

**A RESOLUTION OF THE PLANNING COMMISSION**

**APPROVING USE PERMIT UP-22-0135 TO MODIFY EXISTING PERSONAL WIRELESS FACILITY AT 350 CALLE PRINCIPAL**

WHEREAS, Adam Ehrlich of J5 Infrastructure Partners, on behalf of Dish, submitted an application requesting approval to modify an existing Personal Wireless Service (PWS) facility at 350 Calle Principal (City Code Section 38-112.4);

WHEREAS, the scope of the project is the modification of an existing installation to:

- Remove six (6) existing panel antennas
- Install six (6) new panel antennas (2 per sector)
- Install six (6) new antenna mounts (2 per sector)
- Install new jumpers
- Remove nine (9) existing RRUs
- Install twelve (12) RRUs (4 per sector)
- Install three (3) new OVPs
- Install three (3) new power trunks (1 per sector)
- Install three (3) new fiber trunks (1 per sector)
- Install new RRU H-frame
- Remove existing equipment cabinet
- Install new equipment cabinet
- Install new power conduit
- Install new telco conduit
- Install new NEMA 3 telco-fiber box
- Install new GPS antenna

WHEREAS, the project site has a zoning designation of Visitor Accommodation Facility and a General Plan land use designation of Commercial;

WHEREAS, City Code Section 38-112.4 establishes the review process for proposed modifications to an existing PWS facility;

WHEREAS, the modifications meet the definition of an “eligible facilities request” as determined by the Federal Communications Commission and the project is therefore subject to the review process detailed in City Code Section 38-112.4(D)(2)(a), which requires the Planning Commission to reopen the underlying use permit for existing facilities in order to approve the PWS modifications requested;

WHEREAS, because the proposal is considered a Section 6409(a) “eligible facilities request,” the City is required to process it within sixty 60 day shot clock as required by federal law;

WHEREAS, the application was submitted on August 11, 2022; the City sent an incomplete letter on August 15, 2022; the applicant submitted all incomplete items on August 19, 2022; and the 60-day shot clock resumed and ends on October 12, 2022;

WHEREAS, at a properly noticed public hearing on September 13, 2022, the Planning Commission reviewed and considered all of the information presented, including the agenda report and information submitted at the public hearing by interested persons;

WHEREAS, notice is hereby given that decisions of the Planning Commission are appealable to the City Council within three (3) business days of the date of this action pursuant to Monterey City Code section 38-206; 38-207, and 38-208, and,

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15303, Class 3) because the project that proposes modification of an existing Personal Wireless Service (PWS) facility is classified as installation of small new equipment on an existing structure. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The proposed improvements are located on a developed site. There are no potential issues related to an environmental resource of hazardous or critical concern.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The existing support structure contains existing antenna facilities. The project is to modify an existing facility and does not propose the installation of a new facility; therefore, there would be no cumulative impact.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed project meets all Federal Communications Commission (FCC) radio frequency guidelines. Therefore, the modification of an existing wireless facility would not have a significant impact on the environment, and due to FCC regulations, potential significant impacts related to health concerns cannot be considered as part of the project evaluation.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. The proposed antennas are mounted on an existing building, which is not located adjacent to a scenic highway.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The project site is not listed as a hazardous waste site on any list compiled pursuant to Section 65962.5 of the Government Code.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The proposed project location is not listed as a historic resource, and the project would not cause an adverse

change in the significance of any adjacent or nearby historic resource. No excavation is proposed. Therefore, impacts to archaeological resources would not occur.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MONTEREY that it hereby approves Use Permit UP-22-0135, to allow modifications to an existing PWS facility at 350 Calle Principal, as previously described and attached hereto as Exhibit A, B, C and D, subject to the following Findings and Conditions of Approval:

**Findings:**

1. That pursuant to Section 38-112.4(D)(2)(a)(i)(I), the project was properly noticed, as required by law, September 2, 2022. Notices were sent to all owners of property 150 feet from each corner of the site and 300 feet of the boundaries of the site up and down both sides of the streets it fronts, as shown on the last equalized property tax assessment role.
2. That pursuant to Section 38-112.4(D)(2)(a)(i)(II), the project involves the collocation, replacement, or removal of transmission equipment on an existing wireless support structure or base station. The proposed modifications are therefore reviewed to determine whether they satisfy the standards for a Section 6409(a) approval under Section 38-112.4(D)(2), as well as constraints required by Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (codified as 47 U.S.C. Section 1455(a)).
3. That pursuant to Section 38-112.4(D)(2)(a)(i)(III), all prior regulatory approvals required for the initial construction and any later modifications to the support structure or base station, if any, were properly obtained.
4. That pursuant to Section 38-112.4(D)(2)(a)(i)(IV), the project would not substantially change the physical dimensions of the existing wireless support structure or base station, in that new equipment will be installed on the façade and rooftop of an existing building; the height does not change; no appurtenances are added to the facility; no excavation is proposed outside the current site; the modifications do not result in additional visually intrusive elements of the eligible support structure; and the facility proposed complies with conditions associated with the siting approval of the construction or modification of the eligible support structure and base station equipment, including those conditions reflected in the findings below.
5. That the proposed modifications will be constructed and operated in such a manner to not result in any noise impacts to adjacent uses and activities and shall be in conformance with the General Plan and Zoning Ordinance noise exposure standards.
6. The proposed modifications are designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight, or attractive nuisances, in that the new equipment will be installed on the existing t-arms on an existing PWS telecom rooftop facility and an existing equipment enclosure area with the antennas mounted on the building façade out of reach from public access.
7. That the proposed modifications do not unreasonably impair or diminish views of and vistas from adjacent properties and designated scenic corridors, in that the equipment

will be installed at the highest rooftop level and the antennas are located within existing equipment shelter in the existing PWS telecom rooftop facility.

**Conditions of Approval:**

1. No Permit Term Extension. The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally mandated approval, which under the Code requires the modification to the underlying permit. The City's grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject support structure or base station.
2. Accelerated Permit Term Due to Invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that Federal law would not mandate approval for any Section 6409(a) approval, the permit or permits issued in connection with such Section 6409(a) approval shall automatically expire one year from the effective date of the judicial order. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) approval when it has submitted an application for either a conditional use permit or land use permit for those improvements before the one-year period ends. The Planning Office may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.
3. No Waiver of Standing. The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) approval.
4. Code Compliance. The permittee shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.
5. Inspections--Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
6. Contact Information for Responsible Parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Office upon permittee's receipt of the Planning Office's written request, except in an emergency determined by the City when all such contact information for responsible parties shall be immediately provided to the Planning Department upon that person's verbal request.
7. Indemnities. The permittee and, if applicable, the nongovernment owner of the private property upon which the support structure and/or base station is installed shall defend, indemnify and hold harmless the City of Monterey, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, lawsuits, writs of mandamus and other actions or

proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death, or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

8. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.
9. General Maintenance. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
10. Graffiti Removal. All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.
11. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other State or Federal government agency with the authority to regulate RF exposure standards.
12. The proposed project shall comply with the following airport related project approvals:
  - applicant shall submit to the FAA - the FAA Form 7460-1 Form, Notice of Proposed Construction or Alteration, or other written notification to the FAA of the proposed construction or alteration of any wireless communications facility in the AIA. A copy shall be provided to the City as part of the building permit submittal;
  - applicant shall submit written authorization from the FAA or other official FAA determination of no objection to the proposed construction or alteration to the City prior to issuance of building permit; and
  - the facility shall comply with all applicable FAA and FCC rules, regulations, and standards.
13. Build-Out Period. No specific build-out period has been established by approval of this Use Permit.
14. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all Conditions of Approval, approved plans, Resolutions, and other documentation associated with the permit or regulatory approval. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the

permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.

15. That a copy of these Conditions of Approval be added to the first page of the plans to be submitted in conjunction with the necessary building permits.
16. That the project be constructed and maintained as illustrated on the submitted plan sets and accompanying text documents attached hereto as Exhibits A and B.
17. That all construction shall be subject to the allowable Construction Hours as detailed in Municipal Code Section 38-112.2.
18. That the applicant shall meet all requirements of the City of Monterey's Building and Safety Division.
19. Consistent with existing concealment requirements, the permittee shall paint, color, or finish all visible equipment including, without limitation, the antennas, antenna supports, brackets, cables, wires, connectors and/or jumpers to match the color of the existing antennas and building façade and at all times maintain the equipment in good condition.
20. Prior to final inspection, a post-installation RF coverage report is required to confirm that RF emission levels are those that were reported in the pre-construction RF emissions report and that they are in compliance with Federal Communications Commission RF emission requirements.
21. In order to alert people accessing the rooftop, a Guidelines sign and a Notice of Contact (NOC) Information sign shall be installed at each access point to the rooftop. Additionally, Blue Notice signs shall be installed behind Dish Wireless Sector A, B, and C antennas. These signs must be placed in a conspicuous manner so that they are visible to any person approaching the antennas the barrier from any direction.
22. To reduce the risk of exposure, access to areas associated with the active antenna installation shall be restricted and secured where feasible.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF MONTEREY this 13<sup>th</sup> day of September 2022, by the following vote:

AYES:	0	COMMISSIONERS:
NOES:	0	COMMISSIONERS:
ABSENT:	0	COMMISSIONERS:
ABSTAIN:	0	COMMISSIONERS:

APPROVED:

ATTEST:

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Planning Commission Chair

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Community Development Director