



**SAN RAFAEL ZONING ADMINISTRATOR  
REGULAR HEARING  
January 17, 2024**

**Minutes and Notice of Decision  
(Pursuant to San Rafael Municipal Code 14.28.050)**

- 10:00 – 10:45 am 1. **999 Old Lucas Valley Road** - Requests for a Conditional Use Permit and Minor Environmental and Design Review Permit to install a new freestanding wireless facility for AT&T at 999 Old Lucas Valley Road; 165-010-03; Parks/Open Space Zoning District (P/OS); MARIN MUNICIPAL WATER DISTRICT, Owner; Don Shiveley, Applicant; File No: ED23-059/UP23-026/TEL23-003 (PLAN23-134)

**Project Planner: Renee Nickenig, Associate Planner**

**PERMITS REQUIRED**

- **Environmental and Design Review Permit (ED23-059)/Conditional Use Permit (UP23-026).** Pursuant to San Rafael Municipal Code (SRMC) Section 14.16.360.B.2.a, a zoning administrator level use permit and a minor environmental and design review permit are required for new ground-mounted facilities.

**SITE DESCRIPTION**

The subject site is located within Jerry Russom Memorial Park, south of Lucas Valley Road and Miller Creek. The site is accessed from Water Tank Fire Road, which connects Old Lucas Valley Road to the north and Springs Hill Rife Road at the south. The Site has an existing water tank operated by the Marin Municipal Water District, and several existing cell towers.

**PROJECT DESCRIPTION**

The project proposes to install a new, freestanding wireless telecommunications facility north of the existing water tank at 999 Old Lucas Valley Road. The proposed facility would be a freestanding, “monopine” style stealth wireless facility with screening mimicking the surrounding tree types extending a maximum of 56 feet above the existing grade. A total of 12 panel antennas are proposed to be mounted on the pole, a maximum 49 feet above existing grade.

The “monopine” would be placed within a 25-foot by 25-foot concrete platform surrounded by a 6’ tall chain link fence. The ground equipment would include an eight (8)-foot by eight (8)-foot walk-in equipment cabinet and a 30 kW diesel emergency backup generator and 190 gallon fuel tank.

**PUBLIC HEARING**

On January 17, 2024, a Zoning Administrator hearing was convened for this Environmental and Design Review Permit (ED23-059) and Conditional Use Permit (UP23-026). The Acting Zoning Administrator for this meeting, Margaret Kavanaugh-Lynch, opened the hearing at 10:00 am.

**A. Planner Presentation**

The Project Planner, Renee Nickenig, provided an overview of the proposed project, the project findings for approval, and the draft project conditions.

**B. Applicant presentation**

The applicant, Kevin Gallagher, was present at the meeting. The applicant presented the project and addressed concerns and questions on the project, including feasibility of co-location and the reasoning for proposing an over height facility.

**C. Public Comments**

Craig Tachabery was present at the meeting to represent the Mont Marin/San Rafael Park Neighborhood Association. He shared a list of concerns, including:

1. The tower will be very visible above the existing vegetation. Can it be lower and less conspicuous?
2. The project proposes to use Old Lucas Valley Road and a proposed easement for construction and continuing maintenance. Old Lucas Valley is not being adequately maintained and is continuing to deteriorate, both the surface and the adjacent slopes below and above the road. Please provide a requirement that the applicant and other easement holders enter into a long-term maintenance agreement.
3. This level of review should be completed by the Planning Commission, not the Zoning Administrator.
4. A pine tree is an inappropriate species to use in this location. An oak tree would be more appropriate as the site is located in a group of oak trees.

**D. Zoning Administrator Discussion**

A discussion took place between the Zoning Administrator, the Associate Planner, the member of the public and the Applicant:

1. The Applicant noted that the proposed height of the tower is the minimum height possible to provide essential to meet the service demands of the carrier.
2. The Acting Zoning Administrator noted that it was not legally possible to require the Applicant to maintain the access road, owned by others, however any damage caused by the construction or maintenance of the facility would be the responsibility of the Applicant.
3. The Associate Planner and the Acting Zoning Administrator reviewed and discussed the sections of the municipal code that applied to the application. The

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Associate Planner noted that this level of review had also been discussed with the former Director of Community Development Department and the City's legal counsel. Staff confirmed that Zoning Administrator was an appropriate body of decision.

4. The Applicant and staff discussed the issue regarding use of a pine versus oak tree and the Applicant agreed that either type of installation would be acceptable to his client.

The Acting Zoning Administrator closed the public hearing.

**E. Action**

The Zoning Administrator Approved the request for an Environmental and Design Review Permit (ED23-059) and Conditional Use Permit (UP23-026) subject to the conditions listed below.

These conditions of approval are listed below and included as part of the Zoning Administrators decision.

The meeting was adjourned at approximately 10:45 am.

**FINDINGS**

**CEQA Findings**

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures). Furthermore, none of the exceptions found in Government Code §15300.2 apply.

**Environmental and Design Review Permit (ED23-059) Findings (SRMC §14.25.090)**

- A. That the project design is in accord with the general plan, the objectives of the zoning ordinance and the purposes of this chapter;**

The property is in the Parks, Rec., and Open Space General Plan land use designation. The new equipment will be located at a site with previously approved telecommunication facilities. The design of the new facility has been reviewed pursuant to SRMC § 14.16.120 as the pole will extend above the established building height limit for the zoning district.

The proposed new facility will provide extended telecommunication services for the surrounding area per Policy CSI-4.16 of the General Plan 2040.

- B. That the project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located;**

The project design will exceed the surrounding height requirement for the Parks/Open Space Zoning District. Additional height is proposed to account for the faux “crown” of the “monopine”- or “monoak” - type facility, which will lend to the facility mimicking a tapered tree silhouette. With the conditions listed below (Condition No. 12) this is found to be an acceptable aesthetic solution to the proposed overall height.

**C. That the project design minimizes adverse environmental impacts; and**

The project design minimizes environmental impacts in that the project has prepared an Electromagnetic Energy (RF\_EME) Compliance Report (RF Report) for the proposed project which demonstrates that the proposed AT&T installation is in compliance with Federal Communications Commission (FCC) regulations “upon proper installation of recommended signage and/or barriers” (see Condition No. 14 below).

**D. That the project design will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity.**

The design of the proposed project would not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity in that the project will require City of San Rafael Building Division and Fire Department. Additionally, the site is located on privately-owned land with minimal access from the public right-of-way. The facility will be surrounded by fencing and will not be open to the public.

**Use Permit (UP23-026) Findings (SRMC §14.22.080)**

**A. That the proposed use is in accord with the general plan, the objectives of the zoning ordinance, and the purposes of the district in which the site is located;**

The proposed use is in accord with the San Rafael General Plan 2020, the objectives of the zoning ordinance, and the purposes of the district the site is located in, as discussed in ED23-059 Finding A, listed above.

**B. That the proposed use together with the conditions will not be detrimental to the public health, safety or welfare, or materially injurious to property or improvements in the vicinity, or the general welfare of the city;**

The proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city given that: 1) an RF Report has been provided which concluded that the site would operate below the maximum radio-frequency (RF) exposure limit set by the FCC; and 2) installation of the proposed equipment will be subject to Building Department review and approval, per ED23-059.

**C. That the proposed use complies with each of the applicable provisions of the zoning ordinance.**

The proposed project has been reviewed as a new ground-mounted telecommunication facility in accordance with SRMC § 14.16.360. Projects of this type require review by the Zoning Administrator, including facilities which exceed the general height requirement for the zoning district.

**CONDITIONS OF APPROVAL**

**Planning Division Standard Conditions of Approval**

1. Approved Project. This Environmental and Design Review Permit (ED23-059) and Use Permit (UP23-026) conditionally approves the installation of a new freestanding wireless facility for AT&T at 999 Old Lucas Valley Road. Plans submitted for building permit shall be in substantial conformance to the approved plans dated August 29, 2023, with regard to building techniques, materials, elevations, and overall project appearance except as modified by these conditions of approval. Minor modifications or revisions to the project shall be subject to review and approval by the Community Development Department, Planning Division. Modifications deemed greater than minor in nature by the Community Development Director shall require review and approval by the Zoning Administrator.
2. Subject to All Applicable Laws and Regulations. The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building Division, Public Works Department and other affected City divisions and departments.
3. Permit Validity. This Permit shall become effective on **January 25, 2024** and shall be valid for a period of two (2) years from the date of final approval or **January 25, 2026**, and shall become null and void if a building permit is not issued or a time extension granted by **January 25, 2026**. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
4. Building Permit. Prior to the commencement of work, a building permit shall be obtained from the Building Division.
5. Construction Hours. Except as otherwise provided in subsection B of the San Rafael Municipal Code Section 8.13.050, or by the planning commission or city



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council as part of the development review for the project, on any construction project on property within the city, construction, alteration, demolition, maintenance of construction equipment, deliveries of materials or equipment, or repair activities otherwise allowed under applicable law shall be allowed between the hours of seven a.m. (7:00 a.m.) and six p.m. (6:00 p.m.), Monday through Friday, and nine a.m. (9:00 a.m.) and six p.m. (6:00 p.m.) on Saturdays, provided that the noise level at any point outside of the property plane of the project shall not exceed ninety (90) dBA. All such activities shall be precluded on Sundays and holidays. Violation of the foregoing may subject the permittee to suspension of work by the chief building official for up to two (2) days per violation.

6. Colors, Materials, and Lighting. Colors, materials and lighting shall be designed to avoid creating undue off-site light and glare impacts. New or amended building or site colors, materials and lighting shall comply with San Rafael Municipal Code Section [14.16.227](#), subject to review and recommendation by the police department, public works department, and community development department.
7. Exterior Lighting. Any exterior lighting shall be subject to a 90-day post installation inspection to allow for adjustment and assure compliance with San Rafael Municipal Code Section [14.16.227](#) - Light and glare. The project proponent is responsible for hiring a qualified lighting expert to conduct the inspection and to prepare a summary analysis verifying the projects meets City standards to be submitted to the Planning Division.
8. Rooftop Equipment. Equipment placed on the rooftop of a building or in an exterior yard area shall be adequately screened from public view. See [Chapter 14.16](#) for exclusions to maximum height requirements and [Chapter 14.25](#) for design review requirements.
9. Temporary Fences. Temporary security fences may be erected around construction sites during the time a valid building permit is in effect for construction on the premises. Temporary security fences need not comply with San Rafael Municipal Section [14.16.140](#) and must be immediately removed upon completion of the construction authorized by the building permit.
10. Landscape Maintenance. All landscaping shall be maintained in good condition and any dead or dying plants, bushes, trees, or groundcover plantings shall be replaced with new healthy stock of a size appropriate and compatible with the remainder of the growth at the time of replacement.
11. Approved Materials and Colors. The approved materials and colors for the project shall be indicated on project plans submitted for building permit and implemented in the field. Any changes in materials or colors shall be subject to prior review and approval by the City Planning Division, and a determination as to whether the change is major or minor. Any changes to the approved materials or colors shall



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be clearly indicated on plans and receive written verification that this change has been reviewed and approved by the Planning Division.

**ED23-059 Conditions of Approval**

12. Screening Method. Prior to issuance of a building permit, the applicant shall submit a revised faux tree-type design to better mimic a tree type native to the area (i.e. oak). The Community Development Director shall review the faux pine and the faux oak design and select the option most appropriate for the site. The applicant shall revise the building permit to include that selection.
13. Equipment Revision. No future revision of wireless equipment (e.g. antenna, coax or appurtenance) shall be changed out for a like piece of equipment without painting it to match.
14. Signage. Proposed signage shall include the signage recommended in the Radio Frequency – Electromagnetic Energy (RF\_EME) Compliance Report (dated August 19, 2022) to conform with FCC regulations.
15. All site improvements shall be maintained in good, undamaged conditions at all times. The antenna shall be maintained, and any weathered portions shall be repaired in a timely manner to ensure visual quality (refer to Condition No. 13).

**UP23-026 Conditions of Approval**

16. The Use Permit (UP23-026) approving a new AT&T site build of an unmanned telecommunications facility consisting of a lease area with associated ground-mounted equipment shelter and generator and utilities to the site location; and a “monopine”/ “monoak” type facility with associated antennas and antenna equipment. The size, colors, and materials shall be as shown on the plan set dated August 29, 2023. This Use Permit (UP23-026) shall run concurrently with the associated Environmental and Design Review Permit (ED23-059). Should the Environmental and Design Review Permit (ED23-059) expire, the Use Permit (UP23-026) shall also expire and become invalid.
17. Facility Maintenance. The service provider shall properly maintain this facility during the life of the permit. In the event the wireless antennas become obsolete and abandoned, all wireless antennas and associated accessory structures shall be removed from the subject property within thirty (30) days of abandonment. The service provider shall notify the Planning and Building Divisions within ten (10) days of abandonment. The removal of the entire facility shall take place within twenty (20) days of the notification of the abandonment and shall be restored to the design prior to the installation of the wireless antennas. Failure to remove the equipment shall be subject to action by the City’s Code Enforcement Division.

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18. Notification of Abandonment of Use. The applicant, or its successor, shall remove any abandoned facility or restore existing approved use of a facility within 90 days of termination of use.
19. Validation of Proper Operation. AT&T (or its successors) shall submit the results of the post-installation testing to the Community Development Department, Planning Division. The testing shall be conducted once the antennas and equipment are installed and operating at maximum capacity. The testing shall entail verification of compliance with the FCC's Radio Frequency (RF) emission standards. This testing shall be conducted during normal business hours and on non-holiday weekdays with the facility operating at maximum power. The telecommunication provider, or its successor, shall provide the Community Development Director with a report of the tests results.
20. Five Year Review. Every five (5) years, the wireless telecommunications provider, or its successor(s), shall measure the RFR of the facility approved by this Environmental and Design Review Permit (ED23-059) and Use Permit (UP23-026). The City may contract to perform the independent testing with a qualified expert and the current wireless telecommunications provider, or its successor(s), shall bear the proportionate cost of testing for the wireless telecommunications facility approved by this Environmental and Design Review Permit and Use Permit.
  - a. Testing must be coordinated with and may be observed by the City or its representative. The test measurement observations shall be recorded in a written report prepared by AT&T or its contractor and shall specify the location of the measurement, the peak measured signal strength in units of mW/cm<sup>2</sup> and shall be correlated to the plan view of the project plans on Sheet A-5. The report shall also provide full measurement equipment identification, current calibration certificate(s) for all equipment, and the qualifications of the person(s) conducting the test.
  - b. AT&T shall tender its written report documenting the testing and observations to the City for review prior to unattended operations of its project. The City shall within fourteen (14) business days notify AT&T by writing whether the testing demonstrates compliance with FCC OET Bulletin 65 RF emissions safety standards under the General Population/Uncontrolled standard, and such notification shall not be unreasonably withheld. Upon the City's notification, AT&T may commence unattended operation of its project.
  - c. AT&T shall promptly reimburse the City for all of the City's actual costs in observing the testing and reviewing the report for compliance with the FCC OET Bulletin 65 RF safety requirements, and if necessary for verifying any subsequent remedial measures required to secure areas on the roof as required in these conditions.





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21. Changes Affecting RF. Any operational or technological changes to an approved wireless communication facility affecting RFR exposures shall be reported promptly to the City, including any change of ownership. The City may require new RFR testing within 45 days of notification.
22. Changes to FCC Standards. In the event the FCC changes their standards, the owner or operator of an approved wireless facility shall make necessary changes or upgrades to their facilities in order to comply with any newly adopted FCC standards for RFR. The upgrades to facilities shall be made no later than 90 days after notification of the changed FCC standards and the owner or operator shall notify the city in writing that the upgrades have been completed.
23. If technology improvements allow for the use of materially smaller or less visually obtrusive antennas and screening equipment, or equipment that generates less RF emissions, the current wireless telecommunication provider, or its successors, shall replace or upgrade the antennas and screening design. In the event of replacement or upgrading, the owner or operator of an approved wireless facility may be required to obtain a new Environmental and Design Review Permit and/or Use Permit with associated fees.
24. After transmitter and antenna system optimization, but prior to unattended operations of this project, AT&T or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for General Population/Uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the Uncontrolled/General Population limit.
25. Full initial and ongoing compliance with all FCC RF safety rules in OET Bulletin 65 (as may be amended or superseded or replaced) is a continuing material requirement and condition of this Permit.
26. Future Co-Location. Per SRMC Section 14.16.360.D.9 all new ground-mounted towers or monopoles, require a signed statement that the carrier, or its future successors, will cooperate with the city to allow future co-location of antennas at the proposed site if it is approved and that the carrier has reviewed and agrees to comply with all post-approval requirements of this section. This agreement is required to be created and executed prior to the final inspection of the building permit.

**ACTION TAKEN: On January 17, 2024, the Zoning Administrator Conditionally Approved the requested Environmental and Design Review Permit (ED23-059) and Conditional Use Permit (UP23-026) subject to the Findings and Conditions above.**

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This Notice of Zoning Administrator decision is provided in compliance with SRMC Section 14.28.050 - Notice of decision. Any aggrieved party may appeal this decision pursuant to SRMC Section 14.28.030 - Filing and time limit of appeals, by submitting a letter of appeal and the appropriate fees within five (5) working days of the date of approval, or by **January 24, 2024 at 5:00 p.m.** This approval shall become effective at the end of the appeal period.

Once a permit approval has been implemented/established in compliance with all City requirements, it shall run with the land and be valid for the time period specified; e.g., duration of the project/use.

*Margaret Kavanaugh-Lynch*

January 19, 2024

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Margaret Kavanaugh-Lynch, Acting Zoning Administrator

Date