

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 02026

A.P. # 422-121-044-000

FINDINGS AND DECISION

In the matter of the application of
Michael J. O'Connor (PLN010177)

for a Use Permit in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, to construct a 150' multi-carrier lattice tower with a 70' x 70' fenced equipment area that has the capacity to co-locate several telecommunication companies, located on a 4,900 square foot leased area on property zoned Farmlands ("F/40") and Permanent Grazing ("PG/40"), located northerly of Dead Man's Gulch Road, southeasterly of San Ardo, South County area, came on regularly for hearing before the Planning Commission on May 8, 2002.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING:** Use Permits for O'Conner (PLN010177), as described in condition #1 and as conditioned, conforms to the plans, policies, requirements and standards of the General Plan, the South Monterey County Area Plan, and the Monterey County Zoning Ordinance (Title 21). The property is located at: Dead Man's Gulch Road, off of Sargents Road, southeasterly of the community of San Ardo (Assessor's Parcel Number 422-121-044-000) (Farmlands, "F/40" and Permanent Grazing, "PG/40" zoning districts)

The subject parcel is generally located in areas designated for Permanent Grazing or Farmlands with 40 acre minimums, but Monterey County's *Wireless Communication Facilities Ordinance No. 04053*, incorporated into the Monterey County Code, allows wireless telecommunication facilities to be located on any lot or parcel in any zoning district, subject to the findings, evidence and the conditions of approval. The subject property is found in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of Title 21. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with:

- a) Monterey County General Plan and the South Monterey County Area Plan;
- b) applicable regulations from Title 21, Zoning Ordinance.

EVIDENCE: The project site is physically suitable for the proposed use as described in the project file. The project has been subject to geologic, soils and geotechnical reports to be assured that the site conditions are appropriate and stable to support the respective towers. The project is conditioned to include the geotechnical recommendations for construction of the tower in addition to any other technical reports on file for the project. (See Planning & Building Inspection Department file O'Conner (PLN010177)).

The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works, Parks Department, Environmental Health Division, the South County California Department of Forestry Fire Protection District, the Monterey County Agricultural Commissioner's office and the County's Airport Land Use Commission. There has been no indication from these agencies that the site is not suitable for the proposed development. The Initial Study prepared for the project

demonstrates that no physical or environmental constraints exist that would indicate the site is not suitable for the proposed development when appropriately conditioned.

EVIDENCE: The proposed use is consistent with the zoning development standards for each of the zoning districts listed above pursuant to *Monterey County Ordinance No. 04053, the Wireless Telecommunications Ordinance*, and Title 21, Zoning Ordinance, allowing for quasi-public uses.

EVIDENCE: Staff verification of the Monterey County Planning and Building Inspection Department records indicates that no violations exist on the subject property.

EVIDENCE: Written and verbal public testimony submitted at public hearings before the Planning Commission.

EVIDENCE: The application, plan, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development as found in the project file PLN010177 (O'Conner).

EVIDENCE: The on-site inspection by the project planner.

2. **FINDING:** The development of the proposed wireless communication facility will not adversely affect any designated public viewing area, scenic corridor, or identified environmentally sensitive area.

EVIDENCE: File and application materials; Initial Study and Negative Declaration; staff report and administrative record; South Monterey County Area Plan.

3. **FINDING:** The chosen site is adequate for the development of the proposed wireless communication facility and the applicant has demonstrated that the site is adequate for the provision of telecommunication services as required by the FCC.

EVIDENCE: File with application materials found in Planning & Building Inspection Department file PLN010177 (O'Conner).

4. **FINDING:** The proposed wireless communication facility will not create a hazard for aircraft.

EVIDENCE: The proposed location for the tower has been reviewed and recommended for approval by the County's Airport Land Use Commission (ALUC) and the County's Agricultural Commissioner. Also, the telecommunication tower applicant is required to provide proof from the California Public Utilities Commission, the Federal Communications Commission and the Federal Aviation Authority that they have received the appropriate approvals when required.

EVIDENCE: The tower requires lighting on top of the tower as an aircraft warning signal, but is required also to have manually-operated, non glare lighting for their ground facility so as not to be obtrusive to surrounding properties.

5. **FINDING:** The proposed project, including all permits and approvals, will not have significant adverse impacts on the environment and a Negative Declaration has been prepared for the project.

EVIDENCE: The adoption of a Negative Declaration for the project reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Studies and in consideration of testimony and information received, and scientific and factual data presented as evidence during the public review process. Studies, data and reports prepared by staff from various County departments, including Planning & Building Inspection, Monterey County Water Resources Agency, Environmental Health Division, Public Works Department, Parks Department, the Agricultural Commissioner and the South County California Department of Forestry Fire District, and the newly formed Bradley/Parkfield Land Use Advisory Committee, support adoption of the Initial Study and Negative Declaration for the project. The custodian of the documents and materials that constitute the record of proceedings upon which adoption of the Negative Declaration is based is the Monterey County Planning & Building Inspection

Department located at 2620 First Avenue, Marina. No facts, reasonable assumptions predicated on facts, testimony supported by adequate factual foundation, or expert opinion supported by facts, have been submitted that refute the conclusions reached by these studies, data and reports. Nothing in the record alters the environmental determination, as presented by staff, based on investigation and the independent assessment of those studies, data and reports.

EVIDENCE: County Staff prepared Initial Studies for each of the projects in compliance with the California Environmental Quality Act (CEQA) and its guidelines. The Initial Study provides substantial evidence that the project would not have a significant environmental impact. The Negative Declaration for the project was filed with the County Clerk for a 20-day public review and comment period. All comments on the Initial Study have been received and considered as well as evidence in the record that includes studies, data and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced study, data, and reports analyzed as part of the environmental determination.

6. **FINDING:** The establishment, maintenance, or operation of the uses or structures applied for will not, under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed uses, or be detrimental or injurious to property and improvement in the neighborhoods, or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

7. **FINDING:** The Planning Commission's decision on the project is appealable to the Board of Supervisors.

EVIDENCE: Section 21.80.040 of the Monterey County Zoning Ordinance (Title 21).

DECISION

It is the decision of the Planning Commission of the County of Monterey that the Negative Declaration be adopted and said application for a Use Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Use Permit for locating a wireless telecommunication tower on the O'Connor property is described as follows: Construct of a 150 foot tall multi-carrier lattice tower with a 70' x 70' fenced equipment area that has the capacity to co-locate six telecommunication carriers, located on a 4,900 square foot leased area northerly of Dead Man's Gulch Road, southeasterly of San Ardo (Assessor Parcel Number 422-121-044-000), South County area.

The proposed project is in accordance with County ordinances and land use regulations, subject to the following terms and conditions. Neither the use nor the construction allowed by these permits shall commence unless and until all of the conditions of these permits are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by these permits is allowed unless additional permits are approved by the appropriate authorities. **(Planning and Building Inspection)**

Prior to the Issuance of the Building Permits:

2. The applicant agrees as a condition and in consideration of the approval of their respective permit to enter into an indemnification agreement with the County whereby the applicant agrees to defend, indemnify, and hold harmless the County, its officers, agents, and employees from actions or claims of any description brought on

account of any injury or damages sustained by any person or property resulting from the issuance of the permit and the conduct of the activities authorized under said permit. The applicant shall obtain the permission of the owner on which the wireless communication facility is located to allow the recordation of said indemnification agreement, and the applicant shall cause said indemnification agreement to be recorded by the County Recorder as a prerequisite to the issuance of the building and/or grading permit. The County shall promptly notify each applicant of any such claim, action, or proceeding, and the County shall cooperate fully in the defense thereof. The County may, at its sole discretion, participate in the defense of such action, but such participation shall not relieve applicant of its obligations under this condition. **(Planning & Building Inspection)**

3. The applicant shall record a notice that states: "A permit (Resolution 02026) was approved by the Planning Commission for Assessor's Parcel Number 422-121-044-000 on May 8, 2002. The permit was granted subject to 23 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. **(Planning and Building Inspection)**
4. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
5. The Monterey County Airport Land Use Commission (ALUC) requires a steady red light located on the top of the tower. Exterior lighting for the equipment building shall be hooded and shall be located no higher than 10 feet above ground level. Lighting for the equipment building shall be operated by means of an on-off switch and shall be used only during maintenance checks or emergencies. To ensure compliance, applicant shall submit 3 copies of a lighting plan prior to issuance of a building permit illustrating and listing the location and type of lighting fixtures and wattage. Said plan shall also include the red light located on top of the tower. The applicant shall also submit photo-documentation to the Director of Planning and Building Inspection after the lighting has been installed. **(Planning and Building Inspection)**
6. The Monterey County Airport Land Use Commission (ALUC) requires that the tower shall be painted a color so that it is differentiated from the surrounding area. Applicant shall submit a sample of the proposed paint/color to the Director of Planning and Building Inspection for review and approval prior to building permit issuance. All antennas on the tower shall be painted to match the tower. All components of the tower shall thereafter be repainted, as necessary, with the same approved color. To further ensure compliance, applicant shall submit photo-documentation of the painted facility to said Director prior to final clearance of the building permit. **(Planning and Building Inspection)**
7. If necessary, new utility and service lines shall be placed underground. **(Planning and Building Inspection)**
8. The applicant shall obtain all required building permits from the Department of Planning and Building Inspection before commencing the operation. **(Planning and Building Inspection)**
9. The applicant shall obtain appropriate approvals from the California Public Utilities Commission and the Federal Communications Commission. **(Planning and Building Inspection)**

Prior to Final Building Inspection/Occupancy:

10. The applicant shall contact the F.A.A. to publish a NOTAM (Notice to Airmen) in Monterey County regarding the location of the proposed tower. **(Planning and Building Inspection)**
11. The applicant shall agree in writing that, where future technological advances would allow for reduced visual

impact of the proposed telecommunication facility, applicant shall make such modifications to the facility as would reduce visual impact as part of the facility's normal replacement schedule. If, in the future, the facility is no longer needed, applicant agrees to abandon the facility, remove all permanent structures, and restore the site consistent with the character of the surrounding vegetation. (Planning and Building Inspection Department)
(Planning and Building Inspection)

Continuous Permit Conditions:

12. If during the course of construction on the subject property, cultural, archaeological, historical, and/or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection)**
13. All landscaped areas and planted trees shall be continuously maintained by the applicant in a litter-free, weed-free, healthy, growing condition. Antennas and support structures shall be permanently maintained and regularly painted as long as the facility is in operation. **(Planning and Building Inspection)**
14. If, in the future, the facility is no longer needed, the applicant agrees to abandon the facility and remove the monopole, panel antennas and equipment shelter no later than six months after the operation ceases. The lease site shall be restored to its pre-project state and/or consistent in appearance with surrounding vegetation. **(Planning and Building Inspection)**
15. The applicant and/or successors and assigns shall encourage co-location by other wireless carriers on this tower assuming appropriate permits are approved for co-location. New microwave dishes, antennas and/or similar appurtenances located on the tower, which are not approved pursuant to this permit, are not allowed unless the appropriate authority approves additional permits or waivers. In any case, the overall height of the tower shall not exceed the height limit approved by this permit. **(Planning and Building Inspection)**
16. The _____ (Applicant) and their successors and assigns shall allow additional antennas from other providers to be co-located on their monopole or tower if the Planning Commission approves such co-location. Additionally, _____ (Applicant) and their successors and assigns shall allow such antennas to be co-located on another monopole or tower on the same site. In either event, there shall be only one monopole or tower on the site. **(Planning and Building Inspection Department)**
17. If, as a result of future scientific studies and/or alterations of industry wide standards resulting from such studies, substantial evidence is presented to the County that radio frequency transmissions may be a hazard to human health and/or safety, the Director of Planning and Building Inspection shall set a public hearing at which time this permit may be revoked or conditions of the permit may be modified. **(Planning and Building Inspection)**
18. The applicant shall submit an operation schedule for the emergency generator to the Director of Environmental Health for review and approval indicating the time of day, duration and frequency of operation of the generator as part of its routine maintenance. The schedule shall be designed to minimize noise impacts to adjacent residential uses. **(Environmental Health)**
19. The design of the emergency generator shall incorporate noise attenuation features subject to the review and approval of the Director of Environmental Health, and shall have the following features at a minimum:

- A) An insulated enclosure,
- B) Shock absorbent mounting,
- C) Latest muffler technology,
- D) Exhaust baffled and directed away from nearest residences, and
- E) Use of a diesel engine is prohibited. **(Environmental Health)**

Prior to the Issuance of the Building Permits:

- 20. Proposed development shall be setback as least 50 feet from top of bank, as defined in County Floodplain Ordinance #3272. The top of bank shall be defined by a professional engineer and shown on the site plan prior to issuance of any grading and/or building permits **(Water Resources Agency)**
- 21. Owner shall record a notice stating that the property is located within or partially within a floodplain and may be subject to building and/or land use restrictions. A copy of the recorded notice shall be provided to the County Water Resources Agency. **(Water Resources Agency)**
- 22. Proposed development shall be floodproofed in accordance with County Ordinance #3272, to be certified by a registered civil engineer. **(Water Resources Agency)**
- 23. A notice shall be recorded with the Monterey County Recorder which states: "A Geotechnical Engineering Report, (Site #41994-B, Wunpost) has been prepared for this parcel by Robert Young & Associates, Inc , dated April 2, 2001, and an Erosion Control Plan has been prepared for this parcel by BSK consultants, dated April 24, 2001. Both reports are on record in the Monterey County Planning and Building Inspection Department Library, respectively. All development shall be in accordance with these reports." **(Planning & Building Inspection)**

PASSED AND ADOPTED this 8th day of May, 2002, by the following vote:

AYES: Errea, Sanchez, Hawkins, Parsons, Brennan, Pitt-Derdivanis, Diehl, Hernandez, Classen, Wilmot
 NOES: None
 ABSENT: None

Original Signed By: _____

DALE ELLIS, SECRETARY

Copy of this decision mailed to applicant on

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

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 the Monterey County Planning and Building Inspection Department office in Salinas.

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