

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by Vertical Bridge for)	<u>FINAL ORDER</u>
approval of a conditional use permit for a 190-foot tall)	
telecommunications tower at 22630 SE Upper Highland)	File No. Z0077-24-C
Road in unincorporated Clackamas County, Oregon)	(T-Mobile Lewellen)

A. SUMMARY

1. Vertical Bridge (the “applicant”) requests approval of a conditional use permit to build a wireless telecommunications facility including a 190-foot tall monopole tower plus antennas and ground mounted equipment cabinets. The applicant proposes to build the facility on a leased 12,000-square foot (100- x 120-foot) area near the southeast corner of a roughly 22.69-acre property located at 22630 SE Upper Highland Road; also known as tax lot 2000, Section 02, Township 4 South, Range 3 East, of the Willamette Meridian, Clackamas County (the “site”). T-Mobile will lease space to locate its antenna on the tower and for ground equipment. The facility will provide space for three additional wireless providers to co-located equipment at the facility. The site and all abutting properties are zoned AG/F (Agriculture/Forest).

2. Hearings Officer Joe Turner (the "hearings officer") conducted a public hearing to receive testimony and evidence about the application. County staff recommended that the hearings officer deny the application. See the Staff Report and Recommendation to the Hearings Officer dated March 13, 2025 (the "Staff Report"). The applicant’s representative testified in support of the application. Three persons testified orally and other persons testified in writing in opposition to the application. Contested issues in this case include:

a. Whether wireless communication towers should be allowed in the AG/F zone;

b. Whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands (406.05(A)(1)(a));

c. Whether the proposed use will significantly increase fire hazard, increase fire suppression costs, or risks to fire suppression personnel (406.05(A)(1)(b));

d. Whether the safety of the transportation system is adequate to serve the proposed use (ZDO 1203.01.C and 1007);

e. Whether the proposed use will alter the character of the area, particularly with regard to potential health effects of RF/EMF radiation on humans and wildlife, property value impacts, visual impacts, and noise, in a manner that substantially

limits, impairs or precludes the use of surrounding properties for the primary uses permitted in the underlying zone (ZDO 1203.01.D); and

f. Whether the proposed use is consistent with the applicable goals and policies of the Comprehensive Plan (ZDO 1203.03(E));

g. Whether the application complied with the submittal requirements of ZDO 835.04;

h. Whether the applicant sustained the burden of proof that there are no alternative locations for the antennas on existing or approved towers or structures (ZDO 835.06(D)(1)(a));

i. Whether the complies with the painting or coating requirement of ZDO 835.06(D)(1)(d);

j. Whether the equipment cabinets comply with requirements of ZDO 835.06(D)(2);

k. Whether the proposal can comply with the landscaping requirements of ZDO 835.06(D)(5) and 1009;

m. Whether the proposal can comply with the noise standards of ZDO 835.06(D)(6);

l. Whether the proposal can comply with the Surface Water Management and Erosion Control regulations of ZDO 1006.06; and

m. Whether the application was signed by all owners of the subject property (ZDO 1307.07(A)(1)).

3. Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that the applicant failed to demonstrate compliance with all of the applicable approval criteria. Therefore, File No. Z0077-24-C (T-Mobile Lewellen) should be denied.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on March 20, 2025. All exhibits and records of testimony are filed at the Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation.

a. The applicant proposed to construct a 190-foot tall monopole tower with wireless communication antennas and associated ground mounted equipment within a 50- x 50-foot fenced compound located in a 100- x 120-foot leased portion of a 23-acre parcel in the AG/F zone. The applicant will provide driveway access to the lease area from S. Schockley Road, which abuts the east boundary of the site.

b. She argued that the applicant failed to address ZDO 406.05(A)(1), which requires the applicant demonstrate that the proposed use will not (a) force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands or (b) significantly increase the fire hazard, fire suppression costs, or significantly risks to fire suppression personnel. The applicant argued that the increased wireless service coverage provided by the proposed facility will facilitate fire and other emergency response, but did not address how the facility itself will impact the risk of fire, fire suppression, or safety of fire personnel.

c. The site is suitable for the proposed use. The site is flat, there are no environmental overlays on the site, the facility will generate few vehicle trips, and the site is large enough to accommodate the proposed facility and lease area.

d. Based on the applicant's photo simulations, the applicant proposed a silver colored monopole tower. The silver color appears to blend in during snowy conditions, but not when the snow is gone. Therefore, staff were unable to find that the tower would be coated with a non-reflective surface and blend in with the surrounding area.

e. Area residents submitted written testimony in opposition to the proposal, arguing that the facility will cause adverse health effects, impact the value of surrounding properties, cause adverse visual and aesthetic impacts, that the tower is not farm or forest use allowed in the AG/F zone, that adequate wireless service is currently available in the area, and that the proposed antennas could be collocated on an existing tower in the area.

f. The applicant failed to address ZDO 1203.03(E), which requires that the use be consistent with the applicable goals and policies of the Comprehensive Plan. Comprehensive Plan Chapters 3, 4, and 7 apply to this proposed facility. The applicant argued that they meet the comprehensive plan through compliance with the zoning code. However, staff noted several sections of the zoning code that were not met including sections 406, 835, and 1307. Therefore, staff could not find that the proposal is consistent with the goals and policies of the Comprehensive Plan.

g. ZDO 835.06(D)(1)(a) prohibits the approval of new towers unless there are no existing support structures that can accommodate the proposed antenna. As noted in the neighbors' testimony, there is an existing AT&T wireless communication tower

located northwest of the site which has space available for collocation of additional antennas. The property where the existing tower is located is roughly 1,500 feet from the site and the proposed tower is located 2,980.9 feet from the AT&T tower. The applicant failed to provide any analysis of why the proposed antennas cannot be collocated on the existing AT&T tower. The applicant did not address the AT&T tower in the RF analysis included in the application. However, the applicant provided a revised analysis showing increased coverage in areas to the southeast and northeast with antennas located on the proposed tower compared to antennas located on the AT&T tower.

h. The applicant failed to address the landscaping requirements of ZDO 835 and 1009 and provided no information about vegetation that would be removed, retained, added, or replaced.

i. The applicant's revised submittal proposes a hammerhead emergency vehicle turnaround and a single parking space as required by ZDO 1015.

j. The applicant's narrative states that the tower will not be lighted unless that is required by the "FCC" [sic]. However, the applicant's plans include "*FAA lighting*" on the tower. Aircraft warning lights required by the FAA are not subject to the alignment and shielding requirements of ZDO 1005.

k. ZDO 1307 requires that the property owner initiate and sign the application. In this case Brian Cook initiated the application Connie Diane Sharp signed the application as the property owner. The deeds for the site list the owners as Connie and Roland Farrens. Mr. Farrens did not sign the application. The applicant failed to address this conflict.

l. Based on the above issues, she recommended the hearings officer deny the application.

m. She noted a typographical error on page 11 of the Staff Report; the reference to Exhibit 2g should refer to Exhibit 2h.

n. She noted that the County engineer may require the applicant to submit a speed study to verify that adequate sight distance is available at the proposed driveway intersection with S. Shockley Road.

3. Marina Mohnihan testified for the applicant, Vertical Bridge, and summarized her PowerPoint presentation. She noted that Vertical Bridge is the applicant and T-Mobile is a tenant that will lease space on tower for its antennas. The proposed tower will have sufficient space to accommodate three additional wireless providers in addition to T-Mobile.

a. The applicant will only provide lights on the tower if required by the FAA.

b. The applicant will paint the tower with a non-reflective finish to allow it to blend in with the background sky. The ground equipment will be enclosed by a sight-obscuring slatted cyclone fence.

c. Currently the site is primarily used for seasonal grazing of livestock. The proposed facility will have no impact on that use outside of the fenced compound around the tower and ground equipment. The facility will not generate noise, vibrations, odors, or emissions that could interfere with farming or forestry operations in the area. The applicant included a noise study with the application. The enhanced wireless communications service provided by the tower will benefit business and farming operations in the area.

d. The facility will not impact fire risk, fire suppression costs, or the safety of firefighting personnel as it will be made of non-combustible steel and other fire-resistant materials.

e. The applicant will accept a condition of approval requiring landscaping consistent with the Code, provided any landscaping is not toxic to livestock and compatible with existing grazing activities on the site.

f. She showed an updated coverage map created by T-Mobile which demonstrates that the proposed facility will improve reliable coverage along S. Upper Highland Road which carries about 700 vehicles per day (VPD) and connects to Highway 211 which carries roughly 2,200 VPD. It will also improve coverage in Metzler Park, and the North and Upper Highland neighborhoods.

g. The applicant considered opportunities for collocating the T-Mobile antennas on the existing AT&T tower to the northwest of the site; however, the AT&T tower provides insufficient coverage within the existing limited service areas identified by T-Mobile. The proposed tower will extend wireless coverage by more than one mile and serve roughly 1,000 additional people compared to antennas located on the existing AT&T tower; T-Mobile antennas on the AT&T tower would serve approximately 1,900 people while the same antennas on the proposed tower will serve around 3,200 people. In addition, the applicant would need to extend the height of the existing AT&T tower by 20 feet in order to provide the projected coverage and the applicant may need to trim or top surrounding trees to ensure unobstructed coverage.

h. The applicant could reduce the visual impacts of the tower by constructing a "monopine" tower disguised as a tree or paint the tower to blend in with the background.

i. She requested the hearings officer hold the record open for four weeks to allow the applicant to respond to the issues raised in the Staff Report and at the hearing. She agreed to extend the 150 day clock for seven weeks to accommodate the open record period.

4. Donna Russell summarized her written testimony (Exhibit 18).

a. She noted that her family lives adjacent to the site and the tower will be located “*in her country front yard*,” clearly visible from all locations on their property at all times, even at night with the FAA lights flashing. The tower will block their view of Mt. Hood, which will reduce the value of their property.

b. The proposed driveway access to S. Shockley Road is in a hazardous location, near the top of a rise leading to a blind corner curve onto S. Lewellen Road. Existing traffic often travels at high speeds through this section of roadway, creating a hazard for vehicles entering and exiting the proposed driveway.

c. The site is zoned AG/F, where cell towers should not be allowed.

d. RF emissions from the tower may pose health risks to surrounding residents.

e. The proposed tower could be located elsewhere, including on existing towers in the area, if it is needed at all.

5. Steve Ellis testified on behalf of himself and his wife and Linda Ellis. HE summarized his written testimony (Exhibit 17) and requested the hearings officer deny “*the zone change*.”

a. The Code says that this type of facility “*may*” be permitted, not shall be. Therefore, the County is not required to approve this application. The site is not an appropriate location for this facility; the most appropriate use for the site is agriculture and forestry.

b. The facility will pose a risk to human health, which in combination with existing continuously operating towers in the area will present a health hazard.

c. The proposed facility is not needed, as the existing wireless coverage in the area is adequate. There are many existing towers in the vicinity where T-Mobile could collocate its antennas. He argued that the applicant, Vertical Bridge, wants to construct a tower on the site in order to lease space on the tower to other wireless providers. There is BLM land in the area where the tower could be located.

d. The tower will be visible from his property and will impact the Russells’ view, which will reduce the value of their property.

e. Allowing this type of non-farm/non-forest use “*eats away*” at the opportunities for agriculture and forest uses in the area.

6. Jacob Gibson testified on behalf of the Russell family, his in-laws.

a. He noted that many residents moved to this area in an attempt to get away from this type of urban use. The proposed tower will bring an urban use into the rural area, which will impact the value of surrounding properties.

b. The one-mile of additional coverage provided by the proposed tower, compared to the AT&T tower, will have minimal benefit, given the sparse population density in the area.

c. The proposed facility, located in the middle of a hay field, will increase the risk of fire, based on his experience working on and constructing cell towers in the region. Wireless facilities require 400 amps of electrical power. Accidents can occur. He has been on towers where things were installed improperly, causing the equipment on top of the tower to melt down and “*rain molten copper*” on the land below.

d. The applicant argues that the facility will generate minimal traffic. However, the tower will allow for collocation by three other providers, which will increase the amount of traffic to and from the site.

7. At the conclusion of the public hearing, the hearings officer held the record open for four weeks, until 4:00 p.m. on April 17, 2025, for anyone to submit additional testimony and evidence; for an additional two weeks, until 4:00 p.m. on May 1, 2025, for anyone to respond to whatever was submitted during the first open record period; and for a final week, until 4:00 p.m. on May 8, 2025, for the applicant to submit a final written argument.

8. By email dated April 22, 2025 (Exhibit 26), the applicant requested the hearings officer reopen the initial open record period for submittal of new testimony until June 2, 2025. The hearings officer granted that request and extended the open record period subject to the following revised schedule: extending the initial open record period for the submittal of new evidence until June 2, 2025; until June 16, 2025, for all parties to respond to the whatever was submitted during the extended first open record period; and for final week, until June 23, 2025, for the applicant to submit a final argument. (Exhibit 27). The applicant agreed to extend the 150-day clock until August 17, 2025, to accommodate the requested open record extension.

9. By email dated June 17, 2025, the applicant waived their final argument in this case. (Exhibit 29). Therefore, the record in this closed at 4:00 p.m. on June 17, 2025.

C. DISCUSSION

1. ZDO SECTION 407 AG/FOREST DISTRICT

407.04 Uses Permitted: Uses permitted in the AG/F District are listed in Table 407-1.

Finding: The applicant proposes to establish a 195 foot tall wireless telecommunication facility on property within the AG/Forest zoning district. Wireless telecommunication facilities (other than essential public communication services) are subject to Section 835 and listed as a Conditional Use in Table 407-1. Section 835 Table 835-1 also identifies

Level Two Wireless Telecommunication Facilities as a Conditional use subject to Section 406.05(A)(1) when the subject property is zoned AG/F. The applicant is not requesting a zone change, as this use is allowed as a conditional use under the existing AG/F zoning.

Neighbors argued that this type of use should not be allowed in the AG/F zone. However, this use is currently permitted and the hearings officer has no authority to change the Code. The Board of County Commissioners has exclusive authority to modify the Code. In addition, federal law requires local governments to allow wireless communication facilities in most zones, although the local government may require that applicants demonstrate that such facilities cannot be located in certain preferred zones and still provide the desired coverage prior to being allowed to locate in other zones.

This criterion is met.

2. ZDO SECTION 406 TIMBER DISTRICT

406.05(A)(1): *The use may be allowed provided that:*

- a. *The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and*

Finding: ZDO 406.05(A)(1)(a) implements and adopts ORS 215.296(1), referred to as “the farm impacts test.” The courts have held that in order to comply with the farm impacts test the county must identify “[t]he surrounding lands, the farms on those lands, the accepted farm practices on each farm, and the impacts of the proposed nonfarm use on each farm practice.” Stop the Dump Coalition v. Yamhill County, 364 Or 432, 444, 435 P3d 698 (2019). Conclusions that a use will not result in any significant impacts must be supported by substantial evidence and adequate findings regarding existing farm and forest practices in the area. Guay et al v. Clackamas County, LUBA No. 2024.050.

The applicant provided the following narrative:

The proposed monopole location has been selected to ensure that it will not interfere with surrounding farm or forest operations. The selected location is a minimum of 199’ from the nearest property lines and further from any structures on neighboring properties. The construction and operation of the facility will not require any changes to the existing land use patterns or water access and will not restrict agricultural or forestry practices in the vicinity.

Nearby agricultural practices, such as livestock grazing, haying or crop rotation will not be impeded by the construction and continued use of a wireless facility. Wireless facility will not emit pollutants or run-off that would affect soil quality, water sources, or pasture viability. Common forestry practices such as thinning, replanting, and timber harvest will remain unaffected. The proposed facility is a low-impact, static structure with passive operations.

(Exhibit 28 at 1).

The hearings officer finds that these general findings are insufficient to comply with the farm impacts test requirement as explicitly detailed in *Stop the Dump* and *Guay*. Although the applicant may be correct that the proposed unmanned wireless communication facility will not significantly impact farm and forest uses, the applicant failed to identify surrounding properties that are used for agriculture or forestry and the accepted farm practices on each farm for forest operation. In *Guay*, LUBA remanded the hearings officer's decision to the County for lack of these detailed findings.

This criterion is not met.

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

For fire hazard the applicant provided the following narratives:

The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel since emergency responders use wireless telecommunications to save lives in the event of a natural catastrophe where no other services are available or working under the extreme conditions. E911 Services save lives, not impede them.

(Exhibit 2.b at 4).

The steel monopole and accessory equipment are designed to be non-combustible to minimize fire risk. The proposal includes a new access road and parking spaces that have been designed to meet fire access standards. All access roads will be maintained to ensure fire suppression personnel can safely and efficiently access the facility and property. By choosing non-combustible materials the project will not significantly increase risk for fire suppression personnel, or the fire suppression costs in the area. This requirement is met.

(Exhibit 28 at 2).

The applicant provided no information on fire hazards related to the construction of the tower itself, and failed to address opponents' testimony regarding a wireless communications facility technician regarding fires from improperly installed or maintained equipment and the location of the facility in the middle of a hay field. (Gibson testimony and Exhibit 24 at 2).¹ It is possible that potential sparks and fires would be contained within the gravel surfaced lease area, which would limit potential spread of the fire, and/or that the failures cited by opponents are rare enough that the facility poses no greater hazard than other developments and activities allowed in the AF/F zone. However, there is no evidence in the record to that effect.

This criterion is not met.

¹ Exhibit 24 references an "attached photo, but no photo was included. However, the narrative adequately describes the alleged fire risk.

3. ZDO SECTION 1203.02 CONDITIONAL USES

A. 1203.02: Submittal Requirements

Finding: This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. The application includes all of the submittal requirements under Subsection 1203.02. The application was submitted on February 29, 2024, and additional materials were received on March 5, May 15, August 14, August 20, 2024, November 21 2024, and February 5, 2025. Following submission of additional requested information, and the signed statement by the applicant indicating all materials were provided, the application was deemed complete on August 20, 2024.

This criterion is met.

B. General Approval Criteria

1203.03(A): *The use is listed as a conditional use in the zoning district in which the subject property is located.*

Finding: The subject property is located in the AG/Forest (AG/F) zoning district. ZDO Section 407, Table 407-1 controls land uses in that zoning district.

As discussed above, wireless telecommunication facilities (other than essential public communication services) are listed as a Conditional Use in Table 407-1, subject to the approval criteria in Section 835.

This criterion is met.

1203.03(B): *The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

Finding: As stated by the applicant “*The characteristics of the subject property are within the search ring (location) and offered a large (size) and open (shape) plot size and is relatively flat (topography) without any existing improvements (existing improvements) within a grazing field surrounded by existing trees and vegetation (natural features) consistent with allowed uses and ease of construction.*” There is nothing in the record to indicate that the portion of the site proposed for this facility has any characteristics that make it unsuitable. Staff confirmed that the topography is flat where the proposed tower is located. The only environmental feature regulated by the ZDO is a small Type F stream located on the northern portion of the property that is approximately 950 feet from the proposed tower location. Therefore, no adverse impacts to the natural features on the property are anticipated as a result of the proposed facility.

The site plan submitted by the applicant on March 15, 2004, shows that the compound is about 280 feet from the tax lot line and an additional 100 feet away from any structural development.

This criterion is met.

1203.03(C): *The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.*

Finding: The proposed use is exempt from compliance with ZDO 1007.07 pursuant to ZDO 1007.07(B)(3), which provides, in relevant part:

Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:

...

3. Unmanned utility facilities, such as wireless telecommunication facilities, where no employees are present except to perform periodic servicing and maintenance

...

Neighbors argued that the proposed driveway intersection onto S. Shockley Road will create a safety hazard due to higher traffic speeds and limited sight distances at this location. County engineering staff concluded that *“The applicant’s site plan indicates that adequate sight distance is feasible.”* (Exhibit 14 at 2). The applicant’s site plan shows sight distance on S. Shockley Road to the north and south of the driveway. (Exhibit 2 at 16). However, as neighbors noted, S. Lewellyn Road intersects S. Shockley Road south of the driveway via a two-legged intersection consisting of a southern “T” intersection and a northern angled intersection. Drivers traveling eastbound on S. Lewellyn Road and intending to turn south onto S. Shockley Road would use the southern “T” intersection. Eastbound drivers intending to turn north onto S. Shockley Road would use the northern angled intersection. There is no evidence in the record that adequate sight distance is available to allow drivers exiting the proposed driveway to see eastbound to northbound vehicles on S. Lewellyn Road. Given this lack of evidence the hearings officer cannot find that the *“[s]afety of the transportation system is adequate to serve the proposed use.”*

This criterion is not met.

1203.03(D): *The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.*

Finding: The site is in the AG/Forest (AG/F) district and is surrounded by other properties in AG/F and Timber (TBR) districts. Permitted uses of the AG/F district are included in ZDO Section 407, and permitted uses of the TBR district are included in ZDO Section 406.

This criterion does not require that the proposed use have no impacts; rather the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.

The hearings officer acknowledges the tower will be visible. However, the will facility have a relatively narrow cross section, appearing as a narrow cylindrical object against a

background of trees or sky. Although visible, the tower and antennas are passive objects in a large viewing shed. The applicant will paint the facility a neutral gray to further blend with the sky against which it will be seen. Although some people may not want to see the tower, views of the tower will not substantially limit, impair, or preclude the use of surrounding properties.

Neighbors alleged that the proposed facility will adversely affect the value of their properties. However the hearings officer finds that the impact of the tower on property value, if any, is not relevant to the applicable approval criteria. The Oregon Land Use Board of Appeals (LUBA) held that “[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . .” *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998). The hearings officer agrees with and adopts that conclusion.

As discussed above, the applicant provided no specific evidence of existing farm or forest uses on surrounding properties and how, or if, the proposed telecommunication facility may impact those farm and forest uses. Therefore, the hearings officer is unable to determine based on the evidence in the record whether the proposed use would substantially limit, impair, or preclude the primary use of surrounding properties.

This criterion is not met.

1203.03(E): The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

Finding: Staff noted that the goals and policies from Chapter 3 - Natural Resources and Energy, Chapter 4 - Land Use, and Chapter 7 - Public Facilities and Services apply to the proposed use and that telecommunication towers are subject to the following specific Comprehensive Plan policies: 3.C.1.3; 3.I.1; 4.OO.11; and the Public Facility goals. The applicant provided the following findings regarding these policies and goals:

3.C.1.3 of the Comprehensive Plan protects small stream conservation areas by requiring a minimum 50’ from the mean high-water line along fish bearing streams (Type F). The proposed tower is approximately 950’ from the stream situated on the norther portion of the property.

3.I.1 of the Comprehensive Plan protects Forests from conflicting land uses in environmentally sensitive areas. The proposed wireless facility is not located within a designated watershed or an area subject to high erosion or landslide risk. All site preparation and construction will comply with applicable erosion control and stormwater management standards to ensure stability and prevent sediment runoff. The facility will not interfere with current or future forestry activity in the area. It requires a minimal footprint and involves no clearing of forested tracts, chemical use, or emissions that would affect forest health. Additionally, being an unmanned facility there will not be ongoing activity that would disrupt forestry operations or access.

4.OO.11 of the Comprehensive Plan states that the TBR and AG/F zoning districts implement the goals and policies of the Forest plan designation.

As described above, no agricultural or forestry operations will be displaced or restricted because of the wireless facility's construction or presence. The facility is consistent with zoning purpose and the broader Forest plan designation, as it supports modern infrastructure needs without compromising the continued use of surrounding lands for agriculture, forestry, or residence. This requirement is met.

As noted in the findings for Sections 406 and 1203.03(C) above, the applicant failed to provide sufficient information analyzing farm and forest impacts and the public facility goals, specifically transportation safety. Therefore, there is no evidence that the goals and policies of the Comprehensive Plan are met through this proposal.

This criterion is not met.

1203.03(F): The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800 Special Use Requirements, and Section 1000 Development Standards.

Finding: Staff reviewed compliance with ZDO Section 800 and 1000, as applicable. The findings are included in the findings below.

4. ZDO Section 835 wireless telecommunication facilities

835.04 Submittal Requirements:

A site plan, drawn to scale, that includes:

- 1. Existing and proposed improvements;*
- 2. Adjacent roads;*
- 3. Parking, circulation, and access;*
- 4. Areas of vegetation to be added, retained, replaced, or removed;*
- 5. Setbacks of all existing and proposed structures; and*
- 6. If an adjustment is proposed pursuant to Subsection 835.06, the distance from the proposed location of the wireless telecommunication tower to off-site structures that are closer to the proposed location than a distance equal to the height of the proposed tower.*

Finding: The site plan provided on March 5, 2024 (Exhibit 2a) includes the proposed improvements, adjacent roads, access, distance from proposed tower to the property, and existing structures on adjacent property. The landscape plan provided during the initial open record period (Exhibit 28 at 16) shows areas of vegetation to be added, retained, replaced, or removed and addresses the requirement of ZDO 835.06(D)(5).

These criteria are met.

835.05 Uses Permitted: The types of wireless telecommunication facilities permitted in each zoning district are listed in Table 835-1, Permitted Wireless Telecommunication Facilities. Except for essential public communication services

and small wireless facilities, wireless telecommunication facilities are classified as Level One or Level Two. Wireless telecommunication facilities, except small wireless facilities, are subject to the applicable provisions of Subsections 835.06(A through D) and 835.08, and an adjustment may be approved pursuant to Subsection 835.07.

Finding: Table 835-1 lists “*Wireless Telecommunication Facility not included in any other category*” as a Conditional Use in the AG/F zoning district. Footnote 1 of the Table states that in the AG/F district, the use is also subject to Subsection 406.06(A)(1), which is addressed above.

This criterion is met.

835.06(D) Standards for Level Two Wireless Telecommunication Facilities:

- 1. New Towers: If a new wireless telecommunication tower is proposed:*
 - a. No new tower will be permitted unless no existing support structure can accommodate the proposed antenna. All proposals for new wireless telecommunication facilities must be accompanied by a statement from a qualified person that the necessary telecommunication service cannot be provided by collocation for one or more of the following reasons:*
 - i. No existing support structures, or approved but not yet constructed support structures, are located within the geographic area required to meet the applicant’s engineering requirements;*
 - ii. Existing support structures are not of sufficient height to meet the applicant’s engineering requirements;*
 - iii. Existing support structures do not have sufficient structural strength to support the applicant’s proposed antenna and related equipment;*
 - iv. The applicant’s proposed antenna would cause electromagnetic interference with the antenna on the existing support structure, or the existing antenna would cause interference with the applicant’s proposed antenna; or*
 - v. The applicant demonstrates that there are other limiting factors that render existing support structures unsuitable.*

Finding: Although ZDO 835.06(D) refers to “*necessary telecommunication service*” and “*engineering requirements*,” these terms are not defined. Applicants largely determine what service is necessary, based on proprietary information, market factors, characteristics of RF propagation, and system design and engineering, among other things. The county policy in this regard was shaped in part by the Federal Communications Act of 1996 which requires that local governments allow the development of telecommunications resources subject only to reasonable health, safety and welfare standards. In this case the applicant demonstrated that there are gaps in coverage, and that the proposed facility will fill them. This is *prima facie* evidence that the facility will provide necessary service to the public using the applicant’s telecommunications system. Neighbors’ testimony that existing wireless service in the

area is adequate is not sufficient to overcome the applicant's RF analysis, as the coverage gap identified by the applicant that this facility is intended to fill extends well beyond the area surrounding the site.

The applicant's existing coverage maps show a significant gap in wireless coverage in the area around the site (Exhibit 2b at 12) and that antennas located on the proposed tower would significantly improve wireless coverage in the surrounding area (Exhibit 2b at 13). However, staff found that there is an existing AT&T tower located on the northwest corner of the intersection of S. Upper Highlands Road and S. Lower Highland Road on property with map and tax lot # 43E02 01200 (the "AT&T tower"). This property is in the northwestern portion of the search area and is only 2,550 feet from the property where the tower proposed with the current application. The applicant did not consider this tower in its initial analysis.

The applicant subsequently provided a revised analysis that included the AT&T tower (Exhibit 28 at 56-70). Based on the applicant's analysis, T-Mobile wireless antennas located at 135 feet on the AT&T tower would provide coverage similar to antennas located on the proposed new tower. However, the proposed facility will extend the areas of "reliable coverage" further to the east, southeast, and southwest than antennas on the AT&T tower. (Exhibit 28 at 61). Opponents noted that the area east of the site is primarily unoccupied BLM land where wireless coverage may be less needed. However, Exhibit 28 at 61 shows that the proposed facility will provide better coverage in Metzler Park to the southeast of the site as well as along roads to the south and southwest of the site.

The applicant testified that the existing AT&T tower is only 120 feet tall and the applicant would need to extend the tower to 135 feet to provide the coverage shown in Exhibit 28. (Mohnihan testimony). However, as noted in the Staff Report, the land use decision for AT&T tower identifies it as a 180 foot tall steel monopole with the structural capacity to have at least two additional antennas arrays added to the tower through colocation. There is no evidence in the record to support the applicant's assertion that the AT&T tower is only 120 feet high nor is there evidence that T-Mobile antennas located at a higher elevation on a 180 foot AT&T tower would not meet, or potentially exceed, the identified telecommunication service requirements. Therefore, given the conflicting evidence in the record regarding the height of the AT&T tower, the hearings officer cannot find that there are no existing support structures that could provide the identified telecommunication service (ZDO 835.06(D)(1)(a)(i)) or that existing support structures are not of sufficient height to meet the applicant's engineering requirements (ZDO 835.06(D)(1)(a)(ii)). The applicant did not address the remaining criteria in ZDO 835.06(D)(1)(a)(iii) through (v).

This criterion is not met.

b. If the tower is inside the Portland Metropolitan Urban Growth Boundary, it shall be a monopole.

Finding: The proposed location of the tower is outside the Portland Metropolitan Urban Growth Boundary.

This criterion is not applicable.

- c. *The tower shall be designed and built to accommodate collocation or additional loading. This means that the tower shall be designed specifically to accommodate no less than the following equipment, in addition to the applicant's proposed equipment:*
 - i. *Twelve antennas with a float plate wind-loading of not less than four square feet per antenna;*
 - ii. *A standard mounting structure, standoff arms, platform, or other similar structure designed to hold the antennas;*
 - iii. *Cable ports at the base and antenna levels of the tower; and*
 - iv. *Sufficient room within or on the tower for 12 runs of 7/8-inch coaxial cable from the base of the tower to the antennas.*

Finding: The applicant states “Please refer to the drawings submitted for this project. The tower is being designed to accommodate 3 additional carriers should they be interested in collocation.” The drawing sheet A-6 shows the tower with the locations available for future antennas. The drawing sheet A-3 shows the antenna array has three support arms (sectors) that each have the ability to hold one antenna according to sheet A-6. Therefore, the plans and drawing sheets provided in the application show that twelve antennas could be supported by the proposed monopole with a design that includes standard mounting structure, and sufficient room to meet the cable requirements.

These criterion are met.

- d. *The tower shall be painted or coated in a manner that blends with the surrounding area. The finished coloring shall result in a non-reflective surface that makes the tower as visually unobtrusive as possible unless state or federal regulations require different colors.*

Finding: The original photo simulations submitted by the applicant appear to show the tower with silver or whitish color. (Exhibit 2d at 6-7). The applicant subsequently revised the proposal to state that “The proposed tower will have a non-reflective galvanized gray coating that will minimize glare and blend in with the sky.” (Exhibit 28 at 4) and provided revised photo simulations showing a gray tower (Exhibit 28 at 49 and 50). The examiner finds that the proposed galvanized finish complies with this requirement; the proposed flat gray color is non-reflective and will blend with clouds in the background of the sky.

This criterion is met.

- e. *If the proposed wireless telecommunication facility requires approval of a conditional use permit, placement of the tower in an alternate location on the tract may be required, if the alternate location would result in greater compliance with the criteria in Section 1203, Conditional Uses, than the proposed location. In order to avoid relocating the proposed tower, the applicant shall demonstrate that the necessary wireless telecommunication service cannot reasonably be provided from the alternate location.*

Finding: The application requires approval of a conditional use permit. However, there are no alternate locations on the site that would result in greater compliance with the criteria in Section 1203. Due to the small Type F stream located on the opposite side of the tract, the proposed location is a suitable location if the tower is approved. There is an existing tower that is available for collocation located on property within ½ mile of the site. However, that tower is located outside of the subject tract and therefore not relevant to this criterion.

This criterion is not applicable.

2. *Equipment shelters shall be entirely enclosed. They may be painted or coated with a finish that best suits the operational needs of the facility, including the ability to reflect heat and to resist accumulations of dirt. If there is a conflict between acceptable colors and the operational needs of the facility, the use of architectural screen panels may be required.*

Finding: The applicant states “As evidenced by the submitted drawings, we are not proposing equipment shelters.” (Exhibit 2c at 6). In Exhibit 2a sheet A-3 shows an area in the leased area for “*PROPOSED EQUIPMENT PLAN*”. In Exhibit 2d the photo simulations identify a “*proposed equipment lease area*.” Therefore, there are areas in the plan with equipment that serves the tower. Exhibit 2a drawing A-6 and Exhibit 2c drawing A-4 identify a cabinet with a generator and carrier equipment. The hearings officer finds that a cabinet containing equipment is an equipment shelter subject to this requirement since it is sheltering the equipment.

The applicant stated, “*The proposed equipment cabinet and H-frame will be an industry standard gray, and they are designed to reflect heat and resist the accumulation of dirt.*” (Exhibit 28 at 4). Although, there is no evidence as to whether or how the equipment shelters will be entirely enclosed, it is feasible to do so.

This criterion can be met with a condition.

3. *No lighting shall be permitted on a wireless telecommunication tower, except as required by state or federal regulations. If lighting is required, the light shall be shielded or deflected from the ground, public rights-of-way, and other lots, to the extent practicable.*

Finding: During the open record period the applicant determined that state and federal regulations will not require lighting for the tower. (Exhibit 28 at 5). The applicant submitted revised plans without tower lighting. (Exhibit 28 at 13-14).

This criterion can be met with a condition of approval.

4. *Unless the wireless telecommunication facility is located entirely on a utility pole, it shall be located within an area that is enclosed on all sides. The enclosure shall be a minimum of six feet tall and sight-obscuring.*

Finding: The applicant states “As evidenced by the submitted drawings, we are proposing chain-link fencing to surround the site. Privacy slats will be installed for sight-obscuring.” (Exhibit 2d at 6). The photo simulations in Exhibit 2d show a chain link

fence without the privacy slats. However, the applicant submitted revised photo simulations showing privacy slats. (Exhibit 28 at 49 and 50).

This criterion can be met with a condition of approval.

5. *Landscaping shall be placed outside of the enclosed area required pursuant to Subsection 835.06(D)(4) and shall include ground cover, shrubs, and trees that are reflective of the natural surrounding vegetation in the area. However, if a portion of the wireless telecommunication facility is screened from points offsite by a building with a height of at least eight feet, landscaping is not required for the screened area. In addition, Subsection 1009.10 applies.*

Finding: The applicant submitted a Landscaping Plan during the open record period showing the addition of 24 trees, 25 shrubs, and mulch around the outside of the fenced enclosure. (Exhibit 28 at 16). The plan does not include require ground cover plantings, but those could be required as a condition of approval.

This criterion can be met with a condition of approval.

6. *Noise generated by the wireless telecommunication facility shall not exceed the maximum levels established by the Oregon Department of Environmental Quality (DEQ). If lots adjacent to the subject property have a lower DEQ noise standard than the subject property, the lower standard shall be applicable.*

Finding: The applicant's original noise study dated August 7, 2023, addressed the "County of Clackamas noise limits." (Exhibit 2c at 20). The noise study did not address DEQ maximum noise levels. However, the applicant submitted a second noise study dated May 21, 2025, demonstrating it is feasible to comply with DEQ noise standards. (Exhibit 28 at 51).

This criterion is met.

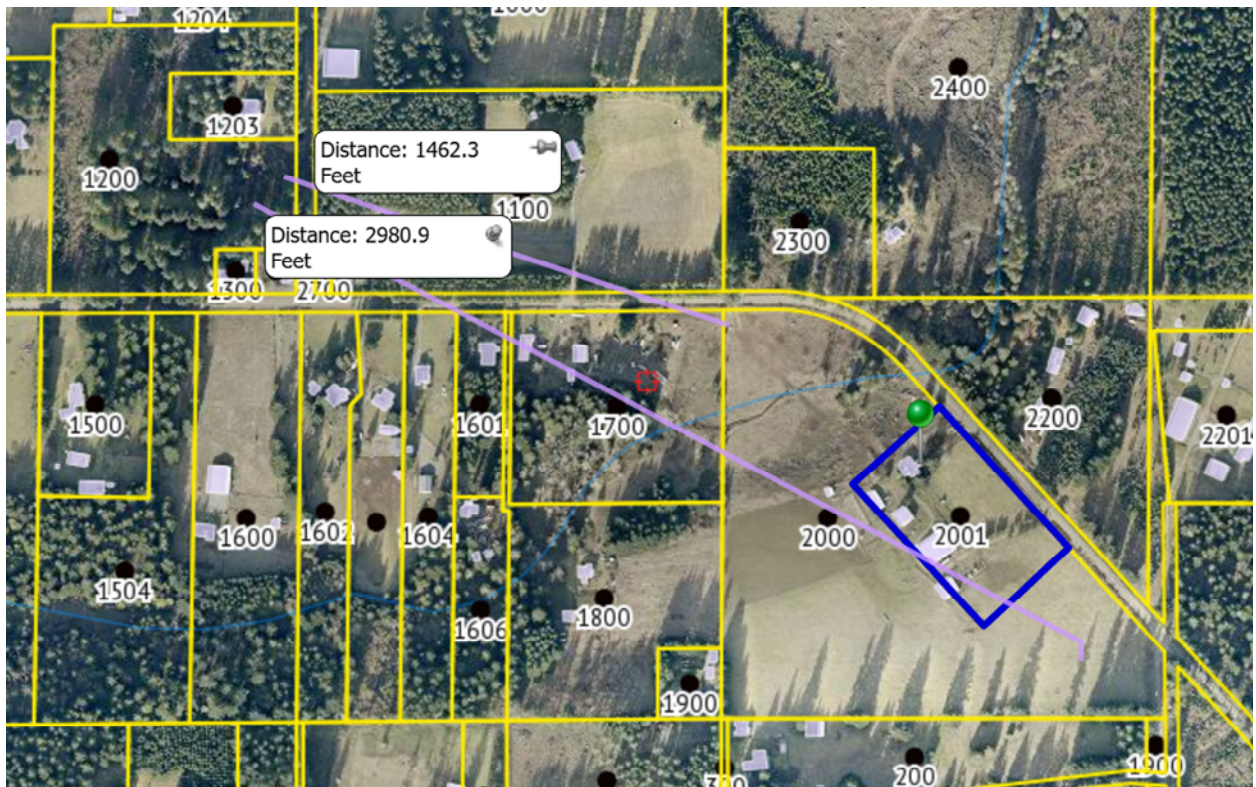
7. *Dimensional Standards: Dimensional standards applicable to wireless telecommunication towers are listed in Table 835-2, Dimensional Standards for Wireless Telecommunication Towers.*

Finding: The applicant states "As evidenced by the drawings previously submitted, the proposed site complies with the Dimensional Standards Table."

Table 835-2: Dimensional Wireless Telecommunication Towers include the following standards:

Zoning District	Maximum Height	Minimum Tower Separation
AG/F, EFU, and TBR, provided that the tower is outside the UGB	250 feet	2,640 feet

The proposed tower is less than 250 feet in height and more than 2,640 feet from the nearest existing tower, the AT&T tower; based on aerial images, the proposed tower is approximately 2,981 feet from the existing AT&T tower.



This criterion is met.

5. ZDO Section 1000 Development standards

Not all review subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use

A. Sections 1002, 1003, and 1004 are not applicable to the subject property.

This criterion is not applicable.

B. Section 1005 relates to the design of the buildings and the site.

Finding: The proposal does not involve the construction of any buildings; therefore, Subsections 1005.02 and 1005.03 are not applicable. Subsection 1005.04 provides requirements for outdoor lighting; no outdoor lighting is proposed. This section is not applicable to this specific development as proposed, however, if the FAA requires lighting this section applies.

As conditioned this criteria can be met.

C. 1006.03(E) Water Supply. *The following standards apply outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:*

- a. *Applicants shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right, or exempt-use well.*

Finding: The property is not within a public or private water district, and is not within a groundwater limited area. The proposed development does not propose using any water as this is a telecommunication tower.

This criterion is not applicable.

D. 1006.06 Surface Water Management and Erosion Control. *The following surface water management and erosion control standards apply:*

- a. *Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.*
- b. *The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply*
- c. *Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.*
 - i. *The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility*
 - ii. *The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.*

Finding: In those areas that are not within a surface water management district, the preliminary statement of feasibility shall be signed by the Surface Water Management Agency of Clackamas County (SWMACC).

Clackamas County is the surface water management authority for the area including the subject site. The applicant submitted a Preliminary Statement of Feasibility in the original application. (Exhibit 3). However, the form had not been reviewed or signed by Development Engineering. During the open record period the applicant submitted what appears to be the same, unsigned, Preliminary Statement of Feasibility. (Exhibit 28 at 45). Therefore, given the lack of a signed form, there is no indication that “[a]dequate surface water management, treatment, and conveyance is available to service the development or can be made available through improvements completed by the development or the system owner.”

This criterion is not met.

E. 1007 Roads and Connectivity.

1007.02 General Provisions

- A. *The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*
- B. *Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*
- D. *Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards.*

Finding: The Clackamas County Development Engineering Program reviewed the application materials and provide the following comments in Exhibit 14:

The County has adopted access control standards to provide positive impact on traffic safety and efficiency for County and State roads. These standards promote shared access points to comply with access control, spacing standards, and to promote safer operations. Applicable references include ZDO section 1007 and Clackamas County Roadway Standards Section 220.

S. Upper Highland Road is classified as a rural minor arterial, while S. Schockley Road is classified as a rural collector. Clackamas County Roadway Standards Section 220.4(a) requires accesses subject to land use shall first take access to the lower functional classified roadway unless evidence or an engineering study establishes that access to the higher classified roadway is needed for safety, circulation or to address topographical or environmental constraints, or are otherwise a benefit to the public. The applicant is proposing access form S. Schockley Road, consistent with access standards.

Section 240.2(b) of the Clackamas County Roadway Standards requires that all new accesses provided adequate intersection sight distance (ISD) and stopping sight distance (SSD) for all accesses. The minimum intersection sight distances for the access on S. Schockley Road will

require 390 feet to the south, and visibility to the intersection of S. Schockley Road with S. Upper Highland Road. Minimum stopping sight distances of 250 feet northbound approaching the site access will be required. The applicant's site plan indicates that adequate sight distance is feasible.

Access to the communication facility is proposed from an approximately 240-foot long access road. The Clackamas County Roadway Standards requires the first 20 feet of an access drive to be paved per Standard Drawing D500. The remainder of the roadway can be gravel, per Roadway Standards Drawing R100. Where a gate is proposed, a minimum setback for the edge of the roadway of 30 feet is required to meet fire access standards, as well as allowing vehicles to safely pull off the road in order to open the gate.

The applicant is required to provide adequate on-site circulation for the parking and maneuvering of all vehicles anticipated to use the site in accordance with ZDO section 1015 and applicable Roadway Standards requirements. The minimum access road includes a 12-foot wide gravel surface, within a minimum 20-foot wide, unobstructed clear zone. Designated vehicle parking spaces will be required to comply with ZDO section 1015 dimensional requirements and require a surface of screened gravel or better.

Neighbors noted that the proposed facility will allow additional wireless providers to collocate on the tower, which will generate additional maintenance traffic. However, each carrier will generate an average of one vehicle trip per month after the facility is constructed. Therefore, even at full capacity the facility will generate an average of four vehicle trips per month.

However, as discussed above, the applicants sight distance evaluation failed to address sight distance on the section of S. Lewellyn Road that curves from southwest to northeast to intersect S. Shockley Road south of the site. Therefore, there is no evidence that the development can comply with the intersection sight distance standards of the Clackamas County Roadway Standards.

This criterion is not met.

1007.07 Transportation Facilities Concurrency.

A. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

Finding: As discussed above, the proposed use is exempt from compliance with concurrency requirements pursuant to ZDO 1007.07(B)(3).

This criterion is inapplicable.

F. 1009 Landscaping.

1009.02 MINIMUM AREA STANDARDS

- A. *Table 1009-1, Minimum landscaped area, establishes the minimum percentage of the area of the subject property that shall be landscaped.*

Finding: There is no minimum required percentage of landscaping for properties in the AG/F district; however, landscaping is required pursuant to Subsection 835. As discussed above, the applicant submitted a landscape plan that can meet the requirements of the Code. (Exhibit 28 at 16).

This criterion is met.

1009.04 SCREENING AND BUFFERING

- A. *Screening shall be used to eliminate or reduce the visual impacts of the following:*
1. *Service areas and facilities, such as loading areas and receptacles for solid waste or recyclable materials;*
 2. *Storage areas;*
 3. *Ground-mounted rainwater collection facilities with a storage capacity of more than 100 gallons;*
 4. *Parking lots within or adjacent to an Urban Low Density Residential, VR-5/7, VR-4/5, RA-1, RA-2, RR, RRFF-5, FF-10, FU-10, or HR District; and*
 5. *Any other area or use, as required by this Ordinance.*
- B. *Screening shall be accomplished by the use of sight-obscuring evergreen plantings, vegetated earth berms, masonry walls, sight-obscuring fences, proper siting of disruptive elements, building placement, or other design techniques.*
- C. *Screening shall be required to substantially block any view of material or equipment from any point located on a street or accessway adjacent to the subject property. Screening from walkways is required only for receptacles for solid waste or recyclable materials. A sight-obscuring fence at least six feet in height and up to a maximum of 10 feet in height shall be required around the material or equipment.*
- D. *Buffering shall be used to mitigate adverse visual impacts, dust, noise, or pollution, and to provide for compatibility between dissimilar adjoining uses. Special consideration shall be given to buffering between residential uses and commercial or industrial uses, and in visually sensitive areas.*
- E. *Buffering shall be accomplished by one of the following:*
1. *A landscaping strip with a minimum width of 15 feet and planted with:*
 - a. *A minimum of one row of deciduous and evergreen trees staggered and spaced a maximum of 30 feet apart;*

- b. *A perennial, evergreen planting with sufficient foliage to obscure vision and which will grow to form a continuous hedge a minimum of six feet in height within two years of planting; and*
 - c. *Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area;*
- 2. *A berm with a minimum width of ten feet, a maximum slope of 40 percent on the side away from the area screened from view, and planted with: a. A perennial, evergreen planting with sufficient foliage to obscure vision and which will grow to form a continuous hedge within two years of planting. The minimum combined height of the berm and planting shall be six feet; and b. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area;*
- 3. *A landscaping strip with a minimum width of five feet and including: a. A masonry wall or sight-obscuring fence a minimum of six feet in height. The wall or fence is to be placed along the interior side of the landscaping strip; b. Evergreen vines, evergreen trees, or evergreen shrubs, any of which shall be spaced not more than five feet apart; and c. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area; or*
- 4. *Another method that provides an adequate buffer considering the nature of the impacts to be mitigated.*

Finding: No parking lot or large rainwater collection systems are proposed with this application. However, landscaping is required pursuant to Subsection 835 and thus this Ordinance requires landscaping to screen and buffer the facility from the adjacent roads and uses. The proposed use includes a 195 foot steel monopole tower in addition to equipment located in the northwestern area of the leased compound. The applicant proposed to enclose the base of the tower and all ground mounted equipment with a sight obscuring slatted chain-link fence and install trees and shrubs around the outside of the fence. If this application were approved, the hearings officer would impose a condition of approval requiring groundcover as discussed above. The hearings officer finds that the proposed fence and landscaping will screen and buffer views of the ground mounted equipment and the base of the tower.

This criterion is met.

G. 1015 Parking and Loading. Section 1015 is designed to ensure that developments in Clackamas County provide sufficient and properly designed parking for motor vehicles and bicycles as well as appropriate off-street loading areas. Outside the UGB, areas used for parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage [1015.01(B)]. Parking and loading requirements for uses and structures not specifically listed in Tables 1015-1 shall be subject to the requirements for the most similar use.

Finding: The land use categories in Table 1015-1 do not provide a similar use to the proposed telecommunication facility; however, the parking demand is most similar to “on-site vehicular parking for employees, customers and visitors, determined through Conditional Use process” like the surface mining standards.

The development proposal will operate as an unstaffed facility. There is a need to accommodate at least one vehicle for occasional maintenance and inspection needs of the unstaffed facility. Therefore, at least one 8.5 feet wide by 16 feet long parking space shall be provided. Designated vehicle parking spaces will be required to comply with ZDO Section 1015 dimensional requirements and require a surface of screened gravel or better. The original application provided by the applicant (Exhibit 2) showed a circular gravel drive. This was modified by the site plan provided on March 5, 2024, to include a hammerhead turnaround for fire trucks and other visitors with the southern arm of the hammerhead extended to provide the one required parking space measuring 8.5’ by 16’ in area.

As the Transportation and Engineering Program staff noted in Exhibit 14:

- 3) *The applicant shall design and construct a minimum 12-foot wide by 20-foot long, paved approach onto S. Schockley Road, per Roadway Standards Drawing D500.*
- 4) *The applicant shall design and construct a minimum 12-foot wide, gravel access road from paved approach to the communication facility site. The access road shall be consistent with Roadway Standards Drawing R100.*
- 5) *Minimum intersection sight distance of 390 feet shall be provided to the south on S. Schockley Road. Visibility to the intersection of S. Schockley Road with S. Upper highland Road shall be provided. Intersection sight distance shall be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height of 3.5 feet in the center of the oncoming travel lane.*
- 6) *A turnaround shall be constructed at or near the end of the access road, constructed per Standard Drawing C350.*
- 7) *Adequate storm drainage facilities shall be provided. A storm water management plan, Roadway Standards Chapter 4 shall be provided when 10,000 square feet or more of impervious is developed. Adequate conveyance of stormwater runoff shall be provided for the site and access road.*
- 8) *If an acre or more of area are disturbed for construction of the roadway and site improvements, the applicant obtain a NPDES 1200-C Erosion Control Permit from the Oregon Department of Environmental Quality. Any Oregon DEQ permitting shall be obtained and submitted prior to Development Permit issuance.*
- 9) *The applicant shall provide adequate on-site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar*

facility. Parking spaces shall meet ZDO section 1015 dimensional requirements, and Roadway Standards, Drawing P100/P200.

This criteria can be met with conditions.

H. 1021 Solid Waste and Recyclable Material Collection. Outlines the standards for refuse and recycling for commercial developments.

Finding: The requirements and standards of Section 1021 are applicable to conditional uses; yet because the development site does not include any administrative office, workshop, or other area for employees to work, it is unlikely that there will be any garbage or recycling generated by this development site. Moreover, the telecommunication facility will operate as an unstaffed facility and will not generate waste. Based on the scope of work of the proposed developed the hearings officer finds that there is no need for solid waste and recycling material collection on site, and therefore compliance with Section 1021 is not necessary.

This criteria is not applicable.

6. 1307.07 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- A Initiation of Applications: Type I, II, II-E, and III land use permit applications may be initiated by:*
- 1. The owner of the subject property;*
 - 2. The contract purchaser of the subject property, if the application is accompanied by proof of the purchaser's status as such;*
 - 3. The agent of the owner or contract purchaser of the subject property, if the application is duly authorized in writing by the owner or the contract purchaser, and accompanied by proof of the agent's authority; or*
 - 4. If the application is for Comprehensive Plan designation or zoning of a Historic District or Historic Corridor, the owners or contract purchasers of at least 60 percent of the property within the area to be so designated or zoned.*

Finding: The applicant was initiated by Brian Cook and signed by Connie Diane Sharp. Based on County records, the property was conveyed most recently to Connie Farrens and Roland Farrens, through recorded document #2008-031317. However, Roland Farrens passed away in 2018. (Exhibit 28 at 55). As of June 20, 2024, title the site was vested in Connie Farrens, aka Connie Diane Sharp. (Exhibit 28 at 19 and 22).

This criterion is met.

- C. Application Submittal: Type I, II, II-E, and III land use permit applications are subject to the following submittal requirements:*
- 1. The following shall be submitted for an application to be complete: a. A completed application form, such form to be prescribed by the Planning Director, and containing, at a minimum, the following information:*

- i. *The names, mailing addresses, and telephone numbers of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;*
- ii. *The address of the subject property, if any, and its assessor's map and tax lot number;*
- iii. *The size of the subject property;*
- iv. *The Comprehensive Plan designation and zoning district of the subject property;*
- v. *The type of application being submitted;*
- vi. *A brief description of the proposal; and*
- vii. *Signature(s) of the applicant(s) and all owners or all contract purchasers of the subject property, or the duly authorized representative(s) thereof, authorizing the filing of the application.*

Finding: Staff deemed the application complete on August 20, 2024, after receiving the signed Incomplete Notice by the applicant that indicated all of the materials needed for a complete application were provided. Based on the title documents noted above, Connie Farrens, aka Connie Diane Sharp, is the sole owner of the property and Ms. Sharp signed the application.

This criterion is met.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that the applicant failed to demonstrate compliance with all of the applicable approval criteria. Therefore, File No. Z0077-24-C (T-Mobile Lewellen) should be denied.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby denies File No. Z0077-24-C (T-Mobile Lewellen).

DATED this 8th day of July 2025.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "*shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.*" This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).