



County of Santa Cruz

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
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ALVIN D. JAMES, DIRECTOR

May 14, 2001

AGENDA: May 22, 2001

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

SUBJECT: CONTINUED PUBLIC HEARING TO CONSIDER APPLICATION NOS. 99-0828, 00-0319 AND 00-0352 (TO CONSTRUCT WIRELESS COMMUNICATION FACILITIES INCLUDING TOWERS AND ACCESSORY BUILDINGS)

Application No. 99-0828
APN: 057-081-22
Applicant: Franklin Orozco
Owner: Big Creek

Application No. 00-0319
APN: 059-033-08
Applicant: Franklin Orozco
Owner: John/Mary Nellany

Application No. 00-0352
APN: 059-121-08
Applicant: Franklin Orozco
Owner: M. Rodoni & Co.

Members of the Board:

On the February 6, 2001 agenda, your Board considered the following:

a proposed work program for the development of a wireless communications facilities ordinance, and

public hearings to consider the three applications for wireless communication facilities referenced above

Your Board directed the Planning Department to return on May 8, 2001, with conceptual policies and ordinances related to cell towers and other wireless communication facilities, and continued the public hearings on the three applications to the May 8, 2001 agenda.

On May 8, 2001, your Board considered a report from the Planning Department regarding a

proposed wireless communications facilities ordinance. Following public testimony and deliberation by Board members on the proposed ordinance, this matter was continued to the June 12, 2001 agenda with specific directions for revisions to the proposed regulations. In a separate motion, your Board continued the public hearing on the three applications to this date and requested a report from County Counsel regarding processing time lines. This report will be presented to your Board under separate cover.

The three applications by Sprint PCS, as described below, are presented for your Board's consideration at this time.

Development/Coastal Permit Applications

As your Board will recall, there were three applications by Sprint PCS, all proposed for the North Coast, that prompted Supervisor Wormhoudt to request special consideration of the applications by the Board. These three applications are briefly described below. The Zoning Administrator's staff report for each application is attached, as indicated below.

1. APPLICATION NO. 99-0828, Big Creek Windsock, APN 057-081-22 (Attachment 2)

Project Summary:

This application seeks the installation of a 39-foot 3-inch communications **monopole** disguised as the mounting for an existing windsock at the Big Creek Lumber facility located at 3564 Highway One on the west side of the highway. The 29 acre parcel carries a Heavy Industry land use designation. The proposed **monopole** would replace an existing 4-inch diameter pole mounting with a **12-inch** diameter pole and would be the same height as the existing windsock. The proposed pole will be similar in diameter to the existing telephone poles in the vicinity, which average 8-12 inches diameter. The proposed equipment shed, a 680 square foot extension to the existing hangar building, will be constructed of native redwood with a maximum 16 foot height.

Project Status:

This application was received by the Planning Department on 12/19/99, deemed complete on 6/23/00 and scheduled before the Zoning Administrator on 8/18/00. It was determined that the project was subject to Environmental Review and was scheduled before the Environmental Coordinator on 10/16/00. A Mitigated Negative Declaration was issued by the Environmental Coordinator on 12/8/00. The project was approved by the Zoning Administrator on 12/15/00. A request for special consideration was filed by Supervisor Wormhoudt on 12/20/00. A Retraction of Final Local Government Action was filed with the Coastal Commission on 1/10/01.

2. APPLICATION NO. 00-03 19, Sand Hill Bluff, APN 059-033-08 (Attachment 3)

Project Summary:

This application seeks the installation of a **65-foot** communications **monopole** disguised as a pine tree among a grove of eucalyptus and cypress trees on a single-family residential parcel of 0.77 acres, with an Agriculture land use designation, located at 5209 Highway One, about 1/4 mile northwest of the intersection of Highway One and Scaroni Road. A 200 square foot equipment shed, 10 feet in height, built of native redwood is also proposed.

Project Status:

This application was received by the Planning Department on 4/28/00, deemed complete on 7/27/00 and scheduled before the Zoning Administrator on 8/18/00. It was determined that the project was subject to Environmental Review and the project was scheduled before the Environmental Coordinator on 10/16/00. A Mitigated Negative Declaration was issued by the Environmental Coordinator on 12/8/00. The project was reviewed by the Zoning Administrator on 12/15/00 and referred to the Planning Commission to determine consistency with visual policies of the County of Santa Cruz as per County Code Section 18.10.124(b). A request for special consideration was filed by Supervisor Wormhoudt on 12/20/00.

3. APPLICATION NO. 00-0352, Rodoni Ranch/Dimeo Lane, APN 059-121-08 (Attachment 4)

Project Summary:

This application seeks the installation of a **59-foot** communications **monopole** disguised as a windmill immediately south of the Santa Cruz City landfill and adjacent to Wilder Ranch State Park, at 395 Dimeo Lane. The 38 acre project site carries an Agriculture land use designation and is developed with a single-family dwelling and accessory farm structures and is actively farmed with row crops. The proposed equipment cabinet is to be disguised as a 16-foot diameter circular redwood water tank approximately 10 feet in height,

Project Status:

This application was received by the Planning Department on 5/18/00, deemed complete on 7/27/00 and scheduled before the Zoning Administrator on 8/18/00. It was determined that the project was subject to Environmental Review and was scheduled before the Environmental Coordinator on 10/30/00. A Mitigated Negative Declaration was proposed by the Environmental Coordinator, however, during the comment/appeal period, letters received from Celia Scott dated 12/7/00 and Benjamin Hanelin dated 11/27/00 convinced the Environmental Coordinator to require the applicant to provide additional analysis of alternative sites which would minimize visual impacts. The CEQA review of this application is still pending. On 12/15/00 the project was reviewed by the Zoning Administrator who referred the project to the Planning Commission for a determination of project consistency with the visual policies of the County of Santa Cruz, consistent with County Code Section 18.10.124(b). A request for special consideration was filed by Supervisor Wormhoudt on 12/20/00.

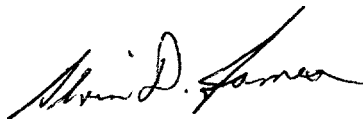
Discussion and Recommendation

As noted above, County Counsel was instructed to prepare a report regarding the status of the applications and to discuss with the applicant the possibility of an extended deferral to allow Planning staff to complete the processing of the ordinance amendments. This report is being presented as a separate item on the agenda.

We have attached the staff reports for the three applications and are ready to present the items to your Board should that be your Board's wish following deliberations on County Counsel's report.

It is, therefore, RECOMMENDED that your Board take whatever action is appropriate regarding the three applications following consideration of the report prepared by County Counsel.

Sincerely,



Alvin D. James
Planning Director

RECOMMENDED: 
Susan A. Mauriello, CAO

- Attachments:
1. Minute Order, Item No. 54.1, May 8, 2001 Agenda
 2. Zoning Administrator's staff report, Application No. 99-0828
 3. Zoning Administrator's staff report, Application No. 00-03 19
 4. Zoning Administrator's staff report, Application No. 00-0352

cc: Franklin Orozco	Ben Hanelin
California State Parks	Big Creek Timber Co.
M. Rodoni	John Nellany
California Coastal Commission	Michael Ortega
Celia Scott	Jim Cochran



County of Santa Cruz

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May 16, 2001

Agenda: May 22, 2001

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Consideration of Application Nos. 99-0828, 00-0319 and 00-0352 to Construct Wireless Communication Facilities Including Towers and Accessory Buildings

Dear Members of the Board:

On May 8, 2001, your Board conducted a preliminary review of a draft Wireless Communication Facilities Ordinance containing conceptual policies and regulations prepared by the Planning Department. Planning staff consulted with an advisory committee comprised of representatives from service providers, the public, and other interested parties. This effort at producing an ordinance resulted, in part, from your Board's consideration of three applications by Sprint PCS to construct wireless communication facilities on the North Coast.

While further deliberation of the draft ordinance was continued to June 12, 2001, your Board also continued consideration of the three applications to this date and directed this Office to report on the legal status of the applications. This Office was further directed to communicate with the applicant and inquire about Sprint PCS's willingness to agree in writing to defer County action on its applications until such time as an ordinance regulating wireless communication facilities goes into effect. While an initial telephone conversations with Mr. John S. Boat, Esq., counsel for Sprint PCS, occurred, no response from Mr. Boat was available at the time that this letter was prepared. A response to this

inquiry is expected prior to your Board's consideration of this matter and will be reported on at the time of the meeting.

In response to your Board's request for a report on the legal status of the pending applications, this letter will (1) briefly describe the procedural history and present status of the applications; (2) outline the pertinent requirements of the Telecommunications Reform Act of 1996; (3) examine how the courts have interpreted the requirements of the federal Act; and (4) propose several options for your Board's consideration on how to proceed with the subject applications.

STATUS OF THE APPLICATIONS

As was described in the staff report prepared for your May 8th meeting, the three applications all involve wireless communication facilities including towers and accessory structures proposed for the North Coast.

1. Application No. 99-0828, was received by the Planning Department on December 19, 1999, and deemed complete on June 23, 2000. A Mitigated Negative Declaration was issued by the Environmental Coordinator on December 8, 2000, and the project was approved by the Zoning Administrator on December 15, 2000.

2. Application No. 00-03 19, was received by the Planning Department on April 28, 2000, and deemed complete on July 27, 2000. A Mitigated Negative Declaration was issued by the Environmental Coordinator on December 8, 2000. On December 15, 2000, the Zoning Administrator considered the application and referred it to the Planning Commission to determine its consistency with County visual protection policies.

3. Application No. 00-0352, was received by the Planning Department on May 18, 2000, and deemed complete on July 27, 2000. A Mitigated Negative Declaration was initially proposed by the Environmental Coordinator but subsequently reconsidered based on comments received during the appeal period requesting an additional alternative sites analysis with the aim of minimizing visual impacts. CEQA review of this application is still pending.. On December 15, 2000, the Zoning Administrator referred this application to the Planning Commission, as with application No. 00-03 19, to determine its consistency with County visual protection policies.

THE TELECOMMUNICATION REFORM ACT OF 1996

The Telecommunications Reform Act of 1996 (“TRA”) establishes Federal regulations which are directly applicable to the three subject applications. In enacting the TRA, Congress intended to end monopoly power in the telecommunications industry by dismantling state and local barriers to competition, and accelerating rapid private sector deployment of advanced telecommunications and information technology and services. S.Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996). While the TRA recognizes local government authority over zoning for such facilities, it has been interpreted by the Federal Communications Commission (FCC) and federal courts in a manner which limits local government control over the siting of wireless facilities.

Among its many provisions, the TRA prohibits state and local governments from:

- (1) Unreasonably discriminating among providers of functionally equivalent services, 47 U.S.C. Sec. 332(c)(7)(B)(i)(I);
- (2) Prohibiting or having the effect of prohibiting the provision of personal wireless services, 47 U.S.C. Sec. 332(c)(7)(B)(i)(II);
- (3) Failing to act on any request for authorizing a wireless service facility within a reasonable period of time after it is filed, taking into account the nature and scope of such request, 47 U.S.C. Sec. 332(c)(7)(B)(ii); and
- (4) Regulating the placement of a wireless service facility on the basis of environmental effects of radio frequency, if the facility complies with FCC regulations in that regard, 47 U.S.C. Sec. 332(c)(7)(B)(iv).

A wireless service provider challenging an action taken by a local government, or a failure to act, may file a legal action in federal court within 30 days and have the matter heard on an expedited basis.

FEDERAL COURT DECISIONS

A review of wireless communication siting decisions in which a federal court has actually reached the merits of whether a local government’s decision denying an application to site a wireless communications facility violated the TRA, the industry applicants won 18 while local governments won 10. Similar results were seen in a handful of other cases, not reached on the merits, with regards to pre-trial motions.

Of the legal challenges by the industry to moratoriums enacted by local governments to allow the development of zoning regulations to address siting decisions, moratoriums were upheld in three cases and struck down in two. Of the three moratoriums upheld, two were for six months (Medina, Wash. and West Stockbridge, Mass.) while the third was authorized for a year (**Haywood** County, N.C.) . An analysis of these moratorium decisions suggest that the longer the moratorium is, the more likely that a reviewing court will find that the local government had improper motives for its enactment.

OPTIONS

The following options are presented for your Board's consideration of the pending applications.

1. Enact an interim ordinance establishing a complete moratorium on the issuance of permits for new wireless communications facilities. Under this option the County would establish a moratorium (pursuant to Government Code Section 65858¹), to completely prohibit the issuance of permits for new facilities while the proposed ordinance is developed and adopted. Under this option, the three applications would be held and not acted upon until after a new ordinance is in effect.
2. Enact an interim ordinance that would allow for the review and issuance of permits for new wireless communications facilities. Under this option the County would establish an interim ordinance establishing interim standards and requirements for the processing, review and issuance of permits for new facilities pending adoption of a permanent ordinance. This option would allow timely consideration of the three applications. By adopting an interim regulatory system, current applications could be processed while work on the final ordinance is completed. Under this option or option 3, your Board could assume the responsibility for review and action, or the applications could be directed to either the Planning Commission or Zoning Administrator for hearing

¹ Under this section, an interim ordinance lasting 45 days could be enacted without notice or a public hearing by a four-fifths vote of the Board of Supervisors. This ordinance could be extended for up to 10 months and 15 days if a subsequent noticed public hearing is held, and further extended for another year by a four-fifths vote of the Board. Alternatively, an interim ordinance lasting 45 days could be adopted at a noticed public hearing by a four-fifths vote, and then extended after a second noticed public hearing for an additional 22 months and 15 days by a four-fifths vote of the Board.

and action. If the applications are directed to the Planning Commission or Zoning Administrator, any action taken would be subject to appeal back to your Board.

3. Consider and act upon the three applications based on current County standards. Under this option, the County could consider these three applications under existing standards and policies which are not specific to wireless communication facilities. Alternatively, the standards and requirements contained in the preliminarily draft ordinance that is scheduled for additional Board review on June 12, 200 1, could serve as a guide to the review and consideration of these applications.

IT IS THEREFORE RECOMMENDED that your Board consider this report.

Very truly yours,

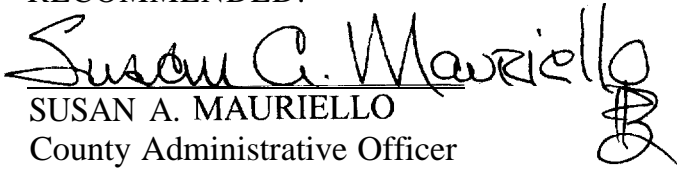
SAMUEL TORRES, JR., COUNTY COUNSEL

By:


RAHN GARCIA

Chief Assistant County Counsel

RECOMMENDED:


SUSAN A. MAURIELLO
County Administrative Officer

cc: Franklin Orozco
John S. Boat, Esq.
Celia Scott
Planning Department