

**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:

INDIAN SPRINGS RANCH PROP OWNERS (VERIZON WIRELESS) (PLN150082)

RESOLUTION NO. 18-018

Resolution by the Monterey County Planning
Commission:

- 1) Finding the denial of the project Statutorily Exempt pursuant to Public Resource Code Section 21080(b)(5) and Section 15270 of the CEQA Guidelines and
- 2) Denying a Use Permit and Design Approval to allow a wireless communication facility consisting of:
 - a. construction of a 34-foot tall wireless communications pole disguised as a mono-eucalyptus or faux water tank,
 - b. equipment shelter,
 - c. electric meter, and
 - d. 30-kilowatt standby diesel generator surrounded by an 8-foot tall fenced security enclosure.

[PLN150082, Indian Springs Ranch Prop Owners (Verizon Wireless), 22400 Indian Springs Road, Salinas, Toro Area Plan (APN: 139-111-011-000)]

The Indian Springs Ranch Property Owners (Verizon Wireless) application (PLN150082) came on for public hearing before the Monterey County Planning Commission on June 28, 2017, September 13, 2017, October 11, 2017, and April 25, 2018. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **CONSISTENCY** – The Project is consistent with the applicable plans and policies which designate this area as appropriate for the proposed development. However, it is not consistent with the Conservation and Scenic Easement Deed incumbering the subject property.
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;
 - Toro Area Plan; and
 - Monterey County Zoning Ordinance (Title 21);Communications were received during the course of review of the project indicating project inconsistencies with the text, policies, and regulations in these documents.
b) The property is located at 22400 Indian Springs Road, Salinas (Assessor's Parcel Number 139-111-011-000), Toro Area Plan. The

parcel is zoned O-D or “Open Space with a Design Control District overlay,” which allows wireless communication facilities (WCF). The applicant, Verizon Wireless, applied for a WCF consisting of: a 34-foot tall telecommunications pole with six panel antennas, nine remote radio units, and four surge protectors disguised as a mono-eucalyptus or faux water tank; an equipment shelter; electric meter; and a 30-kilowatt standby diesel generator surrounded by an 8-foot tall fenced security enclosure. The project is an allowed land use under the zoning, provided a Use Permit is approved as specified in the Open Space zoning district and provided a Design Approval is approved as specified in the Design Control overlay district.

- c) In compliance with a condition of approval for the Indian Springs Ranch subdivision, a Conservation and Scenic Easement Deed, dated July 3, 1973, recorded in Reel 857, Page 67 of Official Records, conveyed an easement over certain portions of land within the subdivision to the County of Monterey. The proposed WCF is located within “Lot E” described in Exhibit A and illustrated in Exhibit B of the easement deed. Therefore, the proposed development is subject to the restrictions and exceptions specified in the easement deed.
- d) Restriction No. 1, as shown on page 2 of the Conservation and Scenic Easement Deed states the following:

“That no structures will be placed or erected upon said described premises EXCEPT to permit the following, generally in the locations designated in Exhibit ‘B’ attached hereto and made a part hereof:

Corral and animal fencing, stables, paddocks, exercise rings, horse arenas, and other related equine facilities, tennis courts, swimming pools, dressing and rest rooms, community recreational building, recreation vehicle and horse trailer storage, picnic and play facilities, water reservoirs; Allowing also for the location, construction and maintenance of water systems, sewer systems with treatment and disposal facilities, electricity, telephone and cable TV systems, together with the location construction, alteration, relocation and maintenance of streets and roads, pedestrian and horse trails, street and identification/direction signs, storm drains and land erosion relief.”

- e) The project was reviewed in light of the easement restrictions and on August 27, 2015, the RMA Director of Planning formally notified the project applicant with a Director’s Interpretation, that the proposed project was not a use allowed within the boundaries of the designated easement area under the above-quoted terms of the easement. The project applicant responded with a request to appeal the Director’s decision to the Planning Commission.
- f) On September 30, 2015, the Planning Commission heard the applicant’s appeal of the Director’s Interpretation and upheld the interpretation that the restricted uses specified within the Conservation and Scenic Easement Deed placed on the subject property do not allow for the establishment of a wireless communication facility; finding that the exception limits utilities (electricity, telephone, and cable TV systems)

to only those necessary to support structures and uses stated in said exception. Furthermore, the Planning Commission found that the easement area was intended for quasi-open space/recreational uses and allows for such limited development as it would not greatly alter the landscape and/or impact the scenic quality of the site. Therefore, the Commission determined that in order to establish a WCF within the easement area, an amendment to the easement deed would be required (Planning Commission Resolution No. 15-049).

- g) On June 28, 2017, the Planning Commission held a duly noticed public hearing to consider the Verizon Wireless permit application. The proposed actions were: 1) adoption of a Negative Declaration; 2) recommendation to the Board of Supervisors to accept an amended Conservation and Scenic Easement Deed from the Indian Springs Ranch Property Owners Association; and 3) approval of a Use Permit and Design Approval, subject to Board approval of the amended Conservation and Scenic Easement Deed, to allow a wireless communication facility consisting of a 34-foot tall mono-eucalyptus pole, equipment shelter, electric meter, and 30-kilowatt standby generator surrounded by an 8-foot tall fence. During the hearing, the Planning Commission identified concerns with the appropriateness of amending the existing conservation and scenic easement to allow a WCF and potential visual and neighborhood character impacts caused by establishment of such a facility. Therefore, the Planning Commission continued the hearing to September 13, 2017 and directed staff to provide additional analysis and supporting evidence in order to render their decision.
- h) On September 13, 2017, the Planning Commission conducted a continued hearing on the Verizon Wireless permit application. Staff presented alternative designs provided by the applicant addressing potential visual and neighborhood character impacts, but on the same site. The Commission found the proposed amendment inconsistent with the easement restrictions and purpose for resource protection afforded by the easement, articulating that there has been no change in circumstances within the easement area that would support approval of an amendment; the WCF is not of similar character, nature, and intensity to what is allowed in the scenic easement area; and the proposed development would materially alter the landscape or other attractive scenic features of the area. Therefore, the Planning Commission adopted a motion of intent to deny the permit, continued the hearing to October 11, 2017, and directed staff return with a resolution based on this motion.
- i) The development of the proposed WCF would have the potential to significantly affect a designated public viewing area and scenic corridor. Based on the property restrictions set forth in the Conservation and Scenic Easement, the site does not allow for the proposed WCF and thus, does not comply with all the applicable requirements of Monterey County Code section 21.64.310 – Wireless Communication Facility Requirements.
- j) The project planner conducted a site inspection on December 28, 2016..

- k) The application, project plans, and related materials for the proposed development found in Monterey County RMA-Planning Project File PLN150082.

2. **FINDING:** **COMPLIANCE WITH FEDERAL TELECOMMUNICATIONS ACT** – Denial of the project complies with the Federal Telecommunications Act and its standards regarding local government regulation of placement, construction, and modification of personal wireless service facilities (WCF) provided in the Federal Telecommunications Act (TCA).

- EVIDENCE:**
- a) The proposed site does not allow the proposed use due to the restrictions placed on the property by the Conservation and Scenic Easement. As the Grantee and holder of the easement, the County of Monterey interprets the easement as not allowing the proposed WCF due to the restrictions in the Conservation and Scenic Easement. The Federal Telecommunications Act does not preempt this determination because it is based on the County's rights as a property owner, apart from its land use regulatory role.
 - b) Denial of the project does not unreasonably discriminate among wireless facility providers. The decision of the Planning Commission is based on the WCF's inconsistency with the development restrictions placed on the property by the Conservation and Scenic Easement. Denial is not based on who the carrier is. The County has approved other wireless facility applications by the same provider, Verizon Wireless.
 - c) Denial of the project would not result in preventing the service provider from filling a significant gap in its own service coverage. The applicant has not demonstrated a significant coverage gap. The application materials indicate that the proposed site would function as a "capacity site" to support residential areas in southern Salinas and the rapid growth in 4G data use, thereby improving "some complaints of poor in-building coverage." There is no discernable change between the existing and proposed coverage graphics submitted. There would however be a change in capacity in the area, resulting in much higher data speeds.
 - d) The applicant has not demonstrated that the project at this particular site is the least intrusive means of closing the gap, if any, in coverage. As discussed, land uses at this site are restricted by the Conservation and Scenic Easement. The application materials demonstrate that the project applicant pursued two alternative sites in the area. However, the applicant could not obtain a lease agreement from either property owner.
 - e) Based on the applicant's request for continuance on October 11, 2017 and the Commission's grant of the continuance of the hearing, the applicant was provided another opportunity and additional time to explore alternative sites in the area outside of the easement. The applicant made several attempts to find a new location and approached three other property owners in the area. However, obtaining lease agreements was not successful. On March 2, 2018, the applicant's representative formally notified the County that they do not contest the

denial and elect to move forward with the Planning Commission's decision of denial.

- 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 PLN150082.

3. **FINDING:** **CEQA (Exempt)** – The project is Statutorily Exempt from environmental review pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270.
- EVIDENCE:** An Initial Study/Negative Declaration (ND) was prepared, circulated for public review, and presented to the Planning Commission. However, the Commission declines to adopt the ND. Denial of the project is exempt from CEQA pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines section 15270.
4. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.
- EVIDENCE:** Section 21.80.040.D of the Monterey County Zoning Ordinance states that the proposed project is appealable to the Board of Supervisors.

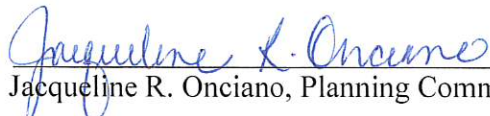
DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Find the denial of the project Statutorily Exempt pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines Section 15270; and
2. Deny a Use Permit and Design Approval for a wireless communication facility consisting of:
 - a. construction of a 34-foot tall wireless communications pole disguised as a mono-eucalyptus or faux water tank,
 - b. electric meter, and
 - c. 30-kilowatt standby diesel generator surrounded by an 8-foot tall fenced security enclosure.

PASSED AND ADOPTED this 25th day of April, 2018 upon motion of Commissioner Roberts, seconded by Commissioner Ambriz, by the following vote:

AYES: Ambriz, Diehl, Duflock, Getzelman, Padilla, Roberts, Vandever
NOES: None
ABSENT: None
ABSTAIN: Gonzalez, Mendoza, Wizard


Jacqueline R. Onciano, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON **APR 26 2018**

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **MAY 07 2018**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County RMA-Planning and RMA-Building Services Department office in Salinas.

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

Form Rev. 5-14-2014