

## **ATTACHMENT A DISCUSSION**

### **I. PROCEDURAL BACKGROUND:**

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 (Attachment G).

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 (Attachment H). 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. Colors and materials currently consist of an aluminum and grey pole.

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' of the subject property on January 9, 2013 (Attachment I).

Constance Murray ("Appellant") filed a timely appeal on January 22, 2013 of the RMA-Director of Planning's approval of the Design Approval (Attachment J).

The appeal is brought on the basis of lack of fair or impartial hearing, the findings or decision or conditions are not supported by evidence, and the decision was contrary to law. Appellant also requests a waiver of the appeal fee.

A duly noticed de novo public hearing on the appeal is scheduled for March 19, 2013 before the Monterey County Board of Supervisors.

### **II. ANALYSIS:**

#### **A. Factual Background**

The property on which the water tank easement is located is an approximately 8.018-acre residential lot located at 10 Oak Meadow Lane within a private subdivision named Rancho Del Sol. The site is developed with a single family residence. The property owner is the appellant, Constance Murray. As indicated on the final map, there is a water tank easement on the parcel (See Attachment D, Lot 4). Cal-Am holds the water tank easement by virtue of a Grant Deed of Easements from Rancho Fiesta Mutual Water Company to California-American Water Company, dated December 20, 1988 (Attachment E). The water tank easement lies along the edge of Oak Meadow Lane (See Attachment D). There is a water tank on the easement. The subject antenna is located adjacent to the water tank and is entirely within the water tank easement.

Planning staff determined the antenna was an appurtenance to the water tank, because the antenna is a communications antenna for the water tank and part of the Supervisory Control and Data Acquisition (SCADA) system at the water tank, according to Cal- Am. As an appurtenance to the water tank for a property in a “D” zoning district, the antenna requires a Design Approval pursuant to Section 21.44.030 of the Monterey County Code. Approval of the Design Approval by the Board of Supervisors will cure the violation (11CE00134). Should the Board not approve the Design Approval, the antenna will need to be removed.

**B. Appellant Contentions**

The appellant challenges the Design Approval on the following grounds: Lack of fair or impartial hearing, the findings or decision or conditions are not supported by evidence, and the decision was contrary to law. Staff’s response to each of the Appellant’s contentions follows:

**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 E 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 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 the findings, the Board of Supervisors will so find and determine.

*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).