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City of Sebastopol City Council Staff Report

Reviewed by City Manager 

Meeting Date: May 3, 2016
To: Mayor and City Council
From: Kenyon Webster, Planning Director
Jonathan Atkinson, Assistant Planner
Subject: Appeal of Planning Commission Decision
Use Permit: Radio Tower in the Community Facilities District
Recommendation: Deny Appeal
Applicant/Owner: KOWS Community Radio/City of Sebastopol
File Number: 2016-13
Address: 1281 Pleasant Hill Road
CEQA Status: Categorical Exemption: Section 15301: Class 1
Categorical Exemption: Section 15303: Class 3
General Plan: Community Facilities
Zoning: CF: Community Facilities
Funding: Currently Budgeted: Yes No N/A
Net General Fund Cost:
If Cost to Other Fund(s):
 Yes No N/A

Introduction:

This is an Appeal application, requesting that the City Council overturn a Planning Commission Use Permit approval, which would allow KOWS Community Radio to construct and operate a radio tower at 1281 Pleasant Hill Road. A Use Permit was required because the radio tower is classified as a Major Telecommunication Facility, which is a conditionally-permitted use in the CF District.

1281 Pleasant Hill Road is a City-owned 3.39 acre parcel surrounded by unincorporated Sonoma County. The site is currently home to the Pleasant Hill Road Reservoir, which contains two 3 million gallon water tanks and an ancillary structure and equipment.

Background: KOWS contacted the City, and expressed interest in constructing and operating a radio tower at the site in an effort to have an antenna with greater broadcast reach. On November 3, 2015 at an agendized public meeting, the City Council gave KOWS permission to apply for a Use Permit for a radio antenna tower and authorized the City Manager to consent to filing of the Use Permit application as the property owner. KOWS and the City would sign a lease agreement with an anticipated payment of \$1 a year, if the Use Permit approval is upheld.

Planning Commission Action: On February 23, 2016, the Commission reviewed a Use Permit application for KOWS at a public hearing, which was publicly noticed and heavily attended. The

Commission received extensive written communications, a staff report, heard from KOWS representatives, and conducted a public hearing where numerous interested community members spoke regarding the project. The Commission ultimately approved the application in a 4-3 decision.

Appeal: On February 29, 2016, Sebastopol Hills Alliance for Rural Preservation (SHARP) submitted an Appeal application, requesting that the City Council overturn the Commission approval and deny the Use Permit. SHARP cited a number of concerns as the basis for their Appeal application. Some of the major concerns include the following:

- The California Environmental Quality Act (CEQA) determination was inappropriate.
- Federal collocation laws could result in future telecommunications improvements at the site.
- The radio tower is inappropriate for the site and inconsistent with the General Plan in that it will have a negative visual impact.
- The radio tower will result in the reduction of neighboring property values.
- Action on the matter occurred without sufficient due process and raised equal protection concerns.

On April 26, 2016, as the staff report was being finalized, an appellant representative submitted an extensive packet of information (attached as an exhibit) regarding the appeal.

Staff has provided responses to SHARP's concerns in the Analysis section of this staff report.

KOWS has also provided written responses to some of the concerns (attached). KOWS has also provided further information about their site search criteria.

On April 25, KOWS provided information regarding an alternative tower design that would reduce visual impact by having a stepped design that narrows with increasing height, with the tower being 60' tall (instead of 70'), and having a 5' tall, 2" wide center pole rising an additional 5' for a total height of 65'. KOWS indicates that this updated proposal is their preferred design. Information about the prior design as well as the proposed update are attached. As this proposal would reduce visual impacts, the Council may wish to consider it as an alternative to the original proposal.

KOWS informed City staff that subsequent to filing of the appeal, they met with a group representing the appellants, and that there was a discussion regarding the appeal, but that this did not result in a change to the situation.

The following sections of this staff report include an analysis of the project to review its consistency with CEQA, General Plan, and Zoning Ordinance requirements, as well as an analysis of the major concerns that SHARP and several community members have identified.

Project Description:

KOWS is a nonprofit community radio station and Federal Communications Commission (FCC) Emergency Alert Station, which began broadcasting in 2007. KOWS relocated its studio to the Sebastopol United Methodist Church at 500 North Main Street in 2015, after years of operation in Occidental, California. KOWS proposes to construct and operate a Low Power FM Radio antenna, which would be installed on a 70 foot tall radio tower at the southeast corner of the Pleasant Hill Road Reservoir site. Under the Commission's conditions of approval, the lower

portion of the radio tower would be painted flat green and the upper portion would be painted blue-gray. The structure would have an approximate diameter of 24 inches with diagonal bracing and an open structure. The radio tower will contain four (4) antennas that will be eight (8) feet apart at the following heights: 46 feet, 54 feet, 62 feet, and 70 feet.

Environmental Review:

As recommended by staff and approved by the Commission, the project was found to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to the following:

15301: Existing Facilities: Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The Commission found that the project was consistent with this categorical exemption in that the site is a 3.39 acre City-owned existing facility with two very large water tanks, and the addition of a radio tower with a small footprint, an open structure, and with minimal activity with a Low Power FM Radio antenna, constitutes a minor physical alteration to this existing substantial facility.

15303: New Construction or Conversion of Small Structures: Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

The Commission also found that the project was consistent with this categorical exemption in that while the height of the radio tower would be 70 feet; its actual footprint and the improvements to construct it are minor, as it has a diameter of 24 inches.

A majority of the Commission determined that the project met the criteria for a categorical exemption and that further environmental review was not required. The City Attorney reviewed this determination and found it appropriate. He also consulted with outside counsel regarding this determination, who concurred.

General Plan Consistency:

The General Plan Land Use Designation for this site is Community Facilities. The General Plan describes Community Facilities as the following: *"This designation includes public buildings and facilities, utility facilities and related easements, public libraries, city offices, fire and police stations, and school sites. Maximum FAR shall not exceed 1.0."* The project is consistent with this land use designation in that it involves a utility use located on a community facility, which currently contains major public utility uses.

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

Chapter I: Land Use

Section V: Residential Land Use

Goal 4: Preserve the unique character and ambiance of residential areas.

P.15: Prevent encroachment of non-residential use.

P.16: Protect Residential Neighborhoods: Protect residential neighborhoods from the effects of adjacent non-residential uses.

The project is consistent with this goal and policies in that the construction and operation of a radio tower is a minor addition to a large non-residential parcel that has already been developed as a City reservoir with substantial utility improvements. The radio tower is a supplemental use and does not expand the footprint of the site nor does it encroach onto residential uses.

Chapter V: Community Identity

Section B: Preservation of Scenic Views

Goal 13: Preserve and enhance scenic views of the Laguna de Santa Rosa, Atascadero Creek, the hills to the west of Sebastopol and other natural resources within the Sebastopol Planning and Referral Area.

P.40: Preserve scenic views of the natural landscape.

The project would have a visual impact but may be interpreted as consistent with this goal and policy in that the radio tower has a diameter of 24 inches and an open structure with diagonal bracing, which makes it less impactful than other telecommunications improvements, and comparable in visual impact to telephone and other utility poles of varying heights and dimensions, which are common in the area and in California generally. The radio tower would also be located on a site that currently contains two large water tanks, numerous mature trees, and would be required to be painted a combination of flat green (lower elements) and blue-gray (upper elements).

Chapter VII: Safety

Section X: Minimizing Magnetic Field Hazards

Goal 9: Minimize community exposure to EMF.

P.37: Consider EMF in Land Use Decisions: Consider information regarding EMF radiation from new electrical transmission lines and substations in making land use decisions.

P.38: Siting and Construction of Electrical Transmission Facilities: Minimize and reduce EMF radiation levels near sensitive areas such as schools, hospitals, and playgrounds when planning for electrical transmission facilities repair and new construction.

The project is consistent with this goal and policies in that the radio tower contains Low Power FM Radio antennas, and is consistent with FCC standards for Nonionizing Radiation (NIER)

emissions. Furthermore, exposure is minimal in that the radio tower is secured by a fence and the actual antennas are located at 46 feet, 54 feet, 62 feet, and 70 feet above the natural grade and at substantial distances from residences.

Zoning Ordinance Consistency:

The site is located in the CF: Community Facilities District. The Zoning Ordinance states the following: "The purpose of the CF District is to implement the 'Community Facilities' and 'Parks' and 'Open Space' land use categories of the General Plan. This District is applicable to lands accommodating governmental, public utility, and educational facilities, as well as parks and open space land in public ownership." The project is consistent with the CF District in that it involves the construction and operation of a radio tower, which is a conditionally-permitted use as a 'Major Telecommunications Facility.'

The radio tower is considered a 'Major Telecommunications Facility' because its height exceeds 35 feet and the application is subject to the following provisions of Chapter 17.100: General Provisions Relating to Telecommunications Facility and Minor Antenna:

Telecommunications Ordinance

This section highlights the purpose of this Zoning Ordinance Chapter and states the following objectives:

1. Protect the visual character of the city from the potential adverse effects of telecommunication facility development and minor antenna installation;
2. Protect the inhabitants of the city from the possible adverse health effects associated with exposure to high levels of NIER (non-ionizing electromagnetic radiation);
3. Protect the environmental resources of the city;
4. Create telecommunication facilities that will serve as an important and effective part of the city's emergency response network;
5. Any antenna and its associated support structure installed for the sole use of federally licensed Amateur Radio operators in the Amateur Radio Service shall not, by definition, be considered telecommunication facilities and shall be exempt from any other antenna or telecommunication facility ordinances enacted by the City, and shall be regulated solely by the following; and
6. Simplify and shorten the process for obtaining necessary permits for telecommunication facilities while at the same time protecting the legitimate interests of the city's citizens.

KOWS submitted an application and supplemental application materials as required by the Antenna Use Permit Checklist. The application is consistent with these requirements.

The ordinance is very detailed. A number of provisions are reviewed below.

KOWS Radio also submitted a 'Telecommunications Facility Acknowledgement of Maintenance Requirements' agreement to the Planning Director and the specific terms of a lease agreement with the City would address facility maintenance and removal.

A section of the ordinance requires Use Permits to be renewed every ten (10) years and identifies scenarios in which a Use Permit would not be renewed. The Planning Department

has added a condition of approval, which requires Use Permit renewal every ten (10) years and outlines scenarios where renewal would not be granted.

The ordinance also establishes structural requirements that are intended to mitigate a telecommunications facility's potential hazard to surrounding properties in terms of its design. Such engineering and code requirements will be addressed in the Building Permit and Encroachment Permit processes.

There are requirements for all telecommunication facilities, which serve as a Critical Disaster Response Facility and provide service to the government and general public, to be designed in a manner to survive a natural disaster without interruption in operation. The section also includes several measures that must be implemented. KOWS is an FCC-designated Emergency Alert Station. The Planning Department has added a condition of approval, which requires KOWS to demonstrate that the radio tower can structurally withstand a natural disaster, to the satisfaction of the Fire Chief and Building Official.

The ordinance requires all telecommunication towers to be set back at least 20 percent of the tower height from all property lines. The radio tower would be located at the southeast corner near the rear (east) and side (south) boundaries of the parcel and is required to have a minimum setback of 14 feet from all property lines based on the following calculation: $20 \text{ percent} \times 70 \text{ feet} = 14 \text{ feet}$. The radio tower has a rear yard setback of 25 feet and a side yard setback of 38 feet. The application is consistent with this provision.

The ordinance requires that all telecommunication facilities be unlit but does provide scenarios, where an exception is appropriate. The radio tower is proposed to be unlit and located at the City-owned Pleasant Hill Reservoir, which contains minimal lighting. The application is consistent with this provision.

The ordinance also requires that all telecommunication facilities be served by the minimum roads and parking areas necessary. The radio tower is proposed to be located at the City-owned Pleasant Hill Reservoir, which currently contains a driveway and small area that is suitable for parking. The construction and operation of the radio tower would not require additional roadway and/or parking improvements. The application is consistent with this provision.

The ordinance requires all telecommunication facilities to be designed and operated in a manner that minimizes the risk of igniting and/or intensifying a fire. The Planning Department has added a condition of approval, which requires Fire Chief and Building Official of a Building Permit application. This provision has been satisfied.

The ordinance requires telecommunications facilities to be constructed and operated in a manner that minimizes the disruption of nearby residences and recreational areas, such as public parks and trails. This section includes several provisions that address noise and traffic issues. The Planning Department has added conditions of approval, which require compliance with noise and traffic provisions both during construction and operation of the radio tower. The provisions of this section have been satisfied.

The ordinance also addresses screening and visual compatibility issues. The nature of the project does not lend itself to landscape screening. However, the large existing trees and water tanks provide some of that function. These aspects, together with the narrow footprint, open structure, and location help mitigate, but not eliminate visual impacts.

Furthermore, the ordinance requires telecommunications facilities be sited in a manner to minimize any potential threat to public health, and are consistent with FCC standards for NEIR exposure. The project is consistent with the ordinance in that the radio tower contains Low Power FM Radio antennas, and is consistent with FCC standards for NIER emissions. Exposure is minimal in that the radio tower is secured by a fence and the actual antennas are located at 46 feet, 54 feet, 62 feet, and 70 feet above the natural grade and at substantial distances from residences.

Public Comment:

City staff did the following to comply with Section 17.260.030.B (5) of the Zoning Ordinance for the Appeal application: (1) Provided written notice to all property owners within 600 feet of the external boundaries of the subject property; (2) provided a written notice that was published in the Sonoma West Times; and (3) posted three written notices publicly on and within vicinity of the subject property. The Planning Department also provided the same level of notice for the Use Permit application. These are the same noticing procedures conducted for all other types of Use Permits.

There is substantial public interest in this project, with considerable concerns expressed by residents in the area; and other comments in support. The Planning Department received numerous comments from the public that are attached to this staff report.

Comments included the following major points in opposition of the application:

- The radio tower will have a detrimental visual impact on the rural residential and agricultural character of the area.
- Public health will be jeopardized due to EMF emissions.
- The radio tower is inconsistent with City policies, particularly the General Plan and Zoning Ordinance.
- Approval of this Use Permit could lead to future telecommunications improvements.
- The radio tower should be located at a different site within the City.

Comments included the following major points in support of the application:

- The radio tower will have a limited visual impact because of its small footprint and open structure.
- The site would provide a sufficient radio signal and allow KOWS to extend its broadcast coverage.
- The radio tower will include Low Power (FM) Radio antennas and does not exceed FCC standards for NIER emissions.
- KOWs will provide Emergency Alert System notifications.
- A local radio station is a valuable community asset.

City Departmental Comment:

The Planning Department circulated the Use Permit application to the following City departments: Building and Safety, Engineering, Fire, and Public Works. The Building Official commented that the Building Permit submittal will need to show details for any solar-powered back-up system.

Required Findings:

Section 17.260.030.C of the Zoning Ordinance establishes the following General Use Permit Criteria:

“A Use Permit may be granted only if the establishment, maintenance or operation of the proposed use or development applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or development, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.”

Analysis:

In their original appeal documents, SHARP raised a number of concerns with the Use Permit approval. This section addresses what appear to be SHARP’s main concerns, which are listed in ***bold italics*** with staff responses:

The commission abused its discretion by failing to adequately consider the environmental regulations governing the application for the construction permit, including but not limited to the California Environmental Quality Act (CEQA).

The Commission discussed the CEQA determination and whether additional environmental review was appropriate or not. The Commission found that project was categorically exempt from CEQA, pursuant to Section 15301, Class 1, in that the site is a 3.39 acre City-owned existing facility with two very large water tanks, and the addition of a radio tower with a small footprint, an open structure, and with minimal activity with a Low Power FM Radio antenna, constitutes minor physical alteration.

Furthermore, the Commission also found that the project also categorically exempt from the requirements of CEQA, pursuant to Section 15303, Class 3, in that while the height of the radio tower would be 70 feet; its actual footprint and the improvements to construct it are minor, as it has a diameter of 24 inches.

The commission acted arbitrarily and capriciously by approving the station’s application without understanding the likelihood that federal preemption could enforce collocation of other telecommunication devices at that site.

There are Federal requirements that place restrictions on State and local government’s ability to regulate co-location of wireless facilities. However these are not applicable to the KOWS antenna situation. FCC Report and Order FCC 14-153 clearly states that co-location mandates do not apply to State and local governments when they are acting as property owners. This is comparable to the rights of other property owners to control uses on their property. This interpretation is supported by a May 2015 legal analysis of FCC wireless rules prepared for the League of California Cities.

The FCC Order states: “...we conclude that Section 6409(a) applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities. As discussed in the record, courts have consistently recognized that in “determining whether government contracts are subject to preemption, the

case law distinguishes between actions a State entity takes in a proprietary capacity— actions similar to those a private entity might take—and its attempts to regulate.” As the Supreme Court has explained, “[i]n the absence of any express or implied implication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and when analogous private conduct would be permitted, this Court will not infer such a restriction.” Like private property owners, local governments enter into lease and license agreements to allow parties to place antennas and other wireless service facilities on local-government property, and we find no basis for applying Section 6409(a) in those circumstances. We find that this conclusion is consistent with judicial decisions holding that Sections 253 and 332(c) (7) of the Communications Act do not preempt “non regulatory decisions of a state or locality acting in its proprietary capacity.”

Thus, if the project moves forward, there would be no requirement that would force the City to allow other telecommunication operators to install antennas on the property. However, the California League of Cities analysis notes that cities should protect their proprietary rights. Thus, in allowing a telecommunications installation on a public property, jurisdictions should consider whether to restrict a lessee’s ability to sub-lease space at the facility. One of the Planning Commission’s conditions of approval specifically restricts use of the tower to KOWS, and it is staff’s understanding that any lease with KOWS will impose a similar restriction.

The commission abused its discretion by relying on the station’s unproven and undocumented assertions of its importance to the community.

While several community members in favor the application commented that KOWS is a community asset, the Commission based its determination on CEQA, the General Plan and Zoning Ordinance, and consistency with the Use Permit findings.

The commission abused its discretion by both underestimating the actual harm to the city’s immediate neighbors from its approval of the permit application and by failing to comply with the city’s general plan’s stated policy of minimizing the city’s impact on the surrounding natural landscape.

The construction of the radio tower would have a visual impact on the area, as it would consist of a metal tower having a height of 70 feet. The radio tower would be visible from adjacent properties and Pleasant Hill Road. The Commission found that the actual visual impact is acceptable in that the radio tower has a diameter of 24 inches and an open structure with diagonal bracing, which makes it less impactful. The Commission also found that the visual impact is minimal in that it would be located on a site that currently contains two large water tanks, many mature trees, and lower elements would be required to be painted a flat green and elements which rise above the horizon would be painted a blue gray color that matches the typical sky color at the location. The visual impact of the tower can also be compared to that of telephone and other utility poles, which are common in the area, and while many such poles are lower in height, are often in closer proximity to roadways and residences than the proposed tower will be; and from that perspective, the visual impact, while present, is not unacceptably substantial.

The commission abused its discretion by relying on undocumented and unverified assertions by the station that it could not find an alternate location for its radio antenna tower, as well as relying on other similar unverified assertions.

KOWS provided written information as part of its Use Permit application regarding its efforts to find an alternate site. The Commission also asked several questions of KOWS at the public hearing regarding its efforts to find an alternate site, and received detailed responses from a KOWS representative prior to acting on the Use Permit application.

The commission capriciously approved the station's use permit without adequately taking into consideration the potential reduction in neighboring property values as a result of its actions.

The Commission engaged in a thorough deliberative process, including a detailed staff report, consideration of detailed information provided by the applicant, extensive public testimony, and discussion and debate by Commissioners. In the context of the very large existing water tanks and related improvements, the project is small in scale, which will limit its impacts. Considering and balancing all of this input, the Commission found that the project as conditioned would not have an unacceptable detrimental impact on the site and surrounding uses.

The commission abused its discretion by approving the use permit application without adequately taking into consideration the city's potential financial liability resulting from its actions.

Under Use Permit procedures, such a finding is not required for any project and therefore is not relevant to the appeal. The City Council authorized application for the project by KOWS after receiving specific information on the nature of the proposed project.

The commission abused its discretion by failing to properly recognize and take into account the due process and potential equal protection violations resulting from the approval of the radio's use permit.

The property in question is within the legal boundaries of the City of Sebastopol and therefore, the City has legal jurisdiction over land use as well as permitting authority. The Sebastopol Planning Commission, unlike most Commissions in California, is open to persons having a business in Sebastopol but who do not reside in the City limits; in addition, the seven-member Commission appointment criteria allows appointment of one person who is not a City resident and does not own a business in the City limits. The Commission currently has one member who is a resident of unincorporated Sebastopol. All City of Sebastopol meetings are open to the public, regardless of where they reside, and all public hearings provide an opportunity for public comment by any person. The Commission approved the Use Permit application at a legally-noticed public hearing after receiving extensive written and oral comments from numerous community members, a number of whom stated they resided in unincorporated areas in proximity to the project site, and by virtue of submitting written comments, or by their attendance at the hearing, had actual or constructive notice of the hearing. This hearing was subsequent to a standard public notice process in which the City provided written notice to property owners within 600 feet of the of the subject property; provided a written notice that was published in the Sonoma West Times; posted three written notices publicly on and within vicinity of the subject property; posted the meeting agenda and staff report on the City web site; and placed a copy of the agenda packet including the agenda and staff report at the Sebastopol Branch Library. Due process and equal protection rights of Sonoma County residents were not violated in that the

Planning Commission had legal authority to act on this matter, public notice was given, a public hearing was conducted, and consistent with the open nature of the Sebastopol public hearing process, that the Commission received a considerable amount of written and verbal comments. The Commission understood that there were concerns regarding the project, but ultimately determined that a Use Permit approval was appropriate.

Public Health and Safety Concerns: The City and Commission heard and received numerous written comments, highlighting health concerns over EMF emissions. A majority of the Commission found that the radio tower would not threaten public health in that it is compliant with FCC standards in terms of NIER exposure, and is a Low Power FM Antenna, which does not emit the same NIER as a cellular tower. Furthermore, the actual antennas are located at 46 feet, 54 feet, 62 feet, and 70 feet above natural grade and the radio tower is enclosed by a secure fence, which creates a substantial distance between the telecommunication improvements and members of the public. Finally, the Commission also found that the radio tower will not threaten public safety in that it will be conditioned to meet several structural and safety requirements to the satisfaction of the Building Official, Fire Chief, Public Works Superintendent, and City Engineer.

Some comments also expressed the opinion that while considering this location surrounded by unincorporated territory, the City would not allow such as tower in the principal City area due to 'in-town' community opposition. In fact, the City has approved several telecommunications facilities, such as the considerably taller and more massive cell tower at Sebastopol's City Hall, a major antenna structure next to Sonoma West Hospital, a substantial tower at the Police Station, and other substantial antenna installations on buildings, including the Rialto Cinemas and the Redwood Credit Union building.

Recommendation:

Staff recommends that the Council deny the Appeal application and uphold the Commission approval based on the findings and conditions set forth in this staff report. The Council could otherwise consider the following alternatives:

1. **Uphold Use Permit Approval with Required Modifications:** The Council could find that the Commission approval was appropriate in that the radio tower use is compatible with the site but determine that additional conditions, such as requiring use of the updated tower design (Trylon design described in the April 25, 2016 email from David Dillman) would be appropriate. Or the Council could impose other conditions reducing the height, or requiring a different color, or other changes. Staff suggests that the Council consider requiring use of the Tryon design described in the April 25 Dillman email, which will reduce visual impacts.
2. **Continuance for Additional Information:** The Council may determine that more information is needed, prior to acting on the Appeal application. However, there is a limit on continuance of a decision on appeals. The Municipal Code requires that a decision on appeals be made within 30 days of the appeal hearing. This deadline can be extended by mutual agreement of the City and the applicant.
3. **Continuance for Consideration of an Alternate Onsite Location:** The Council may advise the applicant to investigate alternate locations on the site.

4. Approve the Appeal and Deny the Use Permit: The Council could find that it is appropriate to overturn the Commission decision and approve the appeal. The Council should articulate its rationale for supporting the appeal and denying the application, and staff will subsequently prepare findings based on Council comments, public testimony, and the appellant's submittals for review and approval at a future Council meeting.

USE PERMIT: 2015-126
KOWS Community Radio: Radio Tower with Low Power FM Antenna
1281 Pleasant Hill Road

Findings for Denying the Appeal and Upholding the Planning Commission Use Permit Approval:

1. That the project is categorically exempt from the requirements of CEQA, pursuant to Section 15301, Class 1, in that the site is a 3.39 acre City-owned existing facility with two very large water tanks, and the addition of a radio tower with a small footprint, an open structure, and with minimal activity associated with a Low Power FM Radio antenna, constitutes a minor physical alteration; and that the project is also categorically exempt from the requirements of CEQA, pursuant to Section 15303, Class 3, in that while the height of the radio tower would be 70 feet; its actual footprint and the improvements to construct it are minor, as it has a diameter of 24 inches, making it comparable to utility pole installations common in the area and in California generally. Further, its location at considerable distance from a public road and from most area residences, the presence of large trees on the site, and variations in grade in the area will lessen visual impacts. While not required to qualify for these CEQA exemptions, the conditions of approval will further reduce project effects. These CEQA determinations have been made after carefully reviewing detailed project information, including the project description, plans, photographs, and visual simulations, and considering extensive public testimony and written submittals.
2. That the project is consistent with the General Plan and Zoning Ordinance in that it involves the operation of a limited utility use at a site that, as detailed in the staff report and application materials currently contains substantial public utility improvements. The project is consistent with General Plan policies and Zoning Ordinance provisions in that the construction and operation of a radio tower is a minor addition to a large non-residential parcel that has already been developed as a City reservoir with substantial utility improvements. The radio tower is a supplemental use and does not expand the footprint of the site nor does it encroach onto residential uses. The project would have a visual impact but may be interpreted as consistent with General Plan goals and policies in that the radio tower has a diameter of 24 inches and an open structure with diagonal bracing, which makes it less impactful than other telecommunications improvements, and comparable in visual impact to telephone and other utility poles of varying heights and dimensions, which are common in the area and in California generally. The radio tower would also be located on a site that currently contains two large water tanks, numerous mature trees, and would be required to be painted a combination of flat green (lower elements) and blue-gray (upper elements).
3. That the project is consistent with goals and policies relating to EMF in that the radio tower contains Low Power FM Radio antennas, and is consistent with FCC standards for Nonionizing Radiation (NIER) emissions. Furthermore, exposure is minimal in that the radio tower is secured by a fence and the actual antennas are located at 46 feet, 54 feet, 62 feet, and 70 feet above the natural grade and at substantial distances from residences.

4. That the project is consistent with zoning district requirements in that the site is located in the CF: Community Facilities District. The Zoning Ordinance states the following: "The purpose of the CF District is to implement the 'Community Facilities' and 'Parks' and 'Open Space' land use categories of the General Plan. This District is applicable to lands accommodating governmental, public utility, and educational facilities, as well as parks and open space land in public ownership." The project is consistent with the CF District in that it involves the construction and operation of a radio tower, which is a conditionally-permitted use as a 'Major Telecommunications Facility.' Further, as detailed in the staff report, the project is consistent with the provisions of the telecommunications facilities provisions of the Zoning Ordinance.
5. That the actual visual impact is acceptable in that the radio tower has a diameter of 24 inches and an open structure with diagonal bracing, which makes it less impactful than some other telecommunications improvements which may have more massive or solid tower structures, or may have extensive attachments, or may have extensive horizontal elements.
6. That the visual impact of the radio tower is minimal in that as detailed in the staff report and application materials, including the supplemental visual simulation analysis included in the submittal by KOWS dated April 25, 2016, it would be located on a site that currently contains two very large water tanks, a number of large, tall mature trees, and would be required to be painted a flat green while elements which rise above the horizon would be painted a blue gray color that matches the typical sky color at that location. The site is not on an exposed ridge line, the specific location takes advantage of natural landforms (a location at a lower elevation than Pleasant Hill Road) and existing vegetation (tall trees) to minimize visual effects. The project does not involve cut and fill grading, or construction of a new road or driveway. While the Sonoma County General Plan designates Highway 116 as a 'scenic corridor,' the site area is not within a County-designated 'scenic landscape unit,' and the actual antenna site does not appear to be visible from Highway 116, as documented by multiple photographs and analysis submitted by KOWS and attached to the staff report. Further, the site is thousands of feet beyond Highway 116. Even if the structure was subject to County regulation, which it is not, the scenic corridor policies state that telecommunications facilities may be permitted, provided they meet applicable County Development Code criteria. Further, the County itself has approved other structures, including antennas, in substantially closer visual proximity to Highway 116 than the subject site; and the City of Sebastopol has conducted an open public hearing process to consider such impacts, among other issues. The visual impact of the tower can also be compared to that of telephone and other utility poles, which are common in the area, and while many such poles are lower in height than the proposed project, they are often in closer proximity to roadways and residences than the proposed tower will be; and from that perspective, the visual impact of the proposed project, while present, is not substantial. This is demonstrated by the updated visual simulation analysis submitted as part of the April 25, 2016 KOWS submittal, which shows the tower from different perspectives and distances, as well as showing the visual impact of near objects (like telephone poles and wires along Pleasant Hill Road) versus distant objects. The submittal also shows the effect of the varying topography in the area, which reduces or eliminates visual impact of the project from some locations, as well as the limited impact of the tower due to its minimal physical profile.
7. That the radio tower does not threaten public health in that it is compliant with FCC standards in terms of NIER exposure, and that it is a Low Power FM Antenna.

8. That the actual antennas are located at 46 feet, 54 feet, 62 feet, and 70 feet above natural grade and the radio tower is enclosed by a secure fence, which creates a distance between the telecommunication improvements and members of the public.
9. That the radio tower will not threaten public safety in that it will be subject to standard conditions and code requirements to meet several structural and safety requirements to the satisfaction of the Building Official, Fire Chief, Public Works Superintendent, and City Engineer.
10. That the project is a compatible with the site in that it is a utility use proposed for a parcel that contains public utility uses, and the radio tower would not impede the City's primary water use of the property.
11. That the project is subject to several conditions of approval that are intended to further reduce impacts on the site and surrounding uses, and includes a condition, which only allows KOWS to install antennas on the radio tower, and prohibits other telecommunications providers from making improvements on the site.
12. That contentions that if the project were approved, the City could be forced to allow other telecommunication antennas on the structure are inaccurate. There are Federal requirements that place restrictions on State and local government's ability to regulate co-location of wireless facilities, however these are not applicable to the KOWS antenna situation. FCC Report and Order FCC 14-153 clearly states that co-location mandates do not apply to State and local governments when they are acting as property owners. This is comparable to the rights of other property owners to control uses on their property. This interpretation is supported by a May 2015 legal analysis of FCC wireless rules prepared for the League of California Cities. This issue is also analyzed in the April 25, 2016 KOWS submittal.
13. That the Planning Commission appropriately exercised its discretion under the General Plan and Zoning Ordinance, complying with due process and equal protection requirements in that the property in question is within the legal boundaries of the City of Sebastopol and therefore, the City has legal jurisdiction over land use as well as permitting authority. Further, all City of Sebastopol meetings are open to the public, regardless of where persons reside, and all City public hearings, including the subject Commission hearing, as well as the appeal hearing, provide an opportunity for public comment. The Commission approved the Use Permit application at a legally-noticed public hearing after receiving extensive written and oral comments from numerous community members, a number of whom stated they resided in proximity to the project site, and by virtue of submitting written comments, or by their attendance at the hearing, had actual or constructive notice of the hearing. This hearing was subsequent to a standard public notice process in which the City provided written notice to property owners within 600 feet of the of the subject property; provided a written notice that was published in the Sonoma West Times; posted three written notices publicly on and within vicinity of the subject property; posted the meeting agenda and staff report on the City web site; and placed a copy of the agenda packet including the agenda and staff report at the Sebastopol Branch Library. The Commissioners heard the staff report, received the applicant's presentation, asked questions, heard extensive public testimony, and carefully deliberated. The fact that different perspectives were expressed in Commissioners' votes illustrates the deliberative process in which the Commission engaged as well as the serious nature of the Commission's action on this matter. Due process and equal protection rights of Sonoma County residents were not violated in that the Planning

Commission had legal authority to act on this matter, public notice was given, a public hearing was conducted, and consistent with the open nature of the Sebastopol public hearing process, the Commission received a considerable amount of written and verbal comments. The Commission understood that there were concerns regarding the project, but ultimately determined that on balance, a Use Permit approval was appropriate.

14. The Commission heard and received numerous written comments, highlighting health concerns over EMF emissions. The Commission found that the radio tower would not threaten public health in that it is compliant with FCC standards in terms of NIER exposure, and is a Low Power FM Antenna, which does not emit the same NIER as a cellular tower. Furthermore, the actual antennas are located at 46 feet, 54 feet, 62 feet, and 70 feet above natural grade and the radio tower is enclosed by a secure fence, which creates a substantial distance between the telecommunication improvements and members of the public. Finally, the Commission also found that the radio tower will not threaten public safety in that it will be conditioned to meet several structural and safety requirements to the satisfaction of the Building Official, Fire Chief, Public Works Superintendent, and City Engineer.
15. Some comments also expressed the opinion that in considering this site for an antenna, the City would not allow such as tower in the principal City area due to community opposition. In fact, the City has approved several telecommunications facilities, such as the considerably taller and more massive cell tower at Sebastopol's City Hall, a major antenna structure next to Sonoma West Hospital, a substantial tower at the Police Station, and other antenna installations installed on buildings. KOWS initiated this proposal after a site search determined that it was a suitable location; as demonstrated by a number of approved antenna projects in the City limits, the City is open to consideration of such applications.
16. Based on the above findings, and following careful consideration of the Commission's action, the staff report, and comments at a public hearing, the City Council hereby determines that the Planning Commission's approval was appropriate, and denies the appeal.

Conditions of Approval:

1. Approval is granted for the Use Permit described in the application date-stamped December 30, 2015, except as modified by the conditions of approval, and is valid for a period of two (2) years during which time the rights granted must be exercised. However, the applicant may request one (1) one-year extension of this Use Permit from the Planning Director, pursuant to Section 17.250.050 of the Zoning Ordinance.
2. The City of Sebastopol and its agents, officers and employees shall be defended, indemnified, and held harmless from any claim, action or proceedings against the City, or its agents, officers and employees to attach, set aside, void, or annul the approval of this application or the environmental determination which accompanies it, or which otherwise arises out of or in connection with the City's action on this application, including but not limited to, damages, costs, expenses, attorney's fees, or expert witness fees.
3. The Planning Director shall interpret applicable requirements in the event of any redundancy or conflict in conditions of approval.
4. No signs shall be installed that identify the KOWS use of this property, unless specifically authorized by the City.

5. No sound may emanate from the telecommunications facility, which violates the Noise Ordinance or causes an undue disturbance to site neighbors.
6. An Encroachment Permit shall be obtained for work on this public property prior to any construction. No Building Permit will be issued unless an Encroachment Permit has been obtained. Please call the Engineering Department for information at (707) 823-5331.
7. All applicable permits shall be obtained from other approving agencies prior to commencement of this use, including, but not limited to Building and Safety Department, Fire Department, and the Federal Communications Commission (FCC).
8. KOWS shall be responsible for all improvements and maintenance. KOWS shall ensure that the needed bandwidth is available and that the operation of the tower does not interfere with Public Works Department requirements.
9. The radio tower shall be selected for the appropriate wind load at the site per the Building Official.
10. The facility shall require a Building Permit and an Electrical Permit. The plans shall be prepared, stamped, and signed by a licensed design professional. If a solar-powered back-up system is proposed, it shall only be permitted if approved by the Planning Director and Public Works Superintendent and shall also be to the satisfaction of the Building Official.
11. All construction work shall be done by California-licensed contractors, who have a current Business License with the City of Sebastopol.
12. All California State mandated SMIF and Green Building fees shall be paid.
13. The applicant shall execute a lease agreement with the City of Sebastopol that authorizes the use and improvements, and establishes terms of use, prior to any construction.
14. Specific access and security arrangements shall be made with the Public Works Department.
15. The radio tower shall be painted flat green while elements which rise above the horizon shall be painted a blue gray color that matches the typical sky color at that location, unless otherwise approved by the Planning Commission.
16. Renewal of the Use Permit for the facility shall be required every ten (10) years from the date of the original Use Permit approval, or from the date of subsequent modifications, pursuant to Section 17.100.010.I of the Zoning Ordinance. KOWS shall submit an application for Use Permit renewal ten (10) years from this approval or in 2026.
17. The facility shall be designed and maintained to withstand without failure the maximum forces expected from wind, earthquakes, and ice when the facility is fully loaded with antennas, transmitters and other equipment, and camouflaging, pursuant to Section 17.100.010.J of the Zoning Ordinance. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Building Official prepared by a structural engineer licensed by the State of California describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the

basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the Planning Director at least every 5 (self-supporting and guyed towers)/10 (monopoles) years of an inspection report prepared by a California-licensed structural engineer indicating the number and types of antennas and related equipment actually present and indicating the structural integrity of the tower. Based on this report, the Building Official may require repair of, if a serious safety problem exists, removal of the tower.

- 18.** This approval is only for the KOWS antenna and related facilities. KOWS is not authorized to install or allow the installation of any other antennas or facilities on the radio tower or at the site.
- 19.** The facility shall remain unlit, unless otherwise approved by the Planning Commission, pursuant to Section 17.100.010.P of the Zoning Ordinance.
- 20.** The facility shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs to the satisfaction of the Fire Chief, pursuant to Section 17.100.010.S of the Zoning Ordinance. All tree trimmings and trash generated by construction of the facility shall be removed from the property and properly disposed of prior to Building Permit finalization or commencement of operation, whichever comes first.
- 21.** The applicant shall submit a site plan, drawn to scale, showing all above and underground features on the site. The site plan shall also include detailed specifications for trenching and address erosion control, pursuant to Section 17.100.010.T of the Zoning Ordinance.
- 22.** The facility shall be constructed and operated in such a manner as to minimize the amount of disruption caused the residents of nearby homes and the users of any nearby recreational areas such as public parks and trails, pursuant to Section 17.100.010.U of the Zoning Ordinance. To that end all the following measures shall be implemented: (1) Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday) between the hours of 7:30 a.m. and 5:30 p.m. unless allowed at other times by the Planning Commission; (2) Backup generators shall only be operated during power outages and for testing and maintenance purposes. Noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least an LDN of 60 DB at the property line and an interior noise level of an LDN of 45 DB; and (3) Traffic at all times be kept to an absolute minimum, but in no case more than two round trips per day on an average annualized basis once construction is complete.
- 23.** The telecommunications facility shall continue to maintain compliance with FCC emission standards for human exposure, related to Nonionizing Electromagnetic Radiation (NIER), pursuant to Section 17.100.010.W of the Zoning Ordinance. Every 5 years a report listing each transmitter and antenna present at the facility and the effective radiated power radiated shall be submitted to the Planning Director. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to be highest shall be prepared. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels in either of these cases exceed 80% of the standard established by this section, the operator of the facility shall hire a qualified electrical engineer licensed by the State of California to measure the actual NIER levels produced. A report of these calculations, required measurements, if

any, and the author's/engineer's findings with respect to compliance with the current NIER standard shall be submitted to the Planning Director within 5 years of facility approval and every 5 years thereafter. In the case of a change in the standard, the required report shall be submitted within 90 days of the date said change becomes effective.

24. KOWS shall be responsible for the payment of all approvals and expenses related to PG&E services for its facility.
25. The tower structure shall include anti-climb panels.
26. The site shall be secure with appropriate fencing.

Attachments:

- 1) Appeal Application Form
- 2) Appeal Written Statement
- 3) Supplemental Appeal Information
- 4) Location Map
- 5) Site Photographs
- 6) Site Plan
- 7) KOWS Response to SHARP Appeal
- 8) Master Planning Application Form and Written Statement (Use Permit Application)
- 9) ROHN Self-Supporting Antenna Tower Specifications (Model 65G)
- 10) Antenna Model OMB MP-4 Specifications (Four MP-I Bays)
- 11) Alternative Design for Antenna
- 12) Nonionizing Electromagnetic Radiation (NIER) Report
- 13) Low Power FM (LPFM) Radio
- 14) Planning Commission Minutes: February 23, 2016
- 15) Public Comments: Received by April 26, 2016
- 16) Public Comments: Received by February 23, 2016