



MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

**STAFF REPORT TO THE MARIN COUNTY
DEPUTY ZONING ADMINISTRATOR**

Rosenberg (AT&T) Use Permit and Design Review

**RECOMMENDATION:
HEARING DATE:**

**Approve with Conditions
December 2, 2010**

Project ID	10-0078	Applicant(s):	Jason Osborne 701 5 th Street Petaluma, CA 94952
No:			
Application	UP 10-3 and DR 10-22	Owner(s):	Kenneth Rosenberg
No(s):			
Agenda		Assessor's Parcel No(s):	157-091-45
Item:		Property Address:	15 Phillips Terrace, Novato
Last Date for		Project Planner:	Veronica Corella-Pearson (415) 499-6276 vcorella@co.marin.us
Action:	December 3, 2010	Signature:	

Countywide Plan Designation: AG3 (Agriculture, 1 unit/1-9 acres)
Community Plan Area: Black Point
Zoning: A2 (Limited Agriculture, 2 acre minimum lot area)
CEQA: Categorically Exempt pursuant to 15301, Class 1(b)

PROJECT DESCRIPTION

The applicant, Jason Osborne, has applied on behalf of the owner, Ken Rosenberg, for Use Permit and Design Review approval for the installation, operation and maintenance of a new wireless telecommunications facility involving a 10-foot extension to an existing monopole with up to six antennae panels that would be concealed as a pine tree, and a new equipment building. The antennas would be attached to the top of an existing 32-foot monopole, adjacent to the existing Sprint/Nextel telecommunication facilities. The new equipment building would be 11.5 feet, by 20 feet, and would attain a height of 11.5 feet above grade. The shelter would be located approximately 20 feet north of the existing monopole, and approximately 33 feet from the nearest property line (north). The structure would maintain large setback to all other property lines. No tree removal is proposed.

PROJECT SETTING

The proposed project would co-locate new antennas on the existing Sprint/Nextel monopole and as proposed it would attain a maximum height of 42 feet above grade. The project is surrounded by a madrone and oak woodlands. The majority of the trees surrounding the monopole are approximately 25 to 33 feet in height. Within 60 feet of the monopole are numerous, sizable protected trees. The average slope on the property is 30 percent, and the proposed project is located on a moderately sloping portion of the property. The nearest residence is on APN 157-091-40, owned by the Rosenberg's, and is approximately 150 feet from the project site. The site is accessed via Phillips Terrace

BACKGROUND

The project site is a 3.1 acre lot and contains two monopoles that serve Sprint/Nextel and MetroPCS. The location of the proposed project is near the Sprint/Nextel communication facilities. The facilities were approved in 1997 under DR 97-122 and UP 97-123. The Use Permit was renewed in 2006 and in 2009, and will expire in 2019. Currently the facilities include four 1-foot by 5-foot panel antennas mounted on a 32.5-foot monopole. There is also a 400 square-foot fenced area that houses all the equipment.

The current application was filed on August 14, 2009. During the review process the project was modified to include a stealth design. Story poles have been erected to demonstrate the visual impacts of the project. In addition to the project plans, the applicant submitted the following reports:

- Radio Frequency – Electromagnetic Energy (RR-EME) Compliance Report, EBI Consulting, Dated August 7, 2009
- Visual Simulations, Applied Imagination, Dated July 23, 2010

Plans were transmitted to The Department of Public Works, Novato Fire Protection District, Black Point Environmental Action Committee, and the Black Point Improvement Club. Comments have been received from the Department of Public Works and the Novato Fire Protection District, which indicated that the project is acceptable with standard conditions of approval. The public notice was distributed to all neighbors within 600 feet of the subject property on November 11, 2010, and to date no comments have been received. A site visit was conducted and during completeness review the GIS database was reviewed. A search of the California Natural Diversity Database found potential for the San Pablo song sparrow to be within the vicinity. Research indicates that the song sparrow resides in wetlands and tidal salt marsh. The project site is a mixed hardwood vegetation community, and does not contain habitat essential for the song sparrow.

In 2005 an application for a new telecommunication facility on Assessor's Parcel 157-091-05 was received. The project included construction of a new telecommunication facility that would share the project site with the existing Sprint/Nextel facility, but did not co-locate equipment at the site. On June 20, 2006, the Marin County Board of Supervisors sustained the Planning Commission's denial of the Use Permit and Design Review because it was found that the project was not consistent with the TFPP policies because the opportunity existed to co-locate facilities.

In 2008, MetroPCS requested the construction of a new wireless telecommunication facility on the subject property that included the co-location of two 56 inch long panel antennas mounted at a height of 35 feet above grade on an existing 42-foot tall lattice tower, which supports ham radio equipment owned and operated by the property owner. The permit was conditioned to be at a maximum height of 35 feet above grade, unless the applicant could demonstrate that at that height a second wireless facility would be required to provide adequate coverage. In no case was the height of the top antenna

panel to exceed 40 feet above grade. The approval of the permit did not preclude the future approval of other telecommunication facilities on the subject property. The applicant was required to cooperate with the County to utilize the subject property for shared location or co-location in the future if it is technically feasible. The permit was also conditioned to require any future service providers on the Rosenberg property to prepare a Ridgeline Facility Plan. Also approved was a 150 square-foot equipment building. The MetroPCS tower is approximately 100 feet from the proposed project.

KEY ISSUES:

During the public hearings on the 2008 MetroPCS Use Permit and Design Review, numerous comments were received from the public recommending any future facility to co-locate on the existing monopoles and utilize a stealth design. The MetroPCS Use Permit and Design Review was conditioned to require all future providers to prepare a Ridgeline Facility Plan. This condition was placed to ensure that all future telecommunication facilities would co-locate if technically feasible and to minimize adverse effects related to land use compatibility, visual resources, and public safety. The Ridgeline Facility Plan would also coordinate facility access, non-interference and consolidation issues for the property. The TFPP Policy Section RP 1.3.2 states that Master Plan or Use Permit approval would be waived for projects that co-locate, are minor facilities at preferred commercial or industrial sites, and implement a stealth design. Typically, only Design Review would be required for a co-located project, such as that proposed. However, in lieu of requiring the applicant to provide a Ridgeline Facility Plan, staff determined to require a new Use Permit to remove The Ridgeline Facility Plan condition of approval required through the previous Use Permit.

The applicant has proposed a project that has been coordinated with Sprint/Nextel. The proposed project has incorporated a stealth design and has clustered the new facilities near the existing monopole. The 10 foot extension would result in a new height of 42 feet above grade and would be a faux pine tree. Based on a site visit, it is evident that the existing pole and antennas are noticeable, and the 10 foot extension would result in the monopole resembling a pine tree pompom, which would make the facility more noticeable from the surrounding area. Therefore, staff recommends the project be conditioned to require that the entire monopole be dark green, rather than trying to disguise the monopole extension as a pine tree. In addition, conditions of approval prohibit any further extensions to the Sprint/Nextel monopole, and to limit the height to a maximum of 42 feet above grade. The proposed location of the equipment facilities is compatible with the existing land use since it is clustered near existing telecommunication facilities. The site is also served by a private driveway and there is ample parking for the project. The applicant did not propose specific colors and materials for the equipment shed, so a condition of approval has been recommended that requires the building to be finished in dark earth tone colors. The applicant has also proposed new plantings surrounding the equipment building. The recommended conditions of approval require all plantings to be native, evergreen, hardwood species that are a minimum container size of 15 gallon.

RECOMMENDATION:

Staff recommends that the Deputy Zoning Administrator review the administrative record, conduct a public hearing, and adopt the attached resolution approving the Rosenberg Design Review and Use Permit.

Attachments:

1. Proposed Resolution recommending approval of the Rosenberg Use Permit and Design Review
2. CEQA Exemption
3. Location Map
4. Assessor's Parcel Map
5. Plan Sheets, 9 sheet
6. Resolution PC08-019, Rosenberg Use Permit and Design Review Approval
7. EBI Consulting, Radio Frequency-Electromagnetic Energy Compliance Report
8. Visual Simulations, 3 pages
9. Novato Fire Protection District Letter, 9/30/10
10. Department of Public Works Memo, 10/1/10

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. _____

A RESOLUTION APPROVING THE

ROSENBERG (AT&T) USE PERMIT (10-3) AND DESIGN REVIEW (DR 10-22)

15 PHILLIPS TERRACE, NOVATO

ASSESSOR'S PARCEL 157-091-45

SECTION I: FINDINGS

- I. WHEREAS the applicant, Jason Osborne, has applied on behalf of the owner, Ken Rosenberg, for Use Permit and Design Review approval for the installation, operation and maintenance of a new wireless telecommunication facility involving a 10-foot extension to an existing monopole with up to six antennae panels that would be concealed as a pine tree, and a new equipment building. The antennas would be attached to the top of an existing 32-foot monopole, adjacent to the existing Sprint/Nextel telecommunication facilities. The new equipment building would be 11.5 feet, by 20 feet, and would attain a height of 11.5 feet above grade. The shelter would be located approximately 20 feet north of the existing monopole, and approximately 33 feet from the nearest property line (north). The structure would maintain large setback to all other property lines. No tree removal is proposed. The subject property is located at 100 Manzanita Ave., Novato, and is further identified as Assessor's Parcel 157-091-45.

- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on December 2, 2010 to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project. The Community Development Agency, Planning Division has provided public notice identifying the applicant(s), describing the project and its location, and giving the scheduled date of the public hearing in accordance with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property and to interested parties and organizations.

- 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 15301, Class 1 of the CEQA Guidelines because it entails installation and operation of an unmanned telecommunication facility that would not result in significant grading, or tree removals. The applicant has submitted a report prepared by EBI Consulting, dated August 7, 2010, which evaluated risks with respect to human exposure to radio frequency electromagnetic fields from the existing telecommunications facility. The report concludes that the facility complies 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 project is consistent with CWP natural systems policies requiring the enhancement, protection, and management of native habitats and the protection of woodlands, forest, and tree resources (*CWP Policies BIO-1.1 and BIO-1.3*) because the project does not entail the removal of protected native trees and the project site is developed.
 - B. The project would not result in impacts to special-status species (*CWP Policies BIO-1.1, BIO-2.1, and BIO-2.2*) because, according to the California Natural Diversity Database, the subject property does not provide habitat for special-status species of plants or animals.
 - C. The project would not significantly impact the ecotones on the project site (*CWP Policies BIO-2.3 and BIO-2.4*) because the subject property is located near existing development and would not result in the removal of major vegetation.
 - D. No wetlands or stream conservation areas would be affected by the project (*CWP Policies BIO-3.1 and CWP BIO-4.1*) because there are no wetlands or streams on, or adjacent to the subject property.
 - E. The project would not result in significant storm water runoff to downstream creeks or soil erosion and discharge of sediments into surface runoff (*CWP Policies WR-2.1, WR-2.2, WR-2.3, and WR-2.4*) because the project requires a building permit, and depending on which time of year the building permit is applied for, a Storm Water Pollution Prevention Plan may be required by the Department of Public Works.
 - F. The project would be constructed in conformance County earthquake standards, as verified during review of the building permit application (*CWP Policies EH-2.1, EH-2.3, and CD-2.8*) and the subject property is not constrained by unusual geotechnical problems, such as existing fault traces.
 - G. The project design and conditions of approval ensure: adequate fire protection (*CWP Policy EH-4.1*); removal of hazardous vegetation (*CWP Policy EH-4.2*); water for fire suppression (*CWP Policy EH-4.c*); defensible space and compliance with Marin County fire safety standards; construction of fire sprinklers and fire-resistant roofing and building materials (*CWP Policies EH-4.d, EH-4.e, EH-4.f, and EH-4.n*); and clearance of vegetation around the proposed structure (*CWP Policy EH-4.h*).

- H. The project would meet energy efficient standards for exterior lighting, and would reducing excessive lighting and glare (*CWP Policy DES-1.h*) because standard conditions of project approval require that lighting be downward directed and low wattage.
 - I. The project would preserve visual quality and protect scenic quality and views of the natural environment from adverse impacts related to development (*CWP Policy DES-4.1*) because the proposed development as conditioned is consistent with the Marin County Telecommunications Facilities Policy Plan (TFPP) and will utilize a stealth design and co-locate antennas on an existing monopole.
- V. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Black Point Community Plan due to the following factors:
- A. The project would not change the rural residential character of the community.
 - B. The project is consistent with the Agricultural, one unit per 1 to 9 acres (AG3) land use designation because the antennas would be co-located on an existing telecommunications tower, and the equipment storage area would be near the developed area.
 - C. The project would further enhance the safety of the community and would not negatively impact the quality of life.
 - D. The project is not located within any sensitive habitat areas, and would not remove any protected trees.
- VI. 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 telecommunications facility is located on a site currently containing two other telecommunication carriers. This Use Permit modifies the prior conditions of approval under Use Permit 08-10 and Design Review 08-32 by approving the proposed project without the preparation of a Ridgeline Facility Plan by conditioning the project and requiring that the entire monopole be dark green, rather than disguise the monopole extension as a pine tree In addition, the conditions of approval prohibit any further extensions to the Sprint/Nextel monopole, and limit the monopole to a maximum height of 42 feet above grade. As conditioned the project complies with the TMPP which encourages co-location of facilities and minimizes adverse effects related to visual resources.

- B. The site is served by an existing access driveway, and the new facility would not require excessive grading, tree removal, or result in other adverse environmental impacts. Based on these factors, the facility is consistent with the location standards contained in the TFPP.
- C. The facility would allow AT&T Wireless to provide cellular coverage in the northwestern portion of the County near the County boundary and to provide a reliable source of wireless communications to residents, businesses, and emergency service providers in the County.
- D. The applicant has submitted a report prepared by EBI Consulting, dated August 7, 2010, which concludes that the existing facility would not result in any significant risks, with respect to human exposure to radio frequency fields, because the existing facility, in conjunction with other telecommunication facilities on the property, would generate maximum ambient radio frequency levels that are below the applicable public exposure limit established by the Federal Communications Commission (FCC).
- E. The facility as conditioned would not create lighting impacts on surrounding areas because all lighting is to be downcast and low wattage.
- F. Vehicular access for the proposed project site is provided from an existing private driveway and ample parking is available. No additional road or parking area is needed.
- G. The project would not require removal of existing vegetation. Existing trees provide ample screening, and the applicant proposes new plantings surrounding the equipment building.
- 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 not 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 screened from off-site views by existing and proposed vegetation and the monopole would be conditioned to be dark green, with no stealth design. No exterior materials are proposed for the building; therefore, the conditions of approval require the structure to be finished in natural materials, with dark earthtone colors, which would blend in with the natural environment. The landscaping is also conditioned to be native, evergreen, hardwood species that are a minimum container size of 15 gallon.

VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings approve the Use Permit (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

Public utility and service uses may be approved in the governing Agricultural zoning district by Use Permit pursuant to Section 22.48.040(F) of the Marin County Code when it is found to be necessary for public health, safety, convenience, or 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 be incidental to the primary residential use of the subject property and would not alter or impair the character of the site or the surrounding community. The new facilities would be co-located near the existing Sprint/Nextel development, and the new equipment building would be concealed behind existing and proposed vegetation. The structure would be on a moderately sloped area and would not require significant site grading or disturbance.

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 would not alter or impair the character of the district in which it is located because the applicant proposes to co-locate the antennas on an existing monopole. As conditioned the project would not result in any significant adverse effects related to visual and aesthetic compatibility because as conditioned it would blend in with the surrounding woodlands. Accordingly, the project would not impair the architectural integrity and character of the governing zoning district.

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.

As conditioned, granting the Use Permit on the subject property would not be detrimental to the public interest, health, safety, convenience, or welfare of the County or properties in the vicinity. The proposed project would be compatible with the existing low-density residential use of the property. As described above, the proposed facility would not exceed standards established by the FCC for human exposure to radio frequency emissions. Therefore, potential health impacts would be minimized. The project would maintain large setbacks to the nearest off-site residential uses and would not interfere with surrounding land uses, alter the character of the site, result in tree removal or significant grading, or create traffic or noise impacts on the community. In addition, the project would enhance public safety in the community by providing improved coverage for wireless devices, which are often utilized in emergency situations. The Ridgeline Facilities Plan would no longer be required as a condition of approval since the applicant has co-located the facility and has worked with the other carriers to locate equipment.

VIII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings approve the Design Review Permit (Section 22.42.060 of the Marin County Code), as specified below.

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

The project as proposed is inconsistent with this finding because as proposed the design is visually obtrusive from the surrounding area. Currently the existing antennas are visible above the tree line from the west and the proposed pine tree design would result in the pole being even more prominent with the monopole resembling a pine tree pompom. Therefore, the project has been modified to require that the antennas be mounted on a monopole with no pine tree design and the entire pole (all 42 feet) is to be painted dark green. Further the monopole is restricted to a maximum height of 42 feet above grade. No further extensions may be permitted. The conditions of approval also require that this decision be recorded to alert future property owners. The equipment building as conditioned would blend in with the surrounding vegetation since it would be required to be finished in dark earth tone colors. The project would not conflict with the existing residential development because it would be over 150 feet away from the nearest adjacent residence. Therefore, as conditioned the project is consistent 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 would cluster the equipment building near the existing Sprint/Nextel facilities. The new equipment building would attain a height of 11.5 feet above grade. The project is over 150 feet to the nearest residence and would not eliminate sun or light exposures, or privacy to adjacent properties. The project would not interfere with views or vistas. The equipment building would be located on a moderately sloping portion of the lot and would not result in adverse grading or tree removal. The project would be located entirely on the subject property and would not interfere with rights-of-way or pathways for circulation.

- 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.**

As mentioned in "B" above, the project does not require the removal of trees or significant grading. The new structures would be approximately 30 feet away from the existing Sprint/Nextel equipment area and is surrounded by native vegetation. The applicant has also proposed to plant 8 new plants. In order to ensure that the new plantings are compatible with the existing environment, the conditions of approval require that new landscaping be native, evergreen, hardwood species that are a minimum container size of 15 gallon.

- 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 proposed project would require a minimal amount of site disturbance, with a low retaining wall of approximately 2 feet in height. The equipment building is located in a relatively level portion of the property that is near existing facilities.

- 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 does not need to comply with the Single-family Residential Design Guidelines since it is for a telecommunication facility and complies with the TFPP. The project complies with all access requirements of Chapter 22.16.

- F. The project design includes features which foster energy and natural resource conservation while maintaining the character of the community.**

The project is for new telecommunication facilities and does not need to comply with the Green Building Requirements since it does not include an addition of over 2,000 square feet and is not a commercial remodel.

- 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.**

The project as proposed is inconsistent with this finding because as proposed the design is visually obtrusive from the surrounding area. Currently the existing antennas are visible above the tree line from the west and the proposed pine tree design would result in the pole being even more prominent and resembling a pine tree pompom. Therefore, the project has been modified to require that the antennas be mounted on a monopole with no pine tree design and the entire pole (all 42 feet) is to be painted dark green. Further the monopole is restricted to a maximum height of 42 feet above grade. No further extensions may be permitted. The conditions of approval also require that this decision be recorded to alert future property owners. As mentioned in VII.A above, public utility and service uses may be approved by Use Permit pursuant to Section 22.48.040 of the Marin County Code when it is found to be necessary for public health, safety, convenience, or welfare. The proposed facility, in conjunction with the existing facilities would not exceed standards established by the FCC for human exposure to radio frequency emissions; therefore, there are no potential health impacts that could be detrimental to the public health, safety, or welfare. With the conditions of approval, the project would be consistent with the CWP, zoning district regulations and would not be detrimental to public interest, health, safety, convenience, or welfare of the County.

- IX. WHEREAS the Marin County Deputy Zoning Administrator hereby approves the Rosenberg (AT&T) Use Permit and Design Review subject to the conditions of approval listed below. This approval authorizes the installation, operation and maintenance of a new wireless telecommunication facility involving a 10-foot extension to an existing monopole with up to six antennae panels. The monopole will be attached to the top of an existing 32-foot monopole, adjacent to the existing Sprint/Nextel telecommunication facilities. The new equipment building will be 11.5 feet, by 20 feet, and will attain a height of 11.5 feet above grade. The shelter will be located approximately 20 feet north of the existing monopole, and approximately 33 feet from the nearest property line (north). The structure will maintain large setback to all other property lines. The subject property is located at 15 Phillips Terrace, Novato, and is further identified as Assessor's Parcel 157-091-45.

SECTION III: CONDITIONS OF APPROVAL

Marin County Community Development Agency - Planning Division

1. Development and use of the facility shall conform to plans identified as “Exhibit A,” entitled “AT&T,” consisting of 9 sheets prepared by Streamline Engineering and Design, Inc., dated September 18, 2010, received September 21, 2010 and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
2. BEFORE ISSUANCE OF A BUILDING PERMIT, Sheet A-1 shall be revised to show all new landscaping as native evergreen, hardwood species that are a minimum container size of 15 gallons. The plans shall specify what species will be planted.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the plans shall be revised to show the equipment building finished in dark earthtone colors. A color palate shall be submitted to the Planning Department for review and approval with the proposed new colors.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, all plan sheets shall remove reference to “House of Daniels,”
5. The approve AT&T facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a one-year period. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall enter into a standard performance agreement with the County and post a suitable security in order to guarantee removal of an abandoned facility. Upon expiration of the Use Permit, all AT&T equipment, structures, and antennas shall be removed and the site shall be returned to its pre-existing conditions.
6. 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.

7. This Use Permit may be revoked by the County should the approved facility, in combination with other existing ambient sources exceed the 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.
8. The approved facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a one-year period. WITHIN 30 DAYS FROM THE DATE OF APPROVAL, 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. Upon expiration of the Use Permit, all equipment, structures, and antennas shall be removed and the site shall be returned to its preexisting conditions.
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. Exterior lighting shall be located and/or shielded so as not to cast glare on nearby properties.
11. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources.

Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.

12. All construction activities shall comply with the following standards:

- a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
- b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.

13. This Use Permit 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.

14. All utility connections and extensions (including but not limited to electric, communication, and cable television lines) serving the development shall be undergrounded from the nearest overhead pole from the property, where feasible as determined by the Community Development Agency staff.

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 Rosenberg (AT&T) 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.

17. BEFORE ISSUANCE OF A BUILDING PERMIT for any of the work identified in Condition 1 above, the applicant shall install temporary construction fencing around

the dripline of the existing trees in the vicinity of any area of grading, construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect existing vegetation during construction and shall remain until all construction activity is complete. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency.

18. The applicant shall retain the services of a licensed arborist, botanist, or forester to periodically monitor the construction activities and to submit a report confirming that the project has complied with all of the best management practices and other requirements BEFORE FINAL INSPECTION.
19. BEFORE FINAL INSPECTION, the entire monopole (42 feet) shall be painted a non-reflective dark green and it shall not be disguised as a tree.
20. BEFORE FINAL INSPECTION AND UPON VESTING OF THE PROJECT, the Community Development Agency shall file this Notice of Decision, including all conditions of project approval, with the Marin County Recorder's Office to advise future property owners of the special development restrictions relative to the Use Permit approval.
21. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.

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22. A separate Building Permit is required if the site/driveway retaining wall height is more than 4' (or 3' when backfill area is sloped or has a surcharge).
23. If a separate building permit is required for the retaining walls, submit structural calculations for the retaining walls signed and stamped by the design engineer.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this approval vest this approval by obtaining a Building Permit or other construction permit, if required, for the approved work and substantially completing the improvements in accordance with the approved permits by December 2, 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.3 of the Marin County Code.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid until **December 2, 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 December 16, 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 2nd day of December 2010.

JOHANNA PATRI
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Joyce Evans
DZA Secretary