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LEE W. SHUBERT
ADMITTED IN D.C. & VA

February 14, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

OUR FILE NO.
0992-102-71

The Honorable John M. Frysiak
The Honorable Edward Luton
Administrative Law Judges
2000 L Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

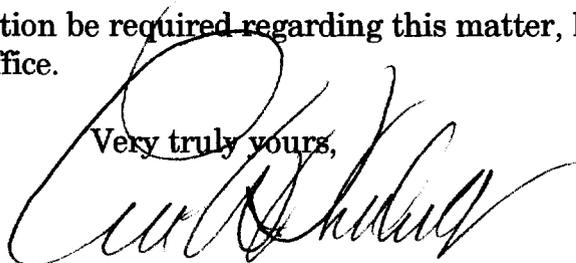
RE: MM Docket 93-42
File No. BPH-911115MG
Calistoga, CA

Dear Messrs. Frysiak & Luton:

Transmitted herewith, on behalf of Moonbeam, Inc., are an original and six copies of a **PETITION FOR LEAVE TO AMEND** its above-referenced pending application for a new FM broadcast station on Channel 265A, Calistoga, California.

Should further information be required regarding this matter, kindly communicate directly with this office.

Very truly yours,



Lee W. Shubert

Enclosures (7)

LWS/blr

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Before The
Federal Communications Commission

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of	}	DOCKET No. MM 93-42
	}	
MOONBEAM, INC.	}	File No. BPH-911115MG
	}	
GARY E. WILLSON	}	File No. BPH-911115MO
	}	
For a Construction Permit for a	}	
New FM Station on Channel	}	
265A in Calistoga, California	}	

DOCKET FILE COPY ORIGINAL

TO: The Honorable John M. Frysiak, and
The Honorable Edward Luton
Administrative Law Judges

Petition for Leave to Amend

Moonbeam, Inc. ("Moonbeam"), by its attorneys, and pursuant to Section 73.3522(b) of the Commission's Rules, hereby petitions for leave to amend its above-captioned application. In support thereof the following is stated:

1. The accompanying amendment seeks to (i) update information concerning the broadcast interests of Moonbeam's sole shareholder, and (ii) substitute the engineering proposal previously submitted by Moonbeam for the proposal by Gary E. Willson ("Willson"). Pursuant to a settlement agreement between the parties, submitted concurrently herewith, Moonbeam agreed to amend its application to include Willson's engineering proposal in return for granting Willson an option and right of first refusal.

2. The proposed amendment meets the test of *Erwin O'Connor Broadcasting, Co.*, 22 FCC 2d 140 (Rev. Bd. 1970). The amendment satisfies Moonbeam's obligations pursuant to Section 1.65 of the Rules, and will eliminate the need for a hearing on the mutually exclusive applications of the parties and allow settlement of the proceeding. As the amendment is submitted to comply with the Commission's disclosure rules and as an element of a proposed settlement, no party will be prejudiced or gain a competitive advantage by acceptance of the amendment. Comparatively, from a diversity standpoint, the amendment is disadvantageous to Moonbeam. In addition, the resources of the parties and the Commission will be conserved by approval of the amendment and the settlement agreement. Finally, acceptance of the amendment, thereby allowing approval of the proposed settlement, will allow Moonbeam to promptly initiate service to Calistoga and the surrounding community.

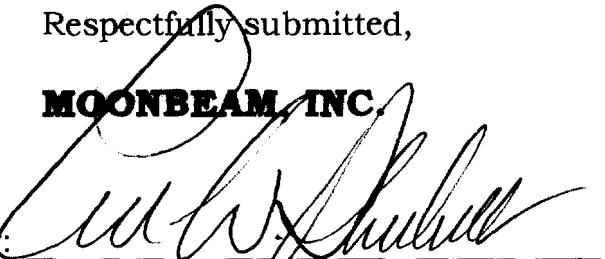
3. Precedent supports the use of amendments to eliminate mutual exclusivity and allow a settlement of the comparative proceeding. See *The Cedarville College*, MM Docket No. 90-654, FCC 91M-1861, released June 12, 1991.

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, the premises considered, Moonbeam, Inc.
respectfully requests that the Presiding Judge grant its Petition for Leave
to Amend and that he accept the accompanying amendment.

Respectfully submitted,

MOONBEAM INC.

By: 

Lee W. Shubert
Its Attorney

HALEY BADER & POTTS P.L.C.

4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633
703/841-0606

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

*The Honorable John M. Frysiak
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 223
Washington, DC 20554

*The Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 225
Washington, DC 20554

*Robert Zauner, Esq.
Federal Communications Commission
2025 M Street, NW, Room 7212
Washington, DC 20554

A. Wray Fitch III, Esq.
Gammon & Grange
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(Counsel to Gary E. Willson)


Barbara L. Rascon

*Hand Delivery

February 14, 1995

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FEDERAL COMMUNICATIONS COMMISSION
DEPARTMENT OF TELECOMMUNICATIONS

AMENDMENT

Please amend the pending application of Moonbeam, Inc. (File No. BPH-911115MG), for authority to construct a new commercial Radio Broadcast Station on FM Channel 265A at Calistoga, California, in the following respects:

Exhibit No. 1. Delete the Amended Exhibit No. 1 previously submitted and substitute in lieu thereof the Amended Exhibit No. 1 that is submitted herewith.

Section V-B and Related Engineering Exhibits: Delete the previously submitted Section V-B and related engineering exhibits and substitute in lieu thereof the Amended Section V-B and related engineering exhibits that are submitted herewith.

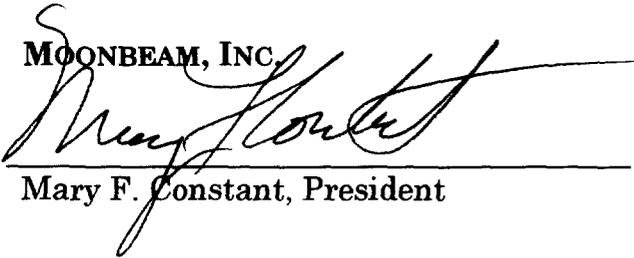
CERTIFICATION

I, Mary F. Constant, hereby certify that the statements contained in this amendment are true, complete and correct, to the best of my knowledge and belief, and are made in good faith. I also certify that no party to the application of Moonbeam, Inc., is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a.

Signed and dated this 11th day of February 1995.

MOONBEAM, INC.

By


Mary F. Constant, President

FCC Form 301
Sec. II, Item 7(a)

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FEDERAL COMMUNICATIONS COMMISSION
Amended Exhibit No. 1
February 1995

**MOONBEAM, INC.
OTHER APPLICATIONS**

In May, 1991, Moonbeam, Inc., filed an application (FCC Form 301) for authority to construct a new FM Broadcast station on FM Channel 265 at Eagle, Idaho. Several other mutually exclusive applicants also filed for the Eagle, Idaho, facility. A settlement among the various applicants was achieved and approved by the Federal Communications Commission. As a result and function of that settlement the application of Moonbeam, Inc., for Eagle, Idaho, was dismissed. (See FCC Public Notice dated February 2, 1995.)

Mary F. Constant, President and sole shareholder of Moonbeam, Inc., was sole shareholder and an officer of Sagebrush Communications Company, an applicant for a new commercial FM broadcast station at Bend, Oregon (File No. BPH-820825AG). A settlement was approved in that proceeding and the Sagebrush application was dismissed by letter on September 1, 1983.

Mary F. Constant is President and sole shareholder of Independent Broadcasting Corporation which, on January 19, 1995, tendered for filing with the Federal Communications Commission an application for consent to the assignment of the permits for Radio Station KRSH(FM), Middletown, California, from Wine Country Radio to Independent Broadcasting Corporation. (File No. BAPH-950119GF).

Section V-B - FM BROADCAST ENGINEERING DATA	FOR COMMISSION USE ONLY File No. _____ ASB Referral Date <u>1 FEB 14 1995</u> Referred by _____
---	--

Name of Applicant
GARY E. WILLSON

Call letters (if issued)	Is this application being filed in response to a window? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, specify closing date: <u>15 NOVEMBER 1991</u>
--------------------------	---

Purpose of Application: (check appropriate boxes)

<input checked="" type="checkbox"/> Construct a new (main) facility	<input type="checkbox"/> Construct a new auxiliary facility
<input type="checkbox"/> Modify existing construction permit for main facility	<input type="checkbox"/> Modify existing construction permit for auxiliary facility
<input type="checkbox"/> Modify licensed main facility	<input type="checkbox"/> Modify licensed auxiliary facility

If purpose is to modify, indicate below the nature of change(s) and specify the file number(s) of the authorizations affected.

<input type="checkbox"/> Antenna supporting-structure height	<input type="checkbox"/> Effective radiated power
<input type="checkbox"/> Antenna height above average terrain	<input type="checkbox"/> Frequency
<input type="checkbox"/> Antenna location	<input type="checkbox"/> Class
<input type="checkbox"/> Main Studio location	<input type="checkbox"/> Other (Summarize briefly)

File Number(s) _____

1. Allocation:

Channel No.	Principal community to be served:			Class (check only one box below)					
	City	County	State	<input checked="" type="checkbox"/> A	<input type="checkbox"/> B1	<input type="checkbox"/> B	<input type="checkbox"/> C3	<input type="checkbox"/> C2	<input type="checkbox"/> C1
265	CALISTOGA	NAPA	CA						

2. Exact location of antenna.

(a) Specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark. **MT. ST. HELENA, APPROXIMATELY 11 KM NORTH-NORTHWEST OF CALISTOGA (NAPA), CALIFORNIA**

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude or East Longitude where applicable; otherwise, North Latitude or West Longitude will be presumed.

Latitude	38°	40'	09"	Longitude	122°	37'	53"
----------	-----	-----	-----	-----------	------	-----	-----

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)? Yes No

If Yes, give call letter(s) or file number(s) or both. (F.C.C. TOWER FILE NO. 33322 IMMEDIATELY ADJACENT)

If proposal involves a change in height of an existing structure, specify existing height above ground level including antenna, all other appurtenances, and lighting, if any.
N/A

4. Does the application propose to correct previous site coordinates?
If Yes, list old coordinates.

Yes No

Latitude	Longitude
----------	-----------

5. Has the FAA been notified of the proposed construction?

Yes No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No. E-1

Date 9 OCTOBER 1991 Office where filed LOS ANGELES, CA; AWP-530

6. List all landing areas within 8 km of antenna site. Specify distance and bearing from structure to nearest point of the nearest runway.

Landing Area	Distance (km)	Bearing (degrees True)
(a) <u>(NONE SO LOCATED)</u>	_____	_____
(b) _____	_____	_____

7. (a) Elevation: (to the nearest meter)

- (1) of site above mean sea level; 1,308 meters
- (2) of the top of supporting structure above ground (including antenna, all other appurtenances, and lighting, if any); and 9 meters
- (3) of the top of supporting structure above mean sea level [(a)(1) + (a)(2)] 1,317 meters

(b) Height of radiation center: (to the nearest meter) H - Horizontal; V - Vertical

- (1) above ground 7 meters (H)
- 7 meters (V)
- (2) above mean sea level [(a)(1) + (b)(1)] 1,315 meters (H)
- 1,315 meters (V)
- (3) above average terrain 898 meters (H)
- 898 meters (V)

8. Attach as an Exhibit sketch(es) of the supporting structure, labelling all elevations required in Question 7 above, except item 7(b)(3). If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of FM radiator.

Exhibit No. E-4

9. Effective Radiated Power:

(a) ERP in the horizontal plane 0.063 kw (H=) 0.063 kw (V=)

(b) Is beam tilt proposed?

Yes No

If Yes, specify maximum ERP in the plane of the tilted beam, and attach as an Exhibit a vertical elevational plot of radiated field.

Exhibit No. N/A

_____ kw (H=) _____ kw (V=)

*Polarization

10. Is a directional antenna proposed?

Yes No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316, including plot(s) and tabulations of the relative field.

Exhibit No.
N/A

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.316(a) and (b)?

Yes No

If No, attach as an Exhibit a request for waiver and justification therefor, including amounts and percentages of population and area that will not receive 3.16 mV/m service.

Exhibit No.
N/A

12. Will the main studio be within the protected 3.16 mV/m field strength contour of this proposal?

Yes No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No.
N/A

13. (a) Does the proposed facility satisfy the requirements of 47 C.F.R. Section 73.207?

Yes No

(b) If the answer to (a) is No, does 47 C.F.R. Section 73.213 apply?

Yes No

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of previous waivers.

Exhibit No.
N/A

(d) If the answer to (a) is No and the answer to (b) is No, attach as an Exhibit a statement describing the short spacing(s) and how it or they arose.

Exhibit No.
N/A

(e) If authorization pursuant to 47 C.F.R. Section 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

Exhibit No.
N/A

- (1) Protected and interfering contours, in all directions (360°), for the proposed operation.
- (2) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as the transmitter location.
- (3) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.
- (4) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.
- (5) The official title(s) of the map(s) used in the exhibit(s).

14. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters, or any nonbroadcast *(except citizens band or amateur)* radio stations; or (b) within the blanketing contour, any established commercial or government receiving stations, cable head-end facilities, or populated areas; or (c) within ten (10) kilometers of the proposed antenna, any proposed or authorized FM or TV transmitters which may produce receiver-induced intermodulation interference?

Yes No

If Yes, attach as an Exhibit a description of any expected, undesired effects of operations and remedial steps to be pursued if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference (including that caused by receiver-induced or other types of modulation) to facilities in existence or authorized or to radio receivers in use prior to grant of this application. (See 47 C.F.R. Sections 73.315(b), 73.316(e) and 73.318.)

Exhibit No.
E-1

15. Attach as an Exhibit a 75 minute series U.S. Geological Survey topographic quadrangle map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the requirements set forth in Instruction V. The map must further clearly and legibly display the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No. E-2

16. Attach as an Exhibit *(name the source)* a map which shows clearly, legibly, and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. E-3

(a) the proposed transmitter location, and the radials along which profile graphs have been prepared;

(b) the 316 mV/m and 1 mV/m predicted contours; and

(c) the legal boundaries of the principal community to be served.

17. Specify area in square kilometers (1 sq. mi. - 259 sq. km.) and population (latest census) within the predicted 1 mV/m contour.

Area 2,498 sq. km. Population 212,533 (U.S. CENSUS, 1990)

18. For an application involving an auxiliary facility only, attach as an Exhibit a map *(Sectional Aeronautical Chart or equivalent)* that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. N/A

(a) the proposed auxiliary 1 mV/m contour; and

(b) the 1 mV/m contour of the licensed main facility for which the applied-for facility will be auxiliary. Also specify the file number of the license.

19. Terrain and coverage data *(to be calculated in accordance with 47 C.F.R. Section 73.313)*

Source of terrain data: *(check only one box below)*

Linearly interpolated 30-second database 75 minute topographic map

(Source: N.G.D.C. 30" DATA BASE; TGP-0050)

Other *(briefly summarize)*

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances	
		To the 316 mV/m contour (kilometers)	To the 1 mV/m contour (kilometers)
-	1,061	14.5	30.8
0	854	13.7	27.6
45	893	13.9	28.3
90	840	13.6	27.4
135	964	14.2	29.4
180	989	14.3	29.7
225	1,116	14.7	31.5
270	1,048	14.5	30.6
315	482	10.9	20.6

*Radial through principal community, if not one of the major radials. This radial should NOT be included in the calculation of HAAT.

20. Environmental Statement (See 47 C.F.R. Section 1.1301 et seq.)

Would a Commission grant of this application come within Section 11.307 of the FCC Rules, such that it may have a significant environmental impact? Yes No

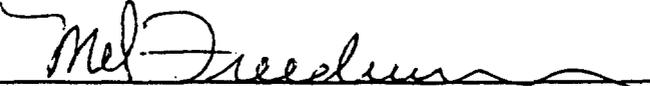
If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 11.311

Exhibit No.
E-1

If No, explain briefly why not. CATEGORICALLY EXCLUDED FROM ENVIRONMENTAL PROCESSING PER SECTION 1.1306.

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name (Typed or Printed)	Relationship to Applicant (e.g., Consulting Engineer)
MEL FREEDMAN	CONSULTING RADIO ENGINEER
Signature	Address (Include ZIP Code)
	1479 MOUNTAIN VIEW ROAD HUGHSON, CA 95326
Date	Telephone No. (Include Area Code)
11 OCTOBER 1991	(209) 883-2611

GARY E. WILLSON
FM Bcst (New) - Calistoga, CA

3
EXHIBIT E-1
Form 301; Section V-B

In order to provide a service to Calistoga, California, and the surrounding areas, it is now proposed to establish a new FM Broadcast Station at Mount St. Helena, near Calistoga. Where responses or comments are called for in the engineering section, these are listed below by item:

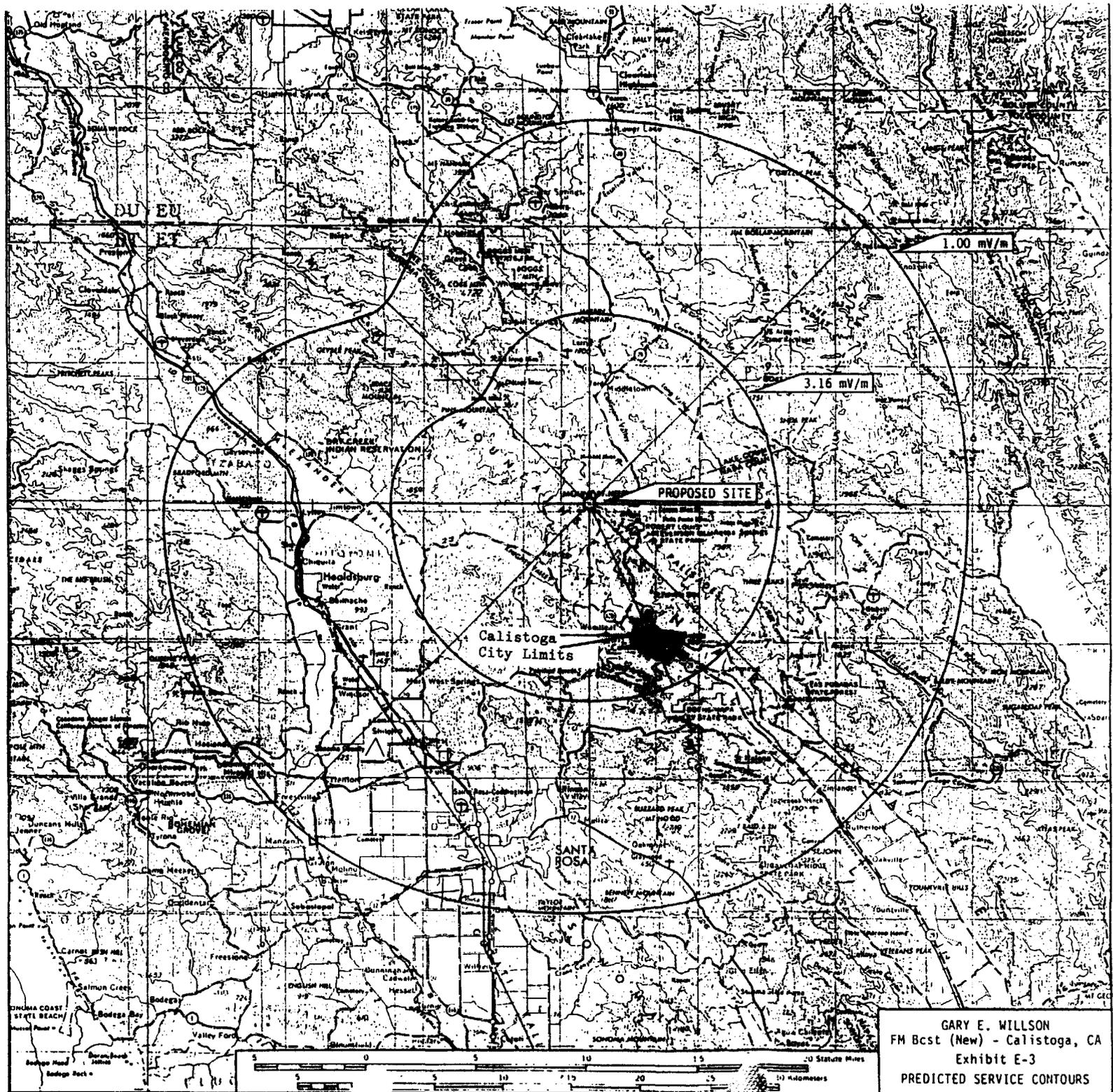
5. F.A.A. has been notified of the proposed construction and a copy of the determination will be provided when received.
9. Antenna height above average terrain would be 898 meters and effective radiated power equivalent to 6 kW at 100 meters has been determined at 0.063 kW. Should the Commission's engineers determine otherwise, the applicant defers to such power as may be assigned.
14. Mount St. Helena is an established antenna farm and several television, broadcast, and communications stations or authorizations are located at or within a short distance of the proposed site. The applicant accepts full responsibility for the elimination of any objectionable interference which may be caused by its operation.
20. It has been determined that this proposal, in combination with existing or authorized stations, would result in on-site R-F radiation levels within the guidelines of O.S.T. Bulletin No. 65 of October, 1985.

The applicant proposes to install and maintain auxiliary primary power generators at both the studio and transmitter sites such that transmission during periods of commercial power outage would be unimpaired.

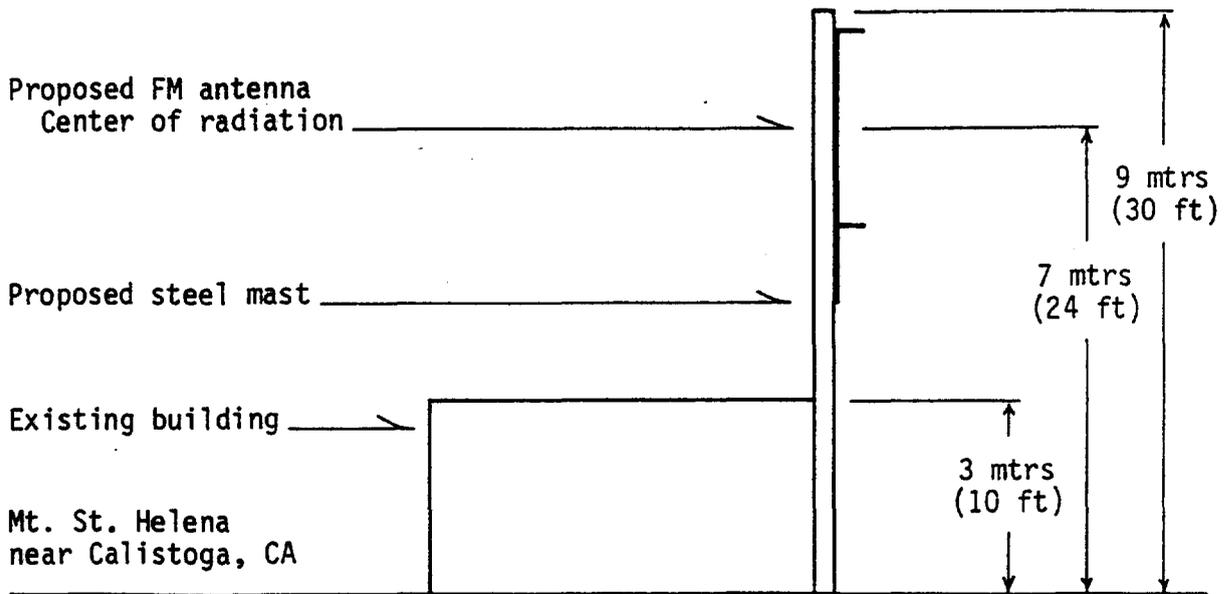
Respectfully submitted,



Mel Freedman
Engineer for Gary E. Willson



GARY E. WILLSON
 FM Bcst (New) - Calistoga, CA
 Exhibit E-3
 PREDICTED SERVICE CONTOURS



Site: 1,308 mtrs (4,291 ft) AMSL
891 mtrs (2,924 ft) AAT

38-40-09 N
122-37-53 W

US Department of Transportation
Federal Aviation Administration

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

Aeronautical Study Number

1. Nature of Proposal		2. Complete Description of Structure	
A. Type	B. Class	C. Work Schedule Dates	A. Include effective radiated power and assigned frequency of all existing, proposed or modified AM, FM, or TV broadcast stations utilizing this structure.
<input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Alteration	<input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Temporary (Duration _____ months)	Beginning <u>Grant + 6 Mos</u> End <u>Start + 1 Day</u>	B. Include size and configuration of power transmission lines and their supporting towers in the vicinity of FAA facilities and public airports.

3A. Name and address of individual, company, corporation, etc. proposing the construction or alteration. (Number, Street, City, State and Zip Code)

(415) 925-3588
area code Telephone Number

Mr. Gary E. Willson
2 Corte del Bayo
Larkspur, CA 94939

B. Name, address and telephone number of proponent's representative if different than 3 above.

Mel Freedman
1479 Mountain View Road
Hughson, CA 95326 (209) 883-2611

C. Include information showing site orientation, dimensions, and construction materials of the proposed structure.

Proposed steel mast (not more than 20 feet above an existing building) with two element FM antenna side-mounted thereon (please see attached sketch).

100.9 MHz; 0.063 kW horizontal + 0.063 kW vertical ERP.

(if more space is required, continue on a separate sheet.)

4. Location of Structure			5. Height and Elevation (Complete to the nearest foot)	
A. Coordinates (nearest second)	B. Nearest City or Town, and State	C. Name of nearest airport, heliport, flightpark, or seaplane base	A. Elevation of site above mean sea level	
38° 40' 09" Latitude	Calistoga, CA	Calistoga	4,291	
	(1) Distance to 4B Appx 6.8 Miles	(1) Distance from structure to nearest point of nearest runway 6.8 Miles	B. Height of Structure including all appurtenances and lighting (if any) above ground, or water if so situated	30
122° 37' 53" Longitude	(2) Direction to 4B South southeast	(2) Direction from structure to airport 155° True	C. Overall height above mean sea level (A + B)	4,321

D. Description of location of site with respect to highways, streets, airports, prominent terrain features, existing structures, etc. Attach a U.S. Geological Survey quadrangle map or equivalent showing the relationship of construction site to nearest airport(s). *(if more space is required, continue on a separate sheet of paper and attach to this notice.)*

Mt. St. Helena, appx 6.8 miles NNW of Calistoga, CA (please see attached site map).

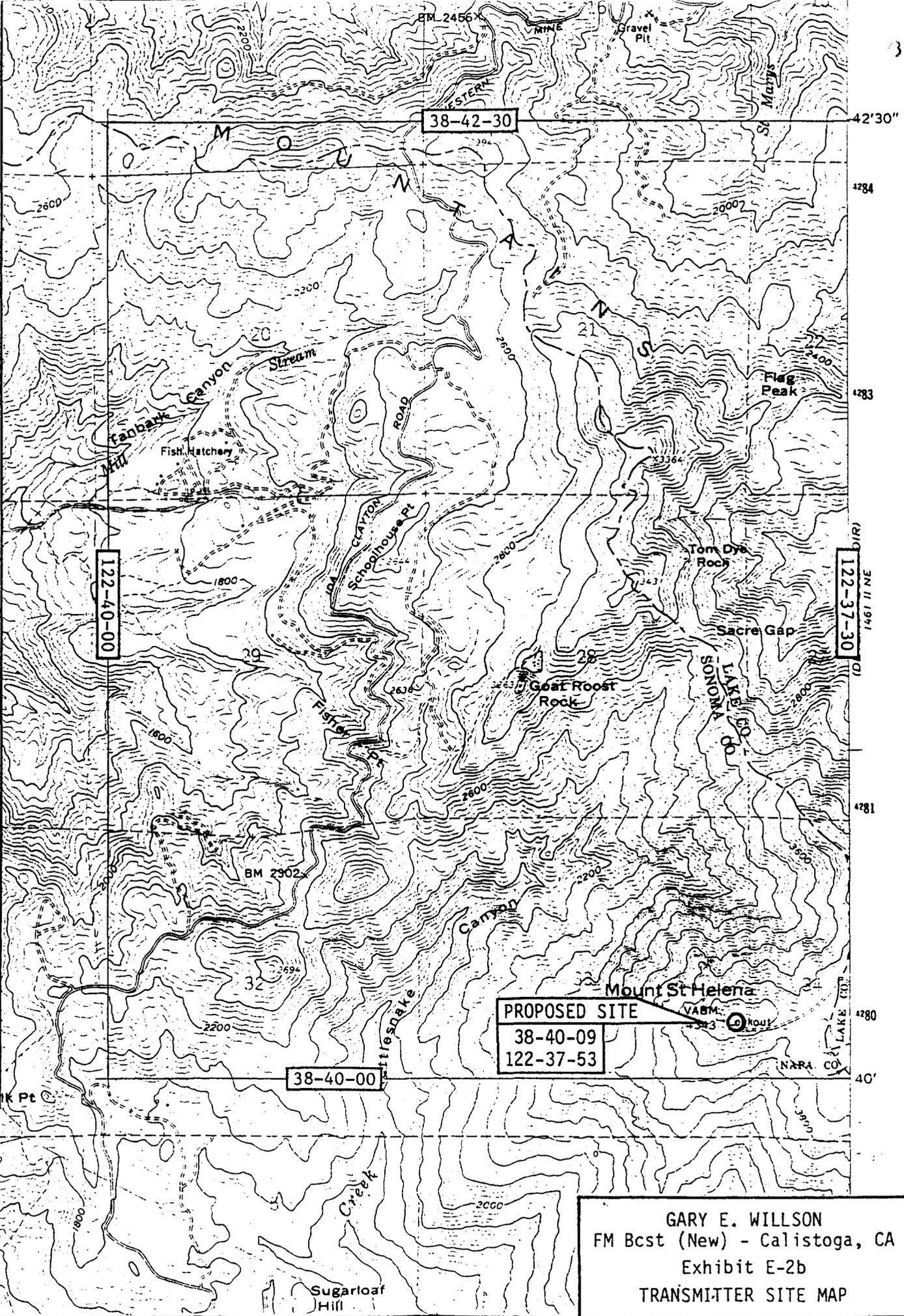
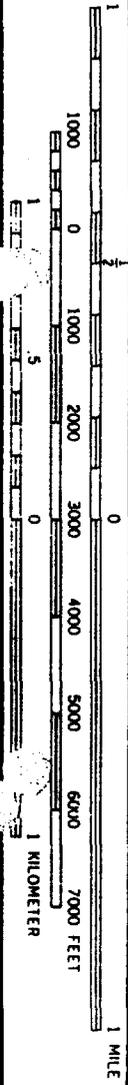
Notice is required by Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) pursuant to Section 1101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1101). Persons who knowingly and willingly violate the Notice requirements of Part 77 are subject to a fine (criminal penalty) of not more than \$500 for the first offense and not more than \$2,000 for subsequent offenses, pursuant to Section 902(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(a)).

I HEREBY CERTIFY that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to obstruction mark and/or light the structure in accordance with established marking & lighting standards if necessary.

9 Oct 1991	Typed Name/Title of Person Filing Notice Mel Freedman / Consulting Radio Engineer	Signature <i>Mel Freedman</i>
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MOUNT ST. HELENA, CALIF.

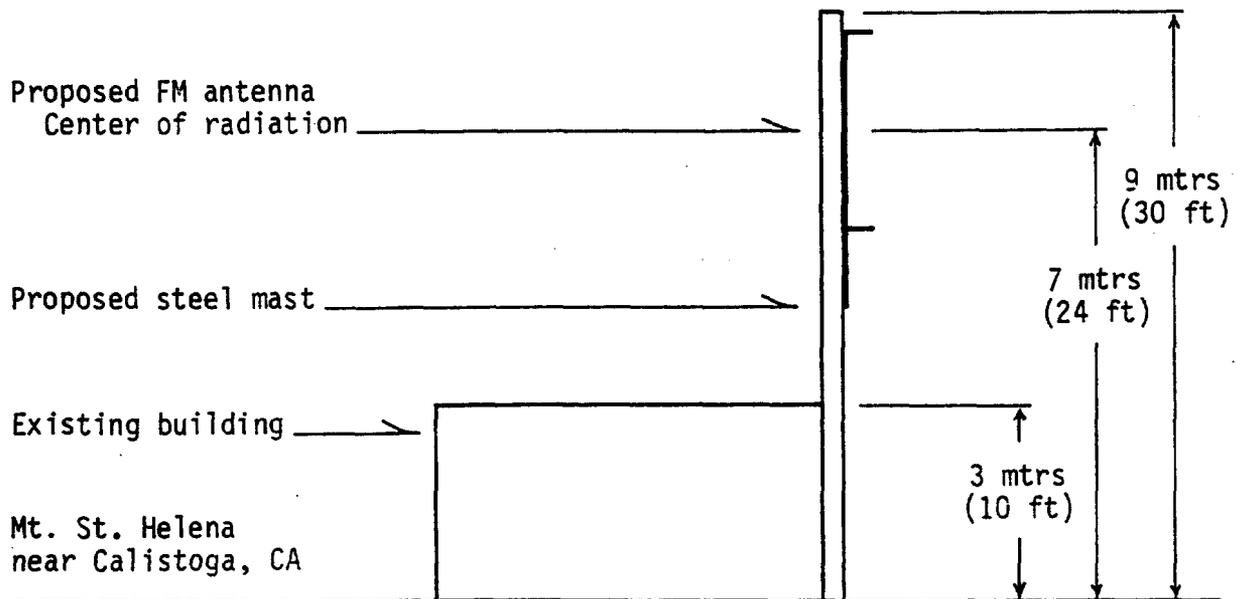
N3837.5-W12237.5/7.5



PROPOSED SITE

38-40-09
122-37-53

GARY E. WILLSON
 FM Bcst (New) - Calistoga, CA
 Exhibit E-2b
 TRANSMITTER SITE MAP



Site: 1,308 mtrs (4,291 ft) AMSL
 891 mtrs (2,924 ft) AAT

38-40-09 N
 122-37-53 W