



MARIN COUNTY
 COMMUNITY DEVELOPMENT AGENCY
 BRIAN C. CRAWFORD, DIRECTOR

STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR			
MARIN MUNICIPAL WATER DISTRICT USE PERMIT & DESIGN REVIEW			
Item No:	H1	Application No:	UP 09-04 & DR 09-02
Applicant:	NSA Wireless, Inc.	Owner:	Marin Municipal Water District
Property Address:	50 Creekside Drive, San Rafael	Assessor's Parcel:	164-600-05
Hearing Date:	March 26, 2009	Planner:	Scott Greeley
RECOMMENDATION:		Denial	
APPEAL PERIOD:		April 9, 2009	
LAST DATE FOR ACTION:		April 19, 2009	

PROJECT DESCRIPTION:

The applicant, NSA Wireless, on behalf of AT&T and the property owner, the Marin Municipal Water District, is requesting Design Review and Use Permit approval to construct and operate a wireless telecommunications facility. The wireless antennas would be mounted to a 45-foot tall tree pole on the northeastern side of the property. The associated base station radio equipment cabinets will be placed in a 200-square-foot lease area also located on the northeastern side of the property. This 200-square-foot area is located within an overall lease area totaling 800 square feet. The project includes the installation and operation of new equipment and facilities.

GENERAL INFORMATION:

Countywide Plan: OS (Open Space)
 Zoning: OA (Open Area)
 Community Plan Area: N/A
 Lot size: 14,005 square feet
 Adjacent Land Uses: Open space and single-family Residential
 Vegetation: Suburban grasses and native trees
 Topography and Slope: Moderate to steeply sloping
 Environmental Hazards: None

ENVIRONMENTAL REVIEW:

Denial of the proposed second unit is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15270 of the CEQA Guidelines.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and the date of the public hearing. This notice has been mailed to all property owners within 600 feet of the subject property. The Community Development Agency has received no adverse comments from the public regarding this project.

PLAN CONSISTENCY:

The project is subject to policies of the Marin Countywide Plan, the Marin County Telecommunications Facilities Policy Plan, and the regulations of the Marin County Code, because it entails the construction of a telecommunications facility. The project is inconsistent with the mandatory findings for Use Permit and Design Review approval, as discussed in the attached Resolution.

ANALYSIS:

The applicant, NSA Wireless, on behalf of AT&T and the property owner Marin Municipal Water District, is proposing a new telecommunications facility to enhance and expand the GSM network for AT&T. GSM is a high frequency technology that lends itself to increased data streams for digital photographs, text messaging, web browsing, and other multimedia applications. The project site is zoned OA (Open Area) and located on Marin Municipal Water District (MMWD) land at 50 Creekside Drive in San Rafael, near an existing water tank and is uphill from an existing residential community. The rationale for the proposed project is that there is very poor AT&T signal reception found along Lucas Valley Road and no reception in the Creekside Drive area.

The Federal Telecommunications Facilities Act does not permit rejections of telecommunications facilities based on the arguments that such facilities may result in potential health impacts to neighboring communities if a radio frequency study is able to demonstrate that proposed safety precautions are undertaken and radio emissions are less than federally established health and safety exposure standards. The project is subject to the Marin Countywide Plan, the Marin County Telecommunications Facilities Policy Plan (TFPP), and the regulations of the Marin County Code.

The applicant is proposing a 45-foot tall monopole telecommunications facility with four panel antennas, a GPS antenna, 6 equipment cabinets and enclosures. The proposed telecommunications facility would also be able to co-locate additional carriers, and is to be disguised as a tree. The applicant has provided a radio frequency study, demonstrating that the radio frequency emissions, even at full co-location build out, would be below those which would constitute a health risk to the surrounding community. The proposed use is permitted as a conditional use in the OA zoning district and by the OS (Open Space) land use designation of the Marin Countywide Plan.

The applicant maintains in the project description letter, dated July 23, 2008, that the proposed project is consistent with the Marin Countywide Plan and the TFPP. The applicant claims that the proposed project limits the amount of necessary grading, tree removal, or significant impacts to the environment. In addition, the applicant indicates the project is consistent with the TFPP's preferences that such facilities be placed in select areas, including

public facilities sites. Additionally, the applicant notes that the proposed project is consistent with innovative design preferences, as outlined by the TFPP, by being of a stealth design and would be fenced off, so as to not be accessible by the public.

The site is within the Ridge and Upland Greenbelt (RUG) area as described by the Countywide Plan. These areas were designated and determined to be of high aesthetic and community value. Additionally, the project site is uphill of an existing residential community. For these reasons, as identified by the TFPP, the proposed project needs to be more carefully scrutinized.

Staff finds that the applicant's argument that because the proposed telecommunications facility is disguised as a tree and further screened by additional landscaping to be of an innovative and stealth design as erroneous. The TFPP does identify stealth designed facilities, to be appropriate dependent on site specifics. The proposed project site is on a hillside, with surrounding trees averaging an approximate height of 25 feet. As such, the 45-foot tall stealth tree would protrude above the surrounding trees in the area. By not being of a similar height to the surrounding trees in the area, the proposed "tree" actually stands out when viewed from certain areas within the residential community and Lucas Valley Road and could not therefore be considered of a truly stealth design. The project, as proposed, also does not comply with all relevant policies and programs of the Marin Countywide Plan, the Marin County Telecommunications Facilities Policy Plan (TFPP), and the regulations of the Marin County Code, as further outlined by the attached Resolution.

In addition, in a prior master plan application (MP06-3) by Cingular Wireless, now AT&T, submitted in December 2005 and brought before the Planning Commission on April 10, 2006, another proposal to expand the GSM network was proposed in a series of locations, along Lucas Valley Road. The proposal was for a series of "micro-cellular" facilities, which would be attached to existing utility poles and have virtually no visual impact to the community. The decision on the master plan was continued pending additional information requested by the Planning Commission. Cingular Wireless later decided not to follow through with that project. Due to the proposal being from the same company, the applicant has not provided rationale as to why micro-cellular facilities are not feasible or, why the proposed facility could not be revised to be more in scale with the trees found in the surrounding area. Lastly, according to Marin County Park and Open Space Department staff, AT&T does not have legal rights to use the fire road that permits access to the site. The fire road comes off of the Park and Open Space Department's land and has been granted to MMWD. MMWD does not have the authority to grant access to AT&T. As such, staff cannot recommend approval of the proposed project.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and deny the Marin Municipal Water District Use Permit and Design Review based on the findings in the recommended Resolution.

Attachments:

1. Recommended Resolution denying the project
2. Location Map
3. Assessor's Parcel Maps

4. Project Plans
5. Project description letter, dated July 23, 2008
6. Radio Frequency Analysis
7. Planning Commission Staff Report for MP06-3, Hearing Date April 10, 2006
8. MMWD letter, dated July 18, 2008
9. DPW comments, dated August 4, 2008
10. DPW-Communications Division email, sent August 7, 2008

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 09-____

A RESOLUTION DENYING THE MARIN MUNICIPAL WATER DISTRICT USE PERMIT AND
DESIGN REVIEW
50 CREEKSIDE DRIVE, SAN RAFAEL
ASSESSOR'S PARCEL 164-600-05

SECTION I: FINDINGS

- I. WHEREAS, the applicant, NSA Wireless, on behalf of the property owner, the Marin Municipal Water District, proposes to construct and operate a wireless telecommunications facility. The wireless antennas would be mounted to a 45-foot tall tree pole on the northeastern side of the property. The associated base station radio equipment cabinets would be placed in a 200-square-foot lease area also located on the northeastern side of the property. The 200-square-foot area is located within an overall lease area totaling 800 square feet. The project includes the installation and operation of new equipment and facilities. **The subject property is located at 50 Creekside Drive, San Rafael, and is further identified as Assessor's Parcel 164-600-05.**
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly-noticed public hearing on March 26th, 2009, to consider the merits of the project and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, denial of the proposed project is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15270 of the CEQA Guidelines.
- IV. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is not consistent with the Marin Countywide Plan for the following reasons:
 - B. The project is out of scale with the surrounding environment and fails to preserve community character and visual quality. (CWP Policies, DES-1.2, DES-4.1, DES-4.a, DES-4.b, DES-4.c, DES-4.d, DES-4.e, PFS-5.2 PFS-5.b)
- V. WHEREAS, the Marin County Deputy Zoning Administrator finds that the project is inconsistent with the Marin County Telecommunications Facilities Policy Plan (TFPP) and with the criteria for wireless communications facilities contained therein, as follows:
 - A. According to the TFPP, Page IV-21, *“one of the most successful techniques for minimizing or avoiding visual effects is to integrate antennas and other telecommunications equipment into the design of existing buildings and other structures so they are essentially invisible or not readily recognizable to the casual observer. Such stealth designs hold the most promise for no or low visual effects.”* Page IV-22, continues along these lines with, *“monopoles can be disguised as free-standing building elements and artificial trees (e.g. pines, oaks, palms, etc.), and special appurtenances on the monopole can conceal or draw attention away from the antenna array. The ability of these structures to minimize the visual effect of an antenna installation is highly dependent on site specifics, and it is difficult to draw general conclusions about their effectiveness.”* The proposed “tree” is not reflective of

a stealth design as it clearly stands out from the other trees by being significantly taller than others in the area, as well as it being above the ridgeline of the hill it would sit upon when looking east from Creekside Drive.

- B. *TFPP, Policy LU1.1: New telecommunications facilities should not be permitted in Ridge and Upland Greenbelt areas unless no other technically feasible and available site exists, provided, wireless communications facilities should be permitted in ridge and upland greenbelt areas where they are co-located with existing structures consistent with the policies and programs of this Telecommunications Plan; and*
TFPP, Program LU1.1.3: Site users and operators should be encouraged to share and/or consolidate facilities to the greatest extent possible. Facilities that may be shared may include buildings, access roads, parking areas, utilities, transmitters, towers and other structures, and antennas;

The proposed facility is located within a Ridge and Upland Greenbelt and is neither co-located with another telecommunications facility site, nor is the proposed site co-locating on the existing water tank.

- C. *TFPP, Policy LU1.3: Telecommunications facilities in ridgetop areas shall be sited in areas already in use for telecommunications to preserve the aesthetic and scenic value of undeveloped ridge lines in the County;*

This is a completely new facility and would stand out well above the existing average height of the surrounding trees as well as the ridgeline when looking east from Creekside Drive.

- D. *TFPP, Policy LU1.4: New construction or substantial expansion of telecommunications facilities should not occur in or near areas where they will cause land use conflicts, particularly in residential areas, unless there are no other suitable and available sites in more suitable areas; and*
TFPP, Program LU 1.4.1: Where a major telecommunications facility must be located in or close to a residential area, the facility shall be located to reduce its visual obtrusiveness and aesthetic contrast with the surrounding area;

The height of the proposed facility exceeds the ridgeline when looking east from Creekside Drive and it also exceeds the average height of the trees in the area by a substantial amount and does not result in a stealth design. The proposed project sits on a hill next to an existing downhill community and will be clearly visible and distinctive when viewed from certain places within the residential community.

- E. *TFPP, Program LU2.1.3: The County shall allow innovative design solutions to siting wireless communications facilities where they are not obtrusive, such as on light poles and other structures in the public right of way;*

The proposed design is not innovative or of a true stealth design, based on the scale of its surroundings. The proposed project is to enhance the area's GSM signal strength. It has not been satisfactorily demonstrated why a project of this size needs to be implemented, particularly when in December 2005, Cingular Wireless, now AT&T, proposed a series of "micro-cellular sites" (see Master Plan 06-3) which were to be located inconspicuously on existing telephone poles. These micro-cellular sites were

also to be used to enhance GSM signal strength in the area. Cingular Wireless, later withdrew this application after AT&T purchased Cingular Wireless.

- F. *TFPP, Policy VIS2.1: The sites of new telecommunications facilities or substantially modified ones should be selected to minimize potential visual effects; and*

TFPP, Program VIS2.1.1: To the greatest extent feasible, all telecommunications facilities should be sited below visually prominent ridgelines.

The proposed project will result in visual impacts on the local and surrounding community. It has not been demonstrated why a smaller “tree”, more in line with the scale of the surrounding trees could not be utilized, nor why a series of micro-cellular sites could not be used to achieve the same ends and not create any visual impacts.

- G. *TFPP, Policy VIS2.2: Buildings, towers, and antennas should be located on each site and designed in a manner which minimizes visual effects; and*

TFPP, Program VIS2.2.8: The placement of towers, equipments buildings, etc. within a particular site should avoid or minimize encroachment into scenic views or otherwise cause adverse visual effects, particularly from any adjacent residential development or public viewpoint.

The project area is visible from Lucas Valley Road, Creekside Drive, and the downhill community. The proposed scale is out of proportion with the surrounding community. In addition, the telecommunications facility, while fenced off, is near an adjacent downhill neighborhood, and can easily be approached by the public.

- VI. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is not consistent with all of the mandatory findings to approve a Use Permit (Marin County Code Section 22.48.040) for the following reasons:

- A. **The proposed use is allowed, as a conditional use, within the subject zoning district and complies with all of the applicable provisions of this Chapter;**

The proposed project is permitted as a conditional use for the OA zoning district and complies with all other applicable provisions of the Use Permit ordinance, however, as noted above in Finding V, the project is inconsistent with the Marin County Telecommunications Facilities Policy Plan (TFPP). Therefore, the project is inconsistent with this finding.

- B. **The proposed use is consistent with the Countywide Plan and any applicable Community Plan and Local Coastal Program;**

While the proposed use complies with the permitted uses of the OS land use designation, as noted above in Finding IV, the project as proposed does not comply with all policies of the Countywide Plan. Therefore, the project is inconsistent with this finding.

- C. **The approval of the Use Permit for the proposed use is in compliance with the California Environmental Quality Act (CEQA);**

The project is not subject to the California Environmental Quality Act (CEQA), since it cannot be approved.

D. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity;

As noted above in Finding V, the proposed project is out of scale with its natural surroundings and the neighboring community. Therefore, the project is inconsistent with this finding.

E. The proposed use would not impair the architectural integrity and character of the zoning district in which it is to be located;

The proposed project, a telecommunications tower disguised as a tree, is permitted as a conditional use for the OA zoning district, however its design is out of proportion with its surrounding natural environment. As noted in Finding V and the Telecommunications Facilities Policy Plan, consideration of the Ridge and Upland Greenbelt area and, if applicable, nearby residential communities need to be made in the review of new or additions to existing telecommunications facilities if found in these areas. The proposed use is out of character and scale for the community. Therefore, the project is inconsistent with this finding.

F. That granting the Use Permit will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located;

The project has been determined by the submitted radio frequency analysis to have no significant potential health risks based on its location. It cannot be found however, to be in the public interest to have a proposed telecommunications facility out of proportion with the surrounding environment and due to its size, not of a stealth design as described in the Telecommunications Facilities Policy Plan. Therefore, the project is inconsistent with this finding.

VII. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is not consistent with all of the mandatory findings to approve a Design Review (Marin County Code Section 22.42.060) for the following reasons:

A. The proposed development provides architectural design, massing, materials, and scale appropriate to and compatible with the site surroundings and the community;

As noted in Findings IV, V, and VI, the proposed tree, with which the telecommunications facilities pole is to be disguised as, is completely out of proportion and scale with the surrounding trees it is to blend in with and does not utilize a stealth design. Therefore, the project is inconsistent with this finding.

B. The proposed development results in site layout and design (including building arrangement, exterior appearance, heights, setbacks, drainage, fences and walls, grading, lighting, signs, etc.) that will not eliminate significant sun and light exposure, views, vistas, and privacy to adjacent properties; that will not result in light pollution, trespass, and glare; and that will not adversely affect rights-of-way or pathways for circulation;

The project is located on open space lands and is several hundred feet from the nearest residence. The proposed facility should therefore not have an impact on light, glare, and privacy. The applicant however does not have legal right to utilize the fire road which provides access to the site. Therefore, the project is not consistent with this finding.

- C. The proposed development will provide appropriate separation between buildings and will be properly and adequately landscaped with maximum retention of trees, native plants, and other natural features consistent with fire safety requirements;**

The project is meant to be disguised as a tree in order to prevent the need for it to be screened by landscaping and to be considered of a “stealth design” as described in the Telecommunications Facilities Policy Plan. The “tree” however stands out because of its size in relation to the surrounding trees, which calls a certain level of attention to itself, and therefore fails to meet a stealth design. Therefore, the project is not consistent with this finding.

- D. The proposed development will minimize cut and fill, the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads);**

The project site is accessed by an existing roadway utilized by the Marin Municipal Water District in order to gain access to the nearby water tower. The project site itself does not require substantial grading due to its size. The amount of total grading is therefore minimal. Therefore, the project is consistent with this finding.

- E. The proposed development complies with the Single-family Residential Design Guidelines and the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards);**

The Single-family Residential Design Guidelines are not applicable in the review of this project.

The proposed project is not consistent with all of the Planned District Development Standards, including the following standards:

- Construction shall not occur on top of, or within 300 feet horizontally, or within 100 feet vertically of visually prominent ridgelines; and
- Consistency with the Marin Countywide Plan.

- F. The project is designed to conserve energy and natural resources by meeting the green building standards found in Table 4-6 of the Marin County Code Chapter 22.42.060; and**

This finding is not applicable.

- G. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations,**

and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

This finding is addressed in Findings IV and VI(F).

SECTION II: ACTION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby denies the Marin Municipal Water District Use Permit and Design Review.

SECTION III: APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and a \$600 filing fee must be submitted in the Community Development Agency, Planning Division, Room 308, Civic Center, San Rafael, no later than 4:00 p.m. on April 9th, 2009.

SECTION IV: ACTION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 26th day of March, 2009.

JOHANNA PATRI
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
DZA Secretary