



# Sonoma County Board of Zoning Adjustments STAFF REPORT

**FILE:** UPE22-0051  
**DATE:** July 27, 2023  
**TIME:** At or after 1:20 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, CA 95472  
**Supervisory District(s):** Fifth District  
**APN:** 061-141-001  
**Description:** Request for a Use Permit for an intermediate freestanding commercial telecommunications Facility, including a 70-foot-tall faux tree monopine, associated ground equipment cabinet and a 48KW generator with 240-gallon diesel fuel tank for the purpose of backup emergency power, located within a 2,500 square foot lease area, enclosed by an 8-foot- 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 a 70-foot-tall intermediate freestanding telecommunications Facility.

## EXECUTIVE SUMMARY

The revised project is a request 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. 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 initial deadline for this project was May 1, 2023 and has been extended to July 30, 2023.

An 80-foot-tall faux tree proposal was brought before the Board of Zoning Adjustments on March 23, 2023 and it was determined that the facility did not minimize visual impacts and additional information was needed for the Board of Zoning Adjustments (BZA) to make an informed assessment. Additional items provided by the applicant include supplemental photo simulations from more vantage points of both a mono-pine and a bare pole design and coverage data for the proposed facility at various heights. The bare mono pole was requested to consider a reduced silhouette for the project and it is shown at the original 80 foot height. The supplemental photo simulations demonstrate limited visibility from Cherry Ridge Road to the north and intermittent visibility from portions of Ferguson Road to the south. As a faux tree at 70 feet tall, the facility would still be visible from portions of Mill Station Road but would integrate better with existing vegetation. The facility is setback over 300 feet from Mill Station Road and approximately 500 feet to the nearest off-site residence.

Additionally, the Board of Zoning Adjustments (BZA) requested additional alternative site analysis as well as identifying collocation opportunities that may be outside of the designated target area. The applicant indicates there are no collocation opportunities and it is not feasible to locate on any existing structures or buildings in the target area and meet their service needs due to height requirements. The applicant submitted additional alternative site information that included existing telecom facilities, none of which would sufficiently address coverage in the target area.

The Board of Zoning Adjustments (BZA) also requested cell coverage data for other carriers in the area. The applicant indicates they do not have access to coverage for other carriers and such materials are proprietary and confidential. Additionally, the applicant indicates that the legal standard for service set by the Ninth Circuit Court of Appeals is that “a significant gap in service (and thus an effective prohibition of service) exists whenever a provider is prevented from filling a significant gap in its own service coverage.” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995, FN. 9 (9th Cir. 2009); *MetroPCS, Inc. v. City & County of S.F.*, 400 F.3d 715, 733 (9th Cir.2005).

The additional coverage maps provided by the applicant showing coverage at 70 and 60 feet in height (attached) appear to demonstrate that the proposed 70-foot-tall facility would reasonably address identified service gap and would likely still provide opportunities for collocation.

## **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."

Here, the applicant has submitted an RF emissions report prepared by Waterford Consultants, LLC dated August 15, 2019, 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. 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).

### **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 drainage 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 affect 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. The development includes a 48KW generator. The Generac diesel generator unit is 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 is 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 contains the capacity to run the facility for a maximum of 48 hours.

**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 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**

**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 extended to July 30, 2023
9/30/2022	Referral to prominent agencies
3/13/2023	Legal Notice posted onsite for BZA Hearing
3/23/2023	BZA Hearing resulting in continuance

**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 service gap for indoor residential and commercial service presently exists in the target area, The purpose of the proposed facility will close the gap and substantially improve service in the target area. In order to improve service in 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 they have not pursued other alternatives. However, the project at the reduced height of 70 feet is more compatible with the rural character due to the faux tree design, setbacks, and vegetation screening. The site is not located within a designated scenic corridor or scenic landscape unit.

**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.

Standard	Ordinance	Existing Condition	Proposed Project
Lot Area	10 acres	14.35 acre	No change proposed.
Base Zone	DA B6 20	Agriculture	Intermediate Commercial Telecommunication Facility
Residential Density	20 acres per unit	Not applicable.	Not applicable.
Front Setback	30'	Not applicable.	353'-10"
Side Setback	10'	Not applicable.	88' 277'-8"
Rear Setback	20'	Not applicable.	1,386'
Height	35 ft for most structures	Not applicable.	70 ft
Lot Coverage %	30,000 sq. ft. or 10%, whichever is greater	Not applicable.	2,500 sf lease area
Parking Spaces	Not applicable.	Not applicable.	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 to 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.

### **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 over 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***

The applicant has provided an alternative site analysis that included potential for 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’s analysis 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. After an opportunity to address a service gap is identified a location search ring is then determined by identifying potential locations or co-location sites which would provide coverage in the identified service gap with similar projected effectiveness as existing facilities. Within this search ring, potential locations are identified by first eliminating locations zoned exclusively residential and avoiding scenic landscape



unit and biotic habitat combining districts. No commercially zoned properties are present in the identified search ring. After further consideration as directed by the Board of Zoning Adjustments on March 23, 2023, no other existing telecommunication facilities, including those owned or operated by the applicant for the same type of service, nor those which provide other wireless services which could potentially support the proposed facility could be identified with the ability to meet the coverage needs identified by the applicant. No other existing structures which might provide an opportunity for attached facilities could be located within the search area.

The applicant initially established four potential sites that met the zoning criteria and offered sufficient area for a facility within the 1-mile search radius of the identified coverage gap. The applicant reached out to landowners and found only one landowner willing to lease, which resulted in the selection of the subject property. The location of the lease area within the parcel was identified to allow the facility operators and the land owner an acceptable level of separation and privacy as well as to reduce potential development requirements in relation to meeting emergency egress. The selected site has been deemed to address the identified coverage gap while meeting zoning and leasing constraints. The proposed revised height from 80 feet to 70 feet has been identified by the applicant as a feasible height to meet their coverage goals while allowing for future colocation by other providers. The proposed height of 70 feet allows for a 61-foot mounting of equipment. As demonstrated in the applicant’s coverage maps provided to consider reduced height options, the applicant has determined that lowering the height of the facility to 70 feet from the initial 80 feet would still provide reasonable coverage in the service gap while reducing the visual impacts and improving design compatibility with surrounding uses.

**Noise**

The project will not produce significant noise during normal operation. However, emergency power is provided by a backup diesel-powered generator to keep cell transmissions operating during outages. The backup generator would be located over 400 feet from the nearest sensitive receptor, the property to the south. The selected generator, Generac RD048, produces 40 dBA at 400 feet and falls within the acceptable daytime and nighttime running limits in table NE2 of the Noise element of the general plan.

**Visual Analysis**

Using the County’s Visual Assessment Guidelines (included as Exhibit 7), 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 and materials will 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 70 foot tall monopine have been included as Attachment 5. The reduced height facility will improve the visual compatibility of the facility.

A monopole design as presented by the applicant is more industrial in nature and would reduce the visual impact, however, it would also reduce the visual compatibility. A monopole design would have strong elements and stand out against the section and attract attention away from the surrounding landscape and contrast with existing elements in the surrounding landscape, this would be characterized as a strong visual dominance. The



combination of the site’s Moderate site sensitivity and dominant Visual dominance would result in a significant Visual Impact.

***Environmental Analysis***

The project is Categorical Exempt from the California Environmental Quality Act (CEQA) under CEQA Guideline 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.

**RECOMMENDATIONS**

***Staff Recommendation***

Staff recommends approval of a 70-foot-tall facility subject to the attached Conditions of Approval.

**ATTACHMENTS**

1. Draft Board of Zoning Adjustments Resolution
2. Draft Conditions of Approval
3. Land Use Maps
4. Site Plan and Elevations (70-foot monopine)
5. Photo Simulations
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. March 23, 2023 Staff Report

