

described the Project location as being “on a ridge line” near Mt. Baldy village. [See, AR IV:1543, 1558.]

However, contrary to Respondents’ assertion, there is no basis in the record to find the testimony of Johnson and the Mt. Baldy residents as insubstantial. Moreover, there is nothing in the record to indicate that the Board of Supervisors discussed any opposing evidence of significant impacts, or made any factual determinations regarding the credibility of any such opposing evidence. Indeed, in the updated Staff Report for the October 2015 appeal hearing, the staff merely set forth the opposing argument and County’s corresponding response, but there was no discussion of the opposing evidence provided by Petitioner and others. [See, AR II:211-12, 225, 227.] Instead, the staff simply stated: “The [Project] will not cause adverse visual impacts due to the 45 foot height of the facility” [AR II:224.] Similarly, at the October 2015 appeal hearing, the Board of Supervisors did not make any specific credibility determinations which would require deference. [See, AR III:885-935.]

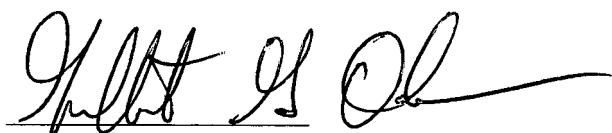
Based on the evidence in the record, Petitioner has demonstrated there is substantial evidence supporting a fair argument that the Project may have a significant aesthetic impact on the environment.⁸ Although there is also evidence supporting County’s decision to issue an MND, it cannot be upheld under the fair argument standard. Accordingly, the MND should be set aside, and County is ordered to prepare an EIR.

Summary of Rulings

- 1.) The Court finds Petitioner exhausted its administrative remedies as to all issues raised in the petition.

⁸ Since Petitioner has successfully demonstrated there is substantial evidence to support a fair argument with regard to the aesthetics impact claim, the other claims regarding impacts to air quality, biological resources, forest resources, etc. do not need to be reached.

- 2.) The Court denies Petitioner's Writ of Mandate as to the alleged violations of the CDC and the General Plan, on the ground that Petitioner did not meet its burden on these issues.
- 3.) The Court grants Petitioner's Writ of Mandate as to the alleged CEQA violations, on the ground Petitioner has met its burden of demonstrating there is substantial evidence in support of a fair argument that the Project will have significant negative aesthetic impacts on the environment. In addition, the Court grants Petitioner's Writ of Mandate as to the alleged CEQA violation, on the ground Petitioner has met its burden of demonstrating there is substantial evidence in support of a fair argument that the Project is improperly segmented or piecemealed because the Initial Study and MND did not consider the environmental impact of the other cell tower or towers that are necessary to provide adequate cell phone coverage in the area. Accordingly, the MND is set aside, and Respondents are ordered to prepare an EIR.
- 4.) Request for Judicial notice is granted.
- 5.) Petitioner to prepare notice, order and judgment.


Judge Gilbert G. Ochoa
Superior Courts of San Bernardino County

9-26-16