

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

RESOLUTION NO. 03048

A.P. # 015-012-037-000

**FINDINGS AND
DECISION**

In the matter of the application of
Cypress Fire Protection District (PLN010085)

for a Use Permit in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, and Design Approval for the construction of a 60' wireless telecommunication tower, a 514 sq. ft. equipment shelter and a 6 ft. tall fence surrounding the cabinet area, located at Cypress Fire Station, 3775 Rio Road, west of Carmel Rancho Blvd. and east of Hwy 1, Carmel Valley Master Plan, came on regularly for hearing before the Planning Commission on August 13, 2003.

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

FINDINGS OF FACT

1. **FINDING:** The project consists of a Use Permit and Design Approval for the construction of a 60' wireless telecommunication tower, a 514 sq. ft. equipment shelter and a 6 ft. tall fence surrounding the cabinet area. One 12-inch scrub Oak tree will be relocated. The property is located at Cypress Fire Station, 3775 Rio Rd. (Assessor's Parcel Number 015-012-037-000), west of Carmel Rancho Blvd. and east of Hwy 1, Carmel Valley Master Plan. This permit allows the construction of a wireless communications facility in accordance with Section 21.64.310 of the Zoning Ordinance (Regulations for the Siting, Design and Construction of Wireless Communication Facilities) and land use regulations. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit 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 this permit is allowed unless additional permits are approved by the appropriate authorities.

EVIDENCE: Materials and project plans in file PLN010085.

EVIDENCE: Site and visual inspection by staff conducted March 6, 2003.

EVIDENCE: There has been no testimony received, either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, applicable Fire Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.

EVIDENCE: The project has been reviewed by the Carmel Area Wastewater District, Pacific Bell, California-American Water Company, & Pacific Gas and Electric Company. Condition No. 3 enables these utilities to have access to the site for servicing of their facilities.

EVIDENCE: A review of Chapters 21.40, 21.44, 21.45 & 21.64.310 of the Monterey County Code (Zoning) establishes that the facility is consistent with the applicable regulations. Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no

violations exist on subject property.

2. **FINDING:** The proposed Use Permit and Design Approval Application (PLN010085) as described in the staff report and associated plans complies with all of the applicable requirements and regulations of Section 21.64.310 of the Zoning Ordinance (Regulations for the Siting, Design and Construction of Wireless Communication Facilities).
- EVIDENCE:** Section 21.64.310.H.1.a states that “site location and development of wireless communications facilities shall preserve the visual character and aesthetic values of the specific parcel and surrounding land uses. Facilities shall be integrated to the “maximum extent feasible...” Section 21.64.310.H.1.c states that “Wireless communication facilities, to every extent possible, should not be sited to create visual clutter or negatively affect specific views.” The proposed tower is setback from Highway 1 and screened by trees and existing development in the Lower Carmel Valley area. The facility is nominally visible from Highway 1 and then only for an exceedingly brief period, as depicted in the ‘Photo simulation of view looking east from Hwy 1 found in the project file.
- EVIDENCE:** The Carmel Valley Land Use Advisory Committee voted 6-0 to recommend approval of the project.
- EVIDENCE:** The Cypress Fire Protection District site was identified as the site to “best comply with Section 21.64.310 (Regulations for the Siting, Design and Construction of Wireless Communication Facilities). Specifically, the site has existing trees which provide natural screening. The Public Use, Public-Quasi Public zoning district hosts other development in the immediate vicinity that is compatible with the facility and the site is setback from Highway 1.
- EVIDENCE:** There has been no testimony received, either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, applicable Fire Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.
- EVIDENCE:** The application and plans in the project file (PLN010085) located at the Monterey County Planning and Building Inspection Department.
- EVIDENCE:** Site inspection by staff conducted March 6, 2003.
3. **FINDING:** The proposed wireless communication facility would not significantly affect a designated public viewing area, scenic corridor or any identified environmentally sensitive area or resource as defined in the Monterey County General Plan, Area Plan, or Local Coastal Plan.
- EVIDENCE:** The site of the proposed facility is located on an existing utility easement adjacent to the Cypress Fire District Station in the Public/Quasi-public zoning district.
- EVIDENCE:** The photo simulation of the facility (Exhibit X) demonstrates that the facility is setback from Highway 1 and screened by natural vegetation and existing development.
- EVIDENCE:** The application and plans in the project file (PLN010085) located at the Monterey County Planning and Building Inspection Department.
- EVIDENCE:** Site inspection by staff conducted March 6, 2003.
- EVIDENCE:** The Carmel Valley Land Use Advisory Committee voted 6-0 to recommend approval of the project.
- EVIDENCE:** Pursuant to the National Environmental Protection Act, an Environmental Site Assessment dated March 19, 2001 was prepared for this site, . The report states: “This assessment has revealed no evidence of recognized environmental conditions at the Site. . . Based upon the findings of this assessment, additional investigation is not warranted at this time.”

EVIDENCE: There has been no testimony received, either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, applicable Fire Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.

4. **FINDING:** The establishment, maintenance, or operation of the use or structure applied for will not, under the circumstances of the particular case, be detrimental to the general welfare of persons residing or working in the neighborhood of such proposed use, and/or will not be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

EVIDENCE: Materials and project plans in file PLN010085.

EVIDENCE: Site and visual inspection by staff conducted March 6, 2003.

5. **FINDING:** The subject property upon which the wireless communications facility is to be built is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and any other applicable provisions of Title 21 and that all zoning violation abatement costs, if any, have been paid.

EVIDENCE: A review of Chapters 21.40, 21.44, 21.45 & 21.64.310 of the Monterey County Code (Zoning) establishes that the facility is consistent with the applicable regulations. Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property.

EVIDENCE: The project is consistent with the policies adopted in the Carmel Valley Master Plan.

EVIDENCE: The Carmel Valley Land Use Advisory Committee voted 6-0 to recommend approval of the project.

EVIDENCE: Pursuant to the National Environmental Protection Act, an Environmental Site Assessment dated March 19, 2001 was prepared for this site, . The report states: "This assessment has revealed no evidence of recognized environmental conditions at the Site. . . Based upon the findings of this assessment, additional investigation is not warranted at this time."

EVIDENCE: There has been no testimony received, either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, applicable Fire Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.

- 6 **FINDING:** The site is adequate for the development of the proposed wireless communication facility and the applicant has demonstrated that it is the most adequate for the provision of services as required by the FCC.

EVIDENCE: Preceding Findings and Evidence.

EVIDENCE: There has been no testimony received, either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, applicable Fire

Department, Public Works Department and Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed. However, there are aesthetic constraints as identified in the Evidence for the Findings, above.

7. **FINDING:** The proposed wireless communications facility will not create a hazard for aircraft in flight.
EVIDENCE: The location and size of the proposed facility does not require review by the Monterey County Airport Land Use Commission as it does not intrude into FAR Part 77 zones (Chapter 21.86 of the Monterey County Code).
EVIDENCE: The Agricultural Commissioner has determined that agricultural aircraft do not fly in the vicinity of the proposed site.

8. **FINDING:** The project is exempt from CEQA review pursuant to Section 15303.
EVIDENCE: Pursuant to the National Environmental Protection Act, an Environmental Site Assessment dated March 19, 2001 was prepared for this site. The report states: "This assessment has revealed no evidence of recognized environmental conditions at the Site. . . Based upon the findings of this assessment, additional investigation is not warranted at this time."
EVIDENCE: Site visit with a visual inspection of the site by staff conducted March 6, 2003.
EVIDENCE: There has been no testimony received, either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Cypress Fire Protection District, the Public Works Department, Environmental Health Division. There has been no indication from those agencies that the site is not suitable. There are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.
EVIDENCE: The Carmel Valley Land Use Advisory Committee reviewed the project and voted 6-0 to recommend approval. No environmental issues were noted in their deliberations.

9. **FINDING:** The decision is appealable to the Board of Supervisors.
EVIDENCE: Sections 21.86.030(A) and 20.86.080 of the Monterey County Zoning Ordinance (Title 21).

DECISION

THEREFORE, it is the decision of said Planning Commission that said application be granted as shown on the attached sketch, subject to the following conditions:

1. The project consists of a Use Permit and Design Approval for the construction of a 60' wireless telecommunication tower, a 514 sq. ft. equipment shelter and a 6 ft. tall fence surrounding the cabinet area. One 12-inch scrub Oak tree will be relocated. The property is located at Cypress Fire Station, 3775 Rio Rd. (Assessor's Parcel Number 015-012-037-000), west of Carmel Rancho Blvd. and east of Hwy 1, Carmel Valley Master Plan. This permit allows the construction of a wireless communications facility in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit 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 this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning & Building Inspection)

Prior to Issuance of a Building or Grading Permit

2. The applicant agrees as a condition and in consideration of the approval of the 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 the permit. Applicant shall obtain the permission of the owner on which the wireless communications 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 County issuance of the building and/or grading permit. The County shall promptly notify the applicant of any such action or claim, 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 and Building Inspection)**
3. The applicant shall record a notice that states: "A permit (Resolution 03048) was approved by the Planning Commission for Assessor's Parcel Number 015-012-037-000 on August 13, 2003. The permit was granted subject to 22 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. Prior to the issuance of a building or grading permit, Sprint PCS shall sign a legally binding agreement with each of the following utilities: Carmel Area Wastewater District, Pacific Bell, California-American Water Company, & Pacific Gas and Electric Company. Said agreement shall be a reciprocal and mutual access agreement that will establish the right of said utilities to unconditionally access the lease site, if necessary, for the servicing of existing and/or proposed facilities. The applicant shall record this agreement with the Monterey County Recorder's office and a copy of the recorded notice shall be provided to the Planning and Building Inspection Department. **(Planning and Building Inspection Department)**
5. 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)**
6. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. That the applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of building permits. High intensity lighting shall not be used. **(Planning and Building Inspection Department)**
7. The antennas shall be painted earth toned gray or green. Nonreflective paint shall be used on the antennas. 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. To further ensure compliance, applicant shall submit photo-documentation of the painted antennas to said Director prior to final building permit issuance. **(Planning and Building Inspection Department)**

8. Native trees which are located close to the construction site shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. The oak tree identified on Sheet A1 of the project plans shall be transplanted to a location identified on the project plans pursuant to all recommendations in correspondence dated March 23, 2001 from Stephen Batchelder, Certified Arborist (Michael Brandman Associates).
9. Sprint will ensure during construction phase activities that telephone conduit is adequately protected. Such measures may include embedding the conduit in a slurry mix, or other equally protective means, in the area where Sprint conduit crosses the existing easement. (Planning and Building Inspection)
10. The applicant shall notify Underground Service Alert at 800-642-2444 prior to any excavation work to verify the possibility of any unknown substructures. (Planning and Building Inspection)

Prior to Final Building Inspection/Occupancy

11. Proposed development shall be flood proofed in accordance with County Ordinance #3272, to be certified by a registered civil engineer. (Water Resources Agency)

Continuous Permit Conditions

12. Sprint PCS 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, Sprint PCS 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.
13. The applicant shall enter into a site restoration agreement subject to the approval of the Director of Planning and Building Inspection and County Counsel. The site shall be restored to its natural state within six months of termination of use or abandonment of the site.
14. If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (150 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 Department)
15. The tower shall not exceed 60 feet in height. (Planning and Building Inspection Department)
16. The location, type and size of all antennas, satellite dishes, towers, and similar appurtenances shall be approved by the Director of Planning and Building Inspection. Any additional microwave dishes to be added to the tower must be approved by the Director of Planning and Building Inspection prior to installation. (Planning and Building Inspection Department)
17. The applicant shall contact the F.A.A. to publish a NOTAM (Notice to Airmen) in Monterey County about the location, etc. of the proposed structure. (Planning and Building Inspection Department)

18. The applicant shall obtain all required building permits from the Department of Planning and Building Inspection before commencing the operation. (Planning and Building Inspection Department)
19. The applicant shall obtain appropriate approvals from the California Public Utilities Commission and the Federal Communications Commission. (Planning and Building Inspection Department)
20. Antennas and support structures shall be permanently maintained and regularly painted as long as the facility is in operation. (Planning and Building Inspection Department)
21. The applicant shall agree in writing that, if future technological advances allow for reducing the visual impacts of the telecommunication facility, the applicant shall make such modifications to the facility accordingly to reduce the visual impact as part of the facility's normal replacement schedule. (Planning and Building Inspection Department)
22. The facility must comply with Federal Communications Commission (FCC) emission standards. If the facility is in violation of the then existing FCC emission standards, the Director of Planning and Building Inspection shall set a public hearing before the appropriate authority whereupon the appropriate authority may, upon a finding based on substantial evidence that the facility is in violation of the then existing FCC emission standards, revoke the permit or modify the conditions of the permit. (Planning and Building Inspection)

PASSED AND ADOPTED this 13th day of August, 2003, by the following vote:

AYES: Errea, Sanchez, Hawkins, Padilla, Brennan, Parsons, Diehl, Gonzalves, Rochester, Wilmot
 NOES: None
 ABSENT: None

Original Signed By:

JEFF MAIN, 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 Marina.

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