



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: RES 21-004, **Version:** 2

Public hearing to consider an appeal by Nina Beety from the October 29, 2020 Zoning Administrator decision approving a Coastal Development Permit adding a 12-foot tower extension for a wireless communication facility on an existing 130.5-foot PG&E steel lattice tower located at 745 Dolan Road, Moss Landing (APN: 131-054-010-000, PLN200128/AT&T Mobility)

RECOMMENDATIONS:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Deny the appeal by Nina Beety from the October 29, 2020 Zoning Administrator decision approving a Coastal Development Permit [Planning File No. PLN200128 - PG&E (AT&T Mobility)];
- b. Find the project is limited development consisting of co-location of wireless communication facility and ground-based support equipment which qualifies as a Class 3 Categorical Exemption per section 15303 (a) of the CEQA Guidelines and none of the exceptions under section 15300.2 apply; and
- c. Approve a Coastal Development Permit to allow the co-location construction of a 12-foot tower extension for new wireless communications facility on an existing 130.5-foot PG&E lattice tower, increasing the height to 142.5 feet, adding 12 antennas, 15 remote radio units, 3 surge suppressors, an equipment shelter, and a backup generator in a new fenced adjacent compound subject to twelve (12) conditions of approval.

PROJECT INFORMATION:

Agent: Tom Johnson, TSJ Consulting Inc., for AT&T Wireless

Property Owner: Pacific Gas and Electric (PG&E)

Flagged and Staked: Photographic simulations

SUMMARY:

Located on Dolan Road about 2.75 miles from Highway 1, the project consists of co-locating a wireless facility on an existing PG&E lattice tower. The addition will add twelve (12) six-foot antennae panels to an existing steel lattice tower in Moss Landing, increasing the height from 130.5 feet to 142.5 feet. The existing lattice tower is on a 27.5-acre parcel owned by PG&E in the Rural Density Residential district within the Coastal Zone.

PLN200128 was approved on October 29, 2020, by the Monterey County Zoning Administrator. The Zoning Administrator found that the proposed co-location of a wireless facility would not substantially alter the height of the tower such that it would interfere with aircraft or create visual impacts. On November 9, 2020, Nina Beety timely filed an appeal from the October 29, 2020 Zoning Administrator decision. Her appeal has four major contentions, summarized as:

- 1) This project blocks access under the Americans with Disabilities Act (ADA) for those who report to be disabled due to electromagnetic emission sensitivity.
- 2) The application is flawed, and the findings of the Resolution are not supported correctly.
- 3) The project is not categorically exempt because it is large (as measured by the emissions area) and will likely have significant human health effects and effects on wildlife.

- 4) The County exhibited bias against the appellant in the process of public review and decision on the project.

Staff finds that these appeal contentions have no merit, and recommends the Board deny the appeal and approve the project as previously approved by the Zoning Administrator.

DISCUSSION:

Project Overview/Analysis:

The proposed co-location of the AT&T wireless facility is in a rural residential area of North County in the Coastal Zone. The parcels bordering the property are zoned Rural Density Residential, and neighboring properties are primarily open space, with residences several hundred feet away. The 27.5-acre subject property is occupied by a parallel set of two overhead power lines on large lattice towers and ground-based support equipment in shelters. The lattice tower that the proposed project will be co-located on is approximately 60 feet from the pavement of Dolan Road (**Attachment A** plans, **Attachment D** photographic simulation.) AT&T proposes to co-locate this wireless communication facility at this site to improve serviceable wireless coverage in the Moss Landing area, as discussed and illustrated in the project description and coverage map (**Attachments A and E**, respectively). The area currently has limited AT&T mobile service in buildings and in transit.

Monterey County Code (MCC) section 20.64.310 encourages co-location of wireless facilities, where possible and MCC section 20.64.310 C.7 directs that such co-location shall be pursued to the maximum extent feasible. There is a PG&E lattice tower nearby that already has another wireless communication facility co-located on it. The tower does not have enough room left to support both wireless communication facilities (**Attachment A**, plans). Co-location of this wireless facility on an existing transmission tower satisfies the requirements of MCC section 20.64.310, and co-location has been pursued to the maximum extent feasible. The North County Area Land Use Plan (Coastal Zone) section 2.2 promotes the preservation of visual resources in the community when installing new structures on the low areas near North County wetlands and sloughs. This tenet is adhered to by the proposed project because it involves co-location rather than new tower construction. The photographic simulations provided by the applicant (**Attachment D**) do not portray a significant visual impact from the bulk, design, or the height of the additions to the existing tower. Therefore, the proposed wireless communication facility complies with all the applicable requirements of both the MCC and the North County Area Land Use Plan. The proposed facility will not create unusual noise or other conditions that may be objectionable, detrimental or incompatible with the surrounding land uses. The proposed equipment associated with the telecommunication structure operates virtually noise free. On the occasion that the primary and secondary power sources for the equipment fail, a backup generator will turn on and it will maintain a level of noise consistent with the County noise ordinance.

The proposed facility was evaluated by EBI Consulting, who has expertise in radio frequency analysis. The report was prepared by a modeling technician trained in RF-EME (Radio Frequency-Electromagnetic Energy) safety and FCC and OSHA regulations and was reviewed and approved by an electrical engineer. The report, updated to clarify several points for this hearing, finds that the facility will comply with prevailing Federal Communications Commission (FCC) standards for limiting human exposure to radio frequency energy (**Attachment C**). AT&T's wireless telecommunication facilities operate at the lowest possible power levels and their radio frequency electromagnetic fields are below established standards used by the FCC for safe human exposure. Written and oral testimony were received from the public and from a representative of the County Health Office in the prior hearings on this item.

Appeal Contentions:

Nina Beety submitted a timely appeal from the October 29, 2020 Zoning Administrator decision on November 9, 2020. These appeal contentions, along with staff responses are summarized as follows:

CONTENTION 1: This project should be denied because it blocks access under ADA for a person who contends that they are disabled due to electromagnetic emission sensitivity.

RESPONSE 1: The Federal Telecommunications Act (TCA) specifically provides: “no State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” (47 U.S.C. § 332 (c) (7)(B)(iv).) The TCA does not include any exemption from this edict, either for the ADA or any other state or federal law. Further, the ADA does not authorize the County to regulate a private activity that arguably has a greater impact on persons with disabilities. The transmission of wireless signals is private activity. The ADA does not apply to private activity regulated by the County under its zoning laws. Additionally, the TCA was enacted after the ADA. Had the federal Congress wished to, it could have excepted Radio Frequency (RF) emissions from this section, but it did not. Finally, Ms. Beety is not without a remedy. The TCA merely prohibits state and local governments from regulating in this area; it gives plenary regulatory authority to the FCC. Consequently, the FCC is the appropriate body to address Ms. Beety’s concerns. Monterey County Code section 20.64.210, “Regulations for the Siting, Design, and Construction of Wireless Communication Facilities,” adheres to TCA limits (for more on the County Code’s application to and the review of this project, see Evidence b). Moreover, even if the TCA did not prohibit the County from regulating in this area, Ms. Beety has not produced substantial evidence of either legal thresholds applicable for electromagnetic frequency emissions (EME) for sensitive groups or that the specific wireless communication facilities at issue should be regulated for distance accommodate for people with RF (aka EME) sensitivities. Substantial evidence of both points is, at a minimum, necessary to meet Ms. Beety’s burden on appeal.

CONTENTION 2: The project should not be approved because the documentation of the application is flawed, and the findings of the Resolution are not supported correctly.

RESPONSE 2: County’s recommendation for approval of the project stems from careful review of the site plan, elevations, photo simulations, RF report, and analyses of such in relation to the zoning district, Zoning Code, Noise Ordinance, and the North County Land Use Plan. The development is allowed in the zoning district with a Coastal Development Permit. Further, the project conforms to each requirement of the relevant sections of the Monterey County Code (MCC). As to the North County Land Use Plan, the project meets its Visual Resources Policies; no other Coastal policies relate to the project’s location or design. The project is consistent with the County Noise Ordinance and the 1982 General Plan. Views from State Route 1 (a scenic highway) are protected, consistent with the North County Land Use Plan and MCC section 20.64.310. These findings are explained further in the Resolution (**Attachment A**) and within the in-line responses added to the appeal correspondence from Ms. Beety (**Attachment B**). The visual impact of the co-location on the rear lattice tower on parallel PG&E power lines was assessed by staff and the North County LUAC and found to be insignificant. Pursuant to MCC section 20.64.310.C, *Regulations for the Siting, Design and Construction of Wireless Communication Facilities*, County found that the project would comply with applicable FCC rules, regulations, and standards. County staff found the company name chosen for the Planning project name satisfactory, understanding that County has effective administrative and legal procedures in place to identify permit holders and signatories of indemnification agreements.

CONTENTION 3: The project is not categorically exempt because it is large (as measured by the emissions area) and will likely have significant human health effects and effects on wildlife.

RESPONSE 3: The appellant contends this project is not categorically exempt from CEQA because it is large (as measured by the emissions area), rather than small and meeting Class 3 exemption status. Ms. Beety further contends that the project falls within one of the exceptions from categorical exemptions set forth in CEQA Guideline section 15300.2 due to the project's potential impacts to the environment. As to the former contention, CEQA Guidelines section 15303, the Guideline upon which the County relies, expressly applies to small structures. There is no indication in that section that the purported size of a project's *emissions area* is relevant to the determination whether an exemption applies. The appellant has produced no evidence to rebut the County's conclusion that the project is a "small structure" within the meaning of CEQA Guidelines. As to the latter claim, the project will not have a significant effect on the environment. The RF report (**Attachment C**) was prepared to meet FCC standards and was signed by Michael McGuire, a certified electrical engineer. Pursuant to MCC section 20.64.310.C, *Regulations for the Siting, Design and Construction of Wireless Communication Facilities*, County found that the project would comply with applicable FCC rules, regulations, and standards. The project's RF report, which the County accepts as persuasive evidence, indicates that the proposed project would not have a significant impact on human health.

CONTENTION 4: The appellant contends that County exhibited bias against the appellant in the process of public review and decision on the project.

RESPONSE 4: To demonstrate prejudicial bias under applicable law, Ms. Beety would need to show either actual bias, based on clear evidence, or an unacceptable probability of actual bias on the part of the Zoning Administrator. (*Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973-974.) Ms. Beety has not provided substantial evidence on either point. Ms. Beety has not produced the necessary "concrete facts" demonstrating a conflict of interest or personal bias of the Zoning Administrator with respect to either her or her condition. The Zoning Administrator provided Ms. Beety with a full and fair opportunity to appear at the hearing and present her arguments, both orally and in writing. County duly noticed all public hearings on this project. Further, the Zoning Administrator invited public comment in written and oral form. Those comments were presented to the decisionmaker. Indeed, Ms. Beety testified at the September 24 and October 29, 2020 hearings, and Ms. Beety's September 23 and 30, 2020 emails were attached to the October 29 staff report as Exhibit H. Additionally, Staff responded to written comments in writing and as part of the staff presentation at the hearings. The Zoning Administrator indicated that he seriously considered the evidence presented, indicating that he "weighed heavily on this ADA issue" but, without substantiating evidence, he could not find any reason to deny the project.

Upon consideration of the documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record, Staff recommends the Board find the Appellant's contentions unsubstantiated and to approve the project as proposed.

CEQA

As a small facility with a 600-square foot enclosure of ground support equipment, the project qualifies for Class 3 exemption from CEQA (Section 15303 of the CEQA Guidelines). The project does not meet any exceptions from the Class 3 exemption listed under section 15300.2 of the Guidelines because it is not located on a hazardous waste site, near a scenic highway, is not likely to effect cultural resources and will not have a significant effect on the environment nor are there any other special circumstances.

OTHER AGENCY INVOLVEMENT:

Office of the County Counsel

FINANCING:

Staff time associated with this project is funded with revenue from fees that are estimated in the FY20-21 Adopted Budget for Planning.

BOARD OF SUPERVISORS' STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this appeal in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources. Development of existing towers available for co-location of wireless communication facilities generates revenue to the County through permit fees and property taxes.

X Economic Development
X Administration
 Health & Human Services
 Infrastructure
 Public Safety

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Reviewed by: Brandon Swanson, HCD Planning Services Manager
Approved by: Carl P. Holm, AICP, HCD Director

The following attachments are on file with the Clerk of the Board:

Attachment A - Resolution, Conditions of Approval, Plans, and Appeal Documents
Attachment B - Appeal letter with in-line responses
Attachment C - Radio Frequency Report
Attachment D - Photographic Simulations
Attachment E - Site Coverage Map
Attachment F - Vicinity Map
Attachment G -North County LUAC Minutes

cc: Front Counter Copy; North County Fire Protection District; HCD-Public Works; HCD-Environmental Services; Environmental Health Bureau; Brandon Swanson, HCD Planning Services Manager; Mary Israel, Project Planner; Tom Johnson, Agent; PG&E, Owner; Nina Beety, Appellant; Michael Weaver, Tony Keppelman, Carol Kuzdenyi, Interested Parties; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); Project File PLN200128.