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Sonoma County Board of Zoning Adjustments

STAFF REPORT

FILE: UPE22-0051
DATE: May 23, 2024
TIME: At or after 1:05 pm
STAFF: Peter Kaljian, Project Planner

SUMMARY

Property Owner: Robert E. Cuellar
Applicant: Melissa Keith obo Assurance Development and Vertical Bridge
Address: 9300 Mill Station Rd., Sebastopol
Supervisory District(s): 5
APN: 061-141-001
Description: Request for a Use Permit for an intermediate freestanding commercial telecommunications facility, including a 70-foot-tall faux tree and associated ground equipment cabinet, located within a 2,500 square foot lease area, enclosed by an 8-foot-high fence on a 14.35-acre parcel.
CEQA Review: Categorical Exemption, Section 15303, New Construction of a Small Structure
General Plan Land Use: Diverse Agriculture (DA – 20-acre density)
Specific/Area Plan Land Use: Not Applicable
Ordinance Reference: Section 26-88-130, Telecommunication Facilities
Zoning: Diverse Agriculture (DA B6 20 acres per dwelling unit) Riparian Corridor (RC100/25, 100-foot development setback and 25-foot agricultural setback)

RECOMMENDATION

The Permit Resource and Management Department (Permit Sonoma) recommends that the Board of Zoning Adjustments approve the requested Use Permit to allow for an intermediate freestanding telecommunications Facility, and find the project exempt from the California Environmental Quality Act under CEQA Guidelines Section 15303.



EXECUTIVE SUMMARY

The proposed project is for a new intermediate freestanding telecommunications facility, including a 70-foot-tall faux tree design to be located within a 2,500 square foot leased section of a 14.35-acre parcel zoned DA (Diverse Agriculture) at 9300 Mill Station Road, Sebastopol.

Staff's recommendation for approval is based on: 1) the tower is consistent with the General Plan and Zoning Code, 2) the project site is located outside of the adjacent Scenic Landscape Unit, and 3) the design is compatible with surrounding landscape features.

A project alternatives analysis, photo simulations, radio frequency report, and biological assessment were prepared to assess the possibility of potential impacts resulting from the development. The project Conditions of Approval, which include ongoing maintenance of the faux tree materials to ensure it remains consistent with its original state, and radio frequency monitoring is conducted.

Due to federal regulations, telecommunication projects are subject to processing deadlines known as the "shot clock." Failure to make a final decision within the shot clock time frames can result in deemed approval of a project. The current shot clock for this project is June 28, 2024.

This project is returning to the Board of Zoning Adjustments (BZA) after being heard on March 23, 2023 and July 27, 2023. After holding the public hearing on July 27, 2023, the BZA continued the item to a date uncertain, allowing time for the applicant to provide additional information and address the following direction:

- Provide justification for the 70-foot-tall faux tree design.
- Provide 50-foot and 40-foot-tall faux tree designs and coverage maps.
- Provide drone footage to assess private views and consider working with neighbors to achieve this.
- Consider water tank design to address microplastic concerns.
- Consider whether breaking the facility into multiple sections is feasible and whether visual impacts could be reduced.
- Consider potential future allowances for collocation within this proposal to the degree feasible and consistent with regulations.
- Address generator and diesel tank safety and noise.
- Address the removal of trees in the visual analysis and facility screening.

On March 22, 2024, the applicant submitted a height justification for the proposed 70-foot-tall faux tree design and provided information determining that 50-foot and 40-foot-tall faux tree designs would not address the coverage gap. As a result, the applicant did not submit 50-foot and 40-foot visual simulations. Additionally, the applicant removed the emergency backup generator from the project proposal. All other BZA requests have been addressed and are summarized in the Staff Report.

PROJECT SITE AND CONTEXT

Federal Law

Federal law preserves local authority over land use decisions for wireless facilities but sets forth specific limitations on that authority. Notably, federal law prohibits local governments from regulating telecommunication facility siting based on exposure to radio frequency emissions. Specifically, the Telecommunications Act of 1996 (the “Act”) states:

"No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." 47 U.S.C. Section 332(c)(7)(B)(iv).

Thus, if an applicant demonstrates compliance with the federal radio frequency (RF) standards, the County cannot deny or modify the project based on "environmental effects of radio frequency emissions."

The applicant has submitted a Radio Frequency Emissions report prepared by Hammett & Edison, dated August 30, 2022, which analyzes the project’s radiofrequency emissions. For this facility, the worst-case maximum exposure would be 9.5% of the federal RF limit at ground level, which is well within federal exposure limits. This report is further clarified at by the Radio Frequency Emission report submitted in response to BZA comments made during the July 27, 2023 hearing. Therefore, this Board has no authority to deny or modify the proposed project based on concerns related to radiofrequency emissions.

In addition to barring local government from regulating the placement, construction, or modification of wireless facilities on the basis of the environmental effects of radio frequency emissions, the Act provides that local government regulation *"shall not prohibit or have the effect of prohibiting the provision of personal wireless services" (i.e., prevent a carrier from closing a significant gap in service coverage), or "unreasonably discriminate" between wireless carriers (i.e., approve a carrier at one site and then turn down another carrier at the same approximate location). See 47 U.S.C. Section 332(c)(7)(B)(i).*

Finally, the Act provides that any decision to deny a facility *"shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. Section 332(c)(7)(B)(iii).*

Due to federal regulations, telecommunication projects are subject to processing deadlines known as the “shot clock.” Failure to make a final decision within the shot clock time frames can result in deemed approval of a project. The current deadline for this project is June 28, 2024.

Background

On March 23, 2023, the Board of Zoning Adjustments (BZA) held a public hearing on the project and continued it to a date uncertain allowing time for the applicant to submit a more detailed alternative site analysis and additional visual simulations. On July 27, 2023, the BZA held a public hearing on the project and continued the item to a date uncertain, allowing time for the applicant to provide additional information and address the following direction:

- Provide justification for the 70-foot-tall faux tree design.
- Provide 50-foot and 40-foot-tall faux tree designs and coverage maps.
- Provide drone footage to assess private views and consider working with neighbors to achieve this.
- Consider water tank design to address microplastics concerns.
- Consider whether breaking the facility into multiple sections is feasible and whether visual impacts could be reduced.
- Consider potential future allowances for collocation within this proposal to the degree feasible and consistent with regulations.
- Address the removal of trees in the visual analysis.
- Address generator and diesel tank safety and noise.
- Address ground-level facility screening.
- Address deciduous vegetation screening vs evergreen vegetation screening.

In response to the July 27, 2023 BZA direction, the applicant submitted additional information and minor changes to the application as summarized below:

- The applicant submitted a height justification for the proposed 70-foot-tall (65-foot top of antenna) faux tree design and provided information determining that 50-foot and 40-foot-tall faux tree designs would not address the coverage gap. See Attachment 12.
- Because the 50-foot and 40-foot-tall faux tree designs do not address the coverage gap, the applicant did not submit 50-foot and 40-foot visual simulations.
- The applicant submitted drone footage to assess private views. The applicant was unable to attain access to neighboring properties.
- The applicant provided a water tank design alternative under Attachment 12.
- Breaking the facility into multiple sections would result in a greater environmental impact and as such was not explored further, as described by the applicant in Attachment 12.
- The proposed design and alternatives consider potential future allowances for collocation as shown in Attachment 12.
- The applicant has removed trees from the visual simulations that are identified for removal and submitted an arborist report to add additional context to tree removal and tree protection.
- To address generator noise and safety concerns raised by the Board of Zoning Adjustments, the applicant has removed the emergency backup generator from the application.
- In addition to setting the project back 330 feet behind the existing abandoned orchard and the slatted fence in the initial application, the applicant has added ground-level facility screening by native deciduous vegetation.

Area Context and Surrounding Land Uses

The 14.35-acre parcel contains a single-family home and apple orchard. The parcel consists of approximately 4 acres of unmaintained orchard and an unnamed seasonal stream (tributary to Atascadero Creek) along the south edge of the property. The project site is situated approximately 1.5 miles west of Sebastopol and 1.7 miles south of Graton.

Direction	Zoning	Existing Uses
North	Diverse Agriculture (DA B6 20)	Orchard
South	Rural Residential (RR B6 2)	Residence
East	Diverse Agriculture (DA B6 20)	Residence
West	Diverse Agriculture (DA B6 20)	Orchard

Significant Applications Nearby

There are no nearby applications that would have a significant effect on the project’s analysis or approval.

Access

The project parcel is accessed from Mill Station Road, which is a County-maintained right of way. The applicant has proposed an approximately 500’ non-exclusive access and utility easement, utilizing an existing driveway to provide access from Mill Station Road to the proposed facility lease area.

Wildfire Risk

The project parcel is located within a Local Responsibility Area for fire protection and is currently served by the Gold Ridge Fire Protection District. Previous iterations of this application included a 48KW generator. The Generac diesel generator unit was proposed to be compliant with National Fire Protection Association (NFPA) code sections, specifically the following sections 37, Standards for Stationary Combustion Engines, 70 Electrical, 99 Use in Critical Health Care facilities, and 110 Fire Standards for Emergency and Standby Power Systems. The purpose of the diesel-powered generator was to supply power to the telecommunications facility in the event of a loss of power, including a PG&E Public Safety Power Shutoff, and the generator would have contained the capacity to run the facility for a maximum of 48 hours. However, the applicant has chosen to remove the generator from the project opting out of a power back up option.

Water/Wastewater/Utilities

The proposed project will not facilitate an increase in water demand and wastewater facilities, as it is an unmanned commercial telecommunications facility.

Agricultural Conditions/Land Encumbrances/Contracts

The site is not under Land Conservation Contract (Williamson Act) and the proposed facility will not change the current single family residential use or unmaintained apple orchard on the property. The project will not reduce the amount of agriculture on the property.

Other Environmental Conditions

Environmental conditions of the project site are further addressed below within the Zoning analysis.

PROJECT DESCRIPTION

This project proposes an intermediate freestanding commercial telecommunications facility, including a 70-foot-tall faux tree and associated ground equipment cabinet, located within a 2,500 square foot lease area, enclosed by an 8-foot-high slatted fence with permitter landscaping. Additional access improvements are proposed to bring the existing access road to current with county standards. The project would be set back from Mill Station Road 330 feet and 85 feet from the nearest interior property boundary as well as 386 feet back from the nearest residential structure.

Project History

The table below summarizes key project milestones and events.

Date	Project Event/Milestone
8/31/2022	Application
9/14/2022	Early Neighborhood Notification
9/29/2022	Notice of Incompleteness
12/27/2022	Completeness
3/12/2023	Shot clock deadline
9/30/2023	Referral to prominent agencies
3/13/2023	Legal Notice posted onsite for BZA Hearing
3/23/2023	BZA holds Public Hearing and continues the item to a date uncertain
6/27/2023	Legal Notice posted onsite for the continued BZA hearing
7/7/2023	BZA holds second Public Hearing and continues the item to a date uncertain
5/13/2024	Legal Notice Posted onsite for the continued BZA hearing

General Plan and Area Plans

The following General Plan and Area Plan policies are applicable to the project:

Policy PF-2u: *Review proposals for public and private telecommunication facilities for consistency with General Plan policies and adopted siting and design criteria. In order for a public telecommunication facility to be found consistent with this plan, it must meet the standards and siting and design criteria of the applicable zoning district.*

The Diverse Agriculture General Plan Land Use designation allows for intermediate freestanding commercial telecommunication facilities where a service coverage study shows that there is no other suitable location for the facility. A large service gap presently exists for the unincorporated area of Sebastopol, the purpose of the proposed facility will close the gap in service for those residents. In order to properly serve this area, the applicant began with four potential sites. Because the proposed site had a willing property owner, enough available space, and could adequately address coverage needs there is no other suitable alternative. The project site is appropriate due to the faux design, setbacks, vegetation screening, and the development otherwise meets the standard and siting criteria for the DA land use and zoning district.

Zoning

The table below summarizes the development standards that apply to the site as outlined in the Sonoma County Zoning Ordinance, the existing and proposed development, and whether the project is consistent with the Zoning Ordinance.

Development of the proposed telecommunications facility is located within a lease area on a Diverse Agricultural zoned parcel.

Standard	Ordinance	Existing Condition	Proposed Project
Lot Area	10 acres	14.35 acre	No change proposed.
Base Zone	DA B6 20	Residential uses, unmaintained orchard	Intermediate Commercial Telecommunication Facility
Residential Density	20 acres per unit	One Single Family Dwelling Unit	No change.
Front Setback	30'	Greater than 30'.	353'-10"
Side Setback	10'	Greater than 10'.	88' 277'-8"
Rear Setback	20'	Greater than 20'.	1,386'
Height	35'	Less than 35'.	70'
Lot Coverage %	30,000 sq. ft. or 10%, whichever is greater	Approximately 3,000 square feet	2,500 sf lease area
Parking Spaces	One covered parking space per dwelling unit. No parking space requirements for telecommunication facilities.	One covered parking space.	Not applicable.

The proposed tower is considered an Intermediate Freestanding Commercial Telecommunication Facility pursuant to Ordinance No. 6335:

Intermediate Facility. Such facility which involves a combination of towers and antennas greater than forty feet (40') and less than or equal to one hundred thirty feet (130') in height.

The facility is considered to be a secondary use 'incidental and compatible with the primary use' because the leasehold area for the proposed telecommunication facility would not interfere with any existing or future residential or agricultural uses on the 14.35-acre property. It is compatible in that it does not generate significant traffic or loud noises and the faux tree design reasonably blends with the vegetation on the property.

Combining Districts

Riparian Corridor, Section 26-65-005-040

The subject property has one unnamed creek located along the southern border. The Riparian Corridor setback is 100 feet from the top of bank of the creek. The proposed telecommunication facility does not propose an encroachment into this required setback. The unnamed creek is located approximately 200 feet south of the proposed lease area.

Other Development Regulations or Guidelines

Section 26-88-130, Telecommunication Facilities

The Diverse Agriculture designation allows for intermediate Telecommunications Facilities subject to obtaining a Use Permit and meeting all standard telecommunications ordinance (Sonoma County Zoning Regulations - Section 26-88-130) requirements for Intermediate Facilities. Due to its location in a Diverse Agriculture zoning district, the project is also subject to the following specific criteria for Intermediate and Major Freestanding Commercial Telecommunication Facilities under Section 26-88-130(b)(1)(iii) of the Sonoma County Zoning Regulations:

(A) Towers shall meet the setback standards of subsection (b)(1)(ii)(A) of this section.

(B) For any proposed major facility, an alternatives analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision-making body, which meets the requirements of subsection (a)(3)(xiv) of this section.

(C) A visual analysis.

Analysis

Alternatives Analysis

In response to the Board of Zoning Adjustment's request, the applicant has provided an additional alternative site analysis and justification that continues to incorporate the discussion of Co-location. The alternatives analysis meets the requirements of Section 26-88-130(a)(3)(xiv) of the Telecommunication section of the Sonoma County Zoning Code. The applicant first began with an identified service improvement opportunity determined by an RF frequency service analysis for all potential towers which shows the "reach" of each tower and any gaps in that service. A location search ring is then determined by identifying potential locations or co-location sites which would provide coverage in service gaps with similar projected effectiveness as existing facilities. Within the search ring, appropriate zoning is taken into consideration. No commercially zoned properties are present in the identified search ring. Locations with primarily residential, as well as scenic landscape unit and biotic habitat combining districts were avoided. The applicant identified four potential sites that met this criteria within a 1 mile search radius. The applicant reached out to landowners and found only one landowner willing to lease, which resulted in selection of the subject property. The selected site is considered to be the most effective because it's feasible from a leasing standpoint and meets other standards through siting and design by taking advantage of existing screening, faux tree design, setbacks from residential uses and avoidance of biologically sensitive and riparian areas.

Noise

The project will not produce significant noise during normal operation. Emergency power was originally proposed as part of the application to provide a backup diesel-powered generator to keep cell transmissions operating during outages. The backup generator would have been located over 400 feet from the nearest sensitive receptor, the property to the south. The previously proposed generator, Generac RD048, produced 40 dBa at 400 feet and would have fallen within the acceptable daytime and nighttime running limits in table NE2 of the Noise element of the general plan. However, in an attempt to address noise concerns raised by the Board of Zoning Adjustments, the applicant has removed the generator from the application.

Visual Analysis

Using the County's Visual Assessment Guidelines (included as Exhibit H), the project site's sensitivity is characterized as moderate, as the property is not located within a scenic resource designation but is within a rural agricultural area containing trees of aesthetic value and would be partially visible from a public road. The project's visual dominance can be characterized as co-dominate as the proposed faux tree design, colors, materials, and landscaping would help the project blend in with the surrounding environment. The combination of moderate sensitivity and co-dominance characteristics, results in a less than significant impact per the County Visual Assessment Guidelines. Photo simulations of the faux tree have been included as Attachment 5.

Additionally, as requested by the BZA, photo simulations of a faux water tower and faux windmill are included for consideration under Attachment 12.

Environmental Analysis

The project is Categorically Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures as development will be limited to within a 2,500 square foot lease area. There are no facts or circumstances specific to this project that would support an exception to the categorical exemption.

Neighborhood/Public Comments

An Early Neighborhood Notification was sent out on September 14, 2022 to property owners within a 300-foot radius of the project parcel. At that time, staff received comments from 13 interested parties expressing opposition to the project. Primary concerns expressed to staff and raised in previous BZA public hearings include concerns with visual impacts, RF and 5G exposure, environmental impacts, and microplastics. Staff's response is summarized below.

Visual Impacts:

While parcels east of the project site, across Mill Station Road, are designated as a scenic Landscape Unit the subject parcel does not carry a Scenic Resource designation. However, Per Sec. 26-88-130(a)3(ii) requires that:

Facility towers, antennas and other structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to minimize visual impacts and to achieve compatibility with neighboring residences and the character of the community to the extent feasible considering the technological requirements of the proposed telecommunication service.

The applicant has made an effort to meet this requirement and incorporate comments from previous hearings by submitting a lower-height structure, setting the project site farther from the right of way than is required, adding landscaping and fence slatting to screen ground level elements from public view, and offering alternative designs.

RF and 5G Exposer:

The project meets all requirements of the Zoning Code criteria for demonstrating the facility will comply with FCC standards. Specifically, Sec. 26-88-130(a)1(vi) states:

The facility shall be operated so that it shall not result in human exposure to nonionizing electromagnetic radiation (NIER) in excess of the levels specified in the most current standard governing human exposure to NIER utilized by the Federal Communications Commission (FCC) in its licensing decision for the applicable facility. The applicant shall be responsible for demonstrating that the proposed facility will comply with this standard and may do so in any one of the following ways:

(C) Provide an independent analysis by or on behalf of the applicant which demonstrates that the facility will comply with the FCC standard by such calculations and measurements as may be necessary. The calculations, measurements, and all related methods utilized to determine compliance shall be consistent with FCC policies and procedures.

In addition to the analysis submitted in the initial application prepared by Hammett & Edison (August 30, 2022) Applicant submitted a supplementary RF emission report prepared by Chris Cubanske, Network RF Engineer for T-Mobile (March 20, 2024) to give additional context.

Micro Plastics:

Public comments have expressed concern for the deterioration of project material (faux tree boughs) resulting in the remises of microplastics. The applicant has submitted alternative designs that minimizes the amount of plastic to be used.

Recommendations

Staff Recommendation

Staff recommends approval of the Use Permit subject to the attached Conditions of Approval, and find the project exempt from the California Environmental Quality Act under CEQA Guidelines 15303.

Attachments

1. Draft Board of Zoning Adjustments Resolution
2. Draft Conditions of Approval
3. Land Use Maps
4. Site Plan
5. Photo Simulations (faux tree)
6. Coverage Predictions & Alternatives Site Analysis

7. Sonoma County Visual Assessment Guidelines
8. Public Comment
9. Co-location Viability Report
10. 60ft, 70ft, and 80ft coverage projections
11. Response letter to request coverage maps or network data for other wireless carriers in the area
12. Applicant's response letter to BZA requests, including Arborist report, height justification, and alternative design photo simulations.
13. UPE22-0051 BZA Staff Report March 23, 2023
14. UPE22-0051 BZA Staff Report July 27, 2023
15. Arborist Report and Tree Protection Plan
16. Coverage Objective and Engineering Justification