

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

Regarding an application by Harmoni Towers for approval of) **FINAL ORDER**
a conditional use permit for a 154-foot tall communications)
tower south of the intersection of SE Pagh and McCabe) **File No. Z0037-25-C**
Roads in unincorporated Clackamas County, Oregon) **(Verizon Dover)**

A. SUMMARY

1. Harmoni Towers (the “applicant”) requests approval of a conditional use permit to build a wireless communications facility including a 154-foot tall steel self-supporting lattice tower plus antennas and ground mounted equipment cabinets. Verizon Wireless will lease space to locate its antenna on the tower and for ground equipment. The applicant designed the tower and lease area to accommodate antennae and equipment from two additional wireless providers.

a. The applicant proposes to build the facility on a leased 2,500-square foot (50- x 50-foot) area near the southeast corner of a roughly 39-acre property located south of where SE Pagh Road turns north and becomes SE McCabe Road. The legal description of the parcel is known as tax lot 00100, Section 04A, Township 3 South, Range 5 East, of the Willamette Meridian, Clackamas County (the “site”). The site is currently vacant and the closest home is located approximately 250 feet away, to the south of the proposed tower.

b. The site and abutting properties to the east and west are zoned TBR (Timber). Properties to the north are zoned RRFF-5 (Rural Residential Farm Forest, five-acre minimum lot size). Properties to the south are zoned FF-10 (Farm Forest, ten-acre minimum lot size).

2. Hearings Officer Joe Turner (the "hearings officer") conducted a public hearing to receive testimony and evidence about the application. County staff recommended that the hearings officer approve the application subject to conditions of approval. See the Staff Report and Recommendation to the Hearings Officer dated March 20, 2025 (the "Staff Report"). The applicant accepted the findings and conditions without exceptions. Three persons testified orally and other persons testified in writing regarding the application. The only contested issue in the case is whether the applicant can be required to provide a 14-day fuel supply in order to ensure that wireless communications remain available in the event of a power outage, especially outages caused by wildfire, earthquakes, or other natural disaster.

3. The hearings officer concludes that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicant complies with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use complies in fact with those

standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order, based on the findings and conclusions in this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on March 27, 2025. All exhibits and records of testimony are filed at the Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation (Exhibit 7).

a. The applicant proposed to construct a 154-foot tall self-supporting lattice tower with wireless communication antennae and associated ground mounted equipment within a 50- x 50-foot lease area surrounded by a seven-foot high sight obscuring fence. The tower can accommodate up to 12 antennae, allowing co-location by three separate wireless providers, including the proposed Verizon facilities. There are no existing towers within a 1.2 mile radius of the site.

b. The site is zoned TBR. There are steep slopes associated with a stream in the northern portion of the site. However, the proposed lease area and access are located in the southeast corner of the site and will not impact the slopes or stream.

c. As shown in the applicant's photo simulations, the majority of the lease area is surrounded by existing mature trees that will screen the ground mounted equipment and the lower portions of the tower. However, there are no trees in the area between the fenced compound and Motejl Road. Therefore, additional landscaping is needed north of the access road between the compound and the road.

d. The applicant will be required to maintain a fuel break around the facility as required by the Code.

e. Neighbors requested that the applicant be required to provide a generator with a 14-day fuel supply in order to provide ongoing wireless coverage during power outages. The applicant may need to increase the size of the lease area compound to accommodate a large fuel tank and future co-located ground mounted equipment. The applicant could increase the size of the lease area to 75- x 75-feet and still meet all applicable approval criteria.

3. Mike Unger testified for the applicant. He accepted the findings and conditions in the Staff Report without objections.

a. The proposed facility will not pose a significant fire risk. The applicant will be required to maintain a primary fire zone around the site and provide an on-site emergency vehicle turnaround, gravel driveway, and paved apron access onto SE Wildcat Mountain Drive at a location that meets sight distance requirements. The tower, generator, and all associated equipment will be located on concrete pads within a gravel surfaced compound.

b. Harmoni Towers will own the tower. Verizon will lease space on the tower and equipment area as a tenant of Harmoni Towers. The tower and equipment area are designed to allow other wireless providers to collocate on the tower, which will limit the need for additional towers in the area.

b. The proposed tower is needed to improve a critical gap in wireless communication service in the area. The site is located on a ridgetop that allows extended coverage along SE Wildcat Mountain Drive.

c. The applicant proposed to include a generator with self-contained fuel tank to provide backup power in the event of an outage. The applicant can provide a 14-day fuel supply if required.

d. The tower is an unmanned passive use that will generate an average of one vehicle trip per month.

e. The applicant's noise study demonstrates that the use will comply with applicable regulations. The applicant will update the study to include citations to state noise standards as required by the conditions of approval.

4. Pat Erdenberger, chair of the Hoodland CPO, testified in support of the proposed tower and improved wireless coverage in the area. She noted that power outages in this area can last for days or weeks. Therefore, the applicant should be required to provide a 14-day fuel supply for the generator to ensure that wireless communication is available in the event of a wildfire, earthquake, or other disaster. The generator serving the existing tower in the area runs out of fuel after 24-hours.

5. Gerald (Murph) Murphy summarized his written testimony (Exhibit 6). He is a member of the Mt. Hood Corridor Wildfire Committee. This area lost all communications when the power failed during the Bull Run fire. Wireless communications are essential in the event of another fire or other disaster so that residents can call for help or get information about where to go if they need to evacuate. A generator is essential to provide power for continuous operation of the tower when the power fails. The applicant's plans include a generator but no fuel tank.

3. At the conclusion of the public hearing, the hearings officer held the record open for one week, until 4:00 p.m. on April 3, 2025, for the applicant to submit a final argument.

C. DISCUSSION

1. ZDO Section 406 timber district

Section 406 regulates the Timber District, which includes the subject property. This application is for a Wireless Telecommunication Facility. Table 406-1 identifies that use as subject to Section 835. In Section 835, Table 835-1 further identifies that Level Two Wireless Telecommunication Facilities in the TBR District are a Conditional Use subject to 406.05(A)(1).

Finding: The proposed use is a Conditional Use in the Timber District. **This criterion is met.**

406.05(A)(1): The use may be allowed provided that: (a) The proposed use will not force a significant change in farm or forest practices on surrounding lands devoted to farm or forest use; and (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

Finding: The applicant is proposing to upgrade and use an access road to provide access to SE Wildcat Mountain Drive from the project site, a 50 by 50 foot fenced compound. The proposed access road also skirts the eastern property boundary of the site, leaving the majority of the 38 acre site to be used for farm and forest practices. As the applicant states in the application:

The proposed footprint for the wireless facility is 2,500 square feet (50' x 50'), and all equipment will be contained within a fenced boundary. The compound is located near the existing access road (Motejl Rd.) along the eastern property boundary, which minimizes impacts on the parcel and future forestry activities.

This wireless communication facility will not increase fire hazards or the cost of fire suppression. The facility is unstaffed, and a technician will visit the site approximately once a month. The ground-mounted cabinets and emergency generator are placed on a concrete pad. The applicant will maintain both a primary and a secondary fuel-free fire break surrounding the structure in accordance with section 406.08 of the Clackamas County Zoning Ordinance. The primary and secondary fire breaks are illustrated in the zoning drawings (Exhibit 1). Additionally, there will be a gravel vehicle turnaround adjacent to the compound.

The wireless communication facility is a critical utility essential for public health and safety. It provides cellular reception for

emergencies, first responders, and public safety officials. As discussed in Section III, "Coverage Needs and Site Selection," this communication facility will address Verizon Wireless's significant regional coverage gap.."

Area residents argued that the applicant should be required to provide a 14-day fuel supply for the generator in order to maintain communications in the area during power outages, especially during wildfires or other natural disasters. While the hearings officer understands those desires and strongly encourages the applicant to do so, nothing in the Code authorizes the County to impose such a requirement. The applicant is only required to ensure that the use will not increase the risk of fire, the cost of fire suppression, or the risk to fire suppression personnel. The Code does not require the applicant to reduce such hazards or ensure continuous communication.

As conditioned, this criterion can be met.

406.05(H)(4):

H. Utility and Solid Waste Disposal Facility Uses

...

4. *Television, microwave, and radio communication facilities and transmission towers, provided the base of such structure shall not be closer to the property line than a distance equal to the height of the tower.*

Finding: As demonstrated by the submitted site plan and narrative, the proposed tower is further from the property lines than a distance equal to the height of the tower. The tower is proposed as a 154 foot tower and the closest property boundary is 161 feet to the east of the tower. **This criterion is met.**

406.08(A)(1): *A primary fuel-free break area shall be maintained surrounding any new structure, including any new dwelling.*

- a. *The primary safety zone is a fire fuel break extending a minimum distance around structures. The minimum distance is established by Table 406-2 and Figure 406-1. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the structure. As slope increases, the primary safety zone shall increase away from the structure and down the slope at a 45-degree angle*

from the structure, in accordance with Table 406-02 and Figure 406-1.

Finding: As demonstrated by the submitted site plan, the proposed telecommunication tower compound can comply with the primary safety zone fire fuel break distance around the structure. The applicant is proposing a 50- x 50-foot compound that on flat ground; thus the 30-foot primary fuel-free break area will be primarily contained within the compound, which will be gravel surfaced and devoid of vegetation. As the applicant states, the proposed equipment within the compound will be on a concrete pad and there is an emergency vehicle turnaround. Therefore, this design will meet the 30-foot primary safety zone requirement.

A condition of approval requires compliance with this criterion. The condition of approval also requires the applicant to submit a signed and notarized form acknowledging compliance with the fuel-free fire break standards prior to Planning and Zoning approval of development permits for the new structure.

As conditioned, this criterion can be met.

406.08(A)(2): *For any new dwelling, a secondary fuel-free break area shall be cleared and maintained on land surrounding the dwelling that is owned or controlled by the owner.*

a. The secondary fuel-free break extends around the primary safety zone required pursuant to Subsection 406.08(A)(1). The goal of the secondary fuel-free break shall be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel-free break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed. The minimum width of the secondary fuel-free break shall be the lesser of:

- i. 100 feet; or*
- ii. The distance from the dwelling to the edge of land surrounding the dwelling that is owned or controlled by the owner.*

Finding: The structure is not a dwelling. Therefore, a secondary fuel-free break area is not required. **This criterion is not applicable.**

406.08(A)(3): *Structures within a River and Stream Conservation Area or the Willamette River Greenway shall be sited consistent with the requirements of Sections 704 and 705, respectively. Structures shall be sited so that a primary safety zone can be completed around the structure outside of the river or stream corridor setback/buffer area. The area within the river or stream setback/buffer area shall be exempt from the secondary fuel-free break area requirements.*

Finding: The site is not located within a River and Stream Conservation Area. There is an unnamed creek beginning along the northern part of the 38-acre property. However, the creek is not a regulated stream. As demonstrated by the submitted site plan, the proposed structure will be more than 500 feet south of the mean high water line of the creek, which easily allows the primary safety zone to be completed around the structure outside of any stream setback/buffer area. The subject property is not located within the Willamette River Greenway. **This criterion is met.**

406.08(A)(4): *The fuel-free break standards shall be completed and approved prior to issuance of any septic, building, or manufactured dwelling permits. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner.*

Finding: A condition of approval requires compliance with this criterion. The condition of approval also requires the applicant to submit a signed and notarized form acknowledging compliance with the fuel-free fire break standards prior to Planning and Zoning approval of development permits for the new dwelling. **As conditioned, this criterion can be met.**

406.08(B): *B. Additional Fire-Siting Standards for New Dwellings:*

Finding: The proposal is not a dwelling. **These criteria are not applicable.**

406.08(C). *Compatibility Siting Standards: The following compatibility siting standards shall apply to any new structure, including any new dwelling, approved pursuant to a land use application based on standards in effect on or after April 28, 1994: 1. Structures shall be sited on the subject property so that: a. They have the least impact on nearby or adjoining forest or agricultural lands; b. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized; c. The amount of forest lands used to site access roads, service corridors, and structures is minimized; and d. The risks associated with wildfire are minimized. 2. Siting criteria satisfying Subsection 406.08(C)(1) may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads, and siting on that portion of the subject property least suited for growing trees.*

Finding: The proposal is not for a dwelling. The structure is proposed inside a 50x50 foot compound located approximately 161 feet from the nearest property boundary. Therefore, the impact from the proposed use is limited to a 50 x 50 foot area and associated access road. The plan has been drawn up to have the access road close to the property boundary in order to minimize impacts to forest uses on the remainder of the site. The property is over 38 acres in size and is surrounded by large parcels that are predominantly in rural residential use. Therefore, although the facility will be the only structure on the property, and is thus not clustered with other structures on the subject site, the location of the proposed tower minimizes impact to farm and forest use by limiting project impacts to an area along the eastern property boundary. The property to the south has an existing house within approximately 300 feet of the tower. Thus the

structure is clustered with existing development to the south to reduce the impact to farm and forest uses. *These criterion are met.*

2. ZDO Section 1203.02 CONDITIONAL USES

1203.02: Submittal Requirements

Finding: This application includes a site plan, application fee, a completed land use application form, and a narrative addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All of the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on January 28, 2025. The application was deemed complete on February 12, 2025.

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

Finding: The subject property is located in the Timber (TBR) zoning district. ZDO Section 406, Table 406-1 controls land uses in the underlying TBR zone and identifies that wireless telecommunication facilities are subject to Section 835. Wireless telecommunication facilities are listed as a conditional use in Table 835-1. The proposed use is a conditional use in the underlying zoning district. **This criterion is met.**

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

Finding: The subject property is approximately 38 acres in size with surrounding parcels in rural residential use. The structural development and access are concentrated along the southeastern property boundary in order to minimize impacts to surrounding forest uses. The access road utilizes a cleared area identified as a county road on surveys from the 1950s and 1960s. The road is privately maintained and has a spur going into the subject property near where the tower is proposed.

There are no known improvements or natural features near the location of the proposed tower. The site is large enough to provide a location for the tower on flat land and allow for future farm or forest uses on the remainder of the site. The location of the subject site is more than a mile from any existing towers according to the applicant and FCC report.

As the applicant states:

Verizon seeks to address a lack of coverage in rural Clackamas County. The proposed site location was chosen to address a significant voice and data coverage and capacity gap for customers in the area. Exhibit 2 is a Verizon Radio Engineering Analysis describing the current coverage deficiencies and how the proposed wireless facility will address Verizon's coverage needs.

Verizon constructs wireless communication facilities at carefully selected locations. The need for service was determined by market demand, coverage, and capacity requirements for a specific geographic area, as well as the need to provide continuous coverage from one site to another.

The selected site was chosen as the least intrusive option. It is situated on a ridge between Pugh Road and Wildcat Mountain Drive, enabling effective coverage along both roadways without requiring multiple locations to achieve the same coverage. Access to utilities, including power and telecommunications, is available from Wildcat Mountain Drive via Motejl Road.

Therefore, impacts and perceived impacts from the proposed wireless telecommunication tower are minimized while providing infrastructure to fill a gap in cell phone coverage.

This criterion is met.

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

Finding: County transportation staff reviewed the proposal for compliance with 1007.07. Those findings are included below. Additionally, the comments from the Transportation and Engineering Program related to 1007.07 state “1007.07.B3, the use qualifies for an exemption regarding transportation facilities concurrency.” Transportation staff suggested a condition of approval requiring “Written approval from Sandy Fire District #72 for the planned access, circulation, fire lanes. The approval shall be in the form of site stamped and signed by the Fire Marshal.” **This criteria can be met as conditioned.**

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

Finding: The site is in the Timber (TBR) districts. Permitted uses in the TBR district are included in ZDO Section 406. This criterion does not require the proposed use to not have any impacts, rather the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses. The proposed location of the wireless telecommunication tower and the use of the property for a tower, will not substantially limit adjacent properties from continuing as timber properties or preclude the use of adjacent properties for timber use, or rural residential use.

The applicant states:

Response: The proposed telecommunication facility will not change the area's character or negatively impact the use of surrounding properties. It is a passive use, similar to other utility facilities, and will be unstaffed. A

technician will visit the site approximately once a month for maintenance. The facility is designed to ensure noise levels will not exceed County standards. A noise study is included as Exhibit 7. Additionally, timber and other resource activities in the area will remain unaffected.

This criteria is met.

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

Finding: Staff has reviewed this proposal relative to the Comprehensive Plan and the application and finds the goals and policies from the following Sections apply and are adequately addressed by the applicant:

The County's Comprehensive Plan Goals and Policies are implemented through the Development Code. The conditional use permit narrative findings demonstrate that the proposal is consistent with the relevant code provisions. The proposed wireless communication facility aligns with the goals and policies outlined in the Clackamas County Comprehensive Plan in several key ways:

Chapter 2 - Citizen Involvement: The proposed use incorporates citizen involvement processes, including a public hearing that allows for community comments and feedback. This ensures that community members play a significant role in shaping the proposal and addressing their concerns.

Chapter 3 - Natural Resources and Energy: The proposed facility is designed to have a minimal environmental footprint. Thorough environmental assessments have been conducted to select a location that avoids sensitive natural resources. This includes preserving existing forested areas, utilizing existing roads, and minimizing utility trench routes.

Chapter 4 - Land Use: Our project complies with the county's land use policies by selecting a site that is appropriately zoned and compatible with surrounding land uses. The facility's design adheres to all zoning regulations and integrates seamlessly into the existing landscape, minimizing visual impact and preserving the area's character.

Chapter 5 - Transportation System Plan: The proposed site is strategically located to ensure minimal disruption to the local transportation network. It is situated on an existing road, with trips to the site being limited to maintenance purposes only, resulting in little to no impact on existing transportation systems. Additionally, the facility will enhance connectivity

and support the county's broader transportation goals by improving wireless communication infrastructure.

Chapter 7 - Public Facilities and Services: Our facility will improve public safety and emergency response capabilities by providing enhanced wireless communication services. This aligns with the county's objective to ensure that public facilities and services are efficient, effective, and resilient.

Chapter 8 - Economics: The project will have a positive economic impact by creating jobs during both the construction and operation phases. Moreover, improved wireless infrastructure will attract businesses and support economic development in the region, contributing to the county's economic growth objectives.

Chapter 9 - Open Space, Parks, and Historic Sites: We have carefully selected a location that avoids interference with open spaces, parks, and historic sites.

Chapter 11 - The Planning Process: Throughout the planning process, we have adhered to the county's rigorous procedures. Our comprehensive approach includes a detailed site analysis, engagement with planning officials, and strict compliance with all regulatory requirements, ensuring a thorough and transparent process.

In conclusion, our proposed wireless communication facility is designed to align with the Comprehensive Goals and Policies of Clackamas County.”

The hearings officer finds that Policy 3.I.1 is met with the placement of the tower to minimize disturbance to forest lands; 4.OO.11 is met through this land use application and 7.C.1 is met through the erosion control and stormwater management proposed by the applicant. **These criteria are met.**

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

Finding: The hearings officer reviewed compliance with ZDO Section 800 and 1000, as applicable. The findings are included below.

3. ZDO Section 835 wireless telecommunication facilities

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

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

Finding: “Level Two Wireless Telecommunication Facility not included in any other category in Table 835-1” is listed as a Conditional Use in the Timber zoning district. Footnote 1 of the Table applies, and states that in the Timber district, the use is subject to Subsection 406.06(A)(1). **This criteria is met.**

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

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

Finding: The applicant provided a map showing that the proposed tower will fill coverage gaps in the area. There are no existing support structures in the area that will allow collocation of the proposed antennae and provide the needed coverage. As the applicant states “There are no existing support structures in the area that meet the minimum antenna height necessary (152’) to meet Verizon’s needs. Exhibit 4 contains the results of the FCC’s Antenna Structure search results. There are no support structures within two kilometers of the proposed location. **This criteria is met.**

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

Finding: The proposed tower is not inside the Portland Metro UGB. **This criteria is not applicable.**

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

Finding: As stated by the applicant *"The proposed tower will be engineered to accommodate a minimum of two future collocations, including their full complement of antennas, coax, and ancillary equipment."* As seen on sheet RF1, the tower is designed to have three antenna in each of the three sectors for a total of nine antenna and the ability to have two additional carriers collocate on the tower with enough room for the cables to meet this criteria. **This criteria is met.**

- d. *The tower shall be painted or coated in a manner that blends with the surrounding area. The finished coloring shall result in a non-reflective surface that makes the tower as visually unobtrusive as possible unless state or federal regulations require different colors.*
- e. *If the proposed wireless telecommunication facility requires approval of a conditional use permit, placement of the tower in an alternate location on the tract may be required, if the alternate location would result in greater compliance with the criteria in Section 1203, Conditional Uses, than the proposed location. In order to avoid relocating the proposed tower, the applicant shall demonstrate that the necessary wireless telecommunication service cannot reasonably be provided from the alternate location.*

Finding: As stated by the applicant *"The tower will be made of non-reflective brushed steel, similar to other utility structures. Photosimulations of the proposed tower are attached as Exhibit 10."* The photosimulations confirm that the tower will blend in with surrounding tree cover to meet these criteria. There is no better location on the subject tract. The proposed location avoids steep slopes and waterways. **These criteria are met.**

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

Finding: As stated by the applicant “Verizon uses fully enclosed equipment cabinets on a concrete pad. The cabinets are painted in a neutral, non-reflective color. They will be within a fenced compound with privacy slates. Page A-3 Elevations of the zoning drawings (Exhibit 1) show the fence with privacy slates.” Review of the application materials confirm that the equipment will be enclosed within a fence that has privacy slats on the gate (sheet A-7). **This criterion is met.**

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

Finding: As stated by the applicant “The FAA has determined that the proposed facility will not be an air hazard, and lighting will not be required. The FAA analysis is attached as Exhibit 5.” No lighting is proposed. **This criterion is met.**

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

Finding: The applicant provided details in the drawing sheet A-7 that shows privacy slats on the gate of the compound and the remainder of the compound has two-inch galvanized chain link fence materials. The fence is proposed at seven feet in height. Thus a sight-obscuring fence at least six feet in height could be achieved with additional privacy slats in the entire chain link compound. **This criterion can be met as conditioned.**

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

Finding: The applicant provided details in the drawing sheet LS-1 that shows the existing tree growth in the vicinity of the project. There are existing trees to the north, west, and south of the project area. There are no trees shown on the site survey in the area

between the fenced compound and Motejl Road. Therefore, additional landscaping is needed north of the access road between the compound and the road in order to provide adequate screening of the facility. The narrative indicates that *“The landscaping is shown on sheet L-1”*. Staff reviewed the sheets provided and found no L-1, but did find sheet LS-1 that shows the existing trees in and around the site. The photosimulations looking west include the addition of evergreen trees around the leased compound area. Sheet A-2 identifies at least two trees *“within proposed lease area and path of access road to be removed.”* Therefore, additional information is needed on what is actually proposed to provide the landscaping necessary to meet 835.06(D)(5) and 835.06(D)(4). A balance between the fire safety fuel-free break areas and the landscaping will be needed so the trees shall be spaced to meet the requirements for the primary fuel-free area that requires *“Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees.”* **This criterion can be met as conditioned.**

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

Finding: As stated by the applicant *“The facility complies with the standards of the Oregon DEQ. A noise study demonstrating the facility’s compliance is attached as Exhibit 7.”* The noise study and found that it cites the Clackamas County code requirements for noise and does not identify the Oregon DEQ standards and how those standards are met. **This criterion can be met as conditioned.**

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

Finding: As stated by the applicant *“The WCF complies with the dimensional standards of the TBR district. The proposed tower will be 152’ in height and 161’ 11” from the nearest property line. No existing support structures are within 2,650’ of the site. Exhibit 4 contains the FCC’s Antenna Structure search results.”* Staff reviewed the FCC’s Antenna Structure search results and agree that there do not appear to be any towers within 2,650’ of the proposed tower. **This criterion is met.**

4. ZDO Section 1000 Development standards

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

Finding: Sections 1002, 1003, and 1004 are not applicable to the proposed site on the subject property.

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

Finding: The proposal does not involve the construction of any buildings; Subsection 1005.02 and 1005.03 are not applicable. Subsection 1005.04 provides requirements for outdoor lighting; no outdoor lighting is proposed. This section is not applicable to this specific development. **This criteria is not applicable.**

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

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

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

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

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

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

Clackamas County is the surface water management authority for the area including the subject site and provided the following condition of approval:

A storm water management plan, Roadway Standards Chapter 4 shall be provided when 10,000 square feet or more of impervious is developed. Adequate conveyance of stormwater runoff shall be provided for the site and access road.

This criterion can be met as conditioned.

D. 1007 Roads and Connectivity.

1007.01 General provisions

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

...

- D. Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards.*

1007.07.A Transportation Facilities Concurrency applies to the following development applications, with exceptions: design review, subdivisions, partitions, and conditional uses.

Finding: The Clackamas County Development Engineering division reviewed the application materials and provide the following comments:

1. SE Wildcat Mountain Drive is classified as a rural minor arterial. Access from SE Wildcat Mountain Drive is proposed from an existing non-maintained, substandard road identified as Motejl Road. Access to the communication facility extends north from SE Wildcat Mountain Drive approximately 1,370 feet. The

applicant will be required to upgrade the roadway as necessary to provide a minimum 12-foot wide gravel surface per Roadway Standards Drawing R100. The Clackamas County Roadway Standards requires the first 20 feet of an access onto a paved county road to be paved, per Standard Drawing D500.

2. Section 240.2(b) of the Clackamas County Roadway Standards requires that accesses serving development that generate fewer than 21 average daily vehicles trips provided adequate stopping sight distance. The minimum stopping sight distances for the access on SE Wildcat Mountain Drive will require 495 feet to the east and west. It appears that with some vegetation clearing within the right-of-way, adequate stopping sight distance is feasible.
3. Based on ZDO subsection 1007.07.B3, the use qualifies for an exemption regarding transportation facilities concurrency.

As conditioned, these criteria can be met.

E. 1009 Landscaping.

Finding: There is no minimum required percentage of landscaping for properties in the TBR district; however, landscaping is required pursuant to Subsection 835. Section 835 requires the trees, shrubs, and ground cover that are reflective of the natural surrounding vegetation in the area.

The applicant is proposing to use the existing forest trees to serve as landscaping according to sheet LS-1. For the landscaping screen to utilize the existing trees surrounding the leased area, the landscaping area should extend 25 feet outside of the compound to ensure the landscaping screen is maintained and thinned to reduce fire potential. Using the existing trees within the landscaping screen will reflect the natural vegetation in the area. However, they should be thinned, pruned, and maintained so that fire will not spread between crowns of trees to reduce fire fuel as required by ZDO 406. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels within a 25 foot landscaped strip shall be removed. The planting and maintenance required by 1009.10 are met with the utilization of the existing trees and the removal of undergrowth. Additional trees and shrubs shall be planted to the east of the compound to provide the required screening and buffering. **As conditioned, this criterion can be met.**

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

Finding: The applicant plans to use the existing non-maintained, substandard road identified as Motejl Road to access proposed development.

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

The development proposal will operate as an unstaffed facility. There is a need to accommodate at least one vehicle for occasional maintenance and inspection needs of the unstaffed facility. At least one 8.5 feet wide by 16 feet long parking space shall be provided. Designated vehicle parking spaces will be required to comply with ZDO Section 1015 dimensional requirements and require a surface of screened gravel or better.

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

As conditioned, this criterion can be met.

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

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

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that File No. Z0037-25-C (Verizon Dover) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with those standards.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves File No. Z0037-25-C (Verizon Dover) subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on January 28, 2025. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a. A building permit for a new primary structure that was part of the conditional use approval; or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. [ZDO 1203.05]

3. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [ZDO 1203.06]
4. **Prior to obtaining a building permit**, the landowner for the project shall sign and record in the deed records for Clackamas County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.930(2) and (4). A sample of the required document may be obtained from Planning and Zoning. **A copy of the recorded document shall be submitted to Planning and Zoning.** [OAR 660-033-0130(38)(1)]
5. The following fire fuel break standards shall be required. Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner. **Prior to a building permit**, the applicant shall submit a signed and notarized form acknowledging compliance with the fuel-free fire break standards. A copy of the Fuel-Free Break Standards Compliance Form may be obtained from Planning and Zoning. [ZDO 406.08(A)]

- a. The primary safety zone is a fire fuel break extending a minimum distance around structures. The minimum distance is established by Table 406-2, *Minimum Primary Safety Zone* and Figure 406-1, *Example of Primary Safety Zone*. Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the structure. As slope increases, the primary safety zone shall increase away from the structure and down the slope at a 45-degree angle from the structure, in accordance with Table 406-2 and Figure 406-1.
6. Privacy slats: The sight-obscuring fence at least six feet in height requires additional privacy slats in the entire chain link compound. [ZDO 835.06(D)(4)].
7. The Landscaping screen surrounding the leased compound shall utilize the existing trees within 30 feet of the leased area. These trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels within this 30 foot landscaped strip shall be removed. The applicants shall provide a landscaping plan that shows the Additional trees and shrubs that will be added to the existing vegetation to provide the required screening. A verification that the landscaping installed will be maintained in accordance with 1009.10 standards will accompany the landscaping plan. [ZDO 1009, 406.08(A)(1), and 835.06(D)(5)].
8. DEQ Noise limits: The applicant shall provide a letter documenting what the DEQ Noise Limits are and how the submitted noise study shows compliance with those requirements. [ZDO 835.06(D)(6)]
9. Wireless telecommunication facilities will be considered abandoned when there has not been a provider licensed or recognized by the Federal Communications Commission operating on the facility for a period of 365 consecutive days. Determination of abandonment will be made by the Planning Director, who shall have the right to demand documentation from the facility owner regarding the tower or antenna use. Upon determination of abandonment, the facility owner shall have 60 calendar days to reuse the facility or transfer the facility to another owner who will reuse it within 60 calendar days of the determination of abandonment. [ZDO 835.08]
10. At least one 8.5 feet wide by 16 feet long parking space shall be provided as a designated vehicle parking spaces in compliance with dimensional standards found in ZDO Section 1015. [ZDO 1015.01].

DATED this 23rd day of April 2025.



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

APPEAL RIGHTS

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