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JUN 13 1991
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

File

In re Application of	)	
	)	
	)	
BECKWITH COMMUNICATIONS, INC.	)	File No. BPH-910211MI
	)	
	)	
	)	
	)	
For Construction Permit for a	)	
New FM Station on Channel 240A	)	
in Healdsburg, CA	)	

To: Chief, Mass Media Bureau

JUN 14 2 21 PM '91
MAIL ROOM
FM EXAMINERS

OPPOSITION TO PETITION TO DENY

BECKWITH COMMUNICATIONS, INC.

George L. Lyon, Jr.
Its Counsel

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Summary

Beckwith Communications, Inc. opposes Williams J. Smith's petition to deny its application. Mr. Smith argues that Beckwith lacks reasonable assurance that local officials will approve its proposed transmitter site when the applicant files for the appropriate land use clearances. Yet, the standard this Commission follows is to presume local zoning approval can be obtained unless a compelling showing is made that such approval will not occur. Mr. Smith has not made that showing. Sonoma County officials have not had the occasion to take any action on Beckwith's proposal, and Mr. Smith has presented nothing which would indicate they will not approve the proposal.

The only case Mr. Smith's presents of adverse action by local officials involves a case where Sonoma County denied a proposed 407 foot lighted metal tower 1.5 miles from Beckwith's proposed wooden, non-lighted tower. It is clear from his evidence that the county took that action because the 407 foot tower would have had substantial adverse effects on the scenic environment. Beckwith, however, proposes only an 80 foot tower and contemplates several steps to minimize the environmental impact of its facility. Thus, Sonoma's denial of a tower more than five times taller some distance away from Beckwith's proposed transmitting structure has little relation to what the county will do when Beckwith requests approval of its transmitting structure. Given Mr. Smith's lack of a prima facie case that the county will deny zoning approval for Beckwith's transmitting structure, the Commission should decline to litigate that issue here.

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In re Application of	)	
	)	
BECKWITH COMMUNICATIONS, INC.	)	File No. BPH-910211MI
	)	
For a construction permit for a new FM Station on Channel 240A at Healdsburg, CA	)	

To: Chief, Mass Media Bureau

OPPOSITION TO PETITION TO DENY

Beckwith Communications, Inc. ("Beckwith"), by its counsel and pursuant to Rule Section 73.3584, opposes the May 29, 1991 petition to deny its application filed by William J. Smith. In support of this opposition, the following is shown:

I. Introduction.

1. Mr. Smith has petitioned to deny three of the applicants competing for Channel 240A at Healdsburg, CA. He claims that Beckwith and the other two applicants, Deas Communications, Inc. and Dragonfly Communications, Inc., lack reasonable assurance of site availability because "there is no reasonable assurance" that the applicants will obtain necessary local land use clearances. Petition at 2. To support that contention, he asserts that the antenna sites in question are classed as Resources and Rural Development in the Sonoma County General Plan and zoning ordinance, that the applicants' transmitting antenna sites are uses which are inconsistent with the General Plan, and that these applicants' proposals therefore cannot be granted. Id. at 3.

2. Mr. Smith further alleges that the Sonoma County General Plan contains specific criteria for the establishment of communications and transmission towers. He claims the zoning ordinance allows radio towers subject to a showing that:

a) the facility would serve a demonstrated public need;

b) include a statement explaining why use of existing tower facilities is infeasible;

c) minimize to the extent feasible, impacts on biotic and scenic resources;

d) include an analysis of alternative sites, explaining why the proposed site results in fewer or less severe environmental effects than feasible alternative sites.

Id. at 5. He asserts in general terms that the towers proposed by the three applicants he has petitioned to deny would have adverse environmental consequences and argues that because another applicant in this proceeding proposes to locate its antenna on an existing tower site at Mount Jackson, that it is unlikely that Sonoma County would approve the proposed transmitting structures at issue here. Id.

3. In that connection, he points out that in early 1990 Sonoma County refused to approve a proposal by FM Station KHTT to locate a radio broadcasting tower at 2300 Big Ridge Road in Healdsburg, which he says is "in close proximity to the proposed Dias site." Id. at 6. Based on the foregoing, he argues that he has made a "reasonable showing that none of these three applicants will be able to obtain approval of their plans from

the local authorities." Id. at 7, citing Teton Broadcasting Limited Partnership, 1 FCC Rcd 518, 519 (1986).[1/]

II. The petition fails to show that local authorities will not approve Beckwith's transmitting structure.

4. Mr. Smith's petition must be denied as to Beckwith for two reasons.[2/] First, Mr. Smith has failed to make the requisite showing that local approval of any of the three applicants' proposed transmitting and antenna structures will not occur. Second, with specific reference to Beckwith's proposal, Mr. Smith's one cited instance where the local authorities disapproved of a broadcast tower differs so substantially from the situation with Beckwith's proposal as to lend absolutely no support to his contention that Beckwith's proposal will not be approved. Indeed, reference to the papers submitted indicate that Beckwith should be able to meet the standards by which Sonoma County reviews and approves transmitting towers.

1/ Mr. Smith also cites Salinas Broadcasting Limited Partnership, 5 FCC Rcd 1613 (1990) for the proposition that the Commission will not inquire into zoning matters absent a "reasonable showing" that approval in "improbable." Id. at 6.

2/ Although Beckwith takes no position on the merits of the petition as it relates to the other two applicants except than to point out herein that its proposed tower structure will have significantly less impact from an ecological standpoint than the proposals of those two other applicants, see Exhibit I at Figure 2, letter from Laura M. Mizrahi, Beckwith's consulting engineer, explaining the procedures contemplated to minimize environmental impact of the proposed transmitting structure, we note that certain of the arguments we raise in this opposition do apply to Mr. Smith's case against all three applicants.

A. Case law requires Mr. Smith to make a prima facie case that the local authorities will not approve Beckwith's proposed transmitting structure.

5. Although Mr. Smith's petition is cast in terms of arguing that approval of Beckwith's transmitting tower is improbable, that is not exactly the applicable standard. Indeed, the law applicable to this case is well established. In Sunshine Broadcasting, Inc., 61 Rad. Reg. 2d (P&F) 386 (1986), the Commission was confronted with a case where it was alleged that the applicant's proposal violated the local zoning ordinance. As the Commission said there:

> It is well established that the Commission generally leaves zoning questions to local zoning authorities and will not add an issue based on a mere difference of opinion as to whether local officials will sanction the site. Absent negative action by the [local city council], no issue will be added.

Id. at 387-88 & n. 4, citing Gainesville Media, Inc., 59 F.C.C.2d 382, 385, 37 Rad. Reg. 2d (P&F) 178, 181-82 (Rev. Bd. 1981).[3/] Thus, the applicable law is that zoning approval will be presumed unless there has already been an adverse action by local authorities with respect to the proposal.

6. Applying that standard to this case shows that Mr. Smith has not come close to making the required showing that Sonoma County will not approve Beckwith's proposed transmitting

---

3/ Similarly in Gainesville, the Review Board refused to add a site availability issue where it was alleged that the property on which a proposed radio station transmitting tower would be located was zoned incompatibly for such a use. The Board stated it was insufficient to warrant addition of an issue merely because a land use permit or a zoning change would be required for such use.

structure. At best, Mr. Smith seems to be asserting that the proposed transmitting structures of the three applicants are inconsistent with the general zoning plan.[4/]

7. This case is thus to be contrasted with the two cases Mr. Smith cites in his petition. The Salinas case involved a situation where both the local planning department and the airport land use commission were on record as opposing the transmitter site in question, and where the chairman of the county board of supervisors had stated in writing that approval of the site was not likely. 5 FCC Rcd 1613. No such showing has been made here. Similarly in Teton, the chairman of the local board of supervisors stated that the board had already rejected the proposal and was unlikely to change its position on the matter. 1 FCC Rcd 519-20. By contrast, here there has been no adverse action by Sonoma County with respect to any of the proposals for the Healdsburg FM allocation, much less Beckwith's. Hence no reason exists to assume that Sonoma County will not approve Beckwith's proposal.

4/ Yet, as shown above, that inconsistency -- if it in fact exists -- is not grounds for the Commission to assume that Sonoma County will not approve the proposed tower. In any event such an inconsistency is not at all clear from the materials Mr. Smith has submitted, since, as discussed below, the zoning ordinance specifically contemplates the erection of towers, and provides interim guidelines for the siting of such structures.

B. Contrary to the petition's implication, the Sonoma County General Plan contemplates the siting of transmitting towers such as Beckwith's.

8. In fact, Mr. Smith admits that the Sonoma County General Land Use Plan itself makes provision for establishment of communications and transmission towers. As he also admits, the county zoning ordinance

> allows transmission towers "subject, at a minimum, to the criteria of general plan policy PF-2u," so there must be a showing by the applicant that the applications would:
>
> a) serve a demonstrated public need;
>
> b) include a statement explaining why use of existing tower facilities is infeasible;
>
> c) minimize to the extent feasible, impacts on biotic and scenic resources; and
>
> d) include an analysis of alternative sites, explaining why the proposed site results in fewer or less severe environmental effects than feasible alternative sites.

Petition at 5.[4/] Significantly, these are interim guidelines, and it is not clear from the materials Mr. Smith has provided whether permanent guidelines have been enacted, nor whether those permanent guidelines will be tougher or more lenient than the interim standards, or whether they will differ in some other way from the interim standards. Petition, Exhibit C at 6-7. Thus, it is well nigh impossible to predict whether Sonoma County would disapprove Beckwith's proposed tower.

4/ The materials submitted by Mr. Smith do not indicate how these criteria are weighed or applied.

9. In any event, although Mr. Smith offers his conclusions that none of the three applicants can meet the above interim requirement, this Commission is simply not the body to which he should be making his presentation. Indeed, that the county has at least interim procedures and guidelines to evaluate tower proposals, such as Beckwith's, indicates that the county, upon an appropriate showing, will allow the construction of such facilities. Accordingly, Mr. Smith's suggestion to the contrary must be rejected.

C. The denial of a 407 foot tower last year by Sonoma County is not indicative of the county's action on Beckwith's proposed 80 foot transmitting structure.

10. Nor is a different result compelled in light of Sonoma County's disapproval last year of a proposed radio tower by Station KHTT(FM), Healdsburg, an action upon which Mr. Smith's petition heavily relies. The most obvious flaw with Mr. Smith's position is that the KHTT tower would not have been placed on the same parcel of land as that which Beckwith is proposing.[5/] Moreover, the materials Mr. Smith included with his petition indicate that the Beckwith tower proposal is materially different from the KHTT proposal in several significant respects.

5/ The KHTT proposal was for 2300 Big Ridge Road. The materials which Mr. Smith provides with his petition do not give the coordinates for that proposed tower. Beckwith has learned, however, that Station KHTT's proposal was for N. Lat. 38°38'13 W. Long. 127°57'56". That is approximately 1.5 miles from Beckwith's proposed transmitter site at N. Lat. 38°37'08", W. Long. 122°58'48". By contrast, Dragonfly and Deas propose transmitter sites located less than a mile from the disapproved KHTT proposal. See Exhibit I.

11. First, the proposals radically differ as to their impact on the scenic environment. KHTT proposed a 407 foot, three-sided metal tower with a 24 inch face. Such a structure would have necessitated obstruction lighting to avoid FAA air hazard concerns. Petition, Exhibit C at 1 (unnumbered). The Sonoma County Planning Department's analysis of the proposal indicated that its main adverse environmental impact would be visual. Id. at 2. In fact, that agency's report emphasized that the tower would be the highest structure in the county. Id. at 5.[6]

12. Beckwith's proposal clearly would not present the danger to scenic resources which was threatened by the KHTT proposal. Review of Beckwith's application indicates that its transmitting tower and antenna would be only 80 feet above ground level. See Beckwith Application at Engineering Statement. Moreover, as shown in Exhibit II hereto, the FAA has cleared Beckwith's structure without any requirement for marking or lighting. Finally, as shown by Exhibit I, Beckwith has already taken steps, even in this early stage, to explore ways in which to minimize the visual impact of its proposed transmitting tower. Thus, Beckwith's consulting engineer anticipates the use of an 80 foot wooden telephone pole of 18 inches in diameter, which would

---

6/ In its analysis of the tower under PF-2u criteria three, impact on biotic and scenic resources, the planning staff acknowledged that a single family home would have more impact on biotic resources than the proposed tower, but doubted "that a 16 to 35 foot residence would have more impacts on scenic resources than a 407 foot high lit tower." Id. at 3.

blend in with the surrounding wooded environment. In addition, the applicant would use a redwood or other type of natural wood fence around the tower to maintain safety while, again, minimizing the visual impact of the facility. Finally, the applicant's equipment building would be constructed of prefabricated stucco or other natural finish, also to blend in with the environment. See Exhibit I at Figure 2. Surely, given these steps which Beckwith easily can take to minimize the visual impact of its proposal, it would be unreasonable to assume that its proposal would engender the same type of environmental objections which stymied the KHTT proposal.

13. A second distinction between the KHTT proposal and Beckwith's is that the KHTT tower presented a local air traffic safety concern. Although the Sonoma County Airport Land Use Commission found the proposal consistent with the Airport Policy Plan, the California Department of Forestry expressed its concern regarding aircraft safety. That agency pointed out that its wildfire air attack helicopter activities often require flights below 400 feet above ground and that the area where the KHTT tower was proposed to be located is a high fire hazard zone. Petition, Exhibit C at 5. Beckwith's proposed 80 foot structure obviously does not present any reasonable chance of impeding fire fighting activities.

14. Still a third distinction involves the issue of whether other feasible transmitter sites exist. As shown by the attached engineering statement of Laura M. Mizrahi, Exhibit I, Beckwith

explored other possible existing tower sites and found only one existing tower site, a cellular tower, which met the minimum distance separations and which did not present terrain obstruction problems. The use of this site was further explored, but the tower agent failed to return numerous telephone calls. The site employed by certain of the other applicants in this proceeding, at Bradford Mountain, did not appear optimum because of inadequate coverage and possible shadowing problems. Id. at 2. Similarly, the Mount Jackson site which Mr. Smith points out was employed by another applicant was short-spaced.[7/] The site ultimately selected was deemed most suitable not only from a coverage and allocations standpoint, but promised to be the most environmentally sound due to the need for only an 80 foot structure. The bulk of the available site location area would have required a tower height above ground substantially higher than that proposed to achieve full Class A facilities. Id. at 2-3. This obviously would have had a greater adverse environmental impact than the site selected. Id.

15. Review of the Sonoma County Planning Department's recommendations regarding the KHTT tower proposal ultimately indicate that the county was concerned with the precedent which would be set by locating such a tall tower in the area. The

---

7/ The applicant proposing that location has employed a directional antenna to avoid the short-spacing problem. However, that applicant proposes only minimal city grade coverage over the city of Healdsburg. It is likely due to the irregular terrain that this proposal does not on a real world basis provide full city-grade service to Healdsburg. See Exhibit I at 2.

Planning Report indicates that the county had, since 1985, processed three requests for cellular towers in the 80 to 100 foot range and seven other radio towers in the 160 to 250 foot range. Id. at 6. It is thus clear from that discussion that while shorter towers, such as Beckwith proposes, have been approved, the county is reluctant to approve taller towers until it issues permanent siting and design guidelines in accordance with its Policy PF-2u. Thus, the county's action concerning KHTT has no bearing on its likely response to Beckwith's proposal.

III. Conclusion.

16. The above discussion clearly shows that although there might be some question whether Sonoma County would approve a 400 foot tower in light of its action on KHTT's proposed tower, the same considerations do not appear to exist with respect to Beckwith's 80 foot tower proposal. It is equally clear that Mr. Smith has not shown that Sonoma County will not approve Beckwith's proposed tower. Accordingly, Mr. Smith's petition should be denied with respect to Beckwith's application.

Respectfully submitted,

BECKWITH COMMUNICATIONS, INC.

By: _____
George L. Lyon, Jr.
Its Counsel

Lukas, McGowan, Nace & Gutierrez, Chartered
1819 H Street, NW, 7th Floor
Washington, DC 20006

(202) 857-3500

June 13, 1991

Opposition to petition to deny
Beckwith Communications, Inc.

Exhibit I
(Engineering Statement of Laura M. Mizrahi)

ENGINEERING STATEMENT IN SUPPORT OF COMMENTS PREPARED ON BEHALF OF BECKWITH COMMUNICATIONS, INC. IN RESPONSE TO PETITION TO DENY FILED BY WILLIAM J. SMITH HEALDSBURG, CALIFORNIA

JUNE 1991

ENGINEERING STATEMENT IN SUPPORT OF COMMENTS PREPARED ON BEHALF OF BECKWITH COMMUNICATIONS, INC. IN RESPONSE TO PETITION TO DENY FILED BY WILLIAM J. SMITH HEALDSBURG, CALIFORNIA

JUNE,1991

This engineering statement has been prepared on behalf of **Beckwith Communications, Inc. ("Beckwith")**, applicant for a new FM station on Channel 240A, Healdsburg, California, File No. BPH-910211MI. The firm of *Communications Technologies, Inc.*, has been retained by **Beckwith**, to prepare supporting engineering comments in response to a Petition to Deny the **Beckwith** application and two other competing Healdsburg applications, Dragonfly Communications, Inc., ("Dragonfly") and Deas Communications, Inc., ("Deas"), filed by William J. Smith.

As requested by **Beckwith's** FCC counsel, I, Laura M. Mizrahi, Technical Consultant to **Beckwith**, state that under penalty of perjury, the following statements are true and correct with respect to preparation of the **Beckwith** Application for Construction Permit in this proceeding.

In an effort to locate a transmitter site for the **Beckwith** application, a site area map was prepared based on site restrictions as determined in a *Section 73.207* allocation study of the proposed channel. As was indicated by the Commission in its Report and Order in this proceeding in MM Docket No. 90-228, the available site area was restricted 4.0 meters (6.4 kM) west of the community of Healdsburg in order to avoid a short spacing to KKHI, Channel 239B, San Francisco, California and a new allocation on Channel 238A, Middletown, California. This site restriction effectively precluded the availability of any site area to the North, East or South of Healdsburg.

The remaining site area to the West was explored for the possible use of a tower which would meet allocation requirements. Only one cellular tower located 7.7 miles (12.4 kM) Northwest of Healdsburg was found to meet these requirements in addition to providing the requisite coverage of the community of license. Unfortunately, efforts to secure site availability at this location were unsuccessful after the site representative did not return several telephone calls and site contact assistance was obtained in the form of a local realtor and an individual experienced in site acquisition.

It was indicated to us through the site acquisition specialist that, based on their contact with another local cellular company, the acquisition of any existing cellular site for our purposes would very likely be futile. No other existing sites appeared to us to be viable. Efforts were then concentrated on locating a site with a high enough natural elevation upon which a non-intrusive structure could be erected which would, additionally, provide optimum coverage of the community of Healdsburg.

As can be seen on the attached portions of 7 1/2 minute topographical maps depicting the available site area (*Figures 1 and 1A*), the greatest natural elevations requiring a structure of the least height above ground are located along the ridge area. Locations North of this ridge rapidly descend in elevation, thereby requiring a far higher transmitting structure to attain even minimum Class A facilities.

The Bradford Mountain site proposed by several competing applicants was not considered an optimum location from a coverage standpoint and, additionally, it was felt that there might be possible shadowing and multipath problems. With respect to the short spaced Mount Jackson site specified by Healdsburg Broadcasting, Inc., it appears that only minimal city grade coverage has been achieved due in part to use of a directional antenna pattern to protect KKHI in San Francisco. Further, it is possible that real world propagation studies may

show actual coverage to be even less than that predicted. The proposed **Beckwith** transmitter site is located on map *Figure 1A*, approximately .3 kM East of the reference site marked "E". It was determined that a supporting structure of only 80' (24.4 meters) above ground would be required at this site. Further, in order to minimize the environmental, scenic and recreational impact of the proposal, various options have been explored which are detailed more fully in the attached March 11, 1991 memorandum to **Beckwith's** FCC counsel as *Figure 2*.Finally, a basic analysis has been performed related to the location of the proposed KHTT transmitter site which, according to Smith's Petition was denied by the local Zoning and Planning Board, and the proposed **Beckwith**, Dragonfly and Deas sites. Location of the proposed KHTT site location was provided by the local realtor handling the property for potential sale. A topographical map indicating the site was marked by the realtor and the coordinates derived therefrom.

KHTT Proposed Site: 38° 38' 13"
122° 57' 56"

APPLICANT	SITE LOCATION	DISTANCE TO KHTT SITE	BEARING
Beckwith	38-37-08 122-58-48	1.47 Mi. (2.37 kM)	32°
Dragonfly	38-38-31 122-56-59	.92 Mi (1.49 kM)	248°
Deas	38-37-47 122-57-06	.90 Mi (1.45 kM)	304°

It is clear that both the proposed Dragonfly and Deas sites are located at least .5 miles closer to the proposed KHTT site than the site proposed by **Beckwith**. Additionally, it should be noted that **Beckwith** is proposing the erection of an 80' wooden telephone pole as opposed to the 407' steel tower which had been proposed by KHTT and which was rejected by the Zoning and Planning Board.

The foregoing was prepared on behalf of **Beckwith Communications, Inc.** by, Laura M Mizrahi of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By _____

Laura M. Mizrahi
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me

this 12th day of June, 1991,

_____, NOTARY PUBLIC

KATHLEEN A. STEVENS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MARCH 28, 1993

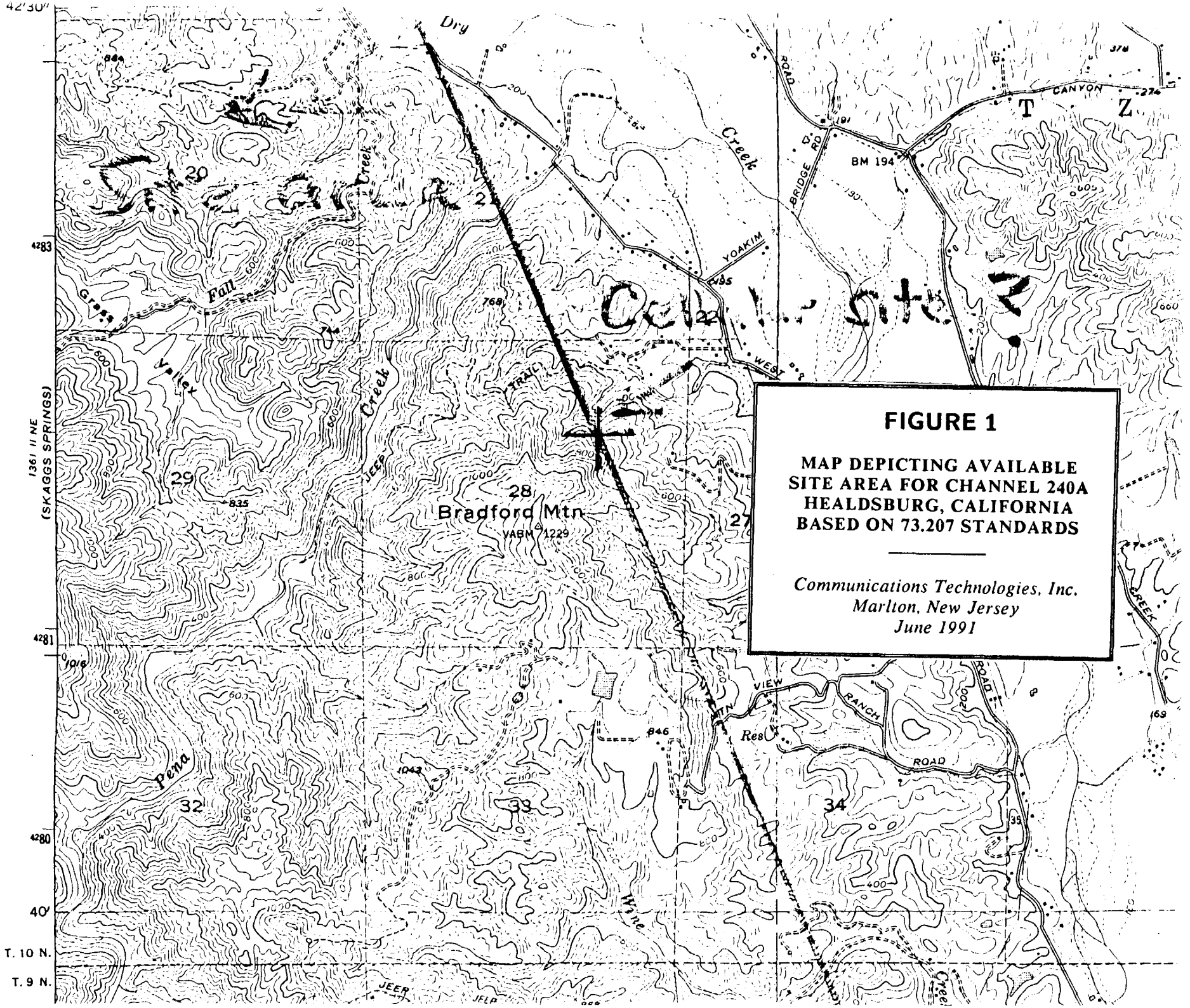
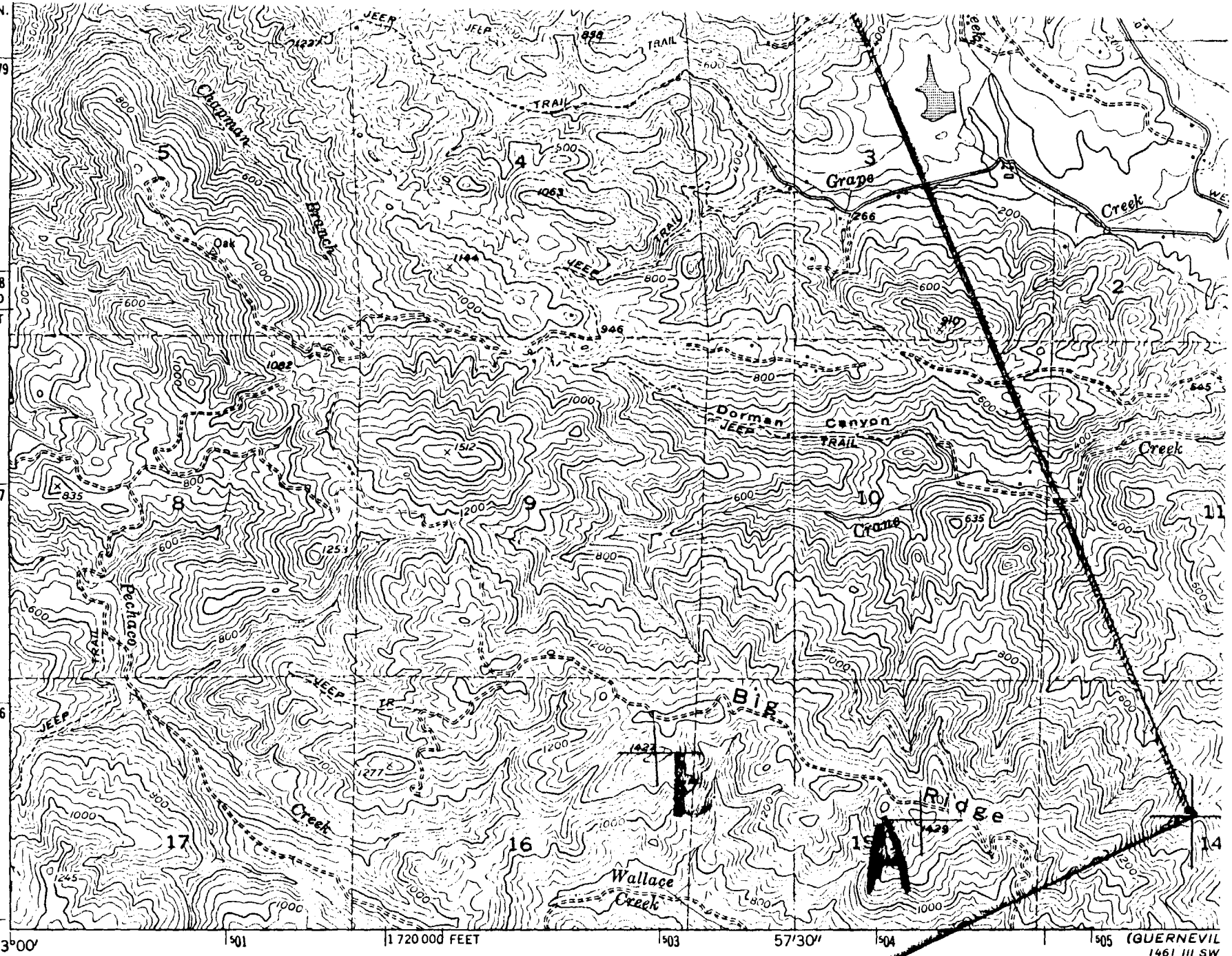


FIGURE 1

MAP DEPICTING AVAILABLE SITE AREA FOR CHANNEL 240A HEALDSBURG, CALIFORNIA BASED ON 73.207 STANDARDS

Communications Technologies, Inc.
Marlton, New Jersey
June 1991



Mapped, edited, and published by the Geological Survey

Control by USGS and USC&GS

Topography from aerial photographs by multiplex methods and by planetable surveys 1955. Aerial photographs taken 1953

Polyconic projection. 1927 North American datum

10,000-foot grid based on California coordinate system, zone 2

(CAZADERO)
1361 II SE

GN MN
0°02' 17°
302 MILS

SCALE 1:24

1 ½ 0

1000 0 1000 2000 3000

1 .5 0

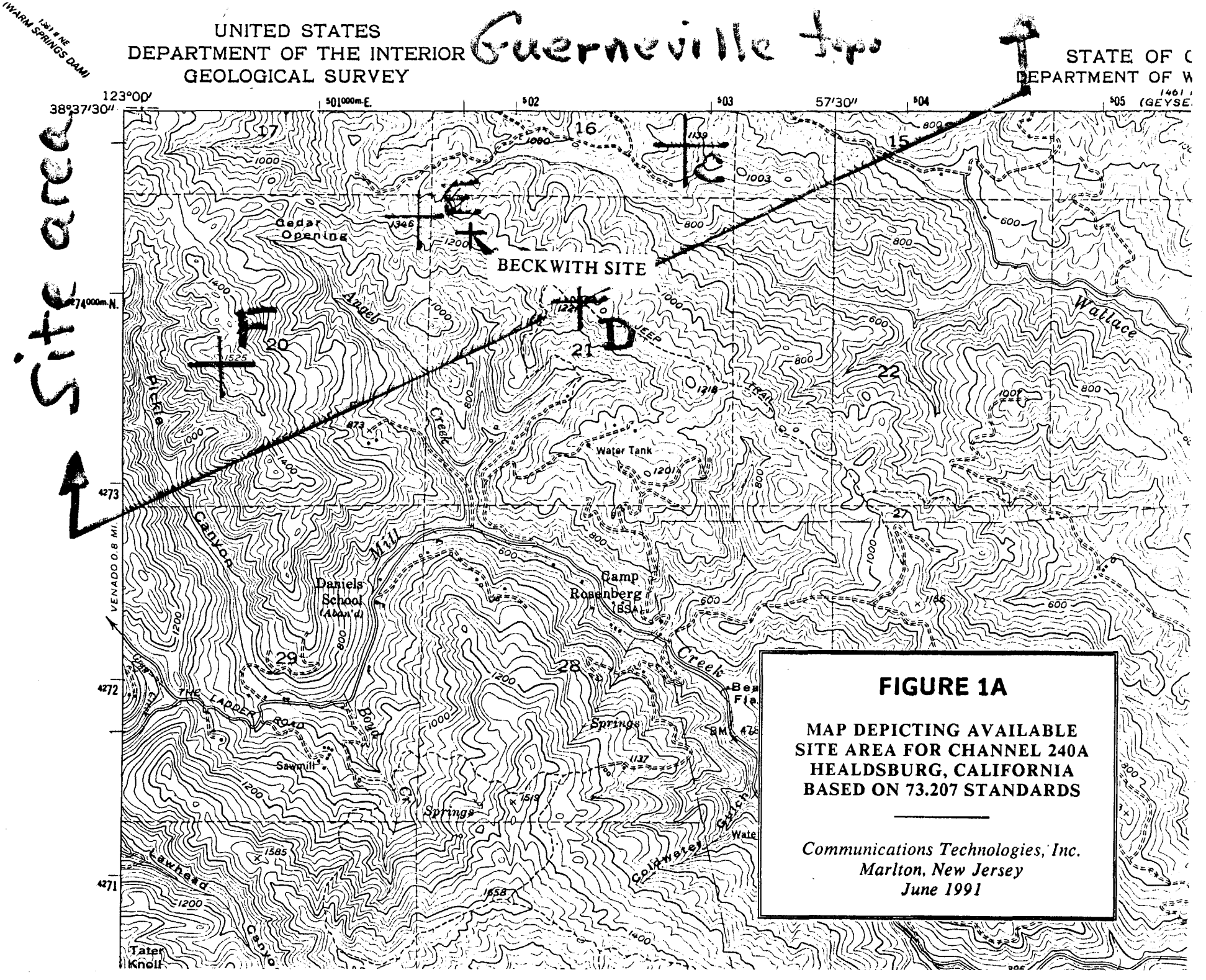


FIGURE 1A

MAP DEPICTING AVAILABLE SITE AREA FOR CHANNEL 240A HEALDSBURG, CALIFORNIA BASED ON 73.207 STANDARDS

Communications Technologies, Inc.
Marlton, New Jersey
June 1991

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VIA FAX

March 11, 1991

Mr. George Lyon, Esquire
LUKAS, McGOWAN, NACE & GUTIERREZ
1819 H Street, NW Suite 700
Washington, DC 20006
FAX: (202) 842-4485

RE: HEALDSBURG, CALIFORNIA

Dear George:

Per our discussion and your recent request, the following information is provided with respect to Linda Beckwith's new FM station proposal for Healdsburg, California.

We have explored the various options of minimizing the environmental impact related to actual construction of the proposed facility, and believe the following approach to be the most favorable from all standpoints.

Regarding actual tower construction, we would propose the use of an 80' wooden telephone-type pole which will blend very well into the natural environment. The pole, not more than 18 inches in diameter, would be inserted 10 feet into the ground in a drilled, 24 inch in diameter hole. The wood would be treated with an environmentally sound preservative, such as copper napthenate, to retard erosion and, thus, unnecessary replacement of the pole.

The transmission line utilized would be 1 5/8" in diameter covered with a black outer jacket so as to minimize visibility on the pole. The antenna will be constructed of 1 5/8" or smaller copper tubing, approximately 6 feet in total length, mounted as close to the pole as possible to also reduce visibility.

Lastly, a small transmitter building at the base of the tower, approximately 10' x 10', would be of pre-fabricated stucco or other natural finish construction to further blend in with the environment. Safety around the base of the tower can be accomplished by means of a 20' x 24" redwood or cedar fence.

George, I hope this information will be helpful to yourself and the property owner. If additional questions should arise, please feel free to call.

Sincerely,

Laura M. Mizrahi
LMM/kas

fc: LYON.1FX

FIGURE 2

Opposition to petition to deny
Beckwith Communications, Inc.

Exhibit II
(FAA No Hazard Determination)