

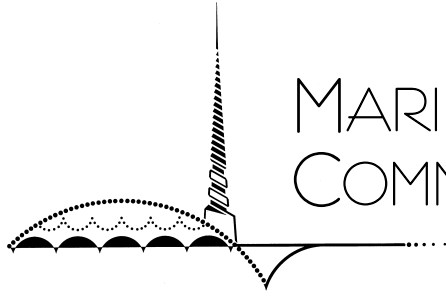
**MARIN COUNTY DEPUTY ZONING ADMINISTRATOR MINUTES**  
**Marin County Civic Center, Room #328 - San Rafael**  
**MEETING – July 30, 2009**

Hearing Officer        Jeremy Tejriran

Staff Present:        Lorene Jackson, Assistant Planner  
                             Neal E. Osborne, Planner

Joyce Evans, Recording Secretary

Convened at 9:05 A.M.  
Adjourned at 10: 04 P.M.



MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY  
BRIAN C. CRAWFORD, DIRECTOR

**NOTICE OF DECISION**

Applicant's Name: **NORTH MARIN COUNTY WATER DISTRICT**

Application (type and number): Use Permit (Ex 09-21)

Assessor's Parcel Number: 125-090-07

Project Location: 3015 Novato Boulevard, Novato

For inquiries, please contact: Lorene Jackson, Assistant Planner

Decision Date: July 30, 2009

**DETERMINATION: Approved with Conditions**

Minutes of the July 30, 2009, Deputy Zoning Administrator's hearing are attached specifying action and applicable conditions 1-24.

Marin County Community Development Agency

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Jeremy Tejirian  
Hearing Officer

**C1. USE PERMIT (UP 09-21) AND DESIGN REVIEW (DR 09-56):  
NORTH MARIN COUNTY WATER DISTRICT**

A proposal to consider construction and operation of a new wireless telecommunications facility for Verizon Wireless. The facility would consist of a 70-foot tall monopole and four flush mounted antennas on the monopole in a "slim line" design to expand the coverage area of the Verizon Wireless telecommunications network west of Novato in the Stafford Lake environs. The telecommunication facility would be located within an approximately 888-square foot lease area in a slightly expanded existing fenced area (6-foot tall chain link with 1.5-foot of barbed wire top). The tower would be mounted on a new concrete slab set into the hill with 4-foot tall retaining walls, an 11.5 –foot tall 182 square foot equipment shelter, and a diesel fuel (with a 210-gallon storage tank) powered 60 KW electricity generator for emergency power supply. The facility would be painted a shade of green identified as Benjamin Moore 686 "crisp romaine" to blend into the background of oak and bay trees. The project is zoned A2-B4 (Limited Agriculture, 1 acre minimum lot area) The subject property is located at **3015 Novato Blvd., Novato**, and is further identified as **Assessor's Parcel 125-090-07**.

In response to the Hearing Officer, staff summarized the contents of her supplemental memorandum dated July 29, 2009 regarding modifications to SECTION 1: FINDINGS, Subsection V: A.; SECTION 1: FINDINGS, Subsection VII: B., & E; and SECTION 11: CONDITIONS OF APPROVAL, 2a.

The public testimony portion of the hearing was opened.

Peter Hilliard, Verizon Wireless spoke acknowledging receipt of the supplemental memorandum and concurring with the staff report and Conditions of Approval. In response to the Hearing Officer's request to disguise the tower as a conifer, the applicant explained that in proposing the slim line design, the number of antennae's were reduced from ten to four, the tower would clear nearby utility lines, and would be less visible. The applicant explained that changing to a conifer design would increase the height of the tower and may require the facility to be cut further into the hillside.

The public testimony portion of the hearing was closed.

The Hearing Officer noted that this project was not consistent with the Telecommunications Facilities Policy Plan 2.2.10, which states that monopoles should be disguised with a stealth design if they are visible. He approved the project with the following modifications to the resolution:

- **SECTION II: CONDITIONS OF APPROVAL 1:** Revise description to say: Pursuant to Chapters 22.48 (Use Permit) and 22.42 (Design Review) of the Marin County Code, the North Marin Water District (Verizon Wireless) Use Permit and Design Review are approved to construct and operate a new wireless telecommunications facility for Verizon Wireless. The facility is approved to consist of a 75-foot high monopole disguised as a conifer tree. All equipment is approved to be located within an approximately 888-square foot lease area in a slightly expanded existing fenced area (6-foot tall chain link with 1.5-foot of barbed wire top). The tower is approved to be mounted on a new concrete slab set into the hill with retaining walls not exceeding 8 feet in height, an 11.5 –foot tall 182 square foot equipment shelter, and a diesel fuel (with a 210-gallon storage tank) powered 60 KW electricity generator for emergency power supply. The subject property is located at **3015 Novato Boulevard, Novato**, and is further identified as **Assessor's Parcel 125-090-07**.

- **SECTION II: CONDITIONS OF APPROVAL 2** Revise **(1)**: The approved monopole shall resemble a pine tree or similar conifer to blend with the surrounding woodland. To allow clearance from the hillside and nearby utilities, branch features may begin up to 25 feet above the ground. To accommodate the tree design, the monopole may attain a maximum height of up to 75 feet. Similarly, to house the new design, the concrete slab may be cut into the hillside with a higher retaining wall and **(2)**: Revise sheet T-2 to delineate correctly the location of the approved project relative to the Marin Countywide Trails Plan.

The Hearing Officer concurred with staff's analysis and approved the North Marin Water District Use Permit and Design Review, based on the Findings and subject to the conditions in the revised Resolution.

The Hearing Officer informed all parties of interest that this action may be appealed to the Marin County Planning Commission within ten (10) working days.

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 09-129

A RESOLUTION APPROVING  
THE NORTH MARIN WATER DISTRICT (VERIZON WIRELESS)  
USE PERMIT (UP 09-21) AND DESIGN REVIEW (09-56)  
3015 NOVATO BOULEVARD, NOVATO

ASSESSOR'S PARCEL 125-090-07

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**SECTION I: FINDINGS**

- I. WHEREAS On Air, LLC, has applied on behalf of the owners, the North Marin Municipal Water District, for a Use Permit and Design Review to construct and operate a new wireless telecommunications facility for Verizon Wireless. The facility would consist of a 70-foot tall monopole with four flush mounted antennas in a "slim line" design. The proposed project would expand the coverage area of the Verizon Wireless telecommunications network west of Novato in the Stafford Lake environs. All equipment would be located within an approximately 888-square foot lease area in a slightly expanded existing fenced area (6-foot tall chain link with 1.5-foot of barbed wire top). The tower would be mounted on a new concrete slab set into the hill with 4-foot tall retaining walls, an 11.5-foot tall 182 square foot equipment shelter, and a diesel fuel powered 60 KW electricity generator (with a 210-gallon storage tank) for emergency power supply. The facility would be painted a shade of green to blend into the background of oak and bay trees. The subject property is located at **3015 Novato Boulevard, Novato**, and is further identified as **Assessor's Parcel 125-090-07**.
  
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on July 30, 2009 to consider the merits of the project, and hear testimony in favor of and in opposition to the project.
  
- III. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines because the construction of a new telecommunications facility would not result in environmental impacts. The applicant has submitted a report prepared by Hammett & Edison, Inc., dated August 26, 2008, which evaluates human exposure to radio frequency electromagnetic fields from the proposed telecommunications facility. The report concludes that the facility will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not cause a significant impact to the public.
  
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan due to the following factors:
  - A. The proposed project is consistent with the PF-OS (Public Facilities and Open Space) land use designation for the project site and would not interfere with the existing public facility (water treatment) use of the immediate property and open space and recreation use of the larger parcel.

- B. The proposed project is consistent with the PFS-5.a, b, and d in that the proposed project is consistent with the goals and policies of the Marin County Telecommunications Facilities Policy Plan and the design of the proposed facility is compatible with other land uses, provides protection from vandalism and fire hazards, minimizes visual impacts, and minimizes potential health risks to people. Additionally, as conditioned, the applicant is encouraged to share and co-locate to the greatest extent possible facilities with other telecommunication site users, including buildings, access roads, parking areas, transmitters, towers, and antennas.
  - C. The proposed project would not impact water supply, fire protection, waste disposal, schools, traffic and circulation, or other services.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin County Telecommunications Facilities Policy Plan (TFPP) and with the criteria for wireless communications facilities contained therein, as follows:
- A. The TFPP states that wireless telecommunications facilities should be sited to avoid or minimize land use conflicts. The TFPP policies establish a general preference for non-residential sites for wireless facilities. TFPP policy LU 1.4 rank orders location preferences in seven categories:
    - 1. Industrial sites
    - 2. Commercial sites
    - 3. Public facilities sites
    - 4. Agricultural sites
    - 5. Mixed use sites
    - 6. Open space and recreational sites
    - 7. Residential sites

The subject property is developed with a water treatment plant, which as a public facility is ranked third in location preference, and is adjacent to agricultural sites, which are ranked fourth. There are no industrial or commercial facilities in the search ring for the coverage area.

The proposed telecommunications facility is compatible with the open space and rural character and use of the subject property and surrounding areas. The site is served by an existing access driveway. The facility would be located on an existing graded pad and would not require significant grading or tree removal, or result in other adverse environmental impacts. The project would not result in adverse visual impacts because existing vegetation and topography screen the facility from the public view along Novato Boulevard. Based on these factors, the facility is consistent with the location standards contained in the TFPP.

- B. The facility would allow Verizon Wireless to continue providing communications services for the west Novato Boulevard area and would allow the carrier to continue to provide a reliable source of wireless communications to residents, businesses, and emergency service providers in the County.
- C. The applicant submitted a report prepared by Hammett & Edison, Inc., dated August 26, 2008, which conclude that the existing facility would not result in any significant risks with respect to human exposure to radio frequency fields because the proposed facility would generate maximum ambient radio frequency levels that are below the applicable public exposure limit established by the Federal Communications Commission (FCC).

- D. The project site is located southeast of the North Marin Municipal Water District's water treatment plant below Stafford Lake Dam, about 480 feet from Novato Creek Road, and over 600 feet from Novato Boulevard. The proposed facility would be located on the lower slope of a heavily vegetated hillside above Novato Creek. The surrounding area is heavily wooded. Balloon tests and simulations indicate that the curves of the canyons and woodlands would screen much of the pole and antennas from public views along Novato Boulevard and Stafford Lake. The facility would be visible from a private road north of Novato Boulevard and directly across from the project site, but would blend into the backdrop of the surrounding vegetation.

Visual and aesthetic compatibility policies contained in the TFPP specify that telecommunications facilities should be sited and designed to avoid or minimize adverse visual effects. TFPP policy VIS 2 encourages minimizing visual affects with location and stealth design. Further, TFPP policy VIS 2.10 encourages a monopole to resemble a natural feature that is consistent with the visual character of the surroundings. Given the wooded setting, this is an appropriate situation for a monopole resembling a conifer, which has been incorporated as a condition of approval. Such a tower would blend into the natural setting. Additionally, to ensure that the facility blends visually with the surrounding background of hills and trees, the remainder of the facility (fencing, shelter, etc ) would be painted a matte non-reflective dark green. Overall, the proposed facility would be compatible with existing uses on the property and would not conflict with the visual character of the subject or surrounding properties.

- E. The facility would not create lighting impacts on surrounding areas because conditions of approval specify that exterior lighting shall be permitted for safety purposes only and shall be manually operated, low intensity, shielded, and directed downward to minimize visual effects on adjoining areas.
- F. Vehicular access for the proposed project site is provided from an existing private gated driveway. Parking is available from level areas at the end of the driveway. No additional road or parking area construction would be required for the operation of the facility.
- G. Except for brush and grass to be cleared for fire protection in the immediate area around the facility, the project would not require removal of vegetation. Existing trees surrounding the facility would provide the predominant screening of the facility from off-site views.
- H. The facility is located in a rural area. Noise levels associated with the operation of the facility would not exceed the ambient noise levels. With exception to routine maintenance visits by a cellular site technician, the facility would not generate other traffic trips to the property. In addition, maintenance visits would occur no more than twice per month and would typically occur during the day, between 7:00 a.m. and 5:00 p.m. Therefore, the proposed facility would neither generate significant levels of noise nor traffic.
- I. As conditioned, the facility would not significantly impair the visual conditions on and surrounding the subject property because the facility would be designed to resemble a conifer to blend into the existing backdrop of trees and would be screened from the primary off-site public views by existing trees and the topography in the canyon.

VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory Use Permit findings (Section 22.48.040 of the Marin County Code), as specified below.

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

The proposed project would be incidental to the primary public facility and open space use of the subject property. Pursuant to Marin County Code Section 22.08.030, the construction and maintenance of communication facilities, are permitted in A-2:B-4 zoning districts.

Public utility and service uses may be approved in the governing Agricultural zoning district by Use Permit pursuant to Section 22.48 of the Marin County Code when it is found to be necessary for public health, safety, convenience, or welfare. The telecommunications facility is part of the Verizon Wireless network, which provides wireless cellular and personal communication services to residents and businesses in Marin County and contributes to public safety, convenience, and welfare.

**B. The proposed use is consistent with the Countywide Plan and applicable Community Plans.**

Please see Section IV above.

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

Please see Section III above.

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

The proposed project would not result in significant adverse visual impacts because the height of the structure is appropriate for the existing use on the property, and is screened by existing vegetation and topography. Additionally, as conditioned, the monopole and antennae would be incorporated into the design of a conifer and the remaining facility painted with an appropriate, non-reflective green tone, which blends with the existing background of trees. This stealth design would avoid visual impacts from future requests for expanded use and co-location.

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

Please see Section V.D, E and I above.

**F. 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 would not result in any significant, public health risks with respect to human exposure to radio frequency radiation because the facility will operate well below the exposure limits set by the Federal Communications Commission (FCC). The grant of the proposed Use Permit on the subject property would not be detrimental to the health, safety, comfort, or welfare of persons working or residing in the surrounding neighborhood.



VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the Mandatory Findings for a Design Review per Section 22.42.060 of the Marin County Development Code can be made based on the following findings:

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

Please see Section V.D above.

- 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 would be located with adequate setbacks to adjoining properties and would not interfere with development on other properties. The project would be set into a vegetated hillside of a canyon and would not result in loss of light, air, privacy, or views in the neighborhood. Please also see Section V. A above.

- 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 facility would maintain large setbacks to all surrounding properties and would not interfere with the existing public facility use of the property. The proposed facility would be located within an area fenced off from Novato Creek Road that is not accessible to the public and more than a half mile from public trails (Doe Hill Fire Road and the Bbay Area Ridge Trail.) In addition, the facility would be a stealth design screened from off-site views by topography and existing vegetation.

- 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 would not result in substantial grading, retaining walls, tree removal, or other adverse physical effects on the environment.

- 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 proposed project is consistent with design standards because it 1) is clustered near the water treatment facility in the most accessible and least visually prominent location on the subject property, 2) is located more than 300 feet from the ridge, and 3) will be painted to blend into the natural environment unobtrusively, consistent with design standards for development.

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

Table 4-6 is designed for residential buildings and is not applicable to telecommunication facilities. Verizon Wireless considered the feasibility of using alternative fuels (biodiesel, solar, and wind turbine), which they determined to be impractical.

- 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.**

As noted in Section IV above, the proposed project would be consistent with the Countywide Plan. The project would be consistent with the zoning district regulations and would not be detrimental to the public health, safety, and welfare.

## **SECTION II: CONDITIONS OF APPROVAL**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Deputy Zoning Administrator hereby approves the North Marin Water District (Verizon) Use Permit subject to the conditions as specified below:

### Marin County Community Development Agency - Planning Division

1. Pursuant to Chapters 22.48 (Use Permit) and 22.42 (Design Review) of the Marin County Code, the North Marin Water District (Verizon Wireless) Use Permit and Design Review are approved to construct and operate a new wireless telecommunications facility for Verizon Wireless. The facility is approved to consist of a 75-foot high monopole disguised as a conifer tree. All equipment is approved to be located within an approximately 888-square foot lease area in a slightly expanded existing fenced area (6-foot tall chain link with 1.5-foot of barbed wire top). The tower is approved to be mounted on a new concrete slab set into the hill with retaining walls not exceeding 8 feet in height, an 11.5 –foot tall 182 square foot equipment shelter, and a diesel fuel (with a 210-gallon storage tank) powered 60 KW electricity generator for emergency power supply. The subject property is located at **3015 Novato Boulevard, Novato**, and is further identified as **Assessor's Parcel 125-090-07**.
2. Development and use of the facility shall conform to plans identified as **Exhibit A1**, entitled "Verizon Wireless, Little Mountain," consisting of 9 sheets prepared by L.D. Strobel Co, Inc, dated May 9, 2009, and **Exhibit C**, color sample, both exhibits received May 13, 2009, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
  - 1) The approved monopole shall resemble a pine tree or similar conifer to blend with the surrounding woodland. To allow clearance from the hillside and nearby utilities, branch features may begin up to 25 feet above the ground. To accommodate the tree design, the monopole may attain a maximum height of up to 75 feet. Similarly, to house the new design, the concrete slab may be cut into the hillside with a higher retaining wall.
  - 2) Revise sheet T-2 to delineate correctly the location of the approved project relative to the Marin Countywide Trails Plan.

3. The electromagnetic field (EMF) strengths or equivalent plane-wave power densities generated by the approved facility, in combination with other existing ambient sources of EMF, shall not expose the general public to EMF levels which exceed the Maximum Permitted Exposure levels for electric and magnetic field strength and equivalent plane-wave power density in the EMF emission guidelines adopted by the Federal Communications Commission (FCC). In the event the FCC adopts a more restrictive Maximum Permitted Exposure Level, or the County adopts a more restrictive EMF exposure standard if allowed by future changes in Federal law, the applicant shall demonstrate compliance with the more restrictive standard unless such a requirement is preempted by State or Federal law. The applicant shall demonstrate compliance by submitting a radio frequency report to the County within 90 days of the effective date of the standard or longer period as required by the applicant and subsequently approved by the Community Development Director. The radio frequency report shall determine conformance with the updated standard by calculating the EMF power levels of the approved facility in combination with other existing ambient sources.
4. This Use Permit may be revoked by the County should the approved facility, in combination with other existing ambient sources exceed an updated EMF standard unless the location, design, and/or operation of the approved facility is modified to meet the updated standard. Modifications of the approved facility shall be submitted to the Community Development Agency to determine if amendments to these permit approvals are necessary. This condition shall not apply if the County is preempted by Federal and/or State law, rules or regulations from applying an updated EMF standard after the approved facility has been constructed.
5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Use Permit and Design Review Conditions of Approval as notes.
6. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall enter into a standard Performance Agreement with the County and post a bond or other suitable security in order to guarantee removal of an abandoned facility. The approved facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a one-year period. Upon expiration of the Use Permit, all equipment, structures, and antennas shall be removed, and the site returned to its pre-existing conditions.
7. Exterior lighting shall be permitted for safety purposes only and shall be manually operated, low intensity, shielded, and directed downward to minimize visual effects. No exterior lighting is proposed or approved on the antennas as part of this application.
8. All visible components of the facility not incorporated as components of the tree design (including, but not limited to the fence and housing) shall be painted subdued matte-finish green, with a light reflective value (LRV) no greater than 8.5, to match the colors of the existing natural surroundings. Preliminary color options include the following:
  - a. The color presented in Exhibit C – Benjamin More 686, crisp romaine (light reflective value – 8.5)

- b. Tnemec brand, Foliage Green EN-08 paint/coating.

The color shall be field tested to ensure the color blends with the surrounding environment, and a specification sheet showing the color and LRV provided to staff PRIOR TO ISSUANCE OF A BUILDING PERMIT. The color of the facility shall be permanently maintained.

9. The approved facility shall operate in compliance with the noise exposure standards contained in the Marin Countywide Plan. Normal testing and maintenance activities shall occur between the hours of 7:00 a.m. and 5:00 p.m., Monday through Sunday, excluding emergency repairs. Normal testing and maintenance activities which do not involve the use or operation of telecommunications and maintenance equipment that is audible from nearby sensitive receptors may occur at all times. Back-up generators shall comply with the above-referenced noise standards, and shall only be operated during power outages, emergency occurrences, or for testing and maintenance as described above.
10. No tree removal or trimming of the tree canopy that provides visual screening of the facility and antennas shall occur unless the Agency Director grants prior authorization.
11. Utility extensions or connections shall be underground.
12. The applicant shall be responsible for ensuring that the number of construction vehicles is limited to the minimum number necessary to complete the project.
13. This Use Permit Renewal approval does not preclude the future approval of other telecommunications facilities on the subject property. The applicant shall cooperate with County efforts to utilize the subject property for shared location or co-location in the future if it is technically feasible and would minimize adverse affects related to land use compatibility, visual resources, public safety, and other environmental factors. Any increase in height of the antenna shall necessitate a stealth design, e.g. to look like a pine tree.
14. Any changes or additions to the project shall be submitted to the Community Development Agency, Planning Division for review and approval before the contemplated modifications may be initiated.
15. The applicant shall hold harmless the County of Marin or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, and employees to attack, set aside, void, or annul, this approval by the County of the North Marin Water District (Verizon Wireless) Use Permit and Design Review.
16. This Use Permit is subject to revocation procedures contained in Chapter 22.120 of the Marin County Code in the event any of the terms of this approval are violated or if the uses are conducted or carried out in a manner so as to adversely affect the public interest, health, safety, convenience, or welfare of the County.

#### Department of Public Works

17. All disturbed surfaces including but not limited to cut and fill slopes, building pads, driveways and areas cleared for vegetation shall be protected against erosion. MCC 24.04.625
18. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a surface runoff pollution prevention plan, which addresses both interim (during construction) and final (post construction) control measures hereinafter, referred to as Best Management Practices (BMP). MCC 24.04.627

19. If construction activity, equipment, vehicle and/or material delivery and storage causes damage to any existing facility (e.g. pavement, curb, gutter, sidewalk, landscaping) beyond normal wear and tear, as determined by the agency, then the permittee shall be responsible for the repair of same. MCC 24.04.016
20. A separate building permit is required for site/driveway retaining walls with a height more than 4-feet (or 3-feet when backfill area is sloped or has a surcharge).
21. BEFORE ISSUANCE OF A BUILDING PERMIT for the retaining wall in item 16 above, the applicant shall submit engineer's calculations for site/driveway retaining walls, signed and stamped by the engineer.

Novato Fire Protection District (NFPD)

22. Provide a minimum of 16 feet driveway clearance.
23. Provide and maintain 30 feet clearance fo brush and natvei grasses to bare eath around site fencing.
24. A NFPD permit is required to install the generator. National Fire Protection Association placards conforming to NFPD Standard #309 shall be installed.

**SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS**

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this approval by substantially completing all conditions of approval and commencing the allowed use by **July 30, 2011**, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 10 days before the expiration date above and the Community Development Agency staff approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050.B.3of the Marin County Code.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid until **July 30, 2019**, unless the conditions of approval are violated, in which case the Use Permit may be revoked. The applicant shall submit an application to renew the Use Permit at least 60 days prior to the expiration of the Use Permit. Should the Use Permit expire without benefit of a renewal, all equipment, structure, and antennas shall be removed and the site shall be returned to its preexisting conditions.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency – Planning Division, Room 308, Civic Center, San Rafael, before **4:00 p.m.** on **August 13, 2009**.

**SECTION IV: ACTION**

PASSED AND ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 30<sup>th</sup> day of July 2009.

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JEREMY TEJIRIAN  
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

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Joyce Evans  
DZA Secretary

- H1.      **A.   NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT:  
          FERRARI LAND DIVISION TENTATIVE MAP (LD 07-5), LOT LINE  
          ADJUSTMENT (LL 08-15) AND PRECISE DEVELOPMENT PLAN (DP 07-4)**
- B.   FERRARI LAND DIVISION TENTATIVE MAP (LD 07-5), LOT LINE  
          ADJUSTMENT (LL 08-15) AND PRECISE DEVELOPMENT PLAN (DP 07-4)**

A proposal to divide a 135.3-acre lot into two (2) lots and to adjust lot lines with an adjacent Ferrari lot (Parcel 2) of the Van Der Reis Division of Land. The subject property is Parcel One of the Van Der Reis Division of Land, recorded in Marin County Records on September 29, 1977 in Book 14 of Parcel Maps at page 35. The upper portion of this lot is located along the ridge that separates Nicasio Valley from San Geronimo Valley. A 114-acre Private Open Space Easement encumbered the upper portions of the parcel until it expired in August 2004. The Marin County Department of Parks and Open Space acquired a new 110-acre Open Space Easement for the ridge and upper portions of the property in 2008. The proposed lot areas would be 127.1 acres for Parcel A, 8.8 acres for Parcel B and 23.8 acres for Parcel 2. **The project address is 1375 and 1401 Nicasio Valley Road, Nicasio, California and are currently proposed are identified as Assessor's Parcels 121-160-22, -23, -25, -41, and -45.**

In response to the Hearing Officer, staff summarized the supplemental memorandums dated July 28, and July 29, 2009 regarding additional comment letters and e-mails from Irving L. Schwartz. The comments request an extension of time to pay in-lieu affordable housing fees and changes to the Conditions of Approval. Staff reviewed the comments and some changes to the Conditions of Approval in a revised resolution are recommended.

Michel Jeremias, Department of Public Works, reviewed the Department of Public Works requirements and clarified that the applicants must comply with best management practices for construction pursuant to Attachment 4 to control storm water runoff.

Pat McDonnell, neighbor, spoke regarding concerns with the potentially unsafe driveway access on blind side of curve, increase to traffic potential for additional properties to use driveway for access should be prohibited and overdraft of groundwater should be prohibited, especially if agricultural uses in the watershed impacts the low water area of Nicasio. He would like to see drought tolerant landscaping required and a hydrologic study completed before agriculture uses in addition to the residences are permitted to ensure that watershed impacts will not affect the neighboring properties' water supplies.

Irving Schwartz, applicant, asked to have the in-lieu affordable housing fees postponed for up to two years as allowed in Marin County Code Section 22.22.080D. He further explained that the requirement to have runoff flow into swales to dissipate the energy is acceptable and asked for clarification of the comments about Attachment 4 from Michel Jeremias, Department of Public Works. The driveway has adequate sight distance on nicasio Valley Road. There is not a right to impose any restrictions about access easements that currently exist for the properties with the potential of 4 residences, and perhaps more. The property is zoned for agriculture and road blocks for completion of a hydrologic study seems inappropriate.

Paul Ferrari, owner, stated that he has owned the property for 22 years and is sensitive to the issues addressed today and is a good land steward. Pursuant to the terms of the Open Space Easement, he is in negotiations with the Department of Parks and Open Space regarding the establishment of a trail within five years.

The public testimony portion of the hearing was closed.

The Hearing Officer explained how potential environmental impacts are evaluated and that under CEQA Section 15183 allows uniform standards to reduce impacts to less than significant without mitigation measures. The Hearing Officer supports the project but continued the item to the hearing of August 27, 2009 to allow time for staff to consult with the Environmental Coordinator regarding additional analysis to be included in the findings, modifications to several Conditions of Approval, and to modify the mitigation measures for a vegetation management plan to protect spotted owl habitat and nest trees.

Additional comments were provided regarding the following issues:

- Adequacy of the Initial Study and need to review with the Environmental Coordinator;
- ARP zoning but agriculture not feasible;
- Severe fire danger requires expanded defensible space;
- Onsite tree replacement may not be feasible;
- A woodland habitat restoration plan may be preferable than a contribution to the Tree Replacement Fund;
- Erosion control mitigation not needed because standards will achieve greater protection with DPW conditions as modified;
- Typographical errors in the Initial Study need correction;
- Staff should expand the findings for Land Division;
- Conditions of Approval 10, 15, and 17 through 21 shall be revised;
- Delete Conditions of Approval 4, 22, and 34.f.4;
- Add Lot Line Adjustment findings and standard Conditions of Approval from Department of Public Works ; and
- Modify findings to clearly indicate the project qualifies for a mitigated Negative Declaration with mitigation measures to reduce impacts to less than significant.

The Hearing Officer continued the item to the hearing of August 27, 2009.