

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

In the matter of the application of:

**CARMEL VALLEY FIRE PROTECTION DISTRICT (PLN100494)**

**RESOLUTION NO. 11-003**

Resolution by the Monterey County Planning

Commission:

- 1) Finding the project statutorily exempt per Section 15270(a) of the California Environmental Quality Act Guidelines;
- 2) Deny the Extension of a previously approved Use Permit and Design Approval (PLN100206) to allow continued temporary cellular broadcasting from a portable Cell on Wheels (COW) structure. Request for temporary cellular broadcasting not to exceed six months in duration or until the Use Permit for the permanent structure has been approved and the permanent facility is constructed and is in operation, which ever occurs first.

(PLN100494, CARMEL VALLEY FIRE PROTECTION DISTRICT, 26 VIA CONTENTA, CARMEL VALLEY, CARMEL VALLEY MASTER PLAN (APN: 187-433-004-000))

**The Extension Request (PLN100494) of a previously approved Use Permit and Design Approval (PLN100206) came on for public hearing before the Monterey County Planning Commission on January 12, 2011. 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:** **INCONSISTENCY** – The Project, as proposed, is inconsistent with the applicable plans and policies which designate this area as appropriate for development.  
**EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
  - 2010 Monterey County General Plan,
  - Carmel Valley Master Plan,
  - Carmel Valley Master Plan, Inventory and Analysis,
  - Monterey County Zoning Ordinance (Title 21).b) The property is located at 26 Via Contenta, Carmel Valley (Assessor's Parcel Number 187-433-004-000, Carmel Valley Master Plan. The parcel is zoned PQP-D-S-RAZ or "Public/Quasi-Public with Design Control, Site Plan Review, and Residential Allocation Zoning Overlays". Monterey County Zoning Code, Section 21.40.050(O) allows wireless communication facilities as a conditional use, subject to approval of a Use Permit, pursuant to Section 21.64.310 (Regulations for the Siting, Design, and Construction of Wireless Communication Facilities). Although the project can be approved as a conditional use for this site (PQP), the project is inconsistent with the intent of the Zoning Code, to require responsible and reasonable development. The continued use of temporary facilities

without a clear alternative plan/remedy creates a situational “de-facto” permanent facility, which can not be considered responsible or reasonable development.

- c) 2010 Monterey County General Plan Policy CV-1.20 establishes guidelines for properties in the “D” (Design Control Overlay) areas. Policy CV-1.20(b) requires that all development be visually compatible with the character of the valley and immediate surrounding areas or enhance the quality of areas that have been degraded by existing development. The COW facility was approved for a limited timeframe, and lacks the ability to be adequately screened from the surrounding residential areas. The COW facility does not enhance the quality of the surrounding areas, but rather further degrades the visual aesthetics of the surrounding areas. Therefore, the COW facility is inconsistent with 2010 Monterey General Plan Policy CV-1.20.
- d) Section 21.64.310.C.4 (Regulations) of Monterey County Zoning Code, Title 21, requires that “wireless communications facilities be sited in the least visually obtrusive location possible. Appropriate mitigation measures shall be applied in instances where the facility is visible from a designated scenic corridor or public viewing area.” The temporary “cell on wheels” (COW) is visible from numerous public viewing areas, as well as Carmel Valley Road, a designated Scenic Corridor. The site can not be camouflaged or disguised in any way, due to the trailer and telescoping pole design of the temporary facility; therefore the project is inconsistent with design standards.
- e) Section 21.64.310.H.1.a (General Design Standards – Site Location) of the Monterey County Zoning Code, Title 21, states “site location and development of wireless communication 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 to the existing characteristics of the site.” The temporary “cell on wheels” (COW) is positioned on a fire station site, surrounding by residential uses. The tower height (60 feet) and lack of visual screening, is not consistent with the visual character or aesthetic values of the residential areas.
- f) Planning Commission approved and conditioned the temporary facility with a firm timeline to ensure that the site would not become semi-permanent. The permanent site proposed to combine the cell site with new improvements to the fire district’s radio equipment. Since that time the fire departments new equipment will be placed at another location and the proposed permanent cell site has moved to another location which will involve a complicated approval, plan check and construction process likely to take a year or more.
- g) The extension request was referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review on November 1, 2010. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did warrant referral to the LUAC because the project involves a Design Approval subject to review by the Planning Commission, and involves a discretionary permit which raises a significant land use concern involving visibility from the surrounding area. The LUAC recommended approval of the extension request with a 5-0 vote (2 members absent).
- h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN100494.

2. **FINDING:** **SITE SUITABILITY** – The site is physically unsuitable for the use proposed.
- EVIDENCE:** a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Carmel Valley Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. While respective reviewing departments did not indicate that the site is not suitable for the proposed extension, from a planning perspective, no foreseeable reason exists to allow continued temporary cellular broadcasting on a site not being selected for placement of a permanent facility.
- b) Exhibit F of the January 12, 2011 staff report shows coverage supplied to the surrounding communities with (Proposed 850 Coverage – COW – 60ft) and without (Existing 850 Coverage) the COW facility. The temporary COW facility currently provides “In-Building” and “In-Transit” service to the Carmel Valley Village area. Without the COW in operation, service would not be lost entirely, although the level of service would revert back to “Outdoor Service”; therefore the site is not required to maintain minimal levels of coverage to the Carmel Valley Village area.
- c) The Carmel Valley Fire Station is not a potential site within the County’s forthcoming NGEN communication network; therefore there will not be new equipment placed at the site. The public benefit of co-locating a permanent wireless facility on the site with public radio equipment no longer exists.
- d) Preceding findings and supporting evidence for PLN100494.
- e) Staff conducted a site inspection on September 30, 2010.
- f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN100494.

3. **FINDING:** **FEDERAL TELECOMMUNICATION ACT** – The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not 1) unreasonably discriminate among providers of functionally equivalent services; and 2) prohibit or have the effect of prohibiting the provision of personal wireless services.
- EVIDENCE:** a) The denial of the subject extension request does not unreasonably discriminate against AT&T or any other provider. It is not normal County practice to allow a temporary site in lieu of appropriate processing of a permanent site. The approval of the temporary site for an initial six month permit was a special circumstance intended to allow the applicant to provide continued service to their customers, while assurances were made by AT&T that a permanent site could be processed, permitted, and constructed in six months. There is now a temporary site in operation, however, the applicant is no closer to the approval or construction of a permanent facility than they were six months ago. In addition, the County has approved various other wireless communication sites for AT&T and other carriers including:
- PLN080572 – Darwin (AT&T) – 22 Rancho Fiesta Way, Carmel Valley
  - PLN080442 – Big Sur Land Trust (Verizon) – 3400 Red Wolf Drive, Carmel

- PLN080239 – Cypress Community Church (AT&T) – 681 Monterey-Salinas Hwy, Salinas
- PLN070295 – Metro PCS – 46 Camino de Travesia, Carmel Valley
- PLN060474 – Carmel Properties Company (Metro PCS) – 3665 Rio Road, Carmel Valley

No unreasonable discrimination or prejudice against AT&T or any other wireless provider has been exercised by the County.

- b) The denial of the subject extension request does not prohibit or have the effect of prohibiting the provision of personal wireless services. The temporary COW facility currently provides “In-Building” and “In-Transit” service to the Carmel Valley Village area. Without the COW in operation, service would not be lost entirely, although the level of service would revert back to “Outdoor Service”; therefore the site is not required to maintain minimal levels of coverage to the Carmel Valley Village area. Exhibit F of the January 12, 2011 staff report shows coverage supplied to the surrounding communities with (Proposed 850 Coverage – COW – 60ft) and without (Existing 850 Coverage) the COW facility.
- c) Preceding findings and supporting evidence for PLN100494.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN100494.

4. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by RMA - Planning Department, Carmel Valley Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. The project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
  - b) Preceding findings and supporting evidence for PLN100494.

5. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County’s zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.
  - b) Staff conducted a site inspection on September 30, 2010 and researched County records to assess if any violation exists on the subject property.
  - c) There are no known violations on the subject parcel.
  - d) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN100494.

6. **FINDING:** **CEQA (Exempt):** - The project is statutorily exempt from environmental review.

- EVIDENCE:** a) California Environmental Quality Act (CEQA) Guidelines Section

15270(a) statutorily exempts projects which a public agency rejects or disapproves.

b) See preceding and following findings and supporting evidence.

7. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.

**EVIDENCE:** Section 21.80.040(D) Monterey County Zoning Ordinance.

### **DECISION**

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

- 1) Find the project statutorily exempt per Section 15270(a) of the California Environmental Quality Act Guidelines; and
- 2) Deny PLN100494, based on the findings and evidence.

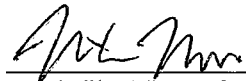
**PASSED AND ADOPTED** this 12<sup>th</sup> day of January, 2011 upon motion of Commissioner Ottone, seconded by Commissioner Diehl, by the following vote:

AYES: Getzelman, Vandever, Roberts, Rochester, Brown, Diehl, Ottone

NOES: Mendez, Padilla

ABSENT: Salazar

ABSTAIN: None



Mike Novo, Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON **JAN 19 2011**

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 **JAN 29 2011**

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.

# CARMEL VALLEY

CARMEL VALLEY  
VILLAGE

PROJECT SITE

PICT RD  
DELFINO PL

FORD RD

VIA CONTENTA

CARMEL VALLEY RD

APPLICANT: CARMEL VALLEY FIRE DISTRICT

APN: 187-433-004-000

FILE # PLN100494

Water



2500' Limit



300' Limit



City Limits



0 1,000  
Feet

