



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: 1/8/13
Placement: Departmental on 1/15/13
Estimated Tme: 0.5 hr on 1/15/13
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell Ph.D., Director, 568-2085
Director(s) Planning and Development
Contact Info: Alice McCurdy, Deputy Director, 568-2518
Development Review Division

SUBJECT: Crown Castle Distributed Antenna System Montecito Coastal Appeal (First Supervisorial District)

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

On January 8, 2013, set a hearing for January 15, 2013, to consider the Crown Castle appeal of the Montecito Planning Commission's November 28, 2012 denial of the Crown Castle Distributed Antenna System Upgrade project (Montecito Coastal), Case Nos. 12CUP-00000-00018 and 12CDP-00000-000038, located in County public rights-of-way (no Assessor Parcel Numbers)¹, in the Montecito area, First Supervisorial District.

On January 15, 2013, staff recommends the Board take the following actions:

1. Uphold the appeal, Case No. 12APL-00000-00021, thereby reversing the Montecito Planning Commission's denials of 12CUP-00000-00018 and 12CDP-00000-00038;
2. Make the required findings for approval of Case Nos. 12CUP-00000-00018 and 12CDP-00000-00038, included as Attachment A of the Montecito Planning Commission Staff Report dated November 8, 2012, (included as Attachment 2);

¹ For purposes of noticing, Assessor Parcel Numbers adjacent to the pole locations in the rights-of-way were used.

3. Determine that the project is exempt from CEQA, pursuant to State CEQA Guidelines Sections 15301(b), 15303(d) and 15304(f), as described in the Notice of Exemption included as Attachment C of the Montecito Planning Commission Staff Report dated November 8, 2012, (included as Attachment 2); and
4. Grant *de novo* approval of Case Nos. 12CUP-00000-00018 and 12CDP-00000-00038, subject to the conditions of approval in Attachment B of the Montecito Planning Commission Staff Report dated November 8, 2012, (included as Attachment 2).

Refer back to staff if the Board of Supervisors takes other than the recommended action for appropriate findings and conditions.

Summary Text:

Crown Castle's application for 12CUP-00000-00018 and 12CDP-00000-00038 was submitted on May 17, 2012. The project is a request by the agent, Sharon James, for the applicant, Crown Castle, for a Major Conditional Use Permit to allow additions to the existing Distributed Antenna System Network to accommodate an additional carrier (T-Mobile). The project would include five new facilities installed on existing utility poles, all of which would be collocated with existing DAS antennas for Metro PCS.

The application was deemed complete on October 19, 2012. Since the facilities are proposed to be located on existing utility poles, the project is considered to be an application for "collocated telecommunications facilities" as defined by the Federal "Shot Clock" Declaratory Ruling. Therefore the 90 day processing Federal "Shot Clock" timeframe applies to this application. Due to time requirements to process this project, Crown Castle initially granted an extension of the 90-day timeframe to the County, from October 15, 2012 to December 15, 2012.

The project was heard by the Montecito Planning Commission on November 28, 2012. At the November 28, 2012 hearing, the Montecito Planning Commission denied the project on the basis of aesthetics (see Montecito Planning Commission Action Letter dated November 29, 2012, included as Attachment 3 to this Board letter). Crown Castle appealed this action on December 10, 2012 (Appeal Application included as Attachment 1). The reasons for the appeal are discussed below, along with staff's responses to each appeal issue. Due to time requirements to process the appeal, Crown Castle granted the County a second extension of the "Shot Clock" timeframe, from December 15, 2012 to January 29, 2013, to provide for your Board's hearing. January 15, 2013 is the last regularly scheduled hearing of the Board of Supervisors to take action within the second Shot Clock extension.

Under Article II County Coastal Zoning Ordinance Section 35.182.5(A)(2), on appeal, the Board reviews the Planning Commissions' denial of an application for a Conditional Use Permit and Coastal Development Permit. Hearings on appeal are *de novo*, and your Board has authority to affirm, reverse, or modify the decision of the Commission. Article II Section 35.182.5(C), (D).

Despite the Montecito Planning Commission's action, staff continues to recommend approval of the proposed project for the following reasons: the project would utilize existing infrastructure to the extent feasible; the project involves collocation with the existing DAS antennas (utilized by Metro PCS), therefore reducing the proliferation of facilities throughout the community; and it would utilize small antennas and would vault the equipment underground at four of the five nodes, including a new vault at a site where the existing equipment is currently pole mounted. The proposed design is consistent with

the utilitarian aesthetic of the existing poles. Also, by utilizing some of the smallest antennas in the industry available in combination with vaulting the equipment where feasible, the proposed project is a visually unobtrusive means of deploying the system. Findings of approval are provided in Attachment A to the Staff Report dated November 8, 2012, included as Attachment 2.

Background:

Regulation of telecommunications facilities by local jurisdictions is subject to, and limited by, the Federal Telecommunications Act of 1996 and the Federal “Shot Clock” Ruling of November 18, 2009. Please see the “Background Information” Section 5.5 of the Staff Report dated November 8, 2012 for further discussion (included as Attachment 2 to this Board Letter).

Appellant Issues and Staff Responses:

Issue No. 1: “The decision of the PC is inconsistent with provisions of the County Zoning Ordinance and other applicable law.”

Staff Response

The appellant contends that the proposed project is consistent with County zoning requirements. Staff concurs that the project is consistent with the Article II Coastal Zoning Ordinance, the Coastal Land Use Plan, and the Montecito Community Plan. A detailed analysis of the project’s consistency in this regard is provided in the Montecito Planning Commission Staff Report dated November 8, 2012, Sections 6.2 and 6.3. In particular, the facilities were found to comply with the telecommunications development standards and policies related to aesthetics due to the small size of equipment being proposed, and due to the fact that the facilities would collocate on existing utility poles.

Additionally, the appellant contends that per the Middle Class Tax Relief & Job Creation Act “local agencies must approve collocation on existing telecommunications facilities.” The Middle Class Tax Relief & Job Creation Act (specifically Section 6409) preempts local zoning authority over “eligible modification requests.” However, Section 6409 applies to modifications of “existing wireless towers.” The FCC has previously defined “tower” as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”² Crown Castle’s proposed facilities would be mounted to existing utility poles, which were built for the primary purpose of supporting utility infrastructure of Southern California Edison, Verizon, and Cox Communications, among others, and not to support FCC-licensed antennas, which have only recently been added. Using the FCC’s definition, these utility poles are not “existing wireless towers,” and therefore Section 6409 does not apply.

Lastly, the appellant contends that Section 7901 of the California Public Utilities Code affords Crown Castle access to the public rights of way. Staff concurs that pursuant to Public Utilities Code Sections 7901 and 7901.1, Crown Castle has a statutory right to construct its facilities within the County rights-of-way. However they are still subject to County zoning regulation and approval.

² FCC Nationwide Programmatic Agreement for Collocation of Wireless Antennas, 47 C.F.R. Pt. 1, App. B

Issue No. 2: “The decision of the PC is not supported by the evidence presented for consideration”

Staff Response

The appellant contends that “no evidence was presented at the hearing that could substantiate the decision of the PC” and that “the facilities are no more obtrusive than existing utility infrastructure.” On appeal, the Board reviews this application de novo. The proposed facilities do indeed utilize very small equipment, in comparison to most telecommunications facilities. The antennas proposed are among the smallest antenna designs used in the industry. The support equipment is compact enough that it can be installed on the pole itself (although in four out of the five locations it is being vaulted underground). Staff concurs that the proposed facilities are visually consistent with the existing utility pole equipment, and therefore are not significantly visible. The only changes made to the design of the project since its positive conceptual review by the Montecito Board of Architectural Review (MBAR) hearing were changes to vault the equipment at all sites where it was found to be feasible, as recommended by the MBAR.

Issue No. 3: “The decision of the PC lacks fairness and impartiality”

Staff Response

The appellant contends “Crown Castle was denied a fair and impartial hearing.” This assertion in the appellant’s letter is based on comments by Commissioner Philips. The appellant contends that “Commissioner Phillips was unable to evaluate the project based on its own merits.” Regardless, the Board’s hearing is de novo. Staff suggests that given the growing reliance on cell phones, the increasing number of services and carriers, and the predicted need for exponentially more facilities over time, it is desirable to use the smallest possible equipment, dispersed to provide adequate service for the demand by constituents in the area of service. The project at hand proposes to utilize existing utility poles in the community’s landscape and is using equipment that is small enough to be visually compatible with the existing equipment on the utility poles. Equipment will be vaulted where feasible. Therefore, the project is consistent with the Article II Coastal Zoning Ordinance, Coastal Land Use Plan and the Montecito Community Plan.

Issue No. 4: “The decision of the PC represents an error or abuse of discretion”

Staff Response

The appellant contends that the MPC abused its discretion in denying the proposed project by its “disregard of Staff’s analysis and findings, to the inappropriate conduct of individual commissioners.” The proposed project requires a Conditional Use Permit under the jurisdiction of the Montecito Planning Commission. As procedures require, staff reviews the project for consistency with zoning requirements and County policies and provides the MPC with staff’s analysis of the project and recommendations for action. In this case, staff’s recommendation was for approval of the project subject to conditions of approval, based on the ability to make the required findings. These recommendations are provided in the Staff Report dated November 8, 2012, included as Attachment 2. Regardless of staff’s recommendations, the MPC has the authority to approve, deny, or conditionally approve the project on the basis of its own analysis and findings. In this instance, after consideration of the project during the November 28, 2012 hearing, the MPC voted to deny the project. This decision is fully within the

authority of the MPC. Regardless, on appeal, your Board reviews applications de novo. For the reasons stated herein and in the staff report to the MPC dated November 8, 2012, staff recommends that your Board reverse the decision of the MPC and approve the Crown Castle project.

Fiscal Analysis:

For developments which are appealable to the Coastal Commission under Section 35-182.6, no appeal fee is charged. Since this project is a Conditional Use Permit, it is appealable to the Coastal Commission. No appeal fee was charged. The costs for processing appeals are provided through funds in P&D's adopted budget. The total staff time for processing this appeal is estimated to be approximately 15 hours, or \$2,730. These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-138 of the adopted 2012-2014 fiscal year budget.

Special Instructions:

None. P&D Hearing Support has completed the noticing requirements

Attachments:

Attachment 1: Crown Castle Appeal Application and Letter dated December 10, 2012

Attachment 2: Montecito Planning Commission Staff Report dated November 8, 2012

Attachment 3: MPC action letter dated November 29, 2012

Authored by:

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cc:

Anne Almy, Supervising Planner – Planning and Development

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