



Monterey County Board of Supervisors

Response to the

2019 - 2020 Monterey County Civil Grand Jury

*Topic: “MONUMENT TO A FAILED PROCESS:
South County Use Permit PLN 180317”*

TABLE OF CONTENTS

**2019 - 2020 Monterey County Civil Grand Jury Final Report –
" MONUMENT TO A FAILED PROCESS: South County Use Permit PLN 180317 "**

Findings	Page #
F3	3-4
F4	4
F5	5
F6	5-6
F7	6-7
F8	7
F9	8
F13	8

Recommendations	Page #
R1	9
R2	9-10
R3	10
R6	11
R7	11
R10	12

REPORT TITLE: 2018 - 2019 Monterey County Civil Grand Jury Final Report –
“MONUMENT TO A FAILED PROCESS: South County Use Permit PLN 180317”

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Findings: F3, F4, F5, F6, F7, F8, F9 and F13

FINDINGS

F3. The RMA Planning draft resolution and briefing for the Application both inaccurately asserted that (1) South County had no LUAC, and (2) that the Application did not need to be sent to the LUAC for review. These errors denied a required hearing and stifled public voice on design and local considerations for a large, visible project.

Response F3:

Short Response:

Respectfully, the County disagrees partially with this finding. The staff report package did inaccurately assert that (1) South County had no LUAC, and (2) that the Application did not need to be sent to the LUAC for review. As such, the public was not afforded an opportunity to voice concerns via the LUAC, which is a valuable part of the land use permit process. This also means that the LUAC members themselves did not have opportunity to provide comments as part of the process, which would have given the decision maker local perspective to consider during the hearing. The public was able to voice opinions at the duly noticed public hearing at the October 28, 2018 Zoning Administrator, but the opportunity for participation was less than it would have been if the LUAC had taken place.

Additional Discussion:

Board of Supervisors Resolution 15-043 establishes procedures for Land Use Advisory Committees (LUACs) in Monterey County. The purpose of a LUAC is to provide a venue for the local community to provide input on proposed projects. LUACs serve to provide the Appropriate Authority comments and recommendations about the local community’s perspective on certain types of projects, especially regarding site design and neighborhood character, which are important factors in the planning process. LUACs also provide a venue for public comment that is closer to the affected community and usually not in the middle of the day, which is beneficial to communities that are farther away from Salinas where the public hearings are held. The Appropriate Authority is where decisions are ultimately made on a project, in this case was the Zoning Administrator (ZA), but the LUAC recommendation plays an important role in the process.

The staff report package incorrectly asserted there was no existence and/or participation of a LUAC for this part of the County. With that in mind, the staff presentation at the public hearing on October 25th, 2018 identified the mistake in an attempt to correct the error. The ZA found that the public hearing on this project was noticed in accordance with Chapter 21.78 Monterey County Code: this project was advertised in a newspaper of general circulation at least 10 days prior to the hearing, members of the community within a 300-foot radius surrounding this tower were informed of the public hearing, and the site was posted with a notice of the hearing. County Code exceeds minimum state regulations for public noticing.

One member of the community was able to attend the ZA hearing and testified about the community's concerns. The ZA, as the decision-maker and former County Planning Director familiar with South County, considered the community issues, that they took into account with the regulatory requirements for telecommunication facilities in making their decision. There was no appeal of the ZA action.

Although this appeared to be an isolated, individual incident, Planning Management provided training in early 2019 for the entire planning staff to clarify that there is a LUAC for the South County Area, and to remind planners of the type of projects that are to be sent to the LUAC for review. In addition, the Director implemented a Standard Operating Procedure (SOP) of County Code that telecommunication projects require notification of at least 1,500 feet due to their visibility. This SOP was presented to the Board of Supervisors on July 14, 2020.

F4. The Application's one-sentence dismissal of the alternative site, "Unfortunately, due to the mountainous terrain access and road constraints the proposed site was not physically feasible for the construction of the proposed tower" was incorrect. As a result, a constrained and inappropriate site selection was approved.

Response F4:

Short Response:

Respectfully, the County disagrees partially with this finding. Determination of feasibility for a cell site requires multi-faceted analysis, due to the numerous factors that can affect coverage, including staff's experience from past projects. Additional information was not sought by staff, so there is no way to be certain if the applicant's statement about alternative sites was correct or incorrect.

Additional Discussion:

Alternative site analysis is not expressly required by County Code, but Section 21.64.310.H.3 does refer to a list of application submittal requirements established by the Department. The Appropriate Authority must find that the applicant has demonstrated that the subject site is the most adequate for provision of services as required by the FCC (Section 21.64.310.J.2 MCC).

In hind sight, the statement received from the applicant is unclear as to whether the "mountainous terrain" is relevant to the site itself, or the relative location/positioning to surrounding mountains that could pose challenges to wireless signals if it were moved to a location on that large parcel. Additional detail should have been sought by the planner during analysis. It has been generally demonstrated with prior telecommunication projects that mountainous terrain presents limited opportunity for coverage, so alternatives depend on finding willing property owners where the facility can adequately provide service to the *intended coverage area*. However, it should not have been assumed by staff that this was the case without adequate evidence provided by the applicant. It has been the practice of County Planning to request telecommunication applicants demonstrate that an alternative site was not feasible, and that the proposed project is the minimum necessary, *to provide the intended coverage*.

On September 5th, 2019, Planning Management provided training for the all Planning Staff relative to alternative site analysis as part of a site visit to the PLN180317 project site.

F5. The RMA Planning public hearing notices for this project complied with State and County code, but were structurally ineffective in providing the local community with reasonable awareness of the significant project being proposed for their South County community.

Response F5:

Short Response:

The County agrees with this finding. State Code requires notification by two of three methods (mail, publication, posting), County Code requires notification using all three methods. Notice for this project met the legal requirements. However, cell phone towers are taller than typical projects so the visual impacts can be broader. Subsequently, County updated the policy for noticing public hearings to extend the distribution radius for cell phone tower projects in certain zoning districts.

Additional Discussion:

As stated in the Finding, public noticing for the October 25, 2018 Zoning Administrator hearing was done in full compliance with all state and local regulations. In addition to a newspaper notice and posting the site, local residents and neighbors within 300 feet of the project were directly sent notice of the hearing. One member of the community participated in the October 25, 2018 hearing in person.

Subsequent to approval of this project, and in response to the concerns of the community, County RMA received a referral from District 3 Supervisor to increase the noticing radius for cell towers in the rural areas of the County (Board Referral 2020.07). On July 14, 2020, the Board of Supervisors accepted the Director's Standard Operating Procedure to require a notification by mail within a distance of 1,500-feet of a proposed wireless communication facility (or more if determined necessary by the Chief of Planning) to meet the purpose of public notification in the Farmland, Rural Grazing, Permanent Grazing, Resource Conservation, and Open Space zoning districts.

F6. The approved cell tower failed to meet multiple site and design conditions of MCC 21.64.310 including:

- E.2 (has local citizen input on impact and alternative sites),
- H.1a (preserve visual character, aesthetic value of parcel and surrounding land),
- H.1c (not sited to create clutter & negatively affect specific views),
- H.1d (designed to minimize visual impact),
- H.1e (screened from any public viewing areas),
- H.2d (designed to mitigate potentially significant adverse visual impacts), and
- J.3 (complies with all applicable requirements of 21.64.310).

As a result of these multiple failures, this application did not meet a required finding for Use Permits as listed in MCC 21.74.050.B.1 (will not be...detrimental or injurious to property and improvement in the neighborhood.) and should not have been approved.

Response F6:

Short Response:

Respectfully, the County disagrees fully with this finding. Conclusions drawn by the CGJ Report in this finding was based on a portion of language in the code. The Zoning Administrator, as the decision-making authority by Code, held a public hearing and considered the testimony. Based on their independent judgement, the Zoning Administrator determined that the project met the required findings. There was no appeal filed contesting this determination.

Additional Discussion:

Section 21.64.310.E reflects a finding that defers decision making from the State to local government as a basis for adopting the ordinance establishing Chapter 21.64.310 into the Monterey County Code (MCC), and is not part of the decision-making process for projects. While it recognizes local governments *and* citizens are in a better position than the Public Utilities Commission (PUC) of the State of California to recognize impacts, it goes on to defer authority to the local government to regulate the location and design of cell sites. LUACs are a very important part of that process, but were established by the local government to provide input from the local community to the ultimate decision-maker.

Section 21.64.301.H MCC includes General Development Standards. Many of these Development Standards have additional qualifying language stating, “to the maximum extent feasible”. For example, Section 21.64.310.H.1.e states in whole that: “*Wireless communications facilities shall be screened from any public viewing areas to the maximum extent feasible* [Emphasis added].” As such, a conclusion drawn about the project approval needs to be based on the entire language of the code, which is less exclusive than what is identified in the CGJ Finding.

Ultimately the Zoning Administrator, the Appropriate Authority in this case, determined that these *General* Development Standards were met to the maximum extent feasible based on their independent judgement and review of the project application materials. County Code affords an aggrieved party an avenue to appeal the ZA decision to the Board of Supervisors to exhaust Administrative Remedies if said party feels that the findings were not supported by the evidence. No appeal of the ZA action was filed.

F7. RMA planners were not diligent or accurate in how they determined, validated, and used certain facts, descriptive information, and technical data in the Application. This damaged the credibility of the Application and undermined local trust in the competence and the fairness of RMA Planning.

Response F7:

Short Response:

The County agrees with this finding. This incident, which appears to have been an isolated case, was an unfortunate circumstance of protocols not being followed during the review phase of this project.

Additional Discussion:

Planners are empowered to make initial assessment of LUAC applicability. However, the protocol is for there to be review by the Planning Manager and/or Chief of Planning, especially where there is any question or potential for local controversy. This looks as if it was an isolated incident of staff not following the protocol.

County recognizes that the specific project planner for this case should have been more thorough in review of the application materials, and routed them to the South County LUAC for review. In addition, Planning Managers/Chief should have been more diligent in their oversight of this case and caught the error earlier in the process.

As noted in prior responses, actions have taken place since this project was approved in an attempt to prevent the same mistakes from happening in the future. The entire planning staff has been trained on these actions. The Standard Operating Procedures (SOPs) for LUAC review are being updated to be clear on roles and responsibilities with specifically requiring review by the Manager/Chief prior to routing applications (related to both process and completeness).

F8. RMA Planning staff's limited expertise in wireless communications facilities' policies, regulations, and rules, plus RMA planner confusion on the applicability of County standards for aesthetics and visual character, were contributing factors to the siting and design of the cell tower in a manner unacceptable to the Bryson Hesperia Community.

Response F8:

Short Response:

Respectfully, the County disagrees partially with this finding. A project planner failed to understand the policies and regulations related to cell towers and County standards, which contributed to the series of events covered in this report. However, specific expertise in wireless communication facilities is not required or expected of staff.

Additional Discussion:

Planning does not require being an expert in any area, but does require knowledge and appropriate application of the policies and regulations. As noted in prior responses, the belief is that this stems more from an isolated incident of staff not following the protocol rather than a systemic issue. Training has been administered to the entire planning staff with respect to cell towers and the level of analysis that should be undertaken regarding site selection, visual impacts, County wireless regulations, and when projects should be referred to a LUAC. This includes planning staff being taken on September 5, 2019 as a group for a site visit down to the project site for PLN180317, with the tower in place, to discuss the analysis in the staff report and the findings in the resolution.

Multiple periodic trainings have also been conducted with staff at general staff meetings since this project was approved on relevant topics such as site selection, alternative analysis, LUAC procedures, FCC shot clocks, and the overall application review process. Planning managers also stayed in contact with key members of the community after the project approval to answer questions and provide information from the applicant when possible, including a post-operational RF-EME survey.

F9. Monterey County wireless communications code (MCC Section 21.64.310) lacks provisions to permit staff to secure outside experts, at applicant expense, when needed. This code omission limited planner resources and flexibility to overcome the technical challenges with this application. It reduced RMA Planning staff's ability to process the Application in a thorough, professional manner.

Response F9:

Short Response:

Respectfully, the County disagrees fully with this finding. Although there are no specific provisions with respect to securing outside experts. County code does not prohibit staff from requesting assistance from outside experts, and in some sections actually gives staff the ability to require additional information if it determined to be needed.

Additional Discussion:

MCC Section 21.64.310 does not have language that requires use of outside experts; however, it also does not preclude use of outside experts where/when needed. There are sections of the code that could be used to require an applicant to provide additional information. For example, MCC Section 21.64.310.G.1.g states that as part of registration package, in addition to the specific items listed, the county can require: "*Such other information as the Director of Planning may reasonably require*". Additionally, during environmental review the California Environmental Quality Act (CEQA) allows for planning to require additional information that may not have been part of the original application submittal to determine the level of significance of potential impacts.

Technical reports are provided by experts hired by the applicant, subject to review by staff. If staff questions the information submitted, there is the ability to request clarification by the applicant's technical expert, or require the applicant to pay for a peer review (consultant hired by County with cost paid by applicant). RMA retains lists of qualified consultants to utilize as needed. In this specific case, staff determined that a peer review was not required.

F13. RMA Planning managers displayed a high degree of internal responsiveness in reaction to the August 28, 2019 meeting in South County about the cell tower. Their subsequent actions were not visible to the community, but represented a quiet, positive example of professional and effective responsiveness to the community's concerns.

Response F13:

Short Response:

The County agrees with this finding. Management took this incident seriously and has looked for ways to coach staff based on the lessons learned.

Additional Discussion:

RMA appreciates CGJ recognition of RMA efforts. We use cases like this to teach planners so we can try to prevent a similar situation from happening in the future. The Board of Supervisors commissioned a report of the RMA by Citygate Associates, LLC. This report was

completed July 22, 2020 and accepted by the Board on July 28, 2020. Recommendations provided in Citygate's report are directed at use of LUACs and building community trust.

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“MONUMENT TO A FAILED PROCESS: South County Use Permit PLN 180317”

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Recommendations: R1, R2, R3, R6, R7 and R10

RECOMMENDATIONS

R1. The RMA Services Manager should review and improve the RMA Current Planning division’s work practices for RMA planners and Planning managers. Critical thinking, attention to detail, and higher professional standards must be imbued into the RMA Planning process. When County Code directs higher levels of decision making, RMA Planning should require assigning higher level, more experienced planners and higher-level supervisors to prepare and review those applications.

Response R1:

Short Response:

The County will be implementing this recommendation with minor modifications in the near future. The suggestion to assign higher level staff to specific projects may not always be practicable given the availability of experienced planners at a given time, and the desire for more junior planners to gain valuable experience. However, there needs to be adequate check and balance to avoid individual errors like this.

Additional Discussion:

One way to develop professional planners is by doing, and we cannot simply load up more experienced planners. The County is currently recruiting to fill up to 8 vacant planning positions, which is nearly 50% of the approved positions for the department. The level of experience in the planning department is directly tied to the level of staff when they come on board and the amount of time they have been able to learn through doing while employed with the County. Less experienced planners require more supervision and management when they are provided a more complex matter.

The Board of Supervisors commissioned a report of the RMA by Citygate Associates, LLC. This report was completed July 22, 2020 and accepted by the Board on July 28, 2020. This recommendation by the CGJ is addressed through recommendations provided in Citygate’s report.

Training has been administered to the planning staff to reiterate the standards for project review. Staff has also been directed to bring more complex projects to a weekly “scoping” meeting, where the entire planning staff, including managers, review and discuss project applications early in the process to identify potential issues and decide on direction.

R2. The Director of RMA should investigate whether the erroneous description of PLN 180317 alternative site’s conditions, as provided to RMA Planning in support of that application, constituted “false material information,” as the term is used in Monterey County Code 21.70.070 (Revocation). Director RMA should then determine if action in accordance with that code is appropriate or necessary for PLN 180317. (F4) This

investigation and determination should be completed no later than 90 days after the publication of this report.

Response R2:

Short Response:

This recommendation has been implemented, and based on the facts of this specific case, the Director of RMA has determined that revocation does not meet the criteria established by County Code.

Additional Discussion:

It appears, based on the facts, that this was not “False Material Information”, but rather staff’s interpretation of information submitted (right or wrong). Arguably, staff should have requested that additional material was provided; however, the information provided was not falsely presented. Therefore, revocation of the permit does not appear to be warranted in this case. Staff presented all of the information to the Appropriate Authority (Zoning Administrator) to make their decision, and there was no appeal of an aggrieved party. (Also see response F4)

R3. The Board of Supervisors should revise the Resolution that establishes and provides guidance to the County Land Use Advisory Committees (LUAC), the “LUAC Guidelines,” to update Exhibit B. Stop using the “Bradley-Parkfield” LUAC name and start using the “South County” LUAC name. This will accurately reflect the change that was made to that LUAC in August 2008 and implemented in January 2009. (F2, F3) This revision should be completed no later than six months after the publication of this report.

Response R3:

Short Response:

The County will be implementing this recommendation in the near future.

Additional Discussion:

Exhibit B of the LUAC Procedures clearly identifies that the Bradley-Parkfield LUAC covers the entire South County planning area (Area Plan). Given past practices by other planners., it is clear that there is not systemic confusion with respect to the naming of the South County LUAC, and the issue of not knowing there was a South County LUAC seems to be an individual occurrence rather than one that is recurring. However, County agrees to amending the LUAC Procedures (Exhibit B) to change the name of this LUAC from “Bradley-Parkfield” to “South County”.

The Board of Supervisors commissioned a report of the RMA by Citygate Associates, LLC. This report was completed July 22, 2020 and accepted by the Board on July 28, 2020. This recommendation by the CGJ is addressed through recommendations provided in Citygate’s report. County will follow timelines established in the Citygate report.

R6. The Board of Supervisors should revise Monterey County Code 21.70.040.A (Public Notice Required) to include the following provision from California Government Code Section 65091(A)(5)(c): "In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable." (F5) This revision should be completed no later than 24 months after the publication of this report. investigation and determination should be completed no later than 90 days after the publication of this report.

Response R6:

Short Response:

The County has implemented this recommendation with a slight modification since County Code did not need to be amended to accomplish the desired outcome.

Additional Discussion:

This is a very good suggestion by the CGJ, and fortunately County Code did not require amending to achieve this goal. On July 14, 2020 The Board of Supervisors accepted the Director's Standard Operating Procedure (SOP) to require a notification by mail within a distance of 1,500-feet of a proposed wireless communication facility (or more if determined necessary by the Chief of Planning) to meet the purpose of public notification in the Farmland, Rural Grazing, Permanent Grazing, Resource Conservation, and Open Space zoning districts. This modification to the County SOP for noticing of wireless facilities will help to ensure that more people who may be affected by these projects will be made aware of them in the future.

R7. The RMA Services Manager should develop explicit guidance to encourage and support applicant-sponsored town halls or orientations for rural communities where significant projects are planned. These events should be in advance of, or early into the application process. (F5) This guidance should be completed and operational no later than 60 days after the publication of this report.

Response R7:

Short Response:

The County will be implementing this recommendation in the near future with a minor modification based on recommendations in the Citygate report.

Additional Discussion:

The Board of Supervisors commissioned a report of the RMA by Citygate Associates, LLC. This report was completed July 22, 2020 and accepted by the Board on July 28, 2020. This recommendation by the CGJ is addressed through recommendations provided in Citygate's report. Citygate has put forward recommendations that will enhance public involvement for land use decisions, and work towards rebuilding trust with the communities throughout Monterey County. The County will follow timelines established in the Citygate report.

R10. The Board of Supervisors should revise Monterey County Code 21.64.310 (Wireless Communication Facilities) to include a provision that requires a post-operational RF-EME survey to be conducted by a certified RF engineer selected by the County but at applicant expense, when any wireless communications facility first becomes operational or has its Use Permit renewed. (F8, F9) This revision should be completed no later than 24 months after the publication of this report.

Response R10:

Short Response:

It is not warranted for the County to implement this recommendation since the Planning standard conditions of approval for wireless facilities already include provisions for obtaining these reports from the applicant.

Additional Discussion:

Staff agrees that obtaining these post-operational reports for wireless facilities and making them available to the public is important. County practice is for all wireless facility projects processed by the County to include a standard condition of approval which states:

“Prior to commencement of use and on an on-going basis, the Owner/Applicant shall submit documentation demonstrating compliance with the FCC emission standards to the Director of RMA-Planning for review and approval.” This language gives the Chief of Planning authority to request the post-operational RF-EME survey, which is a public record available upon request. This condition was included with PLN180317 as part of the standard procedure. Inclusion of this condition allowed staff to obtain a post-operational survey for this project, which was subsequently shared with interested members of the public.