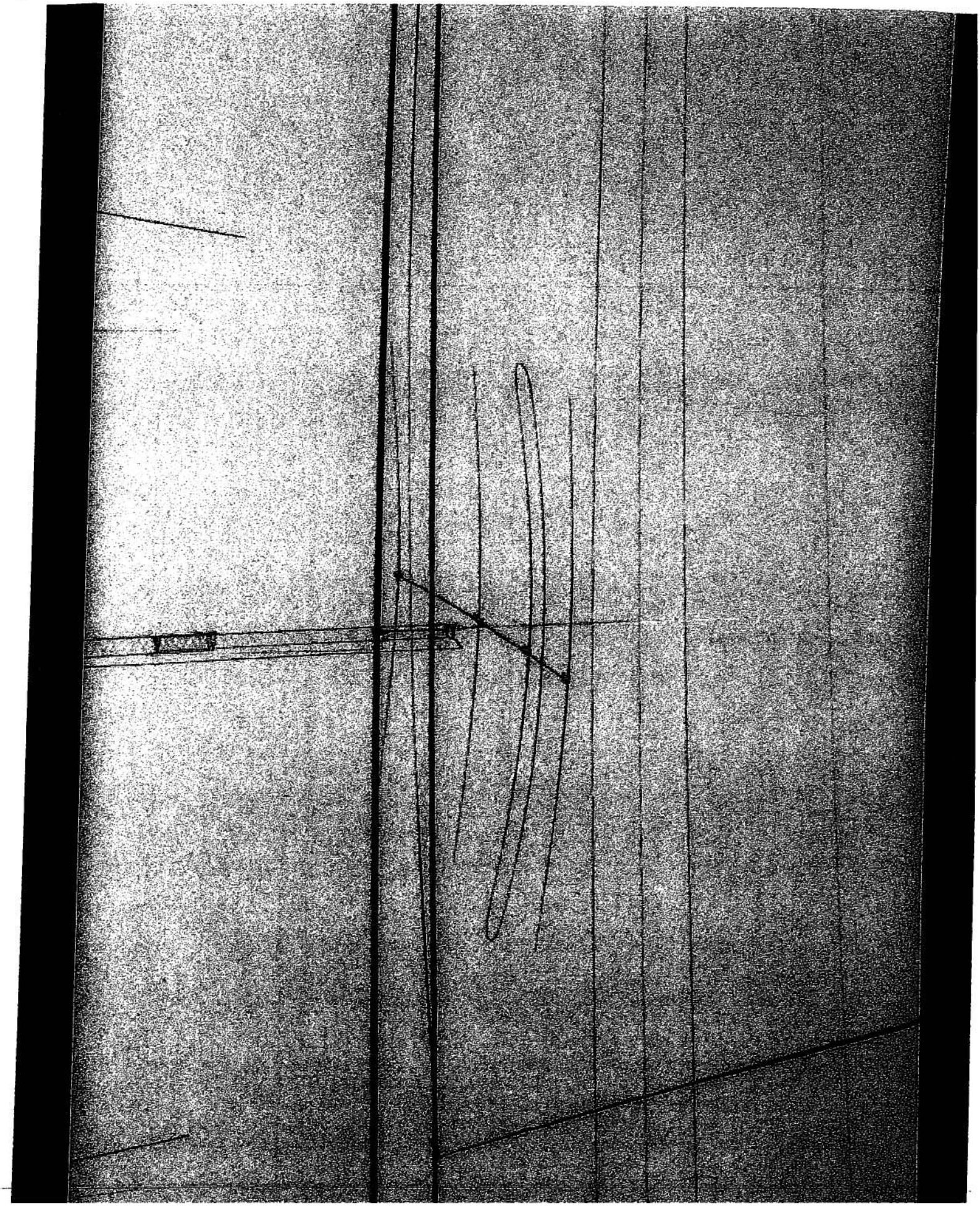
Robert W. Kruger

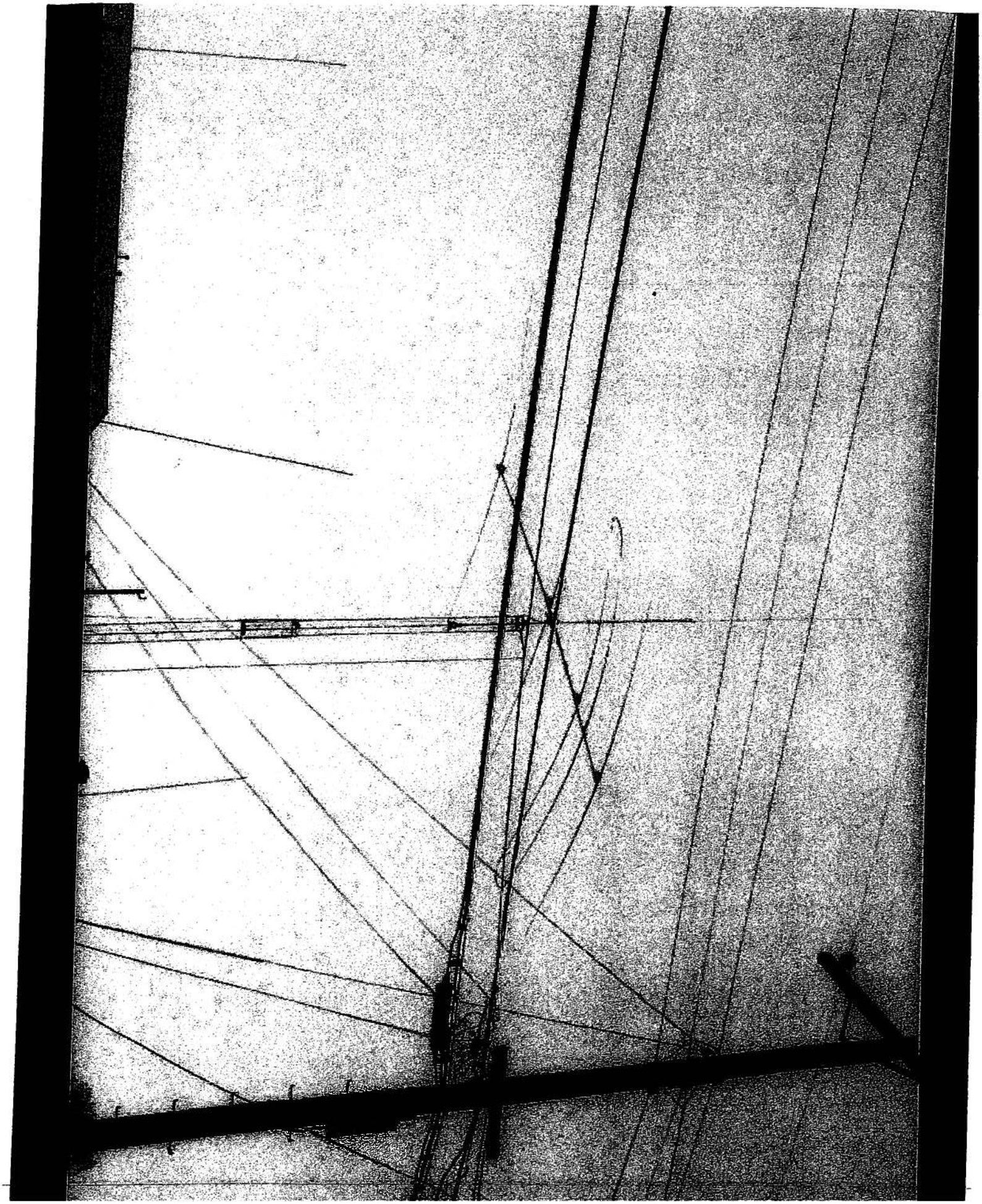
Robert W. Kruger

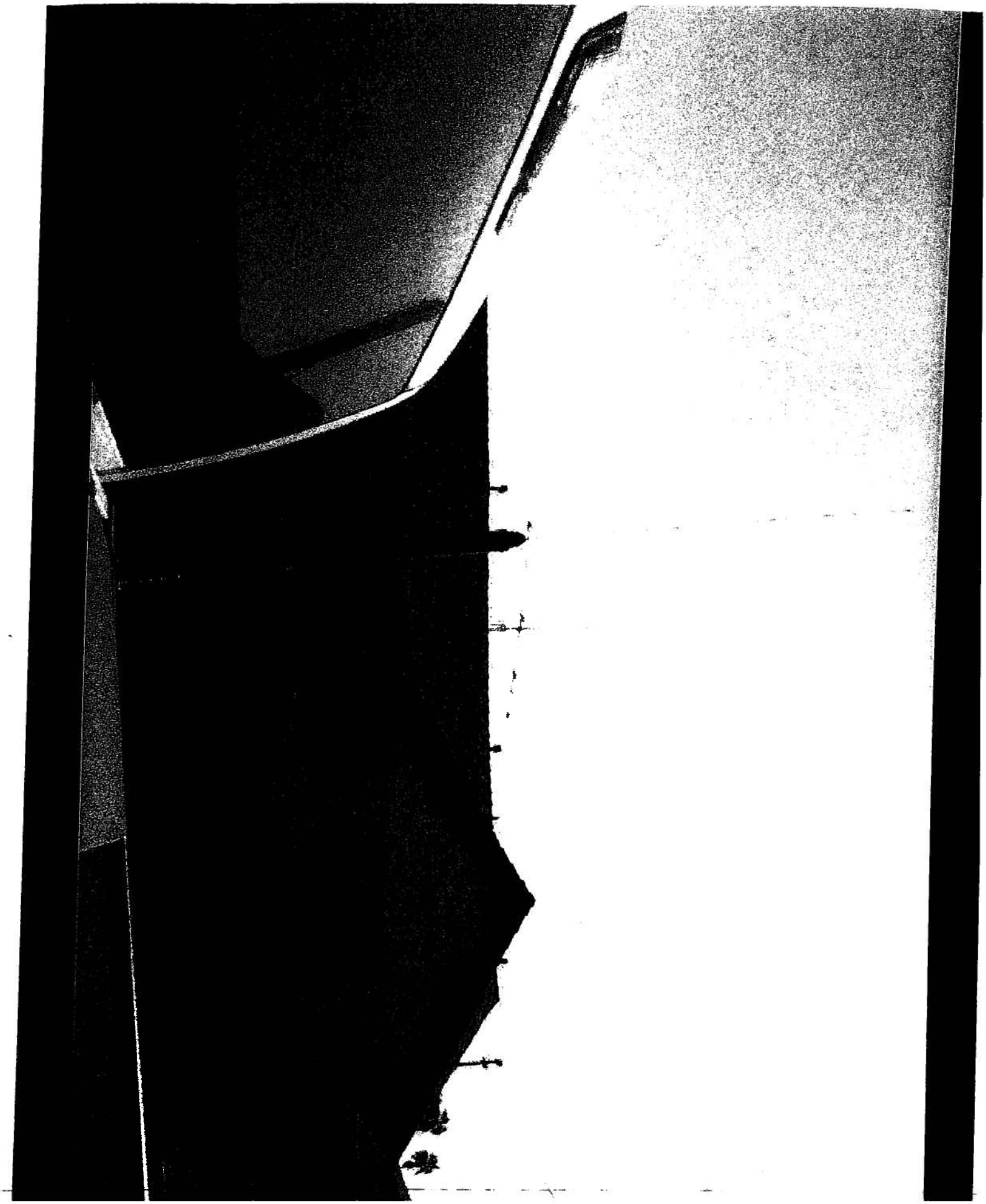
✓ Yes, I do support

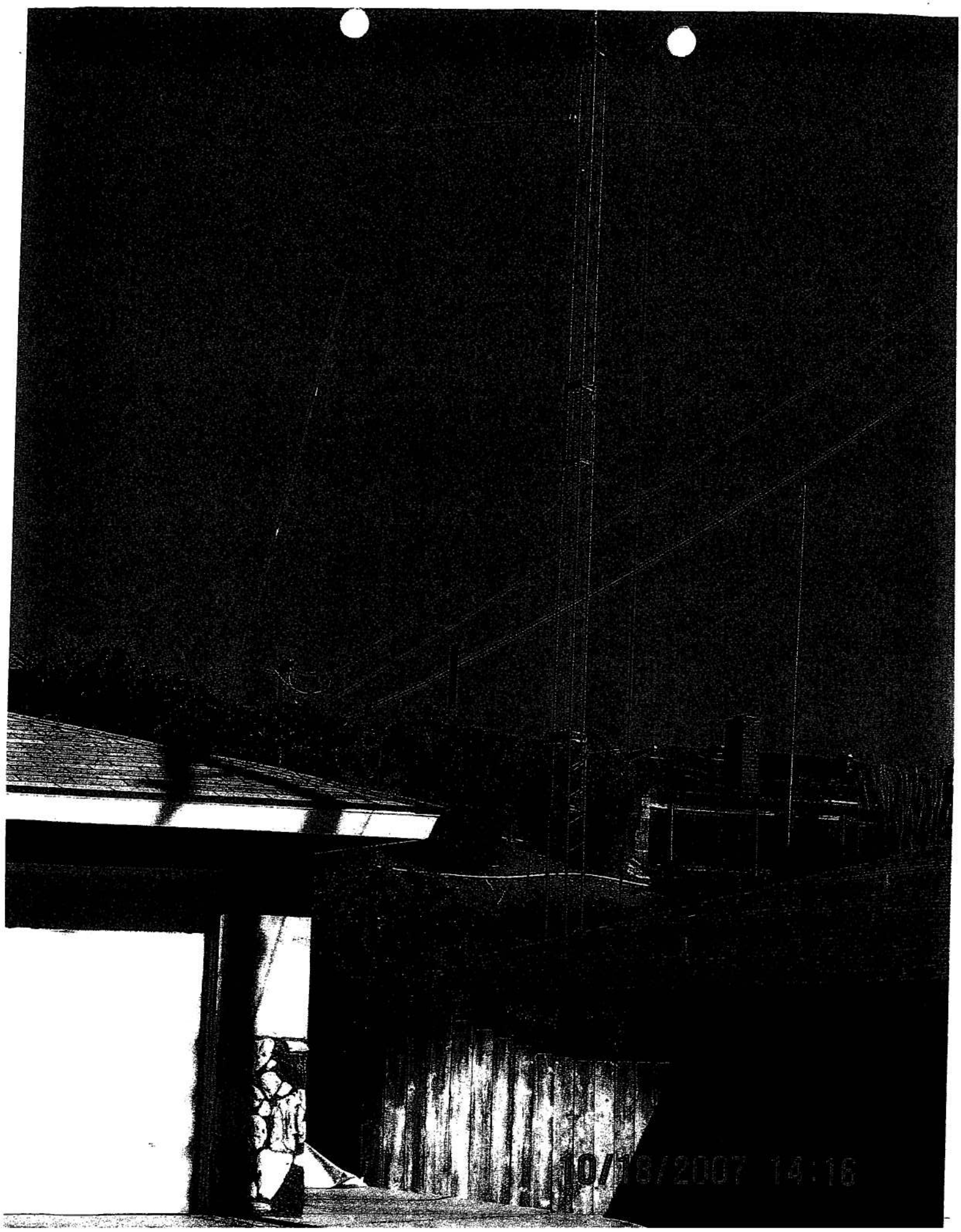
_____ No, I do not support

Nancy Holbrook
Your signature





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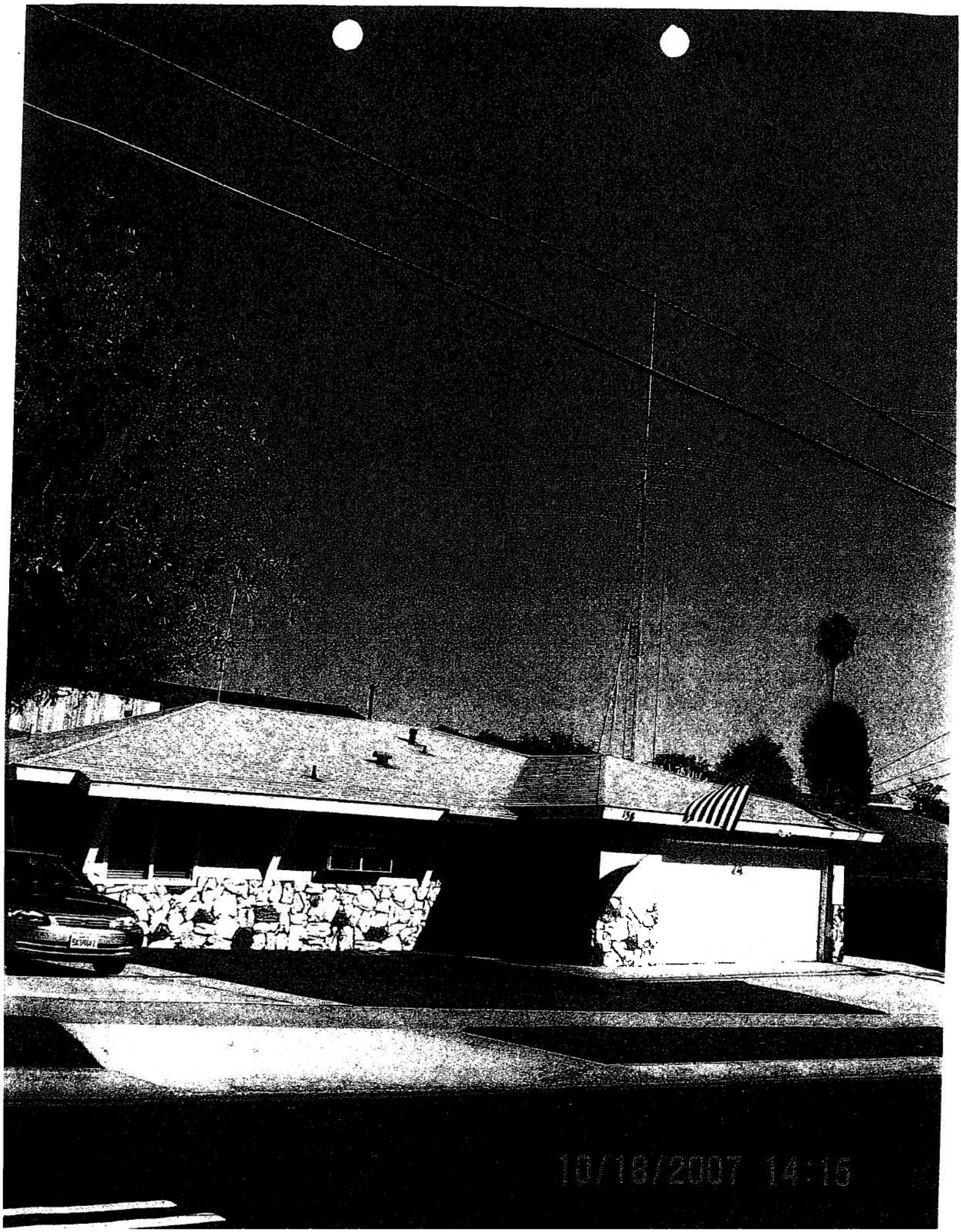
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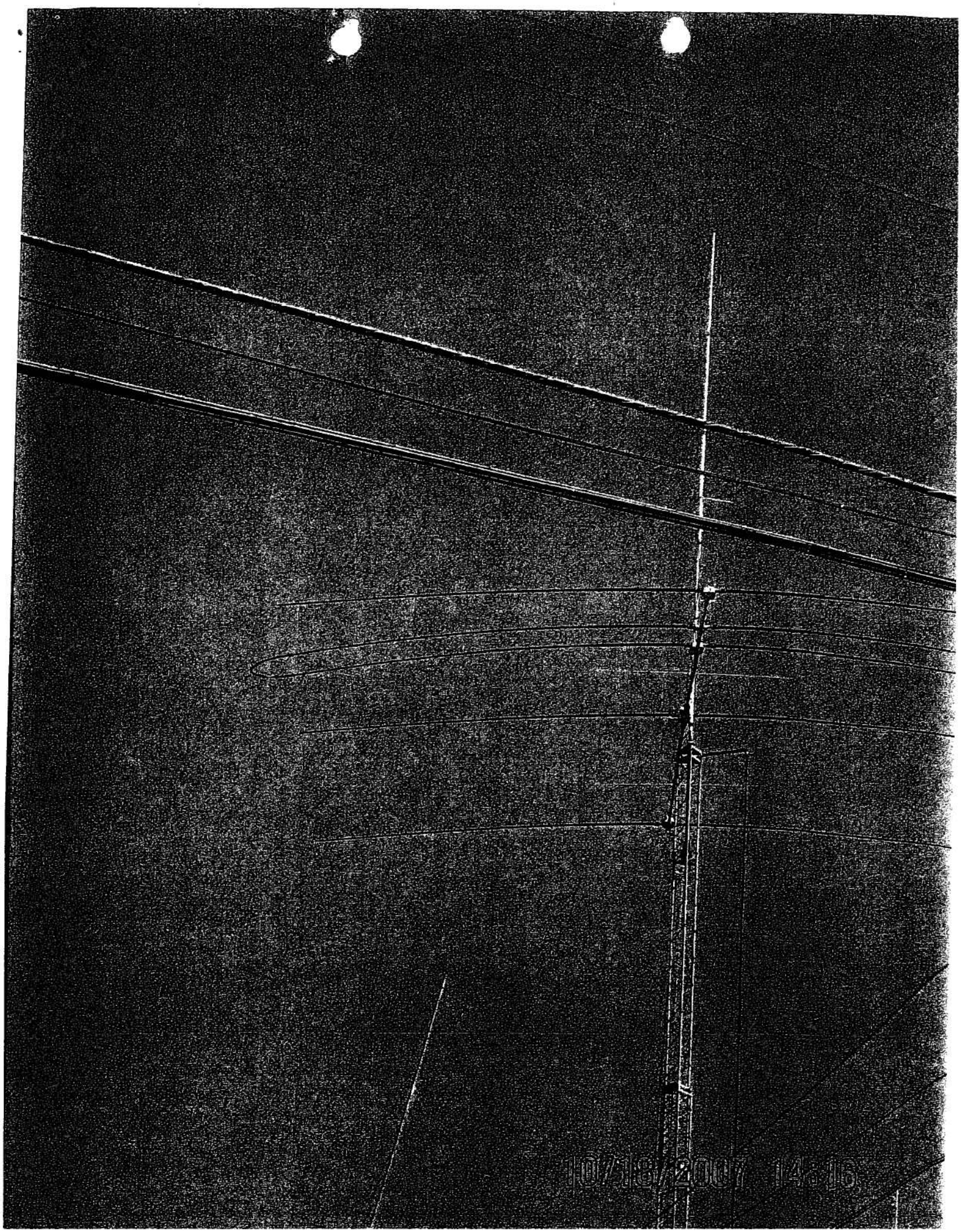
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APPENDIX 01

Cut Along This Line

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
AMATEUR RADIO LICENSE

K6DEX

KRUGER, ROBERT W
142 CAREY RD
OCEANSIDE CA 92054-3630

Licensee: This is your radi authorization in sizes suitab for your wallet and for fra. Carefully cut the documents along the lines as indicated and sign immediately upon receipt. They are not valid until signed.

The Commission suggests that the wallet size version be laminated (or another similar document protection process) after signing. The Commission has found, under certain circumstances, laser print is subject to displacement.

FCC Registration Number (FRN) 0014809081

Special Conditions/Endorsements

NONE

Grant Date	Effective Date	Print Date	Expiration Date
05-23-2006	05-23-2006	05-23-2006	05-23-2016

File Number	Operator Privileges	Station Privileges
0002597256	Amateur Extra	PRIMARY

THIS LICENSE IS NOT TRANSFERABLE

COPY

(Licensee's Signature)

FCC 660 April 2002

Cut Along This Line

Cut Along This Line

Call Sign/Number	Grant Date	Expiration Date	File Number	Print Date	Effective Date
K6DEX	05-23-2006	05-23-2016	0002597256	05-23-2006	05-23-2006

Operator Privileges: Amateur Extra
Station Privileges: PRIMARY

THIS LICENSE IS NOT TRANSFERABLE.
SPECIAL CONDITIONS/ENDORSEMENTS:
NONE

KRUGER, ROBERT W
142 CAREY RD
OCEANSIDE CA 92054-3630

AMATEUR RADIO LICENSE

FCC Registration Number (FRN) 0014809081
FCC 660 April 2002

FOLD HERE

(Licensee's Signature)
FEDERAL COMMUNICATIONS COMMISSION

Cut Along This Line

Appendix ~~02~~

BILL NUMBER: AB 1228 CHAPTERED
BILL TEXT

CHAPTER 50
FILED WITH SECRETARY OF STATE JULY 14, 2003
APPROVED BY GOVERNOR JULY 14, 2003
PASSED THE ASSEMBLY JUNE 30, 2003
PASSED THE SENATE JUNE 24, 2003
AMENDED IN SENATE JUNE 12, 2003
AMENDED IN SENATE MAY 15, 2003

INTRODUCED BY Assembly Member Dutton

FEBRUARY 21, 2003

An act to add Section 65850.3 to the Government Code, relating to zoning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1228, Dutton. Zoning ordinances: radio antennas.

Existing law authorizes the legislative body of any county or city to adopt zoning ordinances for various purposes.

This bill would require that any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures not preclude amateur radio service communications, reasonably accommodate amateur radio service communications, allow amateur radio station antenna structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, and constitute the minimum practicable regulation to accomplish the legitimate purpose of the city or county. It would declare that it is the intent of the Legislature in enacting this bill to codify in state law the provisions of specified federal regulations relating to amateur radio station facilities.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65850.3 is added to the Government Code, to read:

65850.3. Any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose.

It is the intent of the Legislature in adding this section to the

Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio station facilities.

02

Appendix ~~01~~

Memorandum Opinion and Order in PRB-1

Before the
Federal Communications Commission
Washington, DC 20554

FCC 85-506
36149

In the Matter of

Federal preemption of state and local regulations pertaining to Amateur radio facilities.

PRB-1

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985 ;Released: September 19, 1985

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter.\fn 1/ With extension, comments were due on or before December 26, 1984,\fn 2/ with reply comments due on or before January 25, 1985 \fn 3/ Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations

can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance or the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions--anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties,

they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

> No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

> No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operation amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (television, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws, restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS), \fn 4/ Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

> The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster. We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the Issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur Radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of the regulation on Federal goals. Its

position is that Federal preemption is warranted whenever local government regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied. A blanket to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to...legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate `antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a "national policy." However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as "liveable" neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of antennas.

...the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NCL) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See Fidelity Federal Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142, 143 (1963),

or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Hines v. Davidowitz, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statues, Fidelity Federal Savings & Loan Association v. de la Cuesta, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of view point as does the instant issue. The cities, countries, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in Earth Satellite Communications, Inc., 95 FCC 2d 1223 (1983), we recognized that

> ...countervailing state interests inhere in the present situation....For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. \fn 5/ Those rules set forth procedures for the licensing of stations and operators, frequency

allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. \fn 6/

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico
Secretary

File Number: **V-14-07**

Applicant: **Robert W. Kruger**

Description:

VARIANCE (V-14-07) to permit a 54-foot tall ground mounted HAM radio antenna that exceeds the maximum allowable height requirement located at 142 Carey Road. The project site is zoned RS (Residential Single-Family) and is situated within the Loma Alta Neighborhood. – **KRUGER VARIANCE**

Environmental Determination:

The project is exempt from the California Environmental Quality Act.

City of Oceanside, Planning Division
300 N. Coast Highway
Oceanside, CA 92054 (760) 435-3520

Application for Public Hearing

Community Development Department / Planning Division
(760) 435-3520
Oceanside Civic Center 300 North Coast Highway
Oceanside, California 92054-2885

RECEIVED DEC 10 2007 Planning Department

STAFF USE ONLY	
ACCEPTED 12/10/07 RECEIVED DEC 10 2007 Planning Department	BY SN.

Please Print or Type All Information

HEARING	
GPA	
MASTER/SP.PLAN	
ZONE CH.	
TENT. MAP	
PAR. MAP	
DEV. PL.	
C.U.P.	
VARIANCE	V-14-07
COASTAL	
O.H.P.A.C.	

PART I – APPLICANT INFORMATION

1. APPLICANT: Robert W Kruger	2. STATUS: Owner
3. ADDRESS: 142 Carey Road Oceanside, CA 92054	4. PHONE/FAX/E-mail: (760)722-5523
5. APPLICANT'S REPRESENTATIVE (or person to be contacted for information during processing): N/A	
6. ADDRESS: N/A	7. PHONE/FAX/E-mail: N/A

PART II – PROPERTY DESCRIPTION

8. LOCATION: 142 Carey Road Oceanside, CA 92054	9. SIZE: 0.19 AC/8,100 sq. ft

10. GENERAL PLAN	11. ZONING	12. LAND USE	13. ASSESSOR'S PARCEL NUMBER
SFD-R	RS	Sgl Family Home	148-193-05

PART III – PROJECT DESCRIPTION

14. GENERAL PROJECT DESCRIPTION

Provide Zoning Variance For Existing Antenna Tower And Antennas To 75 ft.

15. PROPOSED GENERAL PLAN	16. PROPOSED ZONING	17. PROPOSED LAND USE	18. NO. UNITS	19. DENSITY
N/A	N/A	N/A	N/A	N/A

20. BUILDING SIZE	21. PARKING SPACES	22. % LANDSCAPE	23. % LOT COVERAGE or FAR
3X3X75 ft	N/A	N/A	N/A <0.001%

PART IV – ATTACHMENTS

X	24. DESCRIPTION/JUSTIFICATION	X	25. LEGAL DESCRIPTION	X	26. TITLE REPORT
X	27. NOTIFICATION MAP & LABELS	X	28. ENVIRONMENTAL INFO FORM	X	29. PLOT PLANS
X	30. FLOOR PLANS AND ELEVATIONS		31. CERTIFICATION OF POSTING		32. ~~OTHER~~ (See attachment for required reports) APPENDIX 3

PART V – SIGNATURES

33. APPLICANT OR REPRESENTATIVE (Print): Robert W. Kruger	34. DATE 12/7/2007	SIGNATURES OF ALL OWNERS OF THE SUBJECT PROPERTY ARE NECESSARY BEFORE THE APPLICATION CAN BE ACCEPTED. IN THE CASE OF PARTNERSHIPS OR CORPORATIONS, THE GENERAL PARTNER OR CORPORATION OFFICER SO AUTHORIZED MAY SIGN. (ATTACH ADDITIONAL PAGES AS NECESSARY).
Sign: Robert W Kruger	35. OWNER (Print): Susan E. Kruger	36. DATE 12-7-2007
I DECLARE UNDER PENALTYOF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.	Sign: Susan E. Kruger	

SCOTT

PART IV – ATTACHMENTS

D-J

29. Plot Plans

Robert W Kruger
142 Carey Road
Oceanside, California 92054

PART IV – Attachments

Project Description and Justification:

24a. Purpose: As a Federally Licensed Radio Station K6DEX, FRN-0014809081 (see APPENDIX 01), applicant wishes to achieve approval of a zoning variance for reasonable accommodation as prescribed by FCC 85-506 PRB-1 (see APPENDIX 02) and California law AB-1228 (see APPENDIX 03) for the operation of an existing ground mounted support structure (tower) to receive and transmit radio signals on various allowed licensed frequencies independent of all existing telecommunication networks to aid amateur radio transmissions, natural/civil disaster emergency communications, and rescue operations as needed.

24b. Objective: Topography of the site and surrounding area, prevents effective transmission of such signals due to low elevation caused by the natural "valley" surroundings. Therefore, erection of 75ft high antenna on the property is needed to support such operations.

24c. Construction: Structure currently exists and is in operation. Total above grade aggregate height is 75 feet. Components of the structure are as follows:

1. **54 ft "Tower":** erected vertically from grade level
2. **14ft "Mast":** installed directly onto antenna tower.
3. **7 ft antenna:** installed directly to antenna mast.
4. **"Tower" base:** consists of steel/cement base 3ft x 3ft x 7ft of reinforced concrete cage **(63 cubic feet).**
5. **This structure is unattached and is located approximately 50ft from the front, 50 feet from back, and 25 feet from sides of parcel, directly in the rear of the single family residence.**

PART IV – Attachments (Cont'd)

Benefits:

1. **Owner:** Reliable operating performance of the Amateur Radio Station.

2. **Property:** Safe, semi permanent structure erected to manufacturer standards and specifications (see APPENDIX-04).

3. **Neighborhood:** Effective emergency disaster communications with Amateur Radio Emergency Services (ARES), and Radio Amateur Civil Emergency Services (RACES) which is able to operate independent of existing public communications networks.

4. **City of Oceanside:** Effective emergency disaster communications, preparedness. Due to regular participation in various radio nets, drills, and tests, this station is a "ready-reserve", free of charge adjunct to emergency communications for local, state, and nationwide use.

PART IV – Attachments (Cont'd)

24. Development Plans: Section 4306 of the Zoning Ordinance requires that proof be submitted in support of the following statements:

(Note: Applicant's responses to statements are underlined hereafter.)

a.) That the site plan and physical design of the project as proposed is consistent with the purposes of the Zoning Ordinance.

N/A

b.) That the Development Plan as proposed conforms to the General Plan of the City.

N/A

c.) That the area covered by the Development Plan can be adequately, reasonably and conveniently served by existing and planned public services, utilities and public facilities.

N/A

d.) That the project as proposed is compatible with existing and potential development on adjoining properties or in the surrounding neighborhood.

N/A

e.) That the site plan and physical design of the project is consistent with the policies contained within Section 1.24 and 1.25 of the and Use Element of the General Plan, the Development Guidelines for Hillsides, and Section 3039 of this ordinance.

N/A

PART IV – Attachments (Cont'd)

24. Coastal Development Permits: The Local Coastal Program requires that proof must be submitted in support of the following statements:

a.) That the project conforms to the Local Coastal Plan, including the policies of that Plan.

N/A

b.) That all development within the appeal area conforms to the public access and recreation policies of Chapter 3 of the Coastal Act.

N/A

24. Variances: Section 4105 of the Zoning Ordinance requires that proof be submitted in support of the following statements:

a.) That because of special circumstances or conditions applicable to the development site – including size, shape, topography, location or surroundings – strict application of the requirements of this ordinance deprive such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications;

Applicant's property is in a valley which prevents antenna from clearing topographical conditions at grade level.

b.) That granting the application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health safety o general welfare; and

Under license requirements of FCC, applicant's operation conforms to standards and measurements [Appendix-04]

Part IV Attachments (Cont'd)

c.) That granting the application is consistent with the purposes of this ordinance and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district; and if applicable,

Proposed structure has a footprint of 3ft x 3ft and is a semi-permanent structure that can be/will be removed upon sale/transfer of property.

d.) OS District Only. That granting the application is consistent with the requirements of Section 65911 of the Government Code and will not conflict with General Plan policies governing orderly growth and development and the preservation and conservation of open 0space lands.

N/A

24. Conditional Use Permits: Section 4105 of the Zoning Ordinance requires that proof be submitted in support of the following statements:

a.) That the proposed location of the use is in account with the objectives of this ordinance and the purposes of the district in which the site is located.

N/A

PART IV – ATTACHMENTS (Cont'd)

b.) That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

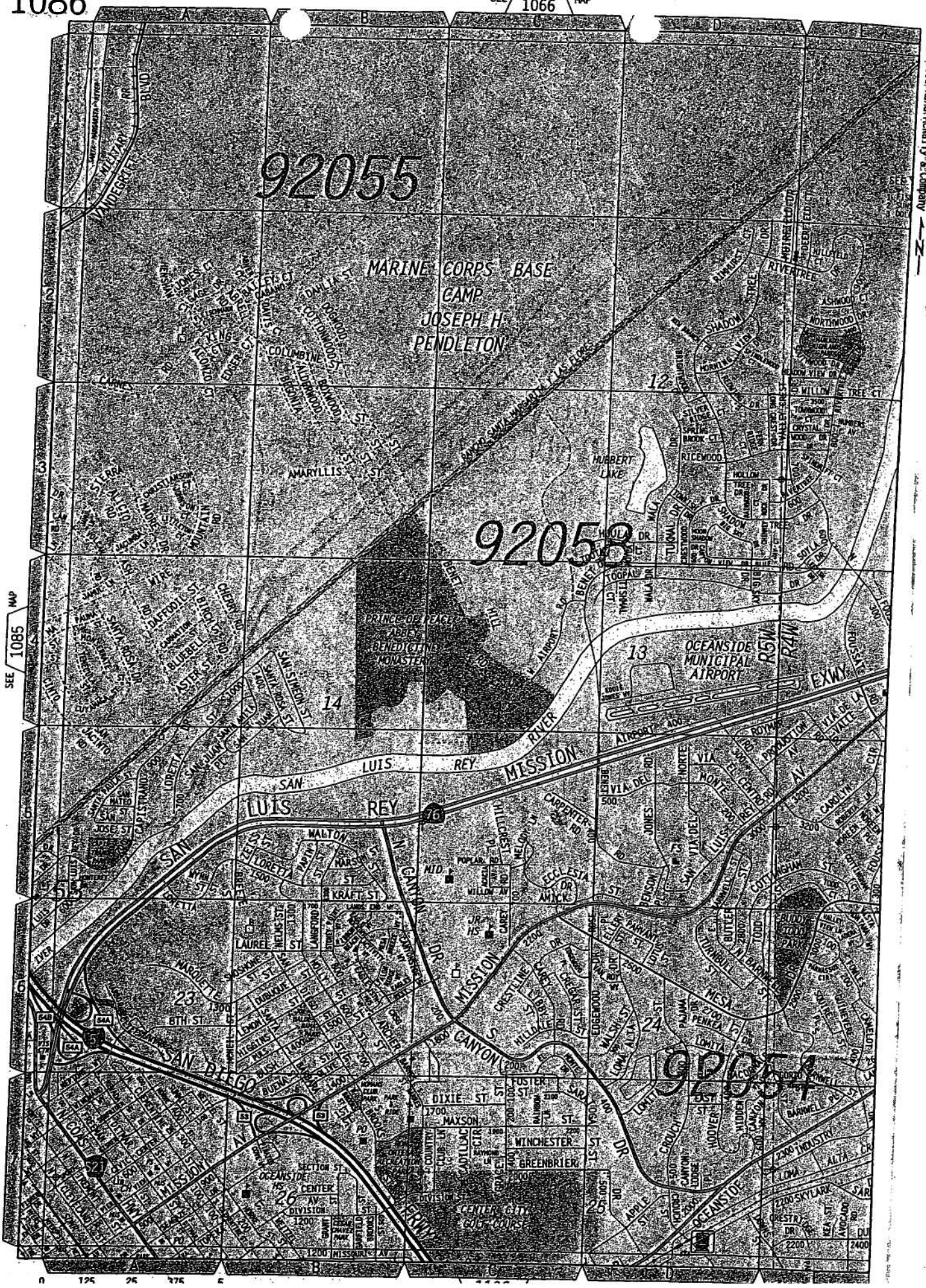
N/A

c.) That the proposed conditional use will comply with the provisions of this ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.

N/A

SEE 1066 MAP

SEE 1085 MAP



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SAN DIEGO CO

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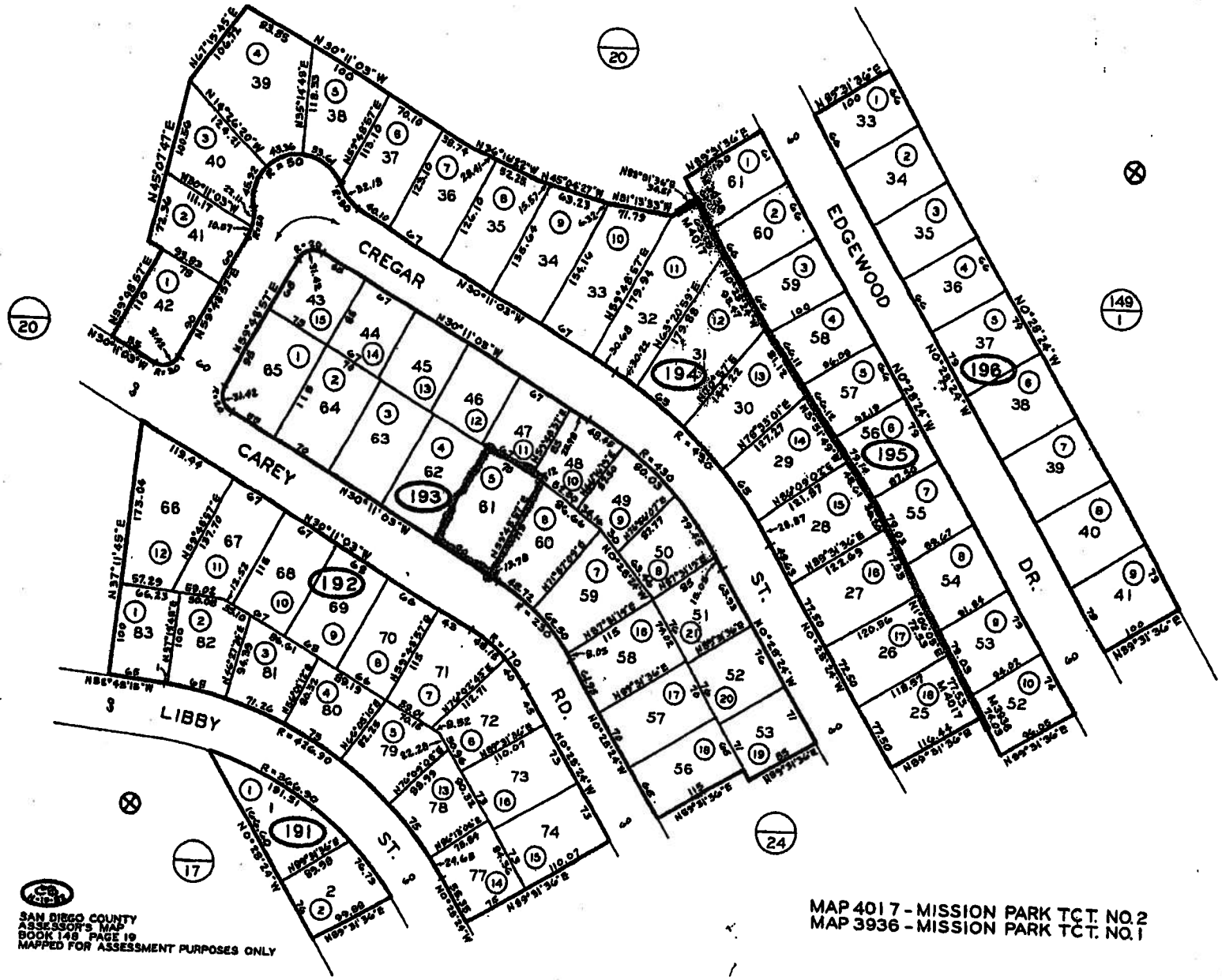

11-18-82 RB

CHANGES				
BLK	OLD	NEW	YR	CUT
191	[illegible]	2		
192	[illegible]	13-16		
193	[illegible]	16-21		
194	[illegible]	14-18	83	10087

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 148 PAGE 19
MAPPED FOR ASSESSMENT PURPOSES ONLY

MAP 4017 - MISSION PARK TCT. NO. 2
MAP 3936 - MISSION PARK TCT. NO. 1

148-191-196
-212-214

11-82 LJD

LEGAL DESCRIPTION

PARCEL 1: APN: (148-193-05-00)

142 CAREY ROAD

THOSE PORTIONS OF TRACT 2 LOT 6 OF MISSION DK, IN THE COUNTY OF SAN DEIGO STATE OF CALIFORNIA, FILLED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY