

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION 11-108

**A RESOLUTION APPROVING
MARINWOOD PLAZA (HOYTT ENTERPRISES, INC.)
T-MOBILE USE PERMIT**

ASSESSOR'S PARCEL 164-471-70

197 MARINWOOD AVENUE, SAN RAFAEL

SECTION 1: FINDINGS

- I. WHEREAS the project is a proposal submitted by Judy Rowland, of Loeven & Associates, Inc. on behalf of T-Mobile and Marinwood Plaza (Hoytt Enterprises, Inc.) to obtain a new Use Permit rather than renew the existing Use Permit (UP 00-13) that was approved for a 10-year term on March 2, 2000. The Use Permit is for the continued use of the existing T-Mobile cellular telecommunications facilities near the southeast corner of the Marinwood Plaza shopping center property approximately 43 feet west of U.S. Highway 101. The T-Mobile facility is adjacent to the Crown Castle (AT&T and Sprint Nextel) facility and consists of a stealth tree supporting 6 panel antennas within a 323 square foot fenced area. The subject property is within the CP, Commercial Planned zoning district and is located at 197 Marinwood Avenue, San Rafael, further identified as Assessor's Parcel 164-471-70.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on February 17, 2011, 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), per Section 15301, Class 1(b) of the CEQA Guidelines because it is the operation of an existing telecommunications facility that would not result in any grading, tree removal, or other potentially significant impacts on the environment. Additionally, the applicant has submitted a Radio Frequency Report prepared by Sitesafe, Inc., RF compliance experts, which concludes that the proposed project would not result in any significant risks with respect to human exposure to radio frequency fields emitted by the proposed telecommunications facility.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project, as modified herein, is consistent with the Marin Countywide Plan due to the following factors:
 - A. The proposed project is compatible with the General Commercial (GC) land use designation for the project site and would not interfere with the existing commercial uses of the property.
 - B. Mandatory Use Permit findings can be made pursuant to Section 22.48.040 of Marin County Code to allow public utility and service uses necessary for public safety, convenience, and welfare.

- C. Pursuant to Community Facilities Objective CF-8, the proposed project is consistent with the goals and policies of the Marin County Telecommunications Facilities Policy Plan and would ensure that the siting and design of the proposed facility is compatible with other land uses, would provide protection from vandalism and fire hazards, would minimize visual impacts, and would minimize potential health risks to people.
 - D. 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, as modified herein, 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 existing telecommunications facility is co-located on a monopole on a commercial site currently in use for commercial purposes (Marinwood Shopping Center) and is compatible with the character and use of the subject property and surrounding areas. The facility would be located more than 43 feet from the nearest public roadway and more than 147 feet from the nearest residence. The existing design of the project would not change substantially with the additional of 8 new ground mounted equipment cabinets within the existing fenced area of the facility. Therefore no grading, tree removal, or other changes to the visual character of the site would change. Based on these factors, the facility is consistent with the location standards contained in the TFPP.
 - B. The Use Permit for this facility would allow T-Mobile to continue to provide cellular coverage to unincorporated areas of North San Rafael along the U.S. Highway 101 corridor and into the Marinwood Subdivision and Silveira Ranch areas. The facility would continue to provide a reliable source of wireless communications to residents, businesses, and emergency service providers in the County.
 - C. The applicant has submitted a Radio Frequency Report prepared by Sitesafe, Inc., dated November 3, 2010, which concludes that the facility would not result in any significant risks with respect to human exposure to radio frequency fields because the antennas, in conjunction with other antennas in the vicinity, would generate maximum radio frequency levels that are less than 5% of the applicable public exposure limit established by American National Standards Institute and the Institute of Electrical and Electronic Engineers.
 - D. The antennas are mounted on a stealth pine tree with associated equipment cabinets within a fenced area adjacent to the fenced Crown Castle site. Although the project is visible from off-site locations, the facility would not be visually prominent in relation to the surrounding setting of trees and hills in the background. The facility visually blends into the surroundings as a stealth tree design with matte nonreflective green and brown colors.
 - 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, hooded, and directed downward to minimize visual effects on adjoining areas.
 - F. The subject property is served by paved public roadways (Marinwood Avenue and Miler Creek Road) and the Marinwood Shopping Center parking lot. Therefore, no additional road or parking area construction would be necessary.

- G. The project would not require removal of existing vegetation. Existing trees along U.S. Highway 101, to the south, west, and east of the facility provide adequate screening of the facility from the highway and surrounding properties.
- H. The facility is located in a commercial area. Noise levels associated with the operation of the facility would not exceed the ambient noise levels. With the exception of routine monthly or bi-monthly maintenance visits by a cellular site technician, the facility would not generate substantial traffic trips to the property. Therefore, the proposed facility would not generate significant noise or traffic.

VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project, as modified herein, is consistent with the mandatory findings to approve a 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 of the applicable provisions of this Chapter.**

A Use Permit may approve telecommunications uses in the governing Commercial Planned District pursuant to Section 22.32.165 of the Marin County Code when it is found to be necessary for public health, safety, convenience, or welfare. The shared-location telecommunications facility is part of the T-Mobile network that provides wireless communication services to residents and businesses in Marin County and contributes to public safety, convenience, and welfare along the U.S. Highway 101 corridor.

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

The project provides consistency with the General Commercial (GC) land use designation for the project site. The T-Mobile telecommunications facility is consistent with the goals and policies of the Marin County Telecommunications Facilities Policy Plan pursuant to Community Facilities Objective CF-8. The Use Permit for the project would ensure that the siting and design of the facility is compatible with other land uses, would provide protection from vandalism and fire hazards, would minimize visual impacts, and would minimize potential health risks to people.

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

The continued use of the T-Mobile telecommunications facility is a class of project that is exempt from CEQA pursuant to CEQA Guidelines Section 15301, Class 1 because it would not result in potentially adverse impacts regarding additional land disturbance, impermeable surface area, visual impacts, or noise. 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 below the exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers adopted by the Federal Communications Commission. The proposed project would not result in significant adverse visual impacts because the antennas would be mounted on an existing stealth tree and would blend into the sky and sylvan hillside surroundings.

- 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 design, location, and size of the T-Mobile telecommunications facility would fit into the neighborhood and would maintain adequate setbacks (12 feet minimum) to neighboring properties and would be compatible with existing and future land uses. The 6 one-foot wide and three-foot tall panel antennas would be located at the top of the stealth pine tree with a maximum height of 46 feet above grade and would not be visually prominent in relation to the surrounding environment.

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

The T-Mobile telecommunications facility would not impair the architectural integrity and character of the CP zoning district as a small facility hidden in the trees in the southeast corner of the of the 1.6-acre property.

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

The grant of the proposed Use Permit on the subject property for the continued use of the T-Mobile telecommunications facility would not be detrimental to the public 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.

SECTION 2: ACTION

NOW, THEREFORE, LET IT BE RESOLVED, that the Deputy Zoning Administrator approves the Marinwood Plaza / T-Mobile Use Permit (Project ID: 10-0342) for the continued use of the existing T-Mobile facility, a shared-location cellular telecommunications facility, pursuant to Marin County Code Section 22.48.040. The project site is located in the southeast corner of the Marinwood Plaza property 43 feet west of U.S. Highway 101. The T-Mobile facility is adjacent to the Crown Castle (AT&T and Sprint Nextel) facilities with 6 panel antennas mounted on a stealth tree within a 323 square foot fenced area.

SECTION 3: CONDITIONS OF PROJECT APPROVAL

1. The approved project shall substantially conform to plans on file in the Marin County Community Development Agency, Planning Division, identified as Exhibit A, "T-Mobile -- Marinwood BA10002" consisting of 5 sheets prepared by Streamline Engineering and Design, Inc., date stamped December 9, 2010.
2. The support monopine, antennas, and branches shall be painted, textured, or covered to resemble natural materials and shall incorporate the best available design and finishes that would blend into the surrounding environment.
3. The approved facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a one-year period.

4. The property owner shall be responsible for notifying the Planning Division in writing in advance of any changes to vendors operating at the site. The property owner shall share responsibility for compliance with all Use Permit conditions of approval including submitting an application for Use Permit Renewal several months before the expiration date.
5. BEFORE APRIL 17, 2011, the applicant and the property owner shall enter into a standard Performance Agreement with the Planning Division and post a bond or other suitable security in order to guarantee removal of an abandoned facility. The bond or other suitable security shall be effective during the entire term of the Use Permit. Upon expiration of the Use Permit, all equipment, structures, and antennas shall be removed and the site returned to its pre-existing conditions.
6. Exterior lighting shall be permitted for safety purposes only and shall be manually operated, low intensity, hooded, and directed downward to minimize visual effects. No exterior lighting is approved on the antennas, or fencing as part of this application.
7. 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-reference noise standards, and shall only be operated during power outages, emergency occurrences, or for testing and maintenance as described above.
8. Utility extensions or connections shall be underground.
9. The applicant shall be responsible for ensuring that the number of construction vehicles is limited to the minimum number necessary to complete the project.
10. If archaeological resources are discovered during site preparation or construction, all work at the site shall stop and the applicant shall contact the Marin County Environmental Coordinator. A registered archaeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Director advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Director. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Director. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources.
11. 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.
12. 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.
13. The electromagnetic frequency radiation (EMF) 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 allowable standards as adopted by the Federal Communications Commission and the County. If nationally accepted research establishes a substantially different standard for human exposure to EMF and such standard is adopted by the County or otherwise determined to be applicable by the County, the applicant shall demonstrate compliance with such standard by submitting a radio frequency report to the County within 90 days of the effective date of the standard or longer period as requested 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.

14. 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.
15. This Use Permit is subject to revocation procedures contained in Marin County Code Chapter 22.120 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 health, welfare, or safety of persons residing or working in the neighborhood.
16. UPON VESTING OF THE PROJECT, the Community Development Agency shall record this Notice of Decision, including all conditions of project approval, with the Marin County Recorder's Office to advise future property owners of the conditions of approval for this telecommunications facility.

SECTION 3: VESTING, PERMIT DURATION, AND APPEAL RIGHTS


NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest the Marinwood Plaza (Hoytt Enterprises, Inc.) / T-Mobile Use Permit (Project ID 10-0342) approval by satisfying Condition of Approval 4 before April 17, 2011, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date and the Community Development Director approves it.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid until **March 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 before 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, Marin County Civic Center, San Rafael, no later than 4:00 p.m. on March 4, 2011.

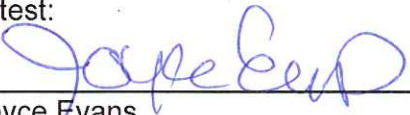
SECTION 4: DECISION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 17th day of February, 2011.



JEREMY TEJIRIAN
DEPUTY ZONING ADMINISTRATOR

Attest:



Joyce Evans
Deputy Zoning Administrator Secretary

