

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use Permit for a New 88-Foot Tall Monopole with Three Antennas, Proposing an Adjustment of Standards to Allow a 45-Foot Side Setback to the West Property Line.

Case File No: Z0352-23-C
(PGE)

A. SUMMARY

1. The Applicant is PGE, c/o Meredith Armstrong. PGE is leasing approximately 2 acres of the subject property, consisting of a 133 acre Forest Service property owned by the United States of America. The leased portion of the subject property is located at 86696 E Hwy 26, south of Hwy 26 and directly across from Hwy 26 south of the existing Summit Pass parking lot, a site also known as T3S, R8E, Section N/A, Tax Lot 00130, W.M. (the “Property”).
2. The Property is within the Timber (TBR) zoning district, with a comprehensive plan designation of Forest. The subject site is not located inside an urban growth boundary. The Property is improved with an existing unmanned PGE control house which is a substation for PGE that receives and transmits data from their grid. The PGE control house is not currently visible from the public roadway and is not accessible to the public.
3. The Applicant is requesting approval of its proposal to install a new Monopole, identified by PGE as a FAN that will connect the overall PGE grid communication in the Mt. Hood area to enable fast, reliable, and secure two-way communications, improving safety, reliability, and efficiency of the electric grid. The proposed Monopole tower will be 88 feet in height, with no existing towers within 2,640 feet of the proposed location. The existing control house will be used to house all of the supporting mechanical equipment that is typically ground mounted. This facility will continue to be unmanned and not utilized by the public.
4. On November 16, 2023, Hearings Officer Carl Cox (the “Hearings Officer”) conducted a public hearing to receive testimony and evidence in support of and in opposition to the Applicant’s proposal. At the request of the Applicant, the Hearings Officer kept the record open until 4:00 p.m., Thursday, December 7, 2023 for the Applicant to submit additional materials for consideration into the record. County staff reviewed the additional submitted application materials, and submitted an updated staff report to the Hearings Officer recommending approval of the application subject to a number of proposed conditions of approval. The Hearings Officer approved the application subject to conditions, consistent with the County’s recommendation.

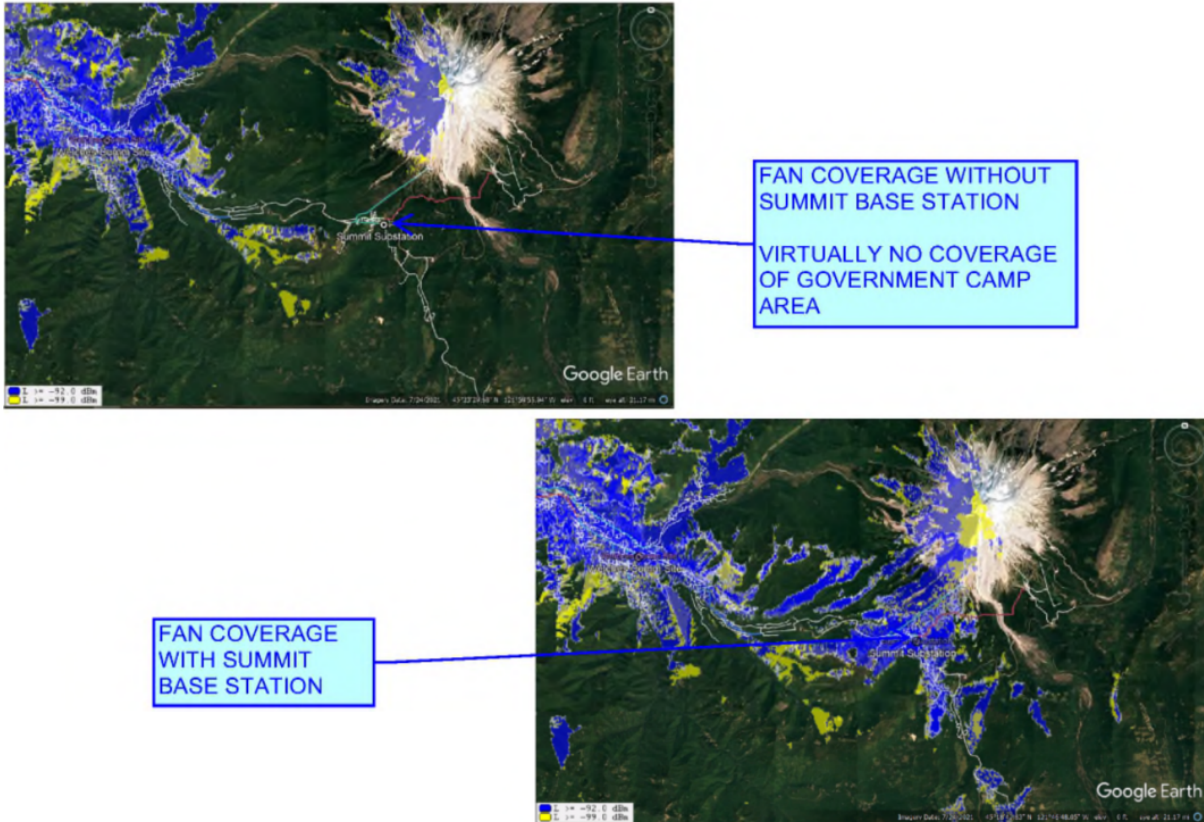
B. APPLICATION AND PUBLIC HEARING

1. The application was originally submitted September 5, 2023. Following several additional submittals, the application was deemed complete by County staff on October 2, 2023. The 150-day deadline for final action on the application pursuant to ORS 215.427(1) is February 29, 2024.

2. On October 12, 2023, the County mailed notice of the scheduled November 16, 2023 public hearing on the application, providing the notice to interested agencies, Community Planning Organization(s) and owners of property within 2,640 feet of the subject Property. Public and Agency responses were requested from:
 - a. Clackamas County Building Codes Division
 - b. Transportation and Engineering Division
 - c. ODOT – Oregon Department of Transportation
 - d. Oregon Department of Aviation
 - e. Hoodland Fire District
 - f. 1000 Friends of Oregon
 - g. Government Camp Community Planning Organization (CPO)
 - h. Property Owners within one half mile
3. The Hearings Officer received testimony and evidence at the November 16, 2023 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any bias, or conflicts of interest, or *ex parte* contact in this matter. The Hearings Officer stated that the only relevant criteria in the current proceeding were those identified in the County’s staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
4. At the hearing, County Planner Lizbeth Dance shared a PowerPoint presentation and described the application and supplemental materials submitted by the Applicant in support of this proposal for a Conditional Use permit to add a PGE Mono pole to the established PGE Control House in Federal Land. Specifically, to install a new 100 foot tall (88 feet above ground level) wood pole for 3 new antennas within a forested area, with ground mounted equipment located within the established control house.
5. Ms. Dance noted that the setback requirement outlined in County ZDO 835 Table 835-2 Dimensional Standards for Wireless Telecommunication Towers requires minimum front, side, and rear setbacks equal to the 88-foot height of the tower. Ms. Dance pointed out that the new PGE pole is proposed off of the SW corner of the existing PGE building, a location approximately 51 feet from the nearest property line.
6. Ms. Dance noted that this proposed location has several advantages, including: less visual impact on the surrounding areas, noting that relocating the pole to meet the 88 foot setback requirement would place it in a location more visible from the Historic Scenic Highway and to the adjacent property owner to the west; placing the pole at the 88-foot setback would require moving the pole further south due to existing underground and aerial power and utility lines/runs, moving it outside the fenced PGE area (against federal requirements) and requiring PGE to lease additional ground space; the 88-foot setback location requires PGE to remove multiple mature evergreens, making the existing substation and proposed pole even more visible from the public right-of-way, causing further visual impact to neighboring properties and negatively impacting property values. Ms. Dance further noted that the safety impact is

similar in either location, as trees surrounding the proposed location are taller than the proposed 88-foot pole and could prevent the pole from falling on the adjacent property, even without the enhanced setback. Ms. Dance provided discussion concerning the need for additional narrative from the Applicant requesting an adjustment, and submitted a proposed condition of approval requiring that the monopole be relocated to meet the setback standards of ZDO 835 Table 835-2 (at least 88 feet from the west/side property line), or provide a request for an adjustment with evidence supporting how the proposed location 45 feet from the west property line better meets the standards outlined in ZDO 835.06(D)(1)(e), 835.07, and 1203(B).

7. Ms. Dance shared the following representation of increased coverage with the proposed pole:



8. Several individuals appeared at the hearing in support of the application, including the Applicant’s representative, Brandy Howlett. Ms. Howlett also shared a shared a PowerPoint presentation and provided discussion of the application and supplemental materials submitted by the Applicant in support of this proposal. No one submitted a statement, materials, or testimony opposing this application.
9. Prior to ending the public hearing and closing the record, the Hearings Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. The Applicant’s representative, Brandy Howlett, requested that record stay open for an additional two weeks to allow submission of additional materials in support of the application, and addressing certain criteria discussed by Ms. Dance in her presentation regarding the setback requirements for the proposed PGE monopole. Hearings Officer closed the hearing, leaving the record open as follows: until 4:00 p.m.,

Thursday, November 30, 2023 for anyone to submit additional evidence, arguments, or testimony, until 4:00 p.m., Thursday, December 7, 2023 for anyone to submit rebuttal to new evidence, arguments, or testimony submitted to the record, and until 4:00 p.m., Thursday, December 14, 2023 for the Applicant to submit a final written statement into the record.

10. Ms. Brandy Howlett submitted several emails during the initial open-record period with additional narrative statements and supporting renderings on behalf of the Applicant and in support of this application.
11. No materials were submitted opposing the application. On November 29, 2023, the Applicant waived the remaining open record period for submitting a final written statement, requesting that the record in this matter close on December 7, 2023. The Hearings Officer agreed and closed the record on December 7, 2023 at 4:00 pm.

C. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III application pursuant to Section 1307 as required by Table 835, as an adjustment is proposed pursuant to Subsection 835.07. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

CONDITIONAL USE PERMIT

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 406, 835, 1203, and 1307; and the Comprehensive Plan. The Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO in conjunction with this proposal and make the following findings and conclusions, ***adopted and/or modified or replaced by the Hearings Officer, as denoted by boldface type in italics. As stated at the outset of the hearing, testimony, arguments, and evidence must be directed towards an approval criteria identified in the staff report, or other relevant criteria found in the comprehensive plan or other land use regulation that the person believes applies to the decision.***

1) PROJECT OVERVIEW

Background: PGE is leasing approximately 2 acres of land from the United States Forest Service 133 acre property. There is established Control House which is a substation for PGE that receives and transmits data from their grid. The new Monopole, identified by PGE as a FAN will connect the overall PGE grid communication in the Mount Hood area to enable fast, reliable and secure two-way communications, improving safety, reliability and efficiency of the electric grid, by providing a channel for radio enabled distribution assists to communicate with PGE' system control Center. The

installation will provided resilient communication to support emergency management, power restoration, and business continuity as well as updating the technology within the system.

The control house will be used to house all of the supporting mechanical equipment that is typically ground mounted. This facility will continue to be unmanned and will not be utilized by the public.

A pre-application conference was held with the applicant on July 18, 2023 to discuss the preliminary proposal (reference file ZPAC0054-23).

2) ZDO SECTION 406 TIMBER ZONING DISTRICT

- A. 406.04 Uses Permitted:** Wireless telecommunication facilities are subject to ZDO 835-Wireless Telecommunication Facilities table 835-1 Level two wireless telecommunication facilities not included in any other category are a conditional use, which means the use is subject to Section 1203, Conditional Uses.

Staff Finding: The applicant has applied for a Conditional Use permit for a Wireless Telecommunication Facility.

- B. 406.07 Dimensional Standards:** Dimensional standards applicable in the TBR zoning district and table 835-2

Maximum Height – 250’ height proposed 88’

Minimum Tower Separation – 2,640 feet

Setbacks: Minimum setback is the standard setback of the zone or the height of the tower whichever is greater.

Staff Finding: The proposed tower will be 88 feet in height and no towers were identified within 2,640 feet of the proposed location. The required setback is 88 feet. As proposed the pole is approximately 45 feet from the side/W property line, within the setback area. The pole shall be relocated to meet this setback standards. It is the applicants responsibility to provide a request for an adjustment with evidence supporting the proposed location, 45’ from the west property line better meets standards outline in ZDO 835.06(D)(1)(e), 835.07 and 1203(B). As conditioned this standard can be met. ***The Hearings Officer concurs, adopting related proposed conditions of approval.***

3) ZDO SECTION 1203.02 CONDITIONAL USES

- A. 1203.02: Submittal Requirements**

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The

application was submitted on September 5, 2023 the application was deemed complete on October 2, 2023.

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

Staff Finding: The subject property is zoned Timber (TBR). Section 406 of the ZDO controls land uses in the underlying TBR zoning district; Table 406-1 lists the uses which are allowed.

Table 406-1 specifies that “Wireless Telecommunication facilities” are subject to ZDO 835. Table 835-1 identifies a New Wireless Communication facility in the TBR zone as requiring a Conditional Use permit. This criterion is met. *The Hearings Officer concurs.*

- C. 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.

Staff Finding: In addition to the findings made in the applicant’s narrative. Staff adds the following:

The subject property is a 2 acre leased area within a 133 acre property owned by the United States. The 133 acre property encompasses several zoning districts, however the location of the proposed wireless facility is within the Timber (TBR) zone. In addition to forestry uses, surrounding uses include Timberline Lodge, Summit Pass Ski Area, a HWY Maintenance area and several other developments including the PGE Substation. The majority of this parcel is forested and used for recreation. The two acre leased portion of this larger property is to the south of HWY 26 and includes a side/W property boundary with the unincorporated community of Government Camp.

The location is suitable for the Monopole due to its proximity to the established Control house with direct access to information necessary to improve PGE maintenance communications and to house all the mechanical equipment within the control house for security purpose and for protection from the severe weather in the area.

The control house occupies a small portion of the 2-acre leased area. The property and existing improvements are of sufficient size to accommodate the use. Access to the site is from HWY 26 and the control house facility is not currently visible from the road. The site is forested with mature evergreen trees and the location of the new monopole is in a cleared area behind (to the south) of the control house approximately 45’ from the West, side property line. Pole location will not require the removal of any trees and will not be visible from the road or surrounding properties. As condition this pole shall be relocated to 88’ from the west property line or addition narrative is required addressing adjustment criteria identified and conditioned herein.

The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed telecommunication facility including 88’ tall wood

pole for PGE Grid Control center. When considering the characteristics of the subject property, staff finds that as conditioned this criterion can be met. ***The Hearings Officer concurs.***

- D. 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.

Staff Finding: Staff reviewed the proposal for compliance with 1007.07. The findings are included in the staff report below. This criterion is met. ***The Hearings Officer concurs.***

- E. 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.

Staff Finding: The site is in the TBR zoning district properties to the south and east are also zoned TBR, the property directly to the west is HR – Hoodland residential and MRR Mountain Resort Residential. The property is located within the unincorporated community of Government Camp.

The physical and visual characteristics of the surrounding area will not be changing with the proposed now monopole. The PGE Control House is established in the neighborhood and has been a part of the characteristics of the area. The proposed development will not alter the character of the surrounding area, and will not substantially limit, impair or preclude the use of surrounding properties for the primary uses allowed. All proposed ground mounted equipment will be in the established control house building not visible from the street or surrounding properties. This criterion is met. ***The Hearings Officer concurs. The Applicant has requested an adjustment of standards to allow for placement of the proposed monopole in a location approximately 45 feet from the west property line. County standards require a setback equal to the height of the monopole above ground, or in this case an 88-foot setback as the pole will be 88 feet above ground. Thus, were the pole to fall down it would fall on the subject property. Here, Applicant points to a number of mature trees that exist on the subject property between the proposed pole location and the west property line, describing these trees as taller than the proposed pole. The Applicant asserts that were the pole to fall down these trees would prevent the pole from reaching the side property line. The adjacent property to the west is developed with a single-family residence that appears to be located at least 50-60 feet from this property line. I find that the potential impact from allowing the reduced setback is no more than posed by the current trees on the subject property and the risk that an existing tree might fall down, particularly as the monopole will only have antennae on it. The pole and its antennae will be painted to help it “blend in” with the surrounding trees and will be placed behind the existing PGE Control House from the vantage point of Highway 26, with no aerial power or similar utility lines extending to other poles. The Applicant provided several photos with renderings showing the proposed monopole from various vantage points along Highway 26 and from the property to the west, showing existing utility poles supporting several aerial power and utility lines running parallel along both sides of Highway 26. The photos also show numerous trees taller than the rendering of the proposed pole. The proposed monopole is only partly visible in these photos and will hardly be noticeable in this neighborhood among the existing utility***

infrastructure, let alone alter the character of the surrounding area, or substantially limit, impair or preclude the use of surrounding properties for the primary uses allowed.

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

Staff Finding: The applicant addresses the Comprehensive Plan Chapters 4 and 7, Public Facilities and Services goals and policies, Chapter 4, Land Use goals and policies for the future urban land, though the submitted narrative touches on a few points.

The proposed development is subject to dimensional and development standards to ensure compatibility, function, wildlife habitat, and scenic aesthetic of the area. The proposal does not involve land division, removal of vegetation or a change to the existing lot size, and so the other policies in Chapter 4 that relate to future urban lands are not applicable to this development.

Chapter 7 related to planning for utilities, including telecommunication facilities, and ensuring that adequate levels of those public facilities and services be available before urban levels of development. These updates to communication systems are within the PGE utility for system efficiency, capacity management, maintenance and emergency systems support.

Staff finds that the proposed use is consistent with the applicable goals and policies of the Comprehensive Plan. This criterion is met. ***The Hearings Officer concurs.***

- G. **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.

Staff Finding: Staff reviewed compliance with Section 835, and 1000 as applicable, and the findings are included in the staff report below.

- H. **1203.05** Approval Period, Time extension

- I. **1203.06** Discontinuation – If discontinued for more than 5 years from implementation approval is void.

Staff Finding: Staff has included conditions of approval outlining the 4 year approval period. Including implementation criteria as well as the requirements for applying for a single 2 year time extension. As conditioned these standards are applicable. ***The Hearings Officer concurs.***

4) ZDO SECTION 835- WIRELESS TELECOMMUNICATION FACILITIES

Not all review subsections in ZDO Section 835 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use.

Section 835.06 Standards (D) Level Two Wireless Telecommunication Facility

New Towers: If a new wireless telecommunication tower is proposed:

- A. 835.06(D)(1)(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.

Staff Finding: Staff has reviewed surrounding area in conjunction with the applicant's narrative assessing the surrounding Mt Hood area and concurs with the statement that surrounding area is an appropriate geographical location and any existing development within the applicants search area does not have sufficient height, and structural integrity to support the proposed facility. There are no other facilities within 2 miles of the proposed new pole and the wireless facility is not for public use. The new wireless facility will enable fast, reliable, and secure two-way communications, improving safety, reliability, and efficiency of the electrical grid, by providing a channel for radio-enabled distribution assets to communicate with PGE's system control center. The installation will provide resilient communication to support emergency management, power restoration, and business continuity, as well as providing advanced technology to the system. ***The Hearings Officer concurs in this analysis and in these staff findings.***

- B. 835.06(D)(1)(b)** If the tower is inside the Portland Metropolitan Urban Growth Boundary, it shall be a monopole.

Staff Finding: The property is not located within a UGB. A monopole is proposed. This standard does not apply. ***The Hearings Officer concurs.***

- C. 835.06(D)(1)(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.

Staff Finding: PGE is proposing to install a new 88 foot wood pole with three new antennas, and a lightning rod at the top of the pole, this will allow for adequate coverage as well as future collocation. As conditioned this standards can be met. ***The Hearings Officer concurs.***

- D. 835.06(D)(1)(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.

Staff Finding: The wood pole will blend in naturally with the surrounding vegetation, the pole will is a similar in appearance to a telephone pole naturally unreflective, treated to sustain the elements and blending with the surrounding evergreen trees. Antennas will be painted with a non-reflective neutral color to blend in with the surroundings and the sky. This will allow for minimal visual impact in the area. All ground level equipment is to go within the existing substation control enclosure, to minimize visual and acoustic impact of the area. There is no proposed lighting on the tower. As proposed and conditioned this standard can be met. ***The Hearings Officer concurs, adopting related proposed conditions of approval.***

- E. 835.06(D) (1)(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.

Staff Finding: This application is being reviewed as a Conditional Use. Due to the scenic nature of Mt.Hood and the 2 acres of federal land leased with the established control house the monopole has been located with proximity to the control house. This location allows for placement of the pole without a need to remove any of the established trees in the surrounding area. As stated in the application materials this is the most viable location for the pole. Relocation is required to meet setback standards or the applicant may request an adjustment subject to ZDO section 835.07. As Conditioned this standard can be met. ***The Hearings Officer concurs, adopting related proposed conditions of approval.***

- F. 835.06(D)(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.

Staff Finding: All equipment will be located within the existing control house at the back of the structure approximately 200 feet from Highway 26. All ground level equipment is to go within the existing substation control enclosure, the established building fully screens the support equipment from view to minimize visual and acoustic impact of the area. As proposed this standards is met. **The Hearings Officer concurs, adopting related proposed conditions of approval.**

- G. 835.06(D)(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.

Staff Finding: No lighting is proposed. **The Hearings Officer concurs that this section is not applicable.**

- H. 835.06(D)(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.

Staff Finding: Over 80% of the leased area is forested with mature evergreen trees over 100' in height. Placement of the pole has been assess to ensure that all trees an site can be retained and that it will be screened from site. As Conditioned this standard can be met. **The Hearings Officer concurs, adopting related proposed conditions of approval.**

- I. 835.06(D)(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.

Staff Finding: As proposed the mechanical equipment will be placed with the established control house – no mechanical equipment that will generate noise will be place outside. Noise generated shall meet DEQ standards. As conditioned this standards can be met. **The Hearings Officer concurs, adopting related proposed conditions of approval.**

5) ZDO SECTION 835.07 ADJUSTMENTS –Adjustments to the standards of Section 835 may be granted under either of the following circumstances:

- A. 835.07(A)** A gap in the applicant's service exists and that gap can only be alleviated through the adjustment of one or more of the standards of this section. If an adjustment is to be approved, the applicant must demonstrate the following:

1. A gap in coverage or capacity exists in the wireless telecommunication provider's service network that results in network users being regularly unable to connect, or maintain connection, with the provider's network;

2. The proposed wireless telecommunication facility will fill the existing service gap. Filled means the proposed facility would substantially reduce the frequency with which users of the network are unable to connect, or maintain connection, with the provider's network; and
3. The gap cannot be filled through collocation on existing facilities, or establishment of facilities that are consistent with the standards of this section on properties other than the proposed site or on the proposed site in a manner which does not require an adjustment.

B. 835.07(B) The proposed adjustment would utilize existing site characteristics to minimize demonstrated or potential impacts on the use of surrounding lots. Site characteristics include, but need not be limited to, those identified in Subsection 1203.03(B). The adjustment must result in a lower level of impact on surrounding lots than would result if the standard were not adjusted. In considering the requested adjustment, the following may be considered:

1. Visual impacts;
2. Impacts on view;
2. Impacts on property values; and
4. Other impacts that can be mitigated by an adjustment so that greater compliance with Subsection 1203.03(D) occurs.

Staff Finding: The monopole as located is 45 feet from the west property *[line and]* within the required 88 foot setback area. The applicant has not submitted a narrative requesting an adjustment. The applicant can relocate the pole to meet the setback standards or provided additional narrative addressing standards outlined in *[ZDO Subsection 835.07]* and 1203(D). Staff has contacted the applicant regarding this requirement. As conditioned this standard shall be addressed or the monopole will be relocated.

Hearings Officer: *The Applicant requested an adjustment allowing location of the monopole 45 feet from the west property line, and within the required 88 foot setback area. The Applicant agrees that locating the proposed monopole in the SE corner of the subject property would allow for the required 88 foot setback. The Applicant asserts, however, that there are numerous reasons supporting the location of the pole in the SW corner in a location approximately 45 feet from the SW property line, contending that this proposed location "is the sole practical option for the pole." The Applicant asserts that adhering to the minimum 88 foot setback required by County ZDO 835 would necessitate a grid shutdown, entailing the relocation and rerouting of both underground and aerial power and utility lines. The Applicant further states that adhering to the minimum 88 foot setback would require the cutting down of several mature trees and vegetation removal, negatively impacting natural vegetation and wildlife. The Applicant points out that this would result in a substantial disruption to the entire area serviced by the substation, leading to a prolonged power outage and significant construction, visual,*

and noise disturbances to the adjacent property owner.” The Applicant describes the purpose of its proposal as “to elevate the electrical system with cutting-edge technologies, enhancing communication between the system control center and distribution assets in the grid.” Ms. Dance shared photos of the improved coverage that the pole and antennae will provide, resulting in a positive impact to the whole community. The Applicant asserts that: “The envisioned Facility Area Network (FAN) is poised to contribute to a safer and more efficient grid...”. The Applicant also points to the safety of the proposed pole location, asserting that the surrounding mature trees will act as a natural buffer preventing the pole from falling and minimizing risk to the surrounding power and utility lines and to the adjacent property owner.

Here, the proposed pole location will utilize existing site characteristics to minimize potential impacts on the use of surrounding properties, preventing disruption of a grid shutdown as necessitated by the SW corner location, maintaining existing trees and vegetation that reduce visual impacts of both the proposed pole and the existing PGE facility and preserving the existing view of this forested USFS property. The proposed location within the setback will reduce inconvenience and impacts to the adjacent property owner and have less visual impact on the adjacent property owner and surrounding properties. The placement of the pole in the proposed location will also have less visual impact from the Historic Scenic Highway (Highway 26) and have less negative impact on the natural vegetation and wildlife as it will not require cutting down multiple mature trees. Based on the above discussion, I find that the Applicant has demonstrated that the proposed adjustment meets the provisions of ZDO Subsection 835.07(B), as discussed above, and the requested setback adjustment should be approved.

5) ZDO SECTION 1000 DEVELOPMENT STANDARDS

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

A. Section 1002 – Protection of Natural Features

Section 1002 addresses the protection of various natural features including hillsides, the excessive removal of trees prior to development, the protection of trees and wooded areas through development, river and stream corridors, the winter ranges of deer and elk populations, certain open spaces near Mount Hood, significant natural areas, and significant landforms and vegetation.

Staff Finding: The application does not involve development on slopes greater than 20%. Tree removal is not proposed with this conditional use permit. There is an established driveway and development site; the proposal will not interfere with existing wooded areas or significant clumps of trees. The applicable criteria of Section 1002 can be met as conditioned. *The Hearings Officer concurs, adopting related proposed conditions of approval.*

B. Section 1003 and 1004 – Hazards to Safety and Historic Protection

Section 1003 addresses various hazards to safety including flood, soils, fire, and mass movement areas. Section 1004 addresses standards related to historic preservation.

Staff Finding: The standards in these Sections are not applicable to this development. *The Hearings Officer concurs.*

C. Section 1006 – Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control.

Section 1006 addresses the provision of appropriate infrastructure for utilities, water supply, and sewage disposal, as well as the management of surface water and site erosion.

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

Staff Finding: The property is within the Government Camp Water System water district. This is an unmanned facility with no connections to Water as stated by the applicant. This standard does not apply. *The Hearings Officer concurs.*

E. Section 1006.04 Sanitary Sewer Service and Section 1006.05 Onsite Wastewater Treatment. All development that has a need for sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development. All development proposing onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Said systems shall be installed pursuant to Oregon Revised Statutes 454.605 through 454.745 and Chapters 171, 523, and 828; Oregon Administrative Rules Chapter 340, Divisions 71 and 73; and the policies of the County.

Staff Finding: The subject property is not located in a public sanitary sewer district. At this time, the applicant does not propose a use that will require onsite wastewater treatment. Any future development will be reviewed for compliance with the onsite wastewater treatment requirements of this section. This section is not applicable. *The Hearings Officer concurs.*

F. Section 1007 - Roads and Connectivity.

Staff Finding: The property takes direct access off of HWY 26 a State HWY not regulated by ZDO 1007. The proposed use adding a single monopole to an unmanned PGE facility will not alert traffic to or from the site. ODOT was sent notice of this application and has not provided comment. *The Hearings Officer concurs that the proposed use will not affect traffic to or from the site.*

G. Section 1007.05 Transit Amenities. All residential, commercial, institutional, and industrial developments on existing and planned transit routes shall be reviewed by Tri-Met or other appropriate transit provider to ensure appropriate design and integration of transit amenities into the development.

Staff Finding: The development does not propose any transit amenities. The project is not located on an existing transit route. Therefore, this subsection is not applicable. **The Hearings Officer concurs.**

H. Section 1007.07 Transportation Facilities Concurrency. Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner.

Staff Finding: Compliance with 1007.07 is required pursuant to Section 1203.03(C). The applicant is proposing to modify and/or replace portions of an existing development on the same property that will not increase motor vehicle traffic. Therefore, the development is exempt from the concurrency requirements. The proposed facility upgrades and alterations will not change the volume of vehicular traffic generated by the facility; the property has been used as a PGE Control House and the scope of work will not increase the traffic demand to or from the facility. This criterion is met. **The Hearings Officer concurs.**

I. Section 1010 Signs; 1010.08 Signs for Institutional Uses. Pursuant to Section 202, Definitions, a utility facility is an institutional use.

Staff Finding: The application materials submitted by the applicant did not identify any new/proposed signage with the conditional use. Any future signage will require compliance with this section. Pertaining to the proposed development, this subsection is not applicable. **The Hearings Officer concurs.**

STAFF RECOMMENDATION:

Staff recommends approval of the conditional use permit for the installation of a new 88' wireless telecommunication facility. **The Hearings Officer agrees with the staff recommendation to approve the application, subject to a number of conditions of approval.**

D. CONDITIONS OF APPROVAL

Staff recommended that approval of this application for a Conditional Use permit be subject to the following conditions. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses. **The following conditions of approval were reviewed, adopted and/or modified by the Hearings Officer:**

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on September 5, 2023. 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). If the County’s final decision is appealed, the approval period shall commence on the date of the final appellate decision. 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 the Monopole and supporting facilities that are part of the conditional use approval, or
 - b) 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. [Subsection 1203.05(B)]

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. [Subsection 1203.05(B)]
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. [Subsection 1203.06]
- ~~4. The monopole shall be relocated meet setback standards ZDO 835 table 835-2, at least 88’ from the west/side property line. If the pole cannot meet the setback it is the applicant’s responsibility to provide a request for an adjustment with evidence supporting the proposed location, 45’ from the west property line better meets standards outline in ZDO 835.06(D)(1)(e), 835.07 and 1203(B)~~
5. The Monopole 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. ZDO 835.06(D)(1)(c)
6. Antennas will be painted with a non-reflective neutral color to blend in with the surroundings and the sky. This will allow for minimal visual impact in the area. ZDO 835.06(D)(1)(d)
7. All exiting mature evergreen trees shall be maintained on site as the Landscape plan. ZDO 1002, 1009.10.

8. Noise generated by the wireless telecommunication facility shall not exceed the maximum levels established by the Oregon Department of Environmental Quality (DEQ). ZDO 835.06(D)(6).

E. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0352-23-C for a conditional use permit for a new 88-foot tall monopole that will include three new antennas, with an adjustment of standards to allow a 45-foot side setback to the west property line, subject to conditions of approval.

Dated: December 13, 2023



Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) 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 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 is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.