



June 16, 2015

Via Email

Nick Gioello, Planner
City of Eugene
Planning and Development Department
99 W. 10th Ave.
Eugene, OR 97401
<mailto:nick.r.gioello@ci.eugene.or.us>

Mr. Gioello:

AT&T hereby submits the attached 5 additional exhibits for submittal to the record. I anticipate one additional exhibit for submittal before the close of business on June 17, 2015.

It should be noted that AT&T asserts that the proprietary technical data requested by CMS is not, and has never been a submittal requirement under your code. The Rest Haven matter was approved just last year based on the format of the information already provided in this case and under the same code. To require public disclosure of the underlying proprietary data for 4 different sites, as a prerequisite to seeking a conditional use permit, is unduly burdensome, unnecessary and is not required for any other use under the Eugene code.

EC 9.5750(11) requires the city to hire, at Applicant expense, a consultant to “verify the accuracy of statements made in connection with an application for a building or land use permit for a telecommunications facility.” Implicit in this provision is the limitation that the statements subject to verification are only those related to code criteria needed for approval. The Eugene code criteria for telecommunications facilities do not require that a gap in coverage be demonstrated to obtain CUP approval. It requires “A statement providing the reasons for the location, design and height of the proposed tower or antennas.” In the second and most recent CMS report, Mr. Monroe indicates that this criterion has been met.

SEATTLE

LOS ANGELES

DENVER

PORTLAND

BEND

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CMS's second report claims that the requested data is needed **only** to verify compliance with EC9.7570(6)b(2) and (3).

In Johnson v. Eugene LUBA No. 2002-031 (2002), LUBA gave a very specific interpretation of what is required to be provided by the Applicant under these exact code provisions.

With respect to sub 2:

"The zones listed in the second sentence of ECC 9.5750(6)(c)(2) permit telecommunications towers outright. The zones listed in the third sentence of ECC 9.5750(6)(c)(2) permit telecommunications towers only after site review. Read in context, it appears that the thrust of ECC 9.5750(6)(c)(2) is to require applicants to consider alternative sites that have less restrictive zoning designations with respect to telecommunications towers. With that understanding, we believe the hearings officer correctly interpreted ECC 9.5750(6)(c)(2) to require consideration of alternative locations within 2,000 feet of the preferred site only if alternative locations are zoned C-4, I-1, I-2 or I-3. Petitioner does not contest the finding that there are no properties with those zoning designations within 2,000 feet of the subject property."

The PL zone has been added to the 3rd sentence of this section since the Johnson case was decided and was the only listed zone, apart from C4, within the 2000 foot radius. AT&T could not site in any of those zones because the owners of the Park, school, EWEB substation and assisted living facilities would not agree to a lease. There is no technical analysis needed regarding this criterion.

With respect to sub 3, LUBA agreed that the hearings official properly applied this section with the following finding:

*"With regard to [ECC] 9.5750(6)(c)(3), the [opponents] challenge the applicant's evidence demonstrating collocation is impractical on existing tall buildings, light or utility poles, water towers, existing transmission towers, and existing tower facility sites for reasons of structural support capabilities, safety, available space or failing to meet service coverage area needs. **The [opponents] argue, essentially, that the height of the tower and the service area has been artificially determined in order to justify locating [the tower and antenna on the subject parcel], and that the applicant could collocate additional facilities on other surrounding buildings with lesser height and achieve the same objectives.***

"This application requirement requires the applicant to establish that the tower, as it is proposed, cannot be collocated. It does not require the applicant to adjust its business needs or reconfigure its proposal in order to attempt to demonstrate that a different proposal, which would not serve its business needs, could potentially be

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collocated on an existing structure.”(Emphasis added).

AT&T has demonstrated that the height of the proposed facility at the Crossfire Church cannot be obtained on an existing utility pole, even with a permitted pole extension.

AT&T is providing in the attached Exhibit A the technical data requested for the proposed site, which provides sufficient information for CMS to verify that this facility, as proposed, cannot be placed on an existing utility pole or structure. It should be noted that the CMS comments on this code provision in its second report focus only on potential use of multiple structures at lower heights and structurally modifying facilities outside the 2000 foot radius. This is clearly not required by the Eugene code, as interpreted by LUBA in the Johnson case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim Allen', with a long horizontal flourish extending to the right.

Kim Allen

Attorneys for Applicant AT&T

WARNING—PROPRIETARY INFORMATION

In connection with the pending Conditional Use Permit Application, CU 14-3, in the city of Eugene, Oregon for the purpose of verifying the accuracy of the statements made by the Applicant as required by Eugene Code Section 9.5750 (11) (the “**Review**”), AT&T is required to disclose certain information, attached hereto, including confidential, proprietary or trade secret information (“**Information**”). Information includes but is not limited to site-specific radio frequency and equipment information, designs, specifications and strategic information.

This Disclosure of Information is made for the sole and limited purpose of compliance with Eugene Code Section 9.5750(11) and does not constitute a waiver of AT&T’s ownership and exclusive right to use the Information, nor does it confer on any individual, business, or entity the right to use the Information for any purpose other than that stated herein.

EG46 TECHNICAL DATA REQUESTED BY CMS

**AT&T SUPPLEMENT TO THE RECORD
6/17/2015
EXHIBIT A**

RF Data Sheet

| Site Information | | | | Release Information | | | |
|--|---------------------------------|-------------------|----------------|-------------------------|----------------------|-------|----------------|
| Site ID | EG46 | | | Date Issued | 06/01/15 | | |
| Site Name | FOX HOLLOW ROAD AND AMAZON ROAD | | | Revision Level | 1.5 Initial Zone 19B | | |
| Project | New Build | | | Contact Details | | | |
| GSM Equipment | Lucent distributed NodeB | | | RF Design Engineer | Ronaldo Baltazar | phone | (360) 608-8473 |
| UMTS Equipment | | | | RF Performance Engineer | Jerry Cavasso | phone | (541) 382-3398 |
| | | | | Zone | 19B | | |
| | | | GSM BSC | | | | |
| NodeB# 1-4 proposed IP#/#lub(T1#)/UCU#/DUW# RAX-m1#/RAX-m2# TX-m1#/TX-m2# | | | | Location Information | | | |
| Latitude (decimal) / (degrees) | 44.010797 | | 44° 0' 38.9" | Structure | Mono Pine | | |
| Longitude (decimal) / (degrees) | -123.077203 | | -123° 4' 37.9" | Tower Owner | AT&T | | |
| County | Lane | | | Colocation Partners | | | |
| Street Address | 4060 West Amazon Drive | | | Tier of our ant | 1st from Top | | |
| City | Eugene | State | OR | Business on site | | | |
| Zip Code | 97405 | Disaster Recovery | Tier 2 | Highest Point w/o ant | 75 | | |
| | | | | Highest Point w/ ant | 75 | | |

| Planned Configuration | Alpha | | | | | | | | | | | |
|-------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--------------|--|
| | UMTS 850 | UMTS 1900 (Off) | UMTS 850 1 (Off) | LTE 700 | LTE 1900 (Off) | WCS (Off) | LTE 2100 (Off) | UMTS 850 | UMTS 1900 (Off) | UMTS 850 1 (Off) | | |
| Number of Antennas | 1 | | | 1 | | | 0 | | | 1 | | |
| Antenna Port Number | 2c+2d | 2a+2b | 2c+2d | 1c+1d | 1a+1b+1e+1f | 1g+1h+1k+1l | 2g+2h+2k+2l | 8c+8d | 8a+8b | 8c+8d | | |
| Antenna Vendor | Kathrein | | | Kathrein | | | Kathrein | | | Kathrein | | |
| Antenna Model | 80010892 | | | 80010892 | | | 80010892 | | | 80010892 | | |
| Antenna (Band / Pol) | DBDP | | | DBDP | | | DBDP | | | DBDP | | |
| Antenna HBW | 66 | | | 69 | | | 66 | | | 66 | | |
| RRH Model/count | RRH2x60-850 / 1 | RRH2x60-1900 / 1 | RRH2x60-850 / | RRH2x40W-07L / 1 | RRH2x60-1900A-4R / 1 | RRH4x25-WCS-4R / 1 | RRH2x40-AWS+RDEM / 1 | RRH2x60-850 / 1 | RRH2x60-1900 / 1 | RRH2x60-850 / | | |
| RET | Included with antenna | Included with antenna | Included with antenna | Included with antenna | Included with antenna | Included with antenna | Included with antenna | Included with antenna | Included with antenna | Included with antenna | | |
| Antenna Dimensions (inches) (H,W,D) | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | 106x14.8x6.7 | |
| Antenna Weight (lbs) | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | | |
| Rad Center (ft) | 65.5 | 65.5 | 65.5 | 65.5 | 65.5 | 65.5 | 65.5 | 65.5 | 65.5 | 65.5 | | |
| Number of Feeders | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | |
| Feeder Type | FIBER | FIBER | FIBER | FIBER | FIBER | FIBER | FIBER | FIBER | FIBER | FIBER | | |
| Feeder Length | 175 | 175 | 175 | 175 | 175 | 175 | 175 | 175 | 175 | 175 | | |
| Jumper Type | [FSJ4] | [FSJ4] | [FSJ4] | [FSJ4] | [none] | [FSJ4] | [FSJ4] | [FSJ4] | [FSJ4] | [FSJ4] | | |
| Number of TMA | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | |
| TMA Type | None | | | | | | | | | None | | |
| TMA DIM (Weight(lb),length,height) | - | - | - | - | - | - | - | - | - | - | | |
| Diplexed | No | | | No | No | No | No | No | No | | | |
| Antenna (Sharing / Type) | No | | No | | | | | | | | | |
| MCPA | No | No | No | | | | | No | No | No | | |
| BCF Name | OREUU0880 | OREUU0880 | OREUU0880 | ORL0880 | ORL0880 | ORL0880 | ORL0880 | OREUU0880 | OREUU0880 | OREUU0880 | | |
| Sector Name | OREUU0880X | OREUU0880A | OREUU0880T | ORL0880_7A_1 | ORL0880_9A_1 | ORL0880_3A_1 | ORL0880_2A_1 | OREUU0880Y | OREUU0880B | OREUU0880U | | |
| BSC/RNC | PTLDOR62CRAR13 | PTLDOR62CRAR13 | PTLDOR62CRAR13 | | | | | PTLDOR62CRAR13 | PTLDOR62CRAR13 | PTLDOR62CRAR13 | | |
| CellID | 8801 | 8807 | 48801 | 15 | 8 | 149 | 22 | 8802 | 8808 | 48802 | | |
| LAC | 33983 | 33983 | 33983 | | | | | 33983 | 33983 | 33983 | | |
| TRX Count | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | | |
| ERP (dBm / Watts) | 59.05 [dBm] / 803 [W] | 59.95 [dBm] / 988 [W] | 59.05 [dBm] / 803 [W] | 58.79 [dBm] / 756 [W] | 59.8 [dBm] / 954 [W] | 59.35 [dBm] / 860 [W] | 59.98 [dBm] / 995 [W] | 59.05 [dBm] / 803 [W] | 59.95 [dBm] / 988 [W] | 59.05 [dBm] / 803 [W] | | |

| Beta | |
|-----------------------|-----------------------|
| LTE 700 | LTE 1900 (Off) |
| 1 | |
| 7c+7d | 7a+7b+7e+7f |
| Kathrein | |
| 80010892 | |
| DBDP | |
| 69 | |
| RRH2x40W-07L / 1 | RRH2x60-1900A-4R / 1 |
| Included with antenna | Included with antenna |
| 106x14.8x6.7 | 106x14.8x6.7 |
| 97 | 97 |
| 65.5 | 65.5 |
| 0 | 0 |
| FIBER | FIBER |
| 175 | 175 |
| [FSJ4] | [none] |
| | 0 |
| - | - |
| No | No |
| | |
| ORL0880 | ORL0880 |
| ORL0880 7B 1 | ORL0880 9B 1 |
| 16 | 9 |
| 1 | 1 |
| 58.69 [dBm] / 739 [W] | 59.8 [dBm] / 954 [W] |

Revision Date Revised

Comments

1.5 Initial Zone 19B 1/15/15
 changed to 65.5ft (by R.Baltazar)

re-designed to meet zoning requirements to 2 antennas per sector. rad center

AT&T does not use Pilot power for RF Propagation

· Frequencies used in Propagation models per band are as follows:

o 700 Band = 740 MHz

o 850 Band = 871.6 MHz

o 1900 Band = 1947.5 MHz

· Maximum Tx Power for PA's = 46 dBm

· ALU Base Station Models

| Lucent (ALU) | 850 UMTS | 1900 UMTS | 700 LTE | AWS LTE | WCS |
|--------------|----------|-----------|---------|---------|-----|
|--------------|----------|-----------|---------|---------|-----|

Tx Manufacturer

| | | |
|--------------|-------------|--------------|
| Nomenclature | RRH2x60-850 | RRH2x60-1900 |
|--------------|-------------|--------------|

| | |
|------------------|----------------|
| RRH2x60-1900A-4R | RRH2x40-07L-DE |
|------------------|----------------|

RRH2x40-07L-AT

| | |
|---------------|-------------|
| RRH2x40-07L-L | RRH2x40-AWS |
|---------------|-------------|

| | |
|------------------|-------------|
| RRH2x40-AWS+RDEM | RRH2x50 B30 |
|------------------|-------------|

RRH4x25-WCS-4R

**DECLARATION OF JACOB FINNEY ADDRESSING EWEB POLICIES
AND PRACTICES REGARDING UTILITY POLE INSTALLATIONS.**

**AT&T SUPPLEMENT TO THE RECORD
6/17/2015
EXHIBIT B**

BEFORE THE EUGENE, OREGON HEARINGS OFFICIAL

Application of New Cingular Wireless PCS, LLC (AT&T) for a Conditional Use Permit and related Variance for a 75-foot tall “mono-pine” telecommunications facility at 4060 Amazon Drive, Crossfire Ministries

FILE NUMBER:

CU 14-3

DECLARATION OF Jacob Finney

This document has been prepared by the undersigned to provide additional testimony in support of AT&T’s application for a new cellular base station at Crossfire church at the intersection of Fox Hollow and Amazon in Eugene, and in particular, to address issues raised by the City regarding EWEB approval policies for utility pole extensions.

I am employed by Technology Associates EC (TAEC) to represent AT&T in its network deployment efforts in Eugene, Oregon. In my efforts to site potential wireless communications facilities in Eugene, I have discussed standards and processes for locating on existing EWEB poles and locating equipment in the public ROW with Jamie Breckenridge (EWEB) and Brian Siria (City of Eugene Utility Coordinator).

The review process explained to me and outlined in the City’s Telecommunication Facilities in the Right-of-Way Policy Guidelines requires submission of EWEB poles of interest for collocation and EWEB conducts a review to determine if they are feasible. If a pole is feasible, it is reviewed by other City departments and agencies, and if those other departments and agencies are supportive, then Planning will have the final input on whether a pole

is collocatable. Following the general requirements in the EWEB Cell Antenna Standards will not guarantee a pole will be determined feasible for collocation.

Additionally, Eugene Planning staff will participate in the review of ancillary equipment proposed in the right of way (ROW). The standards and setbacks for ancillary equipment are extremely difficult, if not impossible, to comply with. No ancillary equipment can be located on the pole, such as you would see on a Portland General Electric (PGE) wireless collocation. I asked Brian Siria if a carrier has ever managed to locate ancillary equipment in the ROW because I wanted to see an example. Brian responded that there were no carriers with equipment located in the ROW, the ones that he was aware of had found privately owned parcels to locate ancillary equipment. In an R-1 zone, a wireless carrier would be limited to placing ancillary equipment on a parcel that is vacant or not developed for residential use, which are very difficult to find.

I certify under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

DATED this 16th day of June, 2015 at TIGARD, Oregon..



JACOB FINNEY

Declaration Of Thomas Gorton, Radio Frequency Expert And Electrical Engineer Registered In Oregon, Addressing The Written And Oral Testimony Of William Collinge And Rusty Monroe Regarding The Use Of Drive Test Data And The Issue Of Signal Propagation Through Monopine Branches .

**AT&T SUPPLEMENT TO THE RECORD
6/17/2015
EXHIBIT C**

BEFORE THE EUGENE, OREGON HEARINGS OFFICIAL

**Application of New Cingular Wireless PCS,
LLC (AT&T) for a Conditional Use Permit
and related Variance for a 75-foot tall
“mono-pine” telecommunications facility
at 4060 Amazon Drive, Crossfire Ministries**

FILE NUMBER:

CU 14-3

**DECLARATION OF THOMAS GORTON,
REGISTERED ELECTRICAL ENGINEER AND RADIO FREQUENCY EXPERT**

This document has been prepared by the undersigned to provide additional testimony in support of AT&T’s application for a new cellular base station at Crossfire church at the intersection of Fox Hollow and Amazon in Eugene, and in particular, to address issues raised by William Collinge in his written testimony.

Mr. Collinge’s testimony includes the results of a “Drive Test” he conducted at select locations by observing the number of “bars” of signal strength displayed on an AT&T phone. This approach is problematic for several reasons, itemized below.

Lack of calibration data

The “bars” displayed can not be used to determine actual received signal power, often referred to as signal strength or (incorrectly) field strength, which in the wireless communications field is almost universally expressed in dBm (decibels above or below one milliwatt). Because there is no data included to indicate how many bars correspond to a particular received signal power level (in dBm), no conclusion as to the accuracy of AT&T’s coverage prediction maps can be reached from this data. Furthermore, the comparison of AT&T’s coverage to that of other carriers is meaningless for several

reasons. The calibration of “bars” to actual signal strength is not consistent across various equipment manufacturers, or even among different handsets produced by the same manufacturer. To demonstrate this, I placed an HTC phone on a desk next to an Apple iPhone. (Both were on the AT&T system). At this common location, the HTC phone indicated 5 bars, the Apple showed 3 bars. In addition, there is no mechanism available which would allow a casual user to determine which technologies and/or frequency bands were being measured. In other words, Mr. Collinge’s data doesn’t and can’t tell us if he was measuring the 3G UMTS signal or the 4G LTE signal. Moreover, it does not identify the origin of the signal(s) he observed. This is significant because one of the older facilities currently providing some service to this coverage area will be removed from service in the near future to address interference problems. Mr. Collinge may well have been measuring the signal from this soon to be retired facility.

Lack of sufficient data points

Looking at the number of bars on a cell phone taken at a dozen points within a proposed coverage area of several square miles provides insufficient data on which to form any conclusion regarding coverage. An actual drive test, as conducted within the industry, employs an automated, calibrated receiver capable of taking multiple field strength readings per second, on multiple frequencies. Each of these readings is tagged with location data from a GPS receiver to facilitate post processing and mapping. This receiver is in operation in a vehicle as it drives (hence the term “drive test”) as much of the area under study as possible. At a minimum, all major and secondary roads within the study are would be driven. Even a simple drive test covering a relatively small area will result in literally thousands of data points. AT&T’s practice is to conduct a drive test

after a site is built to compare the actual coverage provided with the propagation maps, and to optimize the performance of its new sites.

Drive tests do not detect capacity problems

In order to provide satisfactory service to its subscribers, a cellular system must provide both adequate signal strength and capacity. The capacity of a cellular base station, in other words, the maximum number of calls it can handle simultaneously, is finite. If a subscriber attempts to place a call while in an area served by a base station that is operating at capacity, the call may fail, and the subscriber would hear a “fast busy” signal. Even more frustrating, should a subscriber whose call is in progress drive into the service area of a site that is at capacity, the subscriber will be abruptly disconnected, what is referred to as a “dropped call”. When a site is at or near capacity, some random callers will be able to place a call or answer a call, others will not. Because a phone that is not on an active call does not consume system capacity, and drive tests only collect signal strength data from whatever site they are measuring, neither a formal drive test or Collinge’s test will detect system capacity problems. To be clear, insufficient system capacity will result in the same lack of service as insufficient signal strength. Even in the presence of “5 bars” of signal strength, a subscriber will be unable to place or receive a call in the absence of sufficient system capacity.

Signal absorption by fiberglass branches on a monopine

During the May 27th hearing, questions were raised regarding the need to locate antennas above the tree line due to the absorption of AT&Ts radiofrequency signals by

trees and other vegetation, including speculation that the branches of the monopine proposed by AT&T would have similar disruptive properties. Trees attenuate radiofrequency signals because their trunks, branches and leaves or needles contain water. The water molecules contained in the tree absorb some of the radiofrequency energy. The branches of the proposed monopine, being plastic, do not contain water, do not conduct electricity, and are far less dense than the branches on a living tree. In short, these monopine branches have been specifically designed to not attenuate the signal from the proposed site.

I certify under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

DATED this 9th Day of June, 2015 at Seattle, Washington.



THOMAS S. GORTON P.E.
Consulting Electrical Engineer


Declaration Of Kimberly Prebe Addressing The Remarks Of AT&T
Customer Service Representative Cited By William Collinge In Oral
And Written Testimony.

AT&T SUPPLEMENT TO THE RECORD
6/17/2015
EXHIBIT D

I, Kimberly Prebe, being of lawful age and duly sworn, on my oath, state that I am the Strategic Partner Area Manager for Mobility Sales Chat and that I am authorized to execute this Affidavit on behalf of AT&T, and the facts set forth in this Affidavit are true to the best of my knowledge, information and belief.

I am familiar with the training provided to AT&T's Online Chat Representatives. AT&T's Online Chat Representatives are trained to direct customers to att.com which includes the wireless coverage map (<http://www.att.com/maps/wireless-coverage.html>). The Online Chat Representatives are not radio frequency engineers.

DATED this 9th day of June, 2015.

By:  _____
Its: _____

SUBSCRIBED AND SWORN to before me this 9th day of June, 2015.

Important Information About This Coverage Map

[Print](#)

- This coverage viewer provides a high-level approximation of wireless coverage. There are gaps in coverage that are not shown by this high-level approximation. Actual coverage may differ from map graphics and may be affected by terrain, weather, foliage, buildings and other construction, signal strength, high-usage periods, customer equipment, and other factors. AT&T does not guarantee coverage. Our coverage maps are not intended to show actual customer performance on the network, nor are they intended to show future network needs or build requirements inside or outside of existing AT&T coverage areas. Coverage maps also may include areas served by unaffiliated carriers and may depict licensed areas rather than an approximation of coverage. Charges will be based on the location of the site receiving and transmitting the call, not the subscriber's location. Your phone's display does not indicate the rate you will be charged.
- These maps are subject to the Microsoft® Service Agreement and for informational purposes only. No guarantee is made regarding their completeness or accuracy. Construction projects, traffic, or other events may cause actual conditions to differ from these results. Map and traffic data 2013 NAVTEQ®

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[close](#)

Structural Analysis By Larson Camouflage That Proposed Design
Supports Collocation

AT&T SUPPLEMENT TO THE RECORD
6/17/2015
EXHIBIT E

LARSON® CAMOUFLAGE

1501 South Euclid Avenue
Tucson, AZ 85713
(520) 294-3900
www.larsoncamo.com

DATE: June 11, 2015

PROJECT: AT&T EG46 Fox Hollow

LOCATION: 4060 West Amazon Road
Eugene, OR 97405

ISE JOB NO. 9437

LARSON JOB NO. P15089

DESIGN CRITERIA:

DESIGN SATISFIES ALL CRITERIA FOR:

- 2012 IBC, 110MPH Ultimate Wind Speed-Reducible per 1609.1.1-Exception 5
- ANSI/TIA/EIA-222-G W/ Design Wind Speed- 85 MPH (3-Sec Gust), Exposure C
Structure Class II, Topo Category 1 w/ Crest Height = 0 ft
- Seismic Data: $S_s=0.762$, $S_1=0.400$, $S_{DS}=0.607$, $S_{D1}=0.427$
- Soil Site Classification D
- Seismic Design Category D, $C_s=0.404$
- Welding Per AWS D1.1 Latest Edition

MATERIALS:

| | |
|---------------------|---|
| SOILS | - Adapt Engineering Project No. OR13-18613-GEO, 12/2/2013 |
| TAPERED SHAFT STEEL | - ASTM A572-65 (Fy=65 KSI) |
| ANCHOR BOLTS | - ASTM A615-75 (Fy=75 KSI) |
| BASE PLATE STEEL | - ASTM A572-50 (Fy=50 KSI) |
| CONCRETE | - F'c = 4000 PSI AT 28 Days |
| REINFORCING STEEL | - ASTM A615 Bars (Fy=60 KSI) Deformed |

CONTENTS

Pole Detail
Foundation Detail
Pole Geometry
Calculations - Sheets 1 - 30



PREPARED BY: Matthew Nieves, EIT

APPROVED BY: Glen L. Hunt III, PE

PROJECT INFORMATION

Date: June 11, 2015
 ISE Job No. 9437
 Customer: Larson Camouflage
 Product: 70' Mono Pine
 Site ID: AT&T EG46 Fox Hollow
 Location: 4060 West Amazon Road
 Eugene, OR 97405



DESIGN CRITERION:

2012 IBC, 110 MPH Ultimate Wind Speed - Reducible per 1609.1.1-Exception 5
 EIA/TIA-222-G (2006) 85 MPH Design Wind Speed (3-Sec Gust)
 EXP C, Topo Category I, Tower Class II

POLE SPECIFICATIONS

Section Shape 18-Sided Tapered
 Pipe Taper 0.2090 IN/FT
 Pole Material ASTM A572-GR65
 Base Plate ASTM A572-GR50
 Anchor Bolts 2-1/4" x 84" Long, ASTM A615-75

| Pole Section | Length (ft.) | Weight (kips) | Tkns. (in.) | Lap Splice (in.) | Diameter | |
|--------------|--------------|---------------|-------------|------------------|-----------|-----------|
| | | | | | Top (in.) | Bot (in.) |
| 1 | 50.000 | 2.718 | 0.219 | 41.000 | 18.000 | 28.450 |
| 2 | 22.417 | 2.219 | 0.313 | | 27.298 | 31.983 |

Base Plate 0.812 2.500 45.75"Ø Round w/ 25.75" ID

DESIGN LOADS (Unfactored Base Wind Reactions)

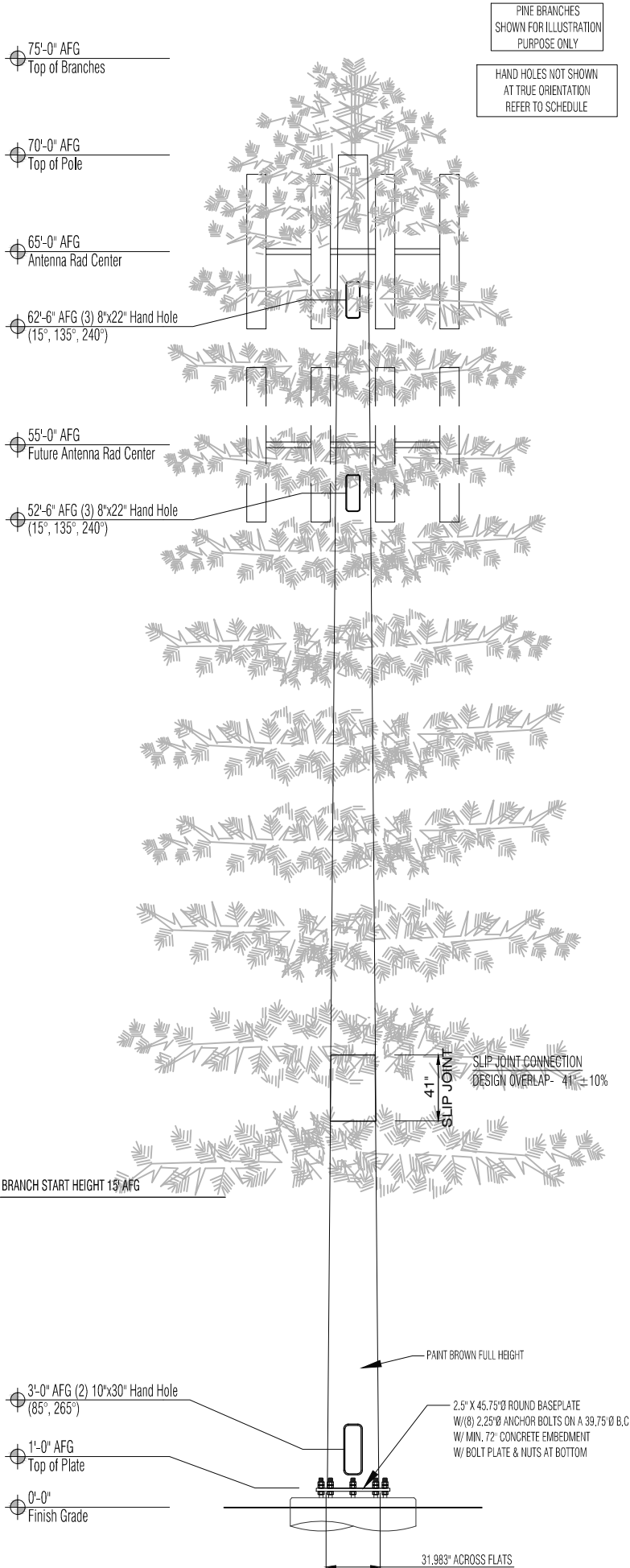
Moment = 900.939 Ft-Kips
 Shear = 21.203 Kips
 Axial = 14.346 Kips

DEFLECTIONS

| Elev. (ft.) | 60 MPH Wind | | 85 MPH Wind | |
|-------------|---------------|----------|---------------|----------|
| | Lateral (in.) | Sway (°) | Lateral (in.) | Sway (°) |
| Top | 11.884 | 1.298 | 42.750 | 4.672 |

APPURTENANCES

| Elevation (ft.) | (Qty) | Description |
|-----------------|-------|--|
| 15' to 70' | (193) | Assorted 4', 6', 8', & 10' Pine Branches |
| 65' | (3) | T-Arm Mount |
| 65' | (6) | 800-10892 Panel Antenna |
| 65' | (18) | RRH |
| 65' | (3) | Raycap Surge Suppressor |
| 55' | (3) | T-Arm Mount (Future) |
| 55' | (6) | 800-10892 Panel Antenna (Future) |
| 55' | (18) | RRH (Future) |
| 55' | (3) | Raycap Surge Suppressor (Future) |



NOT TO SCALE

Prepared by:



ISE Incorporated
 Structural Engineers

P.O. BOX 50039
 Phoenix, Arizona 85076
 PHONE: 602-403-8614
 www.ise-inc.biz

Prepared for:

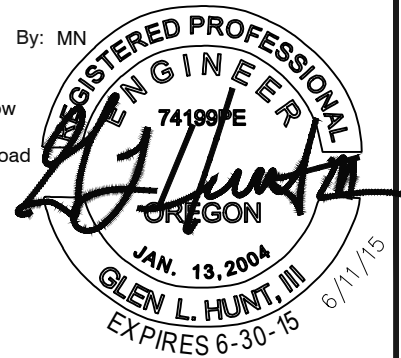
LARSON
CAMOUFLAGE

1501 South Euclid Avenue
 Tucson, AZ 85713
 (520) 294-3900
 www.larsoncamo.com

PROJECT INFORMATION

Date: June 11, 2015
 ISE Job No. 9437
 Customer: Larson Camouflage
 Product: 70' Mono Pine
 Site ID: AT&T EG46 Fox Hollow
 Location: 4060 West Amazon Road
 Eugene, OR 97405

By: MN



DESIGN CRITERION:

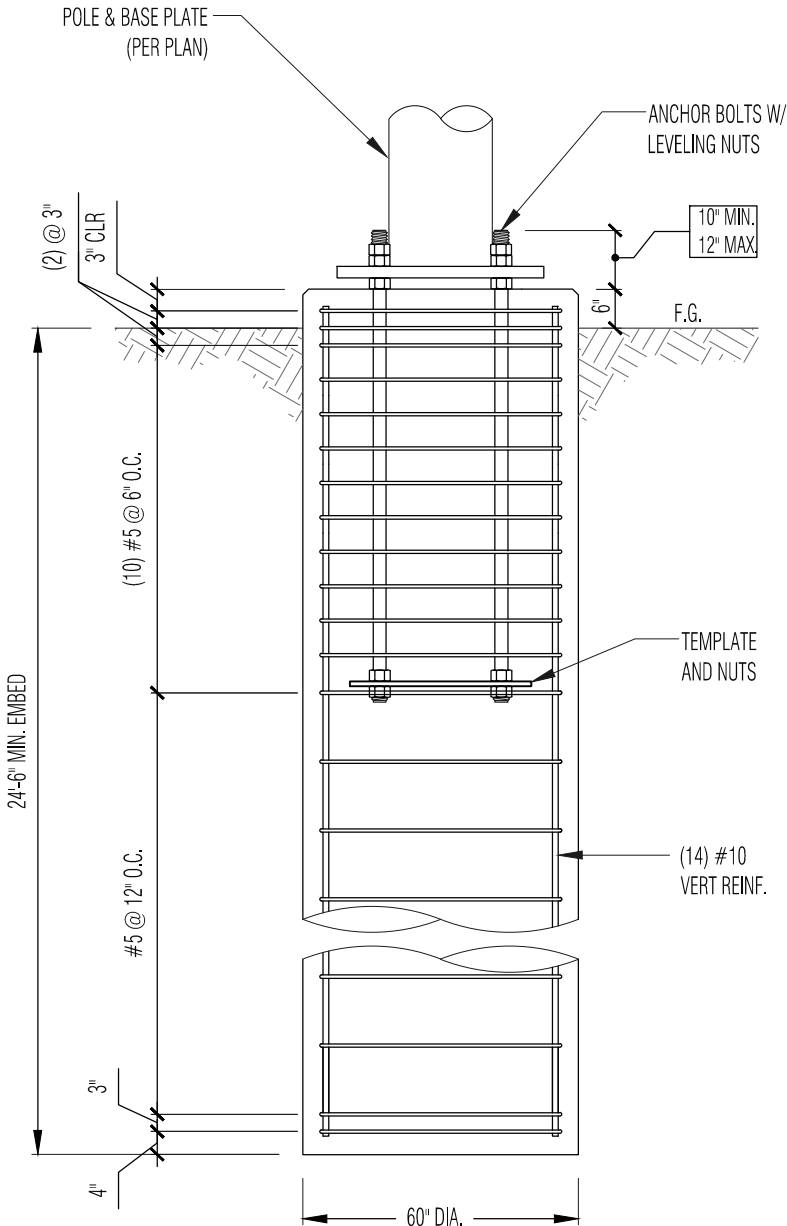
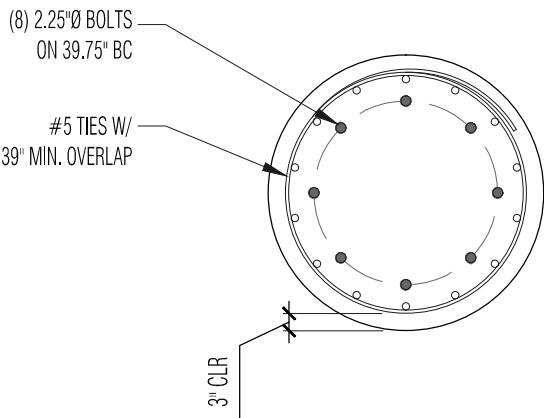
2012 IBC, 110 MPH Ultimate Wind Speed - Reducible per 1609.1.1-Exception 5
 EIA/TIA-222-G (2006) 85 MPH Design Wind Speed (3-Sec Gust)
 EXP C, Topo Category I, Tower Class II

DESIGN LOADS (Unfactored Base Wind Reactions)

Moment = 900.939 Ft-Kips
 Shear = 21.203 Kips
 Axial = 14.346 Kips

NOTES:

- SEE POLE DESIGN PAGE (PAGE 1) FOR POLE, BASEPLATE, AND ANCHOR BOLT DESIGN DATA.
- ALL CONCRETE SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 4000 PSI AT 28 DAYS. ALL CONCRETE WORK SHALL CONFORM TO LATEST EDITION ACI 318, "BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE". FOUNDATION CONSTRUCTION SHALL CONFORM TO ACI 336, "STANDARD SPECIFICATIONS FOR THE CONSTRUCTION OF DRILLED PIERS.
- REINFORCING STEEL SHALL CONFORM TO: #5 BARS AND LARGER - ASTM A-615, GRADE 60
- FOUNDATION DESIGN PER GEOTECHNICAL REPORT:
 PREPARED BY: Adapt Engineering
 PROJECT NO.: OR13-18613-GEO
 DATE: December 2, 2013
- CONTRACTOR SHALL READ THE GEOTECHNICAL REPORT AND CONSULT WITH GEOTECHNICAL ENGINEER PRIOR TO CONSTRUCTION FOR HAZARDS AND SPECIAL CIRCUMSTANCES.
- ESTIMATED CONCRETE VOLUME: 18.18 yd³
- SPECIAL INSPECTION REQUIRED F'_c > 2500 PSI; CONCRETE, REINFORCING STEEL, ANCHOR BOLTS
- TYPE II CEMENT W/C ≤ 0.45



NO SCALE

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Prepared for:

**LARSON
 CAMOUFLAGE**

1501 South Euclid Avenue
 Tucson, AZ 85713
 (520) 294-3900
 www.larsoncamo.com

70.0 ft

| | | |
|--------------------|---------|--------|
| Section | 1 | 2 |
| Length (ft) | 50.000 | 22.417 |
| Number of Sides | 18 | 18 |
| Thickness (in) | 0.219 | 0.313 |
| Socket Length (ft) | 3.417 | 27.298 |
| Top Dia (in) | 18.000 | 31.983 |
| Bot Dia (in) | 28.450 | |
| Grade | A572-65 | |
| Weight (K) | 2.7 | 2.2 |

20.0 ft

1.0 ft



DESIGNED APPURTENANCE LOADING

| TYPE | ELEVATION | TYPE | ELEVATION |
|----------------------------|-----------|----------------------------|-----------|
| Pine Branches | 70 | (2) 800-10892 w/Mount Pipe | 55 |
| Pine Branches | 70 - 60 | (6) RRH | 55 |
| 4' T-Arm w/ 18" S.O. | 65 | Raycap DC6-48-60-18-8F | 55 |
| (2) 800-10892 w/Mount Pipe | 65 | 4' T-Arm w/ 18" S.O. | 55 |
| (6) RRH | 65 | (2) 800-10892 w/Mount Pipe | 55 |
| Raycap DC6-48-60-18-8F | 65 | (6) RRH | 55 |
| 4' T-Arm w/ 18" S.O. | 65 | Raycap DC6-48-60-18-8F | 55 |
| (2) 800-10892 w/Mount Pipe | 65 | 4' T-Arm w/ 18" S.O. | 55 |
| (6) RRH | 65 | (2) 800-10892 w/Mount Pipe | 55 |
| Raycap DC6-48-60-18-8F | 65 | (6) RRH | 55 |
| 4' T-Arm w/ 18" S.O. | 65 | Raycap DC6-48-60-18-8F | 55 |
| (2) 800-10892 w/Mount Pipe | 65 | Pine Branches | 50 - 40 |
| (6) RRH | 65 | Pine Branches | 40 - 30 |
| Raycap DC6-48-60-18-8F | 65 | Pine Branches | 30 - 20 |
| Pine Branches | 60 - 50 | Pine Branches | 20 - 15 |
| 4' T-Arm w/ 18" S.O. | 55 | | |

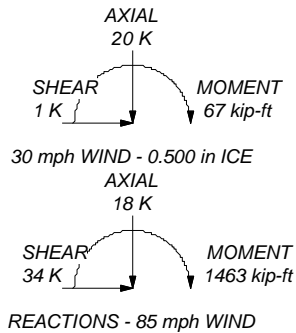
MATERIAL STRENGTH

| GRADE | Fy | Fu | GRADE | Fy | Fu |
|---------|--------|--------|-------|----|----|
| A572-65 | 65 ksi | 80 ksi | | | |

TOWER DESIGN NOTES

1. Tower is located in Lane County, Oregon.
2. Tower designed for Exposure C to the TIA-222-G Standard.
3. Tower designed for a 85 mph basic wind in accordance with the TIA-222-G Standard.
4. Tower is also designed for a 30 mph basic wind with 0.50 in ice. Ice is considered to increase in thickness with height.
5. Deflections are based upon a 60 mph wind.
6. Tower Structure Class II.
7. Topographic Category 1 with Crest Height of 0.000 ft

ALL REACTIONS ARE FACTORED



| | | | |
|--|---|---------------------------------|-------------------------------------|
| ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job: ATT EG46 Fox Hollow Project: ISE Job No. 9437 | | |
| | Client: Larson Camouflage Code: TIA-222-G Path: | Drawn by: MEN Date: 06/11/15 | App'd: Scale: NTS Dwg No. E-1 |

\\ISE\Working\Drawings\Larson\9437 ATT EG46 Fox Hollow (P15289)Rev 1.6.11.15\TXN Output\9437 ATT EG46 Fox Hollow.dwg

| | | |
|---|------------------------------------|----------------------------------|
| tnxTower ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job ATT EG46 Fox Hollow | Page 1 of 13 |
| | Project ISE Job No. 9437 | Date 12:03:43 06/11/15 |
| | Client Larson Camouflage | Designed by MEN |

Tower Input Data

There is a pole section.

This tower is designed using the TIA-222-G standard.

The following design criteria apply:

- Tower is located in Lane County, Oregon.
- Basic wind speed of 85 mph.
- Structure Class II.
- Exposure Category C.
- Topographic Category 1.
- Crest Height 0.000 ft.
- Nominal ice thickness of 0.500 in.
- Ice thickness is considered to increase with height.
- Ice density of 56 pcf.
- A wind speed of 30 mph is used in combination with ice.
- Temperature drop of 50 °F.
- Deflections calculated using a wind speed of 60 mph.
- A non-linear (P-delta) analysis was used.
- Pressures are calculated at each section.
- Stress ratio used in pole design is 1.
- Local bending stresses due to climbing loads, feed line supports, and appurtenance mounts are not considered.

Tapered Pole Section Geometry

| Section | Elevation ft | Section Length ft | Splice Length ft | Number of Sides | Top Diameter in | Bottom Diameter in | Wall Thickness in | Bend Radius in | Pole Grade |
|---------|-----------------|-------------------------|------------------------|-----------------------|-----------------------|--------------------------|-------------------------|----------------------|---------------------|
| L1 | 70.000-20.000 | 50.000 | 3.417 | 18 | 18.000 | 28.450 | 0.219 | 0.875 | A572-65 (65 ksi) |
| L2 | 20.000-1.000 | 22.417 | | 18 | 27.298 | 31.983 | 0.313 | 1.250 | A572-65 (65 ksi) |

Tapered Pole Properties

| Section | Tip Dia. in | Area in ² | I in ⁴ | r in | C in | I/C in ³ | J in ⁴ | It/Q in ² | w in | w/t |
|---------|----------------|-------------------------|----------------------|---------|---------|------------------------|----------------------|-------------------------|---------|--------|
| L1 | 18.278 | 12.349 | 493.259 | 6.312 | 9.144 | 53.943 | 987.167 | 6.175 | 2.783 | 12.719 |
| | 28.889 | 19.606 | 1974.148 | 10.022 | 14.453 | 136.595 | 3950.894 | 9.805 | 4.622 | 21.125 |
| L2 | 28.445 | 26.766 | 2462.622 | 9.580 | 13.868 | 177.582 | 4928.484 | 13.386 | 4.254 | 13.614 |
| | 32.477 | 31.414 | 3980.848 | 11.243 | 16.248 | 245.012 | 7966.934 | 15.710 | 5.079 | 16.253 |

| Tower Elevation ft | Gusset Area (per face) ft ² | Gusset Thickness in | Gusset Grade | Adjust. Factor A _f | Adjust. Factor A _r | Weight Mult. | Double Angle Stitch Bolt Spacing Diagonals in | Double Angle Stitch Bolt Spacing Horizontals in |
|--------------------------|---|---------------------------|--------------|----------------------------------|----------------------------------|--------------|---|---|
| L1 70.000-20.000 | | | | 1 | 1 | 1 | | |
| L2 | | | | 1 | 1 | 1 | | |

| | | | | |
|---|----------------|---------------------|--------------------|-------------------|
| tnxTower ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job | ATT EG46 Fox Hollow | Page | 2 of 13 |
| | Project | ISE Job No. 9437 | Date | 12:03:43 06/11/15 |
| | Client | Larson Camouflage | Designed by | MEN |

| Tower Elevation | Gusset Area (per face) | Gusset Thickness | Gusset Grade | Adjust. Factor A_f | Adjust. Factor A_r | Weight Mult. | Double Angle Stitch Bolt Spacing | Double Angle Stitch Bolt Spacing |
|-----------------|------------------------|------------------|--------------|----------------------|----------------------|--------------|----------------------------------|----------------------------------|
| ft | ft ² | in | | | | | in | in |
| 20.000-1.000 | | | | | | | | |

Monopole Base Plate Data

| Base Plate Data | |
|-----------------------|-------------|
| Base plate is square | |
| Base plate is grouted | |
| Anchor bolt grade | A615-75 |
| Anchor bolt size | 2.250 in |
| Number of bolts | 8 |
| Embedment length | 72.000 in |
| f_c | 4.000 ksi |
| Grout space | 2.000 in |
| Base plate grade | A572-50 |
| Base plate thickness | 2.500 in |
| Bolt circle diameter | 39.750 in |
| Outer diameter | 45.750 in |
| Inner diameter | 25.750 in |
| Base plate type | Plain Plate |

Feed Line/Linear Appurtenances - Entered As Area

| Description | Face or Leg | Allow Shield | Component Type | Placement | Total Number | $C_A A_A$ | Weight |
|-------------|-------------|--------------|----------------|----------------|--------------|---------------------|----------------|
| | | | | ft | | ft ² /ft | klf |
| 6x12 Hybrid | C | No | Inside Pole | 65.000 - 1.000 | 2 | No Ice 1/2" Ice | 0.000 0.001 |
| 6x12 Hybrid | C | No | Inside Pole | 55.000 - 1.000 | 2 | No Ice 1/2" Ice | 0.001 0.001 |

Feed Line/Linear Appurtenances Section Areas

| Tower Section | Tower Elevation | Face | A_R | A_F | $C_A A_A$ In Face | $C_A A_A$ Out Face | Weight |
|---------------|-----------------|------|-----------------|-----------------|-------------------|--------------------|--------|
| | ft | | ft ² | ft ² | ft ² | ft ² | K |
| L1 | 70.000-20.000 | A | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | B | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | C | 0.000 | 0.000 | 0.000 | 0.000 | 0.168 |
| L2 | 20.000-1.000 | A | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | B | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | C | 0.000 | 0.000 | 0.000 | 0.000 | 0.080 |

Feed Line/Linear Appurtenances Section Areas - With Ice

| Tower Section | Tower Elevation | Face or Leg | Ice Thickness | A_R | A_F | $C_A A_A$ In Face | $C_A A_A$ Out Face | Weight |
|---------------|-----------------|-------------|---------------|-----------------|-----------------|-------------------|--------------------|--------|
| | ft | | in | ft ² | ft ² | ft ² | ft ² | K |
| L1 | 70.000-20.000 | A | 1.029 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |

| | | | | |
|---|----------------|---------------------|--------------------|-------------------|
| tnxTower ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job | ATT EG46 Fox Hollow | Page | 3 of 13 |
| | Project | ISE Job No. 9437 | Date | 12:03:43 06/11/15 |
| | Client | Larson Camouflage | Designed by | MEN |

| Tower Section | Tower Elevation ft | Face or Leg | Ice Thickness in | A _R ft ² | A _F ft ² | C _{AA} In Face ft ² | C _{AA} Out Face ft ² | Weight K |
|---------------|-----------------------|-------------|---------------------|-----------------------------------|-----------------------------------|---|--|-------------|
| L2 | 20.000-1.000 | B | | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | C | | 0.000 | 0.000 | 0.000 | 0.000 | 0.168 |
| | | A | 0.890 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | B | | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| | | C | | 0.000 | 0.000 | 0.000 | 0.000 | 0.080 |

Feed Line Center of Pressure

| Section | Elevation ft | CP _X in | CP _Z in | CP _X Ice in | CP _Z Ice in |
|---------|-----------------|-----------------------|-----------------------|------------------------------|------------------------------|
| L1 | 70.000-20.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| L2 | 20.000-1.000 | 0.000 | 0.000 | 0.000 | 0.000 |

Discrete Tower Loads

| Description | Face or Leg | Offset Type | Offsets: Horz Lateral Vert ft ft ft | Azimuth Adjustment ° | Placement ft | C _{AA} Front ft ² | C _{AA} Side ft ² | Weight K | |
|----------------------------|-------------|-------------|---|-------------------------|-----------------|---|--|------------------|----------------|
| Pine Branches | C | None | | 0.000 | 70.000 | No Ice 1/2" Ice | 10.000 0.000 | 0.000 0.000 | 0.100 0.000 |
| Pine Branches | C | None | | 0.000 | 70.000 - 60.000 | No Ice 1/2" Ice | 62.000 0.000 | 0.000 0.000 | 0.502 0.000 |
| Pine Branches | C | None | | 0.000 | 60.000 - 50.000 | No Ice 1/2" Ice | 93.000 0.000 | 0.000 0.000 | 0.730 0.000 |
| Pine Branches | C | None | | 0.000 | 50.000 - 40.000 | No Ice 1/2" Ice | 99.000 0.000 | 0.000 0.000 | 0.755 0.000 |
| Pine Branches | C | None | | 0.000 | 40.000 - 30.000 | No Ice 1/2" Ice | 124.000 0.000 | 0.000 0.000 | 0.920 0.000 |
| Pine Branches | C | None | | 0.000 | 30.000 - 20.000 | No Ice 1/2" Ice | 161.000 0.000 | 0.000 0.000 | 1.172 0.000 |
| Pine Branches | C | None | | 0.000 | 20.000 - 15.000 | No Ice 1/2" Ice | 102.000 0.000 | 0.000 0.000 | 0.743 0.000 |
| ***** | | | | | | | | | |
| 4' T-Arm w/ 18" S.O. | A | From Leg | 1.500 0.000 0.000 | 0.000 | 65.000 | No Ice 1/2" Ice | 1.027 1.173 | 0.513 0.587 | 0.045 0.055 |
| (2) 800-10892 w/Mount Pipe | A | From Leg | 2.000 0.000 0.000 | 0.000 | 65.000 | No Ice 1/2" Ice | 15.351 16.096 | 10.492 12.066 | 0.134 0.239 |
| (6) RRH | A | From Leg | 1.500 0.000 0.000 | 0.000 | 65.000 | No Ice 1/2" Ice | 2.939 3.184 | 1.812 2.028 | 0.060 0.080 |
| Raycap DC6-48-60-18-8F | A | From Leg | 0.000 0.000 0.000 | 0.000 | 65.000 | No Ice 1/2" Ice | 1.760 1.972 | 1.760 1.972 | 0.033 0.055 |
| 4' T-Arm w/ 18" S.O. | B | From Leg | 1.500 0.000 0.000 | 0.000 | 65.000 | No Ice 1/2" Ice | 1.027 1.173 | 0.513 0.587 | 0.045 0.055 |
| (2) 800-10892 w/Mount Pipe | B | From Leg | 2.000 | 0.000 | 65.000 | No Ice | 15.351 | 10.492 | 0.134 |

| | | | | |
|---|----------------|---------------------|--------------------|-------------------|
| tnxTower ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job | ATT EG46 Fox Hollow | Page | 4 of 13 |
| | Project | ISE Job No. 9437 | Date | 12:03:43 06/11/15 |
| | Client | Larson Camouflage | Designed by | MEN |

| Description | Face or Leg | Offset Type | Offsets: Horz Lateral Vert ft ft ft | Azimuth Adjustment ° | Placement ft | C _{AA} Front ft ² | C _{AA} Side ft ² | Weight K |
|----------------------------|-------------|-------------|--|-------------------------|-----------------|--|---|----------------|
| | | | 0.000 | | | 1/2" Ice 16.096 | 12.066 | 0.239 |
| (6) RRH | B | From Leg | 0.000 1.500 | 0.000 | 65.000 | No Ice 2.939 1/2" Ice 3.184 | 1.812 2.028 | 0.060 0.080 |
| Raycap DC6-48-60-18-8F | B | From Leg | 0.000 0.000 | 0.000 | 65.000 | No Ice 1.760 1/2" Ice 1.972 | 1.760 1.972 | 0.033 0.055 |
| 4' T-Arm w/ 18" S.O. | C | From Leg | 0.000 1.500 | 0.000 | 65.000 | No Ice 1.027 1/2" Ice 1.173 | 0.513 0.587 | 0.045 0.055 |
| (2) 800-10892 w/Mount Pipe | C | From Leg | 0.000 2.000 | 0.000 | 65.000 | No Ice 15.351 1/2" Ice 16.096 | 10.492 12.066 | 0.134 0.239 |
| (6) RRH | C | From Leg | 0.000 1.500 | 0.000 | 65.000 | No Ice 2.939 1/2" Ice 3.184 | 1.812 2.028 | 0.060 0.080 |
| Raycap DC6-48-60-18-8F | C | From Leg | 0.000 0.000 | 0.000 | 65.000 | No Ice 1.760 1/2" Ice 1.972 | 1.760 1.972 | 0.033 0.055 |
| ***** | | | 0.000 | | | | | |
| 4' T-Arm w/ 18" S.O. | A | From Leg | 0.000 1.500 | 0.000 | 55.000 | No Ice 1.027 1/2" Ice 1.173 | 0.513 0.587 | 0.045 0.055 |
| (2) 800-10892 w/Mount Pipe | A | From Leg | 0.000 2.000 | 0.000 | 55.000 | No Ice 15.351 1/2" Ice 16.096 | 10.492 12.066 | 0.134 0.239 |
| (6) RRH | A | From Leg | 0.000 1.500 | 0.000 | 55.000 | No Ice 2.939 1/2" Ice 3.184 | 1.812 2.028 | 0.060 0.080 |
| Raycap DC6-48-60-18-8F | A | From Leg | 0.000 0.000 | 0.000 | 55.000 | No Ice 1.760 1/2" Ice 1.972 | 1.760 1.972 | 0.033 0.055 |
| 4' T-Arm w/ 18" S.O. | B | From Leg | 0.000 1.500 | 0.000 | 55.000 | No Ice 1.027 1/2" Ice 1.173 | 0.513 0.587 | 0.045 0.055 |
| (2) 800-10892 w/Mount Pipe | B | From Leg | 0.000 2.000 | 0.000 | 55.000 | No Ice 15.351 1/2" Ice 16.096 | 10.492 12.066 | 0.134 0.239 |
| (6) RRH | B | From Leg | 0.000 1.500 | 0.000 | 55.000 | No Ice 2.939 1/2" Ice 3.184 | 1.812 2.028 | 0.060 0.080 |
| Raycap DC6-48-60-18-8F | B | From Leg | 0.000 0.000 | 0.000 | 55.000 | No Ice 1.760 1/2" Ice 1.972 | 1.760 1.972 | 0.033 0.055 |
| 4' T-Arm w/ 18" S.O. | C | From Leg | 0.000 1.500 | 0.000 | 55.000 | No Ice 1.027 1/2" Ice 1.173 | 0.513 0.587 | 0.045 0.055 |
| (2) 800-10892 w/Mount Pipe | C | From Leg | 0.000 2.000 | 0.000 | 55.000 | No Ice 15.351 1/2" Ice 16.096 | 10.492 12.066 | 0.134 0.239 |
| (6) RRH | C | From Leg | 0.000 1.500 | 0.000 | 55.000 | No Ice 2.939 1/2" Ice 3.184 | 1.812 2.028 | 0.060 0.080 |
| Raycap DC6-48-60-18-8F | C | From Leg | 0.000 0.000 | 0.000 | 55.000 | No Ice 1.760 1/2" Ice 1.972 | 1.760 1.972 | 0.033 0.055 |

| | | | | |
|---|----------------|---------------------|--------------------|-------------------|
| tnxTower ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job | ATT EG46 Fox Hollow | Page | 5 of 13 |
| | Project | ISE Job No. 9437 | Date | 12:03:43 06/11/15 |
| | Client | Larson Camouflage | Designed by | MEN |

Tower Pressures - No Ice

$G_H = 1.100$

| Section Elevation | z | K_Z | q_z | A_G | F a c e | A_F | A_R | A_{leg} | Leg % | C_{AA} In Face | C_{AA} Out Face |
|---------------------|--------|-------|-------|-----------------|---------|-----------------|-----------------|-----------------|--------|------------------|-------------------|
| ft | ft | | ksf | ft ² | e | ft ² | ft ² | ft ² | | ft ² | ft ² |
| L1 70.000-20.000 | 43.872 | 1.064 | 0.019 | 98.264 | A | 0.000 | 98.264 | 98.264 | 100.00 | 0.000 | 0.000 |
| | | | | | B | 0.000 | 98.264 | | 100.00 | 0.000 | 0.000 |
| | | | | | C | 0.000 | 98.264 | | 100.00 | 0.000 | 0.000 |
| L2 20.000-1.000 | 10.290 | 0.85 | 0.015 | 48.229 | A | 0.000 | 48.229 | 48.229 | 100.00 | 0.000 | 0.000 |
| | | | | | B | 0.000 | 48.229 | | 100.00 | 0.000 | 0.000 |
| | | | | | C | 0.000 | 48.229 | | 100.00 | 0.000 | 0.000 |

Tower Pressure - With Ice

$G_H = 1.100$

| Section Elevation | z | K_Z | q_z | t_z | A_G | F a c e | A_F | A_R | A_{leg} | Leg % | C_{AA} In Face | C_{AA} Out Face |
|---------------------|--------|-------|-------|-------|-----------------|---------|-----------------|-----------------|-----------------|--------|------------------|-------------------|
| ft | ft | | ksf | in | ft ² | e | ft ² | ft ² | ft ² | | ft ² | ft ² |
| L1 70.000-20.000 | 43.872 | 1.064 | 0.002 | 1.029 | 106.838 | A | 0.000 | 106.838 | 106.838 | 100.00 | 0.000 | 0.000 |
| | | | | | | B | 0.000 | 106.838 | | 100.00 | 0.000 | 0.000 |
| | | | | | | C | 0.000 | 106.838 | | 100.00 | 0.000 | 0.000 |
| L2 20.000-1.000 | 10.290 | 0.85 | 0.002 | 0.890 | 51.488 | A | 0.000 | 51.488 | 51.488 | 100.00 | 0.000 | 0.000 |
| | | | | | | B | 0.000 | 51.488 | | 100.00 | 0.000 | 0.000 |
| | | | | | | C | 0.000 | 51.488 | | 100.00 | 0.000 | 0.000 |

Tower Pressure - Service

$G_H = 1.100$

| Section Elevation | z | K_Z | q_z | A_G | F a c e | A_F | A_R | A_{leg} | Leg % | C_{AA} In Face | C_{AA} Out Face |
|---------------------|--------|-------|-------|-----------------|---------|-----------------|-----------------|-----------------|--------|------------------|-------------------|
| ft | ft | | ksf | ft ² | e | ft ² | ft ² | ft ² | | ft ² | ft ² |
| L1 70.000-20.000 | 43.872 | 1.064 | 0.008 | 98.264 | A | 0.000 | 98.264 | 98.264 | 100.00 | 0.000 | 0.000 |
| | | | | | B | 0.000 | 98.264 | | 100.00 | 0.000 | 0.000 |
| | | | | | C | 0.000 | 98.264 | | 100.00 | 0.000 | 0.000 |
| L2 20.000-1.000 | 10.290 | 0.85 | 0.007 | 48.229 | A | 0.000 | 48.229 | 48.229 | 100.00 | 0.000 | 0.000 |
| | | | | | B | 0.000 | 48.229 | | 100.00 | 0.000 | 0.000 |
| | | | | | C | 0.000 | 48.229 | | 100.00 | 0.000 | 0.000 |

| | | |
|---|------------------------------------|----------------------------------|
| tnxTower ISE Incorporated PO Box 50039 Phoenix, AZ 85076 Phone: (602) 403-8614 FAX: (623) 321-1283 | Job ATT EG46 Fox Hollow | Page 6 of 13 |
| | Project ISE Job No. 9437 | Date 12:03:43 06/11/15 |
| | Client Larson Camouflage | Designed by MEN |

Tower Forces - No Ice - Wind Normal To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 2.718 | A | 1 | 0.65 | 0.019 | 1 | 1 | 98.264 | 1.300 | 0.026 | C |
| | | | B | 1 | 0.65 | | | 1 | 98.264 | | | |
| | | | C | 1 | 0.65 | | | 1 | 98.264 | | | |
| L2 20.000-1.000 | 0.080 | 2.219 | A | 1 | 0.65 | 0.015 | 1 | 1 | 48.229 | 0.515 | 0.027 | C |
| | | | B | 1 | 0.65 | | | 1 | 48.229 | | | |
| | | | C | 1 | 0.65 | | | 1 | 48.229 | | | |
| Sum Weight: | 0.248 | 4.937 | | | | | | OTM | 60.519 kip-ft | 1.815 | | |

Tower Forces - No Ice - Wind 60 To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 2.718 | A | 1 | 0.65 | 0.019 | 1 | 1 | 98.264 | 1.300 | 0.026 | C |
| | | | B | 1 | 0.65 | | | 1 | 98.264 | | | |
| | | | C | 1 | 0.65 | | | 1 | 98.264 | | | |
| L2 20.000-1.000 | 0.080 | 2.219 | A | 1 | 0.65 | 0.015 | 1 | 1 | 48.229 | 0.515 | 0.027 | C |
| | | | B | 1 | 0.65 | | | 1 | 48.229 | | | |
| | | | C | 1 | 0.65 | | | 1 | 48.229 | | | |
| Sum Weight: | 0.248 | 4.937 | | | | | | OTM | 60.519 kip-ft | 1.815 | | |

Tower Forces - No Ice - Wind 90 To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 2.718 | A | 1 | 0.65 | 0.019 | 1 | 1 | 98.264 | 1.300 | 0.026 | C |
| | | | B | 1 | 0.65 | | | 1 | 98.264 | | | |
| | | | C | 1 | 0.65 | | | 1 | 98.264 | | | |
| L2 20.000-1.000 | 0.080 | 2.219 | A | 1 | 0.65 | 0.015 | 1 | 1 | 48.229 | 0.515 | 0.027 | C |
| | | | B | 1 | 0.65 | | | 1 | 48.229 | | | |
| | | | C | 1 | 0.65 | | | 1 | 48.229 | | | |
| Sum Weight: | 0.248 | 4.937 | | | | | | OTM | 60.519 kip-ft | 1.815 | | |

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Tower Forces - With Ice - Wind Normal To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 4.258 | A | 1 | 1.2 | 0.002 | 1 | 1 | 106.838 | 0.325 | 0.007 | C |
| | | | B | 1 | 1.2 | 1 | 1 | 106.838 | | | | |
| | | | C | 1 | 1.2 | 1 | 1 | 106.838 | | | | |
| L2 20.000-1.000 | 0.080 | 2.864 | A | 1 | 1.2 | 0.002 | 1 | 1 | 51.488 | 0.126 | 0.007 | C |
| | | | B | 1 | 1.2 | 1 | 1 | 51.488 | | | | |
| | | | C | 1 | 1.2 | 1 | 1 | 51.488 | | | | |
| Sum Weight: | 0.248 | 7.122 | | | | | | OTM | 15.110 kip-ft | 0.451 | | |

Tower Forces - With Ice - Wind 60 To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 4.258 | A | 1 | 1.2 | 0.002 | 1 | 1 | 106.838 | 0.325 | 0.007 | C |
| | | | B | 1 | 1.2 | 1 | 1 | 106.838 | | | | |
| | | | C | 1 | 1.2 | 1 | 1 | 106.838 | | | | |
| L2 20.000-1.000 | 0.080 | 2.864 | A | 1 | 1.2 | 0.002 | 1 | 1 | 51.488 | 0.126 | 0.007 | C |
| | | | B | 1 | 1.2 | 1 | 1 | 51.488 | | | | |
| | | | C | 1 | 1.2 | 1 | 1 | 51.488 | | | | |
| Sum Weight: | 0.248 | 7.122 | | | | | | OTM | 15.110 kip-ft | 0.451 | | |

Tower Forces - With Ice - Wind 90 To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 4.258 | A | 1 | 1.2 | 0.002 | 1 | 1 | 106.838 | 0.325 | 0.007 | C |
| | | | B | 1 | 1.2 | 1 | 1 | 106.838 | | | | |
| | | | C | 1 | 1.2 | 1 | 1 | 106.838 | | | | |
| L2 20.000-1.000 | 0.080 | 2.864 | A | 1 | 1.2 | 0.002 | 1 | 1 | 51.488 | 0.126 | 0.007 | C |
| | | | B | 1 | 1.2 | 1 | 1 | 51.488 | | | | |
| | | | C | 1 | 1.2 | 1 | 1 | 51.488 | | | | |
| Sum Weight: | 0.248 | 7.122 | | | | | | OTM | 15.110 kip-ft | 0.451 | | |

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Tower Forces - Service - Wind Normal To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 2.718 | A | 1 | 0.65 | 0.008 | 1 | 1 | 98.264 | 0.580 | 0.012 | C |
| | | | B | 1 | 0.65 | | | 1 | 98.264 | | | |
| | | | C | 1 | 0.65 | | | 1 | 98.264 | | | |
| L2 20.000-1.000 | 0.080 | 2.219 | A | 1 | 0.65 | 0.007 | 1 | 1 | 48.229 | 0.230 | 0.012 | C |
| | | | B | 1 | 0.65 | | | 1 | 48.229 | | | |
| | | | C | 1 | 0.65 | | | 1 | 48.229 | | | |
| Sum Weight: | 0.248 | 4.937 | | | | | | OTM | 26.980 kip-ft | 0.809 | | |

Tower Forces - Service - Wind 60 To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 2.718 | A | 1 | 0.65 | 0.008 | 1 | 1 | 98.264 | 0.580 | 0.012 | C |
| | | | B | 1 | 0.65 | | | 1 | 98.264 | | | |
| | | | C | 1 | 0.65 | | | 1 | 98.264 | | | |
| L2 20.000-1.000 | 0.080 | 2.219 | A | 1 | 0.65 | 0.007 | 1 | 1 | 48.229 | 0.230 | 0.012 | C |
| | | | B | 1 | 0.65 | | | 1 | 48.229 | | | |
| | | | C | 1 | 0.65 | | | 1 | 48.229 | | | |
| Sum Weight: | 0.248 | 4.937 | | | | | | OTM | 26.980 kip-ft | 0.809 | | |

Tower Forces - Service - Wind 90 To Face

| Section Elevation | Add Weight | Self Weight | F a c e | e | C _F | q _z | D _F | D _R | A _E | F | w | Ctrl. Face |
|---------------------|------------|-------------|---------|---|----------------|----------------|----------------|----------------|------------------|-------|-------|------------|
| ft | K | K | | | | ksf | | | ft ² | K | klf | |
| L1 70.000-20.000 | 0.168 | 2.718 | A | 1 | 0.65 | 0.008 | 1 | 1 | 98.264 | 0.580 | 0.012 | C |
| | | | B | 1 | 0.65 | | | 1 | 98.264 | | | |
| | | | C | 1 | 0.65 | | | 1 | 98.264 | | | |
| L2 20.000-1.000 | 0.080 | 2.219 | A | 1 | 0.65 | 0.007 | 1 | 1 | 48.229 | 0.230 | 0.012 | C |
| | | | B | 1 | 0.65 | | | 1 | 48.229 | | | |
| | | | C | 1 | 0.65 | | | 1 | 48.229 | | | |
| Sum Weight: | 0.248 | 4.937 | | | | | | OTM | 26.980 kip-ft | 0.809 | | |

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Force Totals

| Load Case | Vertical Forces K | Sum of Forces X K | Sum of Forces Z K | Sum of Overturning Moments, M_x kip-ft | Sum of Overturning Moments, M_z kip-ft | Sum of Torques kip-ft |
|--------------------------|----------------------|-------------------------|-------------------------|---|---|--------------------------|
| Leg Weight | 4.937 | | | | | |
| Bracing Weight | 0.000 | | | | | |
| Total Member Self-Weight | 4.937 | | | 0.000 | 0.000 | |
| Total Weight | 14.346 | | | 0.000 | 0.000 | |
| Wind 0 deg - No Ice | | 0.000 | -21.203 | -900.939 | 0.000 | 0.000 |
| Wind 90 deg - No Ice | | 21.203 | 0.000 | 0.000 | -900.939 | 0.000 |
| Wind 180 deg - No Ice | | 0.000 | 21.203 | 900.939 | 0.000 | 0.000 |
| Member Ice | 2.185 | | | | | |
| Total Weight Ice | 16.571 | | | 0.000 | 0.000 | |
| Wind 0 deg - Ice | | 0.000 | -1.293 | -64.865 | 0.000 | 0.000 |
| Wind 90 deg - Ice | | 1.293 | 0.000 | 0.000 | -64.865 | 0.000 |
| Wind 180 deg - Ice | | 0.000 | 1.293 | 64.865 | 0.000 | 0.000 |
| Total Weight | 14.346 | | | 0.000 | 0.000 | |
| Wind 0 deg - Service | | 0.000 | -9.453 | -401.657 | 0.000 | 0.000 |
| Wind 90 deg - Service | | 9.453 | 0.000 | 0.000 | -401.657 | 0.000 |
| Wind 180 deg - Service | | 0.000 | 9.453 | 401.657 | 0.000 | 0.000 |

Load Combinations

| Comb. No. | Description |
|-----------|--|
| 1 | Dead Only |
| 2 | 1.2 Dead+1.6 Wind 0 deg - No Ice |
| 3 | 0.9 Dead+1.6 Wind 0 deg - No Ice |
| 4 | 1.2 Dead+1.6 Wind 90 deg - No Ice |
| 5 | 0.9 Dead+1.6 Wind 90 deg - No Ice |
| 6 | 1.2 Dead+1.6 Wind 180 deg - No Ice |
| 7 | 0.9 Dead+1.6 Wind 180 deg - No Ice |
| 8 | 1.2 Dead+1.0 Ice+1.0 Temp |
| 9 | 1.2 Dead+1.0 Wind 0 deg+1.0 Ice+1.0 Temp |
| 10 | 1.2 Dead+1.0 Wind 90 deg+1.0 Ice+1.0 Temp |
| 11 | 1.2 Dead+1.0 Wind 180 deg+1.0 Ice+1.0 Temp |
| 12 | Dead+Wind 0 deg - Service |
| 13 | Dead+Wind 90 deg - Service |
| 14 | Dead+Wind 180 deg - Service |

Maximum Member Forces

| Section No. | Elevation ft | Component Type | Condition | Gov. Load Comb. | Axial K | Major Axis Moment kip-ft | Minor Axis Moment kip-ft |
|-------------|--------------|----------------|------------------|-----------------|---------|--------------------------|--------------------------|
| L1 | 70 - 20 | Pole | Max Tension | 9 | 0.000 | 0.000 | -0.000 |
| | | | Max. Compression | 8 | -15.419 | 0.000 | 0.000 |
| | | | Max. Mx | 4 | -11.770 | -728.640 | 0.000 |
| | | | Max. My | 2 | -11.770 | 0.000 | 728.640 |
| | | | Max. Vy | 4 | 27.424 | -728.640 | 0.000 |
| | | | Max. Vx | 2 | -27.424 | 0.000 | 728.640 |
| L2 | 20 - 1 | Pole | Max Tension | 1 | 0.000 | 0.000 | 0.000 |

| | | | | |
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| Section No. | Elevation ft | Component Type | Condition | Gov. Load Comb. | Axial K | Major Axis Moment kip-ft | Minor Axis Moment kip-ft |
|-------------|--------------|----------------|------------------|-----------------|---------|--------------------------|--------------------------|
| | | | Max. Compression | 8 | -19.636 | 0.000 | 0.000 |
| | | | Max. Mx | 4 | -17.665 | -1462.625 | 0.000 |
| | | | Max. My | 6 | -17.665 | 0.000 | -1462.625 |
| | | | Max. Vy | 4 | 33.940 | -1462.625 | 0.000 |
| | | | Max. Vx | 2 | -33.940 | 0.000 | 1462.625 |

Maximum Reactions

| Location | Condition | Gov. Load Comb. | Vertical K | Horizontal, X K | Horizontal, Z K |
|----------|---------------------|-----------------|------------|-----------------|-----------------|
| Pole | Max. Vert | 8 | 19.636 | 0.000 | 0.000 |
| | Max. H _x | 14 | 14.747 | 0.000 | -9.453 |
| | Max. H _z | 2 | 17.696 | 0.000 | 33.924 |
| | Max. M _x | 2 | 1462.625 | 0.000 | 33.924 |
| | Max. M _z | 4 | 1462.625 | -33.924 | 0.000 |
| | Max. Torsion | 4 | 0.000 | -33.924 | 0.000 |
| | Min. Vert | 3 | 13.272 | 0.000 | 33.924 |
| | Min. H _x | 4 | 17.696 | -33.924 | 0.000 |
| | Min. H _z | 6 | 17.696 | 0.000 | -33.924 |
| | Min. M _x | 6 | -1462.625 | 0.000 | -33.924 |
| | Min. M _z | 6 | 0.000 | 0.000 | -33.924 |
| | Min. Torsion | 13 | 0.000 | -9.453 | 0.000 |

Tower Mast Reaction Summary

| Load Combination | Vertical K | Shear _x K | Shear _z K | Overturning Moment, M _x kip-ft | Overturning Moment, M _z kip-ft | Torque kip-ft |
|--|------------|----------------------|----------------------|---|---|---------------|
| Dead Only | 14.747 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| 1.2 Dead+1.6 Wind 0 deg - No Ice | 17.696 | 0.000 | -33.924 | -1462.625 | 0.000 | 0.000 |
| 0.9 Dead+1.6 Wind 0 deg - No Ice | 13.272 | 0.000 | -33.924 | -1455.513 | 0.000 | 0.000 |
| 1.2 Dead+1.6 Wind 90 deg - No Ice | 17.696 | 33.924 | 0.000 | 0.000 | -1462.625 | 0.000 |
| 0.9 Dead+1.6 Wind 90 deg - No Ice | 13.272 | 33.924 | 0.000 | 0.000 | -1455.513 | 0.000 |
| 1.2 Dead+1.6 Wind 180 deg - No Ice | 17.696 | 0.000 | 33.924 | 1462.625 | 0.000 | 0.000 |
| 0.9 Dead+1.6 Wind 180 deg - No Ice | 13.272 | 0.000 | 33.924 | 1455.513 | 0.000 | 0.000 |
| 1.2 Dead+1.0 Ice+1.0 Temp | 19.636 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| 1.2 Dead+1.0 Wind 0 deg+1.0 Ice+1.0 Temp | 19.636 | 0.000 | -1.293 | -66.810 | 0.000 | 0.000 |
| 1.2 Dead+1.0 Wind 90 deg+1.0 Ice+1.0 Temp | 19.636 | 1.293 | 0.000 | 0.000 | -66.810 | 0.000 |
| 1.2 Dead+1.0 Wind 180 deg+1.0 Ice+1.0 Temp | 19.636 | 0.000 | 1.293 | 66.810 | 0.000 | 0.000 |
| Dead+Wind 0 deg - Service | 14.747 | 0.000 | -9.453 | -406.629 | 0.000 | 0.000 |
| Dead+Wind 90 deg - Service | 14.747 | 9.453 | 0.000 | 0.000 | -406.629 | 0.000 |
| Dead+Wind 180 deg - Service | 14.747 | 0.000 | 9.453 | 406.629 | 0.000 | 0.000 |

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Maximum Tower Deflections - Service Wind

| Section No. | Elevation ft | Horz. Deflection in | Gov. Load Comb. | Tilt ° | Twist ° |
|-------------|-----------------|------------------------|-----------------|-----------|------------|
| L1 | 70 - 20 | 11.884 | 13 | 1.298 | 0.000 |
| L2 | 23.417 - 1 | 1.447 | 13 | 0.565 | 0.000 |

Critical Deflections and Radius of Curvature - Service Wind

| Elevation ft | Appurtenance | Gov. Load Comb. | Deflection in | Tilt ° | Twist ° | Radius of Curvature ft |
|-----------------|---------------|-----------------|------------------|-----------|------------|---------------------------|
| 70.000 | Pine Branches | 13 | 11.884 | 1.298 | 0.000 | 16136 |
| 65.000 | Pine Branches | 13 | 10.498 | 1.235 | 0.000 | 16136 |
| 60.000 | Pine Branches | 13 | 9.130 | 1.171 | 0.000 | 8068 |
| 55.000 | Pine Branches | 13 | 7.800 | 1.105 | 0.000 | 5378 |
| 50.000 | Pine Branches | 13 | 6.525 | 1.035 | 0.000 | 4033 |
| 45.000 | Pine Branches | 13 | 5.325 | 0.962 | 0.000 | 3226 |
| 40.000 | Pine Branches | 13 | 4.218 | 0.882 | 0.000 | 2688 |
| 35.000 | Pine Branches | 13 | 3.222 | 0.796 | 0.000 | 2304 |
| 30.000 | Pine Branches | 13 | 2.357 | 0.702 | 0.000 | 2016 |
| 25.000 | Pine Branches | 13 | 1.640 | 0.600 | 0.000 | 1825 |
| 20.000 | Pine Branches | 13 | 1.088 | 0.487 | 0.000 | 2046 |
| 17.500 | Pine Branches | 13 | 0.870 | 0.428 | 0.000 | 2351 |
| 15.000 | Pine Branches | 13 | 0.683 | 0.366 | 0.000 | 2771 |

Maximum Tower Deflections - Design Wind

| Section No. | Elevation ft | Horz. Deflection in | Gov. Load Comb. | Tilt ° | Twist ° |
|-------------|-----------------|------------------------|-----------------|-----------|------------|
| L1 | 70 - 20 | 42.750 | 6 | 4.672 | 0.000 |
| L2 | 23.417 - 1 | 5.207 | 6 | 2.034 | 0.000 |


Critical Deflections and Radius of Curvature - Design Wind

| Elevation ft | Appurtenance | Gov. Load Comb. | Deflection in | Tilt ° | Twist ° | Radius of Curvature ft |
|-----------------|---------------|-----------------|------------------|-----------|------------|---------------------------|
| 70.000 | Pine Branches | 6 | 42.750 | 4.672 | 0.000 | 4529 |
| 65.000 | Pine Branches | 6 | 37.763 | 4.446 | 0.000 | 4529 |
| 60.000 | Pine Branches | 6 | 32.844 | 4.216 | 0.000 | 2263 |
| 55.000 | Pine Branches | 6 | 28.058 | 3.977 | 0.000 | 1508 |
| 50.000 | Pine Branches | 6 | 23.473 | 3.727 | 0.000 | 1130 |
| 45.000 | Pine Branches | 6 | 19.155 | 3.461 | 0.000 | 903 |
| 40.000 | Pine Branches | 6 | 15.172 | 3.175 | 0.000 | 752 |
| 35.000 | Pine Branches | 6 | 11.591 | 2.865 | 0.000 | 643 |
| 30.000 | Pine Branches | 6 | 8.478 | 2.527 | 0.000 | 562 |
| 25.000 | Pine Branches | 6 | 5.901 | 2.158 | 0.000 | 508 |
| 20.000 | Pine Branches | 6 | 3.915 | 1.753 | 0.000 | 570 |

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| Elevation | Appurtenance | Gov. Load Comb. | Deflection | Tilt | Twist | Radius of Curvature |
|-----------|---------------|-----------------|------------|-------|-------|---------------------|
| ft | | | in | ° | ° | ft |
| 17.500 | Pine Branches | 6 | 3.128 | 1.539 | 0.000 | 654 |
| 15.000 | Pine Branches | 6 | 2.456 | 1.317 | 0.000 | 771 |

Base Plate Design Data

| Plate Thickness | Number of Anchor Bolts | Anchor Bolt Size | Actual Allowable Ratio Bolt Tension K | Actual Allowable Ratio Bolt Compression K | Actual Allowable Ratio Plate Stress ksi | Actual Allowable Ratio Stiffener Stress ksi | Controlling Condition | Ratio |
|-----------------|------------------------|------------------|---------------------------------------|---|---|---|-----------------------|---|
| in | | in | | | | | | |
| 2.500 | 8 | 2.250 | 218.565 | 222.982 | 44.123 | | Plate | 0.98 |
| | | | 223.654 | 371.266 | 45.000 | | |  |
| | | | 0.98 | 0.60 | 0.98 | | | |

Compression Checks

Pole Design Data

| Section No. | Elevation | Size | L | L _u | Kl/r | A | P _u | φP _n | Ratio |
|-------------|-------------|-----------------------|--------|----------------|------|-----------------|----------------|-----------------|------------------------|
| | ft | | ft | ft | | in ² | K | K | $\frac{P_u}{\phi P_n}$ |
| L1 | 70 - 20 (1) | TP28.45x18x0.219 | 50.000 | 0.000 | 0.0 | 19.110 | -11.770 | 1328.260 | 0.009 |
| L2 | 20 - 1 (2) | TP31.983x27.298x0.313 | 22.417 | 0.000 | 0.0 | 31.414 | -17.665 | 2326.350 | 0.008 |

Pole Bending Design Data

| Section No. | Elevation | Size | M _{ux} | φM _{ux} | Ratio | M _{uy} | φM _{uy} | Ratio |
|-------------|-------------|-----------------------|-----------------|------------------|------------------------------|-----------------|------------------|------------------------------|
| | ft | | kip-ft | kip-ft | $\frac{M_{ux}}{\phi M_{ux}}$ | kip-ft | kip-ft | $\frac{M_{uy}}{\phi M_{uy}}$ |
| L1 | 70 - 20 (1) | TP28.45x18x0.219 | 728.641 | 751.515 | 0.970 | 0.000 | 751.515 | 0.000 |
| L2 | 20 - 1 (2) | TP31.983x27.298x0.313 | 1462.625 | 1512.042 | 0.967 | 0.000 | 1512.042 | 0.000 |

Pole Shear Design Data

| | | | | |
|---|----------------|---------------------|--------------------|-------------------|
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| Section No. | Elevation ft | Size | Actual V_u K | ϕV_n K | Ratio $\frac{V_u}{\phi V_n}$ | Actual T_u kip-ft | ϕT_n kip-ft | Ratio $\frac{T_u}{\phi T_n}$ |
|-------------|-----------------|-----------------------|----------------------|-----------------|---------------------------------|---------------------------|----------------------|---------------------------------|
| L1 | 70 - 20 (1) | TP28.45x18x0.219 | 27.424 | 664.130 | 0.041 | 0.000 | 1504.867 | 0.000 |
| L2 | 20 - 1 (2) | TP31.983x27.298x0.313 | 33.940 | 1163.180 | 0.029 | 0.000 | 3027.783 | 0.000 |

Pole Interaction Design Data

| Section No. | Elevation ft | Ratio $\frac{P_u}{\phi P_n}$ | Ratio $\frac{M_{ux}}{\phi M_{nx}}$ | Ratio $\frac{M_{uy}}{\phi M_{ny}}$ | Ratio $\frac{V_u}{\phi V_n}$ | Ratio $\frac{T_u}{\phi T_n}$ | Comb. Stress Ratio | Allow. Stress Ratio | Criteria |
|-------------|-----------------|---------------------------------|---------------------------------------|---------------------------------------|---------------------------------|---------------------------------|--------------------------|---------------------------|----------|
| L1 | 70 - 20 (1) | 0.009 | 0.970 | 0.000 | 0.041 | 0.000 | 0.980 | 1.000 | 4.8.2 ✓ |
| L2 | 20 - 1 (2) | 0.008 | 0.967 | 0.000 | 0.029 | 0.000 | 0.976 ✓ ✓ | 1.000 | 4.8.2 ✓ |

Section Capacity Table

| Section No. | Elevation ft | Component Type | Size | Critical Element | P K | ϕP_{allow} K | % Capacity | Pass Fail |
|-----------------|-----------------|-------------------|-----------------------|---------------------|---------|-----------------------|---------------|--------------|
| L1 | 70 - 20 | Pole | TP28.45x18x0.219 | 1 | -11.770 | 1328.260 | 98.0 | Pass |
| L2 | 20 - 1 | Pole | TP31.983x27.298x0.313 | 2 | -17.665 | 2326.350 | 97.6 | Pass |
| Summary | | | | | | | | |
| Pole (L1) | | | | | | | 98.0 | Pass |
| Base Plate | | | | | | | 98.1 | Pass |
| RATING = | | | | | | | 98.1 | Pass |

USGS Design Maps Summary Report

User-Specified Input

Building Code Reference Document 2012 International Building Code
(which utilizes USGS hazard data available in 2008)

Site Coordinates 44.01083°N, 123.07728°W

Site Soil Classification Site Class D – “Stiff Soil”

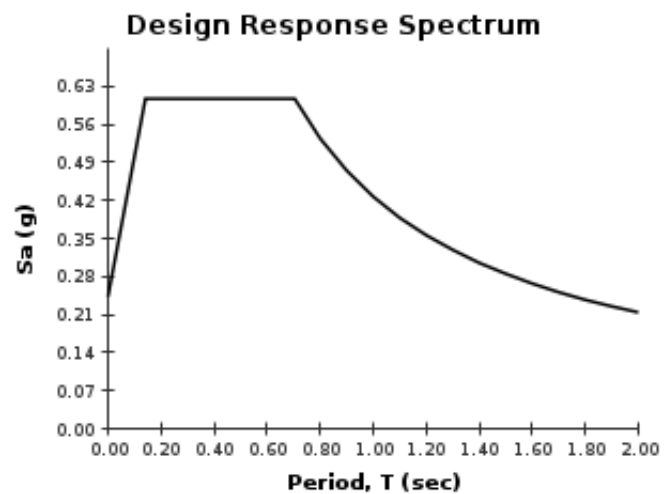
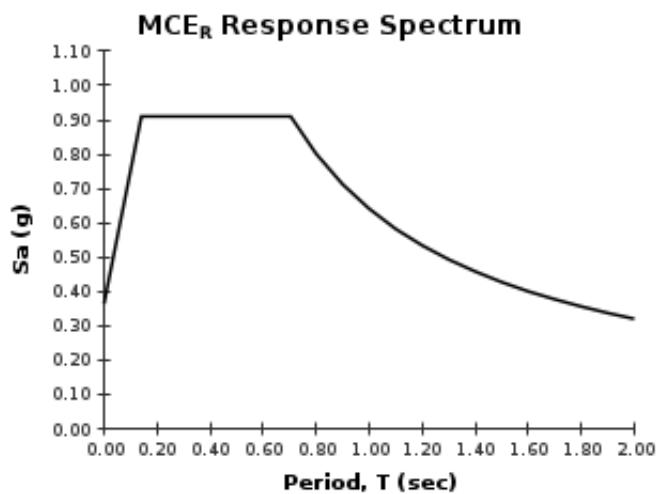
Risk Category I/II/III



USGS-Provided Output

| | | |
|-------------------------|----------------------------|----------------------------|
| $S_S = 0.762 \text{ g}$ | $S_{MS} = 0.910 \text{ g}$ | $S_{DS} = 0.607 \text{ g}$ |
| $S_1 = 0.400 \text{ g}$ | $S_{M1} = 0.641 \text{ g}$ | $S_{D1} = 0.427 \text{ g}$ |

For information on how the S_S and S_1 values above have been calculated from probabilistic (risk-targeted) and deterministic ground motions in the direction of maximum horizontal response, please return to the application and select the “2009 NEHRP” building code reference document.



Although this information is a product of the U.S. Geological Survey, we provide no warranty, expressed or implied, as to the accuracy of the data contained therein. This tool is not a substitute for technical subject-matter knowledge.

Section 1613.3.1 — Mapped acceleration parameters

Note: Ground motion values provided below are for the direction of maximum horizontal spectral response acceleration. They have been converted from corresponding geometric mean ground motions computed by the USGS by applying factors of 1.1 (to obtain S_s) and 1.3 (to obtain S_1). Maps in the 2012 International Building Code are provided for Site Class B. Adjustments for other Site Classes are made, as needed, in Section 1613.3.3.

From [Figure 1613.3.1\(1\)](#) ^[1]

$$S_s = 0.762 \text{ g}$$

From [Figure 1613.3.1\(2\)](#) ^[2]

$$S_1 = 0.400 \text{ g}$$

Section 1613.3.2 — Site class definitions

The authority having jurisdiction (not the USGS), site-specific geotechnical data, and/or the default has classified the site as Site Class D, based on the site soil properties in accordance with Section 1613.

2010 ASCE-7 Standard – Table 20.3-1
SITE CLASS DEFINITIONS

| Site Class | \bar{v}_s | \bar{N} or \bar{N}_{ch} | \bar{s}_u |
|--|---------------------|-----------------------------|--------------------|
| A. Hard Rock | >5,000 ft/s | N/A | N/A |
| B. Rock | 2,500 to 5,000 ft/s | N/A | N/A |
| C. Very dense soil and soft rock | 1,200 to 2,500 ft/s | >50 | >2,000 psf |
| D. Stiff Soil | 600 to 1,200 ft/s | 15 to 50 | 1,000 to 2,000 psf |
| E. Soft clay soil | <600 ft/s | <15 | <1,000 psf |
| Any profile with more than 10 ft of soil having the characteristics: <ul style="list-style-type: none"> • Plasticity index $PI > 20$, • Moisture content $w \geq 40\%$, and • Undrained shear strength $\bar{s}_u < 500$ psf | | | |
| F. Soils requiring site response analysis in accordance with Section 21.1 | See Section 20.3.1 | | |

For SI: 1ft/s = 0.3048 m/s 1lb/ft² = 0.0479 kN/m²

Section 1613.3.3 — Site coefficients and adjusted maximum considered earthquake spectral response acceleration parameters

TABLE 1613.3.3(1)
VALUES OF SITE COEFFICIENT F_a

| Site Class | Mapped Spectral Response Acceleration at Short Period | | | | |
|------------|---|--------------|--------------|--------------|-----------------|
| | $S_s \leq 0.25$ | $S_s = 0.50$ | $S_s = 0.75$ | $S_s = 1.00$ | $S_s \geq 1.25$ |
| A | 0.8 | 0.8 | 0.8 | 0.8 | 0.8 |
| B | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| C | 1.2 | 1.2 | 1.1 | 1.0 | 1.0 |
| D | 1.6 | 1.4 | 1.2 | 1.1 | 1.0 |
| E | 2.5 | 1.7 | 1.2 | 0.9 | 0.9 |
| F | See Section 11.4.7 of ASCE 7 | | | | |

Note: Use straight-line interpolation for intermediate values of S_s

For Site Class = D and $S_s = 0.762$ g, $F_a = 1.195$

TABLE 1613.3.3(2)
VALUES OF SITE COEFFICIENT F_v

| Site Class | Mapped Spectral Response Acceleration at 1-s Period | | | | |
|------------|---|--------------|--------------|--------------|-----------------|
| | $S_1 \leq 0.10$ | $S_1 = 0.20$ | $S_1 = 0.30$ | $S_1 = 0.40$ | $S_1 \geq 0.50$ |
| A | 0.8 | 0.8 | 0.8 | 0.8 | 0.8 |
| B | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| C | 1.7 | 1.6 | 1.5 | 1.4 | 1.3 |
| D | 2.4 | 2.0 | 1.8 | 1.6 | 1.5 |
| E | 3.5 | 3.2 | 2.8 | 2.4 | 2.4 |
| F | See Section 11.4.7 of ASCE 7 | | | | |

Note: Use straight-line interpolation for intermediate values of S_1

For Site Class = D and $S_1 = 0.400$ g, $F_v = 1.600$

Equation (16-37):

$$S_{MS} = F_a S_S = 1.195 \times 0.762 = 0.910 \text{ g}$$

Equation (16-38):

$$S_{M1} = F_v S_1 = 1.600 \times 0.400 = 0.641 \text{ g}$$

Section 1613.3.4 — Design spectral response acceleration parameters

Equation (16-39):

$$S_{DS} = \frac{2}{3} S_{MS} = \frac{2}{3} \times 0.910 = 0.607 \text{ g}$$

Equation (16-40):

$$S_{D1} = \frac{2}{3} S_{M1} = \frac{2}{3} \times 0.641 = 0.427 \text{ g}$$

Section 1613.3.5 — Determination of seismic design category

TABLE 1613.3.5(1)

SEISMIC DESIGN CATEGORY BASED ON SHORT-PERIOD (0.2 second) RESPONSE ACCELERATION

| VALUE OF S_{DS} | RISK CATEGORY | | |
|------------------------------|---------------|-----|----|
| | I or II | III | IV |
| $S_{DS} < 0.167g$ | A | A | A |
| $0.167g \leq S_{DS} < 0.33g$ | B | B | C |
| $0.33g \leq S_{DS} < 0.50g$ | C | C | D |
| $0.50g \leq S_{DS}$ | D | D | D |

For Risk Category = I and $S_{DS} = 0.607 g$, Seismic Design Category = D

TABLE 1613.3.5(2)

SEISMIC DESIGN CATEGORY BASED ON 1-SECOND PERIOD RESPONSE ACCELERATION

| VALUE OF S_{D1} | RISK CATEGORY | | |
|-------------------------------|---------------|-----|----|
| | I or II | III | IV |
| $S_{D1} < 0.067g$ | A | A | A |
| $0.067g \leq S_{D1} < 0.133g$ | B | B | C |
| $0.133g \leq S_{D1} < 0.20g$ | C | C | D |
| $0.20g \leq S_{D1}$ | D | D | D |

For Risk Category = I and $S_{D1} = 0.427 g$, Seismic Design Category = D

Note: When S_1 is greater than or equal to 0.75g, the Seismic Design Category is **E** for buildings in Risk Categories I, II, and III, and **F** for those in Risk Category IV, irrespective of the above.

Seismic Design Category \equiv "the more severe design category in accordance with Table 1613.3.5(1) or 1613.3.5(2)" = D

Note: See Section 1613.3.5.1 for alternative approaches to calculating Seismic Design Category.

References

1. Figure 1613.3.1(1): [http://earthquake.usgs.gov/hazards/designmaps/downloads/pdfs/IBC-2012-Fig1613p3p1\(1\).pdf](http://earthquake.usgs.gov/hazards/designmaps/downloads/pdfs/IBC-2012-Fig1613p3p1(1).pdf)
2. Figure 1613.3.1(2): [http://earthquake.usgs.gov/hazards/designmaps/downloads/pdfs/IBC-2012-Fig1613p3p1\(2\).pdf](http://earthquake.usgs.gov/hazards/designmaps/downloads/pdfs/IBC-2012-Fig1613p3p1(2).pdf)

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Date: June 11, 2015
Designed by: MN

SEISMIC CALCULATIONS

ASCE 7-10 Seismic Design Requirements for Non-Building Structures Not Similar to Buildings

| | | | <u>REFERENCE</u> |
|--|--------------------|---|--|
| <u>Risk Category</u> | II | | ASCE 7-10 Table 1.5-1 |
| <u>Importance Factor</u> | | | |
| $I_e =$ | 1 | | ASCE 7-10 Table 1.5-2 |
| <u>Site Classification</u> | D | | ASCE 7-10 Table 20.3-1 |
| <u>Site Coefficients</u> | | | |
| SS = | 0.762 | Mapped Spectral Accelerations: Short Period | |
| S1 = | 0.400 | Mapped Spectral Accelerations: 1 sec Period | |
| Fa = | 1.195 | Site Coefficient | ASCE 7-10 Table 11.4-1 |
| Fv = | 1.600 | Site Coefficient | ASCE 7-10 Table 11.4-2 |
| SMS = | 0.910 | Max Spectral Accelerations: Short Periods | ASCE 7-10 Eqn. 11.4-1 |
| SM1 = | 0.641 | Max Spectral Accelerations: 1sec Period | ASCE 7-10 Eqn. 11.4-2 |
| <u>Design Spectral Response Acceleration Parameters</u> | | | ASCE 7-10 11.4.4 |
| SDS = | 0.607 | 5% Damped Spectral Acceleration: Short Period | ASCE 7-10 Eqn. 11.4-3 |
| SD1 = | 0.427 | 5% Damped Spectral Acceleration: 1 sec Period | ASCE 7-10 Eqn. 11.4-4 |
| SDC = | D | Seismic Design Category | ASCE 7-10 Tables 11.6-1 & 11.6-2 |
| | | | if S1>0.75 then E |
| <u>Equivalent Lateral Force Procedure</u> | | | |
| T = | $C_t h_n^x =$ | 0.484 | Fundamental Period |
| | $C_t =$ | 0.020 | Period Parameter |
| | $x =$ | 0.750 | Period Parameter |
| | $h_n =$ | 70.000 | Structure Height (ft) |
| R = | | 1.500 | Response Modification Factor |
| TL = | | 8.000 | Long-Period Transition Period |
| Cs = | $SDS/[R/I] =$ | 0.404 | Seismic Response Coefficient |
| where; | | | |
| Cs > | $0.44 SDS/[I] =$ | 0.267 | Lower Limit |
| Cs > | $0.8 S1/[R/I] =$ | 0.213 | Lower Limit for S1 > 0.6g |
| Cs < | $SD1/T[R/I] =$ | 0.589 | Upper Limit for T ≤ TL |
| Cs < | $SD1TL/T^2[R/I] =$ | 9.729 | Upper Limit for T > TL |
| Design Value Cs = | | 0.404 | |
| W = | | 14.346 | Pole Dead Weight + Appurtenances Weight (kips) |
| V = | $CsW =$ | 5.802 | Equivalent Seismic Base Shear (kips) |
| | | | ASCE 7-10 Eqn. 12.8-1 |
| Fwind = | | 33.924 | Wind Base Shear (kips) : 1.6W |

Lateral Wind Shear > Seismic Base Shear : Wind Controls Design

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ANCHOR BOLT & BASE PLATE DESIGN □

Calculated Wind Force Reactions from Force Totals Table: M = 900.939 k-Ft, V = 21.203 kip, A = 14.35 kip

(Round or Square Plate)

Geometry

Plate Square/Round Plate = Round
Plate Width/Diameter: OD = 45.75 inch
Pole Diameter: Dp = 31.983 inch
Bolt Circle Diameter: BC = 39.75 inch
No. Bolts: N = 8
Bolt Moment of Inertia: I = 1580.063 inch² (1/8)(N BC²)
Anchor Bolt Diameter: Dbolt = 2.25 inch
Nominal Anchor Bolt Area: An = 3.25 inch²

Materials

Anchor Bolt Material: Fu = 100 KSI A615 GR 75
Base Plate Material: Fy = 50 KSI A572 GR50

Loads

Unfactored Base Reactions

M = 900.939 Kip-Ft
V = 21.203 Kips
A = 14.346 Kips

Factored Moment: Mu = 1462.625 Kip-Ft 1.2D + 1.6W
Factored Base Shear: V = 33.924 Kips 1.2D + 1.6W
Axial Dead Load: A = 17.696 Kips 1.2 DL

Analysis

ANCHOR BOLTS

Anchor Bolt Tension: T = Pu = 218.562 Kips [(Mu BC/2) / I] - A/N
Anchor Bolt Compression: C = 222.986 Kips [(Mu BC/2) / I] + A/N
Anchor Bolt Shear: Vu = 4.241 Kips/bolt V / N
AB Design Strength - φR_{nt} = φFuAn = 243.750 Kips φ = 0.75 for Rupture Strength

INTERACTION PER TIA-222-G Section 4.9.9

$$[P_u + V_u/\eta] / \phi R_{nt} \leq 1.0 \quad \eta = 0.4 \text{ For Detail Type D}$$

Anchor Bolt Stress Ratio = 0.94 < 1.0 OK!!

UN-GROUTED BASEPLATE

Plate Bending: Mpb = 865.96 Kip-Inch Mpb = C(1/2)(BC-Dp)
Required Plastic Modulus: Z = 19.24 inch³ Z = Mpb / (0.9)Fy
Square Plate Bend Line Length: L = 32.72 inch L = [2^{1/2}(OD) - Dp]
Round Plate Bend Line Length: L = 18.83 inch L = .75BC SIN(360/N)
Required Plate Thickness: Tpl = 2.02 inch Tpl = [4Z / L]^{1/2}

Plate Stress Ratio = 0.65 < 1.0 OK!!

Design Summary

(8) 2.25" Diameter A615 GR 75 Bolts on 39.75" BC Diameter

2.5" X 45.75" Round A572 GR50 Base Plate

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Client: Larson Camouflage

Date: June 11, 2015

Designed by: MN

Pole to Base Weld Connection

Flange Ring Assembly

| | | | |
|--------------------------------|----------|----------|--|
| Dp = | 31.983 | inch | |
| Factored Moment: Mu = | 1462.625 | Kip-Ft | Factored Moment |
| Factored Base Shear: V = | 33.924 | Kips | Factored Shear |
| Groove Weld Thickness: Twg = | 0.3125 | inch | Groove Thickness |
| Groove Weld Thickness: Twf = | 0.3125 | inch | Filet Weld Thickness |
| Weld Material Yield: Fyw = | 70 | ksi | |
| Allowable Weld Force: Fallow = | 17.924 | kip/inch | $Fallow = [(.707)Twf + Twg] (.48)Fyw$ |
| Weld Force: Fw = | 16.385 | kip/inch | $Fw = (3/4)Sqrt [\{Mu/\pi(Dp^2/4)\}^2 + \{V/\pi Dp\}^2]$ |
| Base Weld Stress Ratio = | 91.416 | % | |

DESIGN: APPLY GROOVE WELD AND APPLY 5/16" FILET CAP WELD TO POLE AT TOP OF PLATE

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Designed by: MN

Anchor Bolt Development (ACI 318)

Anchor bolts are mechanically anchored with nuts and load plates at bottom of bolts.

Failure cones emanate at 35 degrees from top of nut.

The failure cones from the 4 bolts overlap and exit the sides of the caisson.

Concrete is assumed to crack and carry no load so, vertical reinforcing steel must be developed to transfer bolt loads.

Calculations presented below determine the required length of anchor bolt embedment and reinforcing development necessary to transfer the design loads.

Minimum Development Length per ACI 318 12.2.2, Eq 12-1.

$$l_d = d_b [f_y / \sqrt{f'_c}] (3/40) (\phi_t \phi_e \lambda / 2.5) :$$

where; $f_y = 60,000$ psi, $f'_c = 4000$ psi, and $\phi_t \phi_e \lambda = 1.0$,

$$l_d = 28.46 d_b \quad \text{For \# 10 Bar } l_d = 35.58 \text{ in.}$$

Anchor Bolts are 2-1/4" X 84" with 72" Embedment on 39.75" Bolt Circle

Reinforcing Cage Diameter = 54.00 in.

Minimum Required AB Depth

$$\text{cover} = 3.00 \text{ in.}$$

$$\text{bottom grip} = 3.00 \text{ in.}$$

$$\frac{1}{2}(\text{Cage-BC}) = 7.13 \text{ in.}$$

$$l_{\min} = l_d + \text{cover} + \text{bottom grip} + \frac{1}{2}(\text{Cage-BC})/\tan 65 = 44.90 \text{ in.}$$

Bolt Embedment Provided = 72.00 in.

Anchor bolts are restrained by fully developed reinforcement satisfying the requirements of 318 Appendix D.

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Date: June 11, 2015

Designed by: MN

Rigid Pole Theory Foundation Design -

Calculated Wind Force Reactions from Force Totals Table: $M = 900.939$ k-Ft, $V = 21.203$ kip, $A = 14.35$ kip

Soils Report -

Adapt Engineering Project No. OR13-18613-GEO

Allowable Lateral Bearing Pressure = 300psf/ft

Drilled shaft foundation design per "Pole Formula" per Equation 18-1 of Section 1807.3.2.1 of the IBC 2012.

Per Enercalc Solution for Eqn 18- 21.25' Embed Required

EnerCalc Design solution results- (Program Output attached)

Add 3.25' to Embedment Requirement:

Use 60" Diameter x 24'-6" deep pier w/ +6" exposure:

Reinforcing: Use (14) - #10 Vertical

Pole Footing Embedded in Soil

File = M:\SEWOR-1\Larson\9437AT-1\REV161-1.15\9437FN-1.EC6
ENERCALC, INC. 1983-2015, Build:6.15.1.19, Ver:6.15.1.19

Lic. #: KW-06004631

Licensee: ISE, INC.

Description: Pier Embedment

Code References

Calculations per IBC 2012 1807.3, CBC 2013, ASCE 7-10

Load Combinations Used: ASCE 7-05

General Information

Pole Footing Shape: Circular
Footing Diameter: 60.0 in
Calculate Min. Depth for Allowable Pressures
No Lateral Restraint at Ground Surface
Allow Passive: 300.0 pcf
Max Passive: 1,500.0 psf

Controlling Values

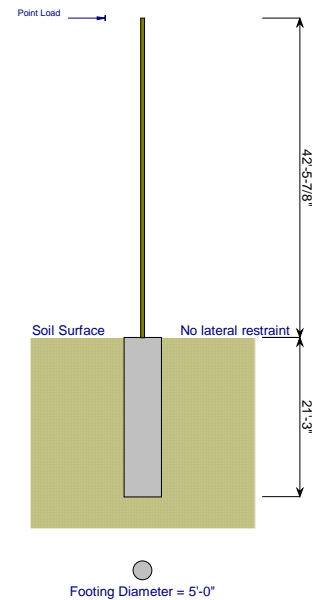
Governing Load Combination: +D+W+H
Lateral Load: 21.203 k
Moment: 900.94 k-ft

NO Ground Surface Restraint

Pressures at 1/3 Depth
Actual: 1,498.80 psf
Allowable: 1,500.0 psf

Minimum Required Depth: 21.250 ft

Footing Base Area: 19.635 ft²
Maximum Soil Pressure: 0.7306 ksf



Applied Loads

| Lateral Concentrated Load | | Lateral Distributed Load | | Vertical Load |
|------------------------------------|-----------|-------------------------------------|------|---------------|
| D : Dead Load | k | | k/ft | 14.346 k |
| Lr : Roof Live | k | | k/ft | k |
| L : Live | k | | k/ft | k |
| S : Snow | k | | k/ft | k |
| W : Wind | 21.203 k | | k/ft | k |
| E : Earthquake | k | | k/ft | k |
| H : Lateral Earth | k | | k/ft | k |
| Load distance above ground surface | 42.491 ft | TOP of Load above ground surface | ft | |
| | | BOTTOM of Load above ground surface | ft | |

Load Combination Results

| Load Combination | Forces @ Ground Surface | | Required Depth - (ft) | Pressure at 1/3 Depth | | Soil Increase Factor |
|----------------------------|-------------------------|------------------|-----------------------|-----------------------|---------------|----------------------|
| | Loads - (k) | Moments - (ft-k) | | Actual - (psf) | Allow - (psf) | |
| D Only | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+L+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+Lr+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+S+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+0.750Lr+0.750L+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+0.750L+0.750S+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+W+H | 21.203 | 900.937 | 21.25 | 1,498.8 | 1,500.0 | 1.000 |
| +D+0.70E+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+0.750Lr+0.750L+0.750W+H | 15.902 | 675.703 | 17.88 | 1,498.6 | 1,500.0 | 1.000 |

Pole Footing Embedded in Soil

File = M:\SEWOR-1\Larson\9437AT-1\REV161-1.15\9437FN-1.EC6
 ENERCALC, INC. 1983-2015, Build:6.15.1.19, Ver:6.15.1.19

Lic. # : KW-06004631

Licensee : ISE, INC.

Description : Pier Embedment

| | | | | | | |
|-----------------------------|--------|---------|-------|---------|---------|-------|
| +D+0.750L+0.750S+0.750W+H | 15.902 | 675.703 | 17.88 | 1,498.6 | 1,500.0 | 1.000 |
| +D+0.750Lr+0.750L+0.5250E+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +D+0.750L+0.750S+0.5250E+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |
| +0.60D+W+H | 21.203 | 900.937 | 21.25 | 1,498.8 | 1,500.0 | 1.000 |
| +0.60D+0.70E+H | 0.000 | 0.000 | 0.13 | 0.0 | 0.0 | 1.000 |

Concrete Column

Lic. #: KW-06004631

Description: Foundation Pier

Licensee: ISE, INC.

Code References

Calculations per ACI 318-11, IBC 2012, CBC 2013, ASCE 7-10
Load Combinations Used: ASCE 7-05

General Information

f'_c : Concrete 28 day strength = 4.0 ksi
E = 3,605.0 ksi
Density = 145.0 pcf
 β = 0.850
 f_y - Main Rebar = 60.0 ksi
E - Main Rebar = 29,000.0 ksi
Allow. Reinforcing Limits *ASTM A615 Bars Used*
Min. Reinf. = 0.50 %
Max. Reinf. = 8.0 %

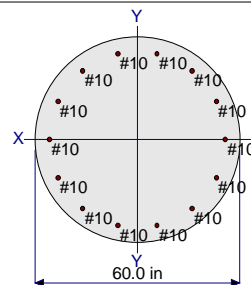
Load Combination: ASCE 7-05

Overall Column Height = 25.0 ft
End Fixity **Top Free, Bottom Fixed**
Brace condition for deflection (buckling) along columns:
X-X (width) axis:
Fully braced against buckling along X-X Axis
Y-Y (depth) axis:
Fully braced against buckling along Y-Y Axis

Column Cross Section

Column Dimensions: 60.0in Diameter, Column Edge to Rebar Edge
Cover = 3.625in

Column Reinforcing: 14.0 - #10 bars



Entered loads are factored per load combinations specified by user.

Applied Loads

Column self weight included: 71,176.7 lbs * Dead Load Factor

AXIAL LOADS . . .

Axial Load at 25.0 ft above base, W = 11.375 k

BENDING LOADS . . .

Lat. Point Load at 25.50 ft creating M_x -x, W = 18.159 k

Moment acting about X-X axis, W = 738.83 k-ft

DESIGN SUMMARY

Load Combination **+0.90D+1.60W+1.60H**
Location of max. above base **24.832 ft**
Maximum Stress Ratio **0.900 : 1**
Ratio = $(P_u^2 + M_u^2)^{.5} / (\Phi P_n^2 + \Phi M_n^2)^{.5}$
 P_u = **82.259 k** $\Phi * P_n$ = **74.840 k**
 M_u -x = **-1,908.48 k-ft** $\Phi * M_n$ -x = **2,160.10 k-ft**
 M_u -y = **0.0 k-ft** $\Phi * M_n$ -y = **0.0 k-ft**
 M_u Angle = **180.0 deg**
 M_u at Angle = **1,908.48 k-ft** ΦM_n at Angle = **2,121.43 k-ft**
 P_n & M_n values located at P_u - M_u vector intersection with capacity curve
Column Capacities . . .
 P_{nmax} : Nominal Max. Compressive Axial Capacity **10,619.6 k**
 P_{nmin} : Nominal Min. Tension Axial Capacity **-1,066.80 k**
 ΦP_n , max: Usable Compressive Axial Capacity **6,318.68 k**
 ΦP_n , min: Usable Tension Axial Capacity **-746.76 k**

Maximum SERVICE Load Reactions . . .

Top along Y-Y **0.0 k** Bottom along Y-Y **0.0 k**
Top along X-X **0.0 k** Bottom along X-X **18.159 k**

Maximum SERVICE Load Deflections . . .

Along Y-Y **0.2437 in** at **25.0 ft** above base
for load combination: **+D+W+H**
Along X-X **0.0 in** at **0.0 ft** above base
for load combination:

General Section Information . ϕ = **0.70** β = **0.850** θ = **0.850**
 ρ : % Reinforcing **0.6288 %** Rebar % Ok
Reinforcing Area **17.780 in²**
Concrete Area **2,827.43 in²**

Concrete Column

File = M:\SEWOR-1\Larson\9437AT-1\REV161-1.15\9437FN-1.EC6
ENERCALC, INC. 1983-2015, Build:6.15.1.19, Ver:6.15.1.19

Lic. #: KW-06004631

Licensee: ISE, INC.

Description: Foundation Pier

Governing Load Combination Results

| Governing Factored Load Combination | Moment Source | | Dist. from base ft | Axial Load k | | | Bending Analysis k-ft | | | | | Utilization Ratio | | |
|-------------------------------------|---------------|-----|--------------------|--------------|--------|----------|-----------------------|------------------|------------|------------------|-------------|-------------------|-------------|-----------|
| | X-X | Y-Y | | Pu | ϕ | Pn | δx | $\delta x * Mux$ | δy | $\delta y * Muy$ | Alpha (deg) | | δMu | ϕMn |
| +1.40D | | | 24.83 | 99.65 | | 6,318.67 | | | | | 0.000 | | | 0.016 |
| +1.20D+0.50Lr+1.60L+1.60H | | | 24.83 | 85.41 | | 6,318.67 | | | | | 0.000 | | | 0.014 |
| +1.20D+1.60L+0.50S+1.60H | | | 24.83 | 85.41 | | 6,318.67 | | | | | 0.000 | | | 0.014 |
| +1.20D+1.60Lr+0.50L | | | 24.83 | 85.41 | | 6,318.67 | | | | | 0.000 | | | 0.014 |
| +1.20D+1.60Lr+0.80W | Actual | | 24.83 | 94.51 | 243.76 | 1.000 | -954.24 | | | 180.000 | 954.24 | 2,424.80 | | 0.394 |
| +1.20D+0.50L+1.60S | | | 24.83 | 85.41 | | 6,318.67 | | | | | 0.000 | | | 0.014 |
| +1.20D+1.60S+0.80W | Actual | | 24.83 | 94.51 | 243.76 | 1.000 | -954.24 | | | 180.000 | 954.24 | 2,424.80 | | 0.394 |
| +1.20D+0.50Lr+0.50L+1.60W | Actual | | 24.83 | 103.61 | 117.02 | 1.000 | -1,908.48 | | | 180.000 | 1,908.48 | 2,198.26 | | 0.868 |
| +1.20D+0.50L+0.50S+1.60W | Actual | | 24.83 | 103.61 | 117.02 | 1.000 | -1,908.48 | | | 180.000 | 1,908.48 | 2,198.26 | | 0.868 |
| +1.20D+0.50L+0.20S+E | | | 24.83 | 85.41 | | 6,318.67 | | | | | 0.000 | | | 0.014 |
| +0.90D+1.60W+1.60H | Actual | | 24.83 | 82.26 | 74.84 | 1.000 | -1,908.48 | | | 180.000 | 1,908.48 | 2,121.43 | | 0.900 |
| +0.90D+E+1.60H | | | 24.83 | 64.06 | | 6,318.67 | | | | | 0.000 | | | 0.010 |

Note: Only non-zero reactions are listed.

Maximum Reactions

| Load Combination | Reaction along X-X Axis | | Reaction along Y-Y Axis | | Axial Reaction @ Base |
|-----------------------------|-------------------------|-------|-------------------------|-------|-----------------------|
| | @ Base | @ Top | @ Base | @ Top | |
| D Only | | | | k | 71.177 k |
| +D+L+H | | | | k | 71.177 k |
| +D+Lr+H | | | | k | 71.177 k |
| +D+S+H | | | | k | 71.177 k |
| +D+0.750Lr+0.750L+H | | | | k | 71.177 k |
| +D+0.750L+0.750S+H | | | | k | 71.177 k |
| +D+W+H | 18.159 | | | k | 82.552 k |
| +D+0.70E+H | | | | k | 71.177 k |
| +D+0.750Lr+0.750L+0.750W+H | 13.619 | | | k | 79.708 k |
| +D+0.750L+0.750S+0.750W+H | 13.619 | | | k | 79.708 k |
| +D+0.750Lr+0.750L+0.5250E+H | | | | k | 71.177 k |
| +D+0.750L+0.750S+0.5250E+H | | | | k | 71.177 k |
| +0.60D+W+H | 18.159 | | | k | 54.081 k |
| +0.60D+0.70E+H | | | | k | 42.706 k |
| D Only | | | | k | 71.177 k |
| Lr Only | | | | k | k |
| L Only | | | | k | k |
| S Only | | | | k | k |
| W Only | 18.159 | | | k | 11.375 k |
| E Only | | | | k | k |
| H Only | | | | k | k |

Maximum Deflections for Load Combinations

| Load Combination | Max. X-X Deflection | | Max. Y-Y Deflection | |
|-----------------------------|---------------------|----------|---------------------|-----------|
| | Distance | Distance | Distance | Distance |
| D Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+L+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+Lr+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+S+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+0.750Lr+0.750L+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+0.750L+0.750S+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+W+H | 0.0000 in | 0.000 ft | 0.244 in | 25.000 ft |
| +D+0.70E+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+0.750Lr+0.750L+0.750W+H | 0.0000 in | 0.000 ft | 0.183 in | 25.000 ft |
| +D+0.750L+0.750S+0.750W+H | 0.0000 in | 0.000 ft | 0.183 in | 25.000 ft |
| +D+0.750Lr+0.750L+0.5250E+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +D+0.750L+0.750S+0.5250E+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| +0.60D+W+H | 0.0000 in | 0.000 ft | 0.244 in | 25.000 ft |
| +0.60D+0.70E+H | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| D Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| Lr Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| L Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| S Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |

Concrete Column

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ENERCALC, INC. 1983-2015, Build:6.15.1.19, Ver:6.15.1.19

Lic. #: KW-06004631

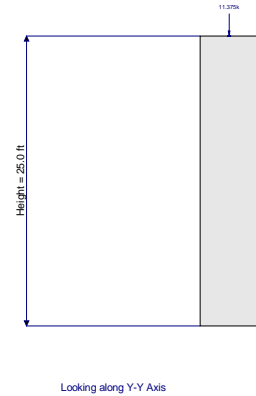
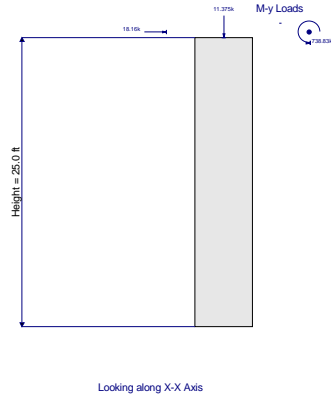
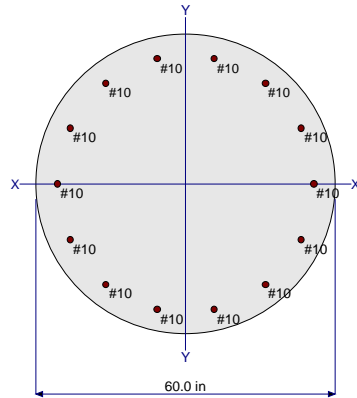
Licensee: ISE, INC.

Description: Foundation Pier

Maximum Deflections for Load Combinations

| Load Combination | Max. X-X Deflection | Distance | Max. Y-Y Deflection | Distance |
|------------------|---------------------|----------|---------------------|-----------|
| W Only | 0.0000 in | 0.000 ft | 0.244 in | 25.000 ft |
| E Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |
| H Only | 0.0000 in | 0.000 ft | 0.000 in | 0.000 ft |

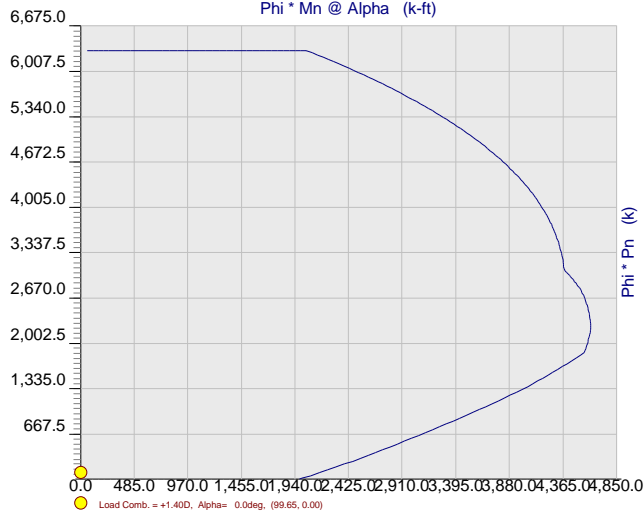
Sketches



Interaction Diagrams

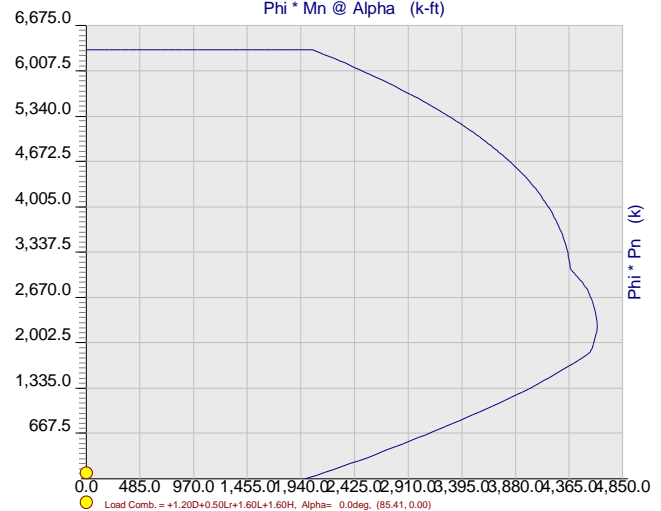
Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



Concrete Column

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ENERCALC, INC. 1983-2015, Build:6.15.1.19, Ver:6.15.1.19

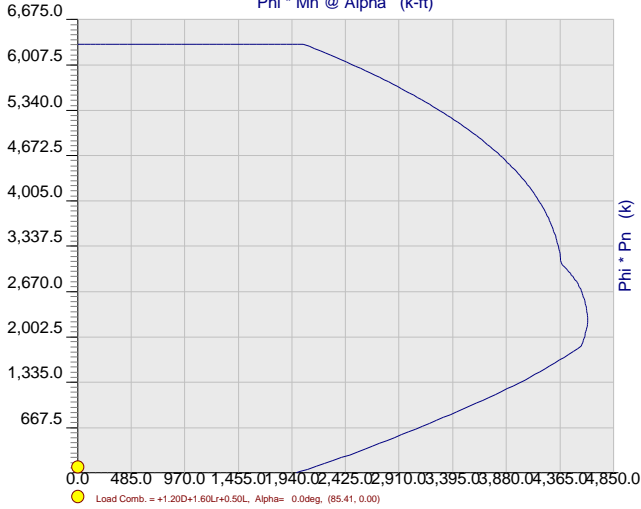
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Licensee: ISE, INC.

Description: Foundation Pier

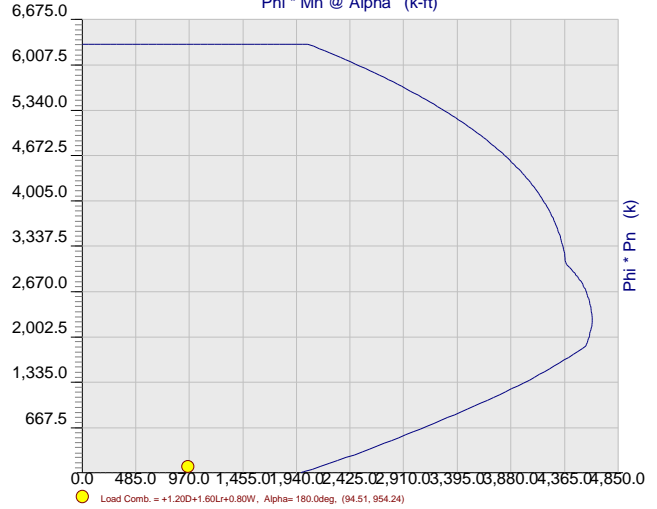
Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



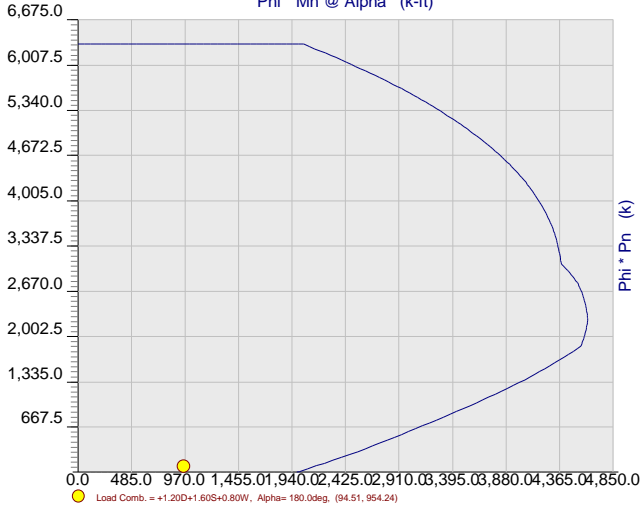
Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



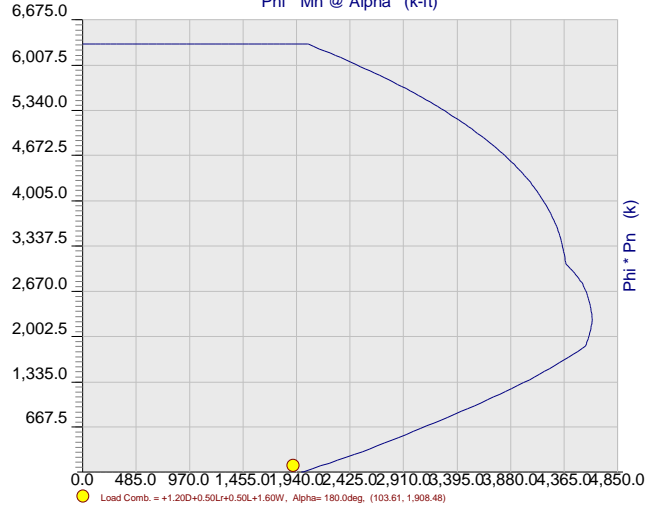
Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



Concrete Column

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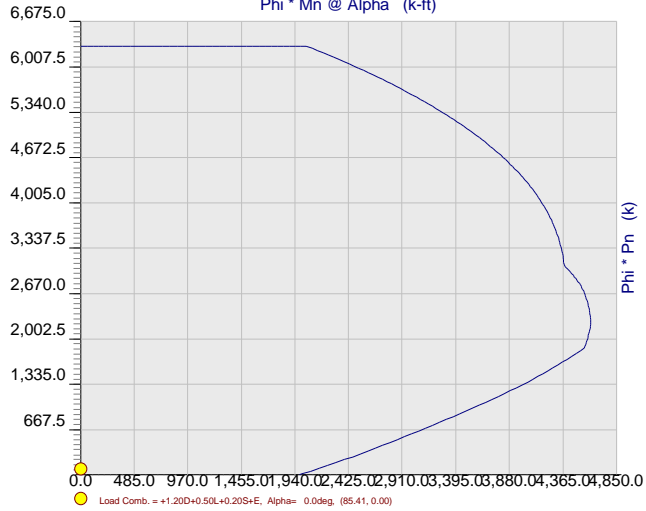
Lic. #: KW-06004631

Licensee: ISE, INC.

Description: Foundation Pier

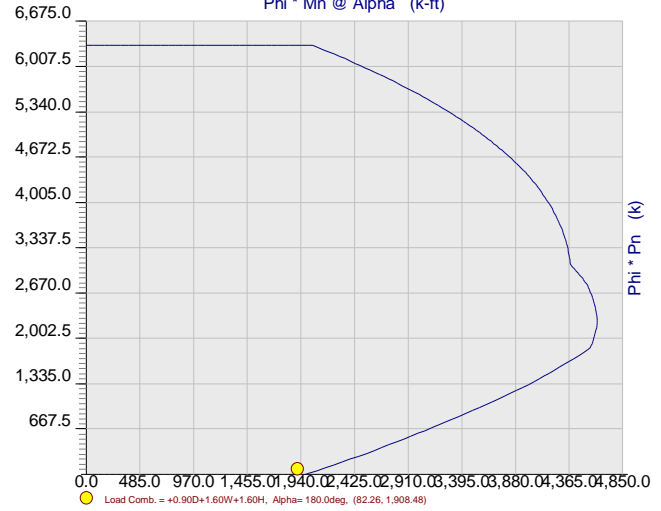
Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



Concrete Column P-M Interaction Diagram

Phi * Mn @ Alpha (k-ft)



LARSON CAMOUFLAGE

AT&T EG46 FOX HOLLOW 70' MONOPINE

4060 WEST AMAZON ROAD, EUGENE, OR 97405

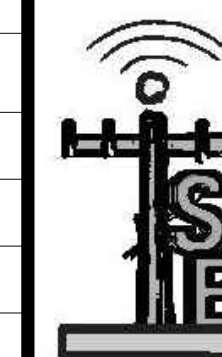
SHEET INDEX

| | |
|-----|------------------------------------|
| PF1 | PRODUCT INFORMATION & NOTES |
| PF2 | POLE DETAIL & FOUNDATION DETAIL(S) |
| PF3 | DETAILS |
| PF4 | MOUNT DETAILS |
| | |
| | |
| | |

LARSON CAMOUFLAGE

1501 South Euclid Avenue
Tucson, AZ 85713
(520) 294-3900
www.larsoncamo.com

LARSON JOB #: P15089



ISE Incorporated
Structural Engineers

P.O. BOX 50039
Phoenix, Arizona 85076
PHONE: 602-403-8614
www.ise-inc.biz

ISE JOB #: 9437

PROJECT INFORMATION

Date: June 11, 2015
ISE Job No. 9437 By: MN
Customer: Larson Camouflage
Product: 70' Mono Pine
Site ID: AT&T EG46 Fox Hollow

Location: 4060 West Amazon Road
Eugene, OR 97405

DESIGN CRITERION:

2012 IBC, 110 MPH Ultimate Wind Speed - Reducible per 1609.1.1-Exception 5
EIA/TIA-222-G (2006) 85 MPH Design Wind Speed (3-Sec Gust)
EXP C, Topo Category I, Tower Class II

POLE SPECIFICATIONS

Section Shape 18-Sided Tapered
Pipe Taper 0.2090 IN/FT
Pole Material ASTM A572-GR65
Base Plate ASTM A572-GR50
Anchor Bolts 2-1/4" x 84" Long, ASTM A615-75

| Pole Section | Length (ft.) | Weight (kips) | Tkns. (in.) | Lap Splice (in.) | Diameter | |
|--------------|--------------|---------------|-------------|------------------|-----------|-----------|
| | | | | | Top (in.) | Bot (in.) |
| 1 | 50.000 | 2.718 | 0.219 | 41.000 | 18.000 | 28.450 |
| 2 | 22.417 | 2.219 | 0.313 | | 27.298 | 31.983 |

Base Plate 0.812 2.500 45.75"Ø Round w/ 25.75" ID

EARTHQUAKE DESIGN DATA

IMPORTANCE FACTOR (I): 1
OCCUPANCY CATEGORY: 1

S_s = 0.762 S_{0.5} = 0.607
S₁ = 0.400 S₁ = 0.427

SEISMIC DESIGN CATEGORY: D
SITE CLASS: D
SEISMIC RESPONSE COEFFICIENT: 0.404
DESIGN BASE SHEAR: 33.924 KIPS (WIND)
RESPONSE MODIFICATION FACTOR (R): 1.50

ANALYSIS PROCEDURE USED EQUIVALENT LATERAL FORCE PROCEDURE

DESIGN LOADS (Unfactored Base Wind Reactions)

Moment = 900.939 Ft-Kips
Shear = 21.203 Kips
Axial = 14.346 Kips

DEFLECTIONS

| Elev. (ft.) | 60 MPH Wind | | 85 MPH Wind | |
|-------------|---------------|----------|---------------|----------|
| | Lateral (in.) | Sway (°) | Lateral (in.) | Sway (°) |
| Top | 11.884 | 1.298 | 42.750 | 4.672 |

APPURTENANCES

| Elevation (ft.) | (Qty) | Description |
|-----------------|-------|--|
| 15' to 70' | (193) | Assorted 4', 6', 8', & 10' Pine Branches |
| 65' | (3) | T-Arm Mount |
| 65' | (6) | 800-10892 Panel Antenna |
| 65' | (18) | RRH |
| 65' | (3) | Raycap Surge Suppressor |
| 55' | (3) | T-Arm Mount (Future) |
| 55' | (6) | 800-10892 Panel Antenna (Future) |
| 55' | (18) | RRH (Future) |
| 55' | (3) | Raycap Surge Suppressor (Future) |

GENERAL NOTES:

- ALL STEEL SHALL MEET THE REQUIREMENTS OF THE "STANDARD SPECIFICATIONS FOR STRUCTURAL STEEL" ASTM A36, UNLESS OTHERWISE NOTED ON THE STRUCTURAL PLANS OR BELOW.
- ALL ROUND STEEL PIPE SHALL MEET THE REQUIREMENTS OF ASTM A53 TYPE E OR S GRADE B (35 KSI YIELD POINT MATERIAL) OR ASTM A501 (36 KSI YIELD POINT MATERIAL).
- ALL TUBE STEEL (SQUARE OR RECTANGULAR) SHALL MEET THE REQUIREMENTS OF ASTM A500 GRADE B (46 KSI YIELD POINT MATERIAL).
- ALL POLYGON FORMED STEEL SHAFTS SHALL MEET THE REQUIREMENTS OF ASTM A572 GRADE 65 (65 KSI YIELD POINT MATERIAL).
- ALL WELDED CONNECTIONS SHALL CONFORM TO THE LATEST VERSION OF THE AMERICAN WELDING SOCIETY AWS 01.1 CODE. ALL WELD ELECTRODES OR WIRE SHALL AT A MINIMUM CONFORM TO E70 ELECTRODES (70 KSI YIELD).
- ALL STEEL SHAPES AND PLATES SHALL BE HOT-DIPPED GALVANIZED ACCORDING TO ASTM A123. ALL STEEL NUTS AND BOLTS AND ASSOCIATED HARDWARE SHALL BE HOT-DIPPED ACCORDING TO ASTM A153.
- WIND TESTING OF PINE TREE BRANCHES HAS BEEN COMPLETED BY THE SUPPLIER OF THE BRANCHES, LARSON CAMOUFLAGE. LARSON CAMOUFLAGE HAS VERIFIED THE STRENGTH OF THE BRANCHES THROUGH FULL SCALE WIND TESTING. THE WIND AREA USED IN THE CALCULATIONS IS BASED ON THE WIND TEST DATA. THE CALCULATION ACCOUNT FOR PINE TREE BRANCHES ATTACHED AT THE TOP OF THE MONOPOLE. ISE INC. HAS REVIEWED AND APPROVED THE WIND TEST METHODS.
- THE MAIN MONOPOLE STRUCTURE SHALL BE FABRICATED BY A JURISDICTION CERTIFIED FABRICATOR OF CONVENTIONAL STEEL STRUCTURES.
- SPECIAL INSPECTION SHALL BE PERFORMED ACCORDING TO SECTION 1704 OF THE IBC 2012 REFER TO TABLE "SUMMARY OF SPECIAL INSPECTION" ON THIS SHEET.
- IT IS THE CONTRACTORS SOLE RESPONSIBILITY TO NOTIFY THE SPECIAL INSPECTOR OR INSPECTION AGENCY (OR THE INSPECTING GEOTECHNICAL ENGINEER) AT LEAST ONE WORKING DAY PRIOR TO PERFORMING ANY WORK THAT REQUIRES SPECIAL INSPECTION. PER THE IBC 2012 ANY WORK THAT REQUIRES SPECIAL INSPECTION THAT IS INSTALLED OR COVERED WITHOUT THE APPROVAL OF THE SPECIAL INSPECTION IS SUBJECT TO REMOVAL.
- THE LIST OF SPECIAL INSPECTIONS IS IN ADDITION TO INSPECTIONS REQUIRED BY SECTION 110 OF THE IBC 2012. SPECIAL INSPECTION IS NOT A SUBSTITUTION FOR INSPECTION BY A CITY INSPECTOR.
- THE SPECIAL INSPECTOR SHALL BE APPROVED BY THE LOCAL JURISDICTION TO PERFORM THE TYPES OF INSPECTION REQUIRED.
- CONTINUOUS INSPECTION IS ALWAYS REQUIRED DURING THE PERFORMANCE OF THE WORK UNLESS OTHERWISE SPECIFIED.
- ANY SUPPORT SERVICE PERFORMED BY THE ENGINEER OF RECORD DURING CONSTRUCTION SHALL BE DISTINGUISHED FROM CONTINUOUS AND DETAILED INSPECTION SERVICES, WHICH ARE FURNISHED BY OTHERS. THESE SUPPORT SERVICES PERFORMED BY THE ENGINEER OF RECORD ARE ONLY FOR THE PURPOSE OF ASSISTING IN THE QUALITY CONTROL AND IN ACHIEVING CONFORMANCE WITH THE CONTRACT DOCUMENTS. THIS SUPPORT DOES NOT GUARANTEE THE CONTRACTOR'S PERFORMANCE AND SHALL NOT BE CONSTRUED AS SUPERVISION OF CONSTRUCTION.
- THE ANTENNA MOUNT SHALL BE FABRICATED BY LARSON CAMOUFLAGE, LLC. OR AN APPROVED FABRICATOR OF CONVENTIONAL STEEL STRUCTURES.

FOUNDATION NOTES:

- THE GEOTECHNICAL ENGINEER (OR THE APPROPRIATE INSPECTOR) SHALL INSPECT THE EXCAVATION PRIOR TO PLACING REINFORCING STEEL OR FORMS. THE GEOTECHNICAL ENGINEER (OR INSPECTOR) SHALL PROVIDE A NOTICE OF INSPECTION FOR THE BUILDING INSPECTOR FOR REVIEW AND RECORDS PURPOSE.
- THE CONTRACTOR SHALL DETERMINE THE MEANS AND METHODS TO SUPPORT THE EXCAVATION DURING CONSTRUCTION. REFER TO THE GEOTECHNICAL REPORT FOR RECOMMENDATIONS.
- THE CONTRACTOR SHALL READ THE GEOTECHNICAL REPORT AND SHALL CONSULT THE GEOTECHNICAL ENGINEER AS NECESSARY PRIOR TO CONSTRUCTION.
- FOUNDATION DESIGN PER GEOTECHNICAL REPORT:
PREPARED BY: Adapt Engineering
PROJECT NO.: OR13-18613-GEO
DATE: December 2, 2013
- ALL FOUNDATION CONCRETE SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH F_c = 4000 PSI AT 28 DAYS. CONCRETE MIX SHALL BE DESIGNED BY AN APPROVED LABORATORY. CONCRETE SHALL HAVE A MAXIMUM WATER/CEMENT RATIO OF 0.45. ALL CONCRETE CONSTRUCTION SHALL BE IN ACCORDANCE WITH ACI 318. "THE BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE", LATEST EDITION. CEMENT SHALL BE TYPE I/II, CONFORMING TO ASTM C-150. ALL AGGREGATE USED IN THE CONCRETE SHALL CONFORM TO ASTM C-33. MAXIMUM AGGREGATE SIZE TO BE 1 1/2". SLUMP 4" - 6".
- CAISSON FOUNDATION INSTALLATION SHALL BE IN ACCORDANCE WITH ACI 336, "STANDARD SPECIFICATIONS FOR THE CONSTRUCTION OF DRILLED PIERS", LATEST EDITION. MAT/PIER FOUNDATION INSTALLATION SHALL BE IN ACCORDANCE WITH ACI 318 LATEST EDITION. CONCRETE CYLINDERS SHALL BE MADE AND TESTED. A MINIMUM OF ONE (1) SET SHALL BE TAKEN FROM CONCRETE IN FOUNDATION. EACH SET SHALL CONSIST OF FOUR (4) CYLINDERS. ONE SHALL BE TESTED AT (7) DAYS, TWO SHALL BE TESTED AT TWENTY EIGHT (28) DAYS AND THE LAST CYLINDER SHALL BE A HOLD. ALL CYLINDERS SHALL BE TAKEN, PREPARED AND TESTED BY A TESTING LAB IN ACCORDANCE WITH ASTM STANDARDS C172, C31 AND C39.
- ALL REINFORCING STEEL SHALL CONFORM TO ASTM A615. VERTICAL BARS SHALL BE GRADE 60, AND TIES OR STIRRUPS SHALL BE A MINIMUM OF GRADE 40. THE PLACEMENT OF ALL REINFORCEMENT SHALL CONFORM TO ACI 315, "MANUAL OF STANDARD PRACTICE FOR DETAILING REINFORCED CONCRETE STRUCTURES", LATEST EDITION, UNLESS OTHERWISE DETAILED ON THIS SHEET.
- ESTIMATED CONCRETE VOLUME =
PIER: 18.18
MAT: N/A
- THE FOUNDATION HAS BEEN DESIGNED TO RESIST THE FOLLOWING FACTORED LOADS:
MOMENT = 1462.625 FT-KIPS, SHEAR = 33.924 KIPS, AXIAL = 17.696 KIPS
- SPECIAL INSPECTION REQUIRED PER TABLE "SUMMARY OF SPECIAL INSPECTION"

ERECTION NOTES:

- ALL ANTENNA COAXIAL CABLES SHALL BE RUN INSIDE THE MONOPOLE SHAFT.
- THE CONTRACTOR SHALL INSTALL THE ANTENNA AND MOUNT AS REQUIRED BY THE OWNER.
- ALL ANCHOR BOLT NUTS SHALL BE TIGHTENED TO AISC SNUG TIGHT REQUIREMENTS. THE SNUG TIGHT CONDITION IS DEFINED AS THE TIGHTNESS THAT EXISTS WHEN ALL PLIES IN A JOINT ARE IN FIRM CONTACT. THIS MAY BE ATTAINED BY A FEW IMPACTS OF AN IMPACT WRENCH OR THE FULL EFFORT OF A MAN USING AN ORDINARY SPUD WRENCH.
- ALL GALVANIZED SURFACES THAT ARE DAMAGED BY ABRASIONS, CUTS, DRILLING OR FIELD WELDING DURING SHIPPING OR ERECTION SHALL BE TOUCHED UP WITH TWO COATS OF A COLD GALVANIZING COMPOUND MEETING THE REQUIREMENTS OF ASTM A780.
- THE ANCHOR BOLT TEMPLATES AND BASE PLATE WILL TYPICALLY HAVE AN AZIMUTH WELDED OR A NOTCH INDICATING THE CORRECT ORIENTATION OF THE ANCHOR BOLTS. THIS IS NECESSARY TO PROPERLY ORIENT THE MONOPOLE EXIT PORTS.
- SLIP JOINT IS A FRICTION CONNECTION THAT WILL TRANSFER DESIGN FORCES WHEN THE SPECIFIED OVERLAP IS ACHIEVED. ASSEMBLY CONTRACTOR SHALL BE EXPERIENCED AND FAMILIAR WITH TAPERED POLE ASSEMBLY. CONTRACTOR SHALL CONSPICUOUSLY MARK THE LOWER POLE SECTION FOR THE MAXIMUM, DESIGN, AND MINIMUM OVERLAP DISTANCES. CONTRACTOR SHALL SLIDE SECTIONS TOGETHER AND APPLY FORCES THROUGH JACKING OR END RAM TO ACHIEVE THE DESIGN OVERLAP.
- ALL SLIP SPLICES SHALL BE JACKED TO WITHIN THE SLIP SPLICE DESIGN CRITERIA AS SHOWN ON THESE DRAWINGS. IF THE DESIGN SPLICE CANNOT BE ATTAINED ISE INC. SHALL BE CONTACTED.
- ALL A36 THREADED ROD AND U-BOLTS SHALL BE TIGHTENED TO AISC SNUG REQUIREMENTS. THE SNUG TIGHT CONDITION IS DEFINED AS THE TIGHTNESS THAT EXIST WHEN ALL PLIES IN A JOINT ARE IN FIRM CONTACT. THIS MAY BE ATTAINED BY A FEW IMPACTS OF AN IMPACT WRENCH OR THE FULL EFFORT OF A MAN USING AN ORDINARY SPUD WRENCH. A36 NUTS AND BOLTS TIGHTENING DO NOT REQUIRE SPECIAL INSPECTION.
- ANTENNA MOUNT SHALL NOT BE USED AS A CLIMBING DEVICE. WORKERS SHALL ALWAYS TIE OFF TO A SPECIFIED CLIMBING POINT.

SUMMARY OF SPECIAL INSPECTIONS

| NO. | DESCRIPTION OF TYPE OF INSPECTION REQUIRED, LOCATION, REMARKS, ETC | CONTINUOUS / PERIODIC |
|-----|--|-----------------------|
| 1). | FOUNDATION CONSTRUCTION: | |
| A. | - GEOTECHNICAL ENGINEER OF RECORD MAY SERVE AS THE SPECIAL INSPECTOR FOR THE FOUNDATION CONSTRUCTION. | |
| B. | - SHALL VERIFY THE DIAMETER, DEPTH AND QUALITY OF EXCAVATION PRIOR TO THE CONCRETE PLACEMENT. | PERIODIC |
| C. | - SHALL VERIFY THE ON SITE SOILS ARE AS DETERMINED IN THE SOILS REPORT. | PERIODIC |
| 2). | CAST IN PLACE CONCRETE (FOUNDATION): | |
| A. | - REINFORCING CAGE SHALL BE INSPECTED TO ENSURE THAT THE PROPER GEOMETRY, SIZE, LENGTH, QUANTITY AND GRADE MATERIAL ARE USED. | PERIODIC |
| B. | - ALL CONCRETE SHALL BE AS SPECIFIED BY ACI-318, LATEST EDITION TO ENSURE THE COMPRESSIVE STRENGTH IS ATTAINED AS DESCRIBED IN THE FOUNDATION NOTES. | |
| C. | - CONTINUOUS INSPECTION IS REQUIRED DURING THE CONCRETE PLACEMENT. | CONTINUOUS |
| 3). | ANCHOR BOLTS INSTALLED IN CONCRETE: | |
| | - PLACEMENT SHALL BE ORIENTED ON PROPER BOLT CIRCLE AS SHOWN ON THE STRUCTURAL PLANS, WITH TOP AND BOTTOM TEMPLATES INSTALLED. | PERIODIC |
| | - SHALL BE PLUMB. | PERIODIC |
| | - SHALL HAVE A MINIMUM EMBEDMENT OF 6" INTO FOUNDATION (12" MAXIMUM PROJECTION). | PERIODIC |
| | - SHALL BE TIGHTENED TO SNUG TIGHT CONDITION PER AISC STEEL MANUAL OF STEEL CONSTRUCTION. | PERIODIC |

AT&T EG46 FOX HOLLOW
70' MONOPINE

PRODUCT INFORMATION & NOTES

4060 WEST AMAZON ROAD, EUGENE, OR 97405

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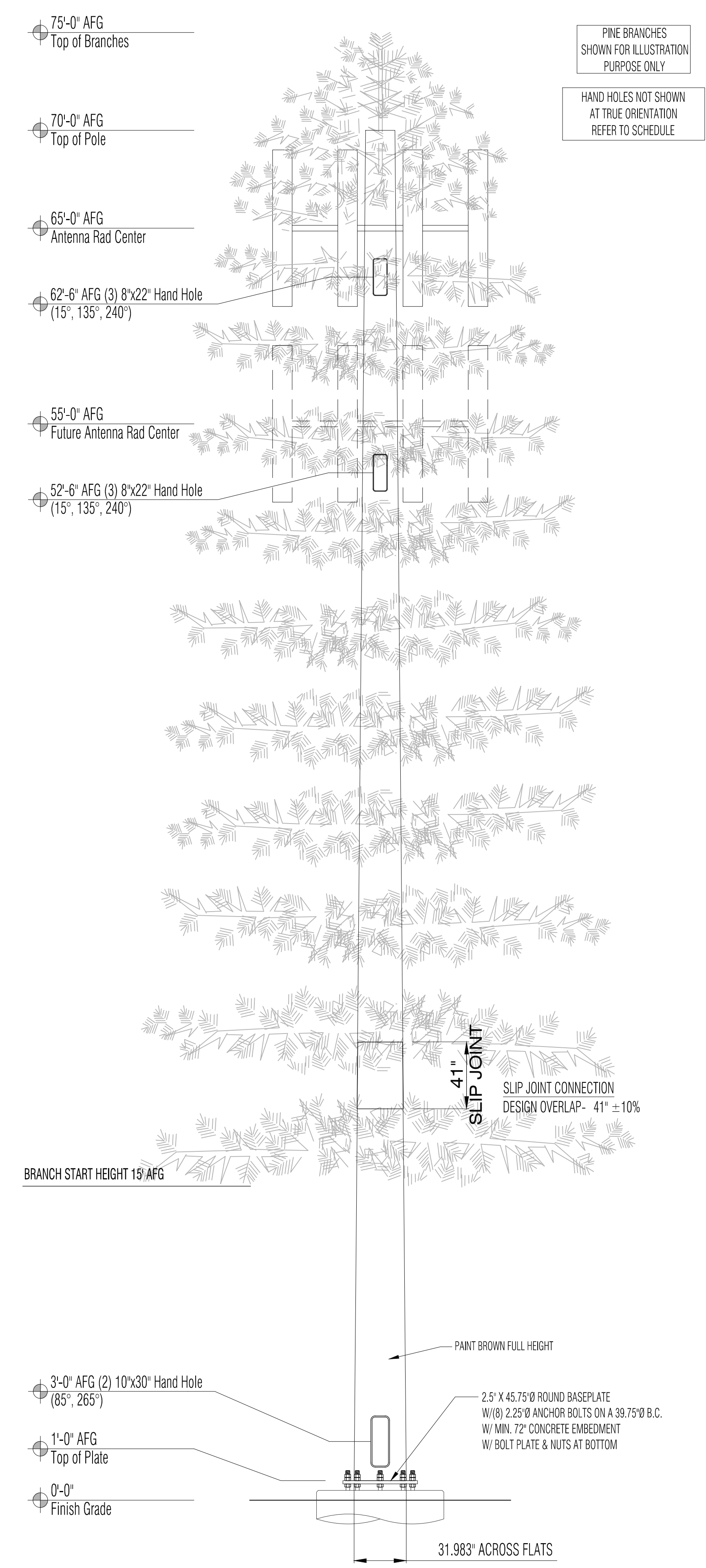
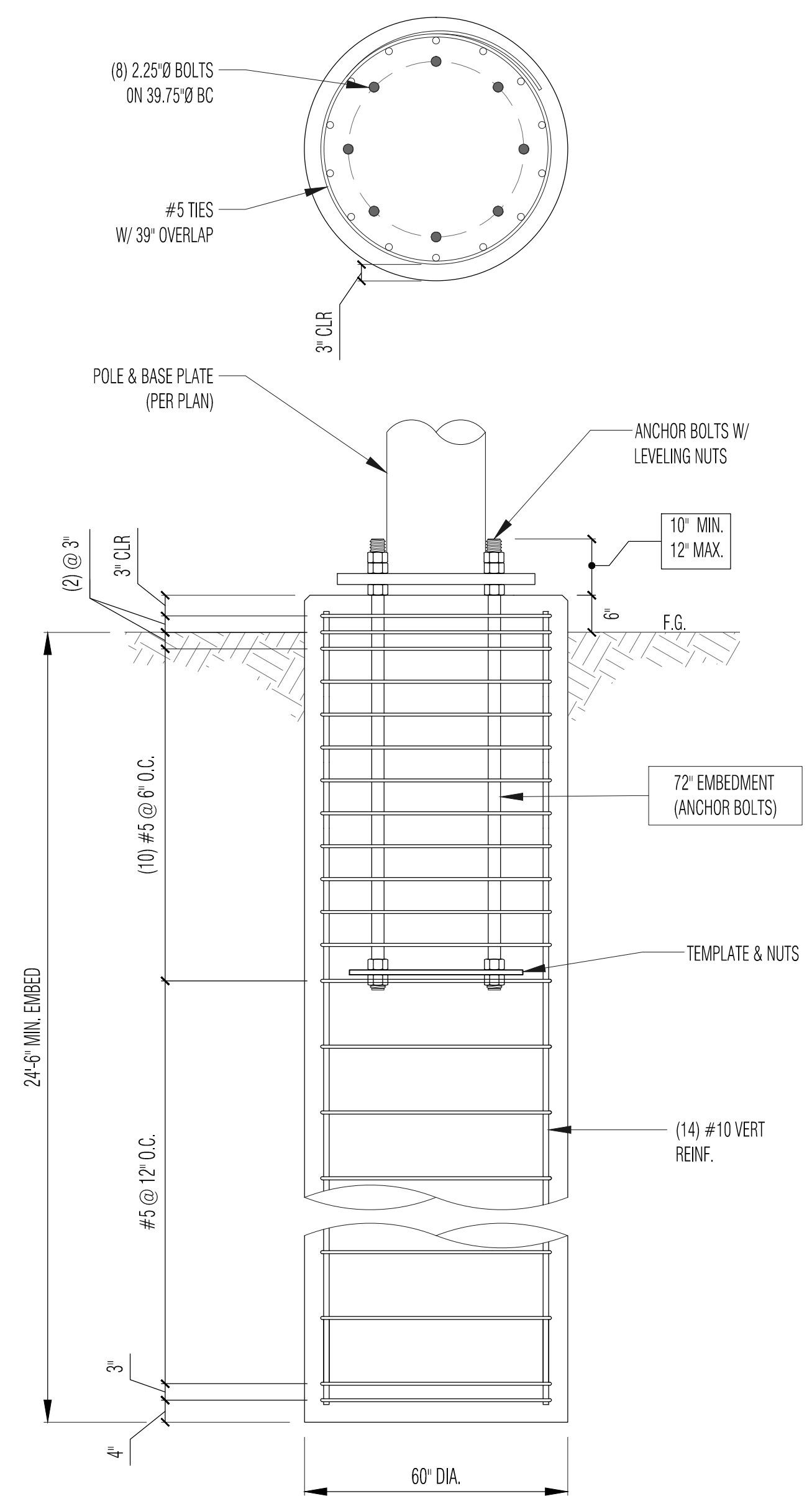
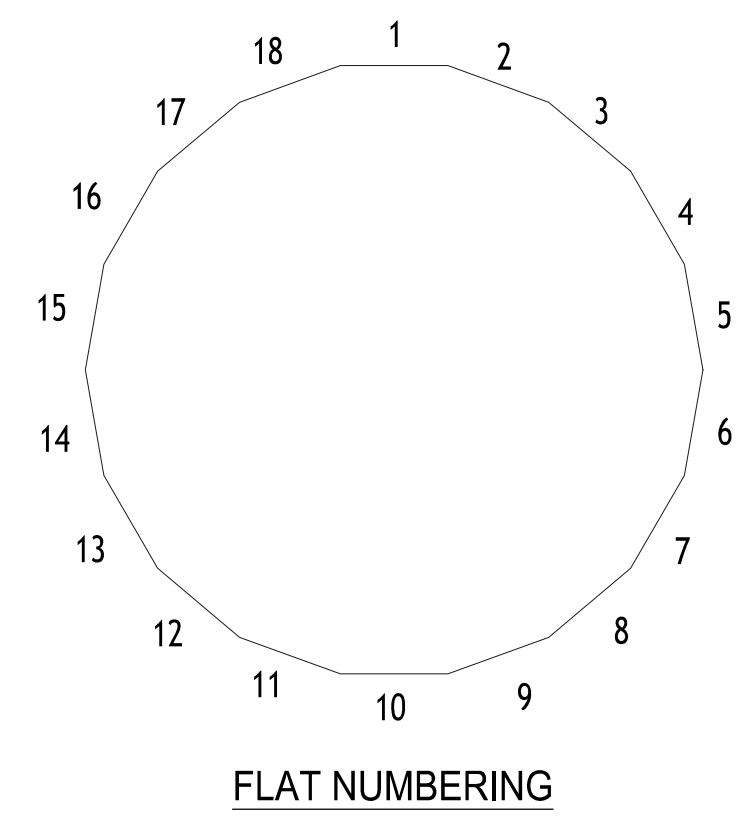
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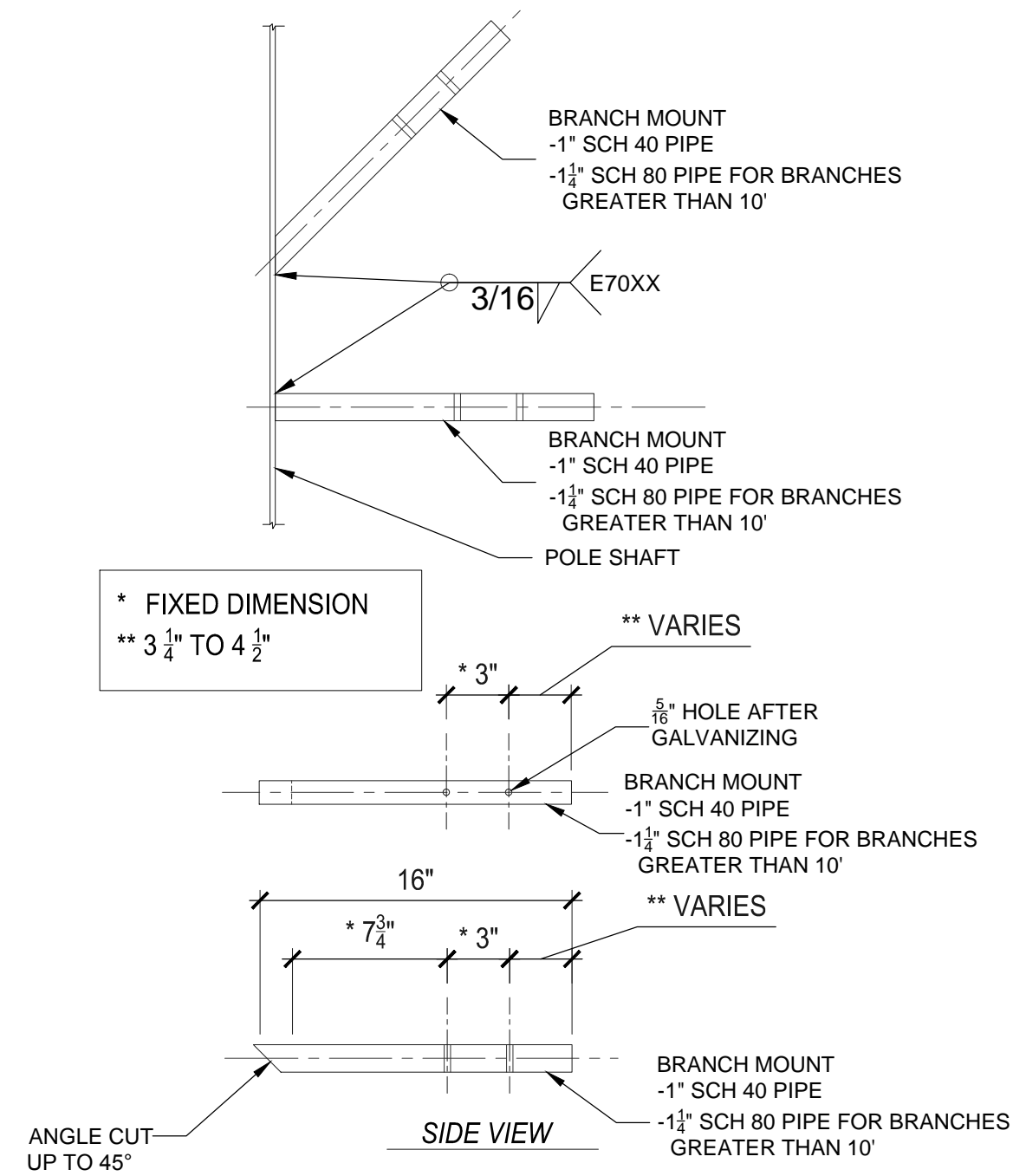
| DATE | ISSUED TO | BY |
|-----------|------------------|----|
| 0 6/11/15 | ISSUED TO CLIENT | MN |

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|---------------|----------|
| SHEET NUMBER | PROGRESS |
| PF1 | 0 |
| DRAWING DATE | |
| June 11, 2015 | |

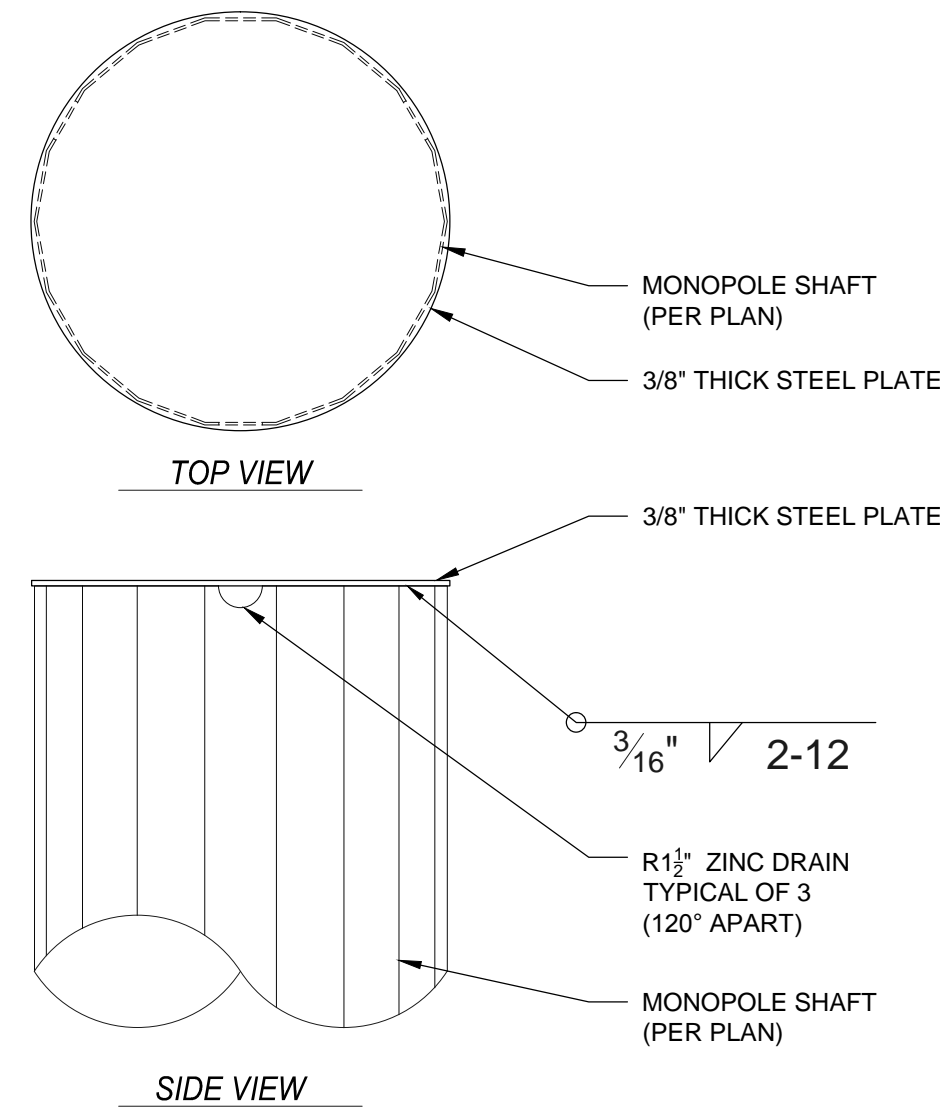
Top Plate: two 4' branches and one 5' branch

| 11 | 9 | 10 | 8 | 12 | 6 | 9 | 10 | 8 | 10 | 9 | 7 | 11 | 10 | 9 | 8 | 14 | 171 | | |
|----|-----|-----|-----|-----|------|------|------|------|------|------|------|------|------|------|------|------|------|----------------|-------|
| 1 | 202 | 403 | 604 | 805 | 1006 | 1207 | 1408 | 1609 | 1810 | 2011 | 2212 | 2413 | 2614 | 2815 | 3016 | 3217 | 3418 | Dist. From Top | MOUNT |
| | | | | | | | | | | | | | | | | | | 1" | 80 |
| | | | | | | | | | | | | | | | | | | 1'-6" | 80 |
| | | | | | | | | | | | | | | | | | | 2" | 70 |
| | | | | | | | | | | | | | | | | | | 2'-6" | 70 |
| | | | | | | | | | | | | | | | | | | 3" | 80 |
| | | | | | | | | | | | | | | | | | | 3'-8" | 80 |
| | | | | | | | | | | | | | | | | | | 4" | MOUNT |
| | | | | | | | | | | | | | | | | | | 4'-6" | MOUNT |
| | | | | | | | | | | | | | | | | | | 5" | 90 |
| | | | | | | | | | | | | | | | | | | 6" | 90 |
| | | | | | | | | | | | | | | | | | | 6'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 7" | 90 |
| | | | | | | | | | | | | | | | | | | 7'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 8" | 90 |
| | | | | | | | | | | | | | | | | | | 8'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 9" | 90 |
| | | | | | | | | | | | | | | | | | | 9'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 10" | 90 |
| | | | | | | | | | | | | | | | | | | 10'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 11" | 90 |
| | | | | | | | | | | | | | | | | | | 11'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 12" | 90 |
| | | | | | | | | | | | | | | | | | | 12'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 13" | 90 |
| | | | | | | | | | | | | | | | | | | 13'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 14" | 90 |
| | | | | | | | | | | | | | | | | | | 14'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 15" | 90 |
| | | | | | | | | | | | | | | | | | | 15'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 16" | 90 |
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| | | | | | | | | | | | | | | | | | | 20" | 90 |
| | | | | | | | | | | | | | | | | | | 20'-6" | 90 |
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| | | | | | | | | | | | | | | | | | | 25" | 90 |
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| | | | | | | | | | | | | | | | | | | 27" | 90 |
| | | | | | | | | | | | | | | | | | | 27'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 28" | 90 |
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| | | | | | | | | | | | | | | | | | | 33'-6" | 90 |
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| | | | | | | | | | | | | | | | | | | 34'-6" | 90 |
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| | | | | | | | | | | | | | | | | | | 35'-6" | 90 |
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| | | | | | | | | | | | | | | | | | | 38" | 90 |
| | | | | | | | | | | | | | | | | | | 38'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 39" | 90 |
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| | | | | | | | | | | | | | | | | | | 40" | 90 |
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| | | | | | | | | | | | | | | | | | | 42" | 90 |
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| | | | | | | | | | | | | | | | | | | 52" | 90 |
| | | | | | | | | | | | | | | | | | | 52'-6" | 90 |
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| | | | | | | | | | | | | | | | | | | 53'-6" | 90 |
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| | | | | | | | | | | | | | | | | | | 54'-6" | 90 |
| | | | | | | | | | | | | | | | | | | 55" | 90 |





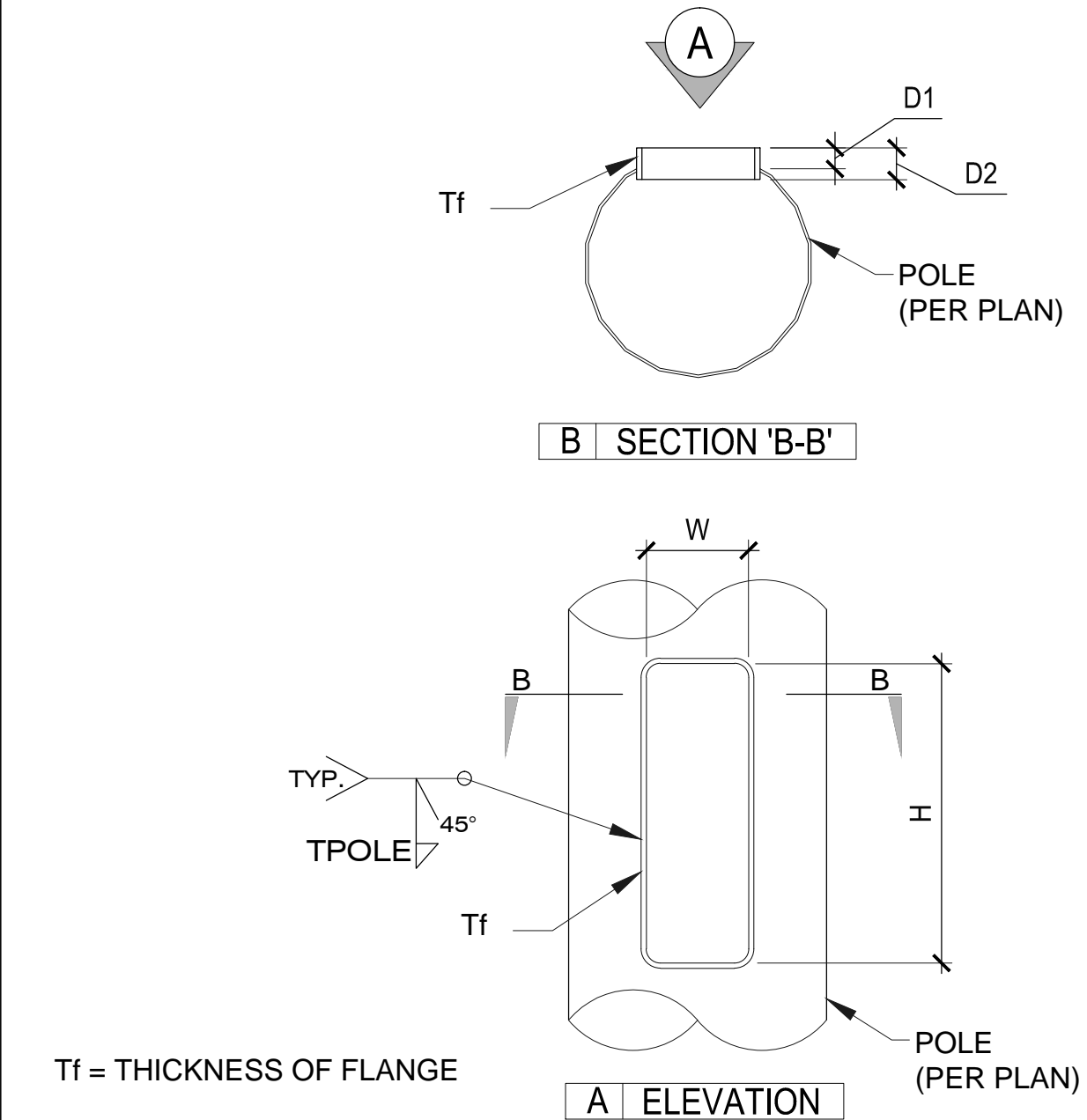
7 BRANCH RECEIVER DETAIL (TYP) SCALE: N.T.S.



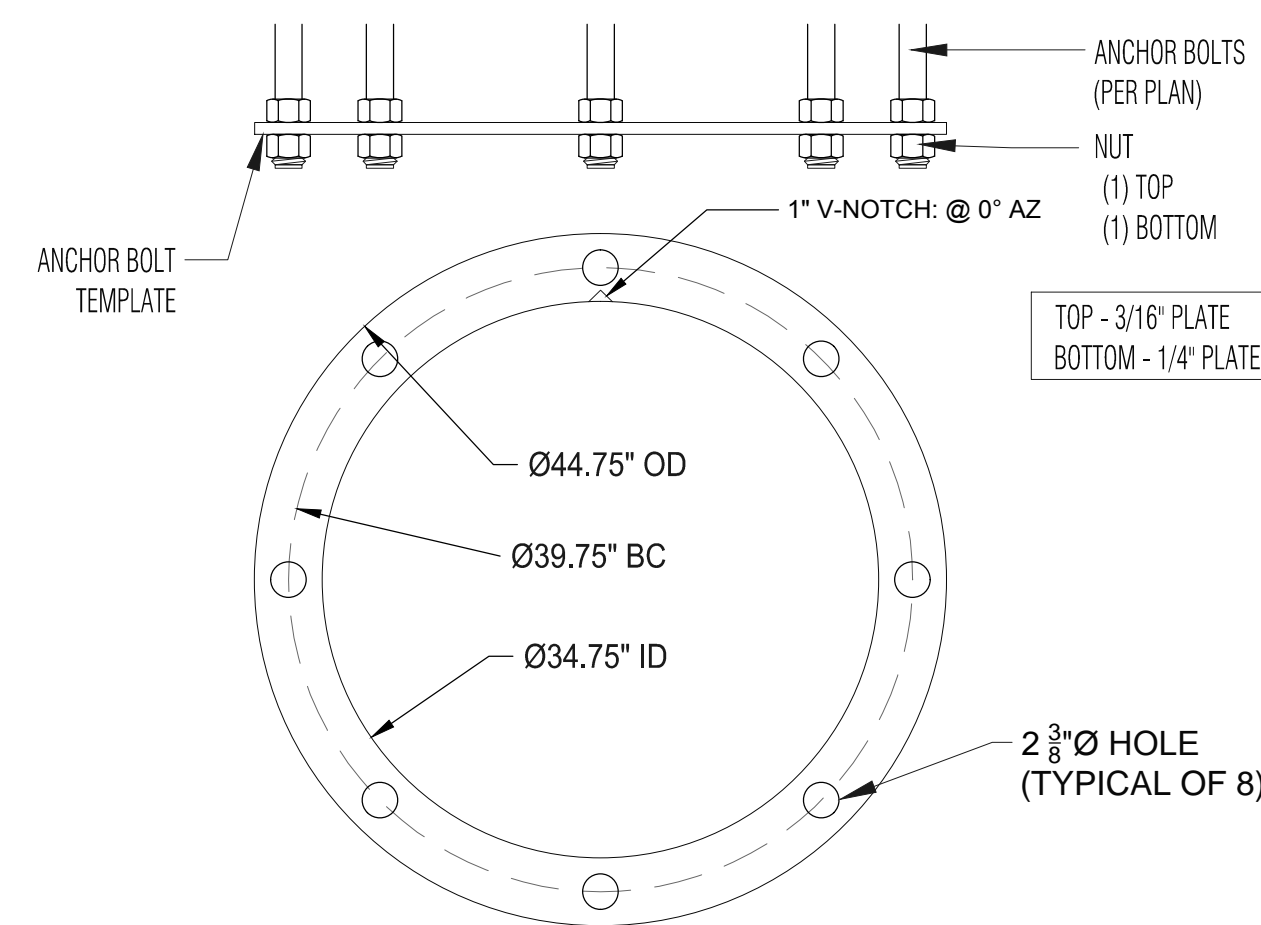
4 TOP PLATE DETAIL SCALE: N.T.S.

COAX HAND/ACCESS HOLE SCHEDULE

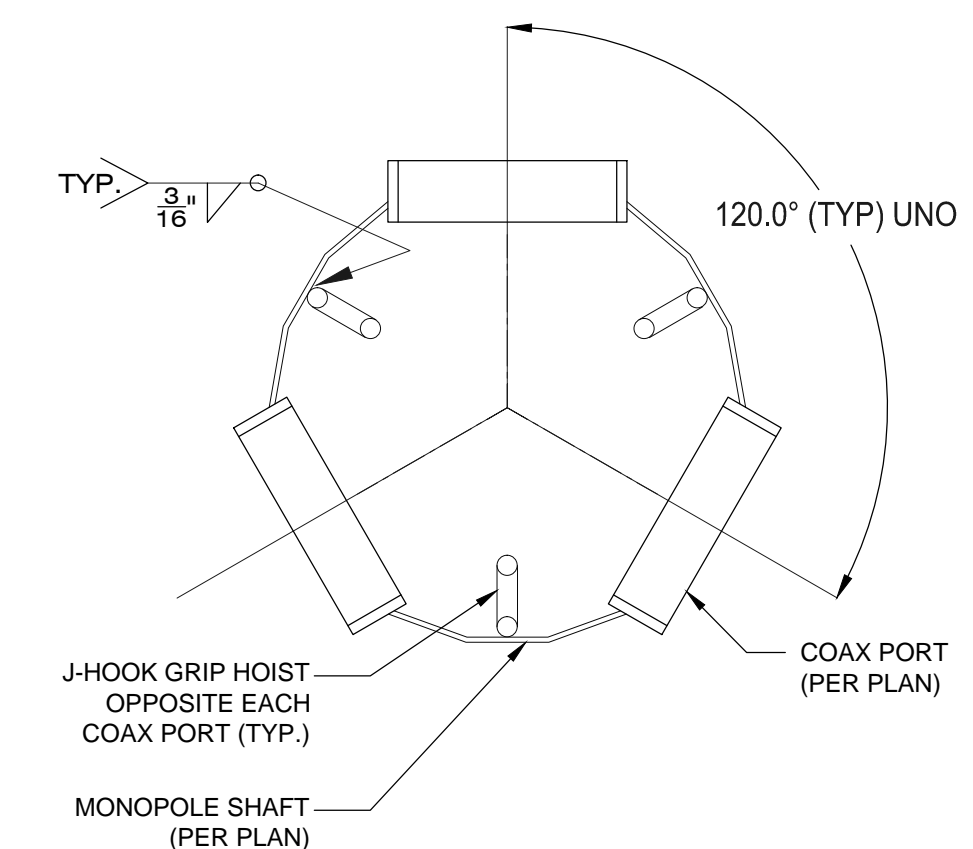
| ELEV (AFG) | QTY | W (IN) | H (IN) | AZIMUTH | D1 (IN) | D2 (IN) | Tf (IN) |
|------------|-----|--------|--------|-----------------|---------|---------|---------|
| 62'-6" | 3 | 8 | 22 | 15°, 135°, 240° | 1 1/2 | 2 1/4 | 3/8 |
| 52'-6" | 3 | 8 | 22 | 15°, 135°, 240° | 1 1/2 | 2 1/4 | 3/8 |
| 3'-0" | 2 | 10 | 30 | 85°, 265° | 2 1/2 | 4 1/2 | 1 |



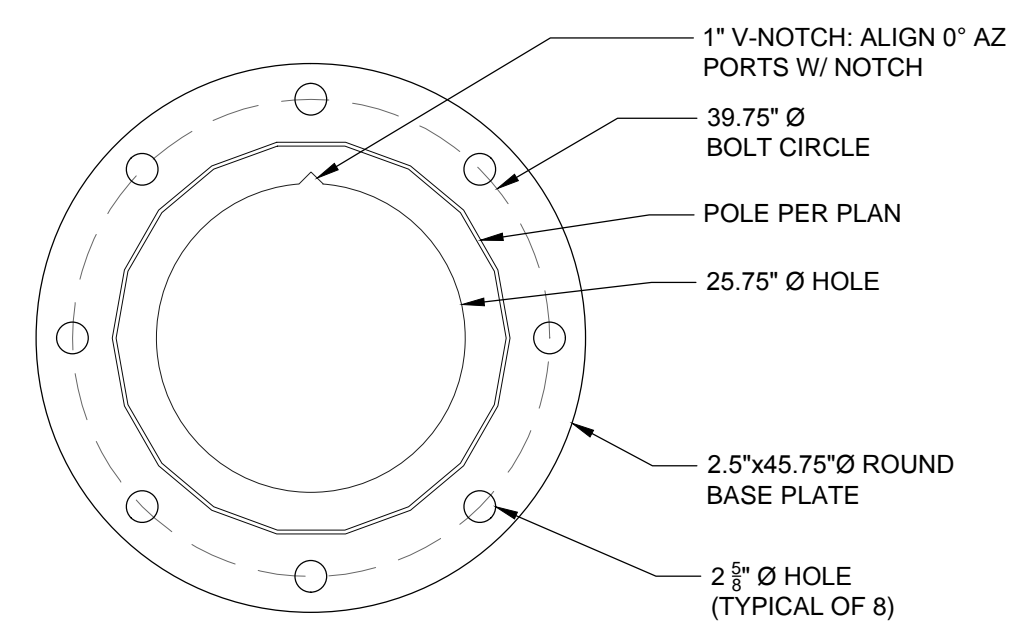
1 COAX HAND HOLE DETAILS SCALE: N.T.S.



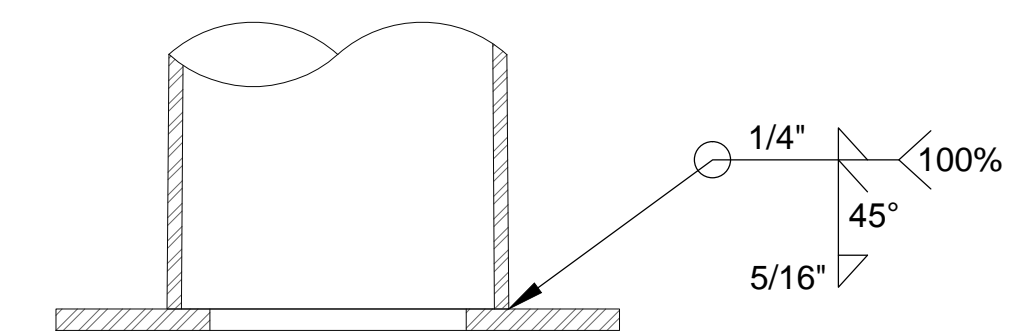
5 ANCHOR BOLT TEMPLATE SCALE: N.T.S.



2 J-HOOK INSIDE POLE AT COAX PORTS SCALE: N.T.S.



6 BASE PLATE DETAIL SCALE: N.T.S.



3 POLE / BASE PLATE CONNECTION SCALE: N.T.S.

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REGISTERED PROFESSIONAL ENGINEER
 74180-E
 LARSON
 JAN. 13, 2004
 GLEN L. HUNT, III
 EXPIRES 6-30-15 6/11/15

PROGRESS LOG

| DATE | ISSUED TO | BY |
|-----------|------------------|----|
| 0 6/11/15 | ISSUED TO CLIENT | MN |

SHEET NUMBER **PF3** PROGRESS **0**

DRAWING DATE **June 11, 2015**

AGENDA

EUGENE HEARINGS OFFICIAL



Council Chambers, City Hall, 777 Pearl Street, Eugene, OR 97401

Phone: (541) 682-5377

Web site: www.eugene-or.gov

The Eugene Hearings Official welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice. To arrange for these services, contact the receptionist at (541)682-5481.

WEDNESDAY, June 15, 2011

(5:30 p.m.)

I. PUBLIC HEARING ON CONDITIONAL USE PERMIT REQUEST

AT & T Mobility Cell Tower - Oakway Golf Course (CU 11-1 & PDT 10-2)

Assessors Map: 17-03-20-32

Tax Lot: 4200

Location: 2000 Cal Young Road

Request: Conditional Use Permit approval for a portion of the golf course to be developed as a telecommunication facility.

Applicant: AT & T

Applicant's Representative: Brian DeMarco, Technology Associates/AT & T

Lead City Staff: Steve Ochs, Associate Planner
Telephone: (541) 682-5453
E-mail: steve.p.ochs@ci.eugene.or.us

Public Hearing Format:

1. Staff introduction/presentation
2. Public testimony from applicant and others in support of application.
3. Comments or questions from interested persons who neither are proponents nor opponents of the proposal.
4. Public testimony from those in opposition to application.
5. Staff response to testimony.
6. Questions from Hearings Official.
7. Rebuttal testimony from applicant.
8. Closing of public hearing.

The Hearings Official will not make a decision at this hearing. The Eugene Code requires that a written decision must be made within 15 days of close of the public comment period. To be notified of the Hearings Official's decision, fill out a request form at the public hearing or contact the lead City staff as noted above. The decision will also be posted at www.eugene-or.us/hearingsofficial.



City of Eugene
99 West 10th Avenue
Eugene, OR 97401
(541) 682-5377
(541) 682-5572 FAX
www.eugene-or.gov

PLANNED UNIT DEVELOPMENT AND CONDITIONAL USE PERMIT STAFF REPORT

Application File Name (Number):

AT & T Mobility Cell Tower – Oakway Golf Course (PDT 10-2 & CU 11-1)

Applicant's Request:

Tentative Planned Unit Development and Conditional Use Permit approval for the installation of a new wireless telecommunication tower facility and ground-mounted equipment shelter on a privately owned golf course.

Applicant/Owner

Technology Associates / AT & T Mobility

Subject Property/Location:

Tax Lot 4200 of Assessor's Map 17-03-20-32; Located on Oakway Golf Course, 2000 Cal Young Road.

Relevant Dates:

PUD application submitted on July 29, 2010; application deemed complete on November 16, 2010; PUD application put on hold and timeline extended. CUP application submitted January 27, 2011; application deemed complete April 21, 2011; public hearing for concurrent applications scheduled for June 15, 2011.

Applicant's Representative:

Konrad Hyle, Technology Associates/AT & T, Phone: (503) 549-0001

Lead City Staff:

Steve Ochs, Associate Planner, Eugene Planning Division, Phone: (541) 682-5453

Description of Planned Unit Development Request:

The applicant requests tentative Planned Unit Development (PUD) and Conditional Use Permit (CUP) approval to install a new wireless telecommunication tower facility and ground-mounted equipment shelter on a privately owned golf course (Oakway Golf Course) which is zoned R-1/PD, Low Density Residential with the Planned Unit Development Overlay. The applicant is proposing to construct a 75-foot monopole communications tower and ground mounted electronic equipment within a 25 x 35-foot area, located adjacent to north of the existing golf course building.

The entire Oakway Golf Course area was annexed in 1972 and received preliminary approval for the entire 168 acre Planned Unit Development. Subsequently, from 1972 through 1976 the area was developed in phases of the original PUD and more recent PUDs.

The telecommunications requirements adopted in the Eugene Code which are relevant to the subject request and addressed below at EC 9.5750, have been crafted to ensure that they are consistent with the requirements of the Federal Telecommunications Act of 1996. The Act prohibits cities and states from discriminating among telecommunications providers and from erecting barriers to a provider's entry into a local market. The City's policies and ordinance ensure that all providers in similar situations are treated in a similar fashion. The City worked to design the ordinance so that no barriers to market entry were created, consistent with federal requirements under the act.

The PUD application is required by the /PD overlay zone. Telecommunications requirements at EC 9.5750(5) also require a CUP for construction new telecommunications towers in areas zoned R-1. Relevant application procedures for this request are addressed at EC 9.7300 through 9.7340. Relevant application requirements and approval criteria for this request are addressed at EC 9.8300 through 9.8330, EC 9.8075 through EC 9.8109 and EC 9.5750.

A pre-application conference was held March 16, 2010 (LC 10-09), consistent with application procedures at EC 9.7005. Public notice of the PUD application was mailed and posted on December 10, 2011. Subsequently, the application was put on hold and a notice of hearing cancellation was mailed on January 4, 2011. All testimony submitted after the first notice is included in the record. Public notice of the June 15, 2011 hearing for concurrent applications was mailed on May 11, 2011. The Planning Department received a large amount of public testimony opposing the telecommunications tower based on a number of issues, but primarily in relation to compatibility with surrounding residential areas in regards to noise, emissions and visual impacts. All of the testimony provided has been forwarded to the Hearings Official under separate cover.

Preliminary Issues:

Concurrent Applications - As noted above, the applicant has submitted for concurrent tentative PUD and CUP approval. Based on initial consultation with City staff, the applicant originally applied only for a PUD. Subsequently, after public comment was received on the PUD application, the applicant provided a time extension put the PUD application on hold and submitted the CUP application. On pages 2 and 3 of the applicant's written statement, the applicant requests that the Hearings Official make a determination as to whether the proposed tower requires a CUP. The applicant also requests that if a determination is made that no CUP is required, the application fee be refunded.

Table EC 9.2740 lists the Telecommunications Facility use as (S), which refers to the telecommunications standards at EC 9.5750. These standards in turn, require a CUP for telecommunications towers in R-1. EC 9.2740 notes that uses subject to CUP requirements (listed as (C) in the table) can also be approved through PUD procedures. Code language at EC 9.2740 allowing uses requiring a CUP to be approved through PUD procedures is intended so to eliminate the need for duplicative Type III processes. In this case EC 9.5750(5)(c) appears to explicitly require a CUP for construction of a transmission tower in R-1. There is no clear link from the telecommunication standards at EC 9.5750(5)(c), back to the provisions at EC 9.2740 which allow PUD procedures in place of the CUP.

Neighborhood Applicant Meeting - An additional preliminary matter relates to the neighborhood meeting requirements. The initial neighborhood/applicant meeting required by EC 9.7007 was held on June 8, 2010. EC 9.7007(12) requires applications be submitted within 180 days of the meeting. The applicant submitted the PUD application within the 180 days of the meeting but later also submitted the concurrent CUP application more than 180 days from the meeting. The application was deemed incomplete because of this requirement. The applicant invoked its right under statute to “force” the application complete, as the proposed development in the CUP application never substantially changed from what the applicant provided at the initial neighborhood meeting.

Appeal Fees – Bill Kloos, on behalf of the Oakway Neighbors, raises the issue of appeal fees in testimony. The City of Eugene’s Appeal fees are set by administrative order. It is understood that the issue has been raised to prepare for a possible local appeal of the decision to the Planning Commission. At this point no appeal has been filed so no further response to the appeal fee issue is included at this time.

Staff Evaluation:

As required by the Type III land use application procedures beginning at EC 9.7300, the Hearings Official must review any PUD application and consider pertinent evidence and testimony as to whether the proposed use is consistent with the criteria required for approval (shown below in **bold** typeface). Based on the evidence available as of the date of this staff report, the following findings and recommendations are presented.

The Hearings Official shall approve, approve with conditions, or deny a tentative planned unit development application with findings and conclusions. Decisions approving an application, or approving with conditions shall be based on compliance with the following criteria at EC 9.8320:

EC 9.8320(1) The PUD is consistent with applicable adopted policies of the Metro Plan.

The Metro Plan land use diagram designates the area of the subject property for Parks and Open Space use. The Parks and Open Space designation includes existing publicly owned parks as well as publicly and privately owned golf courses and cemeteries. Testimony provided asserts that a telecommunications facility is not consistent with the open space designation in the Metro Plan. The existing zoning of R-1 Low Density Residential with the Parks and Open Space (POS) designation does not inherently conflict as the primary golf course use is allowed in R-1 per EC 9.2750. Buildings supporting this use are allowed. While the cell tower will be added on the golf course, the primary use of the development site as a privately owned golf course will not change. The Planned Unit Development and Conditional Use Permit criteria regarding compatibility found below can appropriately be used to address the impacts of the cell tower on the “open space”. The Metro Plan has no provisions expressly prohibiting telecommunications facilities or other structures in areas designated POS.

The applicant’s written statement provides general findings of consistency with regard to adopted Growth Management, Residential Land Use, Environmental Design, Transportation, Public Facilities and Citizen Involvement sections of the Metro Plan. Specific policies are not addressed. While many of these policies provide broad directives to the local government, contain aspirational language, or are inapplicable and thus do not constitute mandatory approval criteria for the proposed PUD, there are several that are addressed below to provide context to the decision making process.

Residential Land Use and Housing Element

**A.24: Consider adopting or modifying local zoning and development regulations to provide a discretionary design review process or clear and objective design standards, in order to address issues of compatibility, aesthetics, open space, and other community concerns.
(Page III-A-9)**

This policy provides broad direction relevant to the local government, regarding the review of proposed telecommunications facilities. The City has adopted specific telecommunications standards which include a discretionary review process (in this case a CUP/PUD review for new towers in R-1) which address issues of compatibility and clear and objective design standards for new cell towers at EC 9.5750 which also address compatibility, aesthetics, open space and other community concerns by restricting tower height, location, color and numerous other criteria. As such, the proposal as reviewed through the PUD process is consistent with this policy.

Environmental Resources Element

C.21 When planning for and regulating development, local governments shall consider the need for protection of open spaces, including those characterized by significant vegetation and wildlife. Means of protecting open space include but are not limited to outright acquisition, conservation easements, planned unit development ordinances, streamside protection ordinances, open space tax deferrals, donations to the public, and performance zoning.

Environmental Design Element

E.6 Local jurisdictions shall carefully evaluate their development regulations to ensure that they address environmental design considerations, such as, but not limited to, safety, crime prevention, aesthetics, and compatibility with existing and anticipated adjacent uses (particularly considering high and medium density development locating adjacent to low density residential).

The two policies above also provide broad policy direction to the local government. Consistent with these policies, the existing golf course includes a /PD overlay which requires any development to be reviewed through the PUD process. While the City takes into consideration the existence of private recreation facilities and open space in its parks planning process, because there is no guarantee that lands owned by private entities will remain in perpetuity as public open space and/or recreation facilities, the City does not (and is not required to) account for private facilities and open space in its supply of recreation facilities, parks and open space. The subject property is not included on any formally adopted list, inventory or map identifying the City's existing parks and open space supply. While the proposed development will impact a private golf course, the proposed development will not impact the provision of public recreational facilities, nor will they affect access to existing or future public recreational facilities.

There are several other examples of privately held golf courses and cemeteries in Eugene including

the Eugene Country Club golf course just to the south, Lane Memorial Gardens on West 11th and Rest Haven Memorial cemetery which include buildings and structures to support the use, while being zoned R-1 with an open space designation:

To the extent that the applicant's findings are relevant and provide context and general support for findings of consistency with the Metro Plan, they are also incorporated here by reference (applicant's written statement, pages 2-4).

Based on the available information, there are no policies or other provisions in the Metro Plan that conflict with the proposed PUD. The proposed development is consistent with the above criterion.

EC 9.8320(2) The PUD is consistent with applicable adopted refinement plan policies.

The Willakenzie Area Plan (WAP) serves as the applicable adopted refinement plan for the area included in this tentative PUD proposal. The property is located within the Cal Young subarea and is designated Parks and Open Space on the Land Use Diagram in the refinement plan. The following General Policies of the WAP appear to apply to this request:

Retain existing significant vegetation whenever possible to provide buffering between residential and nonresidential uses (General Policy 3):

The proposed development does not propose removal of significant vegetation. The applicant proposes new landscaping to be placed around the perimeter of the enclosure which will include 3 Red Oaks and 25 Emerald Arborvitae. All of the existing trees will be retained under the proposed project; some turf grass will be relocated due to the rerouting of the golf cart path. Conditions of approval are included below at EC 9.8320(4) to ensure that all trees are preserved. As such, the proposal is consistent with this policy.

Minimize land use conflicts by promoting compatibility between residential and nonresidential land uses (General Policy 6):

The applicant's written statement refers to several elements that promote compatibility. These include the use of a monopole instead of a lattice tower, tree preservation and new planting, and the tower is to have a matte, non-glare finish and there will be no tower lighting. The discussion and findings at EC 9.8320(3) and (13) are also incorporated herein by reference.

This policy could also be read to provide direction to the City to promote compatibility. The PUD process and criteria which are required through the overlay and telecommunications standards minimize land use conflicts by requiring compliance with criteria that address compatibility, consistent with this policy.

The applicant addresses additional portions of the WAP on pages 4-6 of the written statement. To the extent that those additional findings and policies, which are incorporated herein by reference, are relevant and applicable to this request, staff generally concurs and finds that the proposed development is consistent with the WAP and the above criterion.

EC 9.8320(3) The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.

The applicant proposes to develop a 75-foot tall telecommunications pole within an existing 58 acre golf course development. The adjacent parcels to the north and west are zoned R-1/PD and were developed as part of the Oakway Golf Course PUD with an apartment complex (City File PD 74-3). Adjacent parcels to the east are zoned R-1 and developed with single family residences. To the south and separated by the golf course, the nearest parcels are also zoned R-1/PD and developed with single family residential uses. A petition with signatures from 75 neighbors and numerous letters and emails which are included in the record have been received which note concern with the location and height of the cell tower in relation to the surrounding residential development.

The applicant notes that the tower height is the minimal size necessary to comply with applicant's coverage requirements. It is also the maximum height (75-feet) allowed in the R-1 Low Density Residential zone for new telecommunications facilities. The applicant notes the following elements help to minimize the possible visual impacts from the tower's location: the use of a slim-line monopole as opposed to the traditional lattice tower; the proposed tower will have a matte, non-glare finish; there is no tower lighting proposed; security lighting, as shown on the site plan, will be downcast, shielded and mounted at a height of less than 10 feet and will be subject to City lighting standards; and, the applicant proposes that only the FCC and company standard site designation signs shall be placed upon the door of the equipment shelter to minimize visual impacts of signage on the surrounding properties.

Bulk and Height – The top of the proposed monopole is 75 feet in height. The pole is approximately 4-feet in diameter and the proposed antennae array at the top spans an approximate 12-foot width.

Location - The proposed mono-pole is located 102 feet from the property line to the west. Within that 102-foot setback there is a parking and landscape easement of 26-feet (which contains parking and landscaping for the apartments, granted to the Northgreen Apartments to the east). The apartments to the west are oriented north-south so they do not provide direct views of the cell tower location. The proposed monopole is approximately 134 feet from the nearest property line to the north. The apartments are oriented north-south and provide direct views towards the proposed cell tower site. The monopole is approximately 191 feet from the nearest property line to the east. These houses are oriented so that the backs of their houses and backyards face the cell tower site. The proposed tower is approximately 222 feet from the nearest property line to the south. The sides of the houses are oriented towards the tower site. While not part of this standard, telecommunications setback minimums from adjacent property lines in R-1, at EC 9.5750(7)(d), require a minimum setback equal to the height of the tower (75-feet).

Screening – As shown on the applicant's Sheet L-1, the proposed cell tower lease site is surrounded by 22 mature trees to the east, north and west. Additionally, as shown on Sheet L-1, the applicant proposal includes the planting of 25 arborvitae at the base of the tower and 3 oak trees just north of the tower site. A building and parking lot are adjacent to the lease area to the south. The applicant's Exhibit K Photo Simulations should be referenced here for context. Exhibit L also shows the view locations of the photo simulations. Additionally, staff pictures from the tower site are included in the record for reference. It is also noted that the photo simulations do not include future co-located antennae.

West - To the west between the Northgreen Apartments and the site there are currently 9 existing trees including 4 large and one small evergreen tree and a hedge approximately 4 feet high. These trees provide screening from the adjacent property directly to the west year round (see Sheet L-1, Photo Simulation 7 of the applicant's material and Photo 1: View West from Tower Site). There is a gap of screening to the northwest of the proposed monopole in which the applicant proposes to plant 3 red oak trees that will eventually mature to 60 feet in height by 50 feet wide.

North – To the north, between the Northgreen Apartments and the proposed site there are currently 8 evenly spaced mature Sycamore trees and a hedge approximately 4 feet in height. (See Photo Simulation 6 of Exhibit K and Photo 2: View North from Tower Site). The existing landscaping will provide sufficient screening of the monopole during the spring and summer months, but additional evergreen plantings should be considered along the north property line. (See proposed condition of approval at the end of this subsection.)

East – To the east and southeast, between the adjacent single family residences and the proposed site, there are currently 5 birch and Oak trees on the west side of the driveway, and a variety of evergreen trees scattered along the east side of the driveway along the property line. (See Photo Simulations 8 and 9 and Photos 3 and 4: View Northeast and East from Tower Site). Again, the existing landscaping should provide sufficient screening during the spring and summer months but additional evergreen plantings should be considered along the east property line. (See proposed condition of approval at the end of this subsection.)

South – To the south, the base of the monopole is completely screened by existing buildings. There is a developed golf course with numerous mature trees between the residential developments to the south and the subject site (see Aerial Photo of Proposed Site). No further screening appears to be needed to the south.

A continuous screen of site obscuring vegetation is not provided along the north and east property lines. While the planting of additional evergreen trees is recommended it is also realized the adjacent properties may prefer not to have trees planted that obscure the view to the south or west. As such the following condition of approval is warranted:

Prior to final PUD approval, the applicant shall provide documentation that a certified letter has been has been mailed to property owners at 2070, 2044, 2064 and 2070 Law Lane and the owner of the Northgreen Apartments. The letter shall provide a brief summary noting why the landowner is receiving the letter and that the intent of the optional plantings will be to obscure the view of the proposed telecommunications facility and note that the property owner has 30 days from receipt of the letter to respond. The letter shall of provide the following three options and will specify that only one option can be chosen.

- 1) Please plant ____ (max of 2) evergreen trees on the Oakway Golf Course within 10 feet of my property line.
- 2) Please plant ____ (max of 2) deciduous trees on the Oakway Golf Course within 10 feet of my property line.
- 3) I do not want additional landscaping/trees to be planted within 10 feet of my property line.

Based on the response, the applicant will be required to plant the requested number of trees on the site adjacent to the lot requesting the plantings. With written agreement from the property owner the location and plantings can be adjusted. If the property owners do not respond to the applicant in writing within 30 days of the mailing, the applicant will not be required to provide additional trees along that lot boundary.

To ensure the long term survival of the trees if they are requested, the following condition of approval is also warranted:

The final tree preservation/landscape plan (Sheet L-1) shall show the location and species of required new trees (proposed trees plus additional screening as requested by the neighbors) to be planted on the development site.

- New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
- The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.
- The plantings must be inspected and approved prior to the City granting final approval of the building permit.
- A note shall be added to Sheet L-1 noting that "Watering and general maintenance of replacement trees shall be conducted by the owner or lessee in a manner that ensures their establishment and long-term survival."

Adequate Screening – The term "adequate screening" is discretionary. Testimony provided by Bill Kloos on behalf of the Oakway Neighbors and other public testimony asserts that "adequate screening" should mean completely block the view. Locally, this term has not been implemented to mean that views (in this case of the cell tower) would be eliminated, but rather screened to a reasonable extent. The Hearings Official in the tentative PUD decision for Goodpasture LLC (PDT 09-1) noted that in the case of *Sunburst II Homeowners Association v. City of West Linn*, 17 Or LUBA 401 (1989) LUBA upheld a city determination that the 25-foot trees would adequately buffer a 110-foot tall water tower. LUBA noted that the term "adequate buffer" gave the city discretion, and did not require the city to ensure that views of the water tower would be eliminated. The term "adequate screening" in the Eugene Code is similarly discretionary. The findings below from the staff report establish that the PUD provides "adequate screening".

In that tentative PUD approval (PDT 09-1), which was appealed to the Planning Commission and upheld, an adequate amount of screening was considered to be a combination of a six-foot fence and new landscaping to screen three story apartment buildings. In this case, while the mono-pole is 25-foot taller (75-feet high as compared to 50-foot high apartments) it is not as bulky and setback a greater distance. The existing landscaping on this site is also mature and obscures potential views of the tower from much of the surrounding area. Therefore, the existing mature landscaping combined with the proposed and additional required plantings is found to provide "adequate screening" and the proposed tentative PUD complies with the applicable criterion.

EC 9.8320(4) The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

(a) Protection of Natural Features.

1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:
 - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.
 - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).
 - c. Prominent topographic features, such as ridgelines and rock outcrops.
 - d. Wetlands, intermittent and perennial stream corridors, and riparian areas.
 - e. Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any city-adopted natural resource inventory.
2. For areas included on the City's acknowledged Goal 5 inventory:
 - a. The proposed development's general design and character, including but not limited to anticipated building locations, bulk and height, location and distribution of recreation space, parking, roads, access and other uses, will:
 - (1) Avoid unnecessary disruption or removal of attractive natural features and vegetation, and
 - (2) Avoid conversion of natural resource areas designated in the Metropolitan Area General Plan to urban uses when alternative locations on the property are suitable for development as otherwise permitted.
 - b. Proposed buildings, road, and other uses are designed and sited to assure preservation of significant on-site vegetation, topographic features, and other unique and worthwhile natural features, and to prevent soil erosion or flood hazard.

The area is not included on the City's Goal 5 inventory therefore subsection (1) is applicable to the proposal. There is no significant on-site vegetation other than the trees addressed in subsection (b). The site is presently composed of turf, grass, Cedar, Douglas Fir, Maple, Ash, Birch, Oak and Sycamore trees. All of the existing trees will be retained under the proposed project; some turf grass will be relocated due to the rerouting of the golf cart path. Based on available evidence there is no documented *habitat for rare animal species or for species proposed for listing under state or federal law*. There are no prominent topographic features or wetlands, intermittent and perennial stream corridors or riparian areas that will be impacted by this development on the golf course. The area is not designated as a natural resource in the Metro Plan or identified in the City's natural resource inventory.

(b) **Tree Preservation.** The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:

1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;
2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;
3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;
4. Trees that provide a buffer between potentially incompatible land uses;
5. Trees located along the perimeter of the lot(s) and within building setback areas;
6. Trees and stands of trees located along ridgelines and within view corridors;
7. Trees with significant habitat value;
8. Trees adjacent to public parks, open space and streets;
9. Trees located along a water feature;
10. Heritage trees.

There are 22 trees of varying types and age in the vicinity of the development. The application notes that no trees are proposed for removal. A critical root zone analysis is provided on Sheet L-1 which appears to confirm that all trees in the area will be preserved. The applicant also shows tree preservation fencing to ensure the preservation of the trees. To ensure none of the trees are damaged in the vicinity of construction, the following conditions of approval are warranted.

Tree Preservation Plan (Sheet L-1) with the final site plans shall include the following tree preservation notes:

- "All protective tree fencing shall remain in place until completion of all construction activities."
- "Protective fencing for trees identified to be preserved shall be inspected and approved by the City prior to beginning any construction related activities."
- "No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the City."
- "Removal of dead, diseased, or hazardous trees shall be allowed with documentation from a certified arborist as to the condition of the tree and the need for removal. Documentation must be provided to the City for review and approval prior to tree removal activity."
- "In the event a preservation tree must be removed, the justification of the removal must be documented by a certified arborist. Documentation must be provided to the City for review and approval prior to tree removal activity. The tree shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species, with a minimum caliper of 2" for deciduous canopy trees and a minimum height of 5' for coniferous or evergreen trees. Planting, watering and general maintenance of replacement trees shall be conducted by the lot owner in a manner that ensures their establishment and long-term survival."

As conditioned, preservation of all trees will be assured in compliance with this criterion.

(c) Restoration or Replacement.

1. For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:
 - a. Planting of replacement trees within common areas; or
 - b. Re-vegetation of slopes, ridgelines, and stream corridors; or
 - c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.
2. For areas included on the city's acknowledged Goal 5 inventory, any loss of significant natural features described in criteria (a) and (b) above shall be consistent with the acknowledged level of protection for the features.

There will be no loss of significant natural features under the applicant's proposal. All trees are to be preserved within or near the proposed development site. In addition, the applicant proposes landscape screening, with 3 Red Oaks and 25 Emerald Arborvitae and may need to plant additional trees based on feedback from adjacent properties. Based on these findings, this criterion is met.

- (d) Street Trees. If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305.**

The proposed development does not explicitly involve the removal of existing trees located within existing public rights-of-way. This criterion is not applicable.

EC 9.8320(5): The PUD provides safe and adequate transportation systems through compliance with the following:

- (a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).**

EC 9.6805 Dedication of Public Ways.

As no streets are proposed or required, there is no requirement for the dedication of right of way.

EC 9.6810 Block Length.

The block length requirements are inapplicable in this instance because no new streets are proposed or required.

EC 9.6815 Connectivity for Streets.

The standards at EC 9.6815(2) Street Connectivity Standards require, at a minimum, developments to include street extensions to complete the existing street network and to serve undeveloped or partially developed adjacent lands.

In this case, the development site is comprised of a 25 x 35-foot lease area located adjacent to the existing golf course building. The surrounding area is developed as the Oakway Golf Course. As such, the development qualifies for an exception to connectivity requirements at EC 9.6815(2)(g)(2)(b) because land adjacent to the lease site is already fully developed as a golf course.

Even if the applicant did not qualify for this exception, as access to the cell tower lease site will be via an existing driveway which currently provides access to the Oakway Golf Course, and as increases in traffic resulting from the facility will be negligible (i.e. limited to one maintenance visit per month) the proposal does not create the need for any new public street connections. As such, the City could not require such a connection based on constitutional requirements.

Referral comments from Public Works staff further confirm that the remaining standards of EC 9.6800 through EC 9.6875 are either inapplicable or have been met.

- (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

The development of a proposed cell tower will not change the primary golf course use or development on the remainder of the existing site. As the cell tower will not increase pedestrian, bicycle or transit trips to the site, the City could not make findings to require any further facilities. As such, this criterion is met.

- (c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

With a projected increase in traffic limited to one maintenance visit per month, the proposed cell tower facility does not meet any of the thresholds established in EC 9.8650 through 9.8680. Accordingly, there is no requirement for a Traffic Impact Analysis.

EC 9.8320(6) The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.

Significant public testimony was received noting concern about the health risks posed by the radio emissions from the cell transmission tower and has been included in the record of materials provided to the Hearings Official. City requirements regarding radio frequency (RF) emissions from the project are consistent with the requirements of the Federal Telecommunications Act of 1996. The Act prohibits cities and states from discriminating among telecommunications providers and from

erecting barriers to a provider's entry into a local market. Federal law expressly prohibits any local or state municipality from making decision based upon RF emissions and in fact it is the FCC that tests and governs approvals for cellular providers along those lines. As noted below, the telecommunications standards at EC 9.5750(6)(b)(3) require documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC). The City retains a consultant, Environalysis, LLC to review proposals for FCC compliance. The consultant confirmed that the emissions from this proposal are well below FCC standards.

An Erosion Prevention Permit will be required before any ground disturbing activities may begin, the subject property is not located within a special flood hazard area and the proposed development is in compliance with the applicable stormwater development standards at EC 9.6791 through EC 9.6797. Given the available information, and based on the findings as set forth above, it is concluded that the proposed development will comply with this criterion.

EC 9.8320(7) Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:

- (a) Prior written commitment of public funds by the appropriate public agencies.
- (b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.
- (c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

Public Works staff confirms that although no public improvements are proposed, the existing street system and public utilities can adequately serve the proposed development per the findings provided at EC 9.8320(5)(a) and EC 9.8320(11)(b) and (j).

EC 9.8320(8) Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.

As this PUD is proposed for a cellular transmission tower, which does not have residents, this criterion is not applicable.

EC 9.8320(9) Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.

As discussed below at criterion (11)(j), which is incorporated by reference, runoff from the 8-foot wide concrete path will sheet flow to the surrounding lawn where it will infiltrate into the ground and runoff from the equipment cabinets and footings will be directed to the existing private storm drainage system. Since the proposed development will not result in stormwater discharge to on-site or downstream drainage courses, this criterion is not applicable.

EC 9.8320(10): Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection (11) below.

As the development proposed is a cellular transmission tower, no residential lots are being created and this criterion is not applicable.

EC 9.8320(11): The PUD complies with all of the following:

- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 2. The /WQ Management Area.

The proposed development is for a cellular transmission tower and does not create lots or change densities. The subject property is not within the /WR Water Resources Conservation Overlay Zone. As such, this criterion is not applicable.

- (b) EC 9.6500 through EC 9.6505 Public Improvement Standards.

EC 9.6500 Easements.

No public easements are proposed by the applicant. Public Works staff confirms that no additional public easements are required to accommodate existing or future public wastewater needs. Based on these findings, the proposed development complies with this standard.

EC 9.6505 Improvements–Specifications.

This section requires all public improvements to be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to be served by and implement infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, access ways, and stormwater drainage. There are no proposed or required public improvements in this instance.

EC 9.6505(1) Water Supply.

While water service is not proposed, EWEB referral comments indicate that there is an existing 10-inch cast iron water main and an existing 8-inch asbestos cement water main on the north side of Cal Young Road. Water service exists to the existing golf course development and can be provided to the lease site if needed in accordance with Eugene Water and Electric Board (EWEB) policies and procedures. This criterion is met.

EC 9.6505(2) Sewage.

This standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. Even though the proposed cell tower and equipment shelter do not require wastewater facilities, the proposed development has access to facilities that comply with this requirement as a private lateral has been extended to Tax Lot 4200 from the public manhole (# 8708) in Law Lane.

EC 9.6505(3) Streets and Alleys.

There is no requirement for a public street as a result of this development.

EC 9.6505(4) Sidewalks.

There is no requirement for a public sidewalk as a result of this development.

EC 9.6505(5) Bicycle Paths and Accessways.

No bicycle paths or public access ways are required per the previous findings at EC 9.8320(5), which are incorporated by reference.

(c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas – Standards.

These standards do not apply because the subject property is not located within any of these designations, per the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) 41039C-1139-F, dated June 2, 1999.

(d) EC 9.6710 Geological and Geotechnical Analysis.

The standards for geotechnical analysis are inapplicable in this instance, as the tentative PUD is located on slopes less than 5% and does not include dedication or construction of a new public street or alley, or the construction of public drainage or wastewater facilities.

(e) EC 9.6730 Pedestrian Circulation On-Site.

The standards for on-site pedestrian circulation at EC 9.6730 are generally applicable to institutional, office, commercial, multi-family residential and industrial developments. As the development proposal is for a cell tower, these standards are inapplicable.

(f) EC 9.6735 Public Access Required.

(1) Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.

The proposed facility complies with this standard as the signed option and lease agreement (Applicant's Exhibit A) provides for unrestricted access to the nearest public right-of-way (i.e. Cal Young Road).

(2) Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.

With an anticipated increase in traffic of one visit per month, the existing connection to Cal Young Road is exempt from this standard.

(3) The standard at (2) may be adjusted if consistent with the criteria of EC 9.8030(28).

Based on the foregoing findings, the development complies with these standards and no adjustment is necessary.

(g) EC 9.6750 Special Setback Standards.

Cal Young Road is classified as a minor arterial and has 80 feet of existing right of way. Table 9.6870 designates minor arterials to have between 65-100 feet of right of way. No special setback is required.

(h) EC 9.6775 Underground Utilities.

All on-site utilities will be placed underground consistent with EC 9.6775. EWEB referral comments indicate no objection to the installation of the proposed cell tower. Depending on the designed route of installation, a PUE or EWEB easement may be necessary. Based on the available information, this criterion is satisfied.

(i) EC 9.6780 Vision Clearance Area.

This standard does not apply because no new street intersections are proposed or required:

(j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

EC 9.6791 Stormwater Destination

Per the tentative application, storm water from the relocated impervious concrete pathway will sheet flow to adjacent grass lawn areas and will percolate into the soil. Public Works staff concurs with this statement and notes that the NRCS soil classification for this site is Chehalis which are Type "B" soils characterized by permeability rates between 0.6 and 2 inches per hour. Runoff from cabinets and

footing drains will be connected to the existing drainage system and will have negligible impact to the public drainage system. Based on these findings, the proposed development complies with this standard.

EC 9.6792 Stormwater Pollution Reduction

With 998 square feet of new and replaced impervious surface (Sheet T-1), the proposed development is not subject to pollution reduction standards pursuant to EC 9.6792(2)(c).

EC 9.6793 through EC 9.6797

Because the proposed development is at an elevation less than 500 feet and does not drain to a headwaters facility, does not generate high concentrations of oil and grease, does not include any specific pollutants of concern identified in EC 9.6795(2) and is not subject to the pollution reduction standards, the remaining stormwater destination standards at EC 9.6793 through EC 9.6797 are not applicable.

Based on the above findings, the stormwater development standards will be met.

- (k) **All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.**

The standards for telecommunications facilities beginning at EC 9.5750 are applicable to the proposed new cell tower. To provide context, the purpose of the standards is also included.

EC 9.5750 Telecommunication Devices-Siting Requirements and Procedures.

- (1) **Purpose.** The provisions of this section are intended to ensure that telecommunication facilities are located, installed, maintained and removed in a manner that:
 - (a) **Minimizes the number of transmission towers throughout the community;**
 - (b) **Encourages the collocation of telecommunication facilities;**
 - (c) **Encourages the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers;**
 - (d) **Recognizes the need of telecommunication providers to build out their systems over time; and**
 - (e) **Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the community, and minimize public inconvenience and disruption. Nothing in this section shall apply to amateur radio antennas, or facilities used exclusively for the transmission of television and radio signals.**
- (2) **Siting Restricted.** No telecommunication facility, as defined in this land use code, may be constructed, modified to increase its height, installed or otherwise located within the city except as provided in this section. Depending on the type and location of the telecommunication facility, the telecommunication facility shall be either an outright

- permitted use, subject to site review procedures, or require a conditional use permit.
- (c) **Conditional Use Permit.** A telecommunication facility which, pursuant to subsections (4) or (5) of this section, requires a conditional use permit shall be processed in accordance with the conditional use permit procedures of this land use code, except that the variance provisions shall not apply. The criteria contained in EC 9.8090 Conditional Use Permit Approval Criteria - General and subsections (6) and (7) of this section shall govern approval or denial of the conditional use permit application. In the event of a conflict in criteria, the criteria contained in subsections (6) and (7) of this section shall govern. No development permit shall be issued prior to completion of the conditional use permit process, including any local appeal.

As noted in the preliminary issues at the beginning of the staff report, the applicant has submitted for concurrent tentative PUD and CUP approval but also requests that the Hearings Official make a determination as to whether the proposed tower requires a CUP. The applicant also requests that if a determination is made that no CUP is required, the application fee be refunded. If the Hearings Official finds that a CUP is not required, the City's adopted fee schedule notes that "If an application is withdrawn and the applicant requests a refund in writing, a refund of the balance of the fee, minus staff processing cost at \$55 an hour through the date the application is withdrawn, will be issued to the applicant." So, a partial refund of the fee could be refunded.

- (5) **Construction of Transmission Tower.** Construction of a transmission tower, or a modification of an existing transmission tower to increase its height, shall be allowed as follows:
- (c) **Conditional Use Permit.** Such construction shall require a conditional use permit in the R-1, C-1, S (other than S-WS) and GO zones.

The subject property is zoned R-1 and the applicant has applied for a CUP consistent with this criterion. As noted previously the applicant asserts that, while they have applied for a CUP, one is not required as EC 9.2740 notes that uses subject to CUP requirements (listed as (C) in the table) can also be approved through PUD procedures. While this is true, Table EC 9.2740 lists the Telecommunications Facility use as (S), which refers to these telecommunications standards at EC 9.5750. This criterion in turn, requires a CUP for telecommunications towers in R-1. There is no direct link back to the provisions at EC 9.2740 which allow PUD procedures in place of the CUP. As the applicant has applied for a CUP, this criterion is met. If the Hearings Official is to find that a CUP is not required, findings would need to be made under this criterion noting how PUD procedures can be used in lieu of CUP procedures.

- (6) **Application Requirements.**
- (b) **Construction of Transmission Tower.** In addition to standard required application material, an applicant for a transmission tower shall submit the following information; additional application material is required, as specified in paragraph (c) below, for applications requiring a site review or conditional use process:

1. A description of the proposed tower location, design and height.

The applicant provides a description of the proposed tower location on Sheets T-1 and G-1 of the site

plans, and a description of design and height is included on Sheet A-2.

- 2. The general capacity of the tower in terms of the number and type of antennas it is designed to accommodate.**

The capacity of the tower and number of antennas it is designed to accommodate is included in Exhibit P of the applicant's materials.

- 3. Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC).**

The applicant provided a report as Exhibit O, which includes the documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). This report was subsequently reviewed by Environalysis LLC on behalf of the City of Eugene as required at EC 9.5750(11). The review concluded that "The information in the applicant's proposal is sufficient to determine that the noise and NIER impacts of the project fall well within regulatory limits set by Federal and local jurisdictions. No special conditions need to be applied to mitigate noise or NIER emissions."

- 4. A signed agreement, as supplied by the city, stating that the applicant will allow collocation with other users, provided all safety, structural, and technological requirements are met. This agreement shall also state that any future owners or operators will allow collocation on the tower.**

A signed agreement has been provided by AT&T that will allow collocation with other users, provided all safety, structural and technological requirements are met. This agreement is included as Exhibit Q of the applicant's materials.

- 5. Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified in subsection (7) of this section, or designs showing how the sound is to be effectively muffled and reduced pursuant to those standards.**

The applicant originally submitted an Acoustical Report with the PUD application then provided an updated Acoustical Report (Exhibit R) which includes documentation demonstrating compliance with the standard. It confirms that noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa, as required. This report was subsequently reviewed by Environalysis LLC on behalf of the City of Eugene. The review concluded that no special conditions need to be applied to mitigate noise. Response to testimony asserting that the decibel level should include existing noise is included below in subsection (c)(7).

- 6. A landscape plan drawn to scale showing proposed and existing landscaping, including type, spacing, size and irrigation methods.**

The applicant provided a landscape plan (Sheet L-1) that is drawn to scale (1" = 40'), which includes the type, spacing, size and irrigation method in compliance with this requirement.

7. Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and easements required.

The applicant's site plans, (Sheets A-1.1 and L-1) include utility connections. The written statement indicates that all utility connections will be made on-site and no new easements will be required. EWEB comments indicate an easement may be required at a future date.

8. Documents demonstrating that necessary easements have been obtained.

No easements are required at this time. EWEB indicated they may need a future easement. This can be obtained at a future date, if required by EWEB for utility installation.

9. Plans showing how vehicle access will be provided.

The applicant has provided a copy of the lease agreement which provides for access to the site through access points to the existing golf course (see Exhibit V).

10. Signature of the property owner(s) on the application form or a statement from the property owner(s) granting authorization to proceed with development permit and land use processes.

John Hammer, designated corporate representative of Oakway Golf, Inc. signed a limited power of attorney granting authorization to proceed with development on the subject site with the initial application form.

11. Documents demonstrating that the FAA has reviewed and approved the proposal, and Oregon Department of Aviation has reviewed the proposal. Alternatively, when a site review or conditional use process is required, submit a statement documenting that notice of the proposal has been submitted to the FAA and Oregon Department of Aviation. The site review or conditional use process may proceed and approval may be granted for the proposal as submitted, subject to FAA approval. If FAA approval requires any changes to the proposal as initially approved, then that initial approval shall be void. A new application will need to be submitted, reviewed and approved through an additional site review or conditional use process. No development permit application shall be submitted without documents demonstrating FAA review and approval and Oregon Department of Aviation review.

The applicant notes that FAA and ODA approvals have been requested but are not yet available and will be provided. As such, the following condition of approval is warranted:

Any development permits for the construction of the proposed facility shall include information demonstrating FAA review and approval and Oregon Department of Aviation

review. If FAA approval requires any changes to the proposal as initially approved, then this initial approval shall be void.

Per the findings and condition above, this criterion is met.

(c) Site Review and Conditional Use Permit Applications. In addition to the application requirements specified in paragraph (b) above, applications for site review or conditional use permits also shall include the following information:

- 1. A visual study containing, at a minimum, a graphic simulation showing the appearance of the proposed tower, antennas, and ancillary facilities from at least 5 points within a 3 mile radius. Such points shall be chosen by the provider with review and approval by the planning director to ensure that various potential views are represented.**

The applicant has provided a photo simulation showing the appearance of the proposed tower from 9 different views. These points were evaluated during application completeness review and were found to represent various potential views as required.

- 2. Documentation that alternative sites within a radius of at least 2000 feet have been considered and have been determined to be technologically unfeasible or unavailable. For site reviews, alternative sites zoned C-4, I-1, I-2, and I-3 must be considered. For conditional use permits, alternative sites zoned PL, C-2, C-3, C-4, I-1, I-2, I-3 and S-WS must be considered.**

The applicant notes that several other spaces were considered but were unfeasible or not available (see pages 16 and 17 of the applicant's written statement). There are no sites zoned C-2, C-3, C-4, I-1, I-2, I-3 or S-WS within 2000 feet. There is one PL zoned parcel within that distance owned by the School District (Sheldon High School). The written statement notes the school district was not interested in leasing to AT&T. The written statement addresses other alternative sites (even outside 2000 feet) and confirms that they are either unfeasible or unavailable. Testimony from Bill Kloos on behalf of the Oakway Neighbors asserts that this requirement is not limited to the 2000 foot radius and that the applicant must look further out. While the applicant addresses sites outside of 2000 feet, the requirement is clearly for documentation within a radius of at least 2000 feet.

- 3. Evidence demonstrating collocation is impractical on existing tall buildings, light or utility poles, water towers, existing transmission towers, and existing tower facility sites for reasons of structural support capabilities, safety, available space, or failing to meet service coverage area needs.**

The applicant notes that potential sites were evaluated on buildings, utility poles and water tanks. The written statement generally notes that potential pole locations were evaluated along Gilham Road, Norkenzie Road and Cal Young Road and that ground space was not available at these locations (making collocation impractical). While the level of evidence supporting this assertion provided by the applicant is minimal, the City does require vaulting in the right of way or on private property which requires vacant area to support this. The areas surrounding Gilham Road, Norkenzie Road and Cal Young Road are developed areas with little vacant land along the rights of ways.

4. **A current overall system plan for the city, showing facilities presently constructed or approved and future expansion plans.**

Testimony provided Bill Kloos on behalf of the Oakway Neighbors Association asserts that a system plan was not provided. The applicant has provided the locations of existing towers within the City (See Exhibit U) and noted the locations of future planned towers. Additionally, they have provided a coverage plot plan which shows locations of existing towers and their coverage (see applicant's Exhibit T). Given that the information provided shows existing and proposed facilities, the information provided suffices to meet this standard.

5. **A statement providing the reasons for the location, design and height of the proposed tower or antennas.**

The applicant provides a statement on page 14 of their PUD written materials that provide reasoning for the location, design and height of the proposed tower or antenna structure.

- (7) **Standards for Transmission Towers and Antennas. Installation, construction or modification of all transmission towers and antennas shall comply with the following standards, unless a variance is obtained pursuant to the provisions of subsection (9) of this section:**

- (a) **Separation Between Transmission Towers. No transmission tower may be constructed within 2000 feet of any pre-existing transmission tower. Tower separation shall be measured by following a straight line from the portion of the base of the proposed tower which is closest to the base of any pre-existing tower. For purposes of this paragraph, a tower shall include any transmission tower for which the city has issued a development permit, or for which an application has been filed and not denied. Transmission towers constructed or approved prior to February 26, 1997 may be modified to accommodate additional providers consistent with provisions for collocation in this section.**

Based on available information, the nearest tower is located over a mile from the proposed location and there are no pre-existing transmission towers within 2000 feet.

- (b) **Height Limitation: Transmission tower heights shall be governed by this section except as provided for below. No transmission tower shall exceed the maximum heights provided below. In no case shall a variance be granted from the limitations of subparagraphs (1) through (4) below.**

1. **In any zones, no transmission tower shall exceed the height limitations established for buildings and structures in the specified areas surrounding Skinner Butte contained in EC 9.6715 Height Limitation Areas of this land use code to protect views to and from Skinner Butte.**

The proposed tower is not within the Height Limitation Area shown on EC Map 9.6715(3). This standard does not apply.

2. **In any zone within the area east of Willagillespie Road, south of Cal Young Road, west of Oakway Road, and north of Southwood Lane and Country Club Road, no transmission tower shall exceed 75 feet in height to protect views to and from Gillespie Butte.**

The proposed transmission tower is within this height limitation area and does not exceed 75 feet in height, in compliance with this standard.

3. **If located within a PL, C-2, C-3, C-4, R-4, I-1, I-2, I-3 or S-WS zone, the height limitation for that zone shall apply.**

The proposed tower is within an R-1 zone. This standard does not apply.

4. **If located within a C-1, S (other than S-WS) or GO zone, the maximum height of a transmission tower, including antennas, is 100 feet.**

The proposed tower is within an R-1 zone. This standard does not apply.

5. **If located within an R-1 zone, the maximum height of a transmission tower, including antennas, is 75 feet, unless a variance is granted pursuant to the provisions of subsection (9) of this section. In no event shall a variance be granted to construct such a tower in excess of 100 feet.**

The proposed tower is within an R-1 zone. The maximum height of the tower is 75 feet, in compliance with this standard.

(c) Collocation. New transmission towers shall be designed to accommodate collocation of additional providers:

1. **New transmission towers of a height of 80 feet or more shall be designed to accommodate collocation of a minimum of 2 additional providers either outright or through future modification to the tower.**

The proposed transmission tower is less than 80 feet in height. This standard does not apply.

2. **New transmission towers of a height of at least 60 feet and no more than 80 feet shall be designed to accommodate collocation of a minimum of 1 additional provider either outright or through future modification to the tower.**

The transmission tower is proposed to be 75 feet. As noted in Exhibits P and Q of the applicant's materials, the applicant has agreed to, and the tower can accommodate the collocation of a minimum of 1 additional provider.

(d) Setback. The following setbacks from adjacent property lines and adjacent streets shall be required unless a variance is granted pursuant to the provisions of subsection (9) of this section:

2. **If located within an R-1, C-1, or GO zone, the transmission tower shall be set**

back from adjacent property lines a minimum number of feet that is equal to the height of the transmission tower.

As shown on the applicant's site plans (Sheet A-1) the tower is setback 102'-6" from the nearest property line, in compliance with this standard.

- (e) **Buffering.** In all zones, existing vegetation shall be preserved to the maximum extent possible. In the C-4, I-1, I-2 and I-3 zones, no buffering is required beyond that required by this land use code. In all other zones, landscaping shall be placed completely around the transmission tower and ancillary facilities located at ground level except as required to access the facility. Such landscaping shall consist of evergreen vegetation with a minimum planted height of 6 feet placed densely so as to form a screen. Landscaping shall be compatible with other nearby landscaping and shall be kept healthy and well maintained.

As noted at EC 9.8320(4) which is incorporated here by reference, the applicant is preserving the existing vegetation to the maximum extent possible. Sheet L-1 of the applicant's April 19 submittal shows the landscaping proposed which includes the planting of 3 Oak Tree and 25 Emerald Arborvitae. As shown on Sheet L-1, arborvitae are not shown or proposed in the area between the transmission tower and the building directly to the south.

The PUD criterion at EC 9.8320(11)(j) allows the applicant to propose noncompliance with a standard if it can be shown that it is consistent with the purposes at EC 9.8300. The applicant provided a letter dated April 21, 2011 that requests noncompliance with this standard and provides findings regarding consistency with purposes of the PUD. The PUD provisions note that they are designed to provide a high degree of flexibility in the design of the site. Specifically, applicant notes this proposal is consistent with EC 9.8300(1)(a)(Shared use of services and facilities) as the existing building will provide screening to the south to a greater extent than vegetation. As such, noncompliance with this standard is warranted. To ensure clarity, the following condition of approval is warranted:

A note shall be added to Sheet L-1 noting that noncompliance with EC 9.5750(7)(e) has been approved through the PUD such that landscaping along the south side of the telecommunications facility between the tower and the building is not required.

A note is included on Sheet L-1 indicating that plantings will be hand watered during establishment period (a minimum of two years). To ensure that landscaping be kept healthy and well maintained, the following condition of approval is warranted:

A note shall be added to Sheet L-1 that states "All landscaping proposed on Sheet L-1 shall be kept healthy and well maintained as long as the telecommunications facility remains on the subject site."

Per the findings and conditions above, this criterion will be met.

- (f) **Noise Reduction.** In R-1, R-2, R-3, R-4, C-1, and GO and in all other zones when the adjacent property is zoned for residential use or occupied by a dwelling, hospital,

school, library, or nursing home, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa.

The applicant originally provided an Acoustical Report with the PUD, and then provided an updated version as Exhibit R (dated March 21, 2011), which includes documentation demonstrating compliance with the standard that noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa, as required. This report was subsequently reviewed by Environalysis LLC on behalf of the City of Eugene. The review concluded that the noise impacts at the west and north property lines would be 1 decibel level less than the report indicated. As a result, the noise levels at the two nearest property lines would be less than 45dBa as measured at the property line, in compliance with this criterion.

Testimony provided by Bill Kloos on behalf of the Oakway Neighbors asserts that the proposed use can't be approved because it will aggravate the noise situation, which already exceeds the allowed levels. He notes that the standard does not limit the noise of the equipment, but rather all noise sources must be 45 dBA or less. The interpretation that all noise sources must be below 45 dBA is not an accurate read of this standard. The standard to reduce the sound level measured at the property line to 45 dBA refers directly to the action of reducing sound levels of "noise generating equipment" by baffling, barriers or other suitable means. In the context of this standard, it does not include reference to other existing noise sources.

The City's Telecommunications consultant Carl Bloom, from Environalysis LLC reviewed Mr. Kloos's assertion and provided written feedback, noting that many municipalities and states define maximum noise levels at the boundary between a noise-emitting property and a noise-receiving property. In all cases that he has seen, these regulations specify that the maximum permitted noise level is that coming from the emitting property only, not the total of background and emitting noise. He adds that the reason for a code to be written and understood in this way is that it allows for the straightforward calculation/modeling of noise impacts from equipment (whose noise "emissions" are documented) and thus facilitates the determination of code compliance.

Additional testimony provided by Mr. Kloos, indicated that the noise analysis provided with the PUD application did not include future cabinets or a generator (which was confirmed by Environalysis, LLC). The applicant provided a revised acoustical report from SSA Acoustics, LLC dated March 21 and additional information upon submitting the CUP, which includes all existing and proposed cabinets and confirmed that a generator is not proposed.

Given the findings above, the information provided by the applicant shows compliance with this standard.

- (g) Status of Location. No permit may be issued for the location of a new telecommunications facility within an R-1 or C-1 zone unless the lot on which it is to be placed is vacant or developed with a non-residential use at the time the permit application is submitted. This restriction does not apply within other zones:**

The lot on which the telecommunications facility is to be placed is zoned R-1 and developed with the non-residential use of a privately owned golf course.

- (h) **Lighting.** No lighting shall be permitted on transmission towers except that required by the Federal Aviation Administration. No high intensity white lights may be located on transmission towers in an R-1, C-1, or PRO zone.

Per the applicant's written statement and site plans, no lighting attached to the tower is proposed. To ensure continued compliance with this standard, the following condition of approval is warranted:

Prior to final PUD approval, Sheet A-1 shall be revised to include the following note. "If lighting is required by the FAA no high intensity white lights may be located on the tower."

- (i) **Color.** The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or such shades as are appropriate and compatible with the surrounding environment, as approved by the city.

The applicant's written statement notes that the transmission tower will be unpainted galvanized finish and can be painted to be more compatible. To ensure compliance with this criterion the following condition of approval is warranted:

Prior to final PUD approval, Sheet A-1 shall be revised to include the following note. "The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or shades with a matte finish as approved by the city."

- (j) **Viewshed.** The transmission tower shall be located down slope from the top of a ridgeline so that when viewed from any point along the northern right-of-way line of 18th Avenue, the tower does not interrupt the profile of the ridgeline or Spencer Butte. In addition, a transmission tower shall not interrupt the profile of Spencer Butte when viewed from any location in Amazon Park. Visual impacts to prominent views of Skinner Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the transmission tower is limited in height to the minimum height necessary to provide the approximate coverage the tower is intended to provide.

The tower is located in an area that is restricted in height to 75 feet, both by the zone (R-1) and being within view of Gillespie Butte and Skinner Butte per the standard at (7)(b)(2) above. Impacts to the views of Skinner Butte and Gillespie Butte have been minimized with the proposed location as the existing vegetation to the west of the tower already obscures the views behind the tower location.

As noted above, the applicant has documented that alternative sites have been evaluated and the tower is the minimum height necessary to provide the intended coverage.

- (k) **Display.** No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2.

The applicant's written statement notes that only FCC standard signs shall be placed on the equipment shelter. To ensure continued compliance with this standard, the following condition is warranted:

Prior to final PUD approval, Sheet A-2 shall be revised to include the following note "No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2."

Per the findings and condition above, this standard is met.

- (8) **Standards for Ancillary Facilities.** All ancillary facilities shall comply with the standards of subsections (7)(e) and (7)(f) of this section. In addition, all ancillary facilities within an R-1, PL, C-1, GO, and PRO zone must be located underground to the maximum extent technology allows, unless a variance is obtained pursuant to the provisions of subsection (9) of this section. This restriction does not apply within other zones.

The subject property is zoned R-1 and the applicant is requesting a variance to the underground requirement pursuant to subsection (9)(c) of this section.

(9) **Variance.**

- (a) Any variance to the requirements of this section shall be granted only pursuant to the following provisions. The criteria for granting a variance shall be limited to this section, and shall not include the standard variance criteria beginning at EC 9.8750 Purpose of Variances.
- (c) The city may grant a variance to the setback and undergrounding requirements of subsections (7)(d) or (8) upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.

Testimony provided by Bill Kloos on behalf of the Oakway Neighbors and testimony from other neighbors asserts that a variance should not be granted and provides a great deal of information to show that undergrounding is a viable option and how the applicant's proposal does not meet the requirements for a variance.

As noted above, the code standard does require undergrounding in R-1, *unless* a variance is obtained. Many of the arguments provided that undergrounding is feasible may be accurate, but the applicant is not required to demonstrate that ancillary facilities can't be undergrounded, if a variance is obtained.

The testimony further asserts that the proposal also does not meet the variance criteria in that the proposal doesn't meet the threshold of "obviating the need for compliance". The testimony notes that landscaping is not proposed completely around the facility and a 100 percent screen would take years to achieve and that noise impacts will also occur. These issues are addressed in the findings below.

The applicant includes three design components in response to the variance criteria (i.e. the proposed landscaping as shown in the plans, the addition of wooden slats or a wooden fence surrounding the equipment and the proximity to the existing building). As conditioned, the applicant's landscaping proposal will completely obscure the view of the equipment (see Sheets A-1 and L-1) by providing arborvitae spaced 3-feet on center. Additionally, the configuration of the building obscures views of the equipment from the south. Mature trees and required future plantings are shown on Sheet L-1 and discussed at EC 9.8320(3). As noted in the testimony, until landscaping matures, equipment will be visible. The applicant notes that "the fencing around the equipment can be modified with wooden slats or the construction of an entirely wood fence". This modification would provide a complete, site obscuring screen around the ancillary facilities. This, combined with the proposed landscaping (25 arborvitae, 3 oak trees), configuration of the site (building will screen ancillary facilities to the south) and mature trees (see existing 22 trees on Sheet L-1) surrounding the site, obviate the need for compliance with the undergrounding requirement. The following condition is warranted to ensure complete screening of equipment:

Prior to final PUD approval, Sheet A-2 shall be modified to show the fence around the ancillary equipment to be 100 percent site-obscuring and be constructed out of wood or chain link with wooden slats.

Noise from ancillary facilities, as discussed elsewhere in this report, is below the standard decibel level. The requirement for wooden slats or fence will further reduce the noise level obviating the need for undergrounding.

As such, with the condition to ensure the wooden slats or a wooden fence are installed, the variance is warranted in accordance with subsection 8 and 9 above.

(10) Removal of Facilities.

- (a) All transmission towers and antennas shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas.**
- (b) If a transmission tower is located within an R-1, PL, C-1 or GO zone, the provisions of subparagraph (a) also shall apply to the tower substructure and all above ground ancillary facilities.**
- (c) The city may require the posting of an open ended bond before development permit issuance to insure removal of the transmission tower, substructure or antennas after the facility no longer is being used.**

To ensure removal of facilities comply with the criterion above, the following condition of approval is warranted:

The following note shall be added to the final site plan "All transmission towers, antennas, the tower substructure and all above ground ancillary facilities shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas".

As conditioned, the proposal will comply with this standard.

- (11) Application Review and Fees.** The city manager shall retain one or more consultants to verify the accuracy of statements made in connection with an application for a building or land use permit for a telecommunications facility. Notwithstanding any other provision of this code, the city manager shall require the applicant to pay, as part of the application fees, an amount sufficient to recover all of the city's costs in retaining the consultant(s).

Carl Bloom of Environalysis LLC was retained to verify the accuracy of statements made in connection with both the PUD and CUP applications, including verifying the accuracy of the noise reports and emissions reports. Additionally he also reviewed the accuracy of statements AT&T provided regarding the limitations of stealth design. The applicant has been billed and paid for these services. As such this standard is met.

EC 9.8320(12): The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality.

Extensive public testimony from neighbors was received regarding the negative off-site impacts of the development. The concerns were primarily related to RF emission concerns and aesthetic concerns of a 75-foot tower located near their houses. These concerns are discussed below.

Traffic – As noted above at EC 9.8320(5)(c), with a projected increase in traffic limited to one visit per month, utilizing the existing driveway, the proposed cell tower facility will have minimal off-site impacts in regards to traffic.

Noise – The proposed facility will create noise from the auxiliary equipment. The City's telecommunications standards require a maximum of 45 dBA at the property line apply to communications projects sited adjacent to residential properties. As noted above in subsection (7)(f) of the telecommunications requirements, as confirmed by a consultant retained by the City, the proposed development will comply with this requirement which ensures minimal off-site impacts.

Stormwater – As noted above at EC 9.8320(11)(j) which is incorporated herein by reference, the development will not have any stormwater impacts on adjacent properties.

Environmental Quality – As noted above at EC 9.8320(4), as conditioned, the proposal complies with the natural resource and tree protection criteria in regards to environmental quality.

RF Emissions - As noted above, City requirements regarding RF emissions from the project are consistent with the requirements of the Federal Telecommunications Act of 1996. The Act prohibits cities and states from discriminating among telecommunications providers and from erecting barriers to a provider's entry into a local market. Federal law expressly prohibits any local or state municipality from making decision based upon ERF emissions and in fact it is the FCC that tests and governs approvals for cellular providers along those lines.

As noted above, the telecommunications standards at EC 9.5750(6)(b)(3) require documentation to be provided by the applicant demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC). The City retains a consultant, Enviroanalysis, LLC to review proposals for FCC compliance. The consultant has confirmed that the emissions from this proposal are well below FCC standards.

Aesthetic Impacts – Numerous emails and letters of testimony have been received and have been included in the record regarding the negative aesthetic off-site impacts of having a 75-foot cell tower located on the golf course in close proximity to residences. This is a valid concern given the proposed height of the monopole, which is the maximum allowed in the R-1 zone, in a location that, while zoned for Low-Density Residential, is designated for Parks and Open Space in the Metro Plan. The applicant will comply (as conditioned) with screening requirements which will help reduce the negative aesthetic off-site impacts. Additionally, numerous standards in the telecommunications standards have been met that specifically address aesthetics, such as lighting, height and color standards.

Several letters of testimony also noted that a stealth design such as a pole disguised as a fir tree would have less negative visual impact. During this process, City staff contacted the applicant to find out what options were available to provide a facility that would have less negative aesthetic impacts. This concern was specifically related to the proposed design of the facility which has the antennae at the top (which if a future co-location occurred) would be twice as large. The applicant asserted in a December 1, 2010 letter to staff that AT&T engineers reviewed the design and determined that stealth design (mono-fir, mono-pole or flagpole) is not feasible at this site as it would entail making substantial changes to the network, increase tower height and restrict load and future co-location opportunities. Staff forwarded this letter to the City's telecommunications consultant who confirmed that the applicant was representing these limitations fairly.

EC 9.8320(13): The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.

Public testimony including letters, emails and petitions were received stating that the proposed development is not compatible as a cell tower will impact views from established neighborhoods adjacent to the existing golf course. This testimony has been provided to the Hearings Official under separate cover. The subject lease site is surrounded by the golf course and a combination of multi-family and single family residential land uses on the west, north and east. As described at EC 9.8320(3) which is incorporated here by reference, as conditioned the development will also be

appropriately screened from surrounding properties. This screening will contribute to compatibility. As noted at EC 9.8320 (5)(c) in regards to traffic, EC 9.8320(9) in regards to stormwater runoff, and EC 9.8320(4) in regards to protection of natural features which are incorporated here by reference, the proposed development will have minimal off-site impacts related to traffic, noise, stormwater runoff and natural resources, all of which helps ensure the development is reasonably compatible with the nearby land uses. The findings above at EC 9.8320(12) in regards to off-site impacts are also incorporated here by reference as further demonstration of compliance.

As noted elsewhere, City has very specific telecommunications standards which set maximum heights, setbacks, decibel levels and mirror FCC requirements. The applicant's proposal complies with all of these standards. These telecommunications standards were established to create clear criteria to for providers to meet, but also provide a discretionary process to provide for public input on a case by case basis. While the Eugene Code clearly allows for cell towers in the R-1 zone (as long as the property is not being used for a residential purpose) and certain standards are met, it also provides the additional criteria here regarding compatibility which allows some subjectivity. It is clear based on testimony provided by surrounding neighbors they do not feel that the proposed mono-pole is reasonably compatible or harmonious based on a variety of factors. Several of these factors raised in testimony, such as noise, RF emissions and height have clear standards that have been met and the development is considered reasonably compatible in relation to those factors. Other concerns raised in testimony, such as visual aesthetics and compatibility are addressed by screening, height limitations and other requirements.

EC 9.8320(14): If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.

The applicant is not proposing a land division. This criterion is not applicable.

EC 9.8320(15): If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.

The subject property is not located within a special area zone. As such, this criterion is not applicable.

Conditional Use Permit (CUP) Request:

In accordance with EC 9.7330, the Hearings Official is required to approve, approve with conditions, or deny this Type III land use application for a CUP. The decision must be based on, and be accompanied by, findings that explain the criteria and standards considered relevant to the decision. It must also state the facts relied upon in rendering the decision, and explain the justification for the decision based upon the criteria, standards, and facts set forth.

To assist the Hearings Official in rendering a decision on the application, staff presents the following conditional use permit approval criteria (shown below in **bold** typeface), with findings related to each, based on the evidence available as of the date of this staff report. Where criteria are identical to PUD criteria, the findings are incorporated by reference.

EC 9.8090(1): The proposal is consistent with applicable provisions of the Metro Plan and applicable refinement plans.

The findings above in regards to the PUD criteria at EC 9.8320(1) and (2) which address applicable provisions of the Metro Plan and the Willakenzie Area Plan (WAP), are incorporated herein by reference as demonstration of compliance with this criterion.

Based on the incorporated findings, the proposal is found to be consistent with the Metro Plan, and Willakenzie Area Plan (WAP) as required.

EC 9.8090(2): The location, size, design, and operating characteristics of the proposal are reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property, as they relate to the following factors:

- (a) **The proposed building(s) mass and scale are physically suitable for the type and density of use being proposed.**

This subsection addresses compatibility and livability issues by ensuring that proposed buildings are sized appropriately for their use. In this case the proposed use is for a cell tower not a building as that term is defined in EC 9.0500 and used in subsection (a). While the criterion is not applicable, it is noted that the applicant's proposal incorporates the use of a 75-foot mono-pole instead of a lattice tower. The applicant has also provided elevations of the proposal on Sheet A-2 of the application. Given that the proposed facility meets the telecommunications standards at EC 9.5750 in regards to location and height, the proposed mass and scale are suitable for the use proposed which is a telecommunications facility.

Given the above findings, the proposed mass and scale are physically suitable for the type of use being proposed, consistent with this criterion. The findings presented on pages 8 and 9 of the applicant's written statement for this criterion are acceptable as they relate to the physical suitability of the proposed tower, as well as existing and proposed screening.

- (b) **The proposed structures, parking lots, outdoor use areas or other site improvements which could cause substantial off-site impacts such as noise, glare and odors are oriented away from nearby residential uses and/or are adequately mitigated through other design techniques, such as screening and increased setbacks.**

This criterion addresses site improvements which could cause substantial off-site impacts such as noise, glare, and odors. The subject site is surrounded by low-density and medium density residential development to the east, west and north and the golf course to the south. Off-site impacts could come from four apparent sources: noise from the ancillary facilities, glare from lighting, electromagnetic exposure and visual impacts from the ancillary facilities and tower.

Noise – Telecommunications standards at EC 9.5750 require that noise generating equipment shall be sound-buffered by means of baffling; barriers, or other suitable means to reduce sound level

measured at the property line to 45dBA. The applicant submitted an updated acoustical report from SSA Acoustics, LLP dated March 21, 2011. This report was subsequently reviewed by Environalysis LLC on behalf of the City of Eugene. The review confirmed that the noise at the property line was less than 45 dBA as required. No special conditions need to be applied to mitigate noise. Given that the application meets the telecommunications noise standards will have minimal impact related to noise consistent with this criterion.

Glare – No tower lighting is proposed. Security lighting will be required to meet outdoor lighting requirements at EC 9.6725, which require cutoff and shielding as necessary to direct light within the boundary of the development site. Given these standards, glare from the lights will be adequately mitigated.

Electromagnetic Radiation (NIER) emissions – Telecommunications standards at EC 9.5750 require the applicant to submit documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC).

The applicant provided a report as Exhibit O, which includes the documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). This report was subsequently reviewed by Environalysis LLC on behalf of the City of Eugene as required at EC 9.5750(11). The review concluded that “The information in the applicant’s proposal is sufficient to determine that the noise and NIER impacts of the project fall well within regulatory limits set by Federal and local jurisdictions. No special conditions need to be applied to mitigate noise or NIER emissions.” Given that the proposal meets these requirements, there is no evidence there will be substantial off-site impact from NIER emissions.

Visual Impacts – The findings and conditions provided in the concurrent PUD (PDT 10-2) at EC 9.8320(3), (12) and (13) are incorporated herein by reference as demonstration that sufficient screening will be provided to mitigate visual impacts on surrounding properties.

Based on the findings above, this criterion is met.

- (c) **If the proposal involves a residential use, the project is designed, sited and/or adequately buffered to minimize off-site impacts which could adversely affect the future residents of the subject property.**

As the use is not residential, this criterion is not applicable.

EC 9.8090(3): The location, design, and related features of the proposal provides a convenient and functional living, working, shopping or civic environment, and is as attractive as the nature of the use and its location and setting warrant.

This criterion relates the nature of the use. In this case, the use is a telecommunications tower and ancillary facilities. It does not provide a living, working, shopping or civic environment. The findings and conditions provided in the concurrent PUD (PDT 10-2) at EC 9.8320(3), (12) and (13) are incorporated herein by reference as demonstration that sufficient screening will be provided in compliance with this criterion.

EC 9.8090(4): The proposal demonstrates adequate and safe circulation exists for the following:

- (a) **Vehicular access to and from the proposed site, and on-site circulation and emergency response.**

Vehicular access is provided from Cal Young Road on a private driveway to the site. The findings at EC 9.8320(6),(7) and (11)(f) are incorporated herein by reference to show compliance with this criterion. Based on these incorporated findings, adequate and safe vehicular access to and from the site, on-site circulation, and emergency response will be provided as a result of the proposed development.

- (b) **Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the City makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

The development of a proposed cell tower will not change the primary golf course use or development on the remainder of the existing site. As the cell tower will not increase pedestrian, bicycle or transit trips to the site, the City could not make findings to require any further facilities. As such, this criterion is met.

EC 9.8090(5): The proposal is designed and sited to minimize impacts to the natural environment by addressing the following:

- (a) **Protection of Natural Features.**

1. **For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:**
 - a. **Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under state or federal law), and native plant communities.**
 - b. **All documented habitat for all rare animal species (those that are proposed for listing or are listed under state or federal law).**
 - c. **Prominent topographic features, such as ridgelines and rock outcrops.**
 - d. **Wetlands, intermittent and perennial stream corridors and riparian areas.**
 - e. **Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any City-adopted natural resource inventory.**
2. **For areas included on the City's acknowledged Goal 5 inventory, the preservation of natural features shall be consistent with the acknowledged level of preservation provided for the area.**

- (b) **Tree Preservation.** The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:
1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria.
 2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow.
 3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement.
 4. Trees that provide a buffer between potentially incompatible land uses.
 5. Trees located along the perimeter of the lot(s) and within building setback areas.
 6. Trees and stands of trees located along ridgelines and within view corridors.
 7. Trees with significant habitat value
 8. Trees adjacent to public parks, open space and streets.
 9. Trees along water features.
 10. Heritage trees.
- (c) **Restoration or Replacement.**
1. For areas not included on the City's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:
 - a. Planting of replacement trees within common areas; or
 - b. Re-vegetation of slopes, ridgelines, and stream corridors; or
 - c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320 and rules adopted thereunder.
 2. For areas included on the City's acknowledged Goal 5 inventory, any loss of natural features shall be consistent with the acknowledged level or preservation provided for the resource.
- (d) **Street Trees.** If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305 of this code.

The findings and conditions at EC 9.8320(4) which address the tree preservation and natural resource criterion in the PUD are incorporated herein by reference demonstrating compliance with this criterion.

EC 9.8090(6): The proposal provides adequate public facilities and services including, but not limited to utilities, streets, and other infrastructure.

Referral comments from Public Works and utility providers confirm that although no public improvements are proposed, the existing street system and public utilities can adequately serve the proposed development per the findings provided at EC 9.8320(5)(a) and EC 9.8320(11)(b) and (j).

Based on these findings and future permit requirements, this criterion is met.

EC 9.8090(7): The proposal does not create any significant risk to public health and safety, including but not limited to soil erosion and flood hazard, or an impediment to emergency response.

The findings at EC 9.8320(6) which address this same criterion in the PUD are incorporated herein by reference demonstrate compliance with this criterion.

EC 9.8090(8): The proposal complies with all applicable standards, including but not limited to:

- (a) EC 9.2000 through 9.3915 regarding lot dimensions, solar standards, and density requirements for the subject zone;**

As this proposal does not include any land division or residential building, lot dimension and solar lot standards and density requirements are not applicable to this proposal.

- (b) EC 9.6500 through EC 9.6505 Public Improvement Standards**

EC 9.6500 Easements.

No public easements are proposed by the applicant. Public Works staff confirms that no additional public easements are required to accommodate existing or future public wastewater needs. Based on these findings, the proposed development complies with this standard.

EC 9.6505 Improvements-Specifications.

This section requires all public improvements to be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to be served by and implement infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, access ways, and stormwater drainage. There are no proposed or required public improvements in this instance.

EC 9.6505(1) Water Supply.

While water service is not proposed, EWEB referral comments indicate that there is an existing 10-inch cast iron water main and an existing 8-inch asbestos cement water main on the north side of Cal Young Road. Water service exists to the existing golf course development and can be provided to the

lease site if needed in accordance with Eugene Water and Electric Board (EWEB) policies and procedures. This criterion is met.

EC 9.6505(2) Sewage.

This standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. Even though the proposed cell tower and equipment shelter do not require wastewater facilities, the proposed development has access to facilities that comply with this requirement as a private lateral has been extended to Tax Lot 4200 from the public manhole (# 8708) in Law Lane.

EC 9.6505(3) Streets and Alleys.

There is no requirement for a public street as a result of this development.

EC 9.6505(4) Sidewalks.

There is no requirement for a public sidewalk as a result of this development.

EC 9.6505(5) Bicycle Paths and Accessways.

No bicycle paths or public access ways are required per the previous findings at EC 9.6835, which are incorporated by reference.

(c) EC 9.6735 Public Access Required

(1) Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.

The proposed facility complies with this standard as the signed option and lease agreement (Applicant's Exhibit A) provides for unrestricted access to the nearest public right-of-way (i.e. Cal Young Road).

(2) Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.

With an anticipated increase in traffic of one visit per month, the existing connection to Cal Young Road is exempt from this standard.

(3) The standard at (2) may be adjusted if consistent with the criteria of EC 9.8030(28).

Based on the foregoing findings, the development complies with these standards and no adjustment is necessary.

(d) EC 9.6791 through EC 9.6797 Stormwater Management

EC 9.6791 Stormwater Destination

Per the application, storm water from the relocated impervious concrete pathway will sheet flow to adjacent grass lawn areas and will percolate into the soil. Public Works staff concurs with this statement and notes that the NRCS soil classification for this site is Chehalis which are Type "B" soils characterized by permeability rates between 0.6 and 2 inches per hour. Runoff from cabinets and footing drains will be connected to the existing drainage system and will have negligible impact to the public drainage system. Based on these findings, the proposed development complies with this standard.

EC 9.6792 Stormwater Pollution Reduction

With 998 square feet of new and replaced impervious surface (Sheet T-1), the proposed development is not subject to pollution reduction standards pursuant to EC 9.6792(2)(c).

EC 9.6793 through EC 9.6797

Because the proposed development is at an elevation less than 500 feet and does not drain to a headwaters facility, does not generate high concentrations of oil and grease, does not include any specific pollutants of concern identified in EC 9.6795(2) and is not subject to the pollution reduction standards, the remaining stormwater destination standards at EC 9.6793 through EC 9.6797 are not applicable.

Based on the above findings, the stormwater development standards will be met.

(e) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways

The findings in the concurrent PUD (PDT10-2) at EC 9.8320(5)(a) are incorporated herein by reference to demonstrate compliance with this criterion.

- (f) Where the proposal is to establish non-residential uses subject to residential density requirements on development sites in the residential zone category, it shall achieve the minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards, unless specifically exempted elsewhere in this code or granted a modification through an approved conditional use permit. For purposes of calculating "net density," the acreage of land considered shall include the entire development site and exclude public property, such as public streets, parks, and other public facilities. In considering**

whether to grant a modification to the density requirements, the hearings official shall evaluate the following factors:

1. The availability of the development site for residential use on August 1, 2001. The term "availability" in this section shall include consideration of whether the site was already developed with non-residential uses or had other site constraints impacting its suitability for residential use.
2. The necessity of the development site to be developed with residential uses to be able to achieve the minimum residential density for the area designated on the Metro Plan Land Use Diagram for either medium- or high-density residential use.
3. Adopted plan policies indicate the suitability and appropriateness of the site for non-residential use.

Table 9.2740 does not subject telecommunications tower or facility to density requirements, as such this criterion is not applicable.

An approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard. Additional criteria may also be required based on the applicability of other sections of this land use code.

All applicable development standards including telecommunications standards at EC 9.5750 have been addressed in the PUD. The applicant has proposed noncompliance with the screening standard for the south side of the facility that is next to the building. The findings and conditions above at EC 9.8320(11)(k) are incorporated herein by reference to demonstrate compliance with this criterion.

Otherwise no other adjustments are proposed or required and all other development standards appear to have been met or will be required to be met at the time of development permit application. This criterion is met.

EC 9.8090(9): The proposal complies with the Traffic Impact Analysis Review provisions of EC 9.8650 through 9.8680 where applicable.

With a projected increase in traffic limited to one maintenance visit per month, the proposed cell tower facility does not meet any of the thresholds established in EC 9.8650 through 9.8680. Accordingly, there is no requirement for a Traffic Impact Analysis.

Staff Recommendation:

Based on the available information and materials, and the findings and conditions of approval contained in this report, staff recommends that the Hearings Official grant tentative PUD approval and CUP approval with the following conditions, to ensure compliance with the applicable approval criteria and request the Hearings Official determine if a CUP is required for this proposal.

Conditions of PUD and CUP approval:

1. Prior to final PUD approval, the applicant shall provide documentation that a certified letter has been mailed to property owners at 2070, 2044, 2064 and 2070 Law Lane and the owner of the Northgreen Apartments. The letter shall provide a brief summary noting why the landowner is receiving the letter and that the intent of the optional plantings will be to obscure the view of the proposed telecommunications facility and note that the property owner has 30 days from receipt of the letter to respond. The letter shall provide the following three options and will specify that only one option can be chosen.
 - 4) Please plant ____ (max of 2) evergreen trees on the Oakway Golf Course within 10 feet of my property line.
 - 5) Please plant ____ (max of 2) deciduous trees on the Oakway Golf Course within 10 feet of my property line.
 - 6) I do not want additional landscaping/trees to be planted within 10 feet of my property line.

Based on the response, the applicant will be required to plant the requested number of trees on the site adjacent to the lot requesting the plantings. With written agreement from the property owner the location and plantings can be adjusted. If the property owners do not respond to the applicant in writing within 30 days of the mailing, the applicant will not be required to provide additional trees along that lot boundary.

2. The final tree preservation/landscape plan (Sheet L-1) shall show the location and species of required new trees (proposed trees plus additional screening as requested by the neighbors) to be planted on the development site.
 - New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
 - The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.
 - The plantings must be inspected and approved prior to the City granting final approval of the building permit.
 - A note shall be added to Sheet L-1 noting that "Watering and general maintenance of replacement trees shall be conducted by the owner or lessee in a manner that ensures their establishment and long-term survival."
3. Tree Preservation Plan (Sheet L-1) with the final site plans shall include the following tree preservation notes:
 - "All protective tree fencing shall remain in place until completion of all construction activities."
 - "Protective fencing for trees identified to be preserved shall be inspected and approved by the City prior to beginning any construction related activities."
 - "No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the

City.”

- “Removal of dead, diseased, or hazardous trees shall be allowed with documentation from a certified arborist as to the condition of the tree and the need for removal. Documentation must be provided to the City for review and approval prior to tree removal activity.”
 - “In the event a preservation tree must be removed, the justification of the removal must be documented by a certified arborist. Documentation must be provided to the City for review and approval prior to tree removal activity. The tree shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species, with a minimum caliper of 2" for deciduous canopy trees and a minimum height of 5' for coniferous or evergreen trees. Planting, watering and general maintenance of replacement trees shall be conducted by the lot owner in a manner that ensures their establishment and long-term survival.”
4. Any development permits for the construction of the proposed facility shall include information demonstrating FAA review and approval and Oregon Department of Aviation review. If FAA approval requires any changes to the proposal as initially approved, then this initial approval shall be void.
 5. A note shall be added to Sheet L-1 noting that noncompliance with EC 9.5750(7)(e) has been approved through the PUD such that landscaping along the south side of the telecommunications facility between the tower and the building is not required.
 6. A note shall be added to Sheet L-1 that states “All landscaping proposed on Sheet L-1 shall be kept healthy and well maintained as long as the telecommunications facility remains on the subject site.”
 7. Prior to final PUD approval, Sheet A-1 shall be revised to include the following note. “If lighting is required by the FAA no high intensity white lights may be located on the tower.”
 8. Prior to final PUD approval, Sheet A-1 shall be revised to include the following note. “The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or shades with a matte finish as approved by the city.”
 9. Prior to final PUD approval, Sheet A-2 shall be revised to include the following note “No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2.”
 10. Prior to final PUD approval, Sheet A-2 shall be modified to show the fence around the ancillary equipment to be 100 percent site-obscuring and be constructed out of wood or chain link with wooden slats.
 11. The following note shall be added to the final site plan “All transmission towers, antennas, the tower substructure and all above ground ancillary facilities shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property

owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas.

Consistent with EC 9.7330, unless the applicant agrees to a longer time period, the Eugene Hearings Official shall approve, approve with conditions, or deny a Type III application within 15 days following close of the public record. The decision shall be based upon and be accompanied by findings that explain the criteria and standards considered relevant to the decision, stating the facts relied upon in rendering a decision and explaining the justification for the decision based upon the criteria, standards, and facts set forth. Notice of the written decision will be mailed in accordance with EC 9.7335. Within 12 days of the date the decision is mailed, it may be appealed to the Eugene Planning Commission as set forth at EC 9.7650 through EC 9.7685.

Attachments:

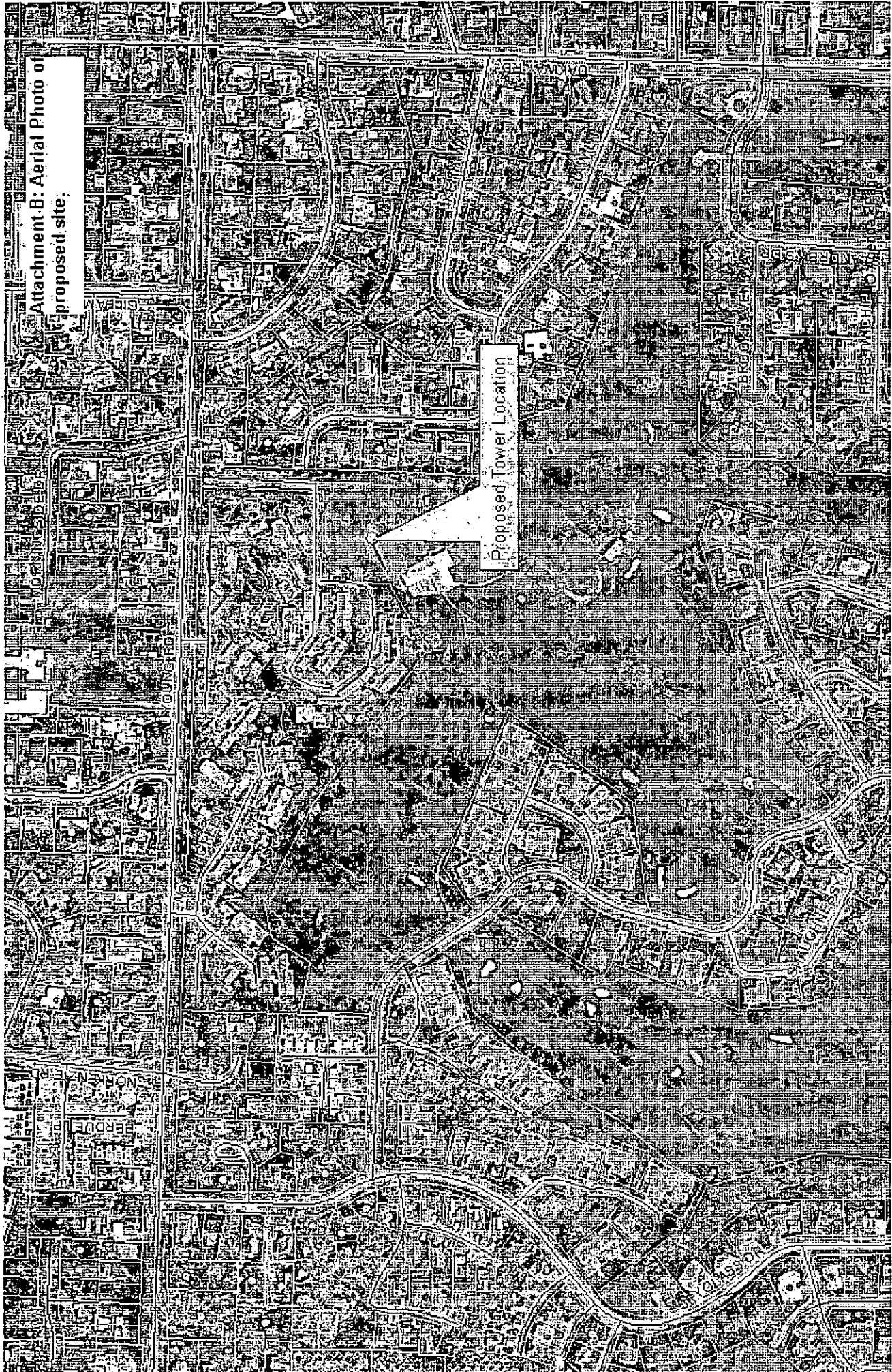
It was not feasible to reprint all of the written materials, site plans, and other items included in the public record for this application as part of the attachments to the staff report. Several relevant items are attached to this report for ease of reference, however all record materials are available for review at the Planning Division. Copies or emails of these additional materials can be provided upon request. The Hearings Official will be provided a full set of the applicant's materials for review, and the full application file will be made available at the public hearing.

Attachment A: Applicant's Overall Site Plan
Attachment B: Aerial Photo of Proposed Site

For More Information:

Please contact Steve Ochs, Assistant Planner, Eugene Planning Division, by phone at (541) 682-5453, or by e-mail, at steve.p.ochs@ci.eugene.or.us

Attachment B: Aerial Photo of proposed site:



Proposed Tower Location

**DECISION OF THE HEARING OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

**PLANNED UNIT DEVELOPMENT AND CONDITIONAL USE PERMIT
PDT 10-2, CU 11-1**

Application File Name (Number):

AT & T Mobility Cell Tower – Oakway Golf Course (PDT 10-2 & CU 11-1)

Applicant's Request:

Tentative Planned Unit Development and Conditional Use Permit approval for the installation of a new wireless telecommunication tower facility and ground-mounted equipment shelter on a privately owned golf course.

Applicant/Owner

Technology Associates / AT & T Mobility

Subject Property/Location:

Tax Lot 4200 of Assessor's Map 17-03-20-32; Located on Oakway Golf Course, 2000 Cal Young Road.

Relevant Dates:

PUD application submitted on July 29, 2010; application deemed complete on November 16, 2010; PUD application put on hold and timeline extended. CUP application submitted January 27, 2011; application deemed complete April 21, 2011; public hearing for concurrent applications scheduled for June 15, 2011.

Applicant's Representative:

Konrad Hyle, Technology Associates/AT & T, Phone: (503) 549-0001

Lead City Staff:

Steve Ochs, Associate Planner, Eugene Planning Division, Phone: (541) 682-5453

Summary of the Public Hearing

The hearing official held a public hearing on this application on June 15, 2011. The hearing official stated he had no conflicts of interests and no *ex parte* communications. No person objected to the hearing official conducting the hearing.

Steve Ochs, Associate Planner, and Gabe Flock, Senior Planner were present and spoke for the city. The city recommended the application complied with the approval criteria a planned unit development and conditional use permit. Mr. Ochs submitted Exhibits 1 and 2 (letters received

between the date of the staff report and the hearing) and exhibit 3 (staff information about appeal costs).

Konrad, Hye, Project Manager, Technology Associates International Corp., spoke for the applicant and submitted exhibit 4 (letter from FAA) and exhibit 5 (Proclamation No. 8460, 74 Fed. Reg. 64585 (Dec. 8, 2009)).

The following persons testified in opposition to the application John Jaworski, President, Cal Young Neighborhood Ass'n., Sarah Bennett, Melissa Brotz, Patrick Brotz, Craig McKern, Sheri Greatwood, Dolores Haddad, Dan Patch, Dan Haddad, Rae LaMarche, JoAnn Lyerla, Francis Bullis, Jeff Willensky, Jenny Soyke, Randy Prince, Michael Reeder (attorney at law, Arnold Gallagher Percell Roberts & Potter, Eugene Oregon, representing Northgreen, LLC), Arthur M. Noxon, PE, Bill Kloos (Law Office of Bill Kloos, PC, Eugene, OR, representing Melissa Brotz and the Oakway Neighbors Association), and Florence Vollstedt.

Mr. Jaworski submitted exhibit 6 (copy of his testimony). Mr. Brotz submitted exhibit 7 (Oakway Neighbors' statement of health risks). Ms. Soyke submitted exhibit 8 (testimony and photo). Mr. Reeder submitted exhibit 9 (letter from Arthur Noxon). Mr. Kloos submitted exhibit 10 (letter with attachments).

Mr. Hyle provided rebuttal testimony.

There was a request to hold the record open to allow time for submission of additional evidence. The hearing official established the following deadlines: June 22, 2011 for submission of new evidence, June 29, 2011 for submission of rebuttal, and July 6, 2011 for the applicant's final legal argument. Subsequently, the applicant requested a longer open record period for submission of new evidence. The hearing official approved this motion and established the following schedule: July 6, 2011 for submission of new evidence, July 13, 2011 for submission of rebuttal, and July 20, 2011 for the applicant's final legal argument. Staff provided notice of the revised open record schedule. There were no objections to any of the materials submitted during this open-record period; the hearing official accepts all of the materials the parties submitted during this open-record period.

Documents Considered by the Hearing Official

The hearing official received and reviewed voluminous application materials, referral comments, the staff recommendation, comments and testimony in many different media to the hearing official (including lengthy submissions from Willamette Oaks), and the applicant's final legal argument. Typically, the hearing official lists each document; however the vast number of documents makes such a list impractical here. City staff has preserved the originals of each document in the city files.

Description of Planned Unit Development Request:

The applicant requests tentative Planned Unit Development (PUD) and Conditional Use Permit (CUP) approval to install a new wireless telecommunication tower facility and ground-mounted equipment shelter on a privately owned golf course (Oakway Golf Course) which is zoned R-1/PD, Low Density Residential with the Planned Unit Development Overlay. The applicant is proposing to construct a 75-foot monopole communications tower and ground mounted electronic equipment within a 25 x 35-foot area, located adjacent to the north of the existing golf course building.

The entire Oakway Golf Course area was annexed in 1972 and received preliminary PUD approval for the entire 168-acre Planned Unit Development. This area was subsequently developed through numerous PUD approvals and modifications.

The telecommunications requirements adopted in the Eugene Code that are relevant to the subject request and addressed below at EC 9.5750, were crafted to ensure that they are consistent with the requirements of the Federal Telecommunications Act of 1996. The Act prohibits cities and states from discriminating among telecommunications providers and from erecting barriers to a provider's entry into a local market. The City's policies and ordinance ensure that all providers in similar situations are treated in a similar fashion. The City worked to design the ordinance so that no barriers to market entry were created, consistent with federal requirements under the act.

The PUD application is required by the /PD overlay zone. Telecommunications requirements at EC 9.5750(5) also require a CUP for construction new telecommunications towers in areas zoned R-1. Relevant application procedures for this request are addressed at EC 9.7300 through 9.7340. Relevant application requirements and approval criteria for this request are addressed at EC 9.8300 through 9.8330, EC 9.8075 through EC 9.8109 and EC 9.5750.

A pre-application conference was held March 16, 2010 (LC 10-09), consistent with application procedures at EC 9.7005. Public notice of the PUD application was mailed and posted on December 10, 2010. Subsequently, the application was put on hold and a notice of hearing cancellation was mailed on January 4, 2011. All testimony submitted after the first notice is included in the record. On January 27, 2011 a CUP application was submitted to run concurrently with the PUD application. Public notice of the June 15, 2011 hearing for concurrent applications was mailed on May 11, 2011.

Preliminary Issues:

Concurrent Applications - As noted above, the applicant submitted for concurrent tentative PUD and CUP approval. Based on initial consultation with City staff, the applicant originally applied only for a PUD. Subsequently, after public comment was received on the PUD application, the applicant provided a time extension, put the PUD application on hold, and submitted the CUP application. On pages 2 and 3 of the applicant's written statement, the applicant requested the hearing official make a determination as to whether the proposed

tower requires a CUP. The applicant also requested that if a determination is made that no CUP is required, the application fee be refunded.

Table EC 9.2740 lists the Telecommunications Facility use as (S), which refers to special development standards starting at EC 9.5000. These standards in turn require a CUP for telecommunications towers in R-1. EC 9.2740 notes that uses subject to CUP requirements (listed as (C) in the table) can also be approved through PUD procedures. Code language at EC 9.2740 allows uses requiring a CUP (listed as (C) in the use table) be approved through PUD procedures. Because the general EC 9.2740 allows a PUD to replace a CUP, but the specific telecommunications provisions expressly require a CUP, there is a conflict in the code—i.e., whether this application requires both PUD and CUP approval.

This issue requires the hearing official to interpret the Eugene Code. Statutory interpretation in Oregon is governed by *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610–12, 859 P2d 1143 (1993), and *State v. Gaines*, 346 Or 160, 171–72, 206 P3d 1042 (2009) (modifying *PGE* method for how to consider legislative history). There is no obvious context other than the two provisions that appear to conflict.

There is no legislative history in the record; however, the staff report stated that the intent of EC 9.2740 is to eliminate the need for duplicative Type III processes. This makes sense because many of the CUP requirements are similar, nearly duplicative, of the PUD requirements, but does not conclusively resolve the conflict.

The next step is consideration of general maxims of statutory construction. *State v. Gaines*, 346 Or at 172. LUBA periodically addresses situations where there is a true conflict. In one recent case, *DLCD v. Jefferson County*, 55 Or LUBA 625 (2008), LUBA noted that courts may apply the legislative maxim that the more specific statute prevails over the more general, and that a later adopted statute prevails over the earlier statute. Here, these maxims appear to resolve the question. EC 9.5750(5)(c) is within the specific special standards that EC 9.2740 refers to and is more specific to the proposal than EC 9.2740, which is the general list of allowed uses and the permits required for those uses. Additionally, EC 9.5750 is the later-in-time provision. EC 9.5750 was most recently amended in July 2010 (effective August 2010), whereas EC 9.2740 was most recently amended in August 2008 (effective July, 2009).

The hearing official concludes that the proposed telecommunications facility in the R-1 zone requires both PUD and CUP approvals.¹

Neighborhood Applicant Meeting - An additional preliminary matter relates to the neighborhood meeting requirements. The initial neighborhood/applicant meeting required by EC 9.7007 was held on June 8, 2010. EC 9.7007(12) requires applications be submitted within 180 days of the meeting. The applicant submitted the PUD application within the 180-day period after the meeting, but later submitted the concurrent CUP application more than 180

¹ City staff might note this issue as a clean-up item for the next code update.

days after the meeting. The applicant submitted the CUP application only after the initial comment period on the staff report revealed that the CUP should be required. The application was deemed incomplete because of the requirement to hold a new neighborhood meeting. The applicant invoked its right to “force” the application complete, as the proposed development in the CUP application never substantially changed from what the applicant provided at the initial neighborhood meeting.

The hearing official is thus left with having to determine whether the requirement for a neighborhood meeting was intended to address a situation where the need for a second application was discovered late in the process, where the two applications contain many similar criteria; and where there was no substantial change in the proposal. EC 9.7007(2) states that the purpose of the neighborhood meeting “is to provide a means for the applicant and surrounding property owners and residents to meet and review the proposal, share information, and identify issues regarding the proposal.” The applicant did hold a neighborhood meeting and neither the project nor the code changed between the neighborhood meeting and the CUP application. The neighborhood had the opportunity to review the proposal, share information, and identify issues. If there would have been any new issues relating specifically to the CUP application, then it would be the applicant that could not have taken advantage of learning from surrounding property owners and residents. In this case, some of the issues that the neighborhood identified during the hearing and in post-hearing submittals may have come as a surprise to the applicant. That was the applicant’s risk by choosing not to hold a second meeting and gambling that the hearing official would not deny the application for that choice.

The hearing official concludes that the applicant’s failure to hold a second neighborhood meeting specifically for the CUP application and submission of the CUP application more than 180 days after the neighborhood meeting was not fatal to the CUP application.

Appeal Fees – Bill Kloos, on behalf of the Oakway Neighbors, raises the issue of appeal fees in testimony. The City of Eugene’s Appeal fees are set by administrative order. It is understood that the issue has been raised to prepare for a possible local appeal of the decision to the Planning Commission. At this point no appeal has been filed so no further response to the appeal fee issue is included at this time.

At the hearing, Mr. Kloos stated that he was raising this issue at this time solely to preserve it for appeal. This issue does not require a response by the hearing official.

Evaluation of the Planned Unit Development Criteria:

EC 9.8320(1) The PUD is consistent with applicable adopted policies of the Metro Plan.

The Parks and Open Space designation includes existing publicly owned parks as well as publicly and privately owned golf courses and cemeteries. Testimony provided asserts that a telecommunications facility is not consistent with the open space designation in the Metro

Plan. The existing zoning of R-1 Low Density Residential with the Parks and Open Space (POS) designation does not inherently conflict as the primary golf course use is allowed in R-1 per EC 9.2750. Buildings supporting this use are allowed. While the cell tower will be added on the golf course, the primary use of the development site as a privately owned golf course will not change. The Planned Unit Development and Conditional Use Permit criteria regarding compatibility found below can appropriately be used to address the impacts of the cell tower on the "open space". The Metro Plan has no provisions expressly prohibiting telecommunications facilities or other structures in areas designated POS.

The applicant's written statement provides general findings of consistency with regard to adopted Growth Management, Residential Land Use, Environmental Design, Transportation, Public Facilities and Citizen Involvement sections of the Metro Plan. Specific policies are not addressed.

Use of the Metro Plan

The staff report and opponents to the proposal contain discussion of many Metro Plan policies. It is thus helpful at this point to discuss how to use the policies in the Metro Plan. The Metro Plan explains, "Use of the *Metro Plan* requires a balancing of its various components on a case-by-case basis, as well as a selection of those goals, objectives, and policies most pertinent to the issue at hand." *Metro Plan* at I-5. The Metro Plan also explains that some of the policies, "call for immediate action; others call for lengthy study aimed at developing more specific policies later on; and still other suggest or take the form of policy statements.

In a prior decision of the hearing official, Z 09-6, upheld by the Planning Commission and LUBA, the hearing official explained:

"LUBA has made clear that not all text in a comprehensive plan may be used as approval criteria. In fact, LUBA observed with respect to a 2003 City of Eugene zone change application, "As our cases have recognized, local governments face a 'recurring problem' in 'identifying the relevant approval standards, if any, in the local government's comprehensive plan.'" *Bothman v. City of Eugene*, 51 Or LUBA 426, 438 (2006) (quoting *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 209 (2004)). LUBA further explained:

"[E]ven where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require, as does EC 9.8865(1) and (2), consistency with applicable plan provisions."

Id. at 439. Whether a specific provision applies to a quasi-judicial application, depends first on whether the Metro Plan “itself expressly assigns a particular role to some or all of the plan’s goals and policies.” *Id.* (citing *Save Our Skyline*, 48 Or LUBA at 210). If there is no express role, then it is appropriate to consider the text and context of the particular provision.

The Metro Plan defines “policy” as: “A statement adopted as part of the *Metro Plan* or other plans to provide a specific course of action moving the community toward attainment of its goals.” Metro Plan, Glossary, V-4. This definition indicates that policies are actions relating to communities, not specific land use applications. . . .

The Metro Plan does not provide an express role for using policies as decisional standards, thus, it is appropriate to review each policy for its text and context.”

Discussion of Specific Metro Plan Policies

Below is a discussion of the specific Metro Plan policies that the staff report, public testimony, and the hearing official identified as relevant to the proposal.

Residential Land Use and Housing Element

A.24: Consider adopting or modifying local zoning and development regulations to provide a discretionary design review process or clear and objective design standards, in order to address issues of compatibility, aesthetics, open space, and other community concerns. (Page III-A-9)

This policy provides broad direction to the local government at the time of adopting or modifying local zoning and development regulations. It is not itself applicable to specific proposed developments. The City has adopted specific telecommunications standards at EC 9.5750, which include a discretionary review process (in this case, CUP and PUD reviews for new towers in R-1) that address compatibility, aesthetics, open space and other community concerns by restricting tower height, location, color, noise, and numerous other criteria.

Environmental Resources Element

Policy C.21 When planning for and regulating development, local governments shall consider the need for protection of open spaces, including those characterized by significant vegetation and wildlife. Means of protecting open space include but are not limited to outright acquisition, conservation easements, planned unit development ordinances, streamside protection ordinances, open space tax deferrals, donations to the public, and performance zoning.

This policy seems to provide both broad direction to the local government for long-term planning, and direction when regulating development; however, the “means of protecting open space” include only long-term planning strategies, not anything that is related to a specific development proposal. The statutory construction maxim of *ejusdem generis* advises that when a provision of law lists specific classes or types, then other general statements within that provision apply to only things similar to those listed. Here, applying *ejusdem generis* to the general statement, “including but not limited to,” would indicate an intent to include only other long-term planning strategies, not to means of regulating specific development proposals. Consistent with this policy, the existing golf course includes a /PD overlay, which requires any development on the golf course to be reviewed through the PUD process.

Environmental Design Element

Policy E.4 Public and private facilities shall be designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas and promotes their sense of identity.

In a prior decision of the hearing official, Z 09-6, the hearing official concluded, “This policy is broad direction to the city. As applied to a PUD, this policy is implemented by numerous criteria, including EC 9.8320(3), (4), (8), (12), and (13). The Planning Commission and LUBA affirmed that overall decision of the hearing official. Two CUP criteria also implement this policy: EC 9.8090(2) and (3).

Mr. Reeder, representing Northgreen, argues that this policy applies to this proposed development and that the proposal does not meet this policy. He cites to “hundreds² of written and oral comments received into the record for the Application that the design and location of the Proposal will not only *not* preserve and enhance desirable features of the local and neighborhood areas and *not* promote the local and neighborhood identities, but will degrade the same.” Letter from Michael Reeder (July 6, 2011) at 6. Even though the hearing official believes this policy provides broad direction to the city, the hearing official notes that this decision addresses the criteria that implement this policy below; it is not necessary to conduct an independent review of the proposed development for consistency with this policy.

² The hearing official did not count the number of comments in the record, but “hundreds” is probably inaccurate because it connotes comments from more than 200 different individuals. The record does contain well over 100 pages of comments, but many people submitted multiple comments, many of the comments are more than one page long, and many of the comments have attachments. Such hyperbole is unnecessary; a more accurate and less bombastic word would be “numerous.” For another opinion on the use of strong language, see http://www.abajournal.com/magazine/article/dirty_dozen/. Regardless, approval or denial of land use applications is not a popularity contest; the hearing official would give the same attention to the issues if they were raised in a single well-composed comment.

Policy E.6 Local jurisdictions shall carefully evaluate their development regulations to ensure that they address environmental design considerations, such as, but not limited to, safety, crime prevention, aesthetics, and compatibility with existing and anticipated adjacent uses (particularly considering high and medium density development locating adjacent to low density residential).

This policy provides broad direction to the local government. It focuses on a task of reviewing development regulations, not reviewing specific development proposals for consistency with this policy. Although this policy mentions aesthetics and compatibility, it is not a development standard for the proposed cell tower.

Conclusion

The proposed development is consistent with the Metro Plan.

EC 9.8320(2) The PUD is consistent with applicable adopted refinement plan policies.

The Willakenzie Area Plan (WAP) is the applicable adopted refinement plan for the area included in this tentative PUD proposal. The property is located within the Cal Young subarea and is designated Parks and Open Space on the Land Use Diagram in the refinement plan.

Discussion of Specific WAP Policies

Retain existing significant vegetation whenever possible to provide buffering between residential and nonresidential uses (General Policy 3):

The context of this policy could be interpreted as broad direction to the city. Both the CUP and PUD criteria contain standards for screening and tree preservation (See EC 9.8090(2)(b), EC 9.8030(5)(b) and (c), EC 9.8320(3), EC 9.8320(4)(b) and (c))

As well, the text of this policy could be interpreted as applicable to specific development proposals. The proposed development does not propose removal of significant vegetation. All of the existing trees would be retained under the proposed project; some turf grass would be relocated due to the rerouting of the golf cart path. Conditions of approval are included below at EC 9.8320(4) to ensure that all trees are preserved. Additionally, at the time of the staff report, the applicant proposed three Red Oak trees and 25 Emerald Arborvitae surrounding the enclosure. The staff report recommended screening trees on the adjoining property lines. After the hearing, the applicant proposed "to plant a total of 14 additional 6' tall evergreen trees (location and species to approved by staff) along the property lines abutting properties to the north and east – 2 trees each along the 4 lots identified in staff report on Law Lane and 6 trees abutting the North green Apartment complex." Letter from Konrad Hyle (July 6, 2011) at 2.

In this decision, however, the hearing official is requiring the applicant to place the equipment supporting the tower underground. This will buffer the residences from that equipment. The hearing official is also requiring the applicant to employ a landscape architect to design visual buffering of the tower both on the subject parcel, and as seen from the parcels that adjoin the subject property in the vicinity of the tower.

No matter whether one reads this provision as broad direction to the city or as applicable to specific proposed development, the proposal is consistent with this policy.

Minimize land use conflicts by promoting compatibility between residential and nonresidential land uses (General Policy 6):

The context of this policy could be interpreted as broad direction to the city to promote compatibility. Both the CUP and PUD criteria require compliance with criteria that address compatibility, consistent with this policy (See EC 9.8090(2), EC 9.8090(3), 9.8320(3), 9.8320(12), and 9.8320(13)).

As well, the text of this policy could be interpreted as applicable to specific development proposals. The applicant's written statement refers to several elements that promote compatibility. These include the use of a monopole instead of a lattice tower, tree preservation and new planting, and the tower is to have a matte, non-glare finish and there will be no tower lighting. The findings and conclusions in response to EC 9.8090(2), EC 9.8090(3), 9.8320(3), 9.8320(12), and 9.8320(13) are incorporated here.

Conclusion

The proposed development is consistent with the Willakenzie Area Plan.

EC 9.8320(3) The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.

Findings

The applicant proposes to develop a 75-foot tall telecommunications pole within an existing 58-acre golf course development. The adjacent parcels to the north and west are zoned R-1/PD and were developed as part of the Oakway Golf Course PUD with an apartment complex (City File PD 74-3). Adjacent parcels to the east are zoned R-1 and developed with single-family residences. To the south and separated by the golf course, the nearest parcels are also zoned R-1/PD and developed with single-family residential uses.

The applicant notes that the tower height is the minimal size necessary to comply with applicant's coverage requirements. It is also the maximum height (75-feet) allowed in the R-1 Low Density Residential zone for new telecommunications facilities. The applicant notes the

following elements help to minimize the possible visual impacts from the tower's location: the use of a slim-line mono-pole as opposed to the traditional lattice tower; the proposed tower will have a matte, non-glare finish; there is no tower lighting; the security lighting, as shown on the site plan, will be downcast, shielded and mounted at a height of less than 10 feet and will be subject to City lighting standards; and, the applicant proposes that only the FCC and company standard site designation signs shall be placed upon the door of the equipment shelter to minimize visual impacts of signage on the surrounding properties.

Bulk and Height – The top of the proposed monopole is 75 feet in height. The pole is approximately 4-feet in diameter and the proposed antennae array at the top spans an approximate 12-foot width.

Location - The proposed mono-pole is located 102 feet from the property line to the west. Within that 102-foot setback there is a parking and landscape easement of 26 feet (which contains parking and landscaping for the apartments, granted to the Northgreen Apartments to the east). The apartments to the west are oriented north-south so they do not provide direct views of the cell tower location. The proposed monopole is approximately 134 feet from the nearest property line to the north. The apartments are oriented north-south and provide direct views towards the proposed cell tower site. The monopole is approximately 191 feet from the nearest property line to the east. These houses are oriented so that the backs of their houses and backyards face the cell tower site. The proposed tower is approximately 222 feet from the nearest property line to the south. The sides of the houses are oriented towards the tower site. While not part of this standard, telecommunications setback minimums from adjacent property lines in R-1, at EC 9.5750(7)(d), require a minimum setback equal to the height of the tower (75-feet).

Screening – As shown on the applicant's Sheet L-1, the proposed cell tower lease site is surrounded by 22 mature trees to the east, north and west. Additionally, as shown on Sheet L-1, the applicant's proposal includes the planting of 25 arborvitae at the base of the tower and 3 oak trees just north of the tower site. At the hearing, the applicant also stated that it would comply with the staff's recommended condition of approval to offer to plant up to two trees along the property lines of all adjoining parcels. After the hearing, the applicant also proposed "to plant a total of 14 additional 6' tall evergreen trees (location and species to approved by staff) along the property lines abutting properties to the north and east – 2 trees each along the 4 lots identified in staff report on Law Lane and 6 trees abutting the North green Apartment complex." Letter from Konrad Hyle (July 6, 2011) at 2.

A building and parking lot are adjacent to the lease area to the south. The applicant's Exhibit K Photo Simulations should be referenced here for context. Exhibit L also shows the view locations of the photo simulations. Additionally, many pictures from the tower site and of the tower site from surrounding properties are in the record.

West - To the west between the Northgreen Apartments and the site there are currently 9 existing trees including 4 large and one small evergreen tree and a hedge approximately 4 feet high. These trees provide screening from the adjacent property directly to the west year round (see Sheet L-1, Photo Simulation 7 of the applicant's material and Photo 1: View West from Tower Site). There is a gap of screening to the northwest of the proposed monopole in which the applicant proposes to plant 3 red oak trees that will eventually mature to 60 feet in height by 50 feet wide.

North – To the north, between the Northgreen Apartments and the proposed site there are currently 8 evenly spaced mature Sycamore trees and a hedge approximately 4 feet in height. (See Photo Simulation 6 of Exhibit K and Photo 2: View North from Tower Site). The existing landscaping will provide sufficient screening of the monopole during the spring and summer months, but additional evergreen plantings should be considered along the north property line. (See proposed condition of approval at the end of this subsection.)

East – To the east and southeast, between the adjacent single family residences and the proposed site, there are currently 5 birch and Oak trees on the west side of the driveway, and a variety of evergreen trees scattered along the east side of the driveway along the property line. (See Photo Simulations 8 and 9 and Photos 3 and 4: View Northeast and East from Tower Site). Again, the existing landscaping should provide sufficient screening during the spring and summer months but additional evergreen plantings should be considered along the east property line. (See proposed condition of approval at the end of this subsection.)

South – To the south, the base of the monopole is completely screened by existing buildings. There is a developed golf course with numerous mature trees between the residential developments to the south and the subject site (see Aerial Photo of Proposed Site). Staff recommended that no further screening appears to be needed to the south.

Discussion

Visibility of the proposed tower is one of the major issues that the adjoining property owners and residents raise. The hearing official understands they argue that the visibility of any tower within a residential neighborhood is inconsistent with this code provision. The starting point for analysis is the definition of screening: EC 9.0500 defines "Screening" as, "A method of visually shielding or obscuring an area through the use of fencing, walls, berms, or densely-planted vegetation." The Eugene Code does not define "shielding" or "obscuring." Thus, we turn to Webster's Third New International Dictionary (unabridged 2002) for the applicable definitions. Webster's is the dictionary that the appellate courts in Oregon use. Webster's shows the following relevant definitions:

Shield – 1.b: to cut off from observation: conceal, hide Webster's at 2094.

Obscure – 1.b: to conceal or hide from view as by or as if by covering wholly or in part: make difficult to discern Webster's at 1557.

These dictionary definitions reveal a bit of an internal inconsistency in the Eugene Code's definition of "Screening." The term "shield" indicates making an object not visible, but the term "obscure" allows for something to be visible in part, just difficult to discern. And there is more to the code provision at issue.

EC 9.8320(3) uses the term "adequate screening." Testimony provided by Bill Kloos on behalf of the Oakway Neighbors and other public testimony asserts that "adequate screening" should mean completely block the view. The staff report noted that this term has not been applied in the past to mean that views of proposed development must be eliminated, but rather they must be screened to a reasonable extent—i.e., adequate in context. For example, in the tentative PUD decision for Goodpasture LLC (PDT 09-1), the hearing official noted that in *Sunburst II Homeowners Association v. City of West Linn*, 17 Or LUBA 401 (1989) LUBA upheld a city determination that the 25-foot trees would adequately buffer a 110-foot tall water tower. LUBA noted that the term "adequate buffer" gave the city discretion, and did not require the city to ensure that views of the water tower would be eliminated. As applied in the past, the term "adequate screening" in the Eugene Code is similarly discretionary.

The staff report then noted that in tentative PUD approval PDT 09-1, which was appealed to the Planning Commission and upheld, an adequate amount of screening was considered to be a combination of a six-foot fence and new landscaping to screen three-story apartment buildings. Even though the mono-pole is 25-feet taller (75-feet high as compared to 50-foot high apartments) it is not as bulky and is set back a greater distance. The existing landscaping on this site is also mature and obscures potential views of the tower from much of the surrounding area. Therefore, staff recommended, the existing mature landscaping combined with the proposed and additional required plantings would provide "adequate screening."

The hearing official does not believe the term "adequate screening" refers to making objects invisible, but the hearing official also does not believe that the screening required for the three-story apartment buildings at issue in PDT 09-1 is a good comparison to the cell tower at issue here. In PDT 09-1, the surrounding development was entirely other multi-story residential apartment and retirement home buildings. Here, the proposed use is not similar in height, type, or use as the surrounding single-family residences or apartment buildings.

The staff report noted that a continuous screen of site obscuring vegetation is not provided along the north and east property lines. Staff thus recommended a condition of approval requiring the applicant to notify neighbors and give them an opportunity to have the applicant plants trees that would screen the proposed tower. After the hearing, the applicant proposed to just plant the trees without first working with the neighbors and the staff recommended deleting that recommended condition. Staff also recommended a condition of approval implementing the landscape plan. The hearing official is concerned that the applicant's revised proposal does not take account of the values of the adjoining owners and residents. Although the owners and residents are given a Hobson's choice—either have the applicant plant

additional screening for them, in which case they lose their a portion of their view into the golf course, or have no additional screening, in which case they have a more obtrusive view of the cell tower—they were given some input into the screening. The applicant's revised proposal would eliminate even that level of input.

As well, the hearing official is aware that by requiring the tower equipment to be underground, the applicant will not be planting the arborvitae mentioned in the application, and may be limited in what could be planted on top of the underground vault. Because there is no equipment to screen, the hearing official believes it is reasonable to require the applicant to do more than just plant a row of arborvitae, which would have little effect in screening the base of the tower. Native vegetation, such as rhododendron, which can grow to 10 feet, 12 feet, or higher, and be dense and bushy for that entire height, would provide better screening of the portion of the tower below the tree canopy. Another alternative would be to mask the tower, not by making it invisible, but by making an attractively landscaped area that draws attention away from the tower. However, the hearing official is not a design professional and has nothing in the record explaining the security needs of a tower base. A landscape architect is the appropriate professional to design adequate screening of the tower.

The mid-section of the pole would probably be well screened by existing and proposed vegetation from most viewing points. It is this section where the leafy crowns of deciduous trees and the thick branches of coniferous trees are most effective.

The top of the tower—the area above the bushy crowns and tops of coniferous trees is the portion of the tower that really can't be screened with anything close to the pole. Practically speaking, this is the area that must be kept clear in order for the antenna array to work. Aesthetically speaking, the pole will be visible against and contrast with the sky, especially as seen from below. Here, again, a landscape architect could assist with how to try to achieve screening (or masking) of the upper portion of the tower.

A condition of approval is thus needed to address screening. Because the owners that border the subject property would be most effective, the hearing official believes it is appropriate for the applicant to have the landscape architect work with those owners as well to determine how to best screen (or mask) the base of the tower. The recommendation in the staff report for the applicant to plant up to two trees on the property lines of the adjoining homes correctly places the burden of screening on the applicant, but does not ensure effective screening. What is needed is individual attention to each property owner and the unique visual challenges from each home and yard:

The applicant shall engage a local (mid-Willamette Valley) landscape architect (no other professional will be acceptable) to develop a comprehensive screening plan for the proposed tower to be incorporated into the final tree preservation/landscape plan (Sheet L-1). The landscape architect must consider views of the tower from the homes and yards that adjoin the subject property in the vicinity of the tower, including the

Northgreen Apartments. The landscape architect shall work directly with the landowners of the adjoining properties to design screening that meets those owners' needs. The screening may be located on the subject property, the property of the adjoining owners (with their consent), or both. The final tree preservation/landscape plan (Sheet L-1) shall show the location and species of existing trees and new screening vegetation to be planted on the development site and adjoining properties and shall list the following requirements:

- New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
- The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.
- The plantings must be inspected and approved prior to the City granting final approval of the building permit.
- Watering and general maintenance of replacement trees, new vegetation, and other screening on the subject property shall be conducted by the owner or lessee of the subject property in a manner that ensures establishment and long-term survival. Maintenance of any screening located on the adjoining properties shall be the responsibility of the owners of those properties.
- The cost of the landscape architect and initial implementation of the screening plan shall be the responsibility of the applicant.

Conclusion

The hearing official believes the proposed tower could be screened, i.e., covered in whole or in part and made more difficult to discern through landscaping.

EC 9.8320(4) The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

- (a) **Protection of Natural Features.**
1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:
 - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.
 - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).
 - c. Prominent topographic features, such as ridgelines and rock outcrops.

- d. Wetlands, intermittent and perennial stream corridors, and riparian areas.
 - e. Natural resource areas designated in the Metro Plan diagram as “Natural Resource” and areas identified in any city-adopted natural resource inventory.
2. For areas included on the City’s acknowledged Goal 5 inventory:
- a. The proposed development’s general design and character, including but not limited to anticipated building locations, bulk and height, location and distribution of recreation space, parking, roads, access and other uses, will:
 - (1) Avoid unnecessary disruption or removal of attractive natural features and vegetation, and
 - (2) Avoid conversion of natural resource areas designated in the Metropolitan Area General Plan to urban uses when alternative locations on the property are suitable for development as otherwise permitted.
 - b. Proposed buildings, road, and other uses are designed and sited to assure preservation of significant on-site vegetation, topographic features, and other unique and worthwhile natural features, and to prevent soil erosion or flood hazard.

The area is not included on the City’s Goal 5 inventory therefore subsection (1) is applicable to the proposal. There is no significant on-site vegetation other than the trees addressed in subsection (b). The site is presently composed of turf, grass, Cedar, Douglas Fir, Maple, Ash, Birch, Oak and Sycamore trees. All of the existing trees will be retained under the proposed project; some turf grass will be relocated due to the rerouting of the golf cart path. Based on available evidence there is no documented habitat for rare animal species or for species proposed for listing under state or federal law. There are no prominent topographic features or wetlands, intermittent and perennial stream corridors or riparian areas that will be impacted by this development on the golf course. The area is not designated as a natural resource in the Metro Plan or identified in the City’s natural resource inventory.

- (b) **Tree Preservation.** The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:
- 1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;
 - 2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;
 - 3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;

4. **Trees that provide a buffer between potentially incompatible land uses;**
5. **Trees located along the perimeter of the lot(s) and within building setback areas;**
6. **Trees and stands of trees located along ridgelines and within view corridors;**
7. **Trees with significant habitat value;**
8. **Trees adjacent to public parks, open space and streets;**
9. **Trees located along a water feature;**
10. **Heritage trees.**

There are 22 trees of varying types and age in the vicinity of the development. The application notes that no trees are proposed for removal. A critical root zone analysis is provided on Sheet L-1, which appears to confirm that all trees in the area will be preserved. The applicant also shows tree preservation fencing to ensure the preservation of the trees.

Sheet L-1 presumes that the applicant will place the equipment above-ground; however, as discussed below, the hearing official is denying the variance request to place the equipment above ground. The equipment will need to be placed in a vault below ground. Sheet L-1 appears to show ample space to place the vault without disturbing existing trees or their critical root zone.

To ensure none of the trees are damaged in the vicinity of construction, the following condition of approval is warranted.

The Tree Preservation Plan (Sheet L-1) with the final site plans shall include the following tree preservation notes:

- "All protective tree fencing shall remain in place until completion of all construction activities."
- "Protective fencing for trees identified to be preserved shall be inspected and approved by the City prior to beginning any construction related activities."
- "No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the City."
- "Removal of dead, diseased, or hazardous trees shall be allowed with documentation from a certified arborist as to the condition of the tree and the need for removal. Documentation must be provided to the City for review and approval prior to tree removal activity."
- "In the event a preservation tree must be removed, the justification of the removal must be documented by a certified arborist. Documentation must be provided to the City for review and approval prior to tree removal activity. The tree shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species,

with a minimum caliper of 2" for deciduous canopy trees and a minimum height of 5' for coniferous or evergreen trees. Planting, watering and general maintenance of replacement trees shall be conducted by the lot owner in a manner that ensures their establishment and long-term survival."

With the above condition of approval, preservation of all trees will be assured in compliance with this criterion.

(c) **Restoration or Replacement.**

1. For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:

- a. Planting of replacement trees within common areas; or
- b. Re-vegetation of slopes, ridgelines, and stream corridors; or
- c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.

2. For areas included on the city's acknowledged Goal 5 inventory, any loss of significant natural features described in criteria (a) and (b) above shall be consistent with the acknowledged level of protection for the features.

There will be no loss of significant natural features under the applicant's proposal. All trees are to be preserved within or near the proposed development site. In addition, the applicant proposes landscape screening, with 3 Red Oaks and 25 Emerald Arborvitae and may need to plant additional trees based on feedback from adjacent properties. Based on these findings, this criterion is met.

(d) **Street Trees.** If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305.

The proposed development does not explicitly involve the removal of existing trees located within existing public rights-of-way. This criterion is not applicable.

EC 9.8320(5): The PUD provides safe and adequate transportation systems through compliance with the following:

- (a) **EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).**

EC 9.6805 Dedication of Public Ways.

No streets are proposed or required; there is no requirement for the dedication of right-of-way.

EC 9.6810 Block Length.

The block length requirements are inapplicable because no new streets are proposed or required.

EC 9.6815 Connectivity for Streets.

The standards at EC 9.6815(2) Street Connectivity Standards require, at a minimum, developments to include street extensions to complete the existing street network and to serve undeveloped or partially developed adjacent lands.

In this case, the development site is comprised of a 25 x 35-foot lease area located adjacent to the existing golf course building. The surrounding area is developed as the Oakway Golf Course. As such, the development qualifies for an exception to connectivity requirements at EC 9.6815(2)(g)(2)(b) because land adjacent to the lease site is already fully developed as a golf course.

Even if the applicant did not qualify for this exception, as access to the cell tower lease site will be via an existing driveway which currently provides access to the Oakway Golf Course, and as increases in traffic resulting from the facility will be negligible (i.e. limited to one maintenance visit per month) the proposal does not create the need for any new public street connections. As such, the City could not require such a connection based on constitutional requirements.

Referral comments from Public Works staff further confirm that the remaining standards of EC 9.6800 through EC 9.6875 are either inapplicable or have been met.

- (b) **Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**

The development of a proposed cell tower will not change the primary golf course use or development on the remainder of the existing site. As the cell tower will not increase pedestrian, bicycle or transit trips to the site, the City could not make findings to require any further facilities. As such, this criterion is met.

(c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.

With a projected increase in traffic limited to one maintenance visit per month, the proposed cell tower facility does not meet any of the thresholds established in EC 9.8650 through 9.8680. Accordingly, there is no requirement for a Traffic Impact Analysis.

EC 9.8320(6) The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.

Significant public testimony was received noting concern about the health risks posed by the radio emissions from the cell transmission tower. City requirements regarding radio frequency (RF) emissions from the project were written to be consistent with the requirements of the Federal Telecommunications Act of 1996, which expressly prohibits any local or state municipality from making a decision based upon RF emissions. The FCC regulates such emissions. For reference, 47 USC § 332(c)(7)(B)(iv) states:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions.

The telecommunications standards at EC 9.5750(6)(b)(3) require documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC). The City retains a consultant, Environalysis, LLC to review proposals for FCC compliance. The consultant confirmed that the emissions from this proposal do not exceed FCC standards. Because of the limited scope of a local government's ability to consider health risk, the hearing official makes no judgment on any of the health risk materials that were provided as public comment.

An Erosion Prevention Permit will be required before any ground disturbing activities may begin, the subject property is not located within a special flood hazard area and the proposed development is in compliance with the applicable stormwater development standards at EC 9.6791 through EC 9.6797.

Based on the findings as set forth above, the proposed development will comply with this criterion.

EC 9.8320(7) Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:

- (a) Prior written commitment of public funds by the appropriate public agencies.
- (b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.
- (c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

Public Works staff confirms that although no public improvements are proposed, the existing street system and public utilities can adequately serve the proposed development per the findings provided at EC 9.8320(5)(a) and EC 9.8320(11)(b) and (j).

EC 9.8320(8) Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.

As this PUD is proposed for a cellular transmission tower, which does not have residents, this criterion is not applicable.

EC 9.8320(9) Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.

Runoff from the 8-foot wide concrete path will sheet flow to the surrounding lawn where it will infiltrate into the ground and runoff from the equipment cabinets and footings will be directed to the existing private storm drainage system. Since the proposed development will not result in stormwater discharge to on-site or downstream drainage courses, this criterion is not applicable.

EC 9.8320(10): Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection (11) below.

As the development proposed is a cellular transmission tower, no residential lots are being created and this criterion is not applicable.

EC 9.8320(11): The PUD complies with all of the following:

- (a) **EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:**
1. **The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or**
 2. **The /WQ Management Area.**

The proposed development is for a cellular transmission tower and does not create lots or change densities. The subject property is not within the /WR Water Resources Conservation Overlay Zone. As such, this criterion is not applicable.

- (b) **EC 9.6500 through EC 9.6505 Public Improvement Standards.**

EC 9.6500 Easements.

No public easements are proposed by the applicant. Public Works staff confirms that no additional public easements are required to accommodate existing or future public wastewater needs. Based on these findings, the proposed development complies with this standard.

EC 9.6505 Improvements–Specifications.

This section requires all public improvements to be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to be served by and implement infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, access ways, and stormwater drainage. There are no proposed or required public improvements in this instance.

EC 9.6505(1) Water Supply.

While water service is not proposed, EWEB referral comments indicate that there is an existing 10-inch cast iron water main and an existing 8-inch asbestos cement water main on the north side of Cal Young Road. Water service exists to the existing golf course development and can be provided to the lease site if needed in accordance with Eugene Water and Electric Board (EWEB) policies and procedures. This criterion is met.

EC 9.6505(2) Sewage.

This standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. Even though the proposed cell tower and equipment shelter do not require wastewater facilities, the proposed development has

access to facilities that comply with this requirement as a private lateral has been extended to Tax Lot 4200 from the public manhole (# 8708) in Law Lane.

EC 9.6505(3) Streets and Alleys.

There is no requirement for a public street as a result of this development.

EC 9.6505(4) Sidewalks.

There is no requirement for a public sidewalk as a result of this development.

EC 9.6505(5) Bicycle Paths and Accessways.

No bicycle paths or public access ways are required per the previous findings at EC 9.8320(5), which are incorporated by reference.

(c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas – Standards.

These standards do not apply because the subject property is not located within any of these designations, per the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) 41039C-1139-F, dated June 2, 1999.

(d) EC 9.6710 Geological and Geotechnical Analysis.

The standards for geotechnical analysis are inapplicable in this instance, as the tentative PUD is located on slopes less than 5% and does not include dedication or construction of a new public street or alley, or the construction of public drainage or wastewater facilities.

(e) EC 9.6730 Pedestrian Circulation On-Site.

The standards for on-site pedestrian circulation at EC 9.6730 are generally applicable to institutional, office, commercial, multi-family residential and industrial developments. As the development proposal is for a cell tower, these standards are inapplicable.

(f) EC 9.6735 Public Access Required.

- (1) Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.**

The proposed facility complies with this standard as the signed option and lease agreement (Applicant's Exhibit A) provides for unrestricted access to the nearest public right-of-way (i.e. Cal Young Road).

- (2) Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.**

With an anticipated increase in traffic of one visit per month, the existing connection to Cal Young Road is exempt from this standard.

- (3) The standard at (2) may be adjusted if consistent with the criteria of EC 9.8030(28).**

Based on the foregoing findings, the development complies with these standards and no adjustment is necessary.

- (g) EC 9.6750 Special Setback Standards.**

Cal Young Road is classified as a minor arterial and has 80 feet of existing right of way. Table 9.6870 designates minor arterials to have between 65-100 feet of right of way. No special setback is required.

- (h) EC 9.6775 Underground Utilities.**

All on-site utilities will be placed underground consistent with EC 9.6775. EWEB referral comments indicate no objection to the installation of the proposed cell tower. Depending on the designed route of installation, a PUE or EWEB easement may be necessary. Based on the available information, this criterion is satisfied.

- (i) EC 9.6780 Vision Clearance Area.**

This standard does not apply because no new street intersections are proposed or required.

- (j) EC 9.6791 through 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.**

EC 9.6791 Stormwater Destination

Per the tentative application, storm water from the relocated impervious concrete pathway will sheet flow to adjacent grass lawn areas and will percolate into the soil. Public Works staff concurs with this statement and notes that the NRCS soil classification for this site is Chehalis which are Type "B" soils characterized by permeability rates between 0.6 and 2 inches per hour. Runoff from cabinets and footing drains will be connected to the existing drainage system and will have negligible impact to the public drainage system. Based on these findings, the proposed development complies with this standard.

EC 9.6792 Stormwater Pollution Reduction

With 998 square feet of new and replaced impervious surface (Sheet T-1), the proposed development is not subject to pollution reduction standards pursuant to EC 9.6792(2)(c).

EC 9.6793 through EC 9.6797

Because the proposed development is at an elevation less than 500 feet and does not drain to a headwaters facility, does not generate high concentrations of oil and grease, does not include any specific pollutants of concern identified in EC 9.6795(2) and is not subject to the pollution reduction standards, the remaining stormwater destination standards at EC 9.6793 through EC 9.6797 are not applicable.

Based on the above findings, the stormwater development standards will be met.

- (k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.**

The standards for telecommunications facilities beginning at EC 9.5750 are applicable to the proposed new cell tower. To provide context, the purpose of the standards is also included.

EC 9.5750 Telecommunication Devices-Siting Requirements and Procedures.

- (1) Purpose. The provisions of this section are intended to ensure that telecommunication facilities are located, installed, maintained and removed in a manner that:**
- (a) Minimizes the number of transmission towers throughout the community;**
 - (b) Encourages the collocation of telecommunication facilities;**
 - (c) Encourages the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers;**
 - (d) Recognizes the need of telecommunication providers to build out their systems over time; and**

- (e) Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the community, and minimize public inconvenience and disruption. Nothing in this section shall apply to amateur radio antennas, or facilities used exclusively for the transmission of television and radio signals.
- (2) **Siting Restricted.** No telecommunication facility, as defined in this land use code, may be constructed, modified to increase its height, installed or otherwise located within the city except as provided in this section. Depending on the type and location of the telecommunication facility, the telecommunication facility shall be either an outright permitted use, subject to site review procedures, or require a conditional use permit. . . .
- (c) **Conditional Use Permit.** A telecommunication facility which, pursuant to subsections (4) or (5) of this section, requires a conditional use permit shall be processed in accordance with the conditional use permit procedures of this land use code, except that the variance provisions shall not apply. The criteria contained in EC 9.8090 **Conditional Use Permit Approval Criteria - General** and subsections (6) and (7) of this section shall govern approval or denial of the conditional use permit application. In the event of a conflict in criteria, the criteria contained in subsections (6) and (7) of this section shall govern. No development permit shall be issued prior to completion of the conditional use permit process, including any local appeal.

The applicant has submitted both a PUD application and a CUP application. As discussed above, the applicant requested the hearing official determine that the CUP is not necessary, but the hearing official concluded that the code does require a CUP.

- (5) **Construction of Transmission Tower.** Construction of a transmission tower, or a modification of an existing transmission tower to increase its height, shall be allowed as follows: . . .
- (c) **Conditional Use Permit.** Such construction shall require a conditional use permit in the R-1, C-1, S (other than S-WS) and GO zones.

The subject property is zoned R-1 and the applicant applied for a CUP consistent with this criterion.

- (6) **Application Requirements.** . . .
- (b) **Construction of Transmission Tower.** In addition to standard required application material, an applicant for a transmission tower shall submit the following information; additional application material is required,

as specified in paragraph (c) below, for applications requiring a site review or conditional use process:

1. **A description of the proposed tower location, design and height.**

The applicant provided a description of the proposed tower location on Sheets T-1 and G-1 of the site plans, and a description of design and height is included on Sheet A-2.

2. **The general capacity of the tower in terms of the number and type of antennas it is designed to accommodate.**

The capacity of the tower and number of antennas it is designed to accommodate is included in Exhibit P of the application materials.

3. **Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC).**

The applicant provided a report as Exhibit O of the application materials, which includes the documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). This report was subsequently reviewed by Environalysis LLC on behalf of the City of Eugene as required at EC 9.5750(11). The review concluded that "The information in the applicant's proposal is sufficient to determine that the noise and NIER impacts of the project fall well within regulatory limits set by Federal and local jurisdictions. No special conditions need to be applied to mitigate noise or NIER emissions."

4. **A signed agreement, as supplied by the city, stating that the applicant will allow collocation with other users, provided all safety, structural, and technological requirements are met. This agreement shall also state that any future owners or operators will allow collocation on the tower.**

A signed agreement has been provided by AT&T that will allow collocation with other users, provided all safety, structural and technological requirements are met. This agreement is included as Exhibit Q of the application materials.

5. **Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified in subsection (7) of this section, or designs showing how the sound is to be effectively muffled and reduced pursuant to those standards.**

The applicant originally submitted an Acoustical Report with the PUD application then provided an updated Acoustical Report (Exhibit R). Together, these reports opine that the proposed

facility would comply with this standard. Thus the applicant met this application requirement. However, compliance with this application requirement to submit reports documenting sound level is not the equivalent to complying with the sound standard in EC 9.5750(7)(f). Compliance with that substantive sound standard is addressed below.

6. A landscape plan drawn to scale showing proposed and existing landscaping, including type, spacing, size and irrigation methods.

The applicant provided a landscape plan (Sheet L-1) that is drawn to scale (1" = 40'), which includes the type, spacing, size and irrigation method in compliance with this requirement.

7. Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and easements required.

The applicant's site plans, (Sheets A-1.1 and L-1) include utility connections. The written statement indicates that all utility connections will be made on-site and no new easements will be required. EWEB comments indicate an easement may be required at a future date.

8. Documents demonstrating that necessary easements have been obtained.

No easements are required at this time. EWEB indicated they might need a future easement. This can be obtained at a future date, if required by EWEB for utility installation.

9. Plans showing how vehicle access will be provided.

The applicant has provided a copy of the lease agreement, which provides for access to the site through access points to the existing golf course (see Exhibit V).

10. Signature of the property owner(s) on the application form or a statement from the property owner(s) granting authorization to proceed with development permit and land use processes.

John Hammer, designated corporate representative of Oakway Golf, Inc. signed a limited power of attorney granting authorization to proceed with development on the subject site with the initial application form.

11. Documents demonstrating that the FAA has reviewed and approved the proposal, and Oregon Department of Aviation has reviewed the proposal. Alternatively, when a site review or conditional use process is required, submit a statement documenting that notice of the proposal has been submitted to the FAA and Oregon Department of Aviation. The site review or

conditional use process may proceed and approval may be granted for the proposal as submitted, subject to FAA approval. If FAA approval requires any changes to the proposal as initially approved, then that initial approval shall be void. A new application will need to be submitted, reviewed and approved through an additional site review or conditional use process. No development permit application shall be submitted without documents demonstrating FAA review and approval and Oregon Department of Aviation review.

The applicant has submitted letters from the FAA (June 28, 2010) and Oregon Department of Aviation (June 17, 2011) indicating approval. This criterion is met.

(c) Site Review and Conditional Use Permit Applications. In addition to the application requirements specified in paragraph (b) above, applications for site review or conditional use permits also shall include the following information:

1. A visual study containing, at a minimum, a graphic simulation showing the appearance of the proposed tower, antennas, and ancillary facilities from at least 5 points within a 3 mile radius. Such points shall be chosen by the provider with review and approval by the planning director to ensure that various potential views are represented.

The applicant has provided a photo simulation showing the appearance of the proposed tower from 9 different views. These points were evaluated during application completeness review and were found to represent various potential views as required.

2. Documentation that alternative sites within a radius of at least 2000 feet have been considered and have been determined to be technologically unfeasible or unavailable. For site reviews, alternative sites zoned C-4, I-1, I-2, and I-3 must be considered. For conditional use permits, alternative sites zoned PL, C-2, C-3, C-4, I-1, I-2, I-3 and S-WS must be considered.

The applicant notes that several other spaces were considered but were unfeasible or not available (see pages 16 and 17 of the applicant's written statement). There are no sites zoned C-2, C-3, C-4, I-1, I-2, I-3 or S-WS within 2000 feet. There is one PL zoned parcel within that distance owned by the School District (Sheldon High School). The written statement notes the school district was not interested in leasing to AT&T. The written statement addresses other alternative sites (even outside 2000 feet) and confirms that they are either unfeasible or unavailable.

There was much written and oral testimony that the applicant did not consider more alternative sites or other specific alternative sites. The requirement to consider alternative sites is an application requirement. There is no substantive standard in EC 9.5750(7) Standards for Transmission Towers and Antennas that addresses how many alternative sites, types of alternative sites, or that the selected site must be the least or most of anything. The Oregon Court of Appeals has addressed a similar requirement to consider alternatives in *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 218 Or App 232, 247–250 (2008). The *Friends* case is not a perfect analogy—the standard at issue there required no practicable alternative more consistent with the purposes and standards of a federal law, and the regulation requiring the alternatives analysis implemented federal law. Here, the only requirement is to conduct some alternatives analysis and the issue is purely one of local and state law. Nevertheless, the *Friends* case is instructive because the claims are very similar. In *Friends*, the petitioners argued that some of the alternatives that the commission rejected were practicable and there were numerous alternatives that the commission did not consider at all. The federal law aspect of *Friends* also does not make that case inapposite because here, federal law does not allow consideration of some issues that might otherwise be the subject of local regulation (and thus restricts some of the alternatives available). This decision mentioned 47 USC § 332(c)(7)(B)(iv) above; that is just one example. Another example is 47 USC § 253(a) and (b), which state:

- (a) In general. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.
- (b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Here, the applicant provided an analysis of the area for which it is trying to provide improved service and where towers might be located to achieve that goal. It rejected some alternatives as providing insufficient or lesser service to meet its goal and others because the sites were not available because of size, unwilling owners, and other reasons. Several comments received during and after the hearing also point out other sites that the applicant did not consider, or sites where there are existing facilities in locations and configurations that the applicant claimed would not be technologically feasible to meet its goal. An email from Beau Binder, July 13, 2011, shows multiple photos of transmission facilities collocated on existing light poles adjacent to existing roads. At base, these comments argue that the applicant improperly rejected alternatives as unfeasible and did not consider some alternatives at all.

In *Friends*, the Court of Appeals reviewed the statutory requirements for an alternatives analysis under the Clean Water Act and under the National Environmental Policy Act (NEPA). The court observed that case law interpreting those statutes concluded an agency did not need

to consider every conceivable alternative, but rather only reasonable alternatives. Here, the application contained an explanation of the service goal (Letter from Ken Seymour, July 6, 2011) and a series of maps showing coverage plots and options. It appears to the hearing official that the applicant looked at several other sites. What was missing, however, was a clear discussion about the nature of each alternative, what service each alternative could provide and why that alternative was rejected to understand that the applicant did more than just “look at” sites it already knew would not work. This information would also be useful for demonstrating compliance with sub-subsection 3 (concerning collocation), the evidence for which the staff report correctly stated was “minimal.” And, the benefit of conducting a more robust alternatives analysis might be to find a site with less neighborhood opposition.

In sum, the requirement to consider alternatives here is an application requirement; there is no requirement that the applicant select the alternative that meets some substantive standard. Similar minimal analysis for another application in a different context might not be sufficient.

- 3. Evidence demonstrating collocation is impractical on existing tall buildings, light or utility poles, water towers, existing transmission towers, and existing tower facility sites for reasons of structural support capabilities, safety, available space, or failing to meet service coverage area needs.**

The applicant notes that potential sites were evaluated on buildings, utility poles and water tanks. The written statement generally notes that potential pole locations were evaluated along Gilham Road, Norkenzie Road and Cal Young Road and that ground space was not available at these locations (making collocation impractical). While the level of evidence supporting this assertion provided by the applicant is minimal, the City does require vaulting in the right-of-way or on private property which requires vacant area to support this. The areas surrounding Gilham Road, Norkenzie Road and Cal Young Road are developed areas with little vacant land along the rights of ways.

- 4. A current overall system plan for the city, showing facilities presently constructed or approved and future expansion plans.**

Testimony provided by Bill Kloos on behalf of the Oakway Neighbors Association asserts that a system plan was not provided. The applicant has provided the locations of existing towers within the City (See Exhibit U) and noted the locations of future planned towers. Additionally, they have provided a coverage plot plan which shows locations of existing towers and their coverage (see applicant’s Exhibit T). Given that the information provided shows existing and proposed facilities, the information provided suffices to meet this standard.

- 5. A statement providing the reasons for the location, design and height of the proposed tower or antennas.**

The applicant provides a statement on page 14 of their PUD written materials that provide reasoning for the location, design and height of the proposed tower or antenna structure.

- (7) **Standards for Transmission Towers and Antennas. Installation, construction or modification of all transmission towers and antennas shall comply with the following standards, unless a variance is obtained pursuant to the provisions of subsection (9) of this section:**

The hearing official points out that this section contains the substantive standards that the proposed tower and ancillary facilities must meet.

- (a) **Separation Between Transmission Towers. No transmission tower may be constructed within 2000 feet of any pre-existing transmission tower. Tower separation shall be measured by following a straight line from the portion of the base of the proposed tower which is closest to the base of any pre-existing tower. For purposes of this paragraph, a tower shall include any transmission tower for which the city has issued a development permit, or for which an application has been filed and not denied. Transmission towers constructed or approved prior to February 26, 1997 may be modified to accommodate additional providers consistent with provisions for collocation in this section.**

Based on available information, the nearest tower is located over a mile from the proposed location and there are no pre-existing transmission towers within 2000 feet.

- (b) **Height Limitation: Transmission tower heights shall be governed by this section except as provided for below. No transmission tower shall exceed the maximum heights provided below. In no case shall a variance be granted from the limitations of subparagraphs (1) through (4) below.**
- 1. In any zones, no transmission tower shall exceed the height limitations established for buildings and structures in the specified areas surrounding Skinner Butte contained in EC 9.6715 Height Limitation Areas of this land use code to protect views to and from Skinner Butte.**

The proposed tower is not within the Height Limitation Area shown on EC Map 9.6715(3). This standard does not apply.

- 2. In any zone within the area east of Willagillespie Road, south of Cal Young Road, west of Oakway Road, and north of Southwood Lane and Country Club Road, no transmission tower shall exceed 75 feet in height to protect views to and from Gillespie Butte.**

The proposed transmission tower is within this height limitation area and does not exceed 75 feet in height, in compliance with this standard.

3. **If located within a PL, C-2, C-3, C-4, R-4, I-1, I-2, I-3 or S-WS zone, the height limitation for that zone shall apply.**

The proposed tower is within an R-1 zone. This standard does not apply.

4. **If located within a C-1, S (other than S-WS) or GO zone, the maximum height of a transmission tower, including antennas, is 100 feet.**

The proposed tower is within an R-1 zone. This standard does not apply.

5. **If located within an R-1 zone, the maximum height of a transmission tower, including antennas, is 75 feet, unless a variance is granted pursuant to the provisions of subsection (9) of this section. In no event shall a variance be granted to construct such a tower in excess of 100 feet.**

The proposed tower is within an R-1 zone. The maximum height of the tower is 75 feet, in compliance with this standard.

(c) **Collocation. New transmission towers shall be designed to accommodate collocation of additional providers:**

1. **New transmission towers of a height of 80 feet or more shall be designed to accommodate collocation of a minimum of 2 additional providers either outright or through future modification to the tower.**

The proposed transmission tower is less than 80 feet in height. This standard does not apply.

2. **New transmission towers of a height of at least 60 feet and no more than 80 feet shall be designed to accommodate collocation of a minimum of 1 additional provider either outright or through future modification to the tower.**

The transmission tower is proposed to be 75 feet. As noted in Exhibits P and Q of the applicant's materials, the applicant has agreed to, and the tower can accommodate the collocation of a minimum of 1 additional provider.

- (d) **Setback.** The following setbacks from adjacent property lines and adjacent streets shall be required unless a variance is granted pursuant to the provisions of subsection (9) of this section: . . .
2. If located within an R-1, C-1, or GO zone, the transmission tower shall be set back from adjacent property lines a minimum number of feet that is equal to the height of the transmission tower.

As shown on the applicant's site plans (Sheet A-1) the tower is setback 102'-6" from the nearest property line, in compliance with this standard.

- (e) **Buffering.** In all zones, existing vegetation shall be preserved to the maximum extent possible. In the C-4, I-1, I-2 and I-3 zones, no buffering is required beyond that required by this land use code. In all other zones, landscaping shall be placed completely around the transmission tower and ancillary facilities located at ground level except as required to access the facility. Such landscaping shall consist of evergreen vegetation with a minimum planted height of 6 feet placed densely so as to form a screen. Landscaping shall be compatible with other nearby landscaping and shall be kept healthy and well maintained.

The applicant is preserving the existing vegetation. Sheet L-1 of the applicant's April 19 submittal shows that no trees will be removed. It also shows additional landscaping, but as discussed above in response to EC 9.8320(3), the hearing official believes the landscaping is not adequate, so there will be a new landscaping plan. That landscaping plan will need to meet this criterion as well. The hearing official again notes that the applicant's landscape architect will develop a plan that does much more than create a dense screen of arborvitae at the base of the tower.

The existing building will provide screening to the south to a greater extent than vegetation. As such, noncompliance with this standard is warranted. To ensure clarity, the following condition of approval is warranted:

A note shall be added to Sheet L-1 noting that noncompliance with EC 9.5750(7)(e) has been approved through the PUD allowing the applicant to not place landscaping around the portion of the tower that is screened by the building. However, any landscaping between the tower and building shall be considered required landscaping that must be kept healthy and well maintained.

A note is included on Sheet L-1 indicating that plantings will be hand watered during establishment period (a minimum of two years). To ensure that landscaping be kept healthy and well maintained, the following condition of approval is warranted:

A note shall be added to Sheet L-1 that states "All landscaping proposed on Sheet L-1 shall be kept healthy and well maintained as long as the telecommunications facility remains on the subject site."

Per the findings and conditions above, this criterion will be met.

- (f) **Noise Reduction.** In R-1, R-2, R-3, R-4, C-1, and GO and in all other zones when the adjacent property is zoned for residential use or occupied by a dwelling, hospital, school, library, or nursing home, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa.

There are numerous reports and letters from engineers and consultants related to noise:

Letter from Alan Burt, PE, SSA Acoustics (Apr. 29, 2010)

Report from Environalysis (Sept. 2010)

Letter from Carl Bloom, Environalysis (Feb. 10, 2011)

Letter from Alan Burt, PE, SSA Acoustics (Mar. 21, 2011) (revising Apr. 29, 2010 report)

Letter from Arthur M. Noxon, P.E. Acoustical Engineer (June 15, 2011)

Letter from Alan Burt, PE and Erik Miller-Klein, PE, SSA Acoustical (July 1, 2011)

Letter from Arthur M. Noxon, P.E. Acoustical Engineer (July 6, 2011)

Letter from Alan Burt, PE, SSA Acoustics (July 12, 2011)

Letter from Arthur M. Noxon, P.E. Acoustical Engineer (July 13, 2011)

To start, the hearing official must first address the argument by Mr. Kloos on behalf of the Oakway Neighbors that the proposed use can't be approved because it will aggravate the noise situation, which already exceeds the allowed levels. He notes that the standard does not limit the noise of the equipment, but rather all noise sources must be 45 dBA or less. The hearing official disagrees. The effect of Mr. Kloos's interpretation would be to require the applicant to reduce existing sound levels from sources not related to the application and not within the applicant's control to meet this standard. The hearing official has heard of regulatory requirements similar to this,³ but not without more robust and detailed requirements for how to contact other owners and obtain access to their property; what "fixes" are required; liability for those "fixes"; and other issues associated with one person performing mitigation work on another's property. Here, without such detail, the hearing official cannot conclude that the City Council intended this criterion to prohibit new sound-creating uses where sound already exceeds 45 dBA.

³ Principally, the hearing official worked with a program in San Simeon, California requiring a person who wanted to obtain a new or expanded water hook-up to the already limited municipal water supply to replace standard plumbing and fixtures in other existing buildings with new plumbing and low-flow fixtures to offset the new water use.

The City's Telecommunications consultant Carl Bloom, from Environalysis LLC, reviewed Mr. Kloos's assertion and provided written feedback, noting that many municipalities and states define maximum noise levels at the boundary between a noise-emitting property and a noise-receiving property. In all cases that he has seen, these regulations specify that the maximum permitted noise level is that coming from the emitting property only, not the total of background and emitting noise. He adds that the reason for a code to be written and understood in this way is that it allows for the straightforward calculation/modeling of noise impacts from equipment (whose noise "emissions" are documented) and thus facilitates the determination of code compliance.

Additional testimony provided by Mr. Kloos, indicated that the noise analysis provided with the PUD application did not include future cabinets or a generator (which was confirmed by Environalysis, LLC). The applicant provided a revised acoustical report from SSA Acoustics, LLC dated March 21, 2011 and additional information upon submitting the CUP, which includes all existing and proposed cabinets and confirmed that a generator is not proposed.

At the hearing and after the hearing, Arthur Noxon, PE, Acoustical Engineer, provided expert information and opinion reviewing the applicant's noise studies and explaining how noise measurement works, how noise affects individuals. The hearing official does point out that some of Mr. Noxon's testimony seems to cross the line from helpful expert to project opponent; however, Mr. Noxon's explanations of the how and why of noise measurement leads the hearing official to conclude that on balance his testimony is both credible and helpful. The hearing official especially appreciates Mr. Noxon's brief paragraph explaining Noise Measurements (July 6, 2011 at 2) in which he explains:

Adding new cell tower noise to a pre-existing ambient noise floor will typically create a new and louder ambient noise floor. There is more to sound, and particularly ambient noise, than just sound *level*. In addition to sound level, sound tone quality, its spectral content and temporal quality (its variations in time) are all relevant aspects of sound with which the proposed cell tower must be measured.

Without reviewing each report in minute detail here, the hearing official makes a few observations. First, there is a clear difference in opinion in the level of ambient conditions. This seems to be related to when the various engineers conducted their measurements. SSA, for the applicant, measured ambient conditions on April 29, 2010 at 11:00 am and found the ambient noise level was "55 dB(A) Leq."⁴ Mr. Noxon measured ambient noise on June 16-17, 2011 between midnight and 1 am and found 40 dB,A. It makes sense to the hearing official that

⁴ The Eugene Code and various reports in this matter use differing abbreviations for noise measurement. For example, EC 9.5750(7)(f) uses "dBa"; SSA's July 1, 2011 report uses "dB(A) Leq," "dBA," "LwA," and "dB(A)"; and Mr. Noxon's July 6, 2011 report uses "dB" and "dB,A." These different acronyms may be meaningful to the engineers doing the reporting and reviewing the reporting, but without explanation to the hearing official, the hearing official assumes they are describing the same.

ambient noise level should be measured at the time of day when noise levels are lowest—i.e., late at night when fewer cars, occupational activities and equipment, and other factors are creating additional ambient noise. This is also the time of the day that most people are home, and as Mr. Noxon described, are sleeping. SSA and Mr. Noxon used different sound meters, but there is no explanation why this might be significant, so the hearing official does not attribute any meaning to this.

Second, Mr. Noxon identified factors that the applicant's noise study did not address. For example, Mr. Noxon factored in reflected noise from the building adjacent to the tower, calculating that it could increase the noise level to 48 dB,A at the Northgreen property line (July 6, 2011 at 5). Mr. Noxon also used comparisons from other sites, carefully describing what he measured and the limits of those observations. SSA noted that Mr. Noxon's calculations using the noise level of equipment at other sites, "are not an accurate representation of noise levels from this site" (July 12, 2011 at 2). But, SSA did not address the actual site condition that Mr. Noxon considered—the reflection from the building to the south of the proposed cell tower site.

Third, Mr. Noxon measured at different octaves; there is nothing in the SSA report to indicate that it measured different octaves; perhaps measuring at different at octaves is standard practice and SSA simply did not provide that level of data in its report. Nevertheless, Mr. Noxon describes that even though the overall increase in noise level might be only +5 dB, there would be a +13 dB increase (degradation in ambient levels) in the 4 and 8K octave range. This, he opined, would violate OAR 340-035-0035(1)(b)(B)(i) and (ii). And, SSA did not address different octaves, even after reviewing Mr. Noxon's report.

Fourth, the applicant proposed to enclose the equipment with a solid fence, which changed much of the noise calculation. Mr. Noxon acknowledged this in his July 13, 2011 report, but also pointed out that the SSA analysis did not address several of the comments that he provided, including the problem of starting with a midday ambient noise level calculation and opinion that the proposal would still violate the OAR cited above.

In short, the entirety of the evidence does not demonstrate that the noise level from the tower equipment would comply with EC 9.5750(7)(f). The reports do show raw numbers that would seem to comply with this standard, but they lack some of the analyses that Mr. Noxon conducted. As such, Mr. Noxon's reports are the only ones in the record to address specific aspects of noise level, such as those described above. As well, the hearing official is concerned that the applicant's reports do not address several questions and formulae that Mr. Noxon raised. The hearing official understands that engineering is as much art as it is science and that professional engineers often differ in their conclusions, but here, where the applicant's engineers do not explain their assumptions and calculations after another qualified person has raised questions about them, the hearing official cannot conclude that those reports demonstrate compliance.

At this point, the hearing official has two choices. First, the hearing official could deny the application as not in compliance with this criterion. Second, the hearing official could deny the applicant's request for a variance pursuant to EC 9.5750(9)(c) to allow placement of the facilities above ground. Placing the equipment for the tower underground will almost certainly resolve the noise issue; however, there is nothing in the record that supports this seemingly obvious conclusion. For this reason, the applicant must still demonstrate that a revised proposal must comply with this noise criterion. Thus, it is appropriate to impose a condition of approval requiring the applicant to provide a new noise study. Because this is an application requirement, it will be necessary for the noise study to be reviewed in the same manner as a PDT application. The final PUD application process subject to type II process with notice and comment period is still required, at which time compliance can be confirmed.

Prior to final PUD approval, the applicant shall provide a revised noise study demonstrating compliance with EC 9.5750(7)(f). The noise study shall be for a proposal that does not include a variance pursuant to EC 9.5750(9)(c).

The hearing official believes the applicant can comply with this standard.

- (g) **Status of Location. No permit may be issued for the location of a new telecommunications facility within an R-1 or C-1 zone unless the lot on which it is to be placed is vacant or developed with a non-residential use at the time the permit application is submitted. This restriction does not apply within other zones.**

The lot on which the telecommunications facility is to be placed is zoned R-1 and developed with the non-residential use of a privately owned golf course.

- (h) **Lighting. No lighting shall be permitted on transmission towers except that required by the Federal Aviation Administration. No high intensity white lights may be located on transmission towers in an R-1, C-1, or PRO zone.**

Per the applicant's written statement and site plans, no lighting attached to the tower is proposed, and neither the FAA nor Oregon Department of Aviation requires lighting.

- (i) **Color. The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or such shades as are appropriate and compatible with the surrounding environment, as approved by the city.**

The applicant's written statement notes that the transmission tower will be unpainted galvanized finish and can be painted to be more compatible. To ensure compliance with this criterion the following condition of approval is warranted:

Prior to final PUD approval, Sheet A-1 shall be revised to include the following note.
“The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or shades with a matte finish as approved by the city.”

- (j) **Viewshed.** The transmission tower shall be located down slope from the top of a ridgeline so that when viewed from any point along the northern right-of-way line of 18th Avenue, the tower does not interrupt the profile of the ridgeline or Spencer Butte. In addition, a transmission tower shall not interrupt the profile of Spencer Butte when viewed from any location in Amazon Park. Visual impacts to prominent views of Skinner Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the transmission tower is limited in height to the minimum height necessary to provide the approximate coverage the tower is intended to provide.

The tower is located in an area that is restricted in height to 75 feet, both by the zone (R-1) and being within view of Gillespie Butte and Skinner Butte per the standard at (7)(b)(2) above. Impacts to the views of Skinner Butte and Gillespie Butte have been minimized with the proposed location as the existing vegetation to the west of the tower already obscures the views behind the tower location.

As noted above, the applicant has documented that alternative sites have been evaluated and the tower is the minimum height necessary to provide the intended coverage.

- (k) **Display.** No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2.

The applicant’s written statement notes that only FCC standard signs shall be placed on the equipment shelter. To ensure continued compliance with this standard, the following condition is warranted:

Prior to final PUD approval, Sheet A-2 shall be revised to include the following note “No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a

surface area of no more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2.”

Per the findings and condition above, this standard is met.

- (8) Standards for Ancillary Facilities. All ancillary facilities shall comply with the standards of subsections (7)(e) and (7)(f) of this section. In addition, all ancillary facilities within an R-1, PL, C-1, GO, and PRO zone must be located underground to the maximum extent technology allows, unless a variance is obtained pursuant to the provisions of subsection (9) of this section. This restriction does not apply within other zones.**

The subject property is zoned R-1 and the applicant requested a variance to the underground requirement pursuant to subsection (9)(c). As discussed below, the hearing official denies this variance, so a condition of approval is appropriate requiring the applicant to submit a new site plan and any necessary narrative that shows the plan for placing the equipment for the tower underground. The applicant should carefully review the findings in this decision and develop a plan that complies with all of the findings and conclusions as much as possible. For example, the location of the underground vault should be sited to avoid removing any screening trees.

The applicant shall submit a new site plan and any necessary narrative for placing the equipment for the tower underground. The applicant should carefully review the findings in this decision and develop a plan that complies with all of the findings and conclusions.

- (9) Variance.**
- (a) Any variance to the requirements of this section shall be granted only pursuant to the following provisions. The criteria for granting a variance shall be limited to this section, and shall not include the standard variance criteria beginning at EC 9.8750 Purpose of Variances.**
- ...
- (c) The city may grant a variance to the setback and undergrounding requirements of subsections (7)(d) or (8) upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.**

This code standard requires undergrounding in R-1 unless a variance is obtained. Testimony provided by Bill Kloos on behalf of the Oakway Neighbors and testimony from other neighbors asserts that a variance should not be granted and provides a great deal of information to show that undergrounding is a viable option and how the applicant’s proposal does not meet the requirements for a variance.

As noted above, the applicant has not demonstrated compliance with EC 9.5750(7)(f) concerning noise reduction. Although the criteria for a variance do not expressly state that an applicant may obtain a variance upon finding that the applicant can meet the noise standard with facilities above ground, the hearing official believes this is a permissible reading of the subsection (9)(c).⁵ The link works as such: Subsection (9)(c) allows a variance to the undergrounding requirement of subsection (8). Subsection (8) requires tower equipment to meet the noise reduction standard (subsection (7)(f)), but then allows a variance pursuant to subsection (9). Hence, although there is no express reference in subsection (9)(c) directly to subsection (7)(f), subsection (8) creates that link.⁶

The hearing official also notes that Mr. Noxon's analysis of reflection of noise from the building immediately south of the tower demonstrates that the configuration of the site (i.e., the siting of the tower equipment in relation to the building) is part of what makes the proposal fail the noise standard. For this reason, the configuration of the site does not obviate the need for complying with subsection (8), which as noted above, requires compliance with subsection (7)(f), the noise reduction standard. To the contrary, it is the configuration of the site that in part creates the need for undergrounding.

The hearing official does not address the proposed landscaping or presence of mature trees as screening for the above ground equipment because those are moot points. Screening for the tower is discussed above in response to EC 9.8320(3).

The hearing official denies the applicant's request for a variance to place the tower equipment above ground.

(10) Removal of Facilities.

- (a) All transmission towers and antennas shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas.**
- (b) If a transmission tower is located within an R-1, PL, C-1 or GO zone, the provisions of subparagraph (a) also shall apply to the tower substructure and all above ground ancillary facilities.**
- (c) The city may require the posting of an open ended bond before development permit issuance to insure removal of the transmission tower, substructure or antennas after the facility no longer is being used.**

⁵ Of course, the request for a variance would also need to meet the stealth design, proposed landscaping, configuration or presence of mature trees factors as well.

⁶ This might be something else the City wants to put on its list of technical fixes to the code.

To ensure removal of facilities comply with the criterion above, the following condition of approval is warranted:

The following note shall be added to the final site plan "All transmission towers, antennas, the tower substructure and all above ground ancillary facilities shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas".

As conditioned, the proposal will comply with this standard.

- (11) Application Review and Fees. The city manager shall retain one or more consultants to verify the accuracy of statements made in connection with an application for a building or land use permit for a telecommunications facility. Notwithstanding any other provision of this code, the city manager shall require the applicant to pay, as part of the application fees, an amount sufficient to recover all of the city's costs in retaining the consultant(s).**

Carl Bloom of Environalysis LLC was retained to verify the accuracy of statements made in connection with both the PUD and CUP applications, including verifying the accuracy of the noise reports and emissions reports. Additionally he also reviewed the accuracy of statements AT&T provided regarding the limitations of stealth design. The applicant has been billed and paid for these services. As such this standard is met.

EC 9.8320(12): The proposed development shall have minimal off-site impacts, including impacts such as traffic, noise, stormwater runoff and environmental quality.

Extensive public testimony from neighbors was received regarding the negative off-site impacts of the development. The concerns were primarily related to RF emission concerns and aesthetic concerns of a 75-foot tower located near their houses. These concerns are discussed below.

Traffic – As noted above at EC 9.8320(5)(c), with a projected increase in traffic limited to one visit per month, utilizing the existing driveway, the proposed cell tower facility will have minimal off-site impacts in regards to traffic.

Noise – Noise was fully discussed in response to EC 9.5750 (7)(f) (the telecommunications requirements). The findings from that section are incorporated here by reference.

Stormwater – As noted above at EC 9.8320(11)(j) which is incorporated herein by reference, the development will not have any stormwater impacts on adjacent properties.

Environmental Quality – As noted above at EC 9.8320(4), as conditioned, the proposal complies with the natural resource and tree protection criteria in regards to environmental quality.

RF Emissions - As noted above, City requirements regarding RF emissions from the project are consistent with the requirements of the Federal Telecommunications Act of 1996. The Act prohibits cities and states from discriminating among telecommunications providers and from erecting barriers to a provider's entry into a local market. Federal law expressly prohibits any local or state municipality from making decision based upon ERF emissions. Federal regulations govern such emissions.

As noted above, the telecommunications standards at EC 9.5750(6)(b)(3) require documentation to be provided by the applicant demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC). The City retains a consultant, Environalysis, LLC to review proposals for FCC compliance. The consultant has confirmed that the emissions from this proposal are well below FCC standards.

Aesthetic Impacts – Numerous emails and letters of testimony have been received and have been included in the record regarding the negative aesthetic off-site impacts of having a 75-foot cell tower located on the golf course in close proximity to residences. This is a valid concern given the proposed height of the monopole, which is the maximum allowed in the R-1 zone, in a location that, while zoned for Low-Density Residential, is designated for Parks and Open Space in the Metro Plan. Aesthetics are addressed above in response to EC 9.8320(3) regarding screening, and below in response to EC 9.8320(13) concerning compatibility with adjacent and nearby land uses. The findings and conclusions in those sections are incorporated here.

Several letters of testimony also noted that a stealth design such as a pole disguised as a fir tree would have less negative visual impact. The applicant stated that a stealth design would require a taller tower height and restrict load and future co-location opportunities. Staff forwarded this letter to the City's telecommunications consultant who confirmed that the applicant was representing these limitations fairly.

EC 9.8320(13): The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.

The vast majority of the public testimony (letters, emails, a petition, and oral comment at the public hearing) stated that the proposed cell tower is not compatible with the adjacent and nearby residential uses, and would impact views from established neighborhoods adjacent to the existing golf course. Compatibility is a subjective standard. What one person believes is

compatible another person might believe is very incompatible. The hearing official will not address noise or the tower equipment in this analysis—those factors were addressed above in response to EC 9.5750(7)(f). The equipment will be below ground and not visible.

The City Council has already determined that telecommunications towers are permissible in the R-1 zone and there is no restriction in other zones against locating a cell tower any distance from the R-1 zone or other residential uses. The telecommunications standards in EC 9.5750 have standards for height, setbacks, color, lighting, and use of the tower for display of signs. These telecommunications standards were established to create clear criteria to for providers to meet, but also provide a discretionary process to provide for public input on a case-by-case basis. The proposed tower complies with the height, setbacks, color, and lighting (there will no aviation lighting) standards.

Basically, what is left for the hearing official to consider is visual impact of this tower at this location—not towers in general, because as explained in the above paragraph, the City Council has already concluded that towers may be located in close proximity to residences. The findings and conclusions in response to EC 9.8320(3) are incorporated here.

The proposed development will comply with this criterion.

EC 9.8320(14): If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.

The applicant is not proposing a land division. This criterion is not applicable.

EC 9.8320(15): If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.

The subject property is not located within a special area zone. As such, this criterion is not applicable.

Evaluation of the Conditional Use Permit Criteria:

EC 9.8090(1): The proposal is consistent with applicable provisions of the Metro Plan and applicable refinement plans.

The findings above in regards to the PUD criteria at EC 9.8320(1) and (2) which address applicable provisions of the Metro Plan and the Willakenzie Area Plan (WAP), are incorporated herein by reference as demonstration of compliance with this criterion.

Based on the incorporated findings, the proposal is found to be consistent with the Metro Plan, and Willakenzie Area Plan (WAP) as required.

EC 9.8090(2): The location, size, design, and operating characteristics of the proposal are reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property, as they relate to the following factors:

- (a) **The proposed building(s) mass and scale are physically suitable for the type and density of use being proposed.**

This subsection addresses compatibility and livability issues by ensuring that proposed buildings are sized appropriately for their use. In this case the proposed use is for a cell tower not a building as that term is defined in EC 9.0500 and used in subsection (a).

- (b) **The proposed structures, parking lots, outdoor use areas or other site improvements which could cause substantial off-site impacts such as noise, glare and odors are oriented away from nearby residential uses and/or are adequately mitigated through other design techniques, such as screening and increased setbacks.**

This criterion addresses site improvements that could cause substantial off-site impacts such as noise, glare, and odors: The subject site is surrounded by low-density and medium density residential development to the east, west and north and the golf course to the south. Off-site impacts could come from four apparent sources: noise from the ancillary facilities, glare from lighting, electromagnetic exposure and visual impacts from the ancillary facilities and tower.

Noise – The findings and conclusions in response to EC 9.5750(7)(f) are incorporated here by reference.

Glare – No tower lighting is proposed. Security lighting will be required to meet outdoor lighting requirements at EC 9.6725, which require cutoff and shielding as necessary to direct light within the boundary of the development site. Given these standards, glare from the lights will be adequately mitigated.

Electromagnetic Radiation (NIER) emissions – Telecommunications standards at EC 9.5750 require the applicant to submit documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC).

The applicant provided a report as Exhibit O, which includes the documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). This report was subsequently reviewed by

Envronalysis LLC on behalf of the City of Eugene as required at EC 9.5750(11). The review concluded that “The information in the applicant’s proposal is sufficient to determine that the noise and NIER impacts of the project fall well within regulatory limits set by Federal and local jurisdictions. No special conditions need to be applied to mitigate noise or NIER emissions.” Given that the proposal meets these requirements, there is no evidence there will be substantial off-site impact from NIER emissions.

Visual Impacts – The findings and conditions provided in the concurrent PUD (PDT 10-2) at EC 9.8320(3), (12) and (13) are incorporated here by reference.

Based on the findings above, this criterion is met.

- (c) If the proposal involves a residential use, the project is designed, sited and/or adequately buffered to minimize off-site impacts which could adversely affect the future residents of the subject property.**

The proposed use is not residential; this criterion is not applicable.

EC 9.8090(3): The location, design, and related features of the proposal provides a convenient and functional living, working, shopping or civic environment, and is as attractive as the nature of the use and its location and setting warrant.

This criterion relates the nature of the use. In this case, the use is a telecommunications tower and ancillary facilities. It does not provide a living, working, shopping or civic environment. The findings and conditions provided in the concurrent PUD (PDT 10-2) at EC 9.8320(3), (12) and (13) are incorporated here by reference.

EC 9.8090(4): The proposal demonstrates adequate and safe circulation exists for the following:

- (a) Vehicular access to and from the proposed site, and on-site circulation and emergency response.**

Vehicular access is provided from Cal Young Road on a private driveway to the site. The findings at EC 9.8320(6),(7) and (11)(f) are incorporated herein by reference to show compliance with this criterion. Based on these incorporated findings, adequate and safe vehicular access to and from the site, on-site circulation, and emergency response will be provided as a result of the proposed development.

- (b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the City makes findings to demonstrate consistency with constitutional requirements. “Nearby” means**

uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.

The development of a proposed cell tower will not change the primary golf course use or development on the remainder of the existing site. As the cell tower will not increase pedestrian, bicycle or transit trips to the site, the City could not make findings to require any further facilities. As such, this criterion is met.

EC 9.8090(5): The proposal is designed and sited to minimize impacts to the natural environment by addressing the following:

(a) Protection of Natural Features.

1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:
 - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under state or federal law), and native plant communities.
 - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under state or federal law).
 - c. Prominent topographic features, such as ridgelines and rock outcrops.
 - d. Wetlands, intermittent and perennial stream corridors and riparian areas.
 - e. Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any City-adopted natural resource inventory.
2. For areas included on the City's acknowledged Goal 5 inventory, the preservation of natural features shall be consistent with the acknowledged level of preservation provided for the area.

(b) Tree Preservation. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:

1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria.
2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow.
3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement.
4. Trees that provide a buffer between potentially incompatible land uses.

5. Trees located along the perimeter of the lot(s) and within building setback areas.
6. Trees and stands of trees located along ridgelines and within view corridors.
7. Trees with significant habitat value
8. Trees adjacent to public parks, open space and streets.
9. Trees along water features.
10. Heritage trees.

(c) **Restoration or Replacement.**

1. For areas not included on the City's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:

- a. Planting of replacement trees within common areas; or
- b. Re-vegetation of slopes, ridgelines, and stream corridors; or
- c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320 and rules adopted thereunder.

2. For areas included on the City's acknowledged Goal 5 inventory, any loss of natural features shall be consistent with the acknowledged level or preservation provided for the resource.

(d) **Street Trees.** If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305 of this code.

The findings and conditions at EC 9.8320(4), which address the tree preservation and natural resource criterion in the PUD, are incorporated here by reference.

EC 9.8090(6): The proposal provides adequate public facilities and services including, but not limited to utilities, streets, and other infrastructure.

Referral comments from Public Works and utility providers confirm that although no public improvements are proposed, the existing street system and public utilities can adequately serve the proposed development per the findings provided at EC 9.8320(5)(a) and EC 9.8320(11)(b) and (j).

Based on these findings and future permit requirements, this criterion is met.

EC 9.8090(7): The proposal does not create any significant risk to public health and safety, including but not limited to soil erosion and flood hazard, or an impediment to emergency response.

The findings at EC 9.8320(6) which address this same criterion in the PUD are incorporated herein by reference demonstrate compliance with this criterion.

EC 9.8090(8): The proposal complies with all applicable standards, including but not limited to:

- (a) EC 9.2000 through 9.3915 regarding lot dimensions, solar standards, and density requirements for the subject zone;

As this proposal does not include any land division or residential building, lot dimension and solar lot standards and density requirements are not applicable to this proposal.

- (b) EC 9.6500 through EC 9.6505 Public Improvement Standards

EC 9.6500 Easements.

No public easements are proposed by the applicant. Public Works staff confirms that no additional public easements are required to accommodate existing or future public wastewater needs. Based on these findings, the proposed development complies with this standard.

EC 9.6505 Improvements–Specifications.

This section requires all public improvements to be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to be served by and implement infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, access ways, and stormwater drainage. There are no proposed or required public improvements in this instance.

EC 9.6505(1) Water Supply.

While water service is not proposed, EWEB referral comments indicate that there is an existing 10-inch cast iron water main and an existing 8-inch asbestos cement water main on the north side of Cal Young Road. Water service exists to the existing golf course development and can be provided to the lease site if needed in accordance with Eugene Water and Electric Board (EWEB) policies and procedures. This criterion is met.

EC 9.6505(2) Sewage.

This standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. Even though the proposed cell tower and equipment shelter do not require wastewater facilities, the proposed development has access to facilities that comply with this requirement as a private lateral has been extended to Tax Lot 4200 from the public manhole (# 8708) in Law Lane.

EC 9.6505(3) Streets and Alleys.

There is no requirement for a public street as a result of this development.

EC 9.6505(4) Sidewalks.

There is no requirement for a public sidewalk as a result of this development.

EC 9.6505(5) Bicycle Paths and Accessways.

No bicycle paths or public access ways are required per the previous findings at EC 9.6835, which are incorporated by reference.

(c) EC 9.6735 Public Access Required

- (1) Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.**

The proposed facility complies with this standard as the signed option and lease agreement (Applicant's Exhibit A) provides for unrestricted access to the nearest public right-of-way (i.e. Cal Young Road).

- (2) Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.**

With an anticipated increase in traffic of one visit per month, the existing connection to Cal Young Road is exempt from this standard.

- (3) The standard at (2) may be adjusted if consistent with the criteria of EC 9.8030(28).**

Based on the foregoing findings, the development complies with these standards and no adjustment is necessary.

(d) EC 9.6791 through EC 9.6797 Stormwater Management

EC 9.6791 Stormwater Destination

Storm water from the relocated impervious concrete pathway will sheet flow to adjacent grass lawn areas and will percolate into the soil. Public Works staff concurs with this statement and notes that the NRCS soil classification for this site is Chehalis which are Type "B" soils characterized by permeability rates between 0.6 and 2 inches per hour. Runoff from cabinets and footing drains will be connected to the existing drainage system and will have negligible impact to the public drainage system. Based on these findings, the proposed development complies with this standard.

EC 9.6792 Stormwater Pollution Reduction

With 998 square feet of new and replaced impervious surface (Sheet T-1), the proposed development is not subject to pollution reduction standards pursuant to EC 9.6792(2)(c).

EC 9.6793 through EC 9.6797

Because the proposed development is at an elevation less than 500 feet and does not drain to a headwaters facility, does not generate high concentrations of oil and grease, does not include any specific pollutants of concern identified in EC 9.6795(2) and is not subject to the pollution reduction standards, the remaining stormwater destination standards at EC 9.6793 through EC 9.6797 are not applicable.

Based on the above findings, the stormwater development standards will be met.

(e) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways

The findings in the concurrent PUD (PDT10-2) at EC 9.8320(5)(a) are incorporated herein by reference to demonstrate compliance with this criterion.

(f) Where the proposal is to establish non-residential uses subject to residential density requirements on development sites in the residential zone category, it shall achieve the minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards, unless specifically exempted elsewhere in this code or granted a modification through an approved conditional use permit. For purposes of calculating "net density,"

the acreage of land considered shall include the entire development site and exclude public property, such as public streets, parks, and other public facilities. In considering whether to grant a modification to the density requirements, the hearings official shall evaluate the following factors:

1. The availability of the development site for residential use on August 1, 2001. The term "availability" in this section shall include consideration of whether the site was already developed with non-residential uses or had other site constraints impacting its suitability for residential use.
2. The necessity of the development site to be developed with residential uses to be able to achieve the minimum residential density for the area designated on the Metro Plan Land Use Diagram for either medium- or high-density residential use.
3. Adopted plan policies indicate the suitability and appropriateness of the site for non-residential use.

Table 9.2740 does not subject telecommunications towers or facilities to density requirements, as such this criterion is not applicable.

An approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard. Additional criteria may also be required based on the applicability of other sections of this land use code.

All applicable development standards including telecommunications standards at EC 9.5750 have been addressed in the PUD. Although the applicant proposed a variance to the requirement to place equipment underground, the hearing official did not grant the variance. The applicant is not proposing any other adjustment to the standards.

EC 9.8090(9): The proposal complies with the Traffic Impact Analysis Review provisions of EC 9.8650 through 9.8680 where applicable.

With a projected increase in traffic limited to one maintenance visit per month, the proposed cell tower facility does not meet any of the thresholds established in EC 9.8650 through 9.8680. Accordingly, there is no requirement for a Traffic Impact Analysis.

Decision of the Hearing Official

Based upon the available information and findings set forth in the preceding evaluation, the hearing official approves the proposed development in these applications PDT 10-2 and CUP 11-1, as required to be modified by the findings above and conditions of approval below. The hearing official specifically notes that this decision denies the requested variance to place the

ancillary equipment above ground, and this decision has modified and deleted several of the recommended conditions from the staff report, and added new conditions addressing the approval criteria. The hearing official cautions the applicant, city staff, and other interested persons to use the Conditions of PUD and CUP Approval listed in this decision.

Conditions of PUD and CUP approval:

1. The applicant shall submit a new site plan and any necessary narrative for placing the equipment for the tower underground. The applicant should carefully review the findings in this decision and develop a plan that complies with all of the findings and conclusions.

2. The applicant shall engage a local (mid-Willamette Valley) landscape architect (no other professional will be acceptable) to develop a comprehensive screening plan for the proposed tower to be incorporated into the final tree preservation/landscape plan (Sheet L-1). The landscape architect must consider views of the tower from the homes and yards that adjoin the subject property in the vicinity of the tower, including the Northgreen Apartments. The landscape architect shall work directly with the landowners of the adjoining properties to design screening that meets those owners' needs. The screening may be located on the subject property, the property of the adjoining owners (with their consent), or both. The final tree preservation/landscape plan (Sheet L-1) shall show the location and species of existing trees and new screening vegetation to be planted on the development site and adjoining properties and shall list the following requirements:

- New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
- The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.
- The plantings must be inspected and approved prior to the City granting final approval of the building permit.
- Watering and general maintenance of replacement trees, new vegetation, and other screening on the subject property shall be conducted by the owner or lessee of the subject property in a manner that ensures establishment and long-term survival. Maintenance of any screening located on the adjoining properties shall be the responsibility of the owners of those properties.
- The cost of the landscape architect and initial implementation of the screening plan shall be the responsibility of the applicant.

3. The Tree Preservation Plan (Sheet L-1) with the final site plans shall include the following tree preservation notes:

- “All protective tree fencing shall remain in place until completion of all construction activities.”
- “Protective fencing for trees identified to be preserved shall be inspected and approved by the City prior to beginning any construction related activities.
- “No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the City.”
- “Removal of dead, diseased, or hazardous trees shall be allowed with documentation from a certified arborist as to the condition of the tree and the need for removal. Documentation must be provided to the City for review and approval prior to tree removal activity.”
- “In the event a preservation tree must be removed, the justification of the removal must be documented by a certified arborist. Documentation must be provided to the City for review and approval prior to tree removal activity. The tree shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species, with a minimum caliper of 2" for deciduous canopy trees and a minimum height of 5' for coniferous or evergreen trees. Planting, watering and general maintenance of replacement trees shall be conducted by the lot owner in a manner that ensures their establishment and long-term survival.”

4. A note shall be added to Sheet L-1 noting that noncompliance with EC 9.5750(7)(e) has been approved through the PUD allowing the applicant to not place landscaping around the portion of the tower that is screened by the building. However, any landscaping between the tower and building shall be considered required landscaping that must be kept healthy and well maintained.

5. A note shall be added to Sheet L-1 that states “All landscaping proposed on Sheet L-1 shall be kept healthy and well maintained as long as the telecommunications facility remains on the subject site.”

6. Prior to final PUD approval, the applicant shall provide a revised noise study demonstrating compliance with EC 9.5750(7)(f). The noise study shall be for a proposal that does not include a variance pursuant to EC 9.5750(9)(c).

7. Prior to final PUD approval, Sheet A-1 shall be revised to include the following note. “The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or shades with a matte finish as approved by the city.”

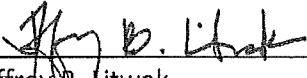
8. Prior to final PUD approval, Sheet A-2 shall be revised to include the following note “No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no

more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2.”

9. The following note shall be added to the final site plan “All transmission towers, antennas, the tower substructure and all above ground ancillary facilities shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas.

Dated this 2 day of August 2011.

Mailed this 3 day of August 2011.



Jeffrey B. Litwak
Hearing Official

SEE NOTICE OF HEARING OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

AGENDA



EUGENE PLANNING COMMISSION

Council Chamber, City Hall

777 Pearl St.

Eugene, OR 97401

www.eugene-or.gov/pc

The Eugene Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours notice. To arrange for these services, contact the receptionist at 541-682-5481. Telecommunications devices for deaf assistance are available at 541-682-5119.

WEDNESDAY, AUGUST 31, 2011 –

WORK SESSION (5:00 p.m.)

Overview of procedural issues related to appeals.

PUBLIC HEARING (6:00 p.m.)

I. APPEAL OF HEARINGS OFFICIAL DECISION: AT&T MOBILITY (PDT 10-2 and CU 11-1)

This is a public hearing on appeal of the Hearings Official's conditional approval of a concurrent tentative PUD and CUP applications by AT&T for installation of a new wireless telecommunications tower at the Oakway Golf Course.

Lead City Staff: Steve Ochs, 541-682-5453

II. APPEAL OF HEARINGS OFFICIAL DECISION: LOOKING GLASS SCHOOL (Z 11-3)

This is a public hearing on appeal of the Hearings Official's approval of a zone change, from the existing zoning of GO, General Office, to C-2, Community Commercial, for property located at 1666 West 12th Avenue.

Lead City Staff: Steve Ochs, 541-682-5453

Public Hearing Format

The Planning Commission will receive a brief City staff report followed by an opportunity for the applicant, appellants and interested parties to provide oral testimony, with final rebuttal reserved for the applicant. Time limits on testimony may be imposed. The Planning Commission may seek a response to testimony from City staff. At the end of the hearing, the Planning Commission Chair will announce whether the record is closed, the record will be held open, or the public hearing will be continued.

AGENDA ITEM SUMMARY

August 24, 2011

To: Eugene Planning Commission

From: Steve Ochs, Associate Planner, Eugene Planning Division

Subject: Appeal of Hearings Official Decision: AT&T Mobility Cell Tower – Oakway Golf Course (PDT 10-2 & CU 11-1)

ACTION REQUESTED

To hold a public hearing on an appeal of the Eugene Hearings Official's decision to approve a Planned Unit Development and Conditional Use Permit for installation of a new wireless telecommunications tower facility on a privately owned golf course.

BRIEFING STATEMENT

The applications subject to this appeal include concurrent Planned Unit Development (PUD) and Conditional Use Permit (CUP) approvals to construct a 75-foot cell tower on a lease area on Oakway Golf Course. The Hearings Official denied a variance request by the applicant (as part of the CUP) to allow ancillary facilities above ground. The property is located at 2000 Cal Young Road. The proposed cell tower will be located on the north side of the golf course, just north of existing buildings on the site. The subject property is zoned R-1/PD and is developed with an existing private golf course and related buildings and parking.

The Eugene Hearings Official held a public hearing for the subject applications on June 15, 2011. The Hearings Official issued a decision approving the concurrent applications on August 2, 2011. On August 15, 2011, two appeals were filed. One appeal was filed by Richard Busch, Attorney for the applicant (now named New Cingular Wireless PCS, LLC). The other appeal was filed by Micheal Reeder, Attorney for Northgreen Property, LLC. The New Cingular Wireless appeal is comprised of 2 assignments of error as reflected in the written statement submitted by Richard Busch (see attached). The Northgreen Property appeal consists of 13 assignments of error as reflected in the written statement submitted by Micheal Reeder (also, see attached). Both appellants' assignments of error are further addressed in the staff report below.

The Eugene Planning Commission is scheduled to hold a public hearing on this appeal on August 31, 2011. Based on procedural requirements set forth in the Eugene Code (see EC 9.7655), the Planning Commission may address only those issues set out in the appeal statements submitted. Further, the Planning Commission must limit its consideration to the evidentiary record established before the Hearings Official; the Planning Commission may not accept new evidence. The Planning Commission is required to conduct the public hearing to accept the parties' arguments according to the statutory procedures for quasi-judicial hearings, and otherwise set forth in the Eugene Code (EC 9.7065 through 9.7095).

The Eugene Code requires that the Planning Commission's decision on this appeal be made within 15 days of the close of the record following the public hearing. However, staff emphasizes that a decision will be required no later than September 16, 2011 to meet the 120-day statutory time limit and to comply with local code procedures. The Planning Commission's decision must otherwise be made in accordance with the provisions for appeal decisions (see EC 9.7680), and more specifically, consistent with the applicable PUD and CUP approval criteria from EC 9.8090 and EC 9.8320.

The Planning Commission is urged to articulate any specific questions of staff following the public hearing or via email to facilitate response at deliberations. Final deliberation and action by the Planning Commission will be scheduled at a future date, based upon when the record closes following the public hearing.

PLANNING COMMISSION'S REVIEW ROLE

Planning Commission's review should be focused entirely on the question of whether or not the Hearings Official failed to properly evaluate the application or make a decision consistent with the applicable criteria. The only questions at issue in this request relate to whether or not the Hearings Official erred in approving the applications based on the approval criteria of EC 9.8090 and EC 9.8320. The Planning Commission may modify the Hearings Official's decision with supplemental findings; or in the event that the Planning Commission finds the Hearings Official erred in approving the request and chooses to reverse the decision, the Planning Commission is required to provide specific findings of fact as to why the decision was in error. The Planning Commission cannot reverse the decision without such findings.

APPEAL ISSUES AND STAFF RESPONSE

The New Cingular Wireless appeal is comprised of 2 assignments of error and the Northgreen Property appeal consists of 13 assignments of error (see attached). Staff's preliminary responses to each of the assignments of error are provided below, followed by staff's recommendation to the Planning Commission. To differentiate the appeals, staff refers to the numbered appeal issues below under the heading of "New Cingular" or "Northgreen Property". When referring to the "the decision" below, staff is referring to the Hearings Official's written decision approving the applications (PDT 10-2 and CU 11-1), dated August 2, 2011. For additional information on the subject request, please also refer to the attached appeal forms and written statements, as well as the full record of materials provided under separate cover which includes the Hearings Official's decision, public testimony and application materials.

New Cingular Appeal Issue 1

Requirement that the new noise study not include a variance.

This appeal issue relates to the variance criteria at EC 9.5750(9). The Hearings Official addresses the relevant variance criteria on pages 40-41 of the decision (pages 80-81 of the record).

The appellant asserts that the noise requirement could be met with a different site design, without undergrounding the equipment, and therefore requests that the Hearings Official's decision be revised to allow AT&T to submit a new noise study and or variance request "in any

form” in order to comply with the approval criteria in EC 9.5750.

The Hearings Official’s decision found that, based on testimony provided, the applicant did not meet the variance criteria at EC 9.5750(9). While, as the applicant asserts, there may have been other options that they could have proposed, without these options and evidence to support a revised design, the variance requirements were not met. Lacking evidence that the variance criterion was met the Hearings Official conditioned the approval (see Condition 1 of the decision), by requiring the applicant to submit new site plans and necessary narrative that would meet applicable criteria for a revised design placing the ancillary equipment underground.

As discussed further below, under Northgreen Property Appeal Issue 3, staff finds that this condition may so substantially change the application that further consideration by Planning Commission is warranted, including possible reversal of the Hearings Official’s approval.

New Cingular Appeal Issue 2 / Northgreen Property Appeal Issue 1

New Cingular and Northgreen Property, LLC assert that the City’s appeal fees are not in compliance with applicable laws. Based on the August 17, 2011, decision of the Court of Appeals in *Willamette Oaks v. City of Eugene*, the Planning Commission and may not accept new evidence pertaining to this issue. The City Attorney’s office will provide further advice with regard to these appeal issues.

Northgreen Property Appeal Issue 2

Telecom Siting Standard for Noise – EC 9.5750(7)(f) – Error in Interpreting Standard

The Hearings Official addresses this issue on pages 35-38 of the decision (pages 75-78 of the record). The appellant asserts that the 45dBa noise limit applies not only to telecom noise measured at the receiving property line, but to all noise. This issue was previously raised in testimony and the Hearings Official noted that the interpretation provided by the appellant would require the applicant to reduce existing noise levels from other sources not related to the application and not within the applicant’s control.

The Hearings Official concluded that without more robust evidentiary detail, and detailed requirements in the code for how the applicant was to address this, the intent of the code was not to prohibit new sound when 45dBA was already exceeded by ambient noise levels, but rather to limit new devices to less than 45dBA.

As such, staff recommends that the Planning Commission affirm the Hearings Official’s decision with regard to Northgreen Property Appeal Issue 2.

Northgreen Property Appeal Issue 3

Telecom Siting Standard for Noise – EC 9.5750(7)(f) – Improper use of Conditioning

The Hearings Official addresses this issue on pages 35-38 and 40-41 of the decision (pages 75-78 and 80-81 of the record). The Hearings Official noted that, based on the evidence provided,

the applicant did not comply with this standard. The Hearings Official noted that he had two choices in responding to this issue. He could deny the entire application, or he could deny the variance request thereby requiring the equipment to be placed underground. He went on to note that placing the equipment underground would almost certainly resolve the noise issue, but there was nothing in the record to support this seemingly obvious conclusion. As a result, he found it appropriate to impose a condition (see Condition 6 of the decision) requiring a new noise study to confirm compliance with EC 9.5750(7)(f), based on a proposal that does not include a variance to undergrounding requirements pursuant to EC 9.5750(9)(c). The Hearings Official also included a related condition (see Condition 1 of the decision) requiring the applicant to submit a new site plan and any necessary narrative for placing the equipment underground.

The appellant asserts that the Hearings Official should have denied the application and required a new proposal, also noting that conditioning is only proper if the record has evidence showing that the standard can be met with the condition. The appellant further asserts that the undergrounding is too big of a change to accomplish by a condition, amending the application so substantially that it results in a different use than what was originally applied for.

While the proposed telecommunications use would certainly remain the same, the uncertainty with respect to impacts from resulting design changes warrants further review and consideration by the Planning Commission on appeal. The Hearings Official may have erred with respect to proper conditioning in this instance, based on at least some evidence showing that it would be feasible to meet the standard with underground equipment, as conditioned. To the extent that relevant statutes and case law may direct a proper determination on this issue, additional input from the City Attorney will be provided.

By denying the variance and thus requiring that ancillary equipment be provided underground, the application may have been so substantially altered that a new application should be required to address all of the new issues that might arise with respect to other applicable standards. The Hearings Official's condition requiring the new site plans and narrative even implies the large magnitude of change, noting that the "applicant should carefully review the findings in this decision and develop a plan that complies with all the findings and conclusions" (see Condition 1 of the decision). This may be more properly accomplished as part of a new application that would then allow full review and public testimony to address the revised proposal's compliance with all applicable PUD and CUP approval criteria. Such a determination would also appear to address New Cingular's Appeal Issue 1, as it would allow the applicant to come up with a new proposal that can address the noise concerns and for that matter, possibly reapply to request a variance (and provide relevant evidence that might support such a request) if they so choose.

Staff recommends that Planning Commission consider this question closely, including possible reversal of the Hearings Official's approval based upon Northgreen Property Appeal Issue 3. As the feasibility of meeting such a condition is not addressed by evidence in the record, undergrounding of the ancillary facilities may alter the current proposal so substantially that a new application is necessary to fully and properly address all applicable PUD and CUP approval criteria. Alternatively, if the Planning Commission determines that the denial of the variance

and adding the condition was an appropriate remedy after evaluating all the available evidence, it is noted that the City's Final PUD approval process requires public notice and opportunity for the parties to testify and submit evidence as to whether the applicant has met the condition of approval, and provides a local appeal process in the event of a challenge to the Planning Director's decision.

Northgreen Property Appeal Issue 4

Telecom Siting Standards for Variance to Undergrounding – EC 9.5750(9)(c) – Erroneous Interpretation

The Hearings Official addresses this issue on pages 40-41 of the decision (pages 80-81 of the record). The appellant asserts that the Hearings Official misinterpreted what the code requires to "obviate" the need for undergrounding. The appellant goes on to assert that undergrounding is required to avoid noise impacts, which requires that the noise go away entirely.

The Hearings Official found that while there is a tenuous link, a variance may be obtained upon finding that the noise standard is met with the facilities above ground and then explains the link in the code for that reading. The Hearings Official further explains that in order for variance to be granted it also needs to meet the other factors, including stealth design, landscaping and site configuration or presence of mature trees. The Hearings Official noted that in this case, the configuration of the site, in part, creates the need for undergrounding.

Both the appellant's argument and Hearing Official's interpretation appear to have merit and weaknesses. The appellant's interpretation that to "obviate" means "go away" is not necessarily correct in all situations. As in this case, there has been no evidence presented demonstrating how much noise would be generated with the equipment underground. Depending on the noise levels generated from underground equipment, a similar level of dBA from above ground equipment could be considered to evaluate what it means to "obviate" the need for compliance in this instance. Additionally, some sites could be located such that sound is not an issue. It could well be that noise from above ground equipment could also meet the standards using design techniques that are not addressed in this situation. On this point, the Hearings Official states the following at the top of page 41 in his decision: "Although the criteria for a variance do not expressly state that an applicant may obtain a variance upon finding that the applicant can meet the noise standard with facilities above ground, the hearing official believes this is a permissible reading of the subsection (9)(c)."

Staff concurs with the Hearings Official that the standard was not adequately met based on available evidence in this case, and recommends that the Planning Commission affirm the Hearings Official's decision with regard to Northgreen Property Appeal Issue 4. In doing so, the Planning Commission should specifically reject the appellant's over-reaching interpretation that absolutely all noise must be eliminated to comply.

Northgreen Property Appeal Issue 5

PUD Standards for Screening EC 9.8320(3) – Naked Top Third of Monopole is not “Adequate Screening”

The Hearings Official addresses this issue extensively on pages 12-15 of the decision (pages 52-55 of the record). The appellant asserts that the entire monopole needs to be screened to some degree to support a finding of “adequate screening”. Ultimately, after closely evaluating the available evidence and meaning of relevant terms, the Hearings Official found that a condition of approval was needed to ensure the requirement for adequate screening has been met (see Condition 2 of the decision). This condition requires the applicant to engage a landscape architect to develop a comprehensive screening plan and work directly with adjoining property owners to design screening that meets their needs. The Hearings Official notes that the pole will be visible against and contrast with the sky, but that a landscape architect could assist with how to try to achieve screening or masking of the upper portion of the tower.

As the condition of approval is based on evidence in the record and feasible to comply with as part of meeting the discretionary PUD approval criteria regarding adequate screening, staff recommend that the Planning Commission affirm the Hearings Official’s decision with regard to Northgreen Property Appeal Issue 5.

Northgreen Property Appeal Issue 6

PUD Standards for Screening – EC 9.8320(3) – Requirement for New Landscape Plan

Again, the Hearings Official addresses this issue on pages 12-15 of the decision (pages 52-55 of the record). The appellant asserts the application should be denied instead of the Hearings Official “repairing” the application through a condition, and because the condition does not state the final plan will be subject to future review in the Final PUD process.

As noted above, Condition 2 requires the applicant to engage a landscape architect to develop a comprehensive screening plan and work directly with adjoining property owners to design screening that meets their needs. It also requires the final site plans to include the changes. The Hearings Official’s condition for a landscape plan does not change the essence of the application and the requirement is feasible to meet in response. Final plans which would be required to show the screening plan are approved as part of the Type II, Final PUD process in this case. A public process with notice, opportunity for comment and appeal is therefore properly required to ensure review of the screening plan for compliance with the condition.

As such, staff recommends that the Planning Commission affirm the Hearings Official’s decision with regard to Northgreen Property Appeal Issue 6.

Northgreen Property Appeal Issue 7

Neighborhood Applicant Meeting – EC 9.7007(2) Applicant Meeting Required for PUD Application

The Hearings Official addresses this issue on pages 4 and 5 of the decision (pages 44-45 of the record). The appellant asserts the Hearings Official failed to look at the plain language that required such a meeting.

The applicant submitted the initial application within the required 180 day timeframe but later added a concurrent CUP after of the 180 day timeframe following the neighborhood/applicant meeting. The Hearings Official found that the intent of the meeting is to share information and the proposal did not change from the time of the meeting to submittal of the CUP application.

As this issue does not relate to any substantive approval criteria as part of the application approval, and because the neighborhood was provided with the opportunity to review the proposal, share information and identify issues as intended by the neighborhood/applicant meeting requirement, staff recommends that the Planning Commission affirm the Hearings Official's decision with regard to Northgreen Property Appeal Issue 7.

Northgreen Property Appeal Issue 8
Metro Plan Policies

The Hearings Official addresses this issue on pages 5-10 of the decision (pages 45-50 of the record). The appellant asserts that the Hearings Official erred in concluding that Metro Plan policies are not independent review standards on which to judge an application.

The Hearings Official provides a thorough explanation on the proper use of the Metro Plan and policies, also specifically noting that several of the policies which are relevant are implemented by specific criteria in the application.

Staff finds that the Hearings Official properly applied relevant Metro Plan policies and correctly concluded that the proposal is consistent with the Metro Plan. As such, staff recommends that the Planning Commission affirm the Hearings Official's decision with regard to Northgreen Property Appeal Issue 8.

Northgreen Property Appeal Issue 9
Health and Safety – EC 9.8320(6)

The Hearings Official addresses this issue on pages 20-21 of the decision (pages 60-61 of the record). The appellant asserts that the Hearings Official erred by not considering the health and safety effects of excessive noise.

The Hearings Official correctly found that the proposal will not be a significant risk to public health and safety, as compliance with FCC emission requirements were met. While the Hearings official did not specifically address noise as a health and safety issue under the discretionary PUD approval criteria as the appellant suggests is needed, the decision thoroughly addresses the issue of noise impacts in context with other more specific governing standards and approval criteria for telecommunication facilities, including federal standards.

As City requirements regarding radio frequency emissions are consistent with the Federal Communications Act of 1996, and the issue of noise impacts is sufficiently addressed through other telecommunications requirements, staff recommends that the Planning Commission affirm the Hearings Official's decision with regard to Northgreen Property Appeal Issue 9.

Northgreen Property Appeal Issue 10
Alternative Sites Analysis – EC 9.5750

The Hearings Official addresses this issue on pages 29-31 of the decision (pages 69-71 of the record). The appellant asserts that the decision did not adequately discuss the applicant's lack of substantial evidence regarding this analysis.

The Hearings Official notes that the standard at EC 9.5750(7) does not address how many alternative sites should be analyzed or provide further guidance. The Hearings Official provides two pages of findings addressing this issue and discusses an Oregon Court of Appeals case in relation to this issue. The Hearings Official correctly concluded that while the evidence provided in regards to this analysis was "minimal" there is no requirement that the applicant select an alternative site and as such, in this case the basic requirement had been met.

As such, staff recommends that the Planning Commission affirm the Hearings Official's decision with regard to Northgreen Property Appeal Issue 10.

Northgreen Property Appeal Issue 11
Minimal Off-Site Impacts – EC 9.8320(12)

The Hearings Official addresses this issue on pages 42-43 of the decision (pages 82-83 of the record). The appellant asserts that this criterion was not met, especially in regards to noise impacts.

The Hearings Official provides findings that address traffic, noise, stormwater, environmental quality, RF emissions and aesthetic impacts. The Hearings Official incorporated EC 9.5750(7)(f) by reference in regards to noise, and part of the Hearings Official's approach was to require undergrounding of the ancillary facilities. As discussed above, undergrounding the ancillary facilities may alter the current application so substantially that a new application is needed, and the feasibility of the related approval condition may not be based on adequate evidence in the record.

As such, staff recommends that the Planning Commission's determination under this issue should follow the related outcome upon deliberations, regarding Northgreen Property Appeal Issue 3.

Northgreen Property Appeal Issue 12
Compatibility and Harmony with the Adjacent and Nearby Uses

The Hearings Official addresses this issue on pages 43-44 of the decision (pages 83-84 of the record) in relation to EC 9.8320(13). The appellant asserts that the Hearings Official wrongly concluded this criterion was met because it met many of the measurable standards.

The Hearings Official noted that compatibility is a very subjective standard and what one person believes is compatible another person might believe is very incompatible. Further, he notes that City Council has already determined that telecommunications towers are permissible under the applicable R-1 zoning and therefore in close proximity to residences. What is essentially left for the Hearings Official to decide is the impact of the tower at this location, in context with the applicable approval criteria, not towers in general. The Hearings Official then incorporates the findings and conclusions from EC 9.8320(3) in determining that the approval criterion was met.

As such, staff recommends that the Planning Commission affirm the Hearings Official's decision with regard to Northgreen Property Appeal Issue 12.

Northgreen Property Appeal Issue 13
Livability – EC 9.8090(2)

The Hearings Official addresses this issue on pages 45-46 of the decision (pages 85-86 of the record). The appellant asserts that the Hearings Official erred in concluding that a portion of the criterion did not apply to the proposal.

The Hearings Official correctly notes that subsection (a) ensures buildings are appropriately sized for their use. The use in this case is a cell tower, not a building, and subsection (a) is not applicable. While the appellant asserts that the equipment may be buildings, the use is a cell tower which is not a building.

Under subsection (b), the Hearings Official also provides findings that address noise, glare and radio frequency emissions. The Hearings Official incorporated EC 9.5750(7)(f) by reference in regards to noise, and part of the Hearings Official's approach was to require undergrounding of the ancillary facilities. As discussed above, undergrounding the ancillary facilities may alter the current application so substantially that a new application is needed, and the feasibility of the related approval condition may not be based on adequate evidence in the record.

As such, staff recommends that the Planning Commission's determination under this issue should also follow the related outcome upon deliberations, regarding Northgreen Property Appeal Issue 3.

RECOMMENDATION

Based on the available evidence and findings above as to why the decision may have erred, staff recommends that the Planning Commission closely consider and deliberate possible reversal of the Hearing's Official's approval of the applications, in response to Northgreen Property Appeal Issue 3.

In the event that the Planning Commission finds the Hearings Official erred in approving the request and chooses to reverse the decision, the Planning Commission is required to provide specific findings of fact as to why the decision was in error. The Planning Commission cannot reverse the decision without such findings.

ATTACHMENTS

The entire record of materials for the subject applications, including the Hearings Official's decision is available for review at the Eugene Planning Division offices, and will be provided to the Planning Commission under separate cover. The record of materials will also be made available for review at the Planning Commission public hearing, and any follow-up deliberation meetings on this matter. For convenience, the following relevant items from the public record are attached for reference:

1. Vicinity Aerial Map
2. Site Plan
3. Appeal form and written appeal statements of New Cingular Wireless
4. Appeal form and written appeal statements of Northgreen Property, LLC

FOR MORE INFORMATION:

Please contact Steve Ochs, Eugene Planning Division, by phone at (541) 682-5453, or by e-mail at steve.p.ochs@ci.eugene.or.us



Proposed Tower Location

Goodman Networks
 at&t

LDC
 Commercial
 Infrastructure
 Residential
 Electrical
 Mechanical
 Plumbing
 Fire Protection
 Energy
 Water
 Sewer
 Telecommunications

DATE: 2-24-10
 DRAWN BY: RJA
 CHECKED BY: MEV

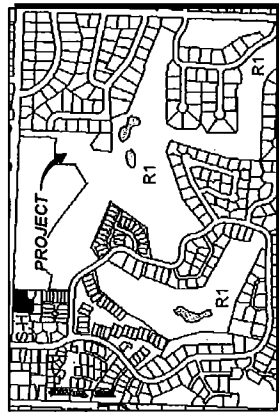
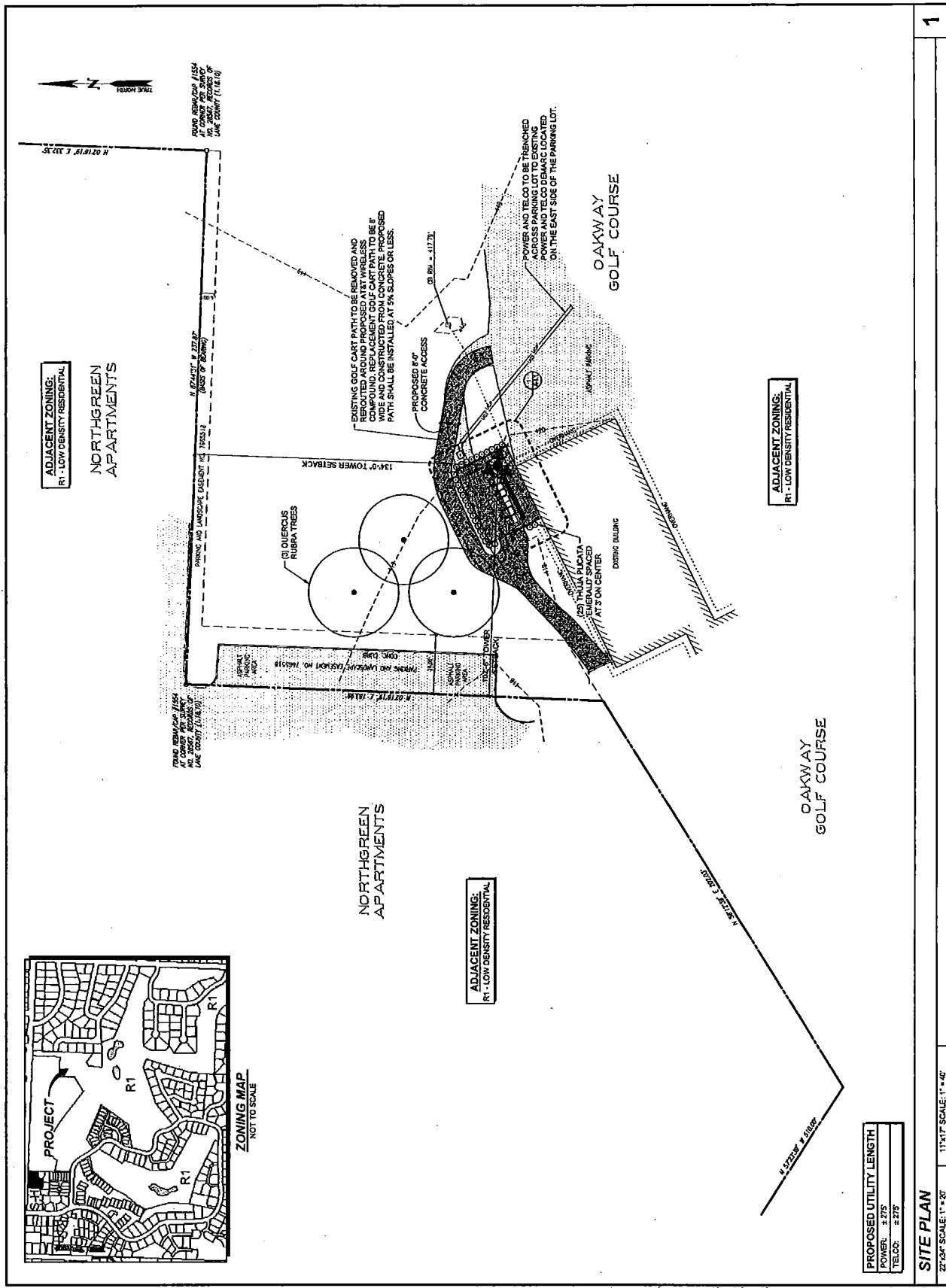
| REV | DATE | DESCRIPTION |
|-----|---------|--------------------|
| 1 | 2-24-10 | PRELIMINARY DESIGN |
| 2 | 3-24-10 | FINAL DESIGN |
| 3 | 4-24-10 | FINAL DESIGN |
| 4 | 5-24-10 | FINAL DESIGN |



SITE
 CAL YOUNG
 2000 CAL YOUNG RD
 OAKWAY GOLF COURSE
 EUGENE, OR 97401

SHEET TITLE
 SITE PLAN

SHEET NUMBER
 A-1

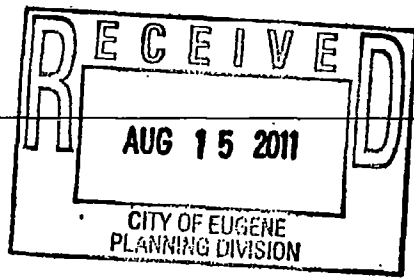


ZONING MAP
 NOT TO SCALE

| |
|-------------------------|
| PROPOSED UTILITY LENGTH |
| POWER: = 275' |
| TELECO: = 275' |

SITE PLAN
 27'x34' SCALE: 1" = 20'
 11'x17' SCALE: 1" = 40'

1



Planning & Development
Planning

City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401
(541) 682-5377
(541) 682-5572 FAX
www.eugene-or.gov

APPEAL OF INITIAL HEARINGS OFFICIAL OR HISTORIC REVIEW BOARD DECISION

The appeal of an initial Hearings Official or Historic Review Board decision provides for a review of a quasi-judicial decision by a higher review authority specified in the Land Use Code. In general, the appeal procedures allow for a review of the original application, the Hearings Official or Historic Review Board decision, the appeal application, and any facts or testimony relating to issues and materials that were submitted before or during the initial quasi-judicial public hearing process. The Hearings Official or Historic Review Board decision may be affirmed, reversed, modified, or remanded by the Planning Commission.

Please check one of the following:

- | | |
|--|--|
| <input type="checkbox"/> Adjustment Review, Major | <input checked="" type="checkbox"/> Planned Unit Development, Tentative Plan |
| <input checked="" type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Willamette Greenway Permit |
| <input type="checkbox"/> Historic Landmark Designation | <input type="checkbox"/> Zone Change* |

**This appeal form is not applicable for zone changes processed concurrently with a Metro Plan amendment, the adoption or amendment of a refinement plan, a Land Use Code amendment, or the application of the /ND Nodal Development overlay zone.*

City File Name: AT&T Mobility Cell Tower – Oakway Golf Course

City File Number: PDT 10-2 & CU 11-1

Date of Hearings Official or Historic Review Board decision: Mailed August 3, 2011;
Signed August 2, 2011

Date Appeal Filed: August 15, 2011

(This date must be within 12 days of the date of the mailing of the Hearings Official or Historic Review Board decision.)

- Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal, be based on the record, and be limited to the issues raised in the record that are set out in the filed statement of issues. The appeal statement shall explain specifically how the Hearings Official or Historic Review Board failed to properly evaluate the application or make a decision consistent with applicable criteria. The basis of the appeal is limited to the issues raised during the review of the original application. Please contact Planning staff at the Permit and Information Center, 99 West 10th Avenue, (541) 682-5377, for further information on the appeal process.

A filing fee must accompany all Hearing's Official and Historic Review Board appeals. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: www.eugeneplanning.org

Acknowledgment

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a Hearings Official or Historic Review Board decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

APPELLANT

Name (print):

New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, its Manager

By: Richard J. Busch, its attorney

Phone: 425-458-3940

Address: 22525 SE 64th Place

City/State/Zip: Issaquah, WA 98027

Signature:



APPELLANT

Name (print):

Phone:

Address:

City/State/Zip:

Signature:

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association:

BEFORE THE PLANNING COMMISSION
OF THE CITY OF EUGENE, OREGON

Appeal of New Cingular Wireless PCS, LLC
by AT&T Mobility Corporation, Its Manager
from the Hearings Official's decision mailed
August 3, 2011 regarding the AT&T Mobility Cell
Tower on the Oakway Golf Course

APPEAL STATEMENT OF NEW
CINGULAR WIRELESS PCS, LLC

File No.: PDT 10-2 & CU 11-1

APPEAL STATEMENT OF NEW CINGULAR WIRELESS PCS, LLC

1 New Cingular Wireless PCS, LLC ("AT&T") hereby appeals the Hearings Official's decision in
2 this matter mailed on August 3, 2011 for the following reasons:

3 1. Requirement that the new noise study not include a variance. The Hearings Official's
4 findings are to be supported by substantial evidence on the record. The Hearings Official
5 acknowledged that there is no evidence in the record that by burying the equipment cabinets,
6 AT&T will be in compliance with the noise requirements in EC 9.5750(7)(f) (noise reduction).
7 Nonetheless, the Hearings Official ordered that AT&T may not apply for a variance under
8 EC 9.5750(9)(c) (variance from underground ancillary facilities), which would require AT&T to
9 place its ancillary facilities underground pursuant to EC 9.5750(8) (underground ancillary
10 facilities). The Hearings Official acknowledged that he simply "believes" AT&T can comply
11 with this standard, despite the lack of any evidence in the record to support the Hearings
12 Official's belief.

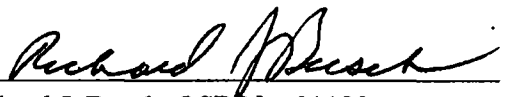
13 AT&T requests that the Hearings Official's decision be revised to allow AT&T to submit
14 a new noise study and/or a variance request in any form in order to comply with the approval

1 criteria in EC 9.5750, because there is no evidence in the record to support the refusal to allow
2 another variance request based upon a different site design (such as an equipment shelter with
3 indoor equipment, a berm and landscaping around the site, or a design that does not include
4 underground ancillary facilities might not require an above ground air conditioning system for
5 equipment in the vault). In the alternative, AT&T request the Planning Commission to remand
6 the matter to the Hearings Officer with an order to allow AT&T to present any new noise study
7 and/or variance request.

8 2. Appeal Fees. AT&T has paid concurrently with the filing of this appeal the appeal
9 fees in an amount of \$12,045.05, which is equal to one-half of the original application fees for
10 the PUD and CUP permit applications. AT&T believes that the appeal fees are not in
11 compliance with applicable laws and requests the appeal fees be decreased.

12
13 Respectfully submitted.

14 Dated: August 11, 2011

15
16 
17 Richard J. Busch, OSB No. 81180
18 Busch Law Firm PLLC
19 22525 SE 64th Place, Suite 288
20 Issaquah, WA 98027
21 425-458-3940 Office
22 206-265-3821 Wireless
23 rich.busch@wirelesscounsel.com



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APPEAL OF INITIAL HEARINGS OFFICIAL OR HISTORIC REVIEW BOARD DECISION

The appeal of an initial Hearings Official or Historic Review Board decision provides for a review of a quasi-judicial decision by a higher review authority specified in the Land Use Code. In general, the appeal procedures allow for a review of the original application, the Hearings Official or Historic Review Board decision, the appeal application, and any facts or testimony relating to issues and materials that were submitted before or during the initial quasi-judicial public hearing process. The Hearings Official or Historic Review Board decision may be affirmed, reversed, modified, or remanded by the Planning Commission.

Please check one of the following:

- | | |
|--|--|
| <input type="checkbox"/> Adjustment Review, Major | <input checked="" type="checkbox"/> Planned Unit Development, Tentative Plan |
| <input checked="" type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Willamette Greenway Permit |
| <input type="checkbox"/> Historic Landmark Designation | <input type="checkbox"/> Zone Change* |

**This appeal form is not applicable for zone changes processed concurrently with a Metro Plan amendment, the adoption or amendment of a refinement plan, a Land Use Code amendment, or the application of the /ND Nodal Development overlay zone.*

City File Name: AT&T Cell Tower – Oakway Golf Course

City File Number: PDT 10-2 and CU 11-1

Date of Hearings Official or Historic Review Board decision: August 3, 2011

Date Appeal Filed: August 15, 2011

(This date must be within 12 days of the date of the mailing of the Hearings Official or Historic Review Board decision.)

- Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal, be based on the record, and be limited to the issues raised in the record that are set out in the filed statement of issues. The appeal statement shall explain specifically how the Hearings Official or Historic Review Board failed to properly evaluate the application or make a decision consistent with applicable criteria. The basis of the appeal is limited to the issues raised during the review of the original application. Please contact Planning staff at the Permit and Information Center, 99 West 10th Avenue, (541) 682-5377, for further information on the appeal process.

A filing fee must accompany all Hearing's Official and Historic Review Board appeals. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: www.eugeneplanning.org

Acknowledgment

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a Hearings Official or Historic Review Board decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

APPELLANT

Name (print): NORTHGREEN PROPERTY, LLC, c/o Micheal M. Reeder Phone: 541-484-0188

Address: 800 Willamette Street, Suite 800

City/State/Zip: Eugene, OR 97401

Signature: 

APPELLANT

Name (print): _____ Phone: _____

Address: _____

City/State/Zip: _____

Signature: _____

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: _____

ARNOLD GALLAGHER PERCELL
ROBERTS & POTTER

A Professional Corporation

ATTORNEYS AT LAW

800 U.S. Bank Center
800 Willamette Street
Eugene, OR 97401

Telephone: (541) 484-0188
Facsimile: (541) 484-0536
E-Mail: mreeder@agsprp.com
www.arnoldgallagher.com

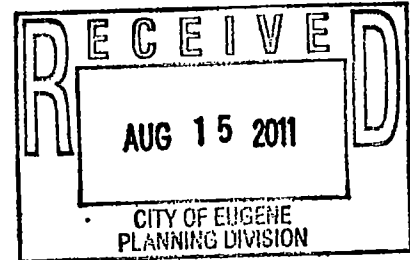
Correspondence:
P.O. Box 1758
Eugene, OR 97440-1758

MICHEAL M. REEDER

August 15, 2011

Hand Delivered and Via Email

Planning Commission
c/o Steve Ochs, Associate Planner
Eugene Planning and Development
Atrium Building
99 West 10th Avenue
Eugene, Oregon 97401



Re: **Northgreen Property, LLC Appeal Statement**
AT&T Mobility Cell Tower – Oakway Golf Course (PDT 10-2 & CU 11-1)

Ladies and Gentlemen:

I represent Northgreen Property, LLC (“Northgreen”), the owner of the Northgreen Apartments located at 1800 Cal Young Road, Eugene; Map 17-03-20-23, Tax Lot 9200 (the “Northgreen Property”). My client opposed the AT&T Mobility Cell Tower consolidated Application, PDT 10-2 and CU 11-1 (the “Application”). The City of Eugene (the “City”) Hearings Official issued a decision on August 3, 2011 (the “HO Decision”), that approved, with conditions, the tentative PUD and CUP application and denied the variance request to allow ancillary facilities above ground.

Please accept this letter as Northgreen’s appeal statement to the Planning Commission required by Eugene Code (“EC”) 9.7655(3). I have attached to this letter the appeal form accompanied with the required appeal fee in the amount of \$12,045.05.

On June 15, 2011, I testified on behalf of Northgreen at the Hearings Official hearing, and submitted written comments in regard to the original combined application on July 6, 2011.

Northgreen appeals the HO Decision to the Planning Commission for the following reasons:

1. Appeal Fee Issue – ORS 227.180(1)(c)

The City’s appeal fee for this appeal, set at 50% of the application fee, is contrary to state law, which applies directly in this process. State statutes govern this. ORS 227.180(1)(c) says, in

relevant part: "The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript."

The 50% appeal fee is set by Administrative Rule of the City Manager. Administrative Order No. 53-10-05-F (Oct. 18, 2010), page 6 of the Fee Schedule. The Administrative Order does not set the appeal fee based on the average or actual cost. There is no evidentiary basis to support the conclusion that the appeal fee is either reasonable or not more than the actual or average cost of processing the appeal.

In further support of this position, we ask the Planning Commission, under the authority of EC 9.7095(1)(a), to take official notice of the City Attorney's public records response dated September 21, 2010, admitting that the City has no public records supporting or justifying the appeal fee being 50% of the application fee. A copy of the September 21 letter is attached.

The HO Decision addressed this issue at page 5, but the HO Decision did not resolve it. The Planning Commission should hold that the appeal fee violates state law, may not be applied, and therefore should be refunded.

In this case, the appeal fee to be paid by Northgreen is \$12,045.05. This issue was raised by Bill Kloos, the attorney for Melissa Brotz and the Oakway Neighbors Association. The City has not shown that the appeal fee is based on the actual or average cost of the appeal or that the appeal fee is reasonable.

2. Telecom Siting Standard for Noise – EC 9.5750(7)(f) – Error in Interpreting Standard

The HO Decision misread the plain language of the noise standard of EC 9.5750(7)(f). Decision at 35. The HO Decision erroneously concluded that the 45 dBa noise limit applies only to telecom noise measured at the receiving property line, rather than all noise. The plain language of the EC requires that the use cannot be approved if the noise level at the receiving property line cannot meet the 45 dBa standard. The EC does not impose a 45 dBa limit in *additional sources* of noise, but on all noise from any and all sources received at the receiving property line.

3. Telecom Siting Standard for Noise – EC 9.5750(7)(f) – Improper Use of Conditioning

The HO Decision correctly found that the applicant failed to prove that the 45 dBa noise standard of EC 9.5750(7)(f) could be met. The HO Decision should have been to deny the Application. The applicant would then be free to submit a new proposal. Instead of denying the Application, the HO Decision conditioned the Application to require a new site plan to bury the ancillary equipment. Decision at 38, 40; Condition 1. The HO Decision also required a new noise study (Condition 6) to show that the use will meet the noise standard with the ancillary equipment

buried, after making a finding that the record did not have any evidence to show that burying the equipment would solve the noise issues. Decision at 38. Conditioning is only proper if the record has evidence showing that the standard can be met with the condition. Here, the HO Decision found that there was no such evidence, but it imposed the condition anyway. The Application should have been denied on this basis. Allowing for a new site plan and a new noise study in connection with the final PUD process mixes up the review processes. However, the noise standard is not a final PUD standard. It is a telcom siting standard that is part of the CUP process, which is not a multi-stage process. Additionally, conditioning may not be used to dramatically change the proposal. The applicant took a gamble and proposed above ground ancillary facilities, asking for a variance to the undergrounding requirement. The HO Decision denied the variance. Requiring undergrounding is too big a change to accomplish by a condition – it amends the Application so substantially that it effectively results in a different use than what was originally applied for. A new application is needed.

4. Telecom Siting Standards for Variance to Undergrounding – EC 9.5750(9)(c) – Erroneous Interpretation

The standard for getting a variance to undergrounding of ancillary facilities is:

“The city may grant a variance to the setback and undergrounding requirements of subsections (7)(d) or (8) upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.”

The HO Decision misinterpreted what the EC requires to “obviate” the need for undergrounding and allow a variance. Undergrounding of ancillary facilities is what the EC requires in Residential zones. The HO Decision adopted the staff position and said that if the facilities can be placed above ground and meet the 45 dBA noise standard at the property line, then the need for undergrounding with respect to noise is obviated, and the variance can be granted. Decision at 40-41. “[O]bviates the need for compliance” does not mean that the ancillary equipment will be no more noisy (45 dBA) than in zones where undergrounding is not required. Undergrounding is required to avoid noise impacts in residential areas – any noise impacts. To “obviate” the need for undergrounding means to obviate the noise. That means making the noise go away. Although the HO Decision denied the variance, this issue could be critical in this or in future proceedings. Whether in its appeal of the HO Decision, or in a new application, the applicant could assert that it is entitled to a variance allowing it to aboveground its facilities so long as it meets the 45 dBA standard. This would be erroneous. Underground is the standard. If applicant wants a variance, to put its noisy equipment above ground, it needs to obviate all its noise, not just meet the 45 dBA level.

5. PUD Standards for Screening – EC 9.8320(3) – Naked Top Third of Monopole is Not “Adequate Screening”

The screening standard for the PUD is:

“EC 9.8320(3) The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.”

The HO Decision concluded that the top third of the monopole can be unscreened in any fashion and the use can still be found to have “adequate screening.” Decision at 13. This is an erroneous conclusion. The entire pole needs to be screened to some degree to support a finding of adequate screening. When a significant portion of an industrial structure in a residential zone is unscreened, it cannot be considered to be “adequately screened.” This may be an impossible standard for someone to meet if it is a 75-foot tall monopole it wants to develop. That may be the unfortunate conclusion when a person picks a site with a PUD overlay. The PUD overlay provides an extra layer of protection for surrounding properties.

6. PUD Standards for Screening – EC 9.8320(3) – Requirement for New Landscaping Plan

In connection with the standard quoted above, the HO Decision imposed Condition 2 in the hope of ensuring adequate screening of the lower part of the tower from surrounding properties. Condition 2 is an attempt to repair the Application on the fly, when the Application should simply be denied. Condition 2 is sweeping in its scope. It essentially directs the applicant to go start from scratch on landscaping for screening. Condition 2 does not say that the final plan will be subject to review in the public process in the final PUD proceeding, and we are unsure whether it will be. If not, this shortcoming certainly dooms the validity of the approach used in the HO Decision. The simple, straightforward approach to this issue would be to deny the Application based on failure to adequately screen the use from the surrounding uses. The applicant is free to take a fresh run at the standards in the context of a new application.

7. Neighborhood Applicant Meeting – EC 9.7007(2) – Applicant Meeting Required for PUD Application

The HO Decision, at 4-5, dismissed Northgreen’s argument that a new applicant meeting was required for the PUD application. The HO Decision erred in concluding that no applicant meeting need be held for the PUD application. The HO Decision failed to look at the plain language of the EC that requires such a meeting. Northgreen reasserts its arguments made in its July 6, 2011 letter in the record, pages 3-4.

8. Metro Plan Policies

The HO Decision, at 5-10, and 4-45 erroneously concluded that the *Metro Plan* policies are not independent review standards with which to judge the Application. Specifically, the HO Decision addressed the Environmental Resource Element, Policy C.21, the Environmental Design Element, Policy E.4, and Policy E.6. The HO Decision also discussed specific *WAP* policies and

erroneously concluded that these were not independent approval criteria. In addition, the HO Decision erroneously dismissed the many oral and written comments from neighbors who testified to the negative impacts that the cell tower would impose on the neighborhood and vicinity.

9. Health and Safety – EC 9.8320(6)

The HO Decision erroneously concluded that the Application will not be a significant risk to public health and safety. The HO Decision focused only on the issues raised regarding radio emissions. The HO Decision made no mention of the health and safety effects raised by Northgreen and others caused by excessive noise. Regardless of the fact that federal law may prohibit a local government from regulating the placement of a cell tower based on the effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations, the HO Decision should not have ignored the other health and safety effects caused by noise. Decision at 20-21.

10. Alternative Sites Analysis – EC 9.5750(6)(c)(2)

The HO Decision did not adequately discuss the applicant's lack of substantial evidence in the record concerning the ability of the applicant to meet this criterion. The applicant's alternative's analysis was deficient. Decision at 31.

11. Minimal Off-Site Impacts – EC 9.8320(12)

The HO Decision, at 42-43, erroneously concluded that EC 9.8320(12) was met. The HO Decision was in error, especially in regards to the noise impacts, as discussed above, and aesthetic impacts.

12. Compatibility and Harmony with the Adjacent and Nearby Uses – EC 9.8320(13)

This is perhaps one the most striking errors in the HO Decision. EC 9.8320(13) requires the application to be "reasonably compatible and harmonious with adjacent and nearby land uses. Decision at 43-44. The HO Decision discussed very briefly the "compatibility" standard, but completely ignored the "harmony" standard. The HO Decision seems to conclude that because a telecom tower may be sited in the R-1 zone in some circumstances, if the Application meets other objective standards (such as height, setbacks, color, and lighting), then it must be de facto "compatible." However, this is in error and sucks all meaning out of the standard. The Planning Commission should reverse this error and conclude that merely meeting the measurable, objective EC standards for a telcom tower is not enough to satisfy EC 9.8320(13). More is required. The Application cannot meet this high standard.

13. Livability – EC 9.8090(2)

The HO Decision, at 45, dismisses the arguments and evidence made regarding the proposal's negative impacts on livability because the HO Decision concluded that the proposal did not include a provision for a "building" as defined the EC 9.0500 and used in subsection (a). The HO Decision is in error. Even though the cell tower may not be considered a building, the auxiliary facilities may be since they store and shelter the equipment relating to the cell tower. The cell tower is certainly a structure, and the entire proposal must be analyzed. Furthermore, the HO Decision did not impose any increased setbacks that could potentially mitigate the impacts to the residential uses surrounding the proposal. Rather than locating the cell tower and auxiliary facilities as close to residences as possible, the proposal could have been located in the center of the golf course and screened by vegetation.

Respectfully submitted,



Micheal M. Reeder
Attorney for Northgreen Property, LLC

MMR:jgh

*Attachments: Appeal Form
Appeal Fee*

September 21, 2010 Public Records Response to Bill Kloos

cc: Client (w/attachments)
Bill Kloos, Attorney (w/attachments)



City of Eugene
777 Pearl Street, Room 105
Eugene, Oregon 97401-2793
(541) 682-8447
(541) 682-5414 FAX
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September 21, 2010

Bill Kloos
Law Office of Bill Kloos PC
375 W 4th Avenue, Suite 204
Eugene, OR 97401

Dear Bill:

This responds to your public records request for "any city document/record that supports or justifies the appeal fee being set at 50% of the application fee."

Oregon public records law does not require that a local government, in order to respond to a public records request, analyze whether a record "supports or justifies" a local government decision. Accordingly, the City is not providing any documents in response to your request for documents that "support or justify" the City's decision. That said, in an effort to provide you with documents related to the City's appeal fee being set at 50% of the application fee, the City looked for any report, study, worksheet or similar record compiled in 1999 when the City first established the appeal fee at 50% of the application fee. The City was unable to locate any such document.

Please note that, pursuant to OAR 166-200-0040(4), there is a three-year retention period for these types of documents.¹ In light of the fact that the City adopted the 50% appeal fee more than eleven years ago, even though we are unable to locate any such documents today, it is unknown whether any reports, studies, worksheets or similar records existed when the City adopted the appeal fee in 1999.

Sincerely,

Kathryn P. Brotherton
Assistant City Attorney

¹ OAR 660-200-0040(4) states:

Financial Impact Analysis Records. Records document the financial analysis of various city practices. Useful for planning future budget proposals. Records include reports, studies, worksheets, and similar records. Subjects may include the impact of specific ballot measure, proposals to increase permit fees, sick leave use analysis, and the city's relationship with various utilities. (Minimum retention: 3 years).

AGENDA ITEM SUMMARY
August 24, 2011

To: Eugene Planning Commission

From: Steve Ochs, Associate Planner, Eugene Planning Division

Subject: Appeal of Hearings Official Decision: Looking Glass School (Z 11-3)

ACTION REQUESTED

To hold a public hearing on an appeal of the Eugene Hearings Official's decision to approve a zone change for Looking Glass School (Z 11-3) and to take action to affirm, reverse, or modify the Hearings Official's decision.

BRIEFING STATEMENT

The application subject to this appeal is a zone change approval for Looking Glass School, from GO, General Office, to C-2, Community Commercial on property located at 1662 West 12th Avenue. The subject property is approximately 1.1 acres in size and is developed with an existing commercial building and related parking.

The Eugene Hearings Official held a public hearing for the subject application on July 13, 2011. After an open record period to allow additional testimony following the public hearing, the Hearings Official issued a decision approving the request on August 4, 2011. On August 16, 2011, an appeal of the Hearings Official's decision was filed by Paul Conte on behalf of the Jefferson Westside Neighbors (JWN). The appeal is comprised of 3 assignments of error and several related sub-assignments, as reflected in the written appeal statement (see attached), and further addressed in the staff response provided below.

The Eugene Planning Commission is scheduled to hold a public hearing on this appeal on August 31, 2011. Based on procedural requirements set forth in the Eugene Code (see EC 9.7655), the Planning Commission may address only those issues set out in JWN's August 16 appeal statement. Further, the Planning Commission must limit its consideration to the evidentiary record established before the Hearings Official; the Planning Commission may not accept new evidence. The Planning Commission is required to conduct the public hearing to accept the parties' arguments according to the statutory procedures for quasi-judicial hearings, and otherwise set forth in the Eugene Code (EC 9.7065 through 9.7095).

The Eugene Code requires that the Planning Commission's decision on this appeal be made within 15 days of the close of the record following the public hearing. However, staff emphasizes that a decision will be required no later than October 8, 2011, to meet the 120-day

statutory time limit and to comply with local code procedures. The Planning Commission's decision must otherwise be made in accordance with the provisions for appeal decisions (see EC 9.7680), and more specifically, consistent with the applicable zone change approval criteria from EC 9.8865.

The Planning Commission is urged to articulate any specific questions of staff following the public hearing or via email to facilitate response at deliberations. Final deliberation and action by the Planning Commission will be scheduled at a future date, based upon when the record closes following the public hearing.

PLANNING COMMISSION'S REVIEW ROLE

Planning Commission's review should be focused entirely on the question of whether or not the Hearings Official failed to properly evaluate the application or make a decision consistent with the applicable criteria. The only questions at issue in this request relate to whether or not the Hearings Official erred in approving the applicant's requested zone change based on the approval criteria of EC 9.8865. The Planning Commission may affirm the decision, modify the decision with supplemental findings; or in the event that the Planning Commission finds the Hearings Official erred in approving the request and chooses to reverse the decision, the Planning Commission is required to provide specific findings of fact as to why the decision was in error. The Planning Commission cannot reverse the decision without such findings.

APPEAL ISSUES AND STAFF RESPONSE

Staff's preliminary responses to the assignments of error are provided below, to be followed by a memorandum from the City Attorney's Office at the public hearing to supplement this initial staff report. For additional information on the subject request, please refer to the attached appeal form and written statement as well as the full record of materials provided under separate cover which includes the Hearings Official's decision, public testimony and application materials.

First Assignment of Error

The appellant asserts that the decision erred by finding that the application met the approval criterion at EC 9.8865(2), with respect to Policy 1 under the "Land Use Element" section of the applicable Westside Neighborhood Plan (WNP). This criterion requires consistency with adopted refinement plans and the cited policy states: "Prevent erosion of the neighborhood's residential character." The appellant asserts that the Hearings Official erred by not finding six of the uses permitted in the City's C-2 zone (enumerated in the appellant's written statement) to be erosive to the neighborhood's residential character and therefore inconsistent with the cited policy.

Under this assignment of error, the appellant provides extensive argument with regard to WNP Policy 1 and the meaning and impact of the term "residential character" in this context. The appellant specifically argues that the Hearings Official erred by failing to apply the proper definition of "residential character" at EC 9.0500 in his decision.

It is not clear that the Hearings Official overlooked the EC 9.0500 definition of "residential character." While the Hearings Official's decision did not include a specific reference to the

definition at EC 9.0500, opposing JWN testimony which addressed this issue was referenced on page 2 of the decision (page 35 of the record) as part of the documents specifically considered by the Hearings Official (see Hearing Exhibit B and additional JWN testimony provided on July 20, 2011). For reference, the Hearing Official addresses opposing testimony with respect to the relevant approval criterion and WNP Policy 1, on pages 4-9 of the decision. He specifically addresses Policy 1 and the question of possible erosion of residential character at the bottom of page 4, in his decision:

The subject property is located within the WNP's sub-area designated for commercial uses and that plan's text refers to commercial uses being appropriate for this sub-area within the larger neighborhood. Continued use of the subject property, which carries a commercial designation under the WNP, will not erode the neighborhood's residential character. To the contrary, continued commercial use of the subject property will maintain the status of the property as commercial, and maintain this property's relationship with the rest of the neighborhood as contemplated by the WNP. Maintaining the status quo as contemplated by the WNP does not cause erosion.

The appeal suggests that additional evidence, including e-mail between the appellant and one of the Planning Commissioners, will be submitted to further address this issue. Staff cautions the Planning Commission that this zone change appeal is restricted to the record of evidence established before the Hearings Official, and its consideration must be based on whether he erred based on the evidence before him. In other words, the Planning Commission may only consider the evidence that was placed before, and not rejected by the Hearings Official in the course of his proceedings. The appellant's related challenge to the Hearings Official's apparent reliance on a 2008 LUBA decision that interpreted the meaning of "residential character" in the context of a residential partition, instead of the more recently adopted definition of the term in EC 9.0500, will be further addressed in the City Attorney's memorandum to follow.

The appeal raises additional legal issues regarding collateral attack and de facto amendment of the Eugene Code. These will also be addressed in the City Attorney's memo.

With respect to the appellant's proposed interpretation of the approval criterion and related policy in this instance, it could lead to an impossible task with respect to future zone change applications, by requiring a level of nuanced analysis of development characteristics and impacts that is not based on enough specifics or substantial evidence to effectively respond. Keep in mind that no specific use is or can be approved for the subject property by the applicant's proposed zone change, and consistent with long-standing City practice based on applicable law, unless there is a specific application for development that is proposed concurrent with the zone change, the particular impacts of a given use and the extent of development to accommodate that use on the site cannot be accurately or properly addressed at this stage -- except perhaps, with regard to statutory requirements under the Transportation Planning Rule (TPR), to address *hypothetical* worst-case traffic impacts under a proposed zone.

In theory, appellant's approach would appear to obligate the City to evaluate every possible use under a proposed zone without sufficiently specific policy language, applicable development standards or substantial evidence in the record to properly direct such an evaluation as part of

a zone change -- such as an actual development plan, or possibly further refinement planning, to address the relationship of the "Chambers Street Commercial Area" in this case, to its surroundings. This approach would represent a drastic departure from long-standing and well-reasoned City practice.

In the event that the Planning Commission finds that the Hearings Official erred, to address the concerns expressed by JWN about neighborhood impacts, one possible solution, consistent with City practice in various other C-2 zones that abut residential areas, would be to apply the /SR Site Review overlay zone to the site, as a modification to the approval. While not expressly required by adopted policy under the WNP, in response to opposing testimony as part of the appeal, the overlay zoning could be established to address "future development considerations" consistent with EC 9.8860(2). The /SR overlay would enable review to address impacts from future commercial uses that might occur on the subject property, including compatibility with "residential character" in the surrounding area, being properly based on individualized, specific evidence and adopted policy and code requirements for an actual use and development proposal.

If the Planning Commission ultimately agrees that the Hearings Official properly evaluated the relevant policy and approval criteria based upon all the available evidence and testimony, then the zone change may be approved without condition or application of any overlay zoning as a modification. Similarly, the appellant's sub-assignments of error may be rendered essentially moot by such a determination, eliminating the need for further analysis or findings.

Second Assignment of Error

The appellant asserts that the decision also erred by finding that the application met the approval criteria at EC 9.8865(1) and (2), with respect to Policy 1 under the "Chambers Street Commercial Area" section of the WNP. The cited policy states: "This area shall be recognized as appropriate for neighborhood and general commercial uses." Specifically, the appellant asserts that the Hearings Official erred by not finding that two particular uses permitted in the City's C-2 zone (Club and Lodge of State or National Organization; and, Correctional Facility, excluding Residential Treatment Center) are not true "general commercial uses" and are, therefore, inconsistent with the cited policy.

Under this assignment of error, the appellant asserts that the City is prohibited from relying on its current, acknowledged land use code to determine the meaning of "neighborhood and general commercial uses" as those terms are used in the refinement plan policy. Appellant asserts that, instead, the City must determine which specific commercial uses were contemplated by the drafters of the refinement plan at the time they wrote the policy. As an initial matter, it is not clear that the drafters intended to limit the subject area to a specific list of uses rather than a more general description to be implemented and updated over time through the City's land use code. Specification of allowed uses has always been a function of the City's land use code. Further, the appellant's proposed approach to distinguish between the terms "general commercial" and "community commercial" related to the C-2 zone, would have the City venture onto entirely new ground in local policy interpretation that runs afoul of long-standing practice to maintain a clear relationship and consistency between the City's land use code and refinement plan language that pre-existed code changes.

Appellant also points out a discrepancy with respect to the dates of WNP adoption and adoption of correlating commercial code provisions referenced by the Hearings Official. However, the date discrepancy appears to raise no substantive issue that is relevant in this zone change approval. In addition, appellant re-asserts arguments related to legal principles of statutory construction and proper local policy analysis, which will be further addressed in a separate memo from the City Attorney.

At its core, the appeal seems to hang on a theory of refinement plan interpretation that would override a clear commercial designation identified in the Metro Plan and the “Chambers Street Commercial Area” of the WNP, which under any other circumstance would allow C-2 zoning where there is no express language that clearly prohibits it.

Again, if the Planning Commission agrees that the Hearings Official properly evaluated the relevant policy and approval criteria based upon all the available evidence and testimony, then the zone change may be approved without condition or modification. Similarly, the appellant’s sub-assignments of error may be rendered essentially moot by such a determination, eliminating the need for further analysis or findings.

Third Assignment of Error

The appellant finally asserts that by approving future development consistent with the City’s C-2 zone, the decision erred by allowing more intensive development than the comprehensive plan allows, which the Oregon Supreme Court determined in a case known as *Baker vs. City of Milwaukie*, is impermissible. The appellant apparently quotes a portion of this court decision with emphasis on the statement that: “zoning decisions of a city must be in accord with that plan and a zoning ordinance which allows a more intensive use that prescribed in the plan must fail.” The appellant then incorporates evidence and arguments made under prior assignments of error, acknowledging that while the substantive arguments are the same, the legal foundation is based on statutory requirements and not local land use code.

To the extent that the appellant makes legal argument with respect to interpretation of the cited decision in *Baker vs. City of Milwaukie*, and its application to this case, staff defers to the City Attorney’s response which is forthcoming. Initially, staff re-emphasize that no specific use or development is or can be approved for the subject property by the proposed zone change in this instance; the particular impacts of a given use and the extent of development to accommodate that use on the site cannot be accurately or properly addressed at this stage. Furthermore, the appellant has provided no compelling or substantial evidence in the record to demonstrate that certain uses are in fact more intense (and such evidence would seem impossible to provide without a specific development plan to evaluate). Staff also reminds the Planning Commission that the codified C-2 use list was found to be consistent with the comprehensive plan and has been adopted by City Council and stands as acknowledged regulation. On this point, the Hearings Official notes the following: “If a particular C-2 use is arguably contrary to [WNP] Policy 1 or Chambers Policy 1, that argument should have been made at the time the City Council amended to the C-2 use list. As an acknowledged zoning code provision, the C-2 use list complies with the Metro Plan, and I am without authority to decide otherwise.” With respect to any “as-applied” challenge that might arise from this

appeal, that challenge will be addressed by legal counsel in context with relevant statutes and case law.

RECOMMENDATION

Based on the available information, staff concludes that the Hearings Official's decision was not in error or otherwise inconsistent with the applicable approval criteria from EC 9.8865. As noted above, a supplemental memo from the City Attorney will also be provided to address legal arguments raised in the appeal. Staff's initial recommendation is to affirm the Hearing Official's decision, with the possibility depending on Planning Commission's deliberations, of modifying the decision to apply the /SR, Site Review overlay zone and provide additional or revised findings as necessary to address any remaining legal issues.

In the event that the Planning Commission finds the Hearings Official erred in approving the request and chooses to reverse the decision, the Planning Commission is required to provide specific findings of fact as to why the decision was in error. The Planning Commission cannot reverse the decision without such findings.

ATTACHMENTS

The entire record of materials for this zone change, including the Hearings Official's decision, is available for review at the Eugene Planning Division offices, and will be provided to the Planning Commission under separate cover. The record of materials will also be made available for review at the Planning Commission public hearing, and any follow-up deliberation meetings on this matter. For convenience, the following relevant items from the record are attached for reference:

1. Vicinity Map
2. Appeal forms and written appeal statement for Z 11-3, prepared by Paul Conte on behalf of Jefferson Westside Neighbors, received August 16, 2011.

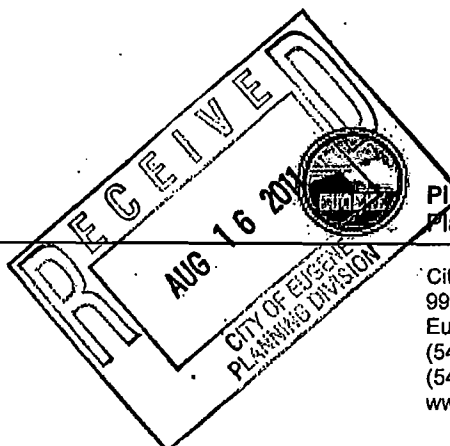
FOR MORE INFORMATION:

Please contact Steve Ochs, Eugene Planning Division, by phone at (541) 682-5453, or by e-mail at steve.p.ochs@ci.eugene.or.us

RECEIVED

AUG 16 2011

CITY OF EUGENE
BUILDING & PERMIT SVCS



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Planning

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**APPEAL OF INITIAL HEARINGS OFFICIAL
OR HISTORIC REVIEW BOARD DECISION**

The appeal of an initial Hearings Official or Historic Review Board decision provides for a review of a quasi-judicial decision by a higher review authority specified in the Land Use Code. In general, the appeal procedures allow for a review of the original application, the Hearings Official or Historic Review Board decision, the appeal application, and any facts or testimony relating to issues and materials that were submitted before or during the initial quasi-judicial public hearing process. The Hearings Official or Historic Review Board decision may be affirmed, reversed, modified, or remanded by the Planning Commission.

Please check one of the following:

- Adjustment Review, Major
- Conditional Use Permit
- Historic Landmark Designation
- Planned Unit Development, Tentative Plan
- Willamette Greenway Permit
- Zone Change*

**This appeal form is not applicable for zone changes processed concurrently with a Metro Plan amendment, the adoption or amendment of a refinement plan, a Land Use Code amendment, or the application of the /ND Nodal Development overlay zone.*

City File Name: LOOKING GLASS SCHOOL

City File Number: 2 11-3

Date of Hearings Official or Historic Review Board decision: August 4, 2011

Date Appeal Filed: August 16, 2011

(This date must be within 12 days of the date of the mailing of the Hearings Official or Historic Review Board decision.)

Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal, be based on the record, and be limited to the issues raised in the record that are set out in the filed statement of issues. The appeal statement shall explain specifically how the Hearings Official or Historic Review Board failed to properly evaluate the application or make a decision consistent with applicable criteria. The basis of the appeal is limited to the issues raised during the review of the original application. Please contact Planning staff at the Permit and Information Center, 99 West 10th Avenue, (541) 682-5377, for further information on the appeal process.

A filing fee must accompany all Hearing's Official and Historic Review Board appeals. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: www.eugeneplanning.org

Acknowledgment

I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a Hearings Official or Historic Review Board decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

APPELLANT

Name (print): PAUL T. CONTE Phone: 541,344,2552
Address: 1461 W, 10th Ave,
City/State/Zip: Eugene, OR 97402
Signature: [Handwritten Signature]

APPELLANT

Name (print): _____ Phone: _____
Address: _____
City/State/Zip: _____
Signature: _____

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: JEFFERSON WESTSIDE NEIGHBORS (JWN)

APPEAL STATEMENT

RE DECISION APPROVING ZONE CHANGE LOOKING GLASS SCHOOL FILE Z 11-3



The following statement by appellant, who is the representative of the **Jefferson Westside Neighbors (JWN)**, a City-chartered neighborhood association, lists the specific issues on appeal and identifies where the Hearings Official's decision is inconsistent with the criteria applicable to the above captioned application for approval of a zone change.

The JWN neighborhood association encompasses the subject property, and the JWN Executive Board voted unanimously to file this appeal.

PRELIMINARIES

A. Settled issues

1. Policy 1 under the "Land Use Element" section of the **1987 Westside Neighborhood Plan (WNP)** is a mandatory approval criterion.

Despite staff ignoring this policy in their original report and their wavering on this issue at the public hearing, the Hearings Official correctly found in favor of the JWN position presented in section III.C of the JWN July 20, 2011 testimony:

*"The WNP contains a general land use element policy applicable to this application that provides: 'Prevent erosion of the neighborhood's residential character.' *** I find that Policy 1 [under the "Land Use Element" section] and Chambers Policy 1 are both applicable criteria for this zone change application." Decision at 4.*

2. A zone change can be approved conditions, including a condition that excludes certain uses permitted under the C-2 Community Commercial Zone.

Despite staff's apparent position during the original decision that the Hearings Official cannot approve a zone change with a condition that limits future uses on the subject parcel to a subset of those uses permitted by the requested zone, the Hearings Official

correctly found in favor of the JWN position presented in section III.F of the JWN July 20, 2011 testimony:

"In accordance with EC 9.7330, I am required to approve, approve with conditions, or deny this Type III land use application for a zone change." Decision at 3.

We note that less than three years ago, during the appeal of Z 08-4, City staff had argued a position diametrically opposite staff's position in the current case:

Appeal Issue 2

"The Hearings Official erred by imposing a condition of approval on a zone change."

The Eugene Code provides authority for the Hearings Official to impose a condition of approval on a zone change, which is a Type III application. Section 9.7330 of the Eugene Code states, in part: "Unless the applicant agrees to a longer time period, within 15 days following the close of the record, the hearings official or historic review board shall approve, approve with conditions, or deny a Type III application." This is consistent with ORS 227.175(4) which provides authority for a Hearings Official, in approving a zone change, to "include such conditions as are authorized by ORS 227.215 or any city legislation." As such, the Hearings Official did not err by imposing a condition of approval on a zone change. In accordance with the information provided above, staff recommends that the Planning Commission affirm the Hearings Official's decision with regard to Appeal Issue 2. (See page 3 of Alissa Hansen's September 9, 2008 memo to the Planning Commission.)

In their appeal decisions on Z 08-4, both the Eugene Planning Commission and the State Land Use Board of Appeals (LUBA) upheld the legality of imposing conditions on an approved zone change.

B. Clarifications

The Hearings Official incorrectly stated JWN positions expressed in our submitted testimony.

While these errors are not a basis for appeal, the Hearings Official's mischaracterizations may confuse the issue and need to be set straight.

1. WNP policies are part of the comprehensive plan

The Hearings Official incorrectly stated:

"Mr. Conte's argument under the Metro Plan approval criterion is premised on his assertion that the Westside Neighborhood Plan, a Metro Plan refinement plan, is the Metro Plan." Decision at 3.

The explanation in section III.B of the JWN testimony on July 20, 2011 clearly states:

"The City of Eugene's comprehensive plan is made up of a number of documents. Two of those documents are the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) and the 1987 Westside Neighborhood Plan (WNP)."

The testimony cites LUBA findings in direct support.

The Hearings Official apparently confused "comprehensive plan" (all the documents) and "Metro Plan" (one of the documents) in his description of the JWN testimony.

Although it may seem like a fine point, the fact that the WNP policies *are* comprehensive plan policies makes clear that statutes and court decisions that refer to the "comprehensive plan" encompass WNP policies, as well as those expressed in the Metro Plan document.

2. The JWN arguments regarding applicable WNP policies are not dependent on each other.

The Hearings Official incorrectly stated:

"Mr. Conte argues that Policy 1 and Chambers Policy 1 should be read to limit the types of commercial uses allowed on the subject property. If such a limit is not imposed, argues Mr. Conte, the resulting zone change will erode the residential character of the neighborhood by placing commercial uses in the Chambers Street Commercial Area that are not 'neighborhood commercial' uses or 'general commercial' uses appropriate for the sub-area.

Mr. Conte's arguments are premised on the assertion that I must provide definitions to what Chambers Policy 1 means by using the terms 'neighborhood commercial' and 'general commercial'" Decision at 5.

The Hearings Official describes a dependency between the two policies that is not at all part of the JWN's arguments.

It is not our argument that *because* certain uses are not consistent with Policy 1 under the "Chambers Street Commercial Area" section of the WNP (i.e., "Chambers Policy 1") these uses will erode the neighborhood's residential character.

We present two distinct arguments:

- a) Six specific uses conflict with Policy 1 under the "Land Use" section of the WNP. It is the nature and impacts of these uses that could erode the neighborhood's residential character.

This argument is in no way premised on definitions of "neighborhood commercial" and "general commercial," as the Hearings Official misstated. (The next argument is the only one premised on the proper interpretation of "general commercial uses.")

- b) Two specific uses conflict with Policy 1 under the "Chambers Street Commercial Area" section of the WNP because they are not true "general commercial uses."

If the JWN argument with respect to Policy 1 under the "Chambers Street Commercial Area" section were to fail, that would have no implication as to the merits of the JWN argument with respect to Policy 1 under the "Land Use" section.

3. The JWN arguments referencing commercial uses allowed in the R-2 and S-JW zones are supportive of the proper application of Policy 1 under the "Land Use" section.

The Hearings Official incorrectly stated:

"In his analysis of appropriate commercial uses for the sub-area, Mr. Conte argues that the proper starting point is the list of "commercial" uses allowed in the R-2 and S-JW zones. That premise ignores Chambers Policy 1 that finds the sub-area appropriate for C-1 and C-2 uses." Decision at 7.

The JWN argument with respect to Policy 1 under the "Land Use" section is presented in section V of the JWN testimony. On page 15, we stated:

"Both the S-JW and R-2 zones allow many commercial uses, and so without deeper examination, a reasonable initial presumption is that those commercial uses not allowed in the R-2 and S-JW zone are prohibited because they're inherently not compatible with those zoning districts.¹ If this wasn't the intent of City Council, then applicant needs to provide a superior explanation, which they have not done."

¹ "Where legislature or administrative agency uses particular term in one provision, but omits term from related provision, term is considered not to apply to related provision." Perlenfein and Perlenfein, 316 Or 16, 848 P2d 604 (1993) In other words, City Council had some intention in leaving only certain commercial uses out of the cited residential

The "initial presumption" in our testimony clearly refers to the commercial uses that would be consistent with Policy 1 under the "Land Use" section; i.e., that would not erode the neighborhood's residential character. This statement has nothing to do with our arguments with respect to which uses Policy 1 under the "Chambers Street Commercial Area" section would permit when considered in isolation.

FIRST ASSIGNMENT OF ERROR

The decision erred by finding the application met the following approval criterion with respect to Policy 1 under the "Land Use Element" section of the WNP:

EC 9.8865(2): *The proposed change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.*

The cited policy states:

*"Prevent erosion of the neighborhood's residential character."*²

The Hearings Official erred in not finding the following uses, permitted under the C-2 Community Commercial Zone, could erode the neighborhood's residential character, which makes these uses inconsistent with the cited policy:

- Manufacturing (except as allowed under the C-1 zone)
- Correctional Facility, excluding Residential Treatment Center
- Drug Treatment Clinic – Non-residential
- Plasma Center
- Recreational Vehicles and Heavy Truck, Sales/Rental/Service
- Manufactured Dwelling Sales/Service/Repair

The Hearings Official relied on the following erroneous findings:

A. The Hearings Official failed to apply the proper interpretation of "residential character."

The Hearings Official relied on an outdated LUBA interpretation of the term's meaning as of April 23, 2007³. That interpretation was

zones. The unsuitability of the excluded uses when proximal to residences is the most obvious reason.

² See WNP 3-1, and EC 9.9680(1)(a).

³ April 23, 2007 is the application date for PT 07-19, which was appealed to LUBA. The LUBA decision was No. 2008-45 issued September 12, 2008.

superseded by Eugene City Council adopting a definition of "residential character" at EC 9.0500 that became effective on July 4, 2009.⁴ This code amendment was acknowledged by DLCD.

The record of the "Minor Code Amendments Process" (MiCAP) up to and including Council deliberations⁵ proves that the adopted definition was in direct response to the LUBA (mis)interpretation of Policy 1 under the "Land Use Element" section and that Council's intent in adopting a definition into the land use code was to clarify this policy and other land use policies and code that used the term without providing an accompanying definition.

The text of Policy 1 under the "Land Use Element" section is also adopted at EC 9.9680(1)(a) and is specifically identified in the code as "Policy 1" under the Land Use Element of the Westside Neighborhood Plan Policies. The text of the policy in Eugene Code can be interpreted in only one reasonable way – which is using the definition of "residential character" that is also in the code.

Since the same policy could not reasonably be interpreted in wholly different ways, both copies of the policy (i.e., in the WNP text and at EC 9.9680(1)(a)) must be based on the definition of "residential character" found in the code. This is consistent with City Council's clear intent to clarify the WNP policy.

We also note that the definition at EC 9.0500 contains no qualification on the scope of the definition or its application, and that the code amendment creating this definition has been acknowledged. If there were an argument that the definition could not apply to the policy at EC 9.9680(1)(a) because the definition conflicted with the WNP policy, such an argument was required to be made at the time Ordinance 20417 was adopted. Raising such an argument in the present case would be an impermissible collateral attack on the acknowledged amendment.

In his decision, the Hearings Official did not mention the definition of "residential character" found at EC 9.0500, nor did he provide any justification for ignoring it in favor of the earlier LUBA decision. It appears the Hearings Official may not have recognized that the LUBA

⁴ See Ordinance 20417. Council adopted this ordinance on August 11, 2008. The ordinance took effect on July 4, 2009 after LUBA denied an appeal on other provisions in the ordinance. (No one contested the "residential character" definition.)

⁵ The evidence to be submitted includes e-mail correspondence between the two authors of the definition: Randy Hledik, who was at the time and is currently a Planning Commissioner, and myself.

decision was made at a time when the “residential character” definition did not yet exist in Eugene Code.

By relying on the much narrower LUBA interpretation of “residential character,” which has been superseded by an acknowledged code amendment, the Hearings Official chose to assess consistency with the cited policy based *solely* on whether a rezoning to C-2 would change a residential use to a non-residential use.

Consequently, the Hearings Official chose not to consider the potential *impacts* of the six uses cited above on the proximal residential areas. Neither applicant, nor Planning Division staff, nor the Hearings Official performed any analysis of these uses’ impacts, nor did the Hearings Official consider in any way the evidence in the hearings record that these uses could erode the neighborhood’s residential character.

The Hearings Official explicitly acknowledged he didn’t consider the lack of evidence and analysis in his decision and justified the omission this way:

“Although Mr. Conte argues that the applicant failed to present any evidence in response to certain issues he has raised, the issues raised were legal issues requiring legal analysis of the applicable criteria, not questions of fact that required the submission of particular evidence by the applicant.” Decision at 9.

As shown in this and the remaining sections, the Hearings Official erred in all his findings on the legal issues that he relied upon to ignore the need for evidence and analysis in regards to *both* Policy 1 under the “Land Use Element” section and to Policy 1 under the “Chambers Street Commercial Area” section.

B. The Hearings Official improperly rendered Policy 1 under the “Land Use Element” section irrelevant by assuming that all C-2 uses were intended by the WNP to be inherently consistent with Policy 1

The Hearings Official made the following two flawed assumptions:⁶

1. Policy 1 of the “Chambers Street Commercial Area” allows all uses permitted under the C-2 Zone.

⁶ The Hearings Official stated: “These C-2 uses were determined, at the time of adoption in 1985, as appropriate uses in the subarea, and such uses would necessarily be consistent with the other WNP policies. To find otherwise would mean that the City Council adopted an internally inconsistent plan. In other words, in 1985, a C-2 use on the subject property would not erode the residential character of the neighborhood.” Decision at 6.

2. Policy 1 under the "Land Use Element" section cannot restrict any use(s) allowed under Policy 1 of the "Chambers Street Commercial Area" or the two policies would be "internally inconsistent."

Based on these assumptions, he then concluded that all C-2 uses are inherently consistent with Policy 1 under the "Land Use Element" section.

The first assumption is addressed more fully under the Second Assignment of Error, below, which demonstrates that at least two C-2 uses are not consistent with Policy 1 of the "Chambers Street Commercial Area."

The Hearings Official, however, compounded his errors in that respect when relying on the first assumption above in his findings with regard to Policy 1 under the "Land Use Element" section. The Hearings Official claimed:

"Mr. Conte would have me read Policy 1 as forbidding certain C-2 uses in the sub-area. He makes this argument despite the fact that these uses (C-2 uses) were allowed in the sub-area in 1985 when the plan was adopted.

In 1985, Chambers Policy 1 determined that general commercial uses, without limitation, were appropriate within the sub-area." (emphasis added) Decision at 7.

These claims go well beyond the Hearings Official's assumption that Policy 1 of the "Chambers Street Commercial Area" allows all C-2 uses. Nothing in the WNP or in any evidence in the record supports a sweeping finding that C-2 uses were allowed in this area "without limitation" by the WNP. Policy 1 under the "Land Use Element" section is precisely a limitation imposed by the WNP upon C-2 uses in this area, as discussed below.

From the Hearings Official's statement, it appears he may believe that the fact certain C-2 uses were allowed when the WNP was adopted implies the WNP intended for these uses to *remain* allowed. However, there is no requirement for a refinement plan to be consistent with existing land use code at the time the plan is adopted; and, in fact, Oregon's land use laws anticipate that the comprehensive plan (including refinement plans) will always be the controlling local land use instrument. Thus, the local jurisdiction will evolve the plan over time; and, in due course, update the land use code as the implementation mechanism consistent with the plan.

The Hearings Official seems to have made the same mistake that the Oregon Supreme Court addressed in the landmark *Baker vs. City of Milwaukie* (21 OR 500 (1975)) decision:

"We agree with the plaintiff and the amici curiae (Northwest Environmental Defense Center, Oregon Environmental Council, and Oregon Chapter of the American Institute of Planners) that the position of defendants evidences a fundamental misunderstanding of the relationship between planning and zoning.

*The basic instrument for county or municipal land use planning is the 'comprehensive plan.' *** The plan has been described as a general plan to control and direct the use and development of property in a municipality. * * * [citing Fasano v. Washington Co. Comm., 264 Or 574, 582, 507 P2d 23 (1973)]*

Zoning, on the other hand, is the means by which the comprehensive plan is effectuated."

We turn next to the Hearings Official's second assumption. Even if the first assumption were correct, there is neither text in the WNP nor any other evidence supporting the assumption that it would be "internally inconsistent" for Policy 1 under the "Land Use Element" section to restrict certain use(s) allowed under Policy 1 of the "Chambers Street Commercial Area."

In general, two refinement plan policies are not necessarily internally inconsistent merely because one policy may add additional restrictions on what would otherwise be allowed by the other policy considered in isolation.

The most straightforward interpretation, based on the text and structure of the WNP sections, is that Policy 1 under the "Land Use Element" section is an overarching policy that applies to all the subareas, and that what is allowed in a subarea are those uses allowed by the policies in the WNP section for the subarea, *as long as they don't erode the neighborhood's residential character.*

It's completely implausible that City Council intended the pair of WNP policies in this case to mean (as the Hearings Official would have it): "Prevent erosion of the neighborhood's residential character; except it

is permissible for any 'neighborhood or general commercial use' in the Chambers Street Commercial Area to cause such erosion."⁷

Further, if the Hearings Official's second assumption were consistently applied to all WNP subareas,⁸ Policy 1 under the "Land Use Element" section would be stripped of all meaningful effect since all uses allowed by each respective subarea's policy(ies) would be interpreted as inherently not having any possibility of eroding the neighborhood's residential character.⁹ The Hearings Official's construction would give no effect to Policy 1 under the "Land Use Element" section¹⁰ and would thus conflict with the ORS 174.010 requirement that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

By relying on the erroneous assumptions identified above, the Hearings Official incorrectly concluded, as under subsection A, above, that no further assessment at all was required of the C-2 uses and their potential to erode the neighborhood's residential character.

C. The Hearings Official improperly found that limiting C-2 uses would be an impermissible "collateral attack" on the C-2 Zone.

The Hearings Official asserted that adding a condition to the zone change whereby a specific set of uses were not permitted would be a "collateral attack" on the ordinances adopting and amending the C-2 Zone:

"This quasi-judicial proceeding cannot collaterally attack uses allowed under the C-2 zone as those uses may have changed over the years. See

⁷ It's just as implausible that City Council in 1987 was making an overarching determination that uses permitted then – or anytime in the future – under the C-2 Zone could not conceivably erode the neighborhood's residential character.

⁸ The Hearings Official appears to suggest as much in his statement: "At the same time, the policy [preventing erosion of the neighborhood's residential character] cannot be read to require the exclusion of uses that are specifically allowed by the then-existing zoning and the adopted designations recognized by the WNP. *Id.*" Decision at 7.

⁹ Under the Hearings Official's interpretation of the relationship between each subarea's respective "use" policies and Policy 1 under the "Land Use Element" section, even the earlier LUBA interpretation of Policy 1 would be superfluous, since all three residential subareas in the WNP already include policies limiting the areas to "medium density residential uses," thereby preventing conversion of non-residential uses to residential use.

¹⁰ The Hearings Official appears to recognize the problem potentially posed by his interpretation, and attempts to counter with the statement that: "This does not read all meaning out of Policy 1. As LUBA found in evaluating Policy 1, the policy still has a place in protecting the residential areas of the plan area." However, as explained in the previous footnote, the policy would not have any effect beyond the limits already imposed by respective residential subareas' individual "use" policies, under the Hearings Official's interpretation.

Toler v. City of Cave Junction, 53 Or LUBA 158, 161 (2006)." Decision at 6.

"Limiting certain C-2 uses from locating on the subject property would be a collateral attack on past legislative decisions taken by the City Council in amending the C-2 use list and finding that such changes were in conformity with the Metro Plan." Decision at 7.

The Hearings Official cites a LUBA decision that doesn't apply to the current case. The issue in *Toler*, was that Cave Junction Zoning Ordinance (CJZO) 17.08.537 defines "medical facility" to allow "assisted residential facilities," and LUBA ruled that:

"any inconsistency between the code definition of "medical facilities" and the purpose or text of the EG-LI zone cannot be challenged in this decision. For good or ill, 'medical facilities' are allowed in the EG-LI zone, and those facilities may include 'assisted residential facilities'." *Toler v. City of Cave Junction, 53 Or LUBA 158, 161 (2006)* at 4.

What LUBA ruled against was an argument that a zoning ordinance was inherently flawed, when such an argument could, and should, have been raised at the time the ordinance was adopted.

In the current case, we raise arguments that do not attack the C-2 Zone, but rather address how the WNP policies require a condition when the C-2 Zone is applied to a specific parcel covered by two applicable refinement plan policies. LUBA found such arguments are not prescribed:

No authority that we are aware of renders quasi-judicial land use decisions immune from review under applicable statutes simply because those decisions apply local regulations or standards that were adopted in an earlier, unappealed decision. While local land use decisions rendered pursuant to acknowledged comprehensive plans and regulations are not reviewable for compliance with statewide planning goals and rules, that principle does not apply to arguments that land use decisions applying acknowledged regulations may be inconsistent with applicable state statutes. Forster v. Polk County, 115 Or App 475, 478, 839 P2d 241 (1992). Young vs. Crook County, LUBA 2007-250 at 14.

Even if the current case were to represent an argument against the C-2 Zone as a whole, LUBA has found that such an argument can be raised when the zone is applied:

"Further, adoption of new zones and associated zoning regulations can, as in the present case, be effected in two separate ordinances, one that adopts the new zone but does not apply it to any property, and a second that

*actually applies the new zone to specific properties. In that circumstance, the second decision is almost certainly the first time that the city notifies property owners that their property is now subject to the new zone and its requirements. *** As a practical matter, then, an appeal of the ordinance that applies the new zone to specific properties is the first reasonable opportunity many affected or concerned persons affected would have to raise a facial constitutional challenge to the zone. Accordingly, we decline respondents' invitation to extend the reasoning in Butte Conservancy, because in many cases the consequences of that extension would be that affected persons would essentially be precluded from advancing a facial challenge to the new zone, and would be limited to as-applied challenges when the city ultimately applied the new zoning requirements to deny or condition proposed development." Barnes vs. City of Hillsboro, LUBA 2010-011 at 8-9.*

The approval of this zone change with appropriate condition(s) is not a collateral challenge to the C-2 Zone and does not prevent the approval of a zone change to C-2 *without* conditions on other parcels that are not constrained by applicable refinement plan policies.

The Hearings Official's claim that arguments for a condition in this particular zone change are a "collateral attack" is without merit.

D. The Hearings Official improperly found that limiting C-2 uses would create a new sub-zoning designation under the Eugene Code.

In his findings regarding a "collateral attack," the Hearings Official also stated:

"The applicant questions my authority to essentially create a new sub-zoning designation under the Eugene Code for the subject property. I agree with the applicant." Decision at 6.

The Hearings Official provided no explanation for how approving a zone change with conditions to a specific parcel would be a *de facto* amendment of the Eugene Code.

LUBA ruled on a similar challenge regarding a zone change approved with a condition:

"We do not think that the condition is a de facto amendment of the ECC. While the condition imposes an additional burden on intervenor, by requiring that intervenor demonstrate that the proposal complies with the TPR at the PUD phase, it does not eliminate other EC provisions regarding transportation impacts or amend the provisions of the EC to include compliance with the TPR for all applicants." Willamette Oaks vs. City of Eugene LUBA No. 2008-173 at 10.

While the condition in Willamette Oaks was related to TPR compliance, LUBA's reasoning still applies in the present case. Directly applying LUBA's analysis: A condition limiting uses "does not eliminate other EC provisions *** or amend the provisions of the EC to include compliance with the [limitation on uses] for all applicants."

The Hearings Official's claim that adding a condition in this particular zone change would be a *de facto* amendment of the Eugene Code is without merit.

SECOND ASSIGNMENT OF ERROR

The decision erred by finding the application met the following approval criteria, with respect to Policy 1 under the "Chambers Street Commercial Area" section of the WNP:

EC 9.8865(1): *The proposed zone change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.*

EC 9.8865(2): *The proposed change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.*

The cited policy states:

"This area shall be recognized as appropriate for neighborhood and general commercial uses."¹¹

The Hearings Official erred in not finding that the following uses allowed by the C-2 Zone are not true "general commercial uses," which makes these uses inconsistent with the cited policy:

- Club and Lodge of State or National Organization
- Correctional Facility, excluding Residential Treatment Center

The Hearings Official relied on the following erroneous findings:

A. The Hearings Official failed to apply the proper interpretation of "general commercial uses" by incorrectly relying on an assumption that this term means exactly those uses allowed by the version of the C-2 Zone in effect at the time of any application, rather than relying on the applicable description found within the comprehensive plan text.

By relying on this assumption, the Hearings Official chose not to consider the actual characteristics of the two uses cited above and did not base his findings of consistency with EC 9.8865(1) and (2) on the

¹¹ See WNP 3-11.

necessary analysis of these uses or the evidence in the record that these uses are not "general commercial uses."

Section III.E of the JWN testimony of July 20, 2011 describes the proper interpretation of "general commercial uses."

We further note that the Hearings Official's entire argument with respect to the interpretation of the "general commercial uses" term used in the WNP policy is that that the C-2 zone was titled "General Commercial District" which includes the words "general commercial" that are also used in the policy. The Hearings Official assumes on this basis that the City Council intended the policy to mean the exact set of uses permitted under C-2, at the time of adoption and at any point in the future.

Despite repeated references to this word correspondence, and multiple assertions that the correspondence settles the issue of interpretation, the Hearings Official has cited no other evidence, nor any legal basis for his finding.

There are several problems with the Hearings Official's reasoning. First, he cites text on page 3-14 under the general "FINDINGS – LAND USE AND ZONING" subsection of the WNP. This subsection is not within the "Chambers Street Commercial Area" section on page 3-11.

Within the "Chambers Street Commercial Area" section, there's the following statement:

Since 1948, most of the area has been zoned either C-2 Community Commercial or C-1 Neighborhood Commercial." (Emphasis added.)

Thus, the more immediate context of the subject policy does not support the textual basis relied upon by the Hearings Official. (Similarly, under the "West 7th Avenue Commercial Area" section on page 3-10 and under the "Eastern Residential/Mixed Use Area" section on page 3-8, C-2 is referred to as "C-2 Community Commercial."

At the very least, the multiple uses of "C-2 Community Commercial" indicate the WNP authors and City Councilors were not so focused on the exiting C-2 code as the Hearings Official believes, or they would have been more likely not to use two different terms for the C-2 zone on the same page.

Second, as explained in the following section, the Hearings Official relied on the wrong version of Eugene Code in supporting his argument. He also presented no evidence that any of the parties involved in the writing, revision and approval of this policy were as

intent as the Hearings Official believes on locking the policy then and forever to the definition of C-2 in the land use code.

The more obvious way to read this policy is that if the authors and City Council intended to lock the policy to C-2 (and C-1), they would have simply said so. This conclusion is supported by the fact that "C-2 Community Commercial" is used explicitly in Policy 2 under the "Eastern Residential/Mixed Use Area" section on page 3-8. When the authors and Council wanted the policy tied to a zone, they reference the zone explicitly.

The Hearings Official's selected references to the use of "C-2 General Commercial" in non-immediate sections of the WNP and a version of code two years earlier than adoption of the WNP don't hold up well under a more thorough examination.

The alternative interpretation has equal merit under a "text similarity" analysis; but, more importantly, is more plausible and has a firmer statutory foundation.

If the WNP policy referred to "C-2" or "the General Commercial District" there would be no need to look further, but that's not the case here. Statutory construction requires looking at the immediate contexts first, when the text itself isn't sufficient. The WNP itself doesn't clarify the term, and thus the next place to look is other elements of the comprehensive plan, and here we find what we need. There is an obvious correspondence between "general commercial uses" term in the WNP and the "general [commercial] activities" term found in the 1982 Metro Plan at page II-E-4.

While the "general [commercial] activities" term appears under the "Community Commercial Centers" Metro Plan category, it's clear from examples above, that "Community Commercial" was in the minds of the WNP authors as they wrote the "Chambers Street Commercial Area" section, regardless of whether the authors were correct that this was the C-2 zone title at the time the section was written or adopted.

Most compelling is that the Metro Plan commercial categories form a loose hierarchy, in which "Neighborhood Commercial Facilities" includes the least intensive commercial activities, "Community Commercial Centers" is the next "higher" category in terms of which commercial activities it includes, and "Major Retail Centers" is at the top of the hierarchy. Policy 1 under the "Chambers Street Commercial Area" section is clearly intended to encompass the lower two categories.

Thus, at least the first step in interpreting this comprehensive plan policy is quite simple and direct: The policy designates the encompassed area for "Neighborhood Commercial Facilities" and "Community Commercial Centers," as described in the Metro Plan.

The fact that there's a strong (but not perfect) correspondence between the C-2 zone and the "Community Commercial Centers" Metro Plan category is no coincidence – C-2 has clearly been the zone intended to implement the "Community Commercial Centers" category, and C-2 is now even titled "Community Commercial Zone."

But this only strengthens the argument for interpreting the WNP policy based on the Metro Plan categories, since land use code must conform to the comprehensive plan and not vice-versa. Thus, it makes more sense to see the WNP policy and the Metro Plan category descriptions as the combined definition of what is allowable in the "Chambers Street Commercial Area"; and where a use permitted in C-2 is not a use within the "Community Commercial Centers" category, that use cannot be allowed.¹²

B. The Hearings Official relied in his findings on an erroneous date for adoption of the WNP, and a version of Eugene code, that were *two years* earlier than the actual date the WNP was adopted.

In his analysis, the Hearings Official stated at least seven times that the WNP was adopted in 1985, when the actual adoption date was January 12, 1987. For example:

*"In late 1984 when the WNP was being developed and early 1985 when the City Council adopted the WNP, ***" Decision at 5.*

The Hearings Official then went on to build his entire findings regarding Policy 1 under the "Chambers Street Commercial Area" section on the version of Eugene Code in effect on September 15, 1984.

Correcting this mistake would not change the fact that, to interpret refinement plan (i.e., WNP) text – which is inherently part of the comprehensive plan, the Hearings Official should have first looked to the descriptive text in the Metro Plan, which is part of the same comprehensive plan, as discussed above.

¹² It isn't a far reach to see the Hearings Official's finding as implying that City Council can redefine the "Community Commercial Centers" category in the comprehensive plan merely by amending the C-2 uses in the code. While the City is permitted to make an implementing zone more restrictive than the comprehensive plan, the decision in *Baker* makes clear that a code amendment can allow more-intensive uses than the comprehensive plan allows.

However, any findings regarding legislative intent that rely on earlier version(s) of code must accurately establish the text of the specific code version(s) (if any) that were actually considered by the Westside Neighborhood Planning Team, the Eugene Planning Commission, and the Eugene City Council.

Neither applicant, nor staff nor the Hearings Official has met that burden of proof.

C. The Hearings Official improperly found that limiting C-2 uses would be an impermissible “collateral attack” on the C-2 Zone.

This error was discussed under section C of the First Assignment of Error and the text of that section is incorporated herein.

We note that there are differences between the two assignments of error. While it’s clear that the First Assignment of Error doesn’t require invalidating the C-2 zone altogether, that possibility may arise as a result of the arguments presented in section A of the Second Assignment of Error.

Should the Planning Commission find that’s the case, then we would point to the LUBA decision in *Barnes vs. City of Hillsboro* (cited earlier) as a basis for not rejecting this argument.

D. The Hearings Official improperly found that limiting C-2 uses would create a new sub-zoning designation under the Eugene Code.

This error was discussed under section D of the First Assignment of Error and the text of that section is incorporated herein.

THIRD ASSIGNMENT OF ERROR

By approving future development for any and all C-2 uses, the decision erred by allowing more intensive development than the comprehensive plan allows, which the Oregon Supreme Court determined in *Baker vs. City of Milwaukie* is impermissible. 21 OR 500 (1975)

In summary, we conclude that a comprehensive plan is the controlling land use planning instrument for a city. Upon passage of a comprehensive plan a city assumes a responsibility to effectuate that plan and conform prior conflicting zoning ordinances to it. We further hold that the zoning decisions of a city must be in accord with that plan and a zoning ordinance which allows a more intensive use than that prescribed in the plan must fail. [Emphasis added.]

The City of Eugene’s comprehensive plan is made up of a number of documents. Two of those documents are the *Eugene-Springfield Metropolitan Area General Plan*

(Metro Plan) and the 1987 Westside Neighborhood Plan (WNP).¹³

Therefore the two WNP policies cited in the first and second assignments of error are comprehensive plan policies and the decision in *Baker* applies to these policies.

Consequently, in addition to failing to meet two mandatory approval criteria enumerated in Eugene Code (as explained in the first and second assignments of error), the proposed zone change also conflicts with the requirement laid down by *Baker*. The evidence and arguments from the first and second assignments of error are incorporated herein as the basis for this assignment of error.

While the substantive arguments are the same here as under the First and Second Assignments of Error, the legal foundation is based on statutory requirements and not local land use code.

CONCLUSION

For the foregoing reasons, the approval of this zone change must be modified to add a condition limiting the uses identified above or the zone change must be denied.

Respectfully submitted this 16th day of August 2011.

FOR JEFFERSON WESTSIDE NEIGHBORS



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JWN Chair

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¹³ LUBA made a comparable statement in reference to another one of Eugene's refinement plans: "The City of Eugene's comprehensive plan is made up of a number of documents. Two of those documents are the Metro Plan and the West University Refinement Plan." *Home Builders Association of Lane County v. City of Eugene* LUBA Nos. 2008-148 and 2008-149, pg. 18-19.

**FINAL ORDER, FINDINGS, AND CONCLUSIONS
OF THE EUGENE PLANNING COMMISSION:
AT&T MOBILITY CELL TOWER – OAKWAY GOLF COURSE
(PDT 10-2 & CU 11-1)**



I. INTRODUCTION

The Eugene Hearings Official held a public hearing for the subject Planned Unit Development and Conditional Use Permit applications on June 15, 2011. The Hearings Official issued a decision approving the concurrent land use applications on August 2, 2011. On August 15, 2011, two appeals of the Hearings Official's approval were filed. One appeal was filed by Richard Busch, Attorney for the applicant (now named New Cingular Wireless PCS, LLC). The other appeal was filed by Micheal Reeder, Attorney for Northgreen Property, LLC. The New Cingular Wireless appeal is comprised of 2 assignments of error as reflected in the written statement submitted by Richard Busch. The Northgreen Property appeal consists of 13 assignments of error as reflected in the written statement submitted by Micheal Reeder. The appellants' assignments of error are further addressed below. The appeals assert that the Hearings Official erred in his findings and decision with respect to applicable Eugene Code (EC) approval criteria at EC 9.8320 and EC 9.8090.

On August 19, 2011, in accordance with EC 9.7655(1), the City mailed written notice of the appeal hearing to the applicant, the appellant, the Cal Young Neighborhood Association, all persons who submitted written comments in regard to the original applications, and all persons who requested notice. The written notice included the required elements set forth in EC 9.7655(2).

The Planning Commission held a public hearing on the appeals, on August 31, 2011. At the public hearing, Richard Busch provided oral testimony on behalf of the applicant, New Cingular Wireless which is also one of the appellants in this case. Area residents including Mike Lynch, Shelli Shaufler, Dwight Purdy, Craig Mckern, Jenny Soyke, Sheri Greatwood, Erica Apollo, Bonnie Baker and Dorothy Porter spoke in opposition to the application and in support of the appeal. Micheal Reeder and Sara Bennett provided oral testimony on behalf of the appellant, Northgreen Property LLC, and Bill Kloos spoke on behalf of the Oakway Neighbors group. Bob Proctor spoke in opposition to the application on behalf of the Cal Young Neighborhood Association. Richard Kang, an area resident spoke as a neutral party. The applicant's counsel Richard Busch followed with rebuttal testimony. Written testimony was also provided by the parties and other individuals at the hearing which is included in the record and considered by the Planning Commission in its final decision, unless specifically excluded below.

The Planning Commission closed the public hearing and the record on August 31, 2011. The Planning Commission deliberated on the appeal issues at its meetings on September 6, 19, and 26, 2011 and reached its final decision on October 3, 2011. The appeal is based on the record and limited to the assignments of error contained in the appeal statement submitted. As described below, the Planning Commission affirms the Hearings Official's decision to approve the subject applications, with additional findings and modifications to approval conditions in some instances. Those additional findings and modifications are detailed below with respect to each related assignment of error.

II. RECORD BEFORE THE PLANNING COMMISSION

The record before the Planning Commission consists of the Eugene Planning Commission Agenda Item Summaries and related attachments for Appeal of Hearings Official Decision: AT & T-Mobility Cell Tower – Oakway Golf Course (PDT 10-2 & CU 11-1) dated August 31, 2011, September 19 and 26, 2011; the written and oral testimony presented by appellants, applicant, and other parties to the Planning Commission; the decision of the Eugene Hearings Official dated August 2, 2011; and all record materials (including written and oral testimony, City staff reports and application materials) presented to and not rejected by the Hearings Official. The entire City Planning & Development Department file was physically before, and subject to limited exceptions specifically stated in Section III of this Order, not rejected by, the Planning Commission prior to its final decision.

EC 9.7655(2) limits the nature of evidence that the Planning Commission can consider on appeal as follows: "The record from the proceeding of the Hearings Official or Historic Review Board shall be forwarded to the appeal review authority. No new evidence pertaining to the appeal issues shall be accepted." Pursuant to this section, the Planning Commission cannot accept any new evidence, and there is no process for an exception to this rule. In accordance with EC 9.7655(2) the Planning Commission cannot accept the new evidence noted below and therefore does not consider the following items as part of the Planning Commission's decision on this appeal:

1. Two pictures submitted by Bonnie Baker in the August 31, 2011 public hearing.
2. A September 21, 2010 letter relating to a public records request, submitted by Northgreen Property as part of its appeal.

As noted above, the Planning Commission's decision on this appeal is otherwise based upon consideration of all other relevant evidence and argument within the record to date.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the applicable law and all argument and evidence in the record, the Planning Commission finds that the subject applications meet all applicable PUD and CUP approval criteria from EC 9.8320 and EC 9.8090, with additional findings and modified conditions of approval described below. In the event of any conflict between the Hearings Official's decision and this Final Order, this Final Order shall prevail.

As noted above, the New Cingular appeal is comprised of 2 assignments of error and the Northgreen Property appeal consists of 13 assignments of error. To differentiate the appeals, the findings refer to the numbered appeal issues below under the heading of "New Cingular" or "Northgreen Property". Each assignment of error is set forth below, followed by the Planning Commission's findings of fact and conclusions of law as to each one.

New Cingular First Assignment of Error:
Requirement that the new noise study not include a variance.

New Cingular requests that the Planning Commission either accept new evidence into the record or remand the Hearings Official decision so that the Hearings Official may do so. Specifically, New Cingular wishes to submit a new noise study and/or variance request to address the noise standard

at EC 9.5750(7)(f), as there is no evidence in the existing record that addresses whether burying the ancillary equipment will result in compliance with the noise standard.

This appeal issue relates to the standards at EC 9.5750(8) and (7)(f), and to the variance criterion at EC 9.5750(9)(c). Those sections provide:

- (8) Standards for Ancillary Facilities. All ancillary facilities shall comply with the standards of subsections (7)(e) and (7)(f) of this section. In addition, all ancillary facilities within an R-1, PL, C-1, GO, and PRO zone must be located underground to the maximum extent technology allows, unless a variance is obtained pursuant to the provisions of subsection (9) of this section. This restriction does not apply within other zones.
- (7)(f) Noise Reduction. In R-1, R-2, R-3, R-4, C-1, and GO and in all other zones when the adjacent property is zoned for residential use or occupied by a dwelling, hospital, school, library, or nursing home, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa.
- (9)(c) The city may grant a variance to the setback and undergrounding requirements of subsections (7)(d) or (8) upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.

The Hearings Official completed a detailed analysis of this issue at pages 40 and 41 of his decision. He found that, based on testimony provided, New Cingular did not meet the variance criteria at EC 9.5750(9) because it did not demonstrate that its proposal to locate the ancillary facilities above-ground would comply with the noise reduction standard at (7)(f). New Cingular did not provide the Planning Commission with additional argument to support its variance request. For the reasons explained in the Hearings Official's decision, the Planning Commission finds that the Hearings Official correctly denied New Cingular's request to place the ancillary facilities above ground and conditioned the approval (see Condition #1 of the decision) on a new noise study with the equipment underground. The Hearings Official's condition also requires the applicant to submit new site plans and necessary narrative that would meet applicable criteria for a revised design, placing the ancillary equipment underground.

The Planning Commission finds that remanding the decision back to the Hearings Official is inappropriate in this case. New Cingular is simply requesting an opportunity to supplement its application after which the Hearings Official would need to hold a new hearing and prepare a new decision. In this case, a remand would potentially allow substantial changes to the application which are more appropriately addressed through a new application. The Planning Commission also denies the appellant's request to reopen the record and submit new evidence as part of these proceedings. Consistent with the August 17, 2011, decision of the Oregon Court of Appeals in *Willamette Oaks v. City of Eugene*, the Planning Commission may not accept new evidence pertaining to this issue.

As discussed below, the Planning Commission affirms the Hearings Official's decision to deny the applicant's variance request and modifies the condition of approval to require a new noise study for underground ancillary facilities. New Cingular's first assignment of error is denied.

New Cingular Second Assignment of Error and Northgreen Property First Assignment of Error: Appeal Fees

New Cingular and Northgreen Property assert that the City's appeal fees are not in compliance with applicable laws. Based on the August 17, 2011, decision of the Oregon Court of Appeals in *Willamette Oaks v. City of Eugene*, the Planning Commission may not accept new evidence pertaining to this issue. EC 9.7655(2) limits the nature of evidence that the Planning Commission can consider on appeal, as follows: "The record from the proceeding of the Hearings Official or Historic Review Board shall be forwarded to the appeal review authority. No new evidence pertaining to the appeal issues shall be accepted." Pursuant to this section, the Planning Commission specifically rejects the September 21, 2010 letter relating to a public records request proffered by Northgreen Property as part of its appeal on this issue.

EC 9.7655(3) also requires that appeal statements specify how the Hearings Official: (1) failed to properly evaluate the application; or (2) made a decision that was not consistent with the applicable criteria. The appellants do not specify how the imposition of the allegedly unreasonable appeal fee is the result of the Hearings Official's failure to properly evaluate the application or the Hearings Official's decision's inconsistency with an applicable criterion. The Planning Commission's review is limited to whether the Hearings Official: (1) failed to properly evaluate the application; or (2) made a decision that was not consistent with the applicable criteria.

While the appellant may be raising an important issue, it is not one that the Planning Commission can substantively address. The Hearings Official's decision did not determine or impose the appeal fee and it would have been beyond the scope of the Hearings Official's authority to do so. Even if the appellant is correct in the assertion that the City's appeal fee structure dictated appeal fees that, in this case, are too high, that determination would not result in a change to the Hearings Official's decision and it does not call the Planning Commission's jurisdiction into question. Whether the City's appeal structure, as applied in this case, is inconsistent with state law is an independent question that is beyond the scope of the Planning Commission's authority. The Planning Commission lacks the authority to allow any deviation from the City's adopted fee structure.

Based on the findings above, and in the absence of a specific criterion or related findings that would serve as a basis for error, Planning Commission denies New Cingular's second assignment of error and Northgreen Property's first assignment of error.

Northgreen Property Second Assignment of Error
Telecom Siting Standard for Noise – EC 9.5750(7)(f) – Error in Interpreting Standard

The Hearings Official completed a detailed analysis of this issue on pages 35-38 of his decision. The Hearings Official concluded that without more robust evidentiary detail or detailed requirements in the code that clarify how the applicant was to address EC 9.5750(7)(f), the code does not prohibit new sound when ambient noise levels already exceed 45dBA, but rather limits new devices to

adding no more than 45dBA. The appellant asserts that the 45dBA noise limit at EC 9.5750(7)(f) applies not only to noise emanating from telecommunications equipment measured at the receiving property line, but to all noise measurable at the property line. This issue was previously raised in testimony and the Hearings Official found that the interpretation provided by the appellant would incorrectly require the applicant to reduce existing noise levels from other sources not related to the application and not within the applicant's control.

The Planning Commission finds that the Hearings Official was correct in his application of 45dBA standard, specific to the noise-generating telecommunications equipment proposed in the application(s). The Planning Commission also finds that the standard does not necessarily preclude noise-generating telecommunications equipment when ambient noise may already exceed 45dBA. As explained in the September 14, 2011 memorandum from Associate Planner Steve Ochs to the Eugene Planning Commission, this determination is supported by the plain text of EC 9.5750(7)(f). Further, this is supported by the context provided by EC 9.5750(6)(b)5, which requires the applicant to submit "[d]ocumentation that *the ancillary facilities* will not produce sound levels in excess of those standards specified in subsection (7) of this section, or designs showing how the sound is to be effectively muffled and reduced pursuant to those standards." (emphasis added).

Furthermore, the Planning Commission concludes that the Hearings Official did not err by establishing the condition of approval to require a new noise study for undergrounded ancillary equipment, so long as the condition is modified as necessary to ensure that other elements of the proposal (specifically, the location of the tower) will remain consistent with the applicable approval criteria. The modified condition of approval is provided under Northgreen Property's third assignment of error, below.

The Planning Commission therefore denies Northgreen Property's second assignment of error.

Northgreen Property Third Assignment of Error
Telecom Siting Standard for Noise – EC 9.5750(7)(f) – Improper use of Conditioning

The Hearings Official completed a detailed analysis of this issue on pages 35-38 and 40-41 of his decision. Based on the evidence provided, he found that the applicant did not comply with the noise standard at EC 9.5750(7)(f). The Hearings Official noted that he had two choices in responding to this issue. He could deny the entire application, or he could deny the variance request thereby requiring the equipment to be placed underground. He went on to note that placing the equipment underground would almost certainly resolve the noise issue and, therefore satisfy EC 9.5750(7)(f), but there was nothing in the record to support this seemingly obvious conclusion. As a result, he correctly imposed a condition (see Condition #6 of the decision) requiring a new noise study to confirm compliance with EC 9.5750(7)(f), based on a site plan that does not include a variance to the undergrounding requirements of EC 9.5750(8). The Hearings Official also included a related condition (see Condition #1 of the decision) requiring the applicant to submit a new site plan and any necessary narrative for placing the equipment underground.

The appellant asserts that the Hearings Official should have denied the application, also noting that conditioning is only proper if the record has evidence showing that the standard can be met with the condition. The appellant further asserts that the undergrounding is too big of a change to

accomplish by a condition, amending the application so substantially that it results in a different use than what was originally applied for.

The Planning Commission finds that Hearings Official did not err in deferring a determination of compliance with the applicable noise standard with this condition of approval, because a Type II final PUD application will be required at a later time with public notice and opportunity for hearing. Like the PUD, a CUP approval also requires the applicant to demonstrate consistency with the noise standard at EC 9.5750(7)(f). As noted above, there is no evidence in the record to demonstrate that the noise standard at EC 9.5750(7)(f) has been met. Unlike the PUD process, the CUP process is not a two-stage approval process, so independently there would be no later opportunity to which the Planning Commission could defer the determination for purposes of approving the CUP. As such, and because these are concurrent applications, the Planning Commission adds a condition of approval below (see Condition #10) to clarify that the effectiveness of CUP approval is contingent upon final PUD approval. Through that Type II final PUD application process, the noise standard (and compliance with other conditions of approval) will be addressed with public notice and opportunity for hearing, consistent local code and statutory requirements.

The Planning Commission finds that the Hearings Official correctly denied the applicant's variance, thereby requiring the ancillary equipment underground, because it did not meet the 45dBa noise standard and thus failed to meet the requirement to "obviate" the need for compliance. Based on the available information in the record, the Planning Commission also concludes that the applicant failed to demonstrate that undergrounding the ancillary equipment would not be possible based on available technology. While the applicant's statement about possible relocation as a result of undergrounding the ancillary equipment is not entirely clear, it appears to be in made in reference to the equipment location, not the tower. To address the concern about tower relocation, the Planning Commission modifies the approval condition below to clarify that relocation of the proposed tower is not allowed as a result of the requirement to install underground ancillary facilities.

Condition of Approval #1 (as modified):

The applicant shall submit a new site plan with the ancillary equipment for the tower placed underground. The tower shall remain in exactly the same location as initially proposed in the tentative PUD and CUP applications.

Condition of Approval #6 (as modified):

For review as part of the final PUD approval process, the applicant shall provide a revised noise study demonstrating compliance with EC 9.5750(7)(f). The noise study shall be for a proposal that does not include a variance pursuant to EC 9.5750(9)(c).

Condition of Approval #10 (added):

The CUP approval shall only be effective upon final PUD approval, with a determination of compliance with approval conditions as part of the required Type II review process for final PUD approval.

With these additional findings and modifications, the Planning Commission concludes that the Hearings Official did not err by requiring a new noise study for undergrounded ancillary equipment and therefore denies Northgreen Property's third assignment of error.

Northgreen Property Fourth Assignment of Error
Telecom Siting Standards for Variance to Undergrounding – EC 9.5750(9)(c) –
Erroneous Interpretation

The Hearings Official provides a detailed analysis of this issue on pages 40-41 of his decision. He determined that a variance to allow facilities above ground could be granted if an applicant demonstrated that the sound emanating from its ancillary facilities, as measured at the property line would be 45dBa or less with above ground facilities. However, the Hearings Official found that the applicant failed to make this demonstration. The appellant asserts that the Hearings Official misinterpreted what the code requires to "obviate" the need for undergrounding. The appellant goes on to assert that a variance would only be appropriate if an applicant's proposal eliminates all noise from the facility. Whether, or not, the Hearings Official was correct in his interpretation is irrelevant as the Planning Commission agrees with the Hearings Official that the applicant failed to demonstrate that its proposed above ground facilities would produce less than 45dBa at the property line as required by EC 9.5750(7)(f).

As the Planning Commission has determined that the applicant's evidence was insufficient to demonstrate that the 45dBa standard was met, it is unnecessary for the Planning Commission to make any further interpretation of the term "obviate" as used in the text of EC 9.5750(9)(c) because, under any reasonable interpretation, the applicant failed to meet its burden of proof. While there is no need to make a formal interpretation, the Planning Commission concludes that the Hearings Official made a permissible reading of subsection (9)(c) in this instance. As the noise standard was not met and the variance was correctly denied, the Planning Commission will not further speculate as to whether or how the applicant may have met the requirement to "obviate" the need for compliance for above ground facilities. Planning Commission concurs with the Hearings Official's footnote that a request for variance approval would also need to address other factors under the variance criteria such as stealth design, proposed landscaping, configuration or presence of mature trees.

The Planning Commission therefore denies Northgreen Property's fourth assignment of error.

Northgreen Property Fifth Assignment of Error
PUD Standards for Screening EC 9.8320(3) – Naked Top Third of Monopole is not
"Adequate Screening"

The Hearings Official completed a detailed analysis of this issue on pages 12-15 of the Hearings Official decision. The appellant asserts that the entire monopole needs to be screened to some degree to support a finding of "adequate screening". As to the interpretation of the term "adequate screening," after evaluating the available evidence and meaning of relevant terms, the Hearings Official found that a condition of approval was needed to ensure the requirement would be met (see Condition #2 of the decision). This condition requires the applicant to engage a landscape architect to develop a comprehensive screening plan and work directly with adjoining property owners to design screening that meets their needs. The Hearings Official notes that the

pole will be visible against and contrast with the sky, but that a landscape architect could assist with how to try to achieve screening or masking of the upper portion of the tower. So, while the top of the pole may not be completely screened from all angles, with the condition, the Hearings Official found that the pole would be "adequately screened."

The Planning Commission concludes that while the Hearings Official erred with respect to the condition of approval to ensure adequate screening under assignment of error six, the Hearings Official did not err in his interpretation what is meant by "adequate screening" as provided at EC 9.8320(3).

The Planning Commission therefore denies Northgreen Property's fifth assignment of error.

Northgreen Property Sixth Assignment of Error
PUD Standards for Screening – EC 9.8320(3) – Requirement for New Landscape Plan

The Hearings Official completed a detailed analysis of this issue on pages 12-15 of his decision, finding that a condition of approval was required to ensure adequate screening. He found that "it is appropriate for the applicant to have the landscape architect work with those owners as well to determine how to best screen (or mask) the base of the tower. The recommendation in the staff report for the applicant to plant up to two trees on the property lines of the adjoining homes correctly places the burden of screening on the applicant, but does not ensure effective screening. What is needed is individual attention to each property owner and the unique visual challenges from each home and yard." The appellant asserts the application should be denied instead of the Hearings Official "repairing" the application through a condition, and because the condition does not state the final plan will be subject to future review in the final PUD process.

The Hearings Official provided the following under Condition of Approval #2:

The applicant shall engage a local (mid-Willamette Valley) landscape architect (no other professional will be acceptable) to develop a comprehensive screening plan for the proposed tower to be incorporated into the final tree preservation/landscape plan (Sheet L-1). The landscape architect must consider views of the tower from the homes and yards that adjoin the subject property in the vicinity of the tower, including the Northgreen Apartments. The landscape architect shall work directly with the landowners of the adjoining properties to design screening that meets those owners' needs. The screening may be located on the subject property, the property of the adjoining owners (with their consent), or both. The final tree preservation/landscape plan (Sheet L-1) shall show the location and species of existing trees and new screening vegetation to be planted on the development site and adjoining properties and shall list the following requirements:

- New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
- The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.
- The plantings must be inspected and approved prior to the City granting final approval of the building permit.

- Watering and general maintenance of replacement trees, new vegetation, and other screening on the subject property shall be conducted by the owner or lessee of the subject property in a manner that ensures establishment and long-term survival. Maintenance of any screening located on the adjoining properties shall be the responsibility of the owners of those properties.
- The cost of the landscape architect and initial implementation of the screening plan shall be the responsibility of the applicant.

The Planning Commission agrees with the Hearings Official's findings on several points, including the determination that it is reasonable to impose a condition of approval to ensure adequate screening, and that a landscape architect is the appropriate design professional to determine how best to provide the screening, but finds that the Hearings Official erred in providing this specific condition for three reasons. First, as drafted by the Hearings Official, it may be an unreasonable condition for the applicant to achieve. The condition does not address what screening will be provided if a landowner refuses to meet with the applicant or if there is no agreement reached as to the best screening option for the homeowner. Second, reference to adjoining properties "in the vicinity of the tower" is not sufficiently specific to determine what locations must be evaluated for adequate screening. Third, the process for ensuring that the screening is implemented is not specified. To ensure that the condition is one the applicant can implement, a "fall back" screening requirement will be added, to ensure that if no agreement is made with the landowner, adequate screening is still provided. Additionally, specific properties are identified for screening. Finally, the final PUD process is an appropriate time to ensure the condition is met. Final plans which would be required to show the screening plan are approved as part of the Type II, final PUD process in this case. A public process with notice, opportunity for comment and appeal is therefore properly required to ensure review of the screening plan for compliance with a condition.

As modified, Condition of Approval #2 shall read as follows:

The applicant shall engage a local (mid-Willamette Valley) landscape architect (no other professional will be acceptable) to develop a comprehensive screening plan for the proposed tower to be incorporated into the final tree preservation/landscape plan (Sheet L-1). The screening plan must include a narrative demonstrating that the landscape architect considered views of the tower from the homes and yards of properties shown and listed on Attachment A. The landscape architect shall work directly with the land owners of these properties and shall design screening that addresses the concerns expressed by the landowners. The screening may be located on the application site, or on another property (with the consent of the land owner), or both.

To demonstrate compliance with this condition, the applicant shall mail a certified letter describing this requirement and requesting an opportunity to work with the identified land owners to provide adequate screening from the proposed telecommunications tower, and noting that the land owner has 30 days from receipt of the letter to respond. If a land owner does not respond to the applicant in writing within 30 days, the applicant will not be required to provide any additional trees to address 9.8320(3) as it pertains to that property.

The letter shall also note that, in the event of documented failure to reach agreement on the provision of adequate screening (including the number, species and location of new

plantings) after contact with a land owner, the applicant will only be required to provide the following:

- 1) If the subject property is the Northgreen Apartments property, a minimum of 8 evergreen or deciduous trees on the Oakway Golf Course planted within 20 feet of the adjoining Northgreen Apartments property line.
- 2) A minimum of 2 evergreen or deciduous trees on the Oakway Golf Course planted within 20 feet of each adjoining property line for all other properties shown and listed on Attachment A.

The final tree preservation/landscape plan (Sheet L-1) shall be certified by the landscape architect as meeting these requirements and show the location and species of existing trees and new screening vegetation to be planted on the development site and adjoining properties (in accordance with land owner responses) and contain the following notes:

- New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
- The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.
- The plantings must be inspected and approved prior to the City granting final approval of the building permit.
- Watering and general maintenance of replacement trees, new vegetation, and other screening on the subject property shall be conducted by the owner or lessee of the subject property in a manner that ensures establishment and long-term survival. Maintenance of any screening located on the adjoining properties shall be the responsibility of the owners of those properties.
- The cost of the landscape architect and initial implementation of the screening plan shall be the responsibility of the applicant.

Compliance with this condition of approval shall be demonstrated as part of the final PUD approval process.

With these additional findings and imposition of the modified condition of approval, the Planning Commission denies the appellant's sixth PUD assignment of error.

Northgreen Property Seventh Assignment of Error
Neighborhood Applicant Meeting – EC 9.7007(2) Applicant Meeting Required for PUD Application

The Hearings Official addresses this issue on pages 4 and 5 of his decision. The appellant asserts the Hearings Official failed to look at the plain language that required such a meeting.

The applicant submitted the initial application within the required 180 day timeframe but later added a concurrent CUP application after the 180 day timeframe following the initial neighborhood/applicant meeting. The Hearings Official correctly found that the intent of the meeting is to share information and the proposal did not change from the time of the meeting to submittal of the CUP application. In

addition, there is no substantive error raised with regard to any of the applicable CUP or PUD approval criteria under this assignment of error.

The Planning Commission therefore denies Northgreen Property's seventh assignment of error.

Northgreen Property Eighth Assignment of Error
Metro Plan Policies

The Hearings Official addresses this issue on pages 5-10 and 44-45 of his decision. The appellant asserts that the Hearings Official erred in concluding that Metro Plan policies are not independent review standards on which to judge an application. The appeal statement and Micheal Reeder's August 31, 2011 letter and testimony provided at the public hearing further elaborate the appellant's position that the Hearings Official erred by concluding that several policies, including Environmental Design Element Policy E.4 of the Metro Plan, were not independent approval criteria for the applications.

The Planning Commission concludes that Metro Plan policies C.21, E.4 and E.6 are not independent, mandatory approval criteria in this instance. In regards to policy E.4, the Hearings Official correctly found the policy to provide broad direction and, as applied to a PUD and CUP, the policy is implemented by numerous criteria, including EC 9.8320(3), (4), (8), (12), (13) and EC 9.8090 (2) and (3). The Hearings Official correctly explains the proper use of this and other Metro Plan policies in his decision, also specifically noting that several of the other relevant policies are implemented by other approval criteria for the applications. To the extent the policies are relevant or could be interpreted as part of the approval criteria in this instance, the Planning Commission has considered them and finds that the intent of the policies are met based on the Hearings Official's decision and the additional findings and modified conditions of approval included elsewhere in this Final Order. The Planning Commission hereby incorporates the Hearings Official's related findings on pages 7-9 and 44-45 of his decision, concerning policies C.21, E.4 and E.6.

The Planning Commission therefore denies Northgreen Property's eighth assignment of error.

Northgreen Property Ninth Assignment of Error
Health and Safety – EC 9.8320(6)

The Hearings Official completed a detailed analysis of this issue on pages 20-21 of his decision. He found that the proposal will not be a significant risk to public health and safety, as compliance with FCC emission requirements were met. The appellant asserts that the Hearings Official erred by not considering the health and safety effects of excessive noise. While the Hearings Official did not more specifically address noise as a health and safety issue under the discretionary PUD approval criteria as the appellant suggests is needed, the decision thoroughly addresses the issue of noise impacts in context with other more specific governing standards and approval criteria for telecommunication facilities, including federal standards.

With the additional findings and modified conditions of approval addressing noise impacts and requirements for undergrounding ancillary equipment above, and to the extent that noise impacts may also be relevant under EC 9.8320(6), the Planning Commission concludes that the PUD approval criterion is met.

The Planning Commission therefore denies Northgreen Property's ninth assignment of error.

Northgreen Property Tenth Assignment of Error
Alternative Site Analysis – EC 9.5750(6)(c)(2)

The Hearings Official evaluated this issue on pages 29-31 of his decision. The appellant asserts that the decision "did not adequately discuss the applicant's lack of substantial evidence in the record concerning the ability of the applicant to meet this criterion" and asserts that the required alternative site analysis was deficient.

The Hearings Official correctly notes that the standard at EC 9.5750(7) does not address how many alternative sites should be analyzed or provide further guidance. The Hearings Official addresses this issue and discusses an Oregon Court of Appeals case in relation to this issue. The Hearings Official correctly concluded that while the evidence provided in regards to this analysis was "minimal" there is no requirement that the applicant selects an alternative site and as such, in this case the basic requirement had been met.

The Planning Commission therefore denies Northgreen Property's tenth assignment of error.

Northgreen Property Eleventh Assignment of Error
Minimal Off-Site Impacts – EC 9.8320(12)

The Hearings Official completed a detailed analysis of this issue on pages 42 - 43 of his decision. The appellant asserts that this criterion was not met, particularly with respect to noise and aesthetic impacts.

The Hearings Official provides findings that address traffic, noise, stormwater, environmental quality, RF emissions and aesthetic impacts. The Hearings Official incorporated his findings under EC 9.5750(7)(f) by reference in regards to noise, and part of the Hearings Official's approach was to require undergrounding of the ancillary facilities. With additional findings and modified conditions of approval noted above, including the revised requirements to ensure adequate screening to address visual impact, the Planning Commission concludes that the PUD approval criterion at EC 9.8320(12) is also met.

The Planning Commission therefore denies Northgreen Property's eleventh assignment of error.

Northgreen Property Twelfth Assignment of Error
Compatibility and Harmony with the Adjacent and Nearby Uses – EC 9.8320(13)

The Hearings Official addresses this issue on pages 43-44 of his decision. He notes that compatibility is a very subjective standard and what one person believes is compatible another person might believe is very incompatible. Further, he notes that City Council has already determined that telecommunications towers are permissible under the applicable R-1 zoning and therefore in close proximity to residences. What is essentially left for the Hearings Official to decide is the impact of the tower at this location, in context with the applicable approval criteria,

not towers in general. The Hearings Official then incorporates the findings and conclusions from EC 9.8320(3) in determining that the approval criterion was met.

In its appeal statement and as part of Mr. Reeder's August 31, 2011 memo to the Planning Commission, the appellant asserts that the Hearings Official erred in concluding that, because the application met many of the objective standards for telecommunications facilities, this criterion was met. The appellant also notes that the condition of approval provided by the Hearings Official (which requires a landscape architect to work with neighbors to develop a screening plan) is fraught with ambiguity and uncertainty, and fails to adequately screen the top portion of the tower. The Planning Commission notes that the limitations set out by measurable standards, such as height, setbacks and noise, combined with the additional findings and modified conditions of approval to address screening requirements at EC 9.8320(3), and undergrounding of the ancillary equipment with respect to EC 9.5750(7)(f) and (8), the PUD approval criterion at EC 9.8320(13) will also be met.

The Planning Commission therefore denies Northgreen Property's twelfth assignment of error.

Northgreen Property Thirteenth Assignment of Error
Livability – EC 9.8090(2)

The Hearings Official addresses this issue on pages 45-46 of his decision. He notes that EC 9.8090(2)(a) ensures buildings are appropriately sized for their use. He correctly finds that the structure in this case is a cell tower, not a "building" as that term is defined in EC 9.0500 and used in subsection (a), and therefore this subsection is not applicable, contrary to the appellant's assertions. The appellant asserts that even though the tower is not a building as that term is defined, the ancillary facilities may be since they store and shelter equipment. Under subsection (b), the Hearings Official also provides findings that address noise, glare and radio frequency emissions.

As to the appellant's further assertion that the Hearings Official erred by not imposing increased setbacks to mitigate impacts on surrounding residential uses, the Planning Commission disagrees and finds that the proposed facility provides ample setbacks, well beyond the minimum requirements (being 102' 6" from the nearest property line). With the additional findings, as well as modified and new conditions of approval above, including the requirements for additional screening, placing the ancillary equipment underground and a new condition (Condition #10) that the CUP approval shall only be effective upon final PUD approval, the Planning Commission concludes that the CUP criterion at EC 9.8090(2) is also met.

The Planning Commission therefore denies Northgreen Property's thirteenth assignment of error.

IV. CONCLUSION

The Eugene Planning Commission has reviewed the record and the appellants' assignments of error, and has voted to modify and affirm the decision of the Hearings Official to conditionally approve the tentative PUD and CUP requests for AT&T Mobility – Oakway Golf Course (PDT 10-2 and CU 11-1). Additional findings and modified conditions of approval are provided in Section III of this Final Order; the modified conditions of approval are also included below for reference. All other conditions imposed by the Hearings Official remain applicable as set out in the Hearings Official's decision.

Condition of Approval #1 (as modified):

The applicant shall submit a new site plan with the ancillary equipment for the tower placed underground. The tower shall remain in exactly the same location as initially proposed in the tentative PUD and CUP applications.

Condition of Approval #2 (as modified):

The applicant shall engage a local (mid-Willamette Valley) landscape architect (no other professional will be acceptable) to develop a comprehensive screening plan for the proposed tower to be incorporated into the final tree preservation/landscape plan (Sheet L-1). The landscape architect must consider views of the tower from the homes and yards of properties shown and listed on Attachment A. The landscape architect shall work directly with the landowners of these adjoining properties to design screening that meets those owners' needs. The screening may be located on the subject property, the property of the adjoining owners (with their consent), or both.

The applicant shall mail a certified letter describing this requirement and requesting an opportunity to work with the identified adjoining owners to provide adequate screening for the proposed telecommunications tower, and note that the property owner has 30 days from receipt of the letter to respond. If the property owners do not respond to the applicant in writing within 30 days, the applicant will not be required to provide additional trees along that lot boundary.

The letter shall also note that, in the event of documented failure to reach agreement on the provision of adequate screening (including the number, species and location of new plantings) after contact with adjoining owners, the applicant will only be required to provide the following:

- 1) If the subject property is the Northgreen Apartments property, a minimum of 8 evergreen or deciduous trees on the Oakway Golf Course planted within 20 feet of the adjoining Northgreen Apartments property line.
- 2) A minimum of 2 evergreen or deciduous trees on the Oakway Golf Course planted within 20 feet of each adjoining property line for all other properties shown and listed on Attachment A.

The final tree preservation/landscape plan (Sheet L-1) shall be certified by the landscape architect as meeting these requirements and show the location and species of existing trees and new screening vegetation to be planted on the development site and adjoining properties (in accordance with property owner responses) and contain the following notes:

- New trees to be planted on the development site shall be a minimum caliper of 2" for deciduous trees and a minimum height of 6-feet for coniferous or evergreen trees at time of planting.
- The proposed trees shall be planted a minimum of ten feet from structures and must be located outside any easements.

- The plantings must be inspected and approved prior to the City granting final approval of the building permit.
- Watering and general maintenance of replacement trees, new vegetation, and other screening on the subject property shall be conducted by the owner or lessee of the subject property in a manner that ensures establishment and long-term survival. Maintenance of any screening located on the adjoining properties shall be the responsibility of the owners of those properties.
- The cost of the landscape architect and initial implementation of the screening plan shall be the responsibility of the applicant.

Compliance with this condition of approval shall be demonstrated prior final PUD approval.

Condition of Approval #6 (modified)

For review as part of the final PUD approval process, the applicant shall provide a revised noise study demonstrating compliance with EC 9.5750(7)(f). The noise study shall be for a proposal that does not include a variance pursuant to EC 9.5750(9)(c).

Condition of Approval #10 (new):

The CUP approval shall only be effective upon final PUD approval, with a determination of compliance with approval conditions as part of the required Type II review process for final PUD approval.

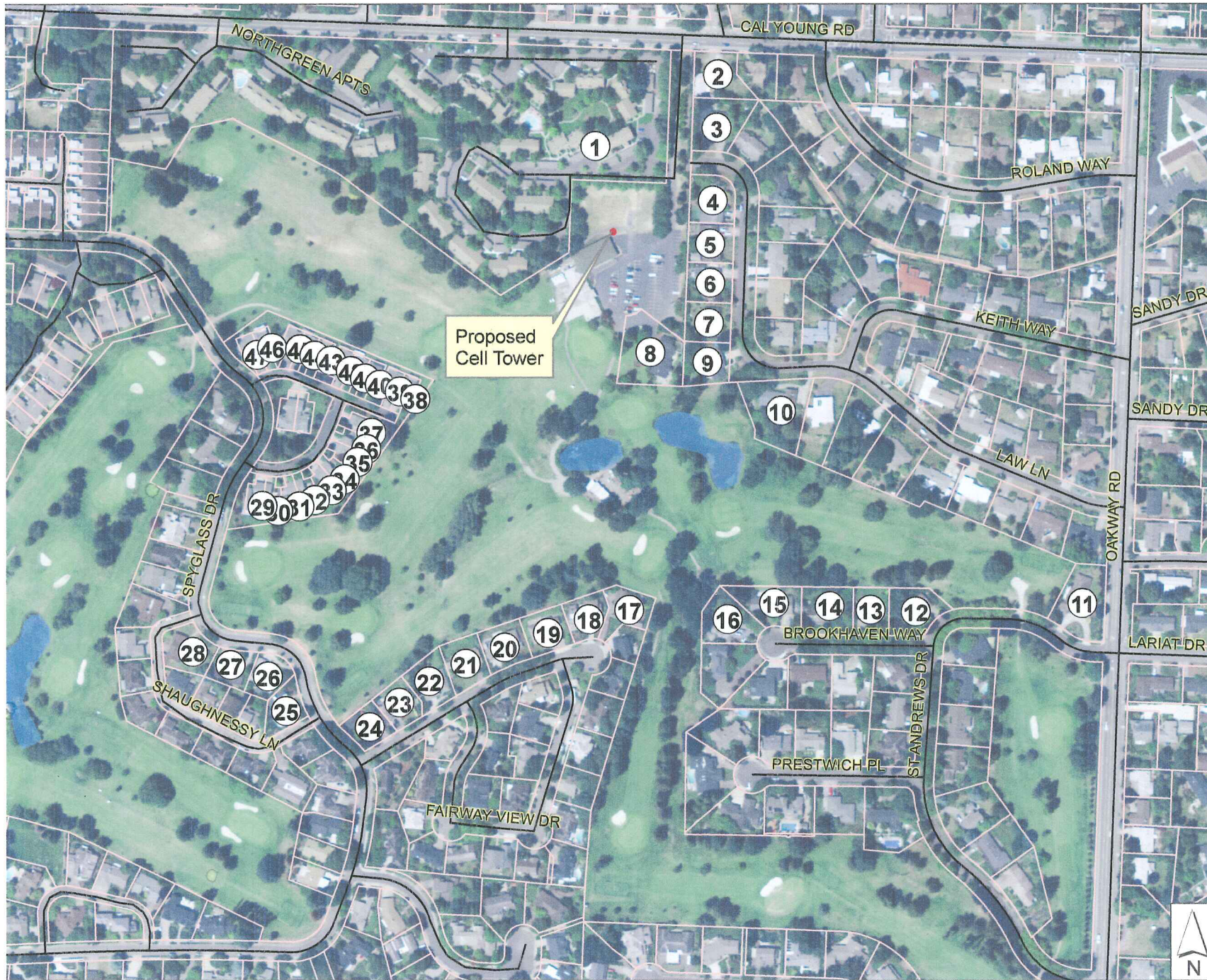
Accordingly, conditional approval is hereby affirmed. The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission for AT&T Mobility – Oakway Golf Course (PDT 10-2 and CU 11-1) this 4th day of October, 2011.



Jeffrey Mills, Chair
Eugene Planning Commission

Attachment A: Properties Subject to Screening Condition for (PDT 10-2)

Attachment A: Properties Subject to Screening Condition for (PDT 10-2)



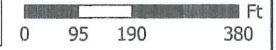
Proposed Cell Tower

Legend

- Streets
- Taxlots
- Water Bodies

October 03, 2011

Caution:
This map is based on imprecise source data, subject to change, and for general reference only.



Option 3: View Potential Properties

| Map Key | Assessor's Map Tax Lot | Property Owner / Tax Payer | Address | City | State | Zip Code |
|---------|------------------------|---------------------------------------|-------------------------|--------------|-------|----------|
| 1 | 17-03-20-23-09200 | NORTHGREEN PROPERTY LLC | PO BOX 529 | EUGENE | OR | 97440 |
| 2 | 17-03-20-23-08900 | KLINDT KEATHER MIGYUNG | 2034 CAL YOUNG RD | EUGENE | OR | 97401 |
| 3 | 17-03-20-23-09000 | HERBERT GREG L & TERRI L | 2005 LAW LN | EUGENE | OR | 97401 |
| 4 | 17-03-20-31-05200 | WILSON MICHAEL ANDREW & NICOLA | 1473 MORNINGSIDE DR | EUGENE | OR | 97401 |
| 5 | 17-03-20-31-05100 | MCPAHON GERALD M | 2044 LAW LN | EUGENE | OR | 97401 |
| 6 | 17-03-20-31-05000 | SCHAUFLE RICK W & SHELLI | 2064 LAW LN | EUGENE | OR | 97401 |
| 7 | 17-03-20-31-04900 | GORDON DONALD A & JOAN A | 2070 LAW LN | EUGENE | OR | 97401 |
| 8 | 17-03-20-32-04700 | CLARK DANIEL R & DEANNA | 2002 CAL YOUNG RD | EUGENE | OR | 97401 |
| 9 | 17-03-20-31-04800 | MCKERN CRAIG E & MARILYN V | 2080 LAW LN | EUGENE | OR | 97401 |
| 10 | 17-03-20-31-04700 | BROTZ MELISSA M | 2094 LAW LANE | EUGENE | OR | 97401 |
| 11 | 17-03-20-31-03800 | FRICHETTE STEVEN A & ACHELLE MOHR | 990 ST ANDREWS DR | EUGENE | OR | 97401 |
| 12 | 17-03-20-31-03700 | WILSON JEAN C | 970 ST ANDREWS DR | EUGENE | OR | 97401 |
| 13 | 17-03-20-31-03600 | SIXEL MARK S & ELIZABETH K SOMERVILLE | 2153 BROOKHAVEN WAY | EUGENE | OR | 97401 |
| 14 | 17-03-20-31-03500 | ONSTAD JACQUELINE L | 2143 BROOKHAVEN WAY | EUGENE | OR | 97401 |
| 15 | 17-03-20-31-03400 | BONESS JERRY M & KATHARINE A | 1443 COUNTRY COMMONS LN | LAKE OSWEGEE | OR | 97034 |
| 16 | 17-03-20-31-03300 | STEVEN & SHERYLL GREATWOOD REV TR | 2103 BROOKHAVEN WAY | EUGENE | OR | 97401 |
| 17 | 17-03-20-32-04500 | CHEN SHANG-YI TE | 863 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 18 | 17-03-20-32-04400 | HIRST DONALD V & LINDA L | 865 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 19 | 17-03-20-32-04300 | WRIGHT MARCUS & JOY B | 867 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 20 | 17-03-20-33-02700 | SHEFLIN DAVID A | 3535 W 1ST AVE | EUGENE | OR | 97402 |
| 21 | 17-03-20-33-02800 | JAMES & LILIA CANEPA REVOCABLE TRUST | 871 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 22 | 17-03-20-33-02900 | WELLMAN DAVID H & KAREN S | 873 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 23 | 17-03-20-33-03000 | ALBERTS STACIE L | 875 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 24 | 17-03-20-33-03100 | RICHANBACH MARK & ELIZABETH ANN | 877 FAIRWAY VIEW DR | EUGENE | OR | 97401 |
| 25 | 17-03-20-33-03200 | BRANVOLD FAMILY TRUST | 922 SPYGLASS DR | EUGENE | OR | 97401 |
| 26 | 17-03-20-33-03700 | BULLIS FRANCES | 942 SPYGLASS DR | EUGENE | OR | 97401 |
| 27 | 17-03-20-33-03800 | HUDSON NORMAN P & SUSAN C | 962 SPYGLASS DR | EUGENE | OR | 97401 |
| 28 | 17-03-20-33-04000 | HORNSBY JAMES O & PAMELA S | 992 SPYGLASS DR | EUGENE | OR | 97401 |
| 29 | 17-03-20-32-03000 | BRONSON MARY E | PO BOX 7 | EUGENE | OR | 97440 |

| | | | | | |
|----|-------------------|---------------------------------|------------------|----------------|-------|
| 30 | 17-03-20-32-02900 | SINGER ROBERTA L | PO BOX 1174 | MONTEREY CA | 93942 |
| 31 | 17-03-20-32-02800 | LEIMAN GERALDINE T TE | 1111 SPYGLASS DR | EUGENE OR | 97401 |
| 32 | 17-03-20-32-02500 | SPARKS DAVID G & ANNETTE L | 1117 SPYGLASS DR | EUGENE OR | 97401 |
| 33 | 17-03-20-32-02400 | KIM DAVID H | 2520 COLUMBIA ST | EUGENE OR | 97403 |
| 34 | 17-03-20-32-02300 | PURDY TRUST FAMILY TRUST | 1127 SPYGLASS DR | EUGENE OR | 97401 |
| 35 | 17-03-20-32-02100 | CARLISLE ROBERT L | 1131 SPYGLASS DR | EUGENE OR | 97401 |
| 36 | 17-03-20-32-02000 | DORMAN PAULINE H | 1133 SPYGLASS DR | EUGENE OR | 97401 |
| 37 | 17-03-20-32-01800 | SAVAGE JAMES W & JEANNE F | 1137 SPYGLASS DR | EUGENE OR | 97401 |
| 38 | 17-03-20-32-0200 | AVERY GILBERT S III | 1141 SPYGLASS DR | EUGENE OR | 97401 |
| 39 | 17-03-20-32-0300 | MARILYN G KAYS REV LIVING TRUST | 1147 SPYGLASS DR | EUGENE OR | 97401 |
| 40 | 17-03-20-32-0400 | ZOLEZZI JEANNE C | 1151 SPYGLASS DR | EUGENE OR | 97401 |
| 41 | 17-03-20-32-0500 | BIGELOW FAMILY TRUST | 1155 SPYGLASS DR | EUGENE OR | 97401 |
| 42 | 17-03-20-32-0600 | SURCAMP ANNA E | 545 N 28TH ST | SPRINGFIELD OR | 97477 |
| 43 | 17-03-20-32-0700 | VIKE GARY & CAROLYN | 1161 SPYGLASS DR | EUGENE OR | 97401 |
| 44 | 17-03-20-32-0800 | TRIPP ZDENKA | 1065 SW 53RD ST | CORVALLIS OR | 97333 |
| 45 | 17-03-20-32-0900 | ADA O L LEE LIVING TRUST | 1169 SPYGLASS DR | EUGENE OR | 97401 |
| 46 | 17-03-20-32-01100 | BELCHER ALLEN E & PAULA M | 1171 SPYGLASS DR | EUGENE OR | 97401 |
| 47 | 17-03-20-32-01300 | BISHOP FRANCES SULLIVAN | 1177 SPYGLASS DR | EUGENE OR | 97401 |

1

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision by the city approving tentative planned unit
4 development and conditional use permit applications to site a cellular communications tower
5 and ancillary facilities on property zoned Low Density Residential/Planned Unit
6 Development (R-1/PD).

7 **MOTION TO INTERVENE**

8 New Cingular Wireless PCS, LLC (intervenor), the applicant below, moves to
9 intervene on the side of the city. There is no opposition to the motion and it is granted.

10 **MOTION TO STRIKE**

11 Petitioner moves to strike Appendix I attached to intervenor’s response brief.
12 Appendix I is a copy of a 2004 hearings officer’s decision on an application for land use
13 review in Deschutes County. Petitioner argues that the document is not a part of the record
14 of this appeal and is not subject to official notice. Intervenor has not cited any legal authority
15 under which we might take official notice of Appendix I.

16 Petitioner’s motion to strike Appendix I is granted. The Board will not consider
17 Appendix 1 or the portion of the Response Brief on page 8 lines 19-27 that quotes a portion
18 of Appendix 1.

19 **FACTS**

20 Intervenor submitted planned unit development and conditional use permit
21 applications to site a 75-foot tall wireless communications tower on the northern part of a 58-
22 acre private golf course, and also submitted a variance application to locate the ancillary
23 facilities that house the equipment for the tower above ground.¹ The subject property is

¹ Eugene Code (EC) 9.5750 contains special siting requirements and procedures for telecommunications facilities. EC 9.5750(8) requires in relevant part that “all ancillary facilities within an R-1, PL, C-1, GO, and PRO zone must be located underground to the maximum extent technology allows, unless a variance is obtained pursuant to the provisions of subsection (9) of this section.”

1 zoned R-1/PD and is designated Parks and Open Space in the Metro Plan and the
2 Willakenzie Area Plan. The Metro Plan is the comprehensive plan that governs the
3 metropolitan area of the city, and the Willakenzie Area Plan is the applicable refinement plan
4 for the area of the city in which the subject property is located. Petitioner’s 222-unit
5 apartment building is located to the north of the golf course property, approximately 100 feet
6 from the proposed cell tower. The golf course is surrounded by single family residential
7 development on all sides.

8 The hearings officer held a hearing on the applications and approved the planned unit
9 development and conditional use permit applications, but denied the variance application to
10 locate the ancillary facilities above ground. Petitioner and intervenor each appealed the
11 hearings officer’s decision to the planning commission, which upheld the hearings officer’s
12 decisions. This appeal followed.

13 **FIRST ASSIGNMENT OF ERROR**

14 EC 9.8320(1) requires the city to find that “[t]he PUD is consistent with applicable
15 adopted policies of the Metro Plan.” EC 9.8090(1) similarly requires the city to find that the
16 conditional use permit application “is consistent with applicable provisions of the Metro Plan
17 and applicable refinement plans.” The city concluded that there were no “applicable” Metro
18 Plan policies or provisions that applied to the applications. In its first assignment of error,
19 petitioner argues that Metro Plan Environmental Resources Element Policy C-21 and
20 Environmental Design Element Policy E-4 are applicable Metro Plan policies and that the
21 city erred in failing to determine whether the applications are consistent with those policies.
22 Petitioner also argues that to the extent the planning commission concluded that the
23 applications are consistent with those policies, the planning commission’s findings are
24 inadequate to explain the basis for that conclusion.

25 **A. Policy C-21**

26 Metro Plan Policy C-21 provides:

1 “When planning for and regulating development, local governments shall
2 consider the need for protection of open spaces, including those characterized
3 by significant vegetation and wildlife. Means of protecting open space include
4 but are not limited to outright acquisition, conservation easements, planned
5 unit development ordinances, streamside protection ordinances, open space
6 tax deferrals, donations to the public, and performance zoning.”²

7 The hearings officer found:

8 “This policy seems to provide both broad direction to the local government for
9 long-term planning, and direction when regulating development; however, the
10 ‘means of protecting open space’ include only long-term planning strategies,
11 not anything that is related to a specific development proposal.” Record 219.

12 The planning commission agreed with the hearings officer and adopted additional findings:

13 “The Planning Commission concludes that Metro Plan policies C.21, E.4 and
14 E.6 are not independent, mandatory approval criteria in this instance. In
15 regards to Policy E.4, the Hearings Official correctly found the policy to
16 provide broad direction and, as applied to a PUD and CUP, the policy is
17 implemented by numerous criteria, including EC 9.8320(3), (4), (8), (12) (13)
18 and EC 9.8090(2) and (3). The Hearings Official correctly explains the proper
19 use of this and other Metro Plan policies in his decision, also specifically
20 noting that several of the other relevant policies are implemented by other
21 approval criteria for the applications. To the extent the policies are relevant or
22 could be interpreted as part of the approval criteria in this instance, the
23 Planning Commission has considered them and finds that the intent of the
24 policies are met based on the Hearings Official’s decision and the additional
25 findings * * * elsewhere in this Final Order.” Record 16.

26 We review the city’s interpretation of its comprehensive plan and land use regulations
27 to determine whether it is correct. *Gage v. City of Portland*, 133 Or App 346, 349-50, 891
28 P2d 1331 (1995). In *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006), we concluded
29 that even where the local code includes a requirement that the comprehensive plan be
30 considered in approving a land use permit application, plan policies that plainly direct the
31 city to undertake planning efforts do not operate as decisional standards that apply on a case-
32 by-case basis when approving individual development proposals. We agree with the city’s
33 interpretation of the Metro Plan that Policy C-21 is such a policy. Policy C-21 directs the

² We set out the text of Policy E-4 and discuss that policy separately later in this opinion.

1 city to implement one of several means of protecting open space, including adopting planned
2 unit development ordinances, and does not contain any language that suggests that it is
3 intended to apply on a case-by-case basis to individual applications for planned unit
4 development approval that are processed under the city’s adopted planned unit development
5 ordinances.

6 **B. Policy E-4**

7 Policy E-4 of the Metro Plan’s Environmental Design Element of the plan provides:

8 “Public and private facilities shall be designed and located in a manner that
9 preserves and enhances desirable features of local and neighborhood areas and
10 promotes their sense of identity.”

11 The hearings officer found that Policy E-4 is not an “applicable” approval criterion, but
12 rather provides broad direction to the city and is implemented by approval criteria in the
13 EC’s sections providing standards for PUD and CUP applications:

14 “In a prior decision * * * the hearings officer concluded “[t]his policy is broad
15 direction to the city. As applied to a PUD, this policy is implemented by
16 numerous criteria, including EC 9.8320(3), (4), (8), (12), and (13). * * * Two
17 CUP criteria also implement this policy: EC 9.8090(2) and (3).

18 “* * * Even though the hearings official believes this policy provides broad
19 direction to the city, the hearings official notes that this decision addresses the
20 criteria that implement this policy below; it is not necessary to conduct an
21 independent review of the proposed development for consistency with this
22 policy.” Record 219.

23 As noted above, the planning commission agreed with the hearings officer.

24 Petitioner argues that the text of Policy E-4 demonstrates that it is an “applicable”
25 provision of the Metro Plan and is intended to apply to individual permit decisions on public
26 facilities. Petitioner first points out that Policy E-4 is phrased in mandatory terms with the
27 use of the word “shall” providing direction for designing and locating public facilities.
28 Petitioner also points to context provided in the preamble to the Environmental Design
29 Element that provides in relevant part that “[i]f we are to maintain a livable urban

1 environment and realize the full potential of our desirable and distinctive qualities, *daily*
2 *decisions that concern change must be guided by environmental design principles, such as*
3 *site planning, in combination with other planning policies.*” Metro Plan, III-E-1 (Emphasis
4 added.) According to petitioner, the text and context of Policy E-4 support reading Policy E-
5 4 as a separate, mandatory approval criterion that applies to the applications.

6 Petitioner also challenges the city’s conclusion that Policy E-4 is fully implemented
7 by EC 9.8320(3), (4), (8), (12) and (13) and EC 9.8090(2) and (3) or that those sections of
8 EC 9.8320 and 9.8090 make it unnecessary to separately apply Policy E-4. We set out the
9 text of those provisions in Appendix A. According to petitioner, the EC provisions cited by
10 the city do not contain any language that suggests that they are intended to implement the
11 purposes stated in Policy E-4 to “enhance[] desirable features” of the area and “promote[]
12 their sense of identity” but at most the provisions require the public facility to mitigate some
13 of the effects of development on those features. Finally, petitioner argues that to the extent
14 the planning commission adopted alternative findings that Policy E-4 is satisfied, those
15 findings are inadequate to explain the basis for that conclusion.

16 Intervenor responds by arguing that Policy E-4 is aspirational rather than mandatory,
17 and that it does not provide specific direction for the city in considering a permit application.
18 Intervenor maintains that the city correctly found that the cited EC provisions implement
19 Policy E-4 and argues that petitioner does not point to any evidence in the record that a
20 neighborhood feature or identity is not preserved or enhanced by the telecommunications
21 tower.

22 We do not think that the city’s interpretation of the Metro Plan is correct. *Gage*, 133
23 Or App at 349-50. We agree with petitioner that Policy E-4 constitutes an “applicable”
24 Metro Plan policy that the city must separately address. The text of Policy E-4 does not
25 generally direct the city to undertake future planning efforts to fulfill its purpose, but rather
26 provides fairly specific and mandatory direction that public facilities such as the

1 telecommunications tower “be designed and located” to “preserve[] and enhance” desirable
2 features of the area. The context provided in the preamble to the Environmental Resources
3 Design element provides additional support in referring to “daily decisions” being guided by
4 “site planning.” Additionally, we are not directed to any language in any of the cited
5 provisions of the EC or any other provision of the EC that indicates that the cited provisions
6 were adopted to implement Policy E-4 fully and make independent application of Policy E-4
7 unnecessary. Absent any citation by the city or intervenor to language in the EC that
8 indicates that the cited provisions governing PUD and CUP applications implement Policy E-
9 4 fully, or citation to any language in the cited provisions that is sufficiently similar to the
10 language in Policy E-4 that requires the city to ensure that public facilities are “designed and
11 located in a manner that preserves and enhances desirable features of local and neighborhood
12 areas and promotes their sense of identity,” we disagree with the city that the cited provisions
13 of the EC implement Policy E-4 fully.

14 Finally, we agree with petitioner that to the extent the planning commission findings
15 quoted above are intended to constitute alternative findings that the applications are
16 consistent with Policy E-4, those findings are inadequate to explain the basis for so
17 concluding.

18 The first assignment of error is sustained, in part.

19 **SECOND AND FOURTH ASSIGNMENTS OF ERROR**

20 EC 9.8320(3) requires that “the PUD will provide adequate screening from
21 surrounding properties including, but not limited to, anticipated building locations, bulk, and
22 height.”³ EC 9.8320(13) requires that “[t]he proposed development shall be reasonably
23 compatible and harmonious with adjacent and nearby land uses.” In its fourth assignment of

³ EC 9.0500 defines “screening” as “[a] method of visually shielding or obscuring an area through the use of fencing, walls, berms, or densely-planted vegetation.”

1 error, petitioner argues that the city misconstrued EC 9.8320(3) in determining that the
2 proposal “will provide adequate screening from surrounding properties * * *.” In its second
3 assignment of error, petitioner argues that the city’s findings are inadequate and there is not
4 substantial evidence in the record to support the city’s conclusion that EC 9.8320(13) is
5 satisfied. The city’s decision addresses EC 9.8320(3) and EC 9.8320(13) together, and we
6 therefore address petitioner’s assignments of error challenging those parts of the decision
7 together.

8 **A. EC 9.8320(3)**

9 In determining whether the proposal provided “adequate screening” as required by
10 EC 9.8320(3) the hearings officer first reviewed the EC definition of “screening” quoted
11 above at *n* 3, and reviewed the dictionary definitions of “shield” and “obscure.”⁴ He
12 concluded that the bottom approximately 50 feet of the tower could be adequately screened
13 through landscaping, that the top approximately 25 feet of the tower could not practically be
14 screened from view with any landscaping, and that even if it could be screened with
15 landscaping the tower would not function in the way that intervenor requires with that
16 screening. He concluded that the use of the word “adequate” in EC 9.8320(3) means that the
17 entire tower is not required to be screened, but rather that the tower must be screened “to a
18 reasonable extent” considering the proposed use. Record 223-226. He imposed a condition
19 of approval that requires intervenor to work with owners of adjoining properties to design
20 screening that meets their needs. The planning commission agreed with the hearings
21 officer’s interpretation of the phrase “adequate screening.” Record 13.

22 In its fourth assignment of error, we understand petitioner to argue that the city
23 misconstrued EC 9.8320(3) when it concluded that requiring screening of the bottom two

⁴ *Webster’s Third New International Dictionary* (Unabridged 1981) defines “shield” as “1.b: to cut off from observation: conceal, hide * * *.” *Id.* at 2094. “Obscure” is defined as “1.b: to conceal or hide from view as by or as if by covering wholly or in part: make difficult to discern.” *Id.* at 1557.

1 thirds of the tower without requiring screening of the top one-third of the tower means that
2 the proposal provides “adequate screening.” According to petitioner, “adequate screening”
3 means that all sections of the tower will be screened from view.

4 The hearings officer considered the definition of “screening” found at EC 9.0500 and
5 the dictionary definitions of “shield” and “obscure” and concluded that the definition of
6 “screening” is somewhat ambiguous given that the definitions of “shield” and “obscure” are
7 not synonymous. He also noted that telecommunications towers are a use that is allowed
8 conditionally in the R-1 zone and that they are allowed to a maximum height of 75 feet.
9 Given the inherently subjective nature of a criterion that requires “adequate screening,” we
10 cannot say that the city’s interpretation of EC 9.8320(3) as requiring screening of the tower
11 to a reasonable extent is incorrect. *Gage*, 133 Or App at 349-50.

12 **B. EC 9.8320(13)**

13 The hearings officer incorporated the findings and conclusions described above that
14 the proposal satisfies EC 9.8320(3) in concluding that the proposal also satisfies EC
15 9.8320(13). The hearings officer found:

16 “Compatibility is a subjective standard. What one person believes is
17 compatible another person might believe is very incompatible. * * *

18 “The City Council has already determined that telecommunications towers are
19 permissible in the R-1 zone and there is no restriction in other zones against
20 locating a cell tower any distance from the R-1 zone or any other residential
21 uses. The telecommunications standards in EC 9.5750 have standards for
22 height, setbacks, color, lighting, and use of the tower for display of signs.
23 These telecommunications standards were established to provide clear criteria
24 for providers to meet, but also provide a discretionary process to provide for
25 public input on a case-by-case basis. The proposed tower complies with the
26 height, setbacks, color and lighting * * * standards.

27 “Basically what is left for the hearing official to consider is visual impact of
28 this tower at this location – not towers in general, because as explained in the
29 above paragraph, the City Council has already concluded that towers may be
30 located in close proximity to residences. The findings and conclusions in
31 response to EC 9.8320(3) are incorporated here.” Record 254-55.

1 The planning commission agreed with the hearings official. Record 18.

2 In its second assignment of error, petitioner argues that the city's findings are
3 inadequate and there is not substantial evidence in the record to support the city's conclusion
4 that EC 9.8320(13) is met, where the top 25 feet of the tower will not be screened. Petitioner
5 argues that the evidence in the record demonstrates that the tower's location in a residential
6 neighborhood and its height are not "reasonably compatible and harmonious" with the
7 neighborhood.

8 Although the findings quoted above could be clearer, we understand the hearings
9 officer to have concluded that the proposed tower is reasonably compatible and harmonious
10 with the neighborhood where it meets the objective standards set out in the EC for
11 telecommunications towers, and where the tower will be screened from view while still
12 allowing the tower to function as intended. We cannot say that those findings are inadequate
13 or represent an erroneous interpretation and application of EC 9.8320(13). We also do not
14 think that the evidence cited by petitioner in support of its argument that the tower is not
15 compatible with the neighborhood is so overwhelming that a reasonable person could not
16 find that the tower is compatible, particularly given the inherently subjective nature of the
17 criterion. *Olson v. City of Springfield*, 56 Or LUBA 229, 237 (2008).

18 Finally, petitioner argues that the city failed to address its argument that the fact that
19 the EC allows telecommunications towers as conditional uses in the R-1 zone does not mean
20 that the proposed tower complies with EC 9.8320(13). The findings quoted above as well as
21 the planning commission's findings that agree with the hearings officer respond to that
22 argument.

23 The second and fourth assignments of error are denied.

24 **THIRD AND FIFTH ASSIGNMENTS OF ERROR**

25 EC 9.5750 imposes special siting requirements and procedures for
26 telecommunications facilities. EC 9.5750(7)(f) provides:

1 “In R-1, R-2, R-3, R-4, C-1, and GO and in all other zones when the adjacent
2 property is zoned for residential use or occupied by a dwelling, hospital,
3 school, library, or nursing home, *noise generating equipment shall be sound*
4 *buffered by means of baffling, barriers or other suitable means to reduce*
5 *sound level measured at the property line to 45 dba.”* (Emphasis added.)

6 **A. Fifth Assignment of Error**

7 The hearings officer concluded that EC 9.5750(7)(f) requires that the noise generating
8 equipment from the proposed telecommunications facilities be sound buffered to reduce the
9 sound level measured at the property line to 45 dBa. The hearings officer rejected
10 petitioner’s assertion below that the 45 dBa limit applies to all noise measurable from the
11 subject property at the property line, including noise that is not generated by the
12 telecommunications equipment, and requires the city to deny the application if the
13 measureable noise level of all noise at the property line exceeds 45 dBa. Record 247. The
14 planning commission agreed with the hearings officer and adopted additional findings:

15 “The Planning Commission finds that the Hearings Official was correct in his
16 application of 45 dba standard, specific to the noise-generating
17 telecommunications equipment proposed in the application(s). The Planning
18 Commission also finds that the standard does not necessarily preclude noise-
19 generating telecommunications equipment when ambient noise may already
20 exceed 45 dba. * * * [T]his determination is supported by the plain text of EC
21 9.5750(7)(f). Further, this is supported by the context provided by EC
22 9.5750(6)(b)(5), which requires the applicant to submit ‘[d]ocumentation that
23 the *ancillary facilities* will not produce sound levels in excess of those
24 standards specified in subsection (7) of this section, or designs showing how
25 the sound is to effectively be muffled and reduced pursuant to those
26 standards.” Record 10 (emphasis in original.)

27 In its fifth assignment of error, petitioner repeats its assertion made below that in applying
28 the EC 9.5750(7)(f) 45 dBa standard, the city must consider all noise from all sources, and
29 argues that the planning commission misconstrued applicable law in determining that the EC
30 9.5750(7)(f) noise standard only requires that the noise generated by the noise generating
31 equipment that is part of the proposed telecommunications facilities be considered.
32 Petitioner argues that the “plain language” of EC 9.5750(7)(f) requires measurement of all

1 sources of noise and that if the noise from all sources would exceed 45 dba at the property
2 line then the city is required to deny the application for the proposed facility. Petition for
3 Review 24.

4 Intervenor responds that the planning commission's interpretation is correct. We
5 agree with intervenor that the city's interpretation of EC 9.5750(7)(f) as only applying to the
6 "noise generating equipment" related to the telecommunications facility that is the subject of
7 the application is correct. EC 9.5750(7)(f) imposes a special noise standard on
8 telecommunications facilities, and requires that a telecommunications facility's "noise
9 generating equipment" must be "sound buffered" "to reduce sound level measured at the
10 property line to 45 dBA." The mechanism EC 9.5750(7)(f) requires that an applicant employ
11 to achieve the 45 dBA standard is "sound buffering." While sound buffering on the
12 telecommunication facility site could be effective to reduce sound from the
13 telecommunication facility's noise generating equipment measured at the property line,
14 sound buffering to reduce the sound at the property line from off-site sources would have to
15 be located off-site to be effective. We believe the EC 9.5750(7)(f) sound buffering
16 requirement is logically understood to mean sound buffering on the telecommunication
17 facility site, which the applicant likely owns or leases. We do not think EC 9.5750(7)(f) is
18 correctly interpreted to require sound buffering on adjacent sites, which the applicant likely
19 does not own, lease or otherwise have control over. We also conclude it is unlikely that the
20 drafters of EC 9.5750(7)(f) intended that an application for a telecommunication facility must
21 be denied where the sound from the telecommunication facility's noise generating equipment
22 does not exceed 45 dBA at the property line, simply because the sound from unrelated off-site
23 sources, which the applicant likely has little or no ability to sound buffer, makes the
24 composite of all noise at the property line exceed 45 dBA. We also agree with the planning
25 commission that EC 9.5750(6), which is referenced in the planning commission's findings,
26 appears to be directed at the telecommunications facility under review by the city, not on

1 sounds emitted from other unrelated sources near the property line. EC 9.5750(6) therefore
2 lends some additional contextual support for the city’s interpretation of EC 9.5750(7)(f).

3 The fifth assignment of error is denied.

4 **B. Third Assignment of Error**

5 As explained above, EC 9.5750(8) requires that ancillary facilities be located
6 underground unless a variance is approved. As defined by EC 9.0500, “Telecommunications
7 Ancillary Facilities’ include “[t]he buildings, cabinets, vaults, closures, and equipment
8 required for operation of telecommunication systems including but not limited to repeaters,
9 equipment housing, ventilation and other mechanical equipment.” Intervenor initially
10 applied for a variance from the requirement to locate its ancillary facilities above ground.
11 Intervenor submitted a noise study to demonstrate that projected noise from the proposed
12 above ground location of the ancillary equipment met the standard set out in EC 9.5750(7)(f).
13 Petitioner and other project opponents submitted evidence and testimony from an acoustical
14 engineer that challenged some of the assumptions, methodology and conclusions in
15 intervenor’s noise study. The hearings officer found the petitioner’s expert’s evidence and
16 testimony to be more credible.⁵ The hearings officer then concluded:

17 “At this point, the hearing official has two choices. First, the hearing official
18 could deny the application as not in compliance with this criterion. Second,
19 the hearing official could deny the applicant’s request for a variance pursuant
20 to EC 9.5750(9)(c) to allow placement of the facilities above ground. Placing
21 the equipment for the tower in the ground will almost certainly resolve the

⁵ The hearings officer found:

“[T]he entirety of the evidence does not demonstrate that the noise level from the tower equipment would comply with EC 9.5750(7)(f). The reports do show raw numbers that would seem to comply with this standard, but they lack some of the analyses that [petitioner’s engineer] conducted. As such, [petitioner’s engineer’s] reports are the only ones in the record to address specific aspects of noise level, * * *. As well, the hearing official is concerned that the applicant’s reports do not address several questions and formulae that [petitioner’s expert] raised. * * * [W]here the applicant’s engineers do not explain their assumptions and calculations after another qualified person has raised questions about them, the hearing official cannot conclude that those reports demonstrate compliance.” Record 248.

1 noise issue; however, there is nothing in the record that supports this
2 seemingly obvious conclusion. For this reason, the applicant must still
3 demonstrate that a revised proposal must comply with this noise criterion.
4 Thus, it is appropriate to impose a condition of approval requiring the
5 applicant to provide a new noise study. Because this is an application
6 requirement, it will be necessary for the noise study to be reviewed in the
7 same manner as a [PUD] application. The final PUD application process
8 subject to type II process with notice and a comment period is still required, at
9 which time compliance can be confirmed. * * * The hearings official believes
10 that the applicant can comply with this standard.” Record 249.

11 The hearings officer then denied the variance to locate the ancillary equipment above
12 ground. He imposed a condition of approval that requires intervenor to produce, prior to
13 final PUD approval, a new noise study for the underground facilities that demonstrates that
14 the noise from the telecommunications facility does not exceed 45 dBA at the property line.

15 In a portion of its third assignment of error, petitioner argues that the city’s deferral of
16 a determination of compliance with EC 9.5750(7)(f) to the final PUD approval stage was
17 improper. According to petitioner, the city’s decision fails to determine that it is feasible to
18 comply with the standard, and in fact concedes that there is no evidence in the record to show
19 that underground ancillary facilities comply with EC 9.5750(7)(f)’s noise standard.

20 Intervenor responds by arguing that the city’s deferral of its determination of
21 compliance with EC 9.5750(7)(f) to the final PUD stage was proper because the final PUD
22 approval process is infused with the same participatory rights as the tentative PUD phase.
23 Further, intervenor argues that the applicant’s noise study showing that aboveground
24 ancillary equipment complies with the 45 dba noise standard is substantial evidence that it is
25 “feasible” to install ancillary equipment in compliance with the noise standard. We
26 understand intervenor to argue that even if its noise study was insufficient to establish that
27 above ground ancillary equipment complies with the noise standard, that noise study is
28 nonetheless sufficient evidence to meet the lesser burden of showing that it is “feasible” to
29 meet that standard with additional evidence or measures, such as undergrounding the
30 equipment, and the noise study is therefore sufficient to support deferral.

1 In order for the city to postpone a determination of compliance with an applicable
2 criterion to a future proceeding, the city must first determine, based on evidence in the
3 record, that “compliance with the approval criterion is possible.” *Gould v. Deschutes*
4 *County*, 227 Or App 601, 612, 206 P3d 1106 (2009).⁶ In *Gould*, the Court explained that a
5 finding that compliance is “possible” is necessary in order to justify a local government’s
6 decision to approve rather than to deny an application, where additional evidence is
7 necessary to make the required ultimate finding that the criterion is satisfied or will be
8 satisfied by measures that are “likely and reasonably certain to succeed. *Id.* at 610-612
9 (quoting *Meyer v. City of Portland*, 67 Or App 274, 678 P2d 741, *rev den*, 297 Or 82 (1984).
10 According to the Court, the reason deferral must be justified by a finding that compliance
11 with an approval standard is “possible” is because if compliance is *not* possible there is no
12 point in deferring consideration of that approval standard: the application should instead be
13 denied. In other words, the purpose of finding that compliance is “possible” is not to
14 establish, even partly, that the application in fact complies or will comply with the approval
15 standard. The purpose is simply to rule out whether immediate *denial* of the application is
16 the more appropriate option.

17 The Court explained that the evidentiary showing that is required in order for the
18 local government to determine that future compliance is “possible” is not the same
19 evidentiary showing that will be required when a local government makes the required
20 ultimate finding that an approval criterion is satisfied or will be satisfied with measures that
21 are “likely and reasonably certain to succeed.” *Id.* at 610. However, the Court did not
22 elaborate on what quantum or quality of evidence is necessary to support a mere finding that

⁶ For the reasons explained in *Gould* we do not use the word “feasible” in describing either the “possible” finding that is required to defer an ultimate finding concerning an applicable criterion or the ultimate, deferred finding that the criterion is satisfied or will be satisfied by measures that are “likely and reasonably certain to succeed.” *Gould* at 610 n 3.

1 compliance is “possible,” in order to justify deferral of a determination whether the
2 application complies with an approval criterion. Presumably, it is the basic substantial
3 evidence standard: evidence that a reasonable person could rely upon, in this case to
4 conclude that compliance with the 45 dba noise standard is “possible.”

5 As explained above, the hearings officer found that intervenor had not met its burden
6 of showing that its proposed above ground facilities meet the EC 9.5750(7)(f) noise standard.
7 Nevertheless, the hearings officer concluded that he believed that placing those facilities
8 underground would “almost certainly resolve the noise issue,” and achieve compliance with
9 the 45 dba standard, and that expression of belief is the functional equivalent of a finding that
10 compliance with the noise standard is “possible.”

11 As we understand the hearings officer’s findings, he observed that if equipment that is
12 above ground comes reasonably close to meeting the noise standard, placing that equipment
13 in an underground vault will “almost certainly” meet the standard. However, he found that
14 there is no evidence in the record that supports the “seemingly obvious conclusion” that
15 placing equipment for the tower in the ground will “almost certainly resolve the noise issue,”
16 *i.e.* establish compliance with the 45 dba standard. The hearings officer apparently presumed
17 that placing the equipment in the ground is likely to reduce noise impacts compared to
18 placing the equipment above ground, and expressed the belief that a noise study of
19 underground equipment would “almost certainly” demonstrate compliance with the 45 dba
20 noise standard. The presumption that placing equipment underground is likely to reduce
21 noise impacts at the property line compared to placing the equipment above ground seems
22 like a common sense presumption. However, no party cites us to any evidence in the record
23 supporting that presumption.

24 Our resolution of the first assignment of error will require remand in any event.
25 Because that remand will provide the city an opportunity to allow the parties to submit
26 additional evidence regarding the possible validity of the hearings officer’s presumption, we

1 decline to decide here whether the lack of any evidence in the record of this appeal to directly
2 support that presumption provides another basis for remand. We do not reach this portion of
3 the third assignment of error.

4 In a portion of its third assignment of error, petitioner also argues that the city erred in
5 determining that EC 9.8320(13), which requires the city to determine that “[t]he proposed
6 development [is] reasonably compatible and harmonious with adjacent and nearby land
7 uses,” is met, where there is no noise study detailing the noise generated by the underground
8 equipment. We do not understand the hearings officer to have concluded that EC 9.8320(13)
9 requires the city to separately determine whether the noise from the facility is reasonably
10 compatible with the neighboring land uses. Rather, we understand the hearings officer to
11 have concluded that satisfaction of the noise standard set out at EC 9.5750(7)(f) will mean
12 that the telecommunications facility is “reasonably compatible and harmonious” with the
13 adjacent residential uses under EC 9.8320(13), as far as noise is concerned. Record 255.
14 Petitioner does not address that finding or otherwise explain why future satisfaction of EC
15 9.5750(7)(f) will not also satisfy EC 9.8320(13) with respect to noise from the facility.
16 Accordingly, petitioner’s argument regarding EC 9.8320(13) provides no basis for reversal or
17 remand.

18 Finally, in its third assignment of error, petitioner also argues that without a noise
19 study for the underground equipment, there is not substantial evidence in the record to
20 support the city’s determination that EC 9.8320(6), which requires the city to determine that
21 “[t]he PUD will not be a significant risk to public health and safety, including but not limited
22 to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency
23 response” is satisfied with respect to the health and safety impacts of noise levels from the
24 underground equipment. Intervenor does not respond to petitioner’s argument.

25 The planning commission found in relevant part:

1 “While the hearings official did not more specifically address noise as a health
2 and safety issue under the discretionary PUD approval criteria as the appellant
3 suggests is needed, the decision thoroughly addresses the issue of noise
4 impacts in context with other more specific governing standards and approval
5 criteria for telecommunications facilities, including federal standards.

6 “With the additional findings and modified conditions of approval addressing
7 noise impacts and requirements for undergrounding ancillary equipment
8 above, and to the extent that noise impacts may also be relevant under EC
9 9.8320(6), the Planning Commission concludes that [EC 9.8320(6)] is met.”
10 Record 16.

11 We understand the findings quoted above to take the position that noise levels from the
12 telecommunications facility do not pose a risk to public health and safety as long as the noise
13 levels do not exceed the noise standard set out in EC 9.5750(7)(f). We do not think that a
14 noise study is required in order for the city to conclude, as we understand it to have
15 concluded, that noise levels that meet the EC noise standard do not pose a significant risk to
16 public health and safety.

17 The third assignment of error denied, in part.⁷

18 The city’s decision is remanded.

19

⁷ We deny the third assignment of error in part because, as explained in the text of the opinion, we do not reach part of the third assignment of error

1 Appendix A

2 9.8090 Conditional Use Permit Approval Criteria - General. A conditional use
3 permit shall be granted only if the proposal conforms to all of the following
4 criteria:

5 (1) The proposal is consistent with applicable provisions of the Metro Plan
6 and applicable refinement plans.

7 (2) The location, size, design, and operating characteristics of the proposal
8 are reasonably compatible with and have minimal impact on the
9 livability or appropriate development of surrounding property, as they
10 relate to the following factors:

11 (a) The proposed building(s) mass and scale are physically suitable
12 for the type and density of use being proposed.

13 (b) The proposed structures, parking lots, outdoor use areas or
14 other site improvements which could cause substantial off-site
15 impacts such as noise, glare and odors are oriented away from
16 nearby residential uses and/or are adequately mitigated through
17 other design techniques, such as screening and increased
18 setbacks.

19 (c) If the proposal involves a residential use, the project is
20 designed, sited and/or adequately buffered to minimize off-site
21 impacts which could adversely affect the future residents of the
22 subject property.

23 (3) The location, design, and related features of the proposal provides a
24 convenient and functional living, working, shopping or civic
25 environment, and is as attractive as the nature of the use and its
26 location and setting warrant.

27
28 9.8320 Tentative Planned Unit Development Approval Criteria- General. The
29 hearings official shall approve, approve with conditions, or deny a tentative
30 PUD application with findings and conclusions. Decisions approving an
31 application, or approving with conditions shall be based on compliance with
32 the following criteria:

33 * * * * *

- 1 (3) The PUD will provide adequate screening from surrounding properties
2 including, but not limited to, anticipated building locations, bulk, and
3 height.
- 4 (4) The PUD is designed and sited to minimize impacts to the natural
5 environment by addressing the following:
- 6 (a) Protection of Natural Features.
- 7 1. For areas not included on the City's acknowledged Goal 5
8 inventory, the preservation of significant natural features to the
9 greatest degree attainable or feasible, including:
- 10 a. Significant on-site vegetation, including rare plants
11 (those that are proposed for listing or are listed under
12 State or Federal law), and native plant communities.
- 13 b. All documented habitat for all rare animal species
14 (those that are proposed for listing or are listed under
15 State or Federal law).
- 16 c. Prominent topographic features, such as ridgelines and
17 rock outcrops.
- 18 d. Wetlands, intermittent and perennial stream corridors,
19 and riparian areas.
- 20 e. Natural resource areas designated in the Metro Plan
21 diagram as "Natural Resource" and areas identified in
22 any city-adopted natural resource inventory.
- 23 2. For areas included on the City's acknowledged Goal 5
24 inventory:
- 25 a. The proposed development's general design and
26 character, including but not limited to anticipated
27 building locations, bulk and height, location and
28 distribution of recreation space, parking, roads, access
29 and other uses, will:
- 30 (1) Avoid unnecessary disruption or removal of attractive
31 natural features and vegetation, and
- 32 (2) Avoid conversion of natural resource areas designated
33 in the Metropolitan Area General Plan to urban uses
34 when alternative locations on the property are suitable
35 for development as otherwise permitted.

- 1 b. Proposed buildings, road, and other uses are designed
2 and sited to assure preservation of significant on-site
3 vegetation, topographic features, and other unique and
4 worthwhile natural features, and to prevent soil erosion
5 or flood hazard.
- 6 (b) Tree Preservation. The proposed project shall be designed and
7 sited to preserve significant trees to the greatest degree
8 attainable or feasible, with trees having the following
9 characteristics given the highest priority for preservation:
- 10 1. Healthy trees that have a reasonable chance of survival
11 considering the base zone or special area zone
12 designation and other applicable approval criteria;
- 13 2. Trees located within vegetated corridors and stands
14 rather than individual isolated trees subject to
15 windthrow;
- 16 3. Trees that fulfill a screening function, provide relief
17 from glare, or shade expansive areas of pavement;
- 18 4. Trees that provide a buffer between potentially
19 incompatible land uses;
- 20 5. Trees located along the perimeter of the lot(s) and
21 within building setback areas;
- 22 6. Trees and stands of trees located along ridgelines and
23 within view corridors;
- 24 7. Trees with significant habitat value;
- 25 8. Trees adjacent to public parks, open space and streets;
- 26 9. Trees located along a water feature;
- 27 10. Heritage trees.
- 28 (c) Restoration or Replacement.
- 29 1. For areas not included on the city's acknowledged Goal 5
30 inventory, the proposal mitigates, to the greatest degree
31 attainable or feasible, the loss of significant natural features
32 described in criteria (a) and (b) above, through the restoration
33 or replacement of natural features such as:

- 1 a. Planting of replacement trees within common areas; or
- 2 b. Re-vegetation of slopes, ridgelines, and stream
- 3 corridors; or
- 4 c. Restoration of fish and wildlife habitat, native plant
- 5 habitat, wetland areas, and riparian vegetation.

6 To the extent applicable, restoration or replacement shall be in compliance
7 with the planting and replacement standards of EC 6.320.

- 8 2. For areas included on the city's acknowledged Goal 5
- 9 inventory, any loss of significant natural features described in
- 10 criteria (a) and (b) above shall be consistent with the
- 11 acknowledged level of protection for the features.
- 12 (d) Street Trees. If the proposal includes removal of any street
- 13 tree(s), removal of those street tree(s) has been approved, or
- 14 approved with conditions according to the process at EC 6.305.

15 * * * * *

- 16 (8) Residents of the PUD will have sufficient usable recreation area and
- 17 open space that is convenient and safely accessible.

18 * * * * *

- 19 (12) The proposed development shall have minimal off-site impacts,
- 20 including such impacts as traffic, noise, stormwater runoff and
- 21 environmental quality.
- 22 (13) The proposed development shall be reasonably compatible and
- 23 harmonious with adjacent and nearby land uses.



**FINAL ORDER OF THE EUGENE PLANNING COMMISSION:
SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
ADDRESSING ISSUES REMANDED BY THE LAND USE BOARD OF APPEALS
(AT&T Mobility Cell Tower – Oakway Golf Course PDT 10-2 & CU 11-1)**

I. INTRODUCTION

This matter concerns the Planning Commission's consideration on remand of the application ("Application") for a Tentative Planned Unit Development and Conditional Use Permit filed by AT&T Mobility to allow construction of a 75-foot telecommunications tower on the Oakway Golf Course.

In *Northgreen Properties, LLC v. City of Eugene* and *New Cingular Wireless PCS, LLC, ___ Or LUBA ___* (LUBA Nos. 2011-099, March 5, 2012), the Land Use Board of Appeals ("LUBA") remanded the Planning Commission's 2011 decision to approve the concurrent applications for the following reasons:

- (1) The Planning Commission failed to properly consider Metro Plan Policy E.4 as an "applicable" policy with "fairly specific and mandatory direction..."**
- (2) In order to condition the approval of a later noise study showing the facility will meet the City's noise standard, the Planning Commission must make a determination that it is feasible or possible to produce such a study.**

LUBA denied all other assignments of error raised against the Planning Commission's decision. On November 28, 2013 the applicant submitted a letter requesting that the City begin remand proceedings which starts a state mandated 90-day timeframe and thus requires the City to respond to the remand no later than February 26, 2013. Due to the limited scope of the two appeal issues on remand, no public hearing was set, but the record was re-opened to allow written testimony and evidence on these two specific issues. Deliberations were initially set for February 11, 2013, but were postponed to February 25, 2013 and March 4, 2013. The applicant provided a 14-day extension to the 90 day timeframe to allow for this change which requires the City to respond to the remand no later than March 12, 2013. Prior to deliberations, Commissioner Jaworski recused himself from participating as he had been involved in opposing the application during the initial proceedings, as chair of the neighborhood association at the time. A quorum of the Planning Commission was present for the deliberations and final action on the remand.

This order is supplemental to the initial Final Order of the Planning Commission dated October 4, 2011 and replaces findings in regards to the Northgreen Properties' Eighth Assignment of Error (on page 11). It also supplements findings in regards to the Northgreen Properties' Second Assignment of Error (on pages 4-5 of the initial Final Order). The text of these supplemental findings shall take precedence over the initial Final Order.

II. APPLICABLE CRITERIA

In this case, the applicable approval criteria involved in the remanded issues include EC 9.8090(1) and EC 9.8320(1), concerning compliance with Metro Plan Policy E.4 (referred to below as "Task 1") and the 45 dBA noise standard for ancillary telecommunications facilities at EC 9.5750(7)(f) (referred to below as "Task 2").

III. RECORD BEFORE THE PLANNING COMMISSION

The record before the Planning Commission consists of the written testimony presented by appellant, applicant, and other parties to the Planning Commission on remand starting November 29, 2012 through January 25, 2013. It also includes the initial record which consists of all documents before the Land Use Board of Appeals in *Northgreen Properties, LLC v. City of Eugene and New Cingular Wireless PCS, LLC*, ___ Or LUBA ___ (LUBA Nos. 2011-099, March 5, 2012). The entire file described above was physically before the Planning Commission.

During the open record period, evidence and testimony was provided regarding the health implications of the proposed cell phone tower. The Planning Commission disregards all such evidence as the issue is beyond the scope of the remand, and under the Federal Communications Act, federal law requires that if the facility complies with the Federal Communications Commission (FCC) regulations for RF emissions, the local government cannot consider this issue further. In this case, the record and decisions below confirm that the application requirements were met with regard to FCC compliance, and that issue was not remanded by LUBA.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

On remand, after consideration of the applicable law and all argument and evidence, the Planning Commission affirms that the Application satisfies all applicable approval criteria. In the event of any conflict between the initial Final Order and these supplemental findings, the supplemental findings shall control. The Planning Commission makes the following specific findings as to each issue on remand:

Task 1: Determine whether the proposal is consistent with Metro Plan Policy E.4, as an applicable approval criterion.

Metro Plan Policy E.4 (page III-E-3): "Public and private facilities shall be designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas and promotes their sense of identity."

During remand proceedings, the Planning Commission first revisited why Policy E.4 applies specifically to this proposal. Based on LUBA's clear direction and past local precedence, the Planning Commission concludes that Policy E.4 applies to this proposed telecommunications tower because it is a "communication facility" and that term is included in the Metro Plan's definition of "key urban services and facilities" (see Metro Plan Glossary, page V-3).

Following that determination, the Planning Commission then evaluated the proposal, and for the reasons explained below, found that it is consistent with Metro Plan Policy E.4, as an applicable approval criterion. Therefore, the Planning Commission affirms its conclusion from the initial proceedings —that the Application satisfies EC 9.8090(1) and EC 9.8320(1)—albeit based upon different reasoning. The Planning Commission reaches this conclusion as described in further detail below.

Metro Plan Context

LUBA found that that Policy E.4 constitutes an “applicable” Metro Plan policy that the City must separately address, because it “provides fairly specific and mandatory direction that public facilities such as the telecommunications tower ‘be designed and located’ to ‘preserve and enhance’ desirable features of the area.”

The proper application of general Metro Plan policies to individual development applications requires careful evaluation of whether and how a particular policy applies and what it means in the context of a particular neighborhood area. It also requires that we look to the context provided by the local regulatory framework of the Metro Plan, refinement plans (in this case the Willakenzie Area Plan), and the Eugene Code regulations intended to implement those adopted land use plans. Interpreting the Metro Plan requires weighing the various components so applicable plan policies and code provisions can be applied in a practical manner to a variety of proposals.

The Metro Plan Introduction includes a section called the “Use of the Metro Plan” (page I-5). This section notes that a “...A policy is a statement adopted as part of the Metro Plan to provide a consistent course of action, moving the community toward attainment of its goals...The revised goals, objectives, and policies contained in this Metro Plan are not presented in any particular order of importance. The respective jurisdictions recognize that there are apparent conflicts and inconsistencies between and among some goals and policies. When making decisions based on the Metro Plan, **not all of the goals and policies can be met to the same degree in every instance. Use of the Metro Plan requires a balancing of its various components on a case-by-case basis, as well as a selection of those goals, objectives, and policies most pertinent to the issue at hand.**”

The Planning Commission finds that while Policy E.4 is the policy subject to additional consideration on remand, given the direction found in the Metro Plan, Policy E.4 should be interpreted in context with other requirements such as Policy G.1 (Public Facilities and Services Element) to extend key urban services and facilities in an orderly and efficient manner. It should not be used in isolation or at the expense of other relevant adopted plan provisions and policies (i.e. Policy G.1), or more detailed code provisions for example, that direct the provision of adequate urban infrastructure. Policy G.1 and its implementing provisions in the land use code are a key aspect of the City’s growth management objectives and promoting compact urban development as described in the Metro Plan.

In making an independent application of Policy E.4, when interpreted in the context of the Metro Plan, the policy should be applied in general enough terms to apply to all “key urban services and facilities” which include a variety of public and private facilities.

Refinement Plan Context

The Metro Plan introduction also notes that *"The Metro Plan is the basic guiding land use policy document, but it is not the only such document. As indicated in the Purpose section, above, the Metro Plan is a framework plan, and it is important that it be supplemented by more detailed refinement plans, programs, and policies"* (see Metro Plan, page I-6).

The Planning Commission finds that the Willakenzie Area Plan (WAP) and additional factors should also be used as context to help interpret the meaning and applicability of Metro Plan Policy E.4. As a refinement of the Metro Plan, the WAP is intended to provide direction for land use decisions in the Willakenzie area and to serve as a basis for evaluating private development proposals.

In this case, the WAP is the applicable refinement plan. The golf course is designated as Parks and Open Space and is located in the Cal Young subarea (consistent with the Metro Plan designation). One of the listed goals in the WAP is to "Provide for the protection and enhancement of land designated park and open space in the Metro Plan and Refinement plan..." It also includes goals to ensure new development is in scale and harmony with existing neighborhood character and is compatible with residential uses and natural values. The WAP does not specifically address telecommunications facilities, but can be used for context in determining how to apply Policy E.4 as it relates to areas of particular importance in the neighborhood.

The "Neighborhood Design Element" of the WAP (see WAP, pages 136-152) more specifically describes the environmental character, identity, and visual qualities in the area. This section of the WAP provides the most directly related context for how to interpret Policy E.4 of the Metro Plan, beyond the findings and conditions (e.g. requirements for landscaping and perimeter trees) already applied to the proposal under the PUD/CUP criteria for compatibility and screening purposes. The stated purpose of the "Neighborhood Design Element" of the WAP is to:

- Preserve the character of the existing neighborhood;
- Improve the appearance of commercial and industrial development;
- Establish and enhance identifiable features in the neighborhood.

The element describes the particular importance of (and includes policies and proposed actions for): Entrance Corridors; Neighborhood Gateways; Commercial Area Design; Willamette Greenway; Natural Resource Protection; Historic Preservation; and Gillespie Butte Site Development Standards. The golf course is shown on several maps in this element but is not identified as an entrance corridor or neighborhood gateway, nor is the golf course specifically addressed in the element. The proposal does not negatively impact any of the areas described above as being of significant importance. This language provides further clarification of the important elements of what defines this neighborhood's sense of identity. In that way, the neighborhood refinement plan helps to further define the proper application of the more general Policy E.4 in the Metro Plan.

The "Neighborhood Design Element" approaches the preservation and enhancement of these features by recommending landscaping along roads as a means to beautify right of way, incorporation of trees and landscaping in areas considered neighborhood gateways. Additionally, it includes siting and

landscaping requirements for commercial development which also address landscape screening recommendations for utilities and parking areas.

Evidence was provided during the remand proceedings from both parties to identify the existing neighborhood character in regards to applying Policy E.4. Opponents of the tower characterized the area as a quiet residential neighborhood surrounding a golf course, while the applicant points to the commercial uses on the golf course and existing neighborhood features such as utility poles and ball field lights as part of the neighborhood character.

The Planning Commission finds that all of these characteristics help to define the neighborhood, but that the open space provided by the golf course is an overarching, character-defining element of the area. Protection of designated open space areas is a defined goal in the WAP. If the golf course (as open space) is given similar consideration as to Entrance Corridors, Neighborhood Gateways and Commercial development, additional landscaping on and around the golf course is a treatment that can be used to help "establish and enhance" the open space as a desirable feature of the neighborhood. The WAP therefore provides context that landscaping can be used to protect and enhance areas important to the neighborhood from a visual perspective.

Telecommunications Standards

LUBA noted that the provisions initially cited by the City did not appear to fully implement Policy E.4. On remand, the Planning Commission notes that in addition to the PUD and CUP standards cited in the initial decision(s), the City's Telecommunications Standards at EC 9.5750 are key component implementing the Metro Plan and refinement plan (and the Federal Telecommunications Act), while balancing the protection of neighborhood views and livability with the need to provide a key urban service. The stated purpose of the telecommunications standards is to ensure that telecommunication facilities are located, installed, maintained and removed in a manner that:

- Minimizes the number of transmission towers throughout the community;
- Encourages the collocation of telecommunication facilities;
- Encourages the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers;
- Recognizes the need of telecommunication providers to build out their systems over time; and
- Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the community, and minimize public inconvenience and disruption.

The City's Telecommunications Standards at EC 9.5750 address a broad range of concerns related to provision of telecommunications service such as requiring viewshed protection (including protections of views of buttes), height limitations, setback minimums, buffering requirements and color requirements. These standards were met by the application and help to balance the need to protect views and livability of the neighborhood with the need to provide a key urban service.

PUD and CUP Requirements

In the initial decision, the Planning Commission relied solely on reference to CUP and PUD criteria as the implementing provisions of Policy E.4. LUBA concluded that the cited provisions did not appear to fully

implement the policy. The Planning Commission finds that the PUD and CUP provisions still have value in at least implementing a part of the policy and also find that an extensive landscaping condition that was included in response to one of the PUD criteria also helps implement Policy E.4 when applied separately to this proposal in the context of the regulatory framework. Acknowledging that the PUD and CUP may not fully implement or address the requirements of Policy E.4, these approval criteria nonetheless ensured that subjective issues such as screening, natural resource issues and compatibility were addressed above and beyond the more basic telecommunications standards.

In response to the PUD standards for screening at EC 9.8320(3), the Planning Commission imposed a condition of approval that requires the applicant to hire a landscape architect to work with 47 adjoining properties that may have a view of the telecommunications tower, to design screening that meets the owner's needs. The condition will result in the planting of approximately 100 new trees if adjoining property owners want the screening (the full text of the condition and a related map are included as part of the initial Final Order of the Planning Commission, dated October 4, 2011). The Planning Commission relied on this condition to ensure sufficient screening, and now, also more specifically as a means to implementing the intent of Policy E.4. Implementation of this condition, in addition to those factors described above, provides further evidence of compliance with Policy E.4.

Application of Metro Plan Policy E.4

Based on the findings and context above, Policy E.4 now can be interpreted expressly in three basic elements:

Is a cell tower a "public or private facility" subject to inclusion under Policy E.4.? As described above, the Planning Commission finds that the cell tower is a private telecommunication facility that should be considered under the Metro Plan definition of key urban series or facility. Therefore, Policy E.4 applies.

What is meant by "designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas"? Given the broad range in the types of facilities covered by Policy E.4, the quoted clause cannot mean that every new facility must be designed and located in a manner that both preserves and enhances every desirable feature of the neighborhood. This is especially true because there are other provisions in the Metro Plan and WAP that require attention to competing concerns. In this case, the proposed facility "preserves" the desirable features of the neighborhood by meeting both the objective telecommunications standards and subjective PUD and CUP standards. In addition, the proposal incorporates a landscaping condition designed to shield it from view and mitigate for any visual impact (none of which adversely impacts the features that the WAP considers significant such as the Greenway, Gillespie Butte, etc.). As a telecommunications facility, it enhances the one neighborhood feature it is designed to address, communication.

What is meant by "promote their sense of identity"? Given the broad range in the types of facilities covered by Policy E-4, the quoted clause cannot mean that every new facility must "promote the sense of identity" of every desirable feature of the neighborhood. The application of the policy must be done in the context of other Metro Plan provisions. The WAP lists the features considered significant and the tower has no negative affect on those. To the extent the

desirable feature of this area is the open space of the golf course, height standards and extensive landscape buffering will ensure the tower is not so prominent as to have some other effect on the neighborhood identity.

For the reasons set forth above, the Planning Commission affirms its prior approval on remand, with additional findings of compliance concerning Policy E.4, under the PUD and CUP approval criteria at EC 9.8090(1) and EC 9.8320(1).

Task 2: Determine whether it is “possible” for the applicant to produce a noise study for the underground equipment, showing the facility will meet the City’s noise standards.

In the initial local proceedings, the Hearings Official and Planning Commission denied a variance request by the applicant to locate the ancillary facilities above ground (which will require the facilities to be placed underground). A condition of approval was also imposed, requiring the applicant to produce a new study for the underground facilities that complied with the City noise standards. This noise study would be reviewed for compliance with noise standards at the time of Final PUD application, which occurs following a tentative PUD approval.

LUBA found that in order for the City to postpone a determination of compliance with an applicable criterion to future proceedings (in this case the Final PUD process), the City must first determine based on evidence in the record, that compliance with the approval criterion is possible. LUBA noted that while it seemed like a common sense presumption that placing equipment underground is likely to reduce noise impacts, there was no evidence to support the City’s conclusion. LUBA noted that the remand will provide the opportunity for parties to submit evidence regarding the validity of the Hearings Official’s presumption that such a noise study would almost certainly resolve the issue.

The Planning Commission finds that the task in this case is not to analyze the noise study for compliance with applicable noise standards during this remand, but rather to determine that is “possible” for the applicant to demonstrate compliance during the future Final PUD process. Based on the previous condition of approval in this application, compliance with the noise standard will be reviewed at the time of the Final PUD application process.

In these remand proceedings, AT&T provided two noise reports prepared by a Professional Engineer from SSA Acoustics, LLP that addresses the equipment sound levels and includes several noise mitigation measures that could be implemented on the site to comply with the noise standard (see SSA Acoustical Reports dated November 29, 2012 and January 11, 2013). Additionally, the applicant addressed the opposing reports in the final rebuttal dated January 25, 2013.

Arthur Noxon, Acoustical Engineer, provided letters responding to both of the applicant’s noise reports (see letters dated December 29, 2012 and January 18, 2013). Mr. Noxon’s letters assert several problems with the applicant’s noise analysis and proposed noise mitigation. His letters conclude that there is no evidence in the record that it is possible that the sound standard can be met.

Since the applicant has produced and submitted a noise study stamped by a licensed professional who addresses the noise standard, and also provides that additional mitigation could be implemented to


further reduce noise levels and thereby ensure the applicable standard will be met, the Planning Commission finds that it is "possible" to produce a noise study that will comply with the City's noise standards in the future. While Mr. Noxon's testimony asserts there are issues with the existing study provided, the Planning Commission finds that there is no reason to believe that the applicant would not be able to address the issues Mr. Noxon raises during the future Final PUD process, if they are found to be valid. The noise study will be substantively reviewed for compliance with the noise standard during a future Final PUD process; conditions of approval could also be applied at that time to require any mitigation needed to ensure compliance.

For the reasons set forth above, the Planning Commission affirms its prior approval on remand, with additional findings of compliance concerning the noise standard at EC 9.5750(7)(f).

V. FINAL CONCLUSION

For the foregoing reasons, and based upon the identified evidence and argument in the record, the Planning Commission finds that the Application satisfies the limited criteria at issue on remand.

Therefore, the Planning Commission denies the assignments of error, and affirms the Hearings Official's conclusion to approve the Tentative Planned Unit Development and Conditional Use Permit (PDT 10-2 and CU 11-1), subject to the conditions identified in the Planning Commission's Final Order dated October 4, 2011.

 MARCH 4, 2013

Randall S. Hledik, Chair
Eugene Planning Commission

Date