

# county of ventura

October 4, 2016

Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
Ventura, CA 93009

**SUBJECT: De Novo Hearing to Consider the Request that a Conditional Use Permit Be Granted and a Mitigated Negative Declaration Be Adopted pursuant to the California Environmental Quality Act to Authorize the Installation, Operation and Maintenance of a Wireless Communication Facility (Case No. PL14-0128); Consideration of a Related Appeal of the Planning Commission's Decision Regarding the Same Matter; Supervisorial District No. 1.**

**A. STAFF RECOMMENDATIONS:**

1. **CERTIFY** that the Board of Supervisors has reviewed and considered this letter and all exhibits hereto, including the proposed Mitigated Negative Declaration (MND) [Exhibit 4], and the Mitigation Monitoring and Reporting Program (Exhibit 5, Condition of Approval Nos. 21 to 24), and has considered all comments received during the public comment and hearing processes regarding this proposed project;
2. **FIND** based on the whole of the record before the Board of Supervisors that the MND (Exhibit 4):
  - a. Was presented to the Board of Supervisors and that the Board of Supervisors reviewed and considered the information contained therein prior to approving the project; and,
  - b. Reflects the Board of Supervisors' independent judgment and analysis;
3. **APPROVE** and **ADOPT** the MND (Exhibit 4), and the Mitigation Monitoring and Reporting Program included in the project's Conditions of Approval (Exhibit 5);
4. **MAKE** the required findings to grant the requested Conditional Use Permit (CUP) (CUP No. PL14-0128) pursuant to Section 8181-3.5 of the Ventura County Coastal Zoning Ordinance (CZO);
5. **GRANT** CUP No. PL14-0128, subject to the conditions of approval (Exhibit 5);
6. **DENY** the appeal submitted by Anthony Brown in its entirety, and decline to refund any appeal fees;



7. **SPECIFY** that the Clerk of the Board of Supervisors is the custodian, and 800 S. Victoria Avenue, Ventura, CA 93009 is the location, of the documents and materials that constitute the administrative record of proceedings upon which the foregoing decisions are based.

**B. FISCAL/MANDATES IMPACT AND APPEAL FEES:**

The Appellant, Anthony Brown, submitted a \$1,000 appeal fee deposit for the appeal in accordance with the Board-adopted Planning Division Fee Schedule. The Applicant is responsible for an additional \$1,000 of the Planning Division's costs to process the subject appeal. If the appeal is granted by your Board in whole, the total of \$1,000 in appeal fees must be refunded to the Appellant. If the appeal is granted in part, your Board must determine at the time the decision is rendered what portion of the \$1,000 appeal charges should be refunded to the Appellant. Therefore, should your Board grant the appeal in part, your actions must include a determination regarding the appropriate refund to the Appellant.

County costs in excess of the appeal fees received from Appellant and Applicant will be funded out of the Planning Division FY 2016-17 budget. To date, the County cost to process the appeal of the Planning Commission decision to approve the proposed project is \$4,531.15. The Appellant is responsible for \$1,000 of these County costs. The Applicant is responsible for \$1,000 of these costs. Thus, the net cost to the County to process these appeals is currently \$2,531.13.

**C. PROPOSED PROJECT**

The Applicant, Verizon Wireless, requests that a CUP be granted to authorize the construction, operation and maintenance of a new wireless communication facility.

The proposed facility would include the following components:

- A 45-foot tall faux palm tree (i.e. mono-palm) antenna structure with the centerline of the antenna mounted at the 38 foot level of the tree.
- An equipment shelter that encompasses approximately 186 square feet.
- Six panel antennas installed on the mono-palm. Three antennas would be located at the 38-foot level of the mono-palm. Three antennas would be located at the 28-foot level of the mono-palm.
- Six remote radio units installed on the mono-palm. Three remote radio units would be located at the 20-foot, 3-inch level of the mono-palm. Three remote radio units would be located at the 14-foot, 9-inch level of the mono-palm.

- Two ray cap surge protectors installed on the mono-palm. One would be installed at the 14-foot, 9-inch level of the mono-palm and one would be located in the equipment shelter.
- Two GPS antennas installed on the roof of the proposed equipment shelter.
- A 30-kilowatt emergency backup generator.

All of the above components of the proposed wireless communications facility would be located within a 1,225 square foot lease area and installed on a concrete pad. A 6-foot tall chain link fence with green slats would be erected at the perimeter of the lease area. About 0.29 acres of existing native brush and vegetation is required to be removed to accommodate the new facility. Minimal ground disturbance is required in the form of removal and re-compaction of the soil to construct the foundation of the wireless communications facility. Water is not required to operate the facility. Access to the site is provided by a private unpaved driveway (Bates Ranch Road) that connects to Bates Road (Exhibit 3).

#### **D. DISCUSSION OF DE NOVO HEARING TO CONSIDER CASE NO. PL14-0128**

##### **Standard of Review and Authority of Your Board**

This land use matter comes before your Board as an appeal of the Planning Commission's June 23, 2016 decision to grant a CUP for the installation, operation and maintenance of the above-described wireless communications facility project for a 10-year period, and to adopt the MND for the project.

Under the Ventura County CZO, the Applicant's request for a CUP, and the related consideration of the MND prepared for the proposed project pursuant to CEQA, come to your Board for a hearing *de novo*, or anew. This means your Board is required to conduct a public hearing on the requested land use entitlement and CEQA document just as if the matter came to your Board in the first instance pursuant to sections 8181-9.1-5 et seq. of the CZO. In this regard, your Board has the authority to approve, deny, or approve with modifications the requested land use entitlement.

Your Board is not required to give any deference to the Planning Commission's findings or decision regarding the proposed project, or to the above-stated recommendations. Of course, your Board is free to make the same findings and decisions as the Planning Commission if, based on your independent judgment, your Board finds them to be persuasive and supported by substantial evidence in the record. While your Board should consider the appeal points raised by the Appellant, your Board is not limited by them. Whether or not the appeal should be granted is a consequence of your Board's final decision on the merits of the land use entitlement request, and not on the merits of the appeal points.

## **E. LAW GOVERNING DECISION**

### **Ventura County Coastal Zoning Ordinance**

Pursuant to sections 8174-4 and 8181-3.5 of the CZO, the proposed wireless communications facility project is allowed in the Coastal Agricultural zone where the subject property is located with the granting of a CUP. In order to grant the requested CUP, your Board must make the required findings specified in section 8181-3.5 of the CZO based on the whole of the record. These findings include:

1. The proposed development is consistent with the intent and provisions of the County's Certified Local Coastal Program [Section 8181-3.5.a].
2. The proposed development is compatible with the character of surrounding development [Section 8181-3.5.b].
3. The proposed development, if a conditionally permitted use, is compatible with planned land uses in the general area where the development is to be located [Section 8181-3.5.c].
4. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses [Section 8181-3.5.d].
5. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare [Section 8181-3.5.e].

The recommended actions include the making of these findings of approval by your Board.

### **California Environmental Quality Act**

An action by your Board to grant the requested CUP would require your Board to adopt the MND (Exhibit 4) as satisfying the requirements of CEQA, and to approve a Mitigation Monitoring and Reporting Program (Exhibit 5) that implements the measures identified in the MND that address the potentially significant environmental impacts of the project.

The proposed MND (Exhibit 4), includes public comments on the MND and staff's responses to those comments. The MND identifies potentially significant impacts of the project on biological resources (nesting birds, Monarch Butterflies, sensitive plants) and cultural resources. Mitigation measures were also identified to reduce these potential impacts to a less than significant level. The MND was prepared in accordance with the Initial Study Assessment Guidelines adopted by your Board.

1. **Findings for Adoption of an MND:** The CEQA Guidelines [Section 15074(b)] state that a MND shall only be adopted by a decision-making body if there is no substantial evidence, in light of the whole record, that the proposed project may have a significant adverse effect on the environment and that the MND reflects the Lead Agency's independent judgment and analysis.

The analysis in the MND concludes that the proposed project, absent mitigation, may have a significant effect on the environment. The identified mitigation measures, discussed in detail below (Section E.2) and in the mitigation monitoring and reporting program (Exhibit 5, Condition of Approval Nos. 21 through 24), are feasible and would reduce impacts to a less than significant level.

Based on the information provided in the MND, and in light of the whole record, staff recommends that your Board find there is no substantial evidence that the proposed project may have a significant adverse effect on the environment and that the MND (Exhibit 4) reflects the Board's independent judgment and analysis.

2. **Mitigation Monitoring and Reporting Program:** The CEQA Guidelines [Section 15091(d)] state that, when approving a project for which a MND has been prepared, the agency shall also adopt a program for reporting on, or monitoring, the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

A mitigation monitoring and reporting program (MMRP) has been prepared in compliance with the CEQA Guidelines. The mitigation measures included in the conditions of approval (Exhibit 5) constitute the MMRP for the proposed project. The requirements of the four mitigation measures are discussed in detail below.

#### **Mitigation Measures required for PL14-0128**

- a. Biological Resources- Monarch Butterfly Winter Roost Sites (Exhibit 5, Condition No. 21): The applicant shall avoid monarch butterfly roosts during all construction activities related to the proposed development. This can be accomplished by implementing either one of the following options:
  - i. Timing of construction: Prohibiting construction activities during the monarch wintering season (October 1 through March 1); or,
  - ii. Surveys and avoidance: Conduct site-specific surveys prior to construction activities during the monarch wintering season (October 1 through March 1) and avoid monarch roosts.



- b. Biological Resources- Pre-Construction Surveys for Nesting Birds (Exhibit 5, Condition No. 22): The applicant shall conduct all demolition, tree removal/trimming, vegetation clearing (including vegetation clearing for fuel modification), construction activities, and grading activities (collectively, "development activities") in such a way as to avoid nesting native birds. No development activities shall occur on the project site during the breeding and nesting season (February 1 – August 31), or if development activities must be conducted during the nesting season, by conducting a pre-development activities survey for active bird nests and avoiding nests until juvenile birds have vacated the nest.
- c. Biological Resources- Sensitive Plant Communities- Fuel Modification Plan (Exhibit 5, Condition No. 23): The applicant shall use a County-approved qualified biologist to prepare a Fuel Modification Plan for County Planning review and approval that minimizes impacts to the surrounding coastal sage scrub habitat and meets the Ventura County Fire Protection District's requirements to modify fuels surrounding structures. The Fuel Modification Plan shall specify the methods of modifying vegetation surrounding structures that will minimize indirect impacts to coastal sage scrub habitats (e.g., use of hand tools to prune vegetation, thinning shrubs rather than clear-cutting, avoiding rare plants, avoiding nesting birds). Because a portion of the fuel modification area is on or near a slope, the Fuel Modification Plan shall incorporate erosion control measures as necessary e.g. straw waddles, silt fencing, hydroseeding, erosion control blankets, etc. The Fuel Modification Plan shall include native, drought tolerant ground cover and shrubs that VCFPD deems not to pose a flammability risk. A County-approved qualified biologist shall monitor all fuel modification activities.
- d. Cultural Resources- Fencing for Protection of Archeological Resources (Exhibit 5, Condition No. 24): In order to prevent the illicit collection of archaeological resources, the applicant shall temporarily protect with fencing the area identified in the Phase I Archaeological study (MacFarlane Archaeological Consultants 2011) that has the potential for the presence of archaeological resources. Human encroachment in the fenced area (Exhibit 6) shall be prohibited. The fencing materials must consist of typical ranch wire or orange construction fence material.

The MND was revised subsequent to the Planning Commission hearing to clarify that only minimal ground disturbance would be required to install the proposed wireless communications facility. This minimal ground disturbance would be comprised of removal and re-compaction of the soil to construct the foundation for the facility. The minimal ground disturbance would have no visual impact on the public view corridor just south of the project site (i.e. Highway 101) due to the location of the facility site on a plateau that is more than 100 feet in elevation above the freeway.

Impacts of the proposed facility itself on visual resources would be less than significant. This conclusion is based on the lack of visibility of the ground mounted equipment from

public viewpoints due to topography and the stealth design of the antenna tower. The antenna tower is designed as a faux palm tree that would be located about 47 feet north of an existing row of palm trees that range from 17 feet to 27 feet in height. These palm trees are located at the edge of the steep terraced cliff that overlooks Highway 101 and would allow the proposed facility to blend in with, and not significantly alter, existing public views.

The clarification made to the MND did not affect any conclusions regarding the environmental effects of the project. Thus, recirculation of the MND is not required.

## **F. PROJECT HISTORY**

### **Permit History**

The property where the wireless communication facility is proposed is currently developed with a single family residence, garage and barn. These residential uses were authorized by Coastal Planned Development Permit No. LU11-0033. A portion of the subject parcel is currently in agricultural production with lemon and cherimoya trees. Discretionary permits granted on the parcel include the following:

- On September 2, 2011, the Planning Director granted Coastal Planned Development Permit (CPD) No. LU11-0033 to authorize the construction of a 4,071 square foot single family dwelling with an attached 1,535 square foot garage, and a 3,744 square foot accessory barn to support the onsite agricultural operation.
- On December 15, 2011, the Planning Director granted Site Plan Adjustment No. LU11-0145 to Coastal Planned Development Permit No. LU11-0033 to authorize the installation of solar panels and an emergency generator.
- On December 14, 2012, the Planning Director granted Site Plan Adjustment No. PL12-0162 to Coastal Planned Development Permit No. LU11-0033 to authorize changes in the design of the barn authorized by CPD LU11-0033.

## **G. PREVIOUS HEARING AND ACTION BY COUNTY DECISION-MAKERS**

### **Planning Commission Hearing and Decision of June 23, 2016**

On June 23, 2016, a public hearing was held by the Planning Commission to consider the proposed project (Case No. PL14-0128). The Planning Commission heard approximately one hour and 25 minutes of public testimony by staff, the Appellant, the Applicant and members of the public. Following the close of the public hearing and deliberation, the Planning Commission voted 4-1 to approve the project and adopt the MND as

recommended by staff.

## **H. APPEAL OF PLANNING COMMISSION DECISION**

On July 1, 2016, the Appellant, Anthony Brown, filed a timely appeal (Exhibit 11) of the Planning Commission's decision to grant the requested CUP and adopt the MND.

### **Grounds of Appeal and Staff Analysis:**

The grounds of appeal are reproduced verbatim below along with the staff response.

#### **Appellant Ground of Appeal No. 1**

*At no point in the public record, or the staff report to the Planning Commission, was an analysis done to consider alternative sites for this project, as required under CEQA section 21001.*

*An alternate site already exists nearby, that voice coverage maps show, greatly reduce this "gap in coverage". According to Federal Law, section 6409A, local governments are required to approve modification to existing wireless towers or base stations. For this reason, the proposed site is unnecessary.*

#### **Staff Response**

The "alternate site" referenced by the Appellant is a wireless communication facility mounted on a pole located in the County of Santa Barbara just west of the Ventura County line. In accordance with section 6409(a) of the federal Spectrum Act, non-substantial changes to an existing facility are eligible for an exemption from local discretionary permitting under certain circumstances. Federal law, however, does not mandate that a facility operator seek such changes or authorize a local agency to mandate that any facility be modified to accommodate another carrier. Should the operator of the separate facility referenced by Appellant seek to expand under the provisions of Section 6409(a), an application would have to be filed with, and processed by, the County of Santa Barbara. The County of Ventura has no authority to mandate land use actions in the County of Santa Barbara. Furthermore, the County of Ventura cannot base its land use decisions on speculative discretionary decisions that may be made in the future by the decision-makers of another jurisdiction.

The MND that was prepared for the proposed project concludes that no significant impacts would result from the installation, operation and maintenance of the proposed wireless communications facility. The five mitigation measures (Exhibit 5, Condition Nos. 21 through 24) identified in the MND that have been incorporated into the proposed conditions of approval would reduce the potentially significant environmental effects of



the project to a less than significant level.

Given the lack of significant environmental effects that would result from the proposed project, a detailed analysis of a project alternatives is not warranted or required. In accordance with CEQA Guideline Section 15126.6(a), an alternatives analysis is only required for environmental impacts deemed significant. The Applicant has demonstrated, with coverage maps and a Line of Site survey (Exhibit 3), that the proposed facility with a 45-foot tall antenna structure is the least intrusive means available for the carrier to fill a significant coverage gap. The County is required under federal law to allow a wireless communication provider to fill a significant coverage gap in its service area with the least intrusive means.

The nearest County of Ventura-permitted wireless communication facility (authorized by CUP No. LU08-0048) is located about 7,781 feet southeast of the project site, adjacent to the Southern Pacific Railroad and Highway 101 and near the community of La Conchita. The facility is a 35-foot monopole operated by American Tower. According to the Applicant's Radio Frequency Engineer (Exhibit A), the location and height of the proposed facility above Highway 101 would achieve coverage objectives by providing service to the north bound lanes of Highway 101, areas south of Carpinteria and the community of Rincon Point. A direct line of site cannot be adequately achieved between the wireless communication facility authorized by CUP No. LU08-0048 and the proposed project site due to the existing terrain, and vegetation between the two sites. The location of the proposed mono-pole on the ridgeline above Highway 101 is required in order to achieve the line of site needed to successfully achieve Verizon's coverage objectives in the Rincon Point area of the County.

Based on the above discussion, the ground of appeal is without merit.

### **Appellant Ground of Appeal No. 2**

*This parcel, 008-0-160-450, is actually prime agriculture, if not unique. The proposed cell site has been intensively farmed until the last few years, and is subject to Land Conservation Act Contract LCA 12-4.10. This contract requires that 90% of the parcel be in agricultural production. At no point in the public record, or the Staff report to the Planning Commission, is there an analysis by the AG Preserve Committee, to ensure that this project will not invalidate this contract.*

### **Staff Response**

The parcel where the proposed facility would be located is currently subject to a Land Conservation Act Contract (LCA Contract No. 12.40). This contract requires 90 percent of the parcel to be in agricultural production. An LCA contract is an agreement between the County and a qualifying landowner that restricts contracted land to agricultural or open space uses for 10 years. In exchange for the land use restriction, the contracting

landowner receives preferential property tax treatment.

It appears the property owner is not in compliance with the terms of LCA Contract No. 12.40. The County Planning Division is working with the property owner to bring the site into compliance with the terms of the contract.

The proposed project involves the use of 1,225 square feet (0.03 acre) of land and will require about 0.29 acre of brush clearing. No agricultural crops will be affected. This minor use of land on a 10.05-acre property will have a negligible effect on the ability of the landowner to fulfill obligations of the LCA contract.

Based on the above discussion, the ground of appeal is without merit.

**Appellant Ground of Appeal No. 3**

*The Staff Report shows efforts to consider the potential impacts to the public, even at great distances. However, it shows little concern for the immediate neighbors who will be impacted daily by this new commercial use, in a beautiful agricultural setting.*

**Staff Response**

As discussed in Staff Response to Appeal Ground No. 1 above, the MND concludes that no significant impacts would result from the installation, operation and maintenance of the proposed wireless communications facility. The five mitigation measures (Exhibit 5, Condition of Approval Nos. 21 through 24) would reduce the potentially significant environmental effects of the project to a less than significant level. Furthermore, no adverse effects on the neighboring properties or uses has been identified. As indicated in the Planning Commission staff report (Exhibit 1), the finding that the project is compatible with the surrounding land uses can be made.

The Planning Division mailed the Notice of Intent to Adopt the MND and the notice of the Planning Commission hearing to owners of property within 300 feet and residents within 100 feet of the property on which the project site is located. A legal ad was also placed in the *Ventura County Star*. In addition, the owners of property in the Rincon Point community located south of U.S. 101 were notified of both the MND and the public hearing. Public comments received are included in the MND along with a staff response.

The nearest offsite single family residence is located 397 feet northwest of the proposed facility. The resident(s) and owner of the parcel this residence is located on were notified of the Planning Commission hearing and were mailed the Notice of Intent to Adopt the MND. No public comments were received from either party regarding the proposed project. In addition, no public comments were received from the property owners and residents of the four parcels located along Bates Road nearest to the project site.

Based on the above discussion, the ground of appeal is without merit.

**Appellant Ground of Appeal No. 4**

*The project as proposed, encroaches onto other parcels in order to meet Fire Department conditions. The public record does not show any contact to affected property of the encroachment.*

**Staff Response**

Parcel Map Waiver Lot Line Adjustment No. 1157 was recorded with the County Recorder on April 8, 2003. This document identifies an existing 20-foot wide access easement (Exhibit 12, Parcel 2, detail A) connecting the subject property to the public Bates Road. This easement was established in 1932 for access and utility purposes (Exhibit 12, page 7). Thus, the Applicant has the authority to use the easement to access and maintain the proposed facility.

Based on the above discussion, the ground of appeal is without merit.

**Appellant Ground of Appeal No. 5**

*The Planning Commission made no condition for minimum maintenance standards, nor are there any conditions as to the eventual dismantling of this site.*

**Staff Response**

On June 23, 2016, the Planning Commission granted the requested CUP, subject to the recommended conditions of approval (Exhibit 5).

Recommended Condition of Approval No. 19 (Exhibit 5) addresses the removal of the facility upon expiration of the CUP or abandonment of the site by the Applicant. The Applicant is required to notify the Planning Division, remove the facility and all appurtenant structures and restore the premises to the conditions existing prior to the issuance of the CUP, within 60 days of the expiration of the CUP, or abandonment of the use.

The Applicant is required to maintain the wireless communication facility and all appurtenant structures and uses within the lease area, in conformance with the project description, as stated in proposed Condition of Approval No. 1 (Project Description) of the CUP. Maintenance of the private road in the established road easement is the responsibility of the property owners. Any dispute over road maintenance responsibility and cost is a private civil matter between property owners and not a County issue.

Based on the above discussion, the ground of appeal is without merit.

**I. APPELLANTS RECOMMENDATIONS:**

The Appellant requests that your Board take the following action (verbatim):

- *Review all the points of my appeal, staff report, etc.*

**J. NOTICE AND PUBLIC COMMENTS**

The Planning Division provided public notice regarding the Planning Commission hearing in accordance with the Government Code section 65091 and CZO section 8181-6.2 et seq. The Planning Division mailed notice to owners of property within 300 feet and residents within 100 feet of the property on which the project site is located and placed a legal ad in the *Ventura County Star*. Property owners and residents of the parcels located in the residential development on Rincon Point were also notified of the Planning Commission hearing. Interested members of the public who requested notification about the proposed project were also contacted. The owners and residents of a total of 87 parcels were notified.

Public comments received are included in the MND (Exhibit 4) along with a staff response. As of September 15, 2016, one public comment has been received. Mr. Paul Albritton of McKenzie and Albritton, LLP submitted documentation regarding the need for the proposed facility and an alternative site analysis (Exhibit 13) for the proposed project.

This Board letter was reviewed by County Counsel, the Auditor-Controller and the County Executive Office. If you have any questions regarding this matter, please contact me at (805) 654-2481, or Kristina Boero at (805) 654-2467.



Kim L. Prillhart, Director  
Ventura County Planning Division

For

**Attachments:**

*Note: Exhibits 1 through Exhibit A below are the planning documents provided to the Planning Commission for the June 23, 2016 hearing.*

- Exhibit 1 Planning Commission Staff Report, dated June 23, 2016
- Exhibit 2 Aerial Location, General Plan and Zoning Designations, and Land Use Maps