

Attachment B
Draft Board Resolution
Exhibit 1: Conditions of Approval
Exhibit 2: Project Elevations

California-American Water Company
PLN120817

**ATTACHMENT B
DRAFT RESOLUTION**

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

In the matter of the application of:

California-American Water Company (PLN120817)

RESOLUTION NO. _____

Resolution by the Monterey County Board of Supervisors:

- a. Deny an appeal by Constance Murray from the decision of Director of Resource Management Agency – Planning approving a Design Approval (California American Water Company/PLN120817) to correct a code violation (11CE00134) and allow the placement of a twenty foot high communication antenna within a water tank easement to serve a California-American Water Company water tank.; and
- b. Find the project categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301; and
- c. Approve the Design Approval (California American Water Company/PLN120817) to correct a code violation (11CE00134) and allow the placement of a 20 foot high communication antenna within a water tank easement to serve a California-American Water Company water tank.; and
- d. Grant the request to waive the appeal fee and authorize the RMA-Planning Director to refund the appeal fee.

[PLN120817, California-American Water Company, 10 Oak Meadow Lane, Carmel Valley, Carmel Valley Master Plan (APN: 187-031-025-000)]

The application for a Design Approval (PLN120817/California-American Water Company) came on for public hearing before the Monterey County Board of Supervisors on March 19, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – The subject Design Approval (PLN120817/California-American Water Company) complies with all applicable procedural

requirements.

- EVIDENCE:**
- a) On December 7, 2012, California American Water Company (“Cal-Am”) applied for an after-the-fact Design Approval to correct a code violation and to allow for the placement of a twenty foot high water tank communication antenna within a water tank easement to serve Cal-Am.
 - b) The project was not referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did not warrant referral to the LUAC because the project is exempt from CEQA, is not a lot line adjustment involving conflicts, does not include a variance, and is not subject to review by the Zoning Administrator or Planning Commission.
 - c) On January 7, 2013 the RMA- Director of Planning approved the Design Approval.
 - d) On January 22, 2013, Constance Murray (“Appellant”) filed a timely appeal from the RMA-Planning Director’s approval of a Design Approval. The Appellant also requested that the appeal fees be waived. The appeal was submitted within the ten day period from the Notice of Approval of the project as required by the zoning ordinance.
 - e) The Board of Supervisors conducted a public hearing on the appeal on March 19, 2013. Notices of the public hearing on the appeal were published in the Monterey County Herald and mailed to neighbors within 300 feet on March 8, 2013, pursuant to Monterey County Code Chapter 21.78. Public hearing notices for the appeal were posted in three different public places on or near the subject property by Planning staff.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- EVIDENCE:**
- a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - the 2010 Monterey County General Plan; and
 - Carmel Valley Master Plan; and
 - Monterey County Zoning Ordinance (Title 21).
 - b) The property on which Cal-Am’s easement is located is at 10 Oak Meadow Lane, Carmel Valley (Assessor’s Parcel Number: 187-031-025-000) within the Carmel Valley Master Plan. The parcel is zoned Low Density Residential with Building Site, Design Control, Site Plan Review, and Residential Allocation Zoning District Overlays, or “LDR B-6 D-S RAZ”, which allows accessory structures, accessory to any permitted use. The existing water tank is the permitted use and the antenna is accessory to the water tank. Therefore, the project is an allowed land use for this site, subject to a Design Approval.
 - c) The subject property is located within a Design Control District, which provides for the regulation of size, configuration, materials and colors of structures to ensure protection of the public viewshed, neighborhood character, and visual integrity of structures. The project consists of a 20 foot tall antenna installed on an existing concrete pedestal. The antenna is accessory to the existing water tank and serves as a communication

- device related to the water tank and the reliability of the water system.
- d) The subject site is located within the visual sensitivity map, as shown on the Scenic Highways Corridor and Visual Sensitivity, Greater Monterey Peninsula Map, Figure #14. Although this parcel is identified on the visual sensitivity map the antenna is only minimally visible from Laureles Grade Road and due to the distance, colors and materials will not have a significant visual impact from the public viewshed. The antenna is visible when traveling on Oak Meadow Lane, which is a private road. However, policies do not protect views from private roads.
 - e) Staff determined that, based on a site visit conducted on February 21, 2013, the project is not considered ridgeline development, which by definition in Monterey County Code Title 21, Section 21.06.950, is development on the crest of a hill which has the potential to create a silhouette or other substantially adverse visual impact when viewed from a common public viewing area. When viewed from Laureles Grade Road, the trees located on the neighboring property and the distant hills at higher elevations prevent the antenna from creating a silhouette. Monterey County Code Title 21, Section 21.06.1275, defines Substantial Adverse Visual Impact as “a visual impact which, considering the condition of the existing viewshed, the proximity and the duration of view when observed with normal unaided vision, causes an existing visual experience to be materially degraded.” As previously stated, based on staff’s site inspection, the antenna is only minimally visible from Laureles Grade Road with unaided vision and, therefore, does not further degrade the existing visual conditions from a public viewing area.
 - f) The proposed project is consistent with the neighborhood character due to the fact that there is an identical antenna located approximately 1/8th of a mile from the subject antenna that serves the same purpose.
 - g) The project planner conducted a site inspection on February 21, 2013 to verify that the project on the subject parcel conforms to the plans listed above and does not constitute ridgeline development.
 - h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN120817.

3. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:**
- a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning. There has been no indication that the site is not suitable for the proposed development.
 - b) Staff conducted a site inspection on February 21, 2013 to verify that the site is suitable for this use.
 - c) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN120817.
 - d) The water tank and antenna exist within a Water Tank Easement, as shown on the final map for the Rancho del Sol subdivision, recorded in October 1979 at Volume 14 of Cities and Towns, page 42. Cal-Am holds an easement together with all improvements thereon. (Attachment

E to the March 19, 2013 staff report)

4. **FINDING:**

VIOLATIONS - The subject property is in not compliance with all rules and regulations pertaining to zoning uses. Violations exist on the property. The approval of this permit will correct the violations and bring the property into compliance.

EVIDENCE:

- a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is aware of one violation existing on subject property. The violation is for the placement of a 20 foot tall water tank communication antenna within a water tank easement (11CE00134) without permits.
- b) On March 21, 2011 a Code Enforcement Case (11CE00134) was opened by the Monterey County RMA-Building Services Department because of the installation of a monopole antenna without permits. A compliance order was mailed to the property owner, Constance Murray, on May 31, 2011. The compliance order required four corrective actions. The monopole antenna is appurtenant to a water tank, both of which lie within a water tank easement held by California-American Water Company (Cal-Am). On December 7, 2012, California-American Water Company submitted an application for a Design Approval. The Design Approval (Cal-Am/PLN120817) was to correct the code violation (11CE00134) and to allow the placement of a 20 foot high communication antenna within a water tank easement to serve the Cal-Am water tank. The application for the Design Approval was approved by the RMA-Planning Director on January 7, 2013. A Notice of Approved Design Approval was mailed to all property owners within 300 feet of the subject property on January 9, 2013. Constance Murray filed a timely appeal on January 22, 2013 of the RMA-Director of Planning's approval of the Design Approval. On March 19, 2013 before the Monterey County Board of Supervisors held a public hearing on the appeal and approved the Design Approval.
- c) The Design Approval (PLN120817) corrects an existing violation regarding the placement of a 20' tall water tank communication antenna within a water tank easement (11CE00134). The permit will bring the subject property into compliance with all rules and regulations pertaining to the property and will remove the existing violations. The Design Approval consists of the placement of a 20' tall water tank communication antenna to serve an existing water tank facility. The antenna is accessory to the water tank facility. The parcel is located within a Design Control District and requires a Design Approval for any exterior change or modification.
- d) Staff conducted a site inspection on February 21, 2013 and researched County records to assess if any violation exists on the subject property.
- e) Zoning violation abatement costs, if any, have been paid. A condition is included to assure that all zoning abatement costs, if any, have been paid.
- f) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning for the proposed development are found in Project File PLN120817.

5. **FINDING:** **CEQA (Exempt)** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.
- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15301 categorically exempts existing public or private facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The project as described is a 20 foot tall antenna appurtenant to a water tank. The Design Approval authorizes the antenna that already exists onsite and does not change or expand the use on the site.
 - b) No adverse environmental effects were identified during staff review of the development application during a site visit on February 21, 2013.
 - c) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project. The exceptions to exemptions listed in sec. 15300.2 are inapplicable to this project because the project will not create an impact within a particularly sensitive environment, will not have a significant cumulative impact or effect on the environment, is not located on a hazardous waste site, and will not result in damage to scenic or historic resources.
 - d) See Finding No. 2, Evidence b.
 - e) Staff conducted a site inspection on February 21, 2013 to verify that the site is suitable for this use.
 - f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN120817.

6. **FINDING:** **FEE WAIVER** – The Board grants Appellant's request to waive the appeal fee based on the following:
- EVIDENCE:**
- a) A Code Enforcement Case (11CE00134) was opened by the Monterey County RMA-Building Services Department on March 21, 2011. A compliance order was mailed to the property owner (Constance Murray) on May 31, 2011.
 - b) On December 7, 2012, the water tank easement holder (California-American Water) submitted an application for a Design Approval to clear Code Violation No. 11CE00134, to allow the placement of a 20 foot high communication antenna within an existing water tank easement to serve an existing California-American Water water tank facility. (California-American Water Company/PLN120817)
 - c) The application for the Design Approval was approved by the RMA-Planning Director on January 7, 2013.
 - d) A Notice of Approved Design Approval was mailed to all property owners within 300' of the subject property on January 9, 2013, including Constance Murray.
 - e) Constance Murray filed an appeal on January 22, 2013 of the RMA-Director of Planning's approval of the Design Approval. Ms. Murray requested waiver of the appeal fee. (Attachment K to the March 19, 2013 staff report) Although all noticing required by the Monterey County Title 21 Zoning Ordinance was followed, the sequence results in the first public hearing on the application occurring on the appeal. On

January 22, 2013 the Appellant paid the appeal fee in the amount of \$5,146.81.

- f) Under Section 21.44.040. D, the Director of Planning may approve the antenna (an appurtenance to the water tank) without a hearing. Notice of the approved Design Approval was given, and the appellant had the opportunity to appeal per section 21.44.070. Because the Design Approval was granted by the Director of Planning without a hearing, this appeal hearing is the first public hearing on the application. It is appropriate to grant the waiver of appeal fee in this case where the Board's appeal hearing is the first public hearing on the Design Approval.

7. **FINDING:**

APPEAL – The appeal was filed on the basis that there was lack of a fair or impartial hearing, the findings or decision or condition are not supported by the evidence and the decision was contrary to law. The Board of Supervisors has considered all the issues raised in the appeal and responds as follows:

- EVIDENCE:** a) ***Appellant's Contention No. 1:** The appellant states that the notice requirements set forth in the Monterey County Code were not followed, that the property owner Constance Murray never received notice from the County that the application was filed, and contends that the application was misleading as California American Water signed the application as the "Property Owner/Agent" when they were neither; for these reasons the application should be denied.*

Response to Contention No. 1: Notice requirements set forth in Monterey County Zoning Ordinance Title 21 were followed. Monterey County Code Section 21.44.040 D provides: "The Director of Planning may approve, in lieu of the Appropriate Authority, plans and submittals in "D" districts for small structure additions, accessory structures and similar minor structures and minor modifications to approved designs." Section 21.44.050 B provides: "No public notice shall be required for actions of the Director of Planning taken pursuant to Section 21.44.040 D". Therefore, the Monterey County Code did not require notice prior to the Director's approval; however, the County Code does provide a right of appeal to the Board of Supervisors. (Monterey County Code Section 21.44.070) A Notice of Approved Design Approval was mailed to all property owners within 300 feet, including Ms. Murray. (Attachment I) Ms. Murray has availed herself of the right to appeal.

California-American Water Company is appropriately the applicant on the application due to the fact that the subject antenna is located within a water tank easement held by California-American Water Company (Attachment F to the March 19, 2013 staff report). Per the Grant Deed of Easements, Cal-Am holds the water tank easement together with "all improvements thereon." As the Design Approval application concerns a structure on the easement, Cal-Am is the holder of the property interest at issue in the application. The application contains the following statement just above the signature line: "I, the undersigned, have authority to submit application for a permit on the subject property." J. Aman Gonzales, Cal-Am's agent signed the application. The RMA-Planning Department relies upon the applicant's attestation of their

authority to make the application. Whether Cal-Am had a duty to notify Ms. Murray of the application is a matter of private dispute.

Appellant's Contention No. 2: *The appellant states that the installation of the monopole antenna in the easement violates the restrictions of the Scenic Easement, and that a review of the application file reveals that no determination was made by the County as to the Scenic Easement, based on being in violation of the scenic easement; the application should be denied.*

Response to Contention No. 2: The installation of the antenna is an appurtenance to the existing water tank. The property is subject to a Conservation and Scenic Easement (CSE) Deed, recorded in the Office of the Recorder of the County of Monterey, on September 19, 1980 at Reel 1434, pages 219-224. (Attachment F to the March 19, 2013 staff report.) The Conservation and Scenic Easement Deed grants an exception for utilities, providing "That no structures will be placed or erected upon said described premises except for fences and utilities" and explicitly excepting "the right to maintain existing utilities." (CSE Deed, Reel 1434, pages 220). After review of the Conservation and Scenic Easement Deed, planning staff determined that the addition of the antenna was an appurtenance to the existing water tank, within the existing water tank easement, which is a utility, thus is within the exception. By adopting these findings, the Board of Supervisors so finds and determines.

Appellant's Contention No. 3: *The appellant states the Design Permit subject to this appeal was obtained without first obtaining a construction permit as set forth in the Compliance Order issued by the County.*

Response to Contention No. 3: Prior to issuance of a Construction Permit, an approved Design Approval is required by the zoning ordinance. Although the compliance order mailed to the owner (Constance Murray) listed the Construction Permit as the first required action, the Compliance Order is meant to inform the property owner of what is required, but not necessarily in chronological order. In any event, since issuance of the compliance order, the County's Chief Building Official has determined that the subject antenna is exempt from building permit requirements. Pursuant to Section 18.02.050 E. 34 of the Monterey County Code, the installation of a radio transmission antenna for California-American Water is exempt from requiring the issuance of a building permit (Attachment G to the March 19, 2013 staff report). Therefore, no construction permit will be required.

Appellant's Contention No. 4: *The application does not conform to the design requirements of location, size, configuration, etc. set forth in the Monterey County Code, does not conform to the 2010 Monterey County General Plan, and is inconsistent with Title 21 of the Monterey County Code.*

Response to Contention No. 4: The purpose of the Design Control

District (Section 21.44) is to assure the protection of the public viewshed, neighborhood character, and to assure the visual integrity of certain developments without imposing undue restrictions on private property. Planning staff conducted a site inspection on February 21, 2013 to assess any possible impacts on the public viewshed. Staff determined that the impact was minimal and did not create a substantially adverse impact when viewed from a common public viewing area (Laureles Grade Road). During the staff site inspection conducted on February 21, 2013, staff observed an identical antenna south of the subject antenna on Oak Meadow Lane. The antenna serves the same purpose, was installed by the same entity, is the same size and configuration, and consists of the same materials. Therefore, staff determined that the subject antenna was within the existing neighborhood character for structures of that nature. Based on staff review and the evidence, the project complies with all regulations of Monterey County Code, the 2010 Monterey County General Plan, and Title 21.

Appellant's Contention No. 5: The appellant states the application must be made by the property owner or her agent. As California American Water is neither the owner of the property or an agent of the owner, it cannot apply for the application in its sole capacity as the easement owner.

Response to Contention No. 5: California-American Water Company holds rights to an easement identified on the Rancho Del Sol subdivision map (See Attachments D and E). As the holder of the water tank easement, California-American Water Company may apply for and obtain the required entitlements for improvements within the water tank easement (Also see response to Contention No. 1).

8. **FINDING:** **APPEALABILITY** - The decision on this project is final.
EVIDENCE: a) Section 21.80.090.I of the Monterey County Zoning Ordinance states that the decision of the appeal authority (Board of Supervisors) shall be final.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Deny the appeal by Constance Murray from the decision of the Director of the Resource Management Agency – Planning; and
- b. Find the project categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301(b); and
- c. Approve the Design Approval to correct the Code Violation (11CE00134) and to allow the placement of a twenty foot high communication antenna within a water tank easement to serve a California-American Water Company water tank, subject to the conditions of approval and in conformance with the site elevation, both being hereto and incorporated herein by reference; and
- d. Grant the request to waive the appeal fee and authorize the RMA-Planning Director to refund the appeal fee.

PASSED AND ADOPTED this 19th day of March, 2013 upon motion of Supervisor _____,
seconded by Supervisor _____, and carried by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book ___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

Attachment B

Exhibit 1: Conditions of Approval

California-American Water Company
PLN120817

Monterey County Planning Department

DRAFT Condition of Approval Implementation Plan/Mitigation Monitoring Reporting Plan

PLN120817

1. PD001 - SPECIFIC USES ONLY

Responsible Department: Planning Department

**Condition/Mitigation
Monitoring Measure:** This permit is a Design Approval to allow the placement of a 20 foot high communication antenna within a water tank easement to serve a California-American Water Company water tank. The water tank easement held by the California-American Water Company is set forth in that certain "Grant Deed of Easements," recorded in the office of the Recorder of the County of Monterey on April, 4, 1989, at Reel 2348, page 307. The property on which the easement is located is at 10 Oak Meadow Lane, Carmel Valley (Assessor's Parcel Number 187-031-025-000), Carmel Valley Plan. For purposes of this Design Approval California-American Water Company is the "Owner/Applicant" and documents required by these conditions of approval to be recorded shall be recorded against the easements held by Cal-Am. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled.
(RMA - Planning Department)

**Compliance or
Monitoring
Action to be Performed:** The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The Owner/Applicant agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The Owner/Applicant will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the Owner/Applicant of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless.
(RMA - Planning Department)

Compliance or Monitoring Action to be Performed: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning Department for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA-Planning Department.

3. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: Planning Department

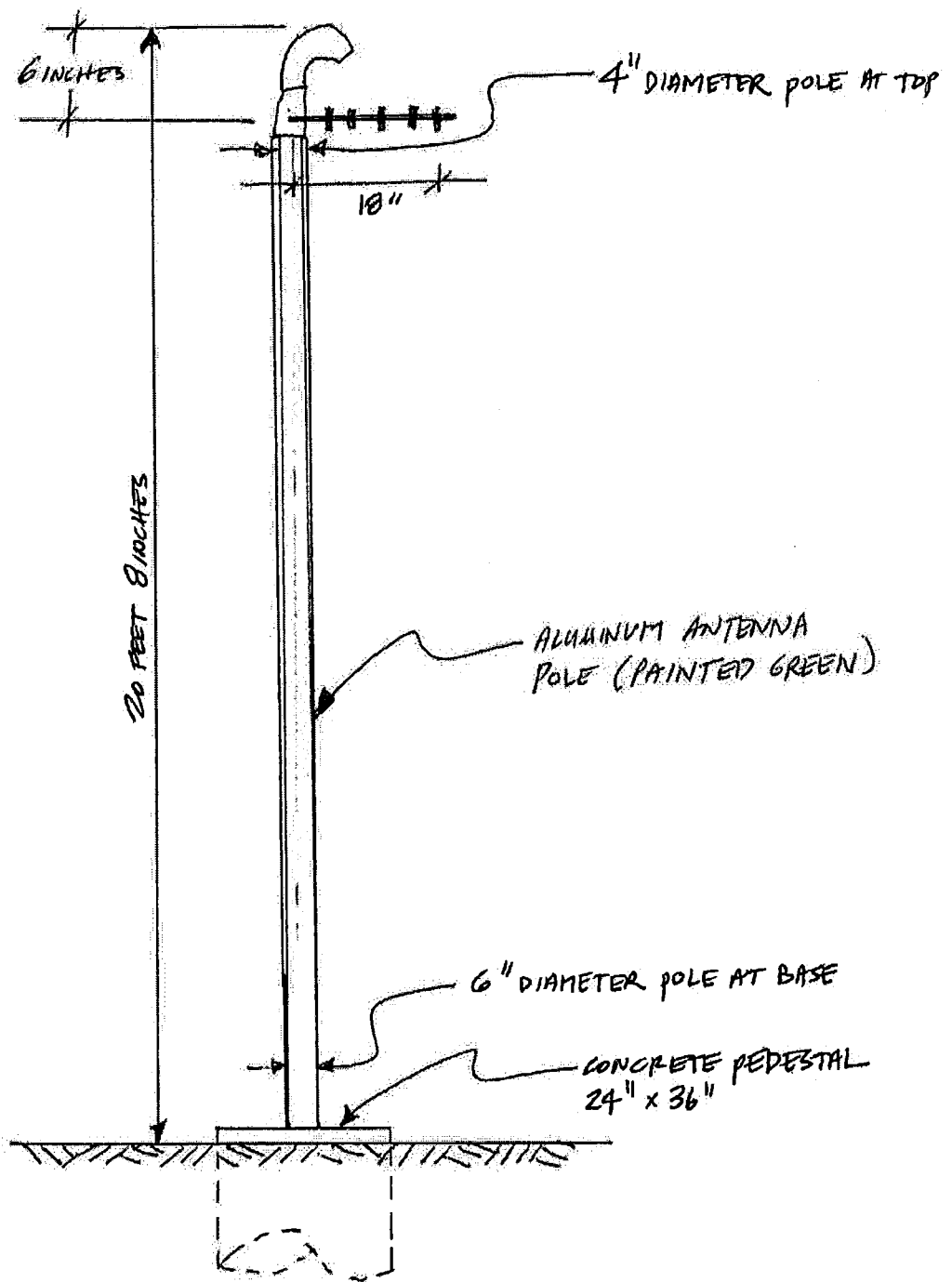
Condition/Mitigation Monitoring Measure: The Owner/Applicant shall record a Permit Approval Notice. This notice shall state:
"A Design Approval (Resolution Number ***) was approved by Monterey County Board of Supervisors for Assessor's Parcel Number 187-031-025-000 on March 19, 2013. The permit was granted subject to three conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department."
Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use.
(RMA - Planning Department)

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits or commencement of use, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning Department.

Attachment B

Exhibit 2: Project Elevations

California-American Water Company
PLN120817



RADIO ANTENNA DETAIL

NOT TO SCALE

