

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

- RESOLUTION NO. 12-____**)
a. Granting in part and denying in part an appeal by)
James Halpern from the Planning Commission’s)
approval of Combined Development Permit)
(PLN100516) (Huckleberry Hill site) consisting)
of: 1) a Coastal Development Permit to allow the)
development of a public safety, non-commercial)
wireless telecommunications facility including a)
100-foot monopole with ten (10) Omni-)
directional antennas, two 4-foot diameter)
microwave dishes and three panel antennas; a)
276 square foot (11.5 x 24.0) equipment shelter;)
two GPS antennas mounted to the roof of the)
shelter; demolition of an abandoned 50,000)
gallon water tank and grading (less than 100)
cubic yards cut and fill); a Coastal Development)
Permit to allow ridgeline development; and 3))
Design Approval.)
b. Vacating the adoption of the Mitigated Negative)
Declaration as applicable to the Combined)
Development Permit for the Huckleberry Hill)
site (PLN100516) and vacating the approval of)
the Combined Development Permit for the)
Huckleberry Hill site (PC Resolution No. 12-)
042); and)
c. Directing staff to prepare an Environmental)
Impact Report on the proposed Combined)
Development Permit for the Huckleberry Hill)
site.)
[PLN100516/County of Monterey Next Generation)
Emergency Telecommunications Network)
(NGEN)/California American Water Company, 4041)
Sunset Lane, Pebble Beach (APN: 008-111-017) Del)
Monte Forest Land Use Plan])
)
)

In the matter of Next Generation Emergency Network (NGEN):

WHEREAS, on May 5, 2012 the County of Monterey, on behalf of Monterey County Emergency Communications Department and other local public safety agencies, submitted applications for the development of four wireless telecommunications facilities (Planning Department File Nos. PLN100501, PLN100502, PLN100515 and PLN100516) as part of the development of the Next Generation Emergency Network (NGEN) radio system throughout Monterey County necessary to upgrade the regional public safety communication system;

WHEREAS, the applications submitted on May 5, 2012 were considered separately by the Planning Commission on September 26, 2012, and the Commission separately approved the subject application for a

Combined Development Permit (File No. PLN100516) consisting of: 1) a Coastal Development Permit to allow the development of a public safety, non-commercial wireless telecommunications facility including a 100-foot monopole with ten (10) Omni-directional antennas, two 4-foot diameter microwave dishes and three panel antennas; a 276 square foot (11.5 x 24.0) equipment shelter; two GPS antennas mounted to the roof of the shelter; demolition of an abandoned 50,000 gallon water tank and grading (less than 100 cubic yards cut and fill); 2) a Coastal Development Permit to allow ridgeline development; and 3) Design Approval (together “Combined Development Permit”). The property is located at 4041 Sunset Lane, Pebble Beach (Assessor’s Parcel Number 008-111-017-000), Del Monte Forest Land Use Plan; and

WHEREAS, consideration by the Planning Commission on September 26, 2012 of the projects under File Nos. PLN100501, PLN100502, PLN100515 and PLN100516 included consideration and adoption of a Mitigated Negative Declaration (Planning Commission Resolution No. 12-039) which separately addressed and analyzed the potential environmental impacts of the individual projects; and

WHEREAS, Jameson Halpern, Esquire, filed a Notice of Appeal on October 8, 2012, appealing the Planning Commission’s approval of the Combined Development Permit for the Huckleberry Hill/Cal-Am site (PLN100516) and adoption of the Mitigated Negative Declaration as it pertains to the Combined Development Permit for the Huckleberry Hill/Cal-Am site;

NOW, THEREFORE, the Board of Supervisors, having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, finds and decides as follows:

FINDINGS

1. **FINDING:** **BACKGROUND (1)** - On May 5, 2012 the County of Monterey, of behalf of the Monterey County Emergency Communications Department and other local public safety agencies, submitted applications for the development of four wireless telecommunications facilities (File Nos. PLN100501, PLN100502, PLN100515 and PLN100516). The facilities are part of a project to deploy the Next Generation Emergency Network (NGEN) radio system throughout Monterey County and are necessary to upgrade the regional public safety communication system used by the participating safety agencies and to support critical communications for first responders to emergency calls.

 EVIDENCE: Administrative record contained in Planning Department File Nos. PLN100501, PLN100502, PLN100515 and PLN100516).

2. **FINDING:** **BACKGROUND (2)** – The applications submitted on May 5, 2012 included an application for a Combined Development Permit (File No. PLN100516) consisting of: 1) a Coastal Development Permit to allow the development of a public safety, non-commercial wireless telecommunications facility including a 100-foot monopole with ten (10) Omni-directional antennas, two 4-foot diameter microwave dishes and three panel antennas; a 276 square foot (11.5 x 24.0) equipment shelter; two GPS antennas mounted to the roof of the shelter; demolition of an abandoned 50,000 gallon water tank and grading (less than 100 cubic yards cut and fill); 2) a Coastal Development Permit to allow ridgeline development; and 3) Design Approval (together “Combined Development Permit”). The project site is known as “Huckleberry Hill” and is located at 4041 Sunset Lane, Pebble Beach (Assessor’s Parcel No. 008-111-017-000) within the Huckleberry Hill

Planning Area of the Del Monte Forest Land Use Plan.

EVIDENCE: a) The California American Water Company (Cal Am) is the owner of the property where the project is located. County of Monterey staff and Cal Am are negotiating a lease agreement for the site which would require approval by the Board of Supervisors. Under the proposed lease agreement, Cal Am would be able to place one antenna on the facility.

EVIDENCE: b) The parcel is zoned MDR/4-D (CZ) [Medium Density Residential, 4 units per acre with a Design Control overlay district within the Coastal Zone], which allows wireless telecommunication facilities with a Use Permit.

EVIDENCE: c) Administrative record contained in Planning Department File No. PLN100516.

3. **FINDING:** **CEQA** - The Monterey County Planning Department prepared an Initial Study pursuant to CEQA which separately described and analyzed the potential environmental impacts from the development of four wireless telecommunications facilities proposed under Application File Nos. PLN100501, PLN100502, PLN100515 and PLN100516. The Initial Study represents the independent judgment of the staff from the County. The Initial Study concluded that development of the projects would not result in individual or cumulative potentially significant impacts that would require the preparation of an Environmental Impact Report. Accordingly, a proposed Mitigated Negative Declaration was circulated for public review, including to the State Clearinghouse, between August 21, 2012 and September 21, 2012.

EVIDENCE: Administrative Record contained in File Nos. PLN100501, PLN100502, PLN100515 and PLN100516.

4. **FINDING:** **PLANNING COMMISSION HEARING** - On September 26, 2012, the Planning Commission held a duly noticed public hearing to consider the four project applications and proposed Mitigated Negative Declaration. The Planning Commission individually approved the projects. (Planning Commission Resolution Nos. 12-040, 12-041, 12-042 and 12-043). These approvals included approval of the project proposed under Application File No. PLN100516 for the Huckleberry Hill site. (Resolution No. 12-042.) .

EVIDENCE: a) The Commission considered all the evidence presented at the hearing, concurred with staff's recommendation and found the project consistent with the standards of Section 20.64.310 of the Zoning Ordinance (Regulations for Siting, Design and Construction of Wireless Communications Facilities) and with the applicable land use regulations of the Del Monte Forest Land Use Plan. (Planning Commission Resolution No. 12-042.)

b) The Commission also considered the Initial Study/proposed Mitigated Negative Declaration which separately identified and addressed the potential impacts from the individual projects (PLN100501, PLN100502, PLN100515, and PLN100516) and adopted a corresponding Mitigated Negative Declaration. (Planning Commission Resolution No. 12-039) A Notice of Determination (NOD) was filed timely with the County Clerk.

c) Administrative record contained in Planning Department File No. PLN100516.

5. **FINDING:** **APPEAL:** Jameson Halpern, Esquire, timely filed a Notice of Appeal on October 8, 2012, appealing the Planning Commission's approval of the

Combined Development Permit for the Huckleberry Hill/Cal-Am site (PLN100516) and the Planning Commission's adoption of the Mitigated Negative Declaration as it pertains to the Combined Development Permit for the Huckleberry Hill/Cal-Am site. The Board grants the appeal insofar as the Board has directed the preparation of an Environmental Impact Report (EIR) for the Combined Development Permit application for the Huckleberry Hill site and denies the remainder of the appeal.

EVIDENCE: a) The Board of Supervisors has considered the issues raised in the appeal relative to the environmental analysis of the Huckleberry Hill site (PLN100516). Pursuant to Section 21080 (d) of the Public Resources Code and Section 15064 (f) (1) of the CEQA Guidelines, if there is a fair argument supported by a substantial evidence that a project may have a significant effect on the environment, the lead agency shall prepare an EIR, even though other substantial evidence has been presented that the project will not have a significant effect. Without having determined whether the Combined Development Permit for the Huckleberry Hill site will have a significant effect on the environment, the Board has determined that preparation of an EIR is appropriate to analyze the potential environmental impacts of the project.

EVIDENCE: b) California Public Resources Code Section 21080 (d) and California Environmental Quality Act (CEQA) Guidelines Section 15064 (f) (1).

EVIDENCE: c) The grant of this appeal does not constitute agreement with the contentions in the appeal. In deciding to prepare an EIR, the Board is not agreeing with appellant's conclusions with respect to environmental impacts or the project's consistency with Local Coastal Program, and any conclusions in that regard would be premature until completion of the EIR. In regard to Appellant's contention that the Planning Commission hearing was "not fair," the evidence shows that the Planning Commission conducted a full and fair hearing on September 26, 2012, that the hearing was duly noticed, and that all members of the public had an opportunity to be heard. In regard to Appellant's contentions that the findings are not supported by the evidence and that the Planning Commission's decision was contrary to law, the Board need not reach these contentions because the Board has decided to prepare an EIR and vacate the Combined Development Permit for the Huckleberry Hill site. The project application will be subject to a new hearing process and decision following preparation of the EIR.

6. **FINDING:** **EFFECT OF DECISION:** The Board's partial grant of the appeal results in vacating the adoption of the Mitigated Negative Declaration only as to its analysis of the Combined Development Permit for the Huckleberry Hill site and results in vacating the approval of only the Combined Development Permit for the Huckleberry Hill site. The Board's decision is limited in scope to the Huckleberry Hill site proposal (File No. PLN 100516) and does not vacate the adoption of the Mitigated Negative Declaration as to the other three Combined Development Permits analyzed in the MND nor vacate the Planning Commission's September 26, 2012 approval of the other three Combined Development Permits for wireless telecommunications facilities (Resolution Nos. 12-040, 12-041 and 12-043; File Nos. PLN100501, PLN100502, PLN100515).

EVIDENCE: a) The appeal challenges only the issuance of the Combined Development Permit for the Huckleberry Hill site (File No. PLN 100516) and Mitigated

Negative Declaration as it pertains to that permit, and accordingly, that is all that is at issue in this appeal. Per Monterey County Code section 20.86.090, an appeal stays the proceedings and effective date of the Planning Commission decision until the appeal is resolved by the Board of Supervisors and/or the California Coastal Commission. Per Monterey County Code section 20.86.070, the Board may reverse or affirm, wholly or in part, the decision. The Board's hearing on the appeal is de novo.

EVIDENCE: b) The Board's determination on this appeal is clearly severable from the other three Combined Development Permits that were analyzed in the Mitigated Negative Declaration and approved by the Planning Commission. No appeal is pending as to the other three Combined Development Permits or the adoption of the Mitigated Negative Declaration as to those permits, and those decisions of the Planning Commission remain final.

EVIDENCE: c) The appeal challenges the adoption of the Mitigated Negative Declaration only as it pertains to the Huckleberry Hill permit, and no appeal is pending as to the adoption of the Mitigated Negative Declaration for the other Combined Development Permits analyzed in the Mitigated Negative Declaration. The Board's vacation of the Mitigated Negative Declaration is limited to the analysis in the Mitigated Negative Declaration of the Combined Development Permit for the Huckleberry Hill site. The environmental analysis in the Mitigated Negative Declaration of the Combined Development Permit application for the Huckleberry Hill site is severable from the environmental analysis of the other permit applications analyzed in the Mitigated Negative Declaration. Each of the sites is geographically distinct. The Mitigated Negative Declaration clearly separates the analysis of each of the four Combined Development Permits under consideration. Therefore, severing the analysis of the Huckleberry Hill site from the analysis of the other sites does not prejudice full and complete compliance with CEQA.

DECISION

NOW, THEREFORE, BASED ON ALL THE ABOVE FINDINGS AND HAVING CONSIDERED THE MITIGATED NEGATIVE DECLARATION, BE IT RESOLVED, that the Board of Supervisors hereby:

- a. Grants in part and denies in part an appeal by Jameson Halpern from the Planning Commission’s approval of Combined Development Permit (PLN100516) (Huckleberry Hill site) consisting of: 1) a Coastal Development Permit to allow the development of a public safety, non-commercial wireless telecommunications facility including a 100-foot monopole with ten (10) Omni-directional antennas, two 4-foot diameter microwave dishes and three panel antennas; a 276 square foot (11.5 x 24.0) equipment shelter; two GPS antennas mounted to the roof of the shelter; demolition of an abandoned 50,000 gallon water tank and grading (less than 100 cubic yards cut and fill); 2) a Coastal Development Permit to allow ridgeline development; and 3) Design Approval.
- b. Vacates the adoption of the Mitigated Negative Declaration as applicable to the Combined Development Permit for the Huckleberry Hill site (PLN 100516) and vacates the approval of the Combined Development Permit for the Huckleberry Hill site (PC Resolution No. 12-042); and
- c. Directs staff to prepare an Environmental Impact Report on the proposed Combined Development Permit for the Huckleberry Hill site.

PASSED AND ADOPTED this 4th day of December, 2012 upon motion of Supervisor _____, seconded by Supervisor _____, by the following vote, to wit:

- 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 Supervisor 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