RESOLUTION NO. PC-2024-005

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA ROSA MAKING FINDINGS AND DETERMINATIONS AND APPROVING A CONDITIONAL USE PERMIT FOR A NEW WIRELESS TELECOMMUNUCATIONS FACILITY- LOCATED AT 2715 GIFFEN AVENUE - FILE NUMBER CUP23-004

WHEREAS, on January 11, 2023, an application was submitted requesting the approval of a Conditional Use Permit for a new wireless telecommunication facility located at 2715 Giffen Avenue, also identified as Sonoma County Assessor's Parcel Number 010-450-008; and

WHEREAS, under the Telecommunications Act of 1996 (the "Act"), Federal law requires that requests to authorize the installation of wireless communications equipment must be acted upon in a "reasonable period of time", which was later determined to be 150 days; and

WHEREAS, the federal government has largely preempted local government regulation in the area of Radio Frequency (RF) emissions, making the Federal Communications Commission (FCC) the federal agency responsible for setting nationwide guidelines for safe RF levels, and severely limiting local authority to regulate RF emissions or to deny an application to install wireless service facilities based on concerns about RF emissions; and

WHEREAS, federal law specifically provides that "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 Federal Communications Commission's (FCC) regulations concerning such emissions" (47 U.S.C. §332(c)(7)(B)(iv)); and

WHEREAS, federal courts have also held that the FCC has exclusive jurisdiction over RF interference issues and thus local zoning ordinances and permit conditions cannot regulate RF interference (Southwestern Bell Wireless v. Johnson County Board of County Commissioners, 199F. 3d 1185 (10th Cir. 1999); and

WHEREAS, on March 17, 2023, a Notice of Application was mailed to residents within 600-feet of the project site; and

WHEREAS, on February 7, 2024, the applicant accepted the City's request for a Tolling Agreement that would extend the review timeframe and shot clock of this project from January 11, 2024, to April 16, 2024, to allow this project to be scheduled for the two required Public Hearings; and

WHEREAS, on March 28, 2024, the Planning Commission held a duly noticed public hearing on the application at which all those wishing to be heard were allowed to speak or present written comments and other materials; and

WHEREAS, the Planning Commission has considered the application, the staff reports, oral and written, the General Plan and zoning on the subject property, the testimony, written comments, and other materials presented at the public hearing; and

WHEREAS, the Planning Commission has considered the approved and adopted Negative Declaration for this use and project; and

NOW, THEREFORE, BE IT RESOLVED, that after consideration of the reports, documents, testimony, and other materials presented, and pursuant to City Code Section 20-52.050 (Conditional Use Permit), the Planning Commission of the City of Santa Rosa finds and determines:

A. The proposed use is allowed within the IL (Light Industrial) zoning district and complies with all other applicable provisions of this Zoning Code and the City Code in that the project complies with application requirements and development standards as set forth in City Code Chapters 20-24 (Industrial Zoning Districts) and 20-44 (Telecommunication Facilities). Specifically, the tower and all related equipment will be placed within an industrial complex, designed as a faux tree, thereby shielding the equipment from public view, and the equipment will be placed behind a 6-foot tall concrete masonry unit (CMU) wall. Further, Section 20-44.060 of the Zoning Code regulates the location of telecommunication towers by requiring an alternative site analysis, a separation between facilities, a good faith effort in achieving colocation, minimum roads and parking areas as necessary to serve the facility, and operation in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER). The applicant has provided analysis of seven alternative sites for the necessary coverage, all of which were ruled out due to an inability of the sites to address service coverage gaps, and the site has been found to have the necessary access through existing roads. Further, an Electromagnetic Energy (EME) Exposure Report, prepared by Waterford Consultants, dated April 12, 2023, concluded that the proposed placement of the tower at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations. Zoning Code Section 20-44.060(F)(18) specifically prohibits all major telecommunication facilities from locating in any residential zoning district, and Section 20-44.060(F)(19) requires a 75-foot setback from a major facility to any habitable structures. The proposed facility would be located in the IL Zoning District, and would be over 200 feet from the nearest habitable structure; and

B. The proposed telecommunications tower is consistent with the General Plan land use designation of Light Industry, in that this designation is intended for areas for manufacturing and distribution activities with potential for creating nuisances, along with accessory offices and retailing, and installation of the proposed telecommunications facility implements a variety of overarching General Plan goals by creating a functional place for those who live and work within the City. While there are no specific General Plan goals or policies that mention telecommunication facilities, cellular phone service has become an integral part of personal and business communication. As such, installation of the proposed telecommunications facility implements a variety of

overarching General Plan goals by creating a functional place for those who live and work within the City. Specifically, the Economic Vitality element of the General Plan 2035 calls out the emergence of telecommunications companies, among other industries, as contributing to the dynamic regional economy. The General Plan also includes goals and policies related to ensuring the availability of emergency communications facilities in the event of a disaster; and

C. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity in that the base of the cell tower and all related equipment will be screened from public view, behind existing trees and a 6-foot-tall CMU wall, which will minimize visual impacts as much as possible. The proposed height of the tower is necessary to maintain adequate height for function while allowing future collocation of the site; and

D. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints in that the existing site is both developed and surrounded by existing industrial and commercial development with adequate access to the proposed use and once in operation, the telecommunications facility does not require frequent visits by employees, thus not intensifying the use of the site; and

E. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located in that the project included an Electromagnetic Energy Report, prepared by Waterford Consultants, LLC, and prepared on April 12, 2023, which concluded that the proposed placement of the telecommunications tower at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations; and

F. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA):

Pursuant to CEQA Guidelines Section 15303, the cellular tower and related equipment qualify for a Class 3 Categorical Exemption, which exempts the construction of new small structures in that telecommunication towers are considered small structures that are similar to this Project. No exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (CEQA Guidelines Section 15300.2).

Pursuant to CEQA Guidelines Section 15183, the proposed use is eligible for a streamlining measure as it is consistent with General Plan 2035, for which an Environmental Impact Report was certified by Council in 2009.

BE IT RESOLVED, pursuant to City Code Section 20-44.060 (Commercial Transmission Tower Location), the Planning Commission of the City of Santa Rosa finds and determines:

A. The proposed site results in the least potentially adverse impacts than any feasible alternative site. The applicant has prepared a comprehensive alternatives analysis evaluating seven alternative sites. The proposed facility is ideally located in an industrial zone near the center of the service gap and is over 200 feet from residences. Other tower locations evaluated are either closer to residences or too distant to serve the gap.

B. The applicant has provided a written explanation why the subject facility is not a candidate for co-location. The applicant has provided technical evidence of the need for the proposed facility. There will be vertical space on the proposed tower for future co-location of antennas by another wireless carriers.

C. All commercial telecommunications facilities shall be served by the minimum roads and parking areas necessary. The proposed facility and its access route across the property will be located on previously-disturbed areas, and no new road or parking will be required.

D. Commercial telecommunications facilities shall be operated in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER), and the applicant for commercial telecommunication facilities shall be responsible for demonstrating that the proposed facility will comply with this standard. The applicant has submitted reports from a licensed engineer confirming compliance with the FCC's radio frequency exposure limits. In a Radio Frequency Emissions Compliance Report, prepared for AT&T Mobility by David H. Kiser, Electrical Engineer, Waterford, dated April 14, 2023, Mr. Kiser confirmed the Radio Frequency Exposure Assessment report to be accurate.

BE IT FURTHER RESOLVED, that this Conditional Use Permit for a new telecommunications facility located at 2715 Giffen Avenue is subject to all applicable provisions of the Zoning Code, including Section 20-54.100 (Permit Revocation or Modification), and is approved subject to each of the following conditions:

DEPARTMENT OF COMMUNITY DEVELOPMENT

GENERAL:

1. Compliance with the latest adopted ordinances, resolutions, policies, and fees adopted by the City Council at the time of building permit review and approval. All fees must be paid prior to issuance of a building permit.

2. All work shall be done according to the final approved plans dated October 17, 2023.

3. The address shall be displayed in a prominent location on the street side of the property. The numbers shall be no less than 6-inches in height and shall be of a contrasting color to the background to which they are attached. The address shall

be illuminated during hours of darkness per City "Premises Identification" requirements.

EXPIRATION AND EXTENSION:

4. This Conditional Use Permit shall be valid for a two-year period. If construction has not begun or if an approved use has not commenced within two (2) years from date of approval, this approval shall automatically expire and shall be invalid unless an application for extension is filed prior to expiration.

5. If implemented within the initial approval period in accordance with all conditions of approval, this Conditional Use Permit shall be valid for the duration of use.

ENGINEERING DIVISION:

6. Compliance with Engineering Development Services Exhibit A, dated October 31, 2023, attached hereto and incorporated herein.

BUILDING DIVISION:

7. Provide a geotechnical investigation and soils report with the building permit application. The investigation shall include subsurface exploration and the report shall include grading, drainage, paving and foundation design recommendations.

8. Obtain building permits for the proposed project.

PLANNING DIVISION:

9. The building materials, elevations, and appearance of this project, as presented for issuance of a building permit, shall be the same as that approved by the Design Review Board upon approval of the Design Review application. Any future additions, expansions, remodeling, etc., will be subject to review and approval of the Planning Division.

10. Compliance with City Graffiti Abatement Program Standards for Graffiti Removal (City Code 10-17.080).

11. When the telecommunications facility (monopine or monopole and supporting equipment) becomes obsolete or is no longer used, the telecommunications facility shall be removed at the operator’s expense.

12. PROJECT DETAILS:

A. All project details shall be in accordance with the restrictions and limitations of the City Zoning and Uniform Building Codes, as well as the City's Design Review Guidelines.

13. TREE PRESERVATION:

A. Tree Preservation notes and protection during construction notes shall be shown on the improvement plans and building plans. The tree driplines shall also be shown on each drawing with the attendant protection instructions.

14. LIGHTING:

A. All exterior lighting shall be shown and specified on the plans submitted for issuance of a building permit in accordance with the Design Review approval.

B. Light sources shall be concealed from public view.

C. All lighting shall be directed toward the subject property and away from adjacent properties.

D. The mounting height of lighting fixtures in parking and storage areas shall not exceed 16-feet in height. Lower mounting heights are encouraged.

15. SIGNING:

A. No exterior signs, banners, or the like are approved with this permit. A planning sign permit application is required for all signs.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission finds and determines this entitlement to use would not be granted but for the applicability and validity of each and every one of the above conditions and that if any one or more of the above said conditions are invalid, this entitlement to use would not have been granted without requiring other valid conditions for achieving the purposes and intent of such approval.

REGULARLY PASSED AND ADOPTED by the Planning Commission of the City of Santa Rosa on the 28th day of March, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:_____
KAREN WEEKS, CHAIR

ATTEST:_____
JESSICA JONES, EXECUTIVE SECRETARY

Attachments:

Exhibit A