

**MARIN COUNTY DEPUTY ZONING ADMINISTRATOR**

**RESOLUTION 12-109**

**A RESOLUTION APPROVING  
THE RAPPAPORT AND ROSENMAN  
COASTAL PERMIT AND PRECISE DEVELOPMENT PLAN AMENDMENT**

**ASSESSOR'S PARCELS 188-140-69 and -70, and 188-140-21**

**330 HORSESHOE HILL ROAD, BOLINAS**

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**SECTION 1: FINDINGS**

- I. WHEREAS, Stacey N. Ford, on behalf of Andrew and Deborah Rappaport, and Andrea and John Rosenman, proposes the legalization of portions of the underground utility line trench excavation and conduit installation completed without a permit, new trenching and underground conduit installation through the adjacent Rosenman property, and installation of a new utility pole within the Horseshoe Hill Road right-of-way. The project would install 710 lineal feet of a 12,000 Volt PG&E electric power transmission line and AT&T telephone lines underground from a new pole in the Horseshoe Hill Road right-of-way in a northeastern direction to the existing pole on the Rosenman property. The proposed new pole would be located on the eastern side of the right-of-way, 200 feet south of the existing driveway to 330 Horseshoe Hill Road. Two poles and the existing overhead lines would be removed. Approximately 290 lineal feet of the as-built trench and conduit are located within the 100-foot Wetlands Conservation Area mapped by WRA, Inc. around a seasonal pond. As recommended in the WRA, Inc. report, and approved by the County, the unauthorized trench was backfilled and stabilized with erosion control measures during the first two weeks of October 2011 to avoid impacts to red-legged frogs that might migrate through the area in the rainy season. No additional site work will be authorized until after approval of the Coastal Permit and Precise Development Plan Amendment for the entire project. The subject properties are within the C-ARP-5 zoning district at 330 Horseshoe Hill Road, Bolinas, further identified as Assessor's Parcels 188-140-69 and -70, and 188-140-21.
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly noticed public hearing on May 17, 2012, 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, pursuant to Section 15302, Class 2(d) of the CEQA Guidelines because it entails the replacement of existing overhead utility lines with underground lines that would not result in substantial vegetation or tree removal or other potentially adverse impacts on the environment.

- IV. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Marin Countywide Plan because:
- A. The project would comply with Marin County standards for geotechnical engineering and seismic safety, and include improvements to protect lives and property from hazard;
  - B. The project would result in underground utilities to replace existing overhead utilities;
  - C. The project would result in development which conforms to the governing standards related to building height, size and location;
  - D. The project would comply with governing development standards related to grading, flood control, drainage and utility improvements as verified by the Department of Public Works;
  - E. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services; and
  - F. The project would minimize soil disturbance and maximize protection of natural vegetation.
- V. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the Bolinas Community Plan because:
- A. The project involves installing utilities underground based on development standards for construction.
  - B. The project would not adversely impact the surrounding natural environment with regard to vegetation, wildlife habitats, or drainage.
  - C. The project would be compatible with the surrounding community character and would not substantially affect the surrounding built environment with regard to views from adjacent properties, privacy for the subject and surrounding properties, and access from Horseshoe Hill Road.
- VI. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Master Plan Waiver approval pursuant to the requirements and objectives of the Planned District standards (Chapter 22.45 and §22.47.010I of the Marin County Interim Zoning Code) as described below.
- A. The project would result in the construction of underground utilities to replace overhead utility lines.
  - B. The installation of new joint utility pole in the Horseshoe Hill Road right-of-way and underground utility lines are minor changes to the existing infrastructure that results in less visual effects.
  - C. The objectives of a Master Plan would be achieved with a Precise Development Plan that establishes development standards for installation of the utility lines underground, in an appropriate location and with an improved design.

VII. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (§22.56.130I of the Marin County Interim Zoning Code) as described below

A. Water Supply:

The Community Development Agency, Environmental Health Services Division staff determined that the existing water supply system would not be affected by the project.

B. Septic System Standards:

Marin County Environmental Health Services Division staff reviewed the proposed determined that the existing septic system would not be affected by the project.

C. Grading and Excavation:

The project site has a variety of slopes and the utility line would go through areas of gradual 5% to 10% slope where excavation of approximately 70 cubic yards of soil and backfill would occur. The excavation has occurred for a portion of the alignment and additional excavation would occur to complete the project through the Rosenman property. All grading and excavation work would be subject to the review and approval of the Department of Public Works, Land Use and Water Resources Division, to ensure consistency with Marin County requirements.

D. Archaeological Resources:

Review of the Marin County Archaeological Sites Inventory indicates that the subject property is located in an area of high archaeological sensitivity. A Cultural Resources Study was completed in 2011 that found no cultural resources. However, the small amount of grading proposed could disturb cultural resources and a condition of approval requires that in the event cultural resources are discovered during construction, all work shall stop immediately and the services of a qualified consulting archaeologist shall be engaged to assess the value of the resource and to develop appropriate protection measures.

E. Coastal Access:

The project is located more than one mile inland of the Pacific Ocean and ¼-mile from Bolinas Lagoon at an elevation of approximately 50 feet and would not impede coastal access.

F. Housing:

The proposed project would not result in the removal of a residential unit that would provide housing opportunities for people of low or moderate income. The project would not affect the availability of affordable housing within the Bolinas community.

G. Stream and Wetland Conservation Protection:

The project site is not located along protected blue-line creeks and is not subject to the Stream Conservation policies and standards of the local Coastal Program. The site does contain a small pond that the National Wetlands Inventory identifies as a Freshwater Pond. While a complete delineation of hydric soil and hydrophytic vegetation was not prepared as, the applicant's biologist, Geoff Smick, Associate Principal Plant Ecologist with WRA Inc. completed a site inspection and mapped the sag pond and meadow. The applicant mapped a 100-foot wetlands buffer around the edge of the sag pond based on Section 404 of the Clean Water Act. One existing utility pole located in the 100-foot buffer would be removed and the overhead utility lines that span across a portion of the wetlands would also be removed. 290 lineal feet of the as-built underground utility line is within the 100-foot wetland buffer area. No fill is proposed within the mapped wetlands. However, portions of the underground utility lines are subject to a Coastal Permit and shall be evaluated for conformance with LCP Policy 18, "To the maximum extent feasible, a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands as delineated by the Department of Fish and Game and in accordance with Section 30121 of the Coastal Act and with the criteria developed by the U.S. Fish and Wildlife Service. No uses other than those dependent upon the resources shall be allowed within the buffer strip." Further, Interim Zoning Code Section 22.56.130.5.d says, "A buffer strip one hundred feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Development activities and uses in the wetland buffer shall be limited to those allowed pursuant to Section 30233 of the Coastal Act of 1976."

While it is infeasible to locate the utility line completely outside of the wetland buffer, the utility easement and trench have been located as far from the wetland as possible. Further, coastal Act Section 30233 allows public service facilities in wetlands when there is no feasible less environmentally damaging alternative. As confirmed by the biological report, the project has been carried out in a manner that eliminates adverse effects to the wetland. WRA Inc. biologists monitored the work and determined that no Red-legged Frogs were affected and that the backfill was properly stabilized to prevent erosion with native plantings. The project encroaches the minimum amount necessary in the wetlands buffer to install the 12kV PG&E line underground. The project would result in removal of an overhead utility line through a wetland and a wetland buffer.

As implemented, the project complies with the stream and wetland conservation protection policies of the Local Coastal Program.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit I of the Local Coastal Program.

I. Wildlife Habitat:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. Also, review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates two special-status wildlife species occurring in the project area including the American Badger (*Taxidea taxus*) and the hoary bat (*Lasiurus cinereus*). The habitat associations for these species do not exist on the project site and the small-scale scope of the project would not adversely affect the existing habitat. However, there is suitable habitat for saltmarsh common yellowthroat and one individual was observed by WRA, Inc. biologists, foraging within the vegetation of the sag pond. California red-legged frog, although none were observed during the biologist's field surveys, may have habitat on the site. The small lineal project within the 12-acre project site would not adversely affect potential habitat of the red-legged frog. The project included construction of protection fencing before construction, training workers, construction during the dry season, a construction management plan, and monitoring activities by a biologist to protect frog habitat. Therefore the project protects wildlife consistent with LCP policies.

J. Protection of Native Plant Communities:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is not located in an area containing rare plants. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property does not contain habitat for sensitive species. The relatively small-scale project would not have an adverse impact on the habitat of the predominant Coast live oak woodland, common velvet grass meadow, and freshwater marsh native plant communities.

K. Shoreline Protection:

The subject property is not adjacent to the shoreline, and the proposed project would not result in adverse effects to the shoreline. The project would not require additional shoreline protection.

L. Geologic Hazards:

The project site is located entirely within the Earthquake Hazard Zone along the San Andreas Fault Zone and would be subjected to strong ground shaking during a proximate seismic event. The applicant submitted a geotechnical evaluation prepared by E. Vincent Howes, SalemHowes Associates, that determined the project to be feasible and with no additional hazards. As a condition of project approval, the applicant shall execute and record a waiver of liability holding the County, other governmental agencies and the public, harmless of any matter resulting from the existence of geologic hazards.

M. Public Works Projects:

The proposed project does not entail expansion of public works facilities such as public roads, flood control projects, or utility services but would result in replacement of existing overhead utility lines with underground lines.

N. Land Division Standards:

A land division is not a part of the proposal.

O. Visual Resources:

The project would not impair or obstruct coastal views from State Route One and would reduce visual effects from Horseshoe Hill Road. The project would result in installation of one new joint utility pole within the Horseshoe Hill Road right-of-way and installation of the existing above ground 12 kV electric lines and telephone lines underground. Two existing utility poles would be removed from the subject Rappaport properties.

P. Recreational/Commercial/Visitor Facilities:

The project site is governed by C-ARP-5 (Coastal, Agricultural Residential, Planned District) zoning regulations and would not affect the established character of the Bolinas village commercial area in the VCR zoning district. The project would have no effect on recreation, commercial, or visitor facilities.

Q. Historic Resource Preservation:

The property is not located within the boundaries of the Bolinas Historic District and no historic resources would be affected by the project.

VIII. WHEREAS, the Marin County Deputy Zoning Administrator finds that the proposed project is consistent with the mandatory findings for Precise Development Plan approval (§ 22.47.050.B1) of the Marin County Interim Zoning Code) as described below

- A. The project would be consistent with the land use designations of the Local Coastal Plan.
- B. The project is designed to minimize potential impacts to drainage, erosion, grading, landscaping, trees and native plants, and circulation/transportation.
- C. The project would not affect for physical development and related on-site circulation and parking, and would have less visual impacts from removal of overhead utility lines and installation underground.

## **SECTION 2: ACTION**

NOW, THEREFORE, LET IT BE RESOLVED, that the Deputy Zoning Administrator approves the Rappaport and Rosenman Coastal Permit and Precise Development Plan Amendment application pursuant to Marin County Interim Coastal Zoning Code Sections 22.56.130I, 20.56.120, and 22.45.050.BI. This Coastal Permit and Precise Development Plan Amendment approval permits the legalization of portions of the underground utility line trench excavation and conduit installation completed without a permit, new trenching and underground conduit installation through the adjacent Rosenman property, and installation of a new utility pole within the Horseshoe Hill Road right-of-way. The approval permits the installation of 710 lineal feet of a 12,000 Volt PG&E electric power transmission line and AT&T telephone lines underground from a new pole in the Horseshoe Hill Road right-of-way in a northeastern direction to the existing pole on the Rosenman property.

## **SECTION 3: CONDITIONS OF PROJECT APPROVAL**

1. The County of Marin approves the Rappaport and Rosenman Coastal Permit and Precise Development Plan Amendment (Project ID 2011-0181) pursuant to Marin County Interim Zoning Code Sections 22.56.130I (Coastal Permit) and 22.45.050.BI (Development Plan) to install electric and telephone utility lines underground. The subject properties are located at 330 Horseshoe Hill Road, Bolinas and are further identified as Assessor's Parcels 188-140-69 and -70, and 188-140-21.
2. Except as modified herein, plans submitted for an Encroachment Permit and Electrical Permit for the approved project shall substantially conform to plans on file in the Marin County Community Development Agency (CDA), Planning Division, identified as EXHIBIT A, "Utilities Undergrounding" consisting of six sheets prepared by Stacey Nichol Ford, Architect, date stamped received March 12, 2012.
3. BEFORE ISSUANCE OF AN ELECTRICAL PERMIT, BUILDING PERMIT, OR ENCROACHMENT PERMIT, the property owners shall record Waivers of Public Liability holding the County of Marin, other governmental agencies, and the public harmless because of loss experienced by geologic actions associated with the San Andreas Fault through the two Rappaport lots and one Rosenman lot. The Waivers of Public Liability shall be submitted to the Director for review and approval before recordation.
4. If archaeological resources are discovered during grading, trenching, or other construction activities all work at the site shall stop immediately, and the project sponsor shall inform the Marin County Environmental Coordinator of the discovery. A registered archaeologist, chosen by the County and paid for by the project sponsor, shall assess the site and shall submit a written report to the Marin County Community Development Agency Director advancing appropriate mitigations to protect the resources discovered. At the discretion of the Environmental Coordinator and consistent with CEQA, the Environmental Coordinator shall retain a Native American monitor to evaluate any cultural resource discovery for sacred values and propose protection measures appropriate to the Federated Indians of the Graton Rancheria Sacred Sites Protection Committee. No work at the site may recommence without approval of the Director. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Director.

5. All flashing, metal work and trim shall be an appropriately subdued, non-reflective color. All exterior lighting shall be subdued, downward directed, hooded, and the minimum lumens necessary for safety only.
6. 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.
7. 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 an approval of this application, for which action is brought within the applicable statute of limitations.
8. All soils disturbed by development of the project shall be reseeded with native groundcover, grasses, wildflowers, and covered with mulch to control erosion.
9. 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

10. Site improvement plans under the purview of Marin County Code Chapter 24 shall be prepared by, or under, the direction of a registered civil engineer and shall be wet-stamped and signed [MCC § 24.10.005(b)].
11. Provide a copy of the recorded Quitclaim for the existing utility easement proposed to be abandoned.
12. BEFORE ISSUANCE OF A BUILDING PERMIT:
  - a. The plans shall be reviewed and approved by a Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer. Certification shall be either by the engineer's stamp and signature on the plans, or by stamped and signed letter.
  - b. Provide a note on plans stating that the Design Engineer and/or Architect shall certify to the County in writing prior to final inspection that all grading, drainage, and retaining wall construction was completed in accordance to approved plans and field direction. Also state that the driveway, parking, and all other site improvements shall be inspected by a DPW engineer prior to final inspection.
  - c. Provide the coordination with PG&E for proposed changes to the existing electrical main line. Any proposed cabinets and/or vaults shall be shown and labeled on the Site Plan.



- d. Provide the destination of the proposed 30-40 cubic yards of excavated soil.
- e. Submit Erosion and Siltation Control plans for during construction operations and for post construction.
- f. An Encroachment Permit shall be required for work within the Horseshoe Hill Road right-of-way. For work that has been started and/or completed without permits will require retroactive permits and all fees will be doubled [MCC § 24.30.020(b)].

**SECTION 4: VESTING AND APPEAL RIGHTS**

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest the Rappaport and Rosenman Coastal Permit and Precise Development Plan Amendment approval by obtaining an Encroachment Permit and Electrical Permit/Building Permit, and substantially completing the approved work before September 17, 2012, 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.

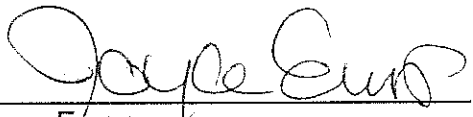
NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Planning Commission. A Petition for Appeal and a \$600.00 filing fee must be submitted in the Community Development Agency, Planning Division, Room 308, Marin County Civic Center, San Rafael, no later than 4:00 p.m. on May 24, 2012.

**SECTION 5: DECISION**

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 17<sup>th</sup> of May 2012.

  
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JEREMY TEJIRIAN  
DEPUTY ZONING ADMINISTRATOR

Attest:

  
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Joyce Evans  
Deputy Zoning Administrator Secretary

