



MARIN COUNTY
 COMMUNITY DEVELOPMENT AGENCY
 BRIAN C. CRAWFORD, DIRECTOR

STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR			
KMC Inc./Paradise Cay Yacht Club/(T-Mobile West Corporation) Use Permit and Design Review			
Item No:	H1.	Application No:	UP 06-23 and DR 05-19
Applicant:	T-Mobile West Corporation	Owner:	KMC Inc.
Property Address:	300 Trinidad Drive, Tiburon	Assessor's Parcel:	038-460-37
Hearing Date:	February 25, 2010	Planner:	Kristina Tierney
RECOMMENDATION:		Approve with Conditions	
APPEAL PERIOD:		10 Business Days	
LAST DATE FOR ACTION:		March 26, 2010	

PROJECT DESCRIPTION:

The applicant is requesting Use Permit and Design Review approval to construct and operate a wireless telecommunications facility on the site of the Paradise Cay Yacht Club harbor office building, which is owned by KMC Inc. Up to eight (8) wireless antennas would be located on the roof of the harbor office building and would be shielded from view by a 4.5 foot tall and 5.5 foot wide square faux chimney. Up to four (4) equipment cabinets would be placed within a 120-square-foot lease area on the northern side of the building.

GENERAL INFORMATION:

Countywide Plan: MF2 (Multi-family, 1-4 units/acre)
 Zoning: BFC-RMP-1.35 (Bayfront Conservation, Residential, Multi-family Planned, 1.35 units/acre)
 Lot size: 13 acres
 Adjacent Land Uses: Commercial/Recreation and Residential
 Vegetation: None
 Topography and Slope: Level
 Environmental Hazards: None identified

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301, Class 1 of the CEQA Guidelines because the project entails minor modifications of an existing structure and would not result in grading, tree removal, or other potentially significant impacts

on the environment. Additionally, a report prepared by Hammett and Edison Inc., for T-Mobile West Corporation, dated September 21, 2009, concludes that the proposed project would result in no significant impact on the environment or general population with respect to exposure to radio frequency fields emitted by the proposed telecommunications facility.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

PLAN CONSISTENCY:

The proposed project is subject to the goals and policies and of the Marin Countywide Plan, which emphasizes protecting natural resources and preserving the character of the local community, and the Marin County Telecommunications Facilities Policy Plan (TFPP), which emphasizes reducing land use conflicts that may result from inappropriate siting or design of telecommunications facilities. Please refer to the project analysis and recommended resolution for detailed findings.

PROJECT ANALYSIS:

T-Mobile West Corporation, a public utility company licensed by the Federal Communications Commission to operate wireless communication facilities in California, is requesting a Use Permit and Design Review approval to build a new telecommunications facility that would host up to four (4) equipment cabinets as well as up to eight (8) panel antennas and associated coax cables to connect antennas to the equipment. The proposed antenna facility would improve coverage in the Paradise Drive area of Tiburon.

The project site is located in Paradise Cay, at the Yacht Club Harbor office building, off Paradise Drive. The proposed facility would be located on the roof of the existing building. The project site is used for commercial purposes and does not contain any vegetation. Photo simulations for the project show that the telecommunication facility's use of a stealth design would result in a structure that blends into the existing structure and would be invisible to neighbors and passerbys (see Attachment 6). 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.

On July 28, 1998, the Marin County Board of Supervisors adopted the Update to the Marin County Telecommunications Facilities Policy Plan (TFPP) which established polices to guide the development of telecommunications facilities while protecting the natural resources, communities, and other land uses in Marin County. The proposed application is generally consistent with the policies contained in the TFPP and with the criteria for wireless communications facilities, which are discussed in Finding V of the attached Resolution.

Alternatives Analysis

The applicant has submitted an analysis of three alternative sites that T-Mobile investigated for development (Attachment 7). One alternative was to install the new facility on a parking light

pole at the Tiburon Yacht Club. This alternative was rejected because the project would require erecting a new pole on the property thereby creating additional visual blight in the area. Further, the provided coverage would be worse than that provided by the project unless a number of antennas were placed on standoff mounts which would protrude from the new pole. The second site was an existing JPA utility pole at 4478 Paradise Drive. This alternative was rejected as the size of the pole and limited design options would not meet T-Mobile's needs. The third site was the Tiburon Fire Protection District Fire Station located at 4301 Paradise Drive. This option was not feasible as AT&T is currently in negotiations with the Tiburon Fire Protection District and collocation would not be possible as a result of height limitations imposed by the Town of Tiburon.

Overall, the proposed project would be the least visible option, utilize existing structures and utilities, and provide the best coverage for T-Mobile. Further, the project site would be located further away from existing residences than the other alternatives, with the exception of the other alternative at the Yacht Club. Therefore, staff finds that the proposed site is preferable to the alternatives identified.

Conclusion

The information submitted indicates that the proposed project would be appropriate for the subject property. Further, the alternative sites identified would be inconsistent with the policies contained in the TFPP. Based on the foregoing analysis, the proposed project would be consistent with the Marin Countywide Plan, the Telecommunications Facilities Policy Plan and the Marin County Zoning Code.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and adopt the attached Resolution approving the KMC Inc./Paradise Cay Harbor (T-Mobile West Corporation) Use Permit and Design Review.

- Attachments:
1. Recommended Resolution approving of the KMC Inc., Paradise Cay Harbor T-Mobile West Corporation Wireless Use Permit and Design Review
 2. CEQA Exemption
 3. Location Map
 4. Assessor's Parcel Map
 5. Project Plans
 6. Photo Simulations
 7. Alternatives Analysis
 8. Department of Public Works memo, dated 11/20/09
 9. Department of Public Works- Communication memo, dated 2/08/10

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION _____

A RESOLUTION APPROVING THE KMC INC./PARADISE CAY HARBOR (T-MOBILE WEST CORPORATION) USE PERMIT AND DESIGN REVIEW
ASSESSOR'S PARCEL 038-460-37
300 TRINIDAD DRIVE, TIBURON

SECTION I: FINDINGS

I. WHEREAS T-Mobile West Corporation, has applied on behalf of the owners, KMC Inc., for a Use Permit and Design Review to construct and operate a new wireless telecommunications facility. The facility would consist of up to eight (8) antennas on the roof of the harbor office building and would be shielded from view by a 4.5-foot-tall and 5.5-foot-wide square faux chimney. Up to four (4) equipment cabinets would be placed within the 120 square foot lease area on the northern side of the building.

The subject property is located at **300 Trinidad Drive, Tiburon**, and is further identified as **Assessor's Parcel 038-460-37**.

II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on February 25, 2010 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 15301, Class 1 of the CEQA Guidelines because exterior modifications of an existing structure and would not result in environmental impacts. The applicant has submitted a report prepared by Hammett & Edison, Inc., dated September 21, 2009, 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 Policies 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.

B. 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 a boat harbor and Yacht Club, which used for both commercial and recreational uses. Commercial sites are ranked second in location preference and recreational sites are ranked sixth. It is surrounded by medium and low density residential development and the bay. While residentially developed sites are ranked 7th, the project would be located over 150 feet from the nearest residence and represents the project alternative that is most compatible with use of the project site and neighboring uses.

The proposed telecommunications facility is compatible with the boat harbor and Yacht Club and use of the subject property and surrounding areas, all of which were approved by the Paradise Cay North Master Plan and Use Permit. The site is served by an existing roadway and utilities. The facility would be located on top of the existing harbor office building and would not require any grading or tree removal, or result in other adverse environmental impacts. The project would not result in adverse visual impacts because the antennas would be concealed by a faux chimney on top of the existing building. The antennas would not be visible to neighbors or passerbys. Based on these factors, the facility is consistent with the location standards contained in the TFPP.

B. The facility would allow T-Mobile West Corporation to continue providing communications services for the Paradise Drive 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 September 21, 2009, 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 at the Paradise Cay Harbor, east of Paradise Drive. The proposed facility would be located on the top of the existing yacht club office building, shielded from view by a square faux chimney measuring 5.5 feet wide and 4.5 feet tall. The project site is developed, devoid of vegetation and as designed, the antennas would not be visible.

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. As the faux chimney eliminates views of the antenna, 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 the existing roadway. Parking is available at the Yacht Club. No additional road or parking area construction would be required for the operation of the facility.
- G. The project site is devoid of vegetation and as the project would be located on the roof of an existing structure, no tree or vegetation removal would be required.
- H. The facility is located at a commercial/recreational site. 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. The facility would not significantly impair the visual conditions on and surrounding the subject property because the facility would be hidden behind a faux chimney on top of the harbor office building.

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 existing harbor office building and operations of the Paradise Cay Harbor and Yacht Club. Pursuant to Marin County Code Section 22.10.030, the construction and maintenance of communication facilities, are permitted in RMP-1.35 zoning districts with Use Permit approval.

Public utility and service uses may be approved in the governing multi-family 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 T-Mobile 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 the proposed faux chimney. 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, V.E and V.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 located on top of an existing building and screened from view by the proposed faux chimney 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 use of the property. The proposed facility would be located on top of an existing building and equipment cabinets would be within an area fenced off from Trinidad Drive. In addition, the facility would be a stealth design screened from off-site views by the faux chimney.

- 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 any 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 with the existing harbor office building in the most accessible and least visually prominent location on the subject property, and 2) 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.

- 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 KMC Inc./Paradise Cay Harbor (T-Mobile West Corporation) Use Permit and Design Review 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 KMC Inc., Paradise Cay Harbor T-Mobile West Corporation Use Permit and Design Review are approved to construct and operate a new wireless telecommunications facility. The facility is approved to consist of up to eight (8) panel antenna located on top of the existing harbor office building and four (4) equipment cabinets and associated equipment located on the ground adjacent to the west side of the building within a 120 square foot lease area. The antennas would be shielded from view by a 4.5 foot tall and 5.5 foot wide square faux chimney. The subject property is located at **300 Trinidad Drive, Tiburon**, and is further identified as **Assessor's Parcel 038-460-37**.
2. Development and use of the facility shall conform to plans identified as **Exhibit A**, entitled "T-Mobile West Corporation, Tiburon Yacht Club-Harbor Office Building," consisting of 7 sheets prepared by ZON Architects, Inc, dated October 5, 2009, received November 3, 2009, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
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. 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.
9. Utility extensions or connections shall be underground.
10. The applicant shall be responsible for ensuring that the number of construction vehicles is limited to the minimum number necessary to complete the project.
11. 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.
12. 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.
13. 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 KMC Inc., Paradise Cay Harbor T-Mobile West Corporation Use Permit and Design Review.
14. 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

15. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide a copy of the lease agreement or a letter from the property owner approving the project.

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 **February 25, 2012**, 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 **February 25, 2020**, 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 **March 11, 2010**.

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 25th day of February 2010.

JOHANNA PATRI
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
DZA Secretary