



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

December 30, 2015

Agenda Date: January 13, 2016

Agenda Item# 9

Time: after 9:00 a.m.

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Appeal of Zoning Administrator's approval of Application 141212 for a Commercial Development Permit to allow construction of a 64 foot tall monopine wireless communication facility

Members of the Commission:

On September 30, 2014 Application 141212 for a Commercial Development Permit was filed to construct a 64 foot tall monopine wireless communication facility.

On November 6, 2015 the Zoning Administrator approved Application 141212 with staff findings and revised conditions of approval. Attached is the staff report (Exhibit 1B), including project plans, findings, and conditions of approval.

On November 20, 2015 a letter of appeal was submitted by James and Dawn Cracolice (Exhibit 1A). The primary issues raised in the letter are lack of required public notice; noncompliance with the noise regulations, Williamson Act, wireless regulations, and General Plan; that the project does not qualify for an exemption under the California Environmental Quality Act (CEQA) and the County failed to adopt a CEQA appeal filing procedure consistent with CEQA.

Lack of Required Public Notice

Appellant asserts that required mailed public notice was not provided to properties outside the county jurisdiction. It has not been the practice to notice properties outside Santa Cruz County because resident and property ownership information is not readily available for Santa Clara County in the Santa Cruz County geographic information system. However, pursuant to County Code Section 18.10.223 (A) (3) and 13.10.661 (H), public notice of this Planning Commission hearing has been provided to all properties within 1000 feet of the subject property, both in and outside county jurisdiction, based on updated Geographic Information System.

The appellant also asserts that public notice was not placed on the subject property pursuant to County Code 18.10.223 (A) 2. Pursuant to 18.10.223 (A) 2 and 18.10.224, in addition to notice in a newspaper of general circulation and notification of owners and occupants within 300 feet of

the subject property (and 1000 feet for wireless facilities) and County Board of Supervisors, the County Code requires posting of a large project description sign on the subject property, and a small public hearing notice sign on the subject property 10 days prior to the public hearing. The applicant is required to post both of these public notices and submit an affidavit of posting to the Department. The applicant provided an affidavit of posting of the large sign, dated July 26, 2015, with a photo identifying the location of the sign. The applicant also provided an affidavit of posting for the Zoning Administrator Public hearing notice, dated November 2, 2015, confirming that this notice was posted 10 days prior to the hearing and that it was posted adjacent to the large project sign.

Violation of Noise Regulations

The project includes cooling fans in the proposed outdoor equipment cabinets and a proposed emergency generator. The cooling fans are proposed to be operated continuously and the generator is proposed to be tested for a period of 15 minutes during daytime hours twice a month and operated for extended periods only during a power outage. The project includes 6 foot solid board fencing around the proposed equipment.

The appellant asserts that the noise study does not evaluate the actual equipment proposed by the project. He asserts that the noise level of the proposed HVAC system exceeds the General Plan nighttime average of 45 dB Leq. The appellant also argues that if the proposed emergency generator is required to be operated during nighttime hours (10 pm to 7 am), operation of the generator would exceed the General Plan nighttime average of 40 dB Leq. General Plan Fig 6-2 requires the nighttime average to be reduced from 45 dB Leq to 40 dB Leq if the ambient noise levels are more than 10 dB below the allowable level.

An updated noise study (Exhibit 1I) was prepared by Bollard Acoustical Consulting, dated December 16, 2015 that was not included in the staff report considered by the Zoning Administrator on November 6, 2015. The revised noise study evaluated the specific equipment proposed by the project and concluded that the proposed project would comply with the daytime average and maximum noise levels at the property line for both the proposed equipment cabinets and generator. The predicted noise level for the outdoor cabinets is 33 dBA at the property line and 47 dBA for the proposed generator, which meet the General Plan standard of 60 dBA at the property line. Noise levels are further reduced to the nearest residences.

The proposed generator noise level of 47 dBA would exceed the nighttime average of 45 dB by 2 decibels. A proposed 6 foot solid board fencing with overlapping slats would reduce project generator noise level to 41 dB Leq at the property line in compliance with the nighttime 45 dBA standard.

On-site ambient levels were not taken by the study preparer. However, if the ambient noise levels are assumed to be reduced by more than 10 dB and the nighttime noise level required to be reduced to 40 dB, the noise study recommends that an 8 foot solid board fence with overlapping slats would be required to comply with the 40 dB Leq standard at the property line. The applicant provided revised plans (Exhibit 1C) that include the recommended 8 foot solid board fencing so that the proposed generator complies with both the 45 dB General Plan nighttime noise threshold and an assumed reduced nighttime threshold of 40 dB.

Revised conditions of approval specifically require the project plans to provide the cooling equipment and generator model specified in the noise study, as well as recommended noise attenuation fencing. Fencing design detail, consistent with the recommended fencing, is

included in the revised project plans before your Commission.

The Noise Study preparer has been requested to be available at the public hearing should your Commission have additional questions regarding noise analysis.

Compliance with CEQA

The Notice of Exemption stated that the project is exempt under the Guidelines section 15303 (Class 3) exemption, which applies to “construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structure from one use to another where only minor modifications are made in the exterior of the structure”.

If a project falls within a categorical exemption, no formal environmental evaluation is made. (City of Pasadena v State of California (1993) 13 Cal. App. 4th 810, 820, disapproved on other grounds by W. States Petroleum Assn. V. Superior Court (1995) 9 Cal. 4th 559.)

The appellant argues that the project is not categorically exempt from the requirements of CEQA because the following exception to the exemption applies:

15300.2(c): “A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

The CEQA guidelines state that “Unusual circumstances” require showing that the project has some specific feature that distinguishes it from others in the exempt class, such as its size or location, and is not satisfied by a mere reasonable possibility that an activity will have a significant effect on the environment. (Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086.)

Appellant Asserted “Unusual Circumstances”:

1. High Fire Hazard: The appellant asserts that the project is located in a high fire hazard area. The appellant neither substantiates where this information is obtained nor that the site is mapped high fire hazard. In fact, project is not located within a mapped high fire hazard area by the General Plan. In addition, all proposed projects in the rural area are subject to the Public Resources and Fire Codes. As such, the fire agency requires all projects to maintain a “100 foot clearance around and adjacent to all buildings or structures to provide additional fire protection for a fire break by removing all brush, flammable vegetation, or combustible growth”. Furthermore, all projects, including residential and commercial projects, are required to comply with the building, fire, plumbing, mechanical, and electrical code by the Building Department, which also address fire hazards associated with fuel tanks. As a result, the proposed project does not pose any unusual safety hazard to the environment. And, like all projects, the monopole is required to be engineered to withstand seismic and wind conditions. Fire hazard, even if substantiated, is not considered an unusual circumstance affecting the subject property.

3. San Joaquin Kit Fox: The appellant asserts that the San Joaquin Kit Fox (*Vulpes macrotis mutica*) potentially inhabits the subject property and that it is reasonable to require further study to determine what species of fox may inhabit the property. The subject property is not mapped for protected biotic resources, including the Kit Fox,

which is listed as an endangered species by the US Fish and Wildlife Service, as mapped in the County GIS system. Biotic resource mapping relies on mapping provided by the California Natural Diversity Database (CNDDDB). This is a program that inventories the status and locations of rare plants and animals in California. The CNDDDB maintains a database of current lists of state and federal rare species as well as maintains an ever-growing database of GIS-mapped locations for protected species. This GIS layer was most recently updated by County GIS staff as of December 3, 2015 and the site is not mapped for this species.

Furthermore, a Kit fox study completed by the U.S Fish and Wildlife Service (Exhibit 1E) with study data compiled up until 2011 notes that 98 percent of kit fox dens were found in lower elevation habitats below 1,100 foot elevation, which is significantly below the 2,120 elevation of the project site, and none are known to occur in Santa Cruz County. They were found within Kern County, Tulare County, Kings County, Fresno County, Monterey County, San Benito County, San Joaquin County, Santa Barbara County, Stanislaus County and Santa Clara County. The Santa Clara County Valley Habitat Plan completed in 2012 (Exhibit 1E) noted that there were two occurrences of the Kit Fox between 1972 and 2002 found between Hollister north to Gilroy, at Henry Coe State Park on the eastern boundary of Santa Clara County, and one observed south of Highway 152/156 junction. None of these locations are near the project site. Other Canid species (mammal of the dog family), such as the gray fox, red fox, and coyote, inhabit Santa Cruz County and these are not subject to rare, threatened, or endangered species protection under CEQA. Given that Santa Cruz County is not an historical or recent habitat for the kit fox, further study of the kit fox is not required.

4. Archaeological Mapping: The appellant asserts that the site is designated for archaeological resources. The applicant had previously completed an archaeological resource inventory (Exhibit 1F), dated October 23, 2014 prior to property selection. The report concluded an absence of resources. The report was accepted by Resource Planner Bob Loveland (Exhibit 1G), dated November 25, 2015, and proposed project includes recommended conditions of approval.

The unusual circumstances asserted by the appellant do not apply to the subject property and therefore the exception to the environmental exemption does not apply to the proposed project. This supports the determination that the project is categorically exempt from CEQA under section 15303 (Class 3) exemption.

Furthermore, the Federal Communications Commission (FCC) requires projects subject to FCC authorization to complete a National Environmental Protection Agency (NEPA) review of environmental impacts. The NEPA review (Exhibit 1J) determines if the project is required to prepare and file an environmental assessment by evaluation of whether the site contains protected wilderness areas, wildlife preserves, protected species, archaeological or historical resources, Indian religious sites, floodplains, or significant changes to a surface feature. The review confirmed the absence of any of these protected resources or features and determined that an Environmental Assessment will not be required for the proposed project. This further supports the County determination that the site does not contain any feature or species that would constitute an "unusual circumstance" affecting the property and that would require formal environmental review.

Zoning/General Plan Inconsistency

The appellant asserts that the project and zoning ordinance are inconsistent with the General Plan as it allows wireless facilities in residential areas without adequate setbacks and buffer zones to avoid health hazards associated with cell towers.

Pursuant to County Code Section 13.10.170, the subject property is zoned A-P (Agriculture-Preserve), which is an implementing district for the Agriculture Land Use plan designation of the General Plan. While the subject property is across the street from property within the County of Santa Clara containing residences, the proposed wireless facility is a permitted use in Santa Cruz County's Agriculture zone district and is not located within a restricted or prohibited zone district. The project complies with all site standards of the Agricultural zone district including the minimum 20 foot setback intended for protection of light, air, and open space. The nearest residence to the subject property is 360 feet away from the base of the tower. The nearest two residences located outside the County of Santa Cruz are 430 feet and 470 feet away from the base of the tower.

Section 47 USC 332(c)(7)(B)(iv) of the Telecommunications Act of 1996 forbids jurisdictions from regulating the placement, construction, or modification of Wireless Communications Facilities based on the environmental effects of RF emissions if these emissions comply with FCC standards. The RF emissions of the proposed wireless communication facility comply with FCC standards. See the Radio Frequency report attached to the Zoning Administrator staff report (Exhibit 1B). Projects in compliance with the federal wireless emissions standard are therefore determined to result in a less than significant impact.

Lack of procedure for filing of Appeals of CEQA Notice of Exemption Filing consistent with the Project Appeal Procedure

The appellant asserts that filing the CEQA notice of exemption prior to consideration of an administrative appeal would be an unfair practice as it does not allow for the administrative appeals process to conclude before a CEQA lawsuit is required to be filed. CEQA says: "If a local agency approves or determines to carry out a project that is subject to this division, the local agency shall file notice of the approval or the determination within five working days after the approval or determination becomes final." (Cal Pub Resources Code § 21152.) CEQA requires appeal within 35 days of filing the notice of exemption. Case law provides that "Filing a notice of exemption under Pub Res C § 21152(b) before project approval does not comply with Cal. Code Regs. tit. 14 § 15062, and does not trigger the 35-day limitations period in Pub Res C § 21167(d)." (Coalition for Clean Air v. City of Visalia (2012, 5th Dist) 209 Cal App 4th 408.) As a result of the appellants concerns, the Notice of Exemption has not been filed and will not be filed until all administrative appeals have been exhausted by the appellant, which renders this concern moot.

Non-Compliance with the Williamson Act Agricultural Preserve Contract

The appellant asserts that the required project findings cannot be made to support the wireless facility. The attached Williamson Act Land Preservation Contract (Exhibit 1H) states that the "land shall be used for the commercial production of agricultural commodities and/or those compatible uses allowed in the A (agricultural) and the P (Agricultural Preserve) Combining District of the County Zoning Ordinance. No structures shall be erected upon said land except such structures as may be incidental to and compatible with such uses".

Pursuant to County Code Section 13.10.312, allowed uses on agriculture zoned property include holiday tree farms, horse ranches, vineyards, family farming, animal raising activities, and orchards and wineries, etc. Wireless facilities are also specifically called out as an allowed use. Crest "Holiday Tree" Ranch on the north coast is an example of a tree farm that contains roadways throughout the site and includes an approved wireless facility that is an integrated and incidental part of the tree farm.

Project findings require that the proposed use be incidental, or secondary to the main use, meaning that it is subordinate to the main agricultural use. A wireless use requiring roadway construction and development of a forty by forty square foot construction pad does not alter the open space use on the property or preclude the agriculture potential as any number of agriculture uses meeting the purpose of the district could be developed. Agriculture properties commonly include more roadways than most zone districts given the required access needs for agriculture management. Therefore, roadway access is considered incidental to agricultural activity.

Revised Agricultural findings are attached (Exhibit 1D).

Non-compliance with Wireless Regulations Compliance

Visual Impacts: The Zoning Administrator staff report notes that the proposed facility is required to minimize visual impacts. A determination was made that a monopine facility, designed as a pine tree within a landscaped fenced enclosure, would minimize visual impacts of the proposed facility because it would appear to blend with the surrounding trees located throughout the site. Updated visual simulations (Exhibit 1C), that include the Zoning Administrator required fence landscaping, support this determination.

Non-ionizing electromagnetic radiation (NIER Safety Measures): The appellant asserts that the safety measures have not been detailed safety measures required by County Code Section 13.10.662. The radio frequency (RF) report contained in the Zoning Administrator Staff Report (Exhibit 1B) provides the detailed safety measures required to ensure public safety. These are included as conditions of project approval under condition I D and II.7. The permit is also conditioned to obtain FCC approval prior to issuance of the building permit to install and operate this facility, which requires compliance with the FCC safety requirements. In addition, plans are required to include recommended signage, including an RF caution sign, 10 step Occupational guideline sign, and network operations Center sign (specifying contact information number) to be constructed prior to building permit final for the project.

Requirement for On-Site Visual Demonstration: Pursuant to County Code Section 13.10.662 Application Requirements, "The Planning Director or his/her designee may release an applicant from the requirement to conduct on-site visual mock-ups upon a written finding that in the specific case involved said mock-ups are not necessary to process or make a decision on the application and would not serve as effective public notice of the proposed facility." Revised findings (Exhibit 1D) include a finding to reflect the determination that the visual simulation provides adequate representation of the proposed facility to determine that the visual impacts of the facility would be minimized by the proposed project.

FCC Non-Compliance/Required Environmental Review of health effects: The zoning administrator report (Exhibit 1B) contains the required non-ionizing emissions report (NIER)/radio frequency (RF) report, concluding compliance with the RF emissions standards of the FCC. Furthermore, Section 47 USC 332(c)(7)(B)(iv) of the Telecommunications Act of 1996 forbids jurisdictions from regulating the placement, construction, or modification of

Wireless Communications Facilities based on the environmental effects of RF emissions if these emissions comply with FCC standards. Projects in compliance with the federal wireless emissions standard are therefore determined to result in a less than significant impact.

Staff Recommendation

Based on the review of the issues being appealed, the staff recommendation is that the Commission uphold the Zoning Administrator's determination that the project is exempt from further environmental review under the California Environmental Quality Act; and, the Commission uphold the Zoning Administrator approval of application 141212 based on the administrative record, revised plans and revised visual simulations (Exhibit 1C), and revised findings and revised conditions (Exhibit 1D).

Sincerely,

Sheila McDaniel
Project Planner
Development Review

Reviewed By: _____
Steven Guiney, AICP
Principal Planner
Development Review

- 1A. Appeal Letter prepared by James and Dawn Cracolice, dated November 20, 2015
- 1B. Staff report from the 11/20/2015 Zoning Administrator Hearing
- 1C. Revised Plans, dated December 3, 2015, and Revised Visual Simulations
- 1D. Revised Findings and Revised Conditions
- 1E. US Fish and Wildlife Service, 5 Year review of Kit fox and Santa Clara Valley Habitat Plan, 2012
- 1F. Archaeological Report, prepared by EGI Consulting, dated October 23, 2014
- 1G. Archaeological Report Review, prepared by Robert Loveland, dated 10/23/14
- 1H. Williamson Act Contract
- 1I. Revised Noise Study, prepared by Bollard Acoustical Consultants, dated December 16, 2015
- 1J. NEPA Review, prepared by EBI Consulting, dated January 15, 2015