

Attachment A

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Exhibit A

Detailed Project Discussion

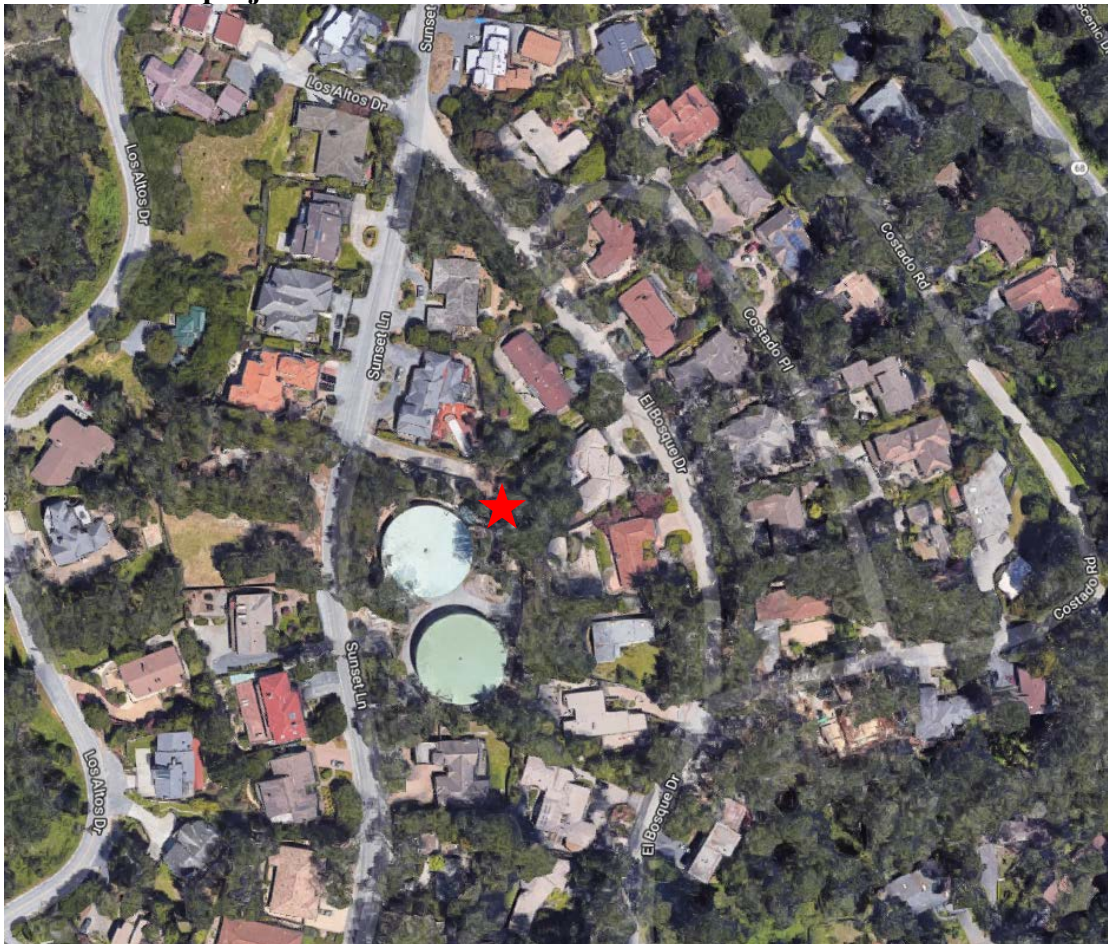
Cal-Am/Monterey County IT (PLN180035)

Project Setting

The proposed project is located on 0.27 acre site in the Huckleberry Hill neighborhood of the Del Monte Forest. The site is owned by California American Water (Cal-Am) and contains two large water tanks that are part of the Cal-Am water distribution system and two existing 80-foot tall wireless communications towers. The County of Monterey Information and Technology Department (County IT) leases a portion of the property for maintenance and operation of one of the existing 80-foot tall wireless communication facilities at the site. From the site, County IT provides radio and wireless communication services to a number of public uses including emergency communications for Fire and Sheriff, Monterey Salinas Transit, and utility providers.

The site is zoned Medium Density Residential, 4 units per acre, with a Design Control Zoning Overlay, in the Coastal Zone (MDR/4-D(CZ)). Communications towers are permitted in all zoning districts subject to regulations contained in Section 20.64.310 of the Coastal Implementation Plan, Part 1 (Title 20, Coastal Zoning Ordinance).

Aerial view of project location



Project Description

County IT is proposing improvements to reinforce the existing 80-foot lattice tower in place, to

remove all 16 antennas currently attached to the tower and replace them with 9 new antennas, and construction of an “ice bridge” which will house cables running from the antennas to the existing equipment shelter. County IT has indicated that the structural reinforcement of the tower is needed to improve structural stability and safety of the existing in accordance with current standards.

Background

In 1973, the Monterey County Board of Supervisors authorized execution of a revocable license with California-American Water Company for the purposes of constructing, operating, and maintaining a radio relay station, tower and auxiliary emergency power system on the subject property. The Board decision predates the County’s zoning regulations for wireless communication facilities and no permits for the construction of the tower have been found since they were not required at the time. The 80-foot tall County IT tower is shown as “existing” on plans approved in 1995 and 1996, for construction of a second tower at the site (DA95099) and a 20-foot addition to the tower in 1996 (PC96032; Resolution No. 96061) respectively. The County IT tower has been leased and operated on the Cal-Am site since the mid 1970’s.

In 2010, and extending into 2012, the County considered permits for upgrades and improvements to the public safety communications network at 18 different sites throughout the county (project known as the Next Generation Emergency Network or NGEN). The subject property was one of the 18 sites identified in the NGEN project. The plan for the subject site contemplated construction of a 100-foot tall monopole (PLN100516). That project was challenged by Mr. Halpern and the Huckleberry Hill Neighborhood Association and the project was subsequently abandoned. The proposed tower retrofit is unrelated to the NGEN project.

On January 12, 2018, County IT submitted a Design Approval application pursuant to Chapter 20.44 of the Monterey County Code for the proposed modifications to the existing tower communications tower. The Design Approval was reviewed and processed by the Director of Planning. On February 13, 2018, pursuant to noticing requirements contained in Section 20.44.050.A, notice of the Chief of Planning’s intent to consider approving the project was mailed to property owners and residents within 300 feet of the project more than 10 days in advance of the Chief’s consideration of the Design Approval scheduled for February 26, 2018. An objection to the approval of the Design Approval and request for public hearing was received from the appellant before the Board of Supervisors was received on February 20, 2018, within the 10-day notification period. Due to receipt of the request for hearing and written objection, the Chief of Planning referred the application to the Planning Commission for consideration.

The proposed project was reviewed by the Del Monte Forest Land Use Advisory Committee (LUAC) on May 8, 2018. The LUAC recommended approval of the project by a vote of 6-0 (**Attachment F**). One neighbor to the site was present at the hearing. The neighbor expressed concerns about potential harmful effects to people residing near the tower from radio frequency electromagnetic energy exposure. Staff has considered the public comment and verified that the project will remain well under the Federal Communications Commission (FCC) recommended Maximum Permissible Exposure limits for field strength and power density for the transmitters operating at frequencies of 300 kHz to 100 GHz.

On May 9, 2018, the Planning Commission considered the Design Approval application together with the written objections received by the Chief of Planning from Mr. Halpern, and voted to approve the project by a vote of 8-0 with two absent (Resolution 18-019). On May 17, 2018, an appeal of the Planning Commission's decision was timely filed by Mr. Jameson Halpern with the Clerk of the Board of Supervisors. Following receipt of the appeal of the Planning Commission's decision to approve the project, the Design Approval has been scheduled for consideration before the Board of Supervisors. The hearing before the Board is de novo.

Permit Review, Process, Appeal, and Analysis

The Resource Management Agency- Planning division staff reviewed the proposed project and determined that the project conforms to the applicable policies and regulations of the Del Monte Forest Land Use Plan and the Coastal Zoning Ordinance (Title 20). A Design Approval was processed for the proposed modifications to the existing tower pursuant to Chapter 20.44 of Title 20. The Appropriate Authority to approve the Design Approval for the minor amendment to the existing facility was the Chief of Planning pursuant to Section 20.64.310.I.

A letter dated February 20, 2018, submitted by Mr. Jameson Halpern on behalf of the Huckleberry Hill Neighborhood Association (HHNA) objected to approval of the Design Approval. Following receipt of the February 20, 2018 letter, RMA staff provided Mr. Halpern with a copy of the Design Approval application and related materials via email, and provided a description and analysis of the project demonstrating that the existing tower height will not change and showing how the project will reduce visual clutter through a reduction of the total number of antenna's and total square footage of antenna surface. Mr. Halpern responded to this information in a second letter dated March 12, 2018 alleging that the proposal:

- 1) Violates the California Environmental Quality Act, the Coastal Act, County policies and regulations;
- 2) Is inconsistent with past practices where simulated tree designs were required; and
- 3) Was not staked and flagged in accordance with adopted policies.

Staff reviewed the letters and information provided by Mr. Halpern on behalf of HHNA and responded to those contentions in the staff report and resolution considered by the Planning Commission (See Exhibit D).

Following the Planning Commission's decision to approve the Cal-Am/County IT Design Approval project, Mr. Halpern submitted an appeal to the Clerk of the Board of Supervisors requesting that the Board revoke the Planning Commission approval and deny the subject application. The written appeal to the Board of Supervisors from Mr. Halpern dated May 14, 2018 contains 47 pages of contentions and arguments (**Exhibit C**). In summary of the appeal contentions, Mr. Halpern alleges:

1. The Planning Commission hearing was not fair;
2. The County failed to make the findings required by Monterey County Code and the Planning Commission approval was contrary to law and violated the Monterey County General Plan, the Monterey County Local Coastal Program, CEQA, the Coastal Act, and

- Title 7 of the California Government Code;
3. The project is not in an appropriate location;
 4. The project was not appropriately staked and flagged;
 5. The project is not consistent with the treatment of other projects and a fiberglass tree design is required.

Staff has reviewed the appeal contentions and is not persuaded to change the original recommendation. Staff has reviewed the project and considered the appeal contentions and recommends that the project be found to meet the standards contained in the applicable codes and regulations and that it has been appropriately processed in compliance with the law.

To start, the RMA has evaluated the proposed project as a minor change to an existing facility. The existing tower is not being removed or replaced, would not change location, and would not intensify the use of the existing facility beyond what currently exists. In fact, the project would reduce the number and size of antennas attached to the existing tower and would improve the structural stability of the existing tower by reinforcing the structure in place. As a modification to an existing tower, many of the County's requirements for siting and design of new wireless communication facilities do not apply. With this in mind, staff responds to the specific contentions in the appeal as follows:

1. Response to contention 1 (Fair Hearing):

The project has been publicly noticed four separate times. First, pursuant to the requirements of Section 20.44.050 of the Coastal Implementation Plan, Part 1 (Title 20 Coastal Zoning Ordinance), notice of the Chief of Planning to consider approving a Design Approval was provided to all residents and property owners within 300 feet of the project site 10 days in advance of approval. Second, notice of consideration of the project at the Del Monte Forest Land Use Advisory Committee was provided 72 hours in advance of the meeting and by mailing notice to all residents and property owners within 300 feet of the site, by posting notice at 1441 Shilling Place in Salinas, and by posting notice at the meeting LUAC meeting. Third, a duly noticed Planning Commission hearing was held on May 9, 2018. Notice of the hearing was published in the Monterey County Weekly, posted on the Monterey County RMA-Planning website, sent to property owners and residents within 300 feet of the site, sent directly via email to Mr. Halpern, and three notices were posted at the project site. Finally, the Board will be considering the project at another duly noticed public hearing.

It should be noted that Mr. Halpern was not present at the Del Monte Forest Land Use Advisory Committee hearing or the Planning Commission hearing. He therefore could not have been limited in his presentation, as contended in his appeal. The Planning Commission did consider Mr. Halpern's written objections during the hearing on this project. It should also be noted that the RMA had no prior knowledge of the application, has no direct involvement in the project, and would not benefit from the project. The applicant for this project is the Monterey County Information Technology Department. Staff has presented a professional recommendation on the project based on review of the project against the applicable laws. The appeal does not allege or provide any evidence of bias or animus on the part of the Planning Commission, nor does it contend that the Planning Commission's decision was arbitrary.

The subject project is unrelated to the NGEN project referenced in the appeal.

2. Response to Contention 2 (Findings and Evidence supported by the law):

The project is located in the Del Monte Forest Land Use Plan area and is subject to the certified Local Coastal Program. The project was reviewed for consistency with:

- The Coastal Implementation Plan, Part 1 (Coastal Zoning Ordinance)
- The 1982 General Plan (“General Plan”)
- The Del Monte Forest Land Use Plan (“LUP”); and
- The Coastal Implementation Plan, Part 5, Regulations for Development in the Del Monte Forest Land Use Plan Area (“CIP”).

The project was found by the Planning Commission to be consistent with the above referenced regulations. The site is zoned Medium Density Residential, 4 units per acre, with a Design Control Overlay, in the Coastal Zone [MDR/4-D (CZ)] and the proposed project includes improvements to an existing wireless communication facility.

Coastal Zoning Ordinance: Pursuant to Section 20.12.050.AA [Uses allowed (in the MDR zone) subject to a Coastal Development Permit in each case] and Section 20.64.310.B and C (Regulations for Wireless Communications Facilities), wireless communications facilities are an allowed use on the property. As mentioned previously, the project does not involve construction or location of a new structure or facility. As such, the project was found to qualify for an exemption from a Coastal Development Permit pursuant to Section 20.70.120.B of the Coastal Zoning Ordinance as a minor modification to an existing facility. None of the exceptions to the exemptions apply due to the fact that there are no new impacts or unusual circumstances associated with this project.

A Design Approval was required for the proposed modifications to the tower and antenna’s pursuant to Section 20.44 of the Coastal Zoning Ordinance (D-district). Because the project would reduce the number and size of the antenna’s attached to the tower, includes painting the tower to help blend the tower with the surrounding trees, and does not change the height, mass, or location of the tower, the project was found to be consistent with the purpose and regulations contained in Chapter 20.44 of the Coastal Zoning Ordinance.

The project was also reviewed for consistency with specific policies of Chapter 20.64.310 (Regulations for Wireless Communications Facilities). Policies specific to location and design of “new” towers are not applicable to the project because the tower is already located and exists on the site. The project would simply reinforce the existing tower to improve structural stability consistent with current code and design standards, remove 16 antennas attached to the tower and attach 9 new antennas to the tower, and construct an “ice bridge” to support cables running from the antennas to the existing equipment shelter.

Pursuant to section 20.64.310.I the Chief of Planning is the appropriate authority to approve minor alterations to existing facilities; although the project has been appealed to the Planning Commission and Board of Supervisors. Replacement of the antennas attached to the tower are exempt from the requirements of Section 20.64.310 pursuant to subsection D.1. Policies applicable to minor alterations to existing facilities including painting and implementation of technologies to minimize visual clutter have been incorporated in the project (20.64.310.H.3).

Included in the numerous claims of inconsistencies with the Coastal Zoning Ordinance is a contention that the project constitutes ridgeline development. The project is not visible from a common public viewing area and is not located on the crest of a hill and therefore is not considered “ridgeline development.” The site is relatively flat and located amongst an improved site and surrounding neighborhood visible only from private roads within the Del Monte Forest. The site is not located in the area mapped in Figure 3 of the Del Monte Forest Land Use Plan as visible from public view areas and does not involve construction of a new structure. Further, the height of the tower will not change as a result of the project.

Overall, staff has determined that the project is consistent with the Coastal Zoning Ordinance. The project involves an allowed use, the use will not be intensified beyond existing conditions under this permit, separate reviews and approvals would be required for any future modifications or improvements to the tower and antennas, and the project would improve structural stability of an existing tower and reduce massing of antennas attached to the existing tower. County IT has confirmed that there are no current plans for additions in services or additional antenna at the site. Future expansion of antenna’s or modifications to the tower would, at a minimum, require a Design Approval (similar to the currently proposed modifications).

LUP and CIP: As proposed, the project can be found consistent with the Del Monte Forest Land Use Plan and Coastal Implementation Plan, Part 5. The project includes improvements and minor modifications to an existing wireless communication facility that would reduce visual impacts from existing conditions, does not impact habitat, public access, or other significant coastal resources protected by the LUP or CIP. The project is not located with an area mapped in Figure 3 of the Del Monte Forest Land Use Plan as visually sensitive and is not visible from common public viewing areas or designated viewing areas in the Del Monte Forest area.

California Environmental Quality Act (CEQA): The project has been reviewed pursuant to the CEQA. The project can be categorically exempt from environmental review pursuant to Section 15301 of the CEQA guidelines which exempt minor alterations to existing public or private facilities involving negligible or no expansion of use beyond that existing at the time of permit consideration. No unusual circumstances which would preclude the application of the exemption exist.

Title 7 of the California Government Code (Planning and Zoning Law): It is unclear from the appeal contentions how the project would violate Planning and Zoning Law. The

project is a minor discretionary permit that has been adequately processed and considered in compliance with adopted and applicable planning and zoning laws.

1982 General Plan: It is unclear from the appeal contentions how the project would conflict with the General Plan. The 1982 General Plan was adopted as part of the County's certified Local Coastal Program so that General Plan policies apply where the LUP, CIP, and Coastal Zoning Ordinances are silent. The 1982 General Plan contains no policies that would directly or indirectly prohibit the proposed project. The appeal references general policies of the 1982 General plan that encourage protection of scenic qualities and ridgelines. Visual resources are addressed in the LUP. The project, as proposed, would improve visual conditions and the project does not constitute "ridgeline development" as described above.

California Coastal Act: It is unclear from the appeal contentions how the project would violate the Coastal Act. The project is subject to the County's certified LCP pursuant to the Coastal Act which includes the LUP, CIP, Coastal Zoning Ordinance, and General Plan, all of which are addressed above. The project will not conflict with coastal resource protection policies and will minimize visual clutter from existing conditions. In addition, the project will not impact coastal access.

Adequate findings with evidence, supporting the determination that the project is consistent with the applicable laws and regulations were made by the Planning Commission. After review of the project, and in light of the appeal contentions, staff still finds that the project is consistent with the applicable laws and regulation.

3. *Response to Contention 3 (Improper project location)*

The project does not include locating a new wireless communication facility. The facility has existed in this location since the mid 1970's and the project includes structurally reinforcing the existing facility and reducing the number of antennas attached to the tower. Neither the existing facility, nor the proposed facility would be visible from a public view area. The communication facility is an allowed use on the site (see Response to Contention 2).

4. *Response to Contention 4 (Staking and flagging criteria):*

Staking and Flagging criteria adopted by the Board of Supervisors provide County staff or the Decision-making body for the permit with the authority to require, or not require, installation of staking and flagging. The purpose of staking and/or flagging is to provide visualization and analysis of projects in relation to County policies and regulations. Staking and/or flagging is intended to help planners and the public visualize the mass and form of a proposed project. In this case, there are existing antennas attached to an existing tower. The project would clearly reduce visual impacts from existing conditions. The ice bridge is near ground level, screened by trees and a fence, the existing antennas already provide a visual representation of visual conditions which the project will improve upon, and the structural reinforcement will not change the size, height, location, or mass of the existing structure. For these reasons, staff found that the project would clearly not result in potential visual impacts and exempted the project from staking and

flagging requirements pursuant to the Board adopted policies.

5. *Response to Contention 5 (Inconsistency with past practices):*

The County Code requires appropriate siting and design of new development. Many other projects in the vicinity are cited in the appeal support the contention that a simulated pine tree design is required. The circumstances of this case are different. In the cases cited, proposals included new monopoles or wireless communication towers, or added substantially to the height and mass of such facilities. In those cases, design considerations to minimize visual impacts were considered. In this case, the project includes structural reinforcement of an existing tower that does not change the height or mass, includes reduction in the number of structure-mounted antennas and construction of an ice bridge that is under the tree canopy screened from view by existing vegetation. The tower would be painted to help disguise the existing structure. The project does not involve demolition and reconstruction or expansion of the existing facility that would warrant the requirement to replace the facility entirely with a new design. Nothing in the applicable laws or regulations require removal of the existing tower and replacement of the tower with a fiberglass tree disguise.

Conclusion

Staff has reviewed the project together with the appeal contentions and recommends that the Board of Supervisors find that the project is consistent with applicable policies, regulations, and laws. The proposed project reduces the visual clutter from existing conditions by consolidating the size and number of structure-mounted antennas. There is no increase in size or height of the facilities and, in conformance with the Design Review Criteria contained in Section 20.64.310.H.3, the County of Monterey Information Technology Department will paint the existing tower with a flat brown color to help it blend with the site and its surroundings.

Staff recommends that the Board of Supervisors deny the appeal of the Planning Commission's approval and approve the Design Approval as proposed.