



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: 7/1/14
Placement: Departmental
Estimated Time: 1 hr.
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell Ph.D., Director, 568-2085
Directors Planning and Development
Contact Info: Alice McCurdy, Deputy Director, 568-2518
Development Review Division
SUBJECT: Crown Castle Distributed Antenna System Montecito Inland Appeal (1st District)

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors consider the Crown Castle appeal of the Montecito Planning Commission's May 21, 2014 denial of the Crown Castle Distributed Antenna System project (Montecito Inland), Case No. 13CUP-00000-00009 located in County public rights-of-way (no Assessor Parcel Numbers)¹, in the Montecito area, First Supervisorial District and take the following actions:

1. Uphold the appeal, Case No. 14APL-00000-00016;
2. Make the required findings for approval of Case No. 13CUP-00000-00009, included as Attachment 4 of this Board Letter, including CEQA findings;
3. Adopt the Mitigated Negative Declaration 14NGD-00000-00004, included as Attachment C of the Montecito Planning Commission Staff Report Inland dated May 1, 2014 (see Attachment 2), and adopt the mitigation monitoring program contained in the updated conditions of approval included as Attachment 5 of this Board Letter; and
4. Grant *de novo* approval of Case No. 13CUP-00000-00009, as modified by the Applicant since the decision of the Montecito Planning Commission, thereby reversing the decision of the

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

Montecito Planning Commission, subject to the conditions of approval in Attachment 5 of this Board Letter.

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 13CUP-00000-00009 was submitted on April 23, 2013. The project is a request by the agent, Sharon James, for the applicant, Crown Castle, for a Major Conditional Use Permit to allow the installation of 18 new telecommunications facilities connected by a network of fiber optic cabling, installed aerially between the existing utility poles, with the exception of six (6) segments where the cabling would be undergrounded.

The application was deemed complete on December 24, 2013. 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, including seven hearings by the Montecito Board of Architectural Review, Crown Castle originally granted extensions of the 90-day timeframe to May 26, 2014. Upon denial of the project by the Montecito Planning Commission on May 21, 2014, the applicant provided an extension of the Shot Clock on May 23, 2014 to July 15, 2014 to allow for appeal to the Board of Supervisors.

Throughout the permit review process, including seven MBAR hearings, the applicant made numerous changes, revisions, and alterations, to their plans and the design of the network in response to concerns by staff, the public, MBAR and Public Works. The changes made include entirely relocating sites; using all existing poles rather than install two new poles as originally proposed; changing the antenna design; vaulting equipment; removing pole equipment and placing it onto the pedestals; and removing ground-mounted equipment to avoid impacts to traffic, trees, cultural resources, or Environmentally Sensitive Habitat areas. A number of the sites returned multiple times to the MBAR. During this process, the applicant continued to make adjustments to equipment to address the comments and concerns of the MBAR and residents, including changes such as rotating the pole-mounted equipment and antennas to more preferable angles on the poles, tailoring the type of pedestal design, and exploring alternate paint colors to be used to help blend the facilities into the existing environment. Each of these changes also required approval by SCE and the Joint Pole Association, which the applicant pursued during each renovation.

The Montecito Planning Commission heard the project on May 21, 2014. At the May 21, 2014 hearing, the Montecito Planning Commission denied the project due to concern that the project will result in visual blight (see Montecito Planning Commission Action Letter dated May 23, 2014, included as Attachment 1 to this Board letter). Crown Castle filed an appeal of this action on June 2, 2014.

Since receiving the denial from the Montecito Planning Commission, Crown Castle approached Southern California Edison again to address the requirements for the power pedestals and identify alternatives that would address the MPC's concerns. Given the denial of the project, SCE was amenable to allowing an alternative power design that would reduce the number of power pedestals from the overall network by "low vaulting" the power from one pedestal to power up to three node sites, instead of each pedestal powering just one or two node sites. This change requires a "low vault" box (approximately 12" x 12" x 6") be added to each node location to facilitate the distribution of power

throughout the system. This alternative power design would make the retention of the remaining pedestals even more critical, as they would be providing power for several sites. However, these changes would provide a reduction of twelve additional power pedestals, bringing the number of pedestals down from 21 pedestals as proposed when reviewed by the Montecito Planning Commission to 9 pedestals for the entire project (inland and coastal)—a considerable reduction in pedestals from the original project application which initially proposed 29 pedestals (one at each node site).

Additionally, the applicant looked for additional potential to vault more of the radio equipment. One site, MON01, was identified as a candidate where vaulting was feasible. An L-shaped box (above ground cabinet) was proposed for this site to avoid minor impacts to trees, but a vault can be used instead without causing significant environmental impacts. Per the MPC's direction, that vaulting is preferable over minor impacts to trees, the applicant has redesigned this site to include a vault.

Lastly, the applicant has communicated that they are withdrawing sites MON17 and MON22 from the proposed applications at this time.² The designs of these two sites proved to be considerably problematic and therefore the applicant is willing to explore providing coverage for these areas by alternate means or design. It should be noted that this will likely result in a new and separate permit application filed for these locations at a future date.

Staff recommends approval of the proposed project, as revised, because the project would appear to address some of the concerns of the MPC, and would provide service to the Montecito area, to meet the capacity demands on the network and ensure continual service as the existing technology ("3G") is phased-out. Furthermore, the facilities are collocating with existing utility infrastructure, consistent with the utilitarian aesthetic, the antennas and pole-mounted equipment would be no more obtrusive than the other utilities' pole equipment, such as transformers, meters, conversion boxes, phone terminals and splice cases. Similarly, the nine power pedestals would be no more obtrusive than other utility boxes in the rights-of-way throughout the community. Findings of approval are provided in Attachment 4 of this Board Letter.

Background:

The regulation of telecommunications facilities by local jurisdictions is subject to, and limited by, the Federal Telecommunications Act of 1996, the Federal "Shot Clock" Ruling of November 18, 2009, and the Middle Class Tax Relief & Job Creation Act. These regulations are discussed in the "Background Information" Section 5.5 of the Staff Report Inland dated May 1, 2014.

Appellant Issues and Staff Responses:

Issue No. 1: "The decision of the MPC is inconsistent with provisions of the County Zoning Ordinance and contrary to State and Federal law."

Staff Response

Crown Castle contends that the proposed project is consistent with County zoning requirements. The Montecito Planning Commission had substantial evidence and the discretion to find the project

² As such, the project description for the Inland project (13CUP-00000-00009) included as Attachment 5 of this Board Letter, has been revised to reflect the remaining 16 sites, removing MON17 and MON22 from this application. This brings the total number of sites for both the Inland and Coastal applications to a total of 27 sites.

inconsistent with the County's zoning ordinance. However, staff agrees that the project, as revised to address many of the aesthetic concerns raised by the MPC, is consistent with the Montecito Land Use and Development Code and Comprehensive Plan, including the Montecito Community Plan. A detailed analysis of the project's consistency in this regard is provided in the Montecito Planning Commission Staff Report Inland dated May 1, 2014, Sections 6.2 and 6.3. The facilities were found to comply with the telecommunications development standards and policies that address aesthetics due to the small size of the equipment being proposed, and due to the fact that the facilities would collocate on existing utility poles. The revised project, which eliminates the two nodes that received the most objections from the public, reduces the number of pedestals, and vaults to radio equipment at one additional site, further appears to address the concerns of the Montecito Planning Commission and ensures consistency with the County's ordinances and policies.

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."³ 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, Crown Castle's proposed facilities are still subject to County zoning regulation and approval.

Issue No. 2: "The Decision of the MPC, and its accompanying Findings of Denial, are not supported by the public record or by evidence presented for consideration."

Staff Response

The appellant contends that "no evidence exists in the public record, nor was any evidence presented at the hearing that could substantiate the decision of the MPC or its Findings." The appellant further contends that "the proposed facilities are better than, and definitely not more obtrusive than, existing utility infrastructure in the area." Additionally, the appellant contends that Crown Castle "has no authority to influence Southern California Edison's (SCE's) electrical meter pedestal designs" and that "This electrical pedestal, which is an ancillary or accessory use to Crown's node, is not regulated by the County Code."

The findings made by the MPC were based upon objection to the number and size of the power pedestals in the rights-of-way—which are part of the proposed development. The Montecito Planning Commission's decision was based upon substantial evidence in the record, including public testimony

³ FCC Nationwide Programmatic Agreement for Collocation of Wireless Antennas, 47 C.F.R. Pt. 1, App. B

and a node by node review of the project by the Commission. The major concern of the Commission stemmed from evidence that other similar DAS facilities did not require power pedestals of this size and number. Although those facilities may have provided different functionality, the MPC had evidence to believe additional flexibility could be granted by Southern California Edison in their technical standards for the power pedestals to further reduce their visibility.

Since the MPC's decision to deny the project at their May 21, 2014 hearing, Southern California Edison has worked with the applicant to identify alternative power designs, where a number of the pedestals could be removed by "low vaulting" the power from a single pedestal to power up to three node sites. This design has significantly reduced the number of pedestals that were of concern to the MPC. On appeal, the Board reviews this application *de novo*. The proposed facilities do indeed utilize 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 either installed on the pole itself, vaulted underground, or placed inside power pedestals. Furthermore, the power pedestals, as discussed above, have been significantly been reduced in number, in coordination with Southern California Edison. Staff concurs that the proposed facilities are visually consistent with the existing utility equipment in public rights-of-way, and therefore are not significantly visible. The Board of Supervisor's review is *de novo* and staff recommends approval of the project as revised.

Issue No. 3: "The Decision of the MPC lacks fairness and impartiality."

Staff Response

The appellant contends that "The MPC was unable to evaluate the Project on its merits and consistency with regulations," and instead employed "hard ball tactics of denial, unless the Applicant gives the MPC more time to review and rework the Project." As such, the appellant contends "Crown Castle was denied a fair and impartial hearing."

Staff does not agree with this appeal issue. The MPC followed their hearing procedures, first hearing from staff, then the applicant, and then the public. The MPC carefully reviewed the proposed project and discussed each node individually. The applicant was provided an opportunity to address the MPC several times during the Commission's deliberation. The MPC decision was supported by substantial evidence. The hearing and resulting discussion was fair and impartial.

Issue No. 4: "The Decision of the MPC 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," and by the "inappropriate conduct of individual commissioners." The proposed project requires a Conditional Use Permit under the jurisdiction of the Montecito Planning Commission. 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 for consistency with the applicable zoning requirements and policies. 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. At the May 21, 2014 hearing, staff presented the project, followed by the applicant's

presentation, and then public testimony. In this instance, after consideration of the presentations and public testimony, including several opportunities for the applicant to address the Commission, and after a node by node review of the project, the MPC had concerns about the aesthetics of the facilities as they were proposed, and voted to deny the project. This decision is fully within the authority of the MPC and was supported by substantial evidence. Regardless, on appeal, the Board's review of the application is *de novo*. For all the reasons stated herein and in the Montecito Planning Commission Staff Report Inland dated May 1, 2014, the staff recommendation is that your Board uphold the appeal and approve the revised Crown Castle project.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The costs for processing appeals are provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$648.26. P&D will absorb the costs beyond that fee, estimated at approximately \$2,730 (15 hours). These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-168 of the adopted 2013-2015 fiscal year budget.

Staffing Impacts:

None.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on July 1, 2014. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Authored by:

Megan Lowery, Planner, Development Review Division, P&D, (805) 568-2517

Attachments:

- 1) Montecito Planning Commission Action Letter, dated May 23, 2014
- 2) Montecito Planning Commission Staff Report Inland, dated May 1, 2014, also available online at: http://www.sbcountyplanning.org/boards/pc/mpc_documents_archive.cfm?DocID=14074
- 3) Crown Castle Appeal Application and Letter, dated May 30, 2014 (received June 2, 2014)
- 4) Findings
- 5) Conditions of Approval

6) Coverage Maps

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