

2. **METRO PCS @ GREEK CHURCH (DM)**
10710U; USE PERMIT
160-150-03; 1110 HIGHLAND DRIVE

Consider a Use Permit application to allow the installation of three additional panel antenna for an existing co-location facility mounted along the upper exterior wall of the Greek Orthodox Church building at 1110 Highland Drive.

PRESENT

Mary Giles, 2 Ganey Court, Novato

Zoning Administrator Lazure reported that he had received a letter from several residents, sent by Joe Lopez of 5 Silver Maple Place, expressing concern about health and safety issues. The Zoning Administrator noted for the record that Federal Law prohibits a city from denying a telecommunication antenna, if the facility will operate within maximum human exposure levels as specified by the F.C.C.

The staff report states a recommendation for approval subject to conditions.

The public hearing was opened. The public hearing was closed.

ACTION

Zoning Administrator Lazure rendered a decision of approval on November 29, 2007, in accordance with the findings and action as recommended in the staff report, subject to the following conditions:

CONDITIONS OF APPROVAL

1. The Use Permit shall be valid for one year from the date of approval. The Use Permit may be extended at the request of the applicant for additional one year increments at the discretion of the Community Development Director, in compliance with the procedures set forth in Section 19.38.180 of the Zoning Code. The applicant shall be responsible for the costs, on an hourly basis, for the City to process an extension.
2. No deviation from approved plans, including color changes or substitution of materials, shall be made without City approval. Any changes or additions to the approved project shall be submitted to the Community Development Department and shall be subject to review and approval prior to the implementation of any proposed modification.

NOVATO ZONING ADMINISTRATOR
MINUTES EXCERPT
DATE: November 29, 2007

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copies to property owner and
applicant 12/10/07.
(Signature)

3. All utilities connecting the approved facility visible from ground level shall be placed underground or in cable trays.
4. No exterior lighting shall be allowed for any part of the proposed facility, except as may be deemed necessary for security and shall be subject to the review and approval of the Community Development Director.
5. With the exception of emergency repairs, routine testing and maintenance activities shall be allowed only during the hours between 7:00 a.m. and 5:00 p.m., Monday through Friday. Emergency energy generators shall be used in compliance with the City's noise standards, and shall be operated only during power interruptions, or for routine testing and maintenance.
6. The Radio Frequency Radiation (RFR) generated by the approved facility, in combination with other sources of RFR, shall not expose the general public to RFR levels that exceed the allowable standards as adopted by Federal Communications Commission (FCC) and the City. Should nationally accepted research result in the establishment of substantially revised standards for human exposure to RFR and such standards are adopted by the City or otherwise determined to be applicable to the City, the applicant shall demonstrate compliance with such standards by submitting a new RFR report to the Community Development Department within 30 days of the effective date of the adoption of the revised standards. A longer period for submitting the RFR report may be granted at the discretion of the Community Development Director. The RFR report shall determine compliance with the updated standards by calculating the RFR power level of the approved facility in combination with other similar sources of RFR.
7. Within 6 months of the initiation of the operation of the approved facility, the applicant shall submit a post-construction RFR report, including the data developed, verifying that the actual levels of RFR emitted by the approved facility, operating alone, and in combination with other approved facilities, are below the FCC, threshold standards. The applicant shall be responsible for the cost of the post-construction reports to be prepared by a qualified consultant selected by the City.
8. Prior to the issuance of a building permit, the proposal shall be subject to the review and approval of the City of Novato Public Works Department. Items that may need to be addressed, include, but are not limited to:
 - a. Maintenance agreements/facility maintenance requirements
 - b. Shared or common use agreements

NOVATO ZONING ADMINISTRATOR MINUTES EXCERPT DATE: November 29, 2007

c. Indemnification

9. This Use Permit is subject to the revocation procedures contained in Section 19.42.050.G of the Novato Municipal Code in the event that any of the terms of this approval are violated or if the uses are conducted or carried out in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the City.
10. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, recordation of final maps or other entitlements.
11. Indemnity and Time Limitations:
 - a. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack, set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.
 - b. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
 - c. In the event that a claim, action or proceeding described in Article (a) above, is brought, the City shall promptly notify the applicant of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, the City shall retain the right to (I) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the

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manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the applicant in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where the applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that if said Counsel is the City Attorney, his fees and costs shall be paid by the applicant.

- d. The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- e. Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
- f. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The applicant is hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

NOVATO ZONING ADMINISTRATOR
MINUTES EXCERPT
DATE: November 29, 2007



THE CITY OF
NOVATO
CALIFORNIA

Community Development Dept.
Planning Division
75 Rowland Way, #200
Novato, CA 94945
(415) 899-8989
FAX (415) 899-8217
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ZONING ADMINISTRATOR STAFF REPORT
(Use Permit)

MEETING

DATE: November 29, 2007

STAFF: Daniel Toillion, Planner I
899-8981

SUBJECT: **WIRELESS COMMUNICATION FACILITY**
10710U; USE PERMIT
APN 160-150-03; 1110 HIGHLAND DRIVE

PROJECT DESCRIPTION

Consider a Use Permit application to allow the installation of three panel antennas on the face of the Greek Orthodox Church, located at 1110 Highland Avenue. The panel antennas will be concealed in FRP (fiberglass reinforced plastic) boxes on the south-west, south, and East facing walls, 45 feet above grade. An equipment area to house the new transceivers will be located near the two existing equipment areas currently leased by AT&T and Sprint.

NEED FOR ZONING ADMINISTRATOR ACTION

Novato Municipal Code Section 19.42.050 provides for the Zoning Administrator to hold public hearings on a Use Permit. Novato Municipal Code 19.38.030.A.3, states the Zoning Administrator has the authority to approve a co-located wireless facility that is not located within 200 feet of a scenic resource as designated by the General Plan.

BACKGROUND

Applicant: Metro PCS Inc.
Property Owner: Greek Orthodox Church of Marin
Property Size: 5.16 Acres
GP Designation: R1
Existing Zone/Use: PD; Church
Adjacent Zone/Use: North - PD; Open Space/Residential
South - PD; Residential
West - PD; Residential
East - PD; Residential

ENVIRONMENTAL ASSESSMENT

The Environmental Coordinator has determined this project is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section §15303 (New Construction) Class 3; installation of small, new equipment and facilities in small structures.



STAFF ANALYSIS

In order to grant a Use Permit, the following findings must be made consistent with Novato Municipal Code Section 19.42.050.E:

Finding 1: The proposed use is consistent with the General Plan and any applicable specific plan.

Discussion: Chapter VI of the Novato General Plan (Economic Development & Fiscal Vitality) establishes the following Program for the implementation of wireless telecommunications.

EC Program 13.1: Work with telecommunications companies and the PUC to encourage state-of-the-art telecommunications capabilities, including fiber optic, satellite, wireless, cable lines and other new emerging technologies capable of transferring data digitally.

The applicant is a telecommunication company and proposes the installation of wireless technology, which is consistent with and would implement the above Program.

Discussion: The Community Identity Chapter of the Novato General Plan establishes the following policy that is applicable to wireless facilities:

CI Policy 1: Compatibility of Development with Surroundings: Ensure that new development is sensitive to the surrounding architecture, topography, landscaping, and to the character, scale, and ambiance of the surrounding neighborhood. Recognize that neighborhoods include community facilities needed by Novato residents as well as homes, and integrate facilities into neighborhoods.

The proposed antennas will be concealed behind FRP (Fiberglass Reinforced Plastic) boxes matching the color of the church building. The support equipment area on the ground is concealed by large trees, an arbor, and a fence and will also match the building in both color and materials. The size of the proposed facilities is small in scale and utilizes existing wireless facility infrastructure including walkways and equipment cabinet location.

Finding 2: The proposed use is allowed with a Use Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Ordinance and any relevant Master Plan and/or Precise Development Plan.

Discussion: Section 19.38.030 of the Zoning Ordinance specifies that wireless communication facilities shall not be constructed, installed, or maintained without first obtaining a Use Permit in compliance with Section 19.42.050 (Use Permits).

Zoning Ordinance 19.38.030.A.3: The Zoning Administrator shall have the authority to approve a co-located facility that is not within 200 feet of a scenic resource as designated by the General Plan.

The project site supports wireless panel antennas for two other service providers, (Sprint PCS & Cingular), operating under previously approved Use Permits. The current proposal would utilize the site as a co-location facility and is not within 200 feet of a scenic resource. Therefore, the proposed wireless facility complies with Zoning Ordinance Section 19.38.030.

Finding 3: The establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Finding 4: The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Finding 5: The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

Discussion: Zoning Ordinance Division 19.38 establishes development standards to help mitigate any undesirable health or visual effects caused by wireless telecommunications facilities, including location compatibility and site design, roadway access, vegetation and lighting standards, co-location requirements, and levels of radio frequency radiation (RFR). These standards have been used by staff as a guide in preparing this analysis and in determining consistency with Use Permit findings 3-5. The project proposal is found by staff to comply with the established development standards and is consistent with findings 3-5 as follows:

Radio Frequency Radiation (RFR) *City standards and criteria for wireless communication facilities specify that such facilities operating alone and in conjunction with other telecommunications facilities shall not produce RFR in excess of the standards for permissible human exposure to RFR as adopted by the Federal Communications Commission (FCC).*

An RFR statement prepared by Hammet and Edison, the applicant's consulting engineers, has been included with the application materials. The document confirms that the maximum combined RFR level produced by the proposed panel antennas and the two existing panel antennas is well below Federal Communication Commission (FCC) standards at 2.6% of the applicable public exposure limit of 3 kHz – 300 GHz.

Site Design & Location Compatibility *City standards and criteria for wireless communication facilities specify that such facilities shall be sited, designed, and screened to blend with the surrounding natural or built environment in order to reduce visual impacts to the maximum extent feasible.*

The project is located on an existing Church surrounded by residential neighborhoods and City owned Open Space. The proposed panel antennas are designed to integrate with the existing building façade, will be partially screened by existing trees, and covered by an antenna screen. Colors will match the church building.

Co-location *City standards and criteria for wireless communication facilities specify that the design of co-location sites should promote shared use among different carriers. To the extent feasible, antenna support and equipment structures should be designed to consolidate future planned facilities to eliminate or minimize the visual clutter resulting from multiple telecommunications structures.*

The facility will be located directly next to two existing wireless facilities, making it the third array of panel antennas occupying this project site.

Vegetation, *City standards and criteria for wireless communication facilities specify that*

*Lighting, &
Access*

such facilities should be unlit, served by minimal road and parking areas, and shall require additional landscaping to provide visual screening of the proposed wireless facility. Existing parking would not change.

The proposed facility will be unmanned and does not require additional landscaping, lighting, roads, or parking areas to serve its operation. Service workers doing routine maintenance will access the equipment using the existing roads and paths servicing the church.

RECOMMENDATION

The proposed co-located panel antennas comply with City standards and regulations, specified in Division 19.38 of the Novato Municipal Code, including: location compatibility and site design, co-location requirements, and levels of radio frequency radiation. Staff recommends approval based on the findings discussed in the staff analysis section of this staff report.

FINDINGS AND ACTION

1. In accordance with Section 19.42.050E and Division 19.38 of the Novato Municipal Code, and as stated in the above staff analysis section, the Zoning Administrator hereby makes the required Use Permit findings.
2. Approve the application subject to the conditions listed below.

CONDITIONS OF APPROVAL

1. The Use Permit shall be valid for one year from the date of approval. The Use Permit may be extended at the request of the applicant for additional one year increments at the discretion of the Community Development Director, in compliance with the procedures set forth in Section 19.38.180 of the Zoning Code. The applicant shall be responsible for the costs, on an hourly basis, for the City to process an extension.
2. No deviation from approved plans, including color changes or substitution of materials, shall be made without City approval. Any changes or additions to the approved project shall be submitted to the Community Development Department and shall be subject to review and approval prior to the implementation of any proposed modification.
3. All utilities connecting the approved facility visible from ground level shall be placed underground or in cable trays.
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8. Prior to the issuance of a building permit, the proposal shall be subject to the review and approval of the City of Novato Public Works Department. Items that may need to be addressed, include, but are not limited to:
 - a. Maintenance agreements/facility maintenance requirements
 - b. Shared or common use agreements
 - c. Indemnification
9. This Use Permit is subject to the revocation procedures contained in Section 19.42.050.G of the Novato Municipal Code in the event that any of the terms of this approval are violated or if the uses are conducted or carried out in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the City.
10. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding

issuance of related building permits, certificate of occupancy, recordation of final maps or other entitlements.

11. Indemnity and Time Limitations:

- a. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack, set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.
- b. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- c. In the event that a claim, action or proceeding described in Article (a) above, is brought, the City shall promptly notify the applicant of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the applicant in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where the applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that if said Counsel is the City Attorney, his fees and costs shall be paid by the applicant.
- d. The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- e. Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.

- f. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The applicant is hereby further notified that the 90 day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

FURTHER ACTION

No further action on the Use Permit will be taken unless an appeal is filed in writing within ten calendar days along with the required filing fee.

**PROOF OF PUBLICATION
(2015.5 C.C.P.)**

CITY OF NOVATO

.....1110 HIGHLAND DRIVE.....
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This space is for the County Clerk's
Filing Stamp

**STATE OF CALIFORNIA
County of Marin**

} SS

Proof of Publication of

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25568; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:
NOV. 19

.....
.....

all in the year 2007.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Donna Lazarus
.....
Donna Lazarus

Signature

19 NOV.
Dated this.....day of.....2007

**CITY OF NOVATO
NOTICE OF PUBLIC HEARING
USE PERMIT
GREEK ORTHODOX CHURCH / METRO PCS
1110 HIGHLAND DRIVE**

Notice is hereby given that the Zoning Administrator will hold a public hearing on November 29, 2007, at 2:00 PM in the Community Development Department Conference Room, 75 Rowland Way, Novato, California, to consider a Use Permit application to allow the installation of three panel PCS antennas behind three new enclosures to be installed on the face of the Greek Orthodox Church, located at 1110 Highland Avenue. The antennas will be concealed in FRP boxes on the South-West and South facing walls, 45 feet above grade. An equipment area to house the transceivers will be located near the two existing equipment areas currently leased by AT&T and Sprint; APN 160-150-03.

The Environmental Coordinator has determined that this project is exempt from the California Environmental Quality Act, pursuant to Section §15303 (New Construction or Conversion of Small Structures).

Comments received on or before the hearing date will be considered by the Zoning Administrator.

The Zoning Administrator's action on this application may be appealed in writing within ten calendar days following the action, accompanied by the required filing fee.
If anyone wishes to challenge this project in court, they may be limited to raising only those issues they or anyone else raised at the public hearing described in this notice or in written correspondence delivered to the Community Development Department at, or prior to, the hearing date.

Information on the above proposal is available at the City of Novato Community Development Department, 75 Rowland Way, Novato, CA 94945. All inquiries should be directed to Daniel Tollion, Planner I, at (415) 899-8981, weekdays from 9 a.m. to 5 p.m. at the Community Development Department. It is recommended that an appointment be made with the staff member, prior to visiting the City offices. Please note that City offices are closed every other Friday, including November 16, 2007.

Community Development Director
File Reference: 10710U
pn07138
NO. 2108 NOV. 19, 2007

PROOF OF PUBLICATION