



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

STAFF REPORT TO THE DEPUTY ZONING ADMINISTRATOR  
BONTY USE PERMIT AND DESIGN REVIEW

Item No:	3	Project ID No:	
Applicant:	Gordon Bell, AT&T	Application No:	UP09-15 and DR09-24
Property Address:	2800 Nicasio Valley Road, Nicasio	Owner:	Lauren Bonty
Hearing Date:	October 27, 2011	Assessor's Parcel:	121-160-37
		Planner:	Scott Greeley

<b>RECOMMENDATION:</b>	<b>Approve with Conditions</b>
<b>APPEAL PERIOD:</b>	<b>November 10, 2011</b>
<b>LAST DATE FOR ACTION:</b>	<b>December 10, 2011</b>

**PROJECT SETTING AND BACKGROUND:**

Countywide Plan:	AG1 (Agriculture, 1 unit per 31-60 acres)
Zoning:	ARP-40 (Agriculture-Residential, Single-Family, Planned, 1 unit per 40-acres)
Community Plan Area:	Nicasio Valley
Lot size:	74.67-acres
Adjacent Land Uses:	Rural residential
Vegetation:	Mature native trees and grasslands
Topography and Slope:	Flat to steeply sloping
Environmental Hazards:	None identified

The property is approximately 75-acres in size. The property and surrounding neighborhood is composed of large lots, with varying slopes, ranging from flat to steep. The site is partially open and home to an existing equestrian center, while much of the property contains mature Bay Laurels and Coast Live Oaks. Nicasio Creek runs west to east through mostly the northern part of the property. The proposed project is located approximately 700 feet outside of the stream conservation area (SCA).

The application was first submitted on November 18, 2008 and was transmitted to the Department of Public Works, Environmental Health Services, Marin County Fire Department, and the Nicasio Design Review Board. In addition to the architectural and site plans for the proposed project, the information and materials submitted during the completeness review of

the application included a Preliminary Title Report, Radio Frequency (RF) study, Tree Analysis, Photosimulations, and photos taken from the road of a truck with an extended arm and balloons set at heights of 55, 60, 65, 70, and 75-feet to illustrate the height of the proposed 55-foot monopine in place of the usual story pole.

The RF study concluded that the proposed facility's radio frequency emissions would not exceed to safety standard established by the Federal Communication's Commission (FCC). The emissions of the proposed facility by itself would be 2.0% of the maximum allowed by law. With co-location of additional antennas, the maximum calculated fields estimated by the RF study, at ground level would be 14.3% of the maximum allowed by law.

The tree analysis found that Sudden Oak Death (SOD) has had an impact to varying degrees on the oaks found upon the site. The analysis found that 10 of the oaks should be removed, and some of the remaining should be treated with fungicide or insecticide sprays, and one should receive tree surgery.

All of the agencies that received a transmittal regarding the project responded that the project could be constructed in conformance with their requirements. Standard conditions of approval were recommended by those agencies, which have been incorporated into the attached Resolution.

The application was deemed complete on October 11, 2011 and notice was subsequently provided of the Deputy Zoning Administrator hearing.

#### **PUBLIC COMMENT AND RESONSE:**

The Nicasio Design Review Board has provided comments on every submittal made by the applicant with expressed reservations on the last submittal about the height of the structure, the potential visibility of the facility from the road and the time new screening may take to grow with a 24-inch box redwood or bay tree, the RF study, fire access and fire safety, and proximity to the southerly neighbor. In order to provide public input, the applicant has requested a story pole be installed for public viewing and comment.

In response to concerns raised by the Nicasio Design Review Board, the applicant reduced the initial proposed height of the telecommunications facility from 75 feet to 55 feet which is consistent with the height of many of the surrounding trees when viewed from the roadway. In response to the request for a story pole, the applicant expressed concern that the story pole would not be stable and could tip over. Staff concurred with the applicant that a story pole set at 55-feet could pose a safety issue for the southerly neighbor. While the proposed facility itself would be secured to the ground and subject to building code standards regulated by the Building and Safety division, a story pole is not secured and reviewed in such a way and would pose a potential risk to the neighbor in the event of strong winds. Staff agreed to accept the photosimulations of the proposed facility, along with the photos of the simulated height, provided by the truck, with extended arm and balloons. These photosimulations and photos have been provided to the Nicasio Design Review Board for consideration and have been part of the public record and available for review by all.

Staff has found that the photosimulations and photos adequately illustrate how the proposed facility will look from Nicasio Valley Road and the community and recommends that it is not substantial, in spite of the recommended removal of 10-oak trees, recommended by Dr.

Svihra. This recommendation is based on the location of the facility off Nicasio Valley Road, its stealth design as a “monopine” and it not exceeding the average height of the surrounding treeline, and because the applicant will need to plant 15-20 replacement trees to provide added screening of the facility over time. Dr. Svihra has recommended that the trees not exceed the 24-inch box size since younger trees generally do not take a long time to catch up to the next larger size 36-inch box, and because they more easily adapt to a new environment and have a better chance of survival than older trees.

The submitted RF study, as noted above, shows the proposed facility’s radio frequency emissions is well below the maximum allowed by law.

Fire access and fire safety have been reviewed by the Marin County Fire Department and has been conditioned, prior to issuance of a building permit, to meet all fire safe standards required by the fire department. This includes providing adequate fire access and an approved Vegetation Management Plan.

With regards to the immediate southerly neighbor, while the neighbor would be located downslope of the proposed facility, the neighbor’s residence would be approximately 600 feet from the proposed facility, which is disguised as a tree of generally equal size of others found in the area and will be surrounded by new trees which will over time, provided added screening of the site.

The Nicasio Design Review Board has also raised questions pertaining to: the length of time the Use Permit would last; in which cases would additional discretionary review be necessary; whether additional co-location would be possible; and why the applicant is not co-locating at the nearby, 46 foot tall existing tower at 3431 Nicasio Valley Road.

The Use Permit would last 10-years and would be renewed based on evidence that the facility continues to meet federal standards for electromagnetic frequencies (EMFs) and the conditions of Use Permit approval. This would apply to any co-location of new antennas as well. The applicant has stated that co-location on the site would be possible. If this is requested by the same or a different carrier, Design Review would be required. It is standard policy and procedure, in such circumstances, for the applicant to provide a revised RF study to demonstrate that the facility would continue to meet Federal health and safety standards.

The applicant has stated that the site at 3431 Nicasio Valley Road would not meet their coverage requirements due to the need for a higher elevation. The applicant has stated that by co-locating at this other site, another new facility would still be necessary to provide the same level of coverage that this site provides.

## **RECOMMENDATION:**

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

- Attachments:**
1. *Recommended Resolution approving the Bonty Use Permit and Design Review*
  2. *CEQA Exemption*
  3. *Assessor's Parcel Map*
  4. *Project Plans*
  5. *"AT&T Site CN0510 – Lucas Valley Road Site – Mock Up Analysis*
  6. *Photosimulations, submitted March 16, 2011*
  7. *Alternatives Analysis, submitted November 18, 2008 and Response Letter, dated August 26, 2009*
  8. *Coverage Service Maps, dated December 7, 2010*
  9. *Department of Public Works memo, dated September 21, 2009*
  10. *Environmental Health Services memos, dated September 21, 2009 and September 22, 2009*
  11. *Marin Municipal Water District memo, dated June 30, 2011*
  12. *Marin County Fire Department memo and Hold, dated December 26, 2008*
  13. *Nicasio Design Review Board letter from January 6, 2011*

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO.  
A RESOLUTION APPROVING THE BONTY USE PERMIT/DESIGN REVIEW  
2800 NICASIO VALLEY ROAD, NICASIO  
ASSESSOR'S PARCEL 121-160-37

\*\*\*\*\*

**SECTION I: FINDINGS**

- I. WHEREAS, AT&T, the applicant, is seeking Use Permit and Design Review approval which will authorize the construction of an unstaffed, wireless Personal Communication Services (PCS) facility on a new monopine (i.e. a monopole disguised as a pine tree) on a 74.67-acre property. The monopine would reach a height of 55 feet and accommodate 9 panel antennas. The proposed monopole is located approximately 22 feet from the southerly property line. **The subject property is located at 2800 Nicasio Valley Road, Nicasio, and is further identified as Assessor's Parcel 121-160-37.**
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly-noticed public hearing October 27, 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 Categorical Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 of the CEQA Guidelines because the project entails the installation and operation of new equipment and facilities and would not result in grading, tree removal, or other potentially significant impacts on the environment. Additionally, a report prepared by Evan Wappel, Electrical Engineer, dated October 15, 2008 and submitted November 18, 2008, 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.
- IV. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
  - A. The project would be consistent with the AG1 (Agriculture, 1 unit per 31-60 acres) land use designation;
  - B. The project will comply with CWP policies minimizing air, water, and noise pollution and comply with applicable standards for air quality. The project will cause less than significant short-term increases in construction-related emission and short-term construction-generated noise impacts will be minimized by limiting the hours of construction to the hours of 7:00a.m. and 6:00p.m., Monday through Friday, and between the hours of 9:00a.m. and 5:00p.m. on Saturday. (CWP Policies NO-1.1 and NO-1.3);

- C. The project has been designed to be consistent with the design and scale of the surrounding community (CWP Policies, DES-1.2, DES-1.h, DES-4.1, DES-4.c, and DES-5.1);
  - D. 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 would not entail the removal of a substantial number of healthy, mature, native trees. The trees that are to be removed have been evaluated and found to be unhealthy or dying. These trees will be replaced on a greater than 1 for 1 basis.
  - E. No wetlands or stream conservation areas would be affected by the project (CWP Policies BIO-3.1 and CWP BIO-4.1).
  - F. 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 proposed drainage system complies with the standards and best management practices required by the Department of Public Works.
  - G. 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.
  - H. The project would meet energy efficient standards for exterior lighting, and would reducing excessive lighting and glare (CWP Policy DES-1.h) because exterior up-lighting is not proposed and standard conditions of project approval require that lighting be downward directed.
- V. WHEREAS, the Marin County Deputy Zoning Administrator finds that the 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. *Land Use Compatibility***

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 75-acre lot, developed with a commercial equestrian facility in an agricultural-residentially zoned property. As a commercial site, the property is ranked second in the land use compatibility list. There are no industrial uses in the search ring for the coverage area.

TFPP policies LU 1.5, LU 1.6, and LU 1.7 discourage the construction of wireless facilities in conservation areas, such as near streams or the Bay or the Upland Ridge and Greenbelt area, and also discourage any projects that would adversely affect natural or cultural resources. The subject property is not in any areas identified for conservation and the project would not affect natural or cultural resources.

TFPP policy LU 2.1 encourages co-location of facilities or clustering of facilities on a single property, and innovative designs to avoid adverse visual effects. While there is an existing telecommunications facility at 3431 Nicasio Valley Road, it has been found to be inadequate to provide the desired level of coverage. There are no co-location sites available in the area that would meet AT&T's coverage objectives, but it would be feasible for future wireless providers to also locate on the subject property. Installing the antennas within a "monopine" would hide them from view, as further discussed below. Based on these factors, the proposed facility is consistent with the Land Use Compatibility policies contained in the TFPP.

#### ***B. Visual and Aesthetic Compatibility***

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 1 encourages reducing cumulative visual impacts by collocating facilities, or when this is not possible, policy VIS 2 encourages minimizing visual affects with location and stealth design. Further, TFPP policy VIS 2.4 encourages the use of landscaping to screen facilities from off-site locations. As a result of this project, several oak trees have been identified as sick or dying from Sudden Oak Death (SOD), with recommendations ranging from treatment with fungicide and insecticide sprays, tree surgery, and in some cases, removal. While the facility will use a stealth design, disguised as a tree, a condition of project approval requires that these removed trees be replaced and located in places which will help the facility further blend in with the surrounding natural environment.

The otherwise visible portions of the facility would be disguised as a tree and set back from the roadway. The design is an effective means of concealing the facility that has been used elsewhere in the County. Based on these factors, the proposed facility is consistent with the Visual and Aesthetic Compatibility policies contained in the TFPP.

#### ***C. Electromagnetic Field Emissions***

TFPP policy EMF 2 requires that wireless facilities be designed in compliance with Federal standards to reduce the potential health risks from radio fields. The

applicant has submitted a report prepared by Evan Wappel, Electrical Engineer. The report evaluated the existing conditions and RF emissions at the site. The report concludes that the RF emissions of the existing telecommunications facility are well below the maximum permissible exposure standards established by the FCC. Additionally, the antenna area would not be publicly accessible. Based on these factors, the proposed facility is consistent with the Electromagnetic Field Emissions policies contained in the TFPP.

***D. Public Safety and Operation Effects***

TFPP policies require that telecommunications facilities be constructed, maintained and operated in a manner that does not adversely affect public safety or result in noise or traffic impacts on surrounding land uses. In particular, policy PS 1.1 requires that structures be properly engineered and policy 1.2 encourages facilities to be designed to prevent unauthorized access. The construction would be subject to Building Permit approval to ensure its structural capacity, and the antenna panels would be located in the pole 41 feet above grade, and would not be accessible to the public. The equipment cabinet and utility pole would be constructed on grade within a fenced enclosure. In addition, conditions of approval require that the facility be dismantled and removed if it has been inoperative or abandoned for over a year.

TFPP policy OI 1 encourages the operation of facilities to avoid adverse noise or traffic affects. Noise levels associated with the operation of the facility would be minimal and would not exceed the ambient noise levels. With the exception of routine maintenance visits by a cellular site technician, the facility would not generate traffic trips to the property. Therefore, the proposed facility would not result in noise or traffic impacts on surrounding properties. Based on these factors, the facility is consistent with public safety and operational standards contained in the TFPP.

***E. Alternatives***

The applicant has submitted an analysis of two alternative sites that AT&T investigated for development. One alternative site was 3431 Nicasio Valley Road where an existing 45 foot tall telecommunications facility exists. The TFPP encourages co-location of facilities where possible, however after the analysis was performed, it was determined that unless the height of the existing facility was substantially increased, another additional, separate telecommunications facility on another site would have been required to provide the same level of coverage as would occur with the site and size proposed. The same issue arose with the potential co-location at another site considered, 3-miles away, at 1 Mountain King Blvd in San Geronimo Valley. The applicant ruled out all other sites because of the necessary height required to provide the desired coverage for the valley. Therefore, staff concurs with the applicant that the proposed site is preferable to the alternatives identified.

VI. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to 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 of the applicable provisions of this Chapter;**

The proposed project is a permitted conditional use for the ARP-40 zoning district and complies with all other applicable provisions of the Use Permit ordinance and, as noted above in Finding V, the project is consistent with the Marin County Telecommunications Facilities Policy Plan (TFPP).

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

As noted above in Finding IV, the proposed project complies with the policies and permitted uses for the AG1 land use designation of the Countywide Plan.

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

The proposed project has been determined to be Categorically Exempt from CEQA per Section 15303, Class 3 of the CEQA Guidelines because the use is a new telecommunications facility which has been located and designed so as to not result in potentially significant impacts to the environment.

- 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 telecommunications facility is well concealed from view due to the parcel size, location, and surrounding natural landscaping. In addition, as a condition of approval, the applicant is required to plant additional trees to replace those which will be removed on a greater than 1 for 1 basis. These trees will be located primarily in a way that provides addition screening when viewed from Nicasio Valley Road and neighboring properties.

- 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 is to construct a new Personal Communication Services (PCS) facility. The proposed use is permitted with a Use Permit in the ARP-60 zoning district. In addition, the facility is in a secluded location and in conjunction with the existing and required landscaping, as well as its stealth design disguised as a tree it will blend in well with its location. Disguised as a tree and surrounded by other similar sized trees, it will be concealed from the surrounding and larger community. It should therefore not impact the architectural integrity or character of the zoning district or the community in which it is located.

- 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 proposed project is to construct a new wireless telecommunications facility. As noted above in Finding IV, the project complies with the Marin County Telecommunications Facilities Policy Plan (TFPP) and has previously been determined to have no significant potential health risks based on its location, coupled with the type of PCS facilities which do not result in the generation of hazardous levels of non-ionizing electromagnetic radiation.

VII. WHEREAS the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings to approve the Design Review (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 proposed telecommunications facility is to be constructed so as to blend with the natural surroundings. The applicant has submitted photosimulations and pictures, using a truck and balloons, set at heights ranging from 55 feet to 75 feet, taken from Nicasio Valley Road and other locations surrounding the property to demonstrate that the proposed monopine will be in line with the surrounding tree canopy and not otherwise readily visible to the community. In addition, the project has been conditioned to include native landscaping in front of the proposed facility to further screen the proposed structure. Therefore, 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 proposed monopine is located on a 75-acre lot and is surrounded by many trees of similar or larger size. In addition, due to the size of the surrounding lots, adjacent uses, and size of the proposed monopoles, there will be no impacts to sun and light exposure, views, vistas or privacy to adjacent properties. Further, rights-of-way and pathways for circulation will not be impacted, because the additions would be entirely on the property. Therefore, the project is consistent with this finding.

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

Due to the size of the surrounding lots and adjacent uses, adequate separation between buildings will be maintained. The project site is home to numerous mature Bay Laurels and Coast Live Oaks. Dr. Pavel Svihra, Consulting Horticulturalist, has determined that the Bay Laurels will completely take over the property, likely over the next ten years due to the rampant spread of Sudden Oak Death (SOD). Dr. Svihra has recommended that ten of the oaks be removed immediately and others be treated through fungicidal and insecticidal sprays, pruning, and surgery to better contain and prevent the spread of the disease.

The site will remain well forested with healthy Bay Laurels, but in order to limit potential holes and exposure of the site, as well as the proposed telecommunications facility to Nicasio Valley Road and the surrounding community, the project has been conditioned to have 15-20, twenty-four (24) inch box SOD resistant trees be planted, based on an approved plan by Dr. Svihra's or another licensed arborist's recommendations. As an added note, while a larger sized box may otherwise have a taller initial tree, Dr. Svihra has recommended that the tree be no larger than 24-inch box since younger trees are better able to adapt to new site conditions and are more likely to survive after planting. As conditioned, the landscaping will preserve scenic views. Therefore, the project is consistent with this finding.

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

The project, as proposed, will result in minimal cut and fill and reforming of the natural terrain due to there being no new roads or substantial grading necessary in its construction. Therefore, the project is consistent with this finding.

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

This finding is not applicable.

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

This finding is not applicable.

- G. **The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.**

As noted in Findings IV, V, and VII the project is consistent with the goals and objectives of the Marin Countywide Plan, the ARP-40 zoning district, and the Telecommunications Facilities Policy Plan. Therefore, the project is consistent with this finding.

## **SECTION II: ACTION**

WHEREAS the Marin County Deputy Zoning Administrator hereby approves the Bonty Use Permit and Design Review subject to the conditions of approval listed below. This approval authorizes the construction of an unstaffed, wireless Personal Communication Services (PCS) facility on a new monopine (i.e. a monopole disguised as a pine tree) on a 74.67-acre property. The monopine shall reach a maximum height of 55 feet and accommodate 9 panel antennas. The monopole shall be located approximately 22 feet from the southerly property line. The subject property is located at 2800 Nicasio Valley Road, Nicasio, and is further identified as Assessor's Parcel 121-160-37.

## **SECTION III: CONDITIONS OF PROJECT APPROVAL**

### Marin County Community Development Agency, Planning Division

1. The Plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled, "LUCAS VALLEY ROAD - CN0510," consisting of nine sheets prepared by TRK Engineering, received December 8, 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, the applicant shall make the following modifications:
  - a. The applicant shall implement all recommendations of Dr. Svihra, including in some cases, removal of unhealthy oaks, pruning, spraying of fungicides and insecticides on select trees, and tree surgery. The applicant shall submit in writing from Dr. Svihra or a licensed arborist that all of these recommendations have been implemented.
  - b. The applicant shall submit a revised landscape plan which includes the planting of 15-20, twenty-four (24) inch box native trees which are resistant to Sudden Oak Death to act as screening when viewed from Nicasio Valley Road and the surrounding community.
3. 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.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a copy of a safety standards plan for review and approval by the Community Development Director. The plan shall contain safety standards to be implemented in order to protect persons working in areas that are not accessible to the general public who might be exposed to EMF levels in excess of the Maximum Permitted Exposure Level. Such standards may include restricted access to telecommunications

facilities, temporarily ceasing operation of the facility for work required within specified distances of antennas, and posting safety signage in compliance with FCC requirements.

5. The approved facility must be dismantled and removed from the premises if it has been inoperative or abandoned for a one-year period. BEFORE ISSUANCE OF 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 equipment, structures, and antennas shall be removed and the site shall be returned to its pre-existing conditions.
6. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit either: 1) a Statement of Conformance, signed by a certified or licensed landscape design professional confirming that the landscape design requirements of Chapter 23.10 of the Marin County Code have been met; or 2) a letter from the Marin Municipal Water District indicating that the proposed landscaping complies with all conditions of the District's Water Conservation Ordinance.
7. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide confirmation to the Planning Division that the Fire Marshal has approved the Vegetation Management/Defensible Space Plan and that the project complies with all applicable fire safety requirements.
8. 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.
9. Exterior lighting shall be located and/or shielded so as not to cast glare on nearby properties.
10. BEFORE FINAL INSPECTION, the applicant shall install warning signage, in compliance with FCC requirements, warning persons (including maintenance

workers) about potential health risks. Proof of such can be made to the Community Development Agency by photographs of the signage posted at the site.

11. BEFORE FINAL INSPECTION, the applicant shall submit a Statement of Completion, signed by a certified or licensed landscape design professional, verifying that all approved and required landscaping has been installed in accordance with the approved landscape plan and Chapter 23.10 of the Marin County Code, where applicable.
12. BEFORE FINAL INSPECTION, the applicant shall provide confirmation to the Planning Division from the Fire Marshal confirming that the Vegetation Management/Defensible Space Plan has been implemented and that the fire suppression water supply is in place.
13. 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.
14. 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.
15. 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.
16. 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. If the County is preempted by Federal and/or State law, rules or regulations, from applying an updated EMF standard, this condition shall not apply.

17. 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.
18. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul approval of the project, for which action is brought within the applicable statute of limitations.
19. 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.

Marin County Department of Public Works - Land Use and Water Resources Division

20. BEFORE ISSUANCE OF A BUILDING PERMIT, if grading or site disturbance is to occur between October 15 and April 15, the applicant shall submit an Erosion and Siltation Control Plan.
21. BEFORE ISSUANCE OF A BUILDING PERMIT, an encroachment permit shall be required for work within the Nicasio Valley Road right-of-way.
22. BEFORE ISSUANCE OF A BUILDING PERMIT, the permittee shall be responsible for the repair of damage to any existing facilities (e.g. pavement, curb, gutter, sidewalk, landscaping) caused by construction activity equipment, vehicles and/or material delivery and storage. In order to ensure repair, the agency may require cash deposits prior to issuance of permits or may place holds on interim or final inspections.
23. BEFORE FINAL INSPECTION, a radio interference study shall be completed and submitted to DPW Communications Division for review.

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

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit and Design Review approval by complying with all conditions of approval, obtaining Building Permits for the approved work, and substantially completing approved work before October 27, 2013, or all rights granted in this approval shall lapse.

The Building Permit approval expires if the building or work authorized in this approval does not commence within one year from issuance of such permits. A Building Permit is valid for two years during which construction is required to be completed. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of the permit. Please be advised that if your Building Permit lapses after the vesting date stipulated in the approval, and no extensions have been granted, the Building Permit may become null and void. Should you have difficulties in meeting deadlines for completing the work pursuant for a Building Permit, the applicant may apply for an extension at least ten days before the expiration.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid until **October 27, 2021**, 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.

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, no later than **4:00 p.m. on November 10, 2011**.

#### **SECTION V: ACTION**

PASSED AND ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 27<sup>th</sup> day of October 2011.

---

BEN BERTO  
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

---

Joyce Evans  
DZA Secretary