

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 11-136
A RESOLUTION APPROVING THE BOUNTY 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. Co-location of additional service providers is possible with the proposed design, but is not presently planned. **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 and December 1, 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, 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 is consistent with the Nicasio Valley Community Plan, including with regards to requesting input for Design Review from the Nicasio Design Review Board for projects within the Nicasio Valley Road Corridor. In partial response to comment from the Nicasio Design Review Board, the applicant reduced the height of the proposed facility to better blend with the surrounding environment and to be more in scale with the trees found within the community;

- C. 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);
- D. 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);
- E. 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.
- F. No wetlands or stream conservation areas would be affected by the project (CWP Policies BIO-3.1 and CWP BIO-4.1).
- G. 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.
- H. 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.
- I. 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. The project is in scale with the surrounding community and is of an acceptable stealth design which will make it visually unobtrusive (TFPP Policies, Land Use Compatibility Policies, LU-1.4, LU-1.4.2, LU-1.6.2; Visual and Aesthetic Compatibility Policies, VIS-2.1, VIS-2.1.3, VIS-2.2, VIS-2.2.10, VIS-2.3.2).

- B. The project is located outside of the Ridge and Upland Greenbelt and its scenic ridgelines. (TFPP Policies, Land Use Compatibility Policies, LU-1.1; and Visual and Aesthetic Compatibility Programs, VIS-2.1.1 and VIS-2.2.8).
 - C. The facility would allow the applicant, AT&T, to provide cellular coverage in the central portion of the County and would allow the carrier to provide a reliable source of wireless communications to residents, businesses, and emergency service providers in the County.
 - D. The applicant has submitted an Electromagnetic Energy Survey 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 (TFPP Policies, Electromagnetic Field Emissions Policies, EMF-1.1, EMF-2.1.3).
 - E. The facility will not create significant lighting impacts on surrounding areas because no lighting is proposed for the site (TFPP Policies, Visual and Aesthetic Compatibility Policies, VIS-2.3.7).
 - F. 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, therefore, the proposed facility would neither generate significant levels of noise nor traffic.
 - G. The facility does not significantly impair the visual conditions on and surrounding the subject property because the facility is disguised to blend in with the surrounding vegetation, additional landscaping to provide further screening is one of the conditions of approval, and the monopine will not rise above the background treeline when viewed from Nicasio Valley Road or Lucas Valley Road.
- 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 Categorical 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, additional landscaping when viewed from Nicasio Valley Road is to be planted and maintained by the applicant, and is a condition of approval in order to further screen the proposed facility.

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 the existing, as well as the conditioned, natural landscaping and exterior coloring to have it blend with its location, conceal from the surrounding and larger community and 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 Personal Communication Services (PCS) 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 is designed to conserve energy and natural resources by meeting the green building standards found in Table 4-6 of the Marin County Code Chapter 22.42.060; and***

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. Co-location of additional service providers shall be possible. 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.
 - c. The applicant shall incorporate a contract of continued maintenance with the submitted landscape plan. This agreement shall also include an agreement that the vicinity of the site will be cleared and maintained free of all invasive weeds and plants.
 - d. The applicant shall erect a 6 foot tall, solid redwood fence around the proposed telecommunications facility, in place of the proposed 6 foot tall chain link fence with barb wire.
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. 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.
9. 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.
10. 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.

11. 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.
12. Three years after final inspection, the applicant shall submit a report prepared by a licensed arborist which examines the health of the trees on-site. Any maintenance recommendations made by the licensed arborist shall be implemented. Any trees on-site, either previously existing or placed as a result of the approved landscape plan, which need to come out due to poor health or death must be replaced on a 2:1 basis.
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. 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.
15. 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.
16. 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.
17. The applicant shall be responsible for ensuring that the number of construction and maintenance vehicles is limited to the minimum number necessary to construct and maintain the project.
18. 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.
19. 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.
20. 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.

21. 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. 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

23. 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.
24. BEFORE ISSUANCE OF A BUILDING PERMIT, an encroachment permit shall be required for work within the Nicasio Valley Road right-of-way.
25. 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.
26. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall demonstrate that a legal access easement is provided in compliance with Title 24.
27. 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 December 1, 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

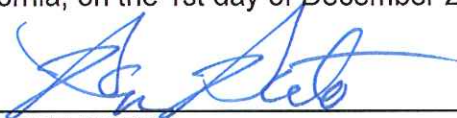
pursuant for a Building Permit, the applicant may apply for an extension at least ten days before the expiration.

NOW, THEREFORE BE IT FURTHER RESOLVED that this Use Permit shall be valid until **December 1, 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. 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, no later than 4:00 p.m. on December 15, 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 1st day of December 2011.



BEN BERTO
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:



Joyce Evans
DZA Secretary