

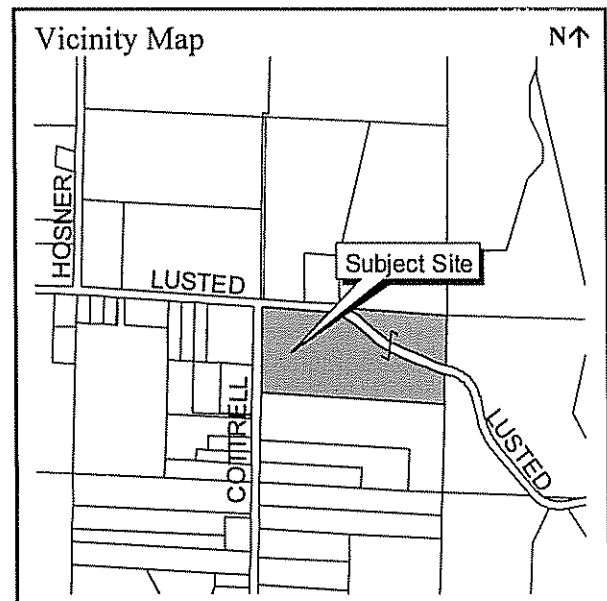
**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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FINDINGS AND DECISION OF MULTNOMAH COUNTY HEARINGS OFFICER

Conditional Use Permit for Community Service Use and Significant Environmental Concern for Wildlife Habitat Permit

Case File: T3-06-003**Applicant:** Kevin Freeto
New Horizon Communications**Owner:** City of Portland
Bureau of Water Works**Location:** 6704 SE Cottrell Road
TL 200, Sec 22BA, T 1S, R 4E, W.M.
Tax Account #R99422-0300

Public Hearing: Held September 8, 2005. The record remained open at the applicant's request until October 23, 2006, during which time the applicant submitted additional written materials and plans.

Summary: Applicant requested a Community Service Use and a Significant Environmental Concern Permit for wildlife habitat to construct a Radio and Telecommunication Tower. The purpose is to increase security and communications between the City of Portland's Bureau of Water Works facilities in-town, at their Bull Run facility, and at this existing ammonia disinfection and corrosion control plant in the Commercial Forest Use zone.

Zoning: Commercial Forest Use (CFU) / Significant Environmental Concern for wildlife habitat (SEC-h) / Hillside Development & Erosion Control (HDP)

Site Size: 14.55 acres

Impartiality of Hearings Officer: As a preliminary to the public hearing, the Hearings Officer stated that she had no financial interest in the outcome of the decision; that she had no prior relationship with the applicant; that she had neither visited the site nor had any ex parte communication with any person concerning the merits of the application; and that she could be fair in rendering a decision based upon the criteria. No person objected to this Hearings Officer hearing and rendering a decision on the case.

Approval Criteria: Multnomah County Code (MCC):

Commercial Forest Use (CFU) - MCC 36.2030 Conditional Uses, MCC 36.2045 Use Compatibility Standards, MCC 36.2060 Dimensional Requirements, MCC 36.2075 Lot of Record, MCC 36.2085 Off-Street Parking and Loading, MCC 36.2105 Development Standards for Dwellings and Structures.

Community Service, CS - MCC 36.6000 Purpose, MCC 36.6005 General Provisions, MCC 36.6015 Uses, MCC 36.6020 Restrictions.

Radio and Television Transmission Towers, CS - MCC 36.6100 Purpose., MCC 36.6105 Definitions, MCC 36.6110 Application Requirements, MCC 36.6115 Approval Criteria for New Transmission Towers, MCC 36.6120 Design Review, MCC 36.6125 Radiation Standards.

Significant Environmental Concern (SEC) - MCC 36.4515 Uses - SEC Permit Required, MCC 36.4540 Application for SEC Permit, MCC 36.4550 General Requirements for Approval in Areas Designated as SEC-wr or SEC-h, MCC 36.4560 Criteria for Approval of SEC-h Permit -Wildlife Habitat.

FINDINGS OF FACT:

Note: Findings herein address Multnomah County ordinance requirements. Multnomah County Code criteria and Comprehensive Plan Policies are in a **bold** font. Planning staff comments and analysis may follow applicant comments. The notation "Applicant" precedes the applicant's comments, and the notation "Staff" precedes staff comments and analysis. The Hearings Officer's analysis and conclusions may follow, preceded by the notation "Hearings Officer." **Unless explicitly noted otherwise, the Hearings Officer adopts and incorporates Staff comments and analysis as findings supporting this decision.**

Project Description:

Applicant: The City of Portland Water Bureau plans to construct a 120 ft self-supporting steel lattice tower on its Lusted Hill treatment facility property located at 6704 SE Cottrell Road in unincorporated Multnomah County. The facility is located on Tax Lot 200 in the NE1/4, Section 22, T1S, R4E, Willamette Meridian. The tower is designed to attach antennas for the City's 800 MHz radio system and microwave telecommunication system. The tower is needed in order to improve radio and telecommunication signals between the Water Bureau's in town facilities, Lusted Hill treatment facility, and Bull Run Headworks treatment facility. Radio equipment will be located in the existing metal frame building that serves as the treatment facility for ammonia disinfection and corrosion control for the Bull Run water supply system.

The tower will be located approximately 35 feet north of the Lusted Hill water treatment building in a landscaped, cleared area bordered by the building on the south side and by a 24 ft wide paved driveway on the west, north and east sides. Design drawings for the tower are shown in Exhibits 1 through 4.

The base zoning for the proposed tower site is CFU (Commercial Forest Use) and the overlay zoning is

classified as SEC-H (Significant Environmental Concern – Wildlife Habitat.

1.00 ***Administration and Procedures***

1.01 **Proof of Ownership**

MCC 37.0550 Initiation of Action

Except as provided in MCC 37.0760, Type I – IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The proposed project is located on Tax Lot 200, Section 22BA, Township: 1 South, Range: 4 East. Assessment & Taxation records show that the land is owned by the City of Portland, care of the Bureau of Water Works. Andrew Degner, Water Treatment Supervisor of the Water Bureau has signed the General Application form authorizing Kevin Freeto of New Horizon Communications to apply for the necessary permits to construct a radio and telecommunication tower on the subject property (Exhibit A.1).

Hearings Officer: This criterion has been met.

1.02 **MCC 37.0560 Code Compliance And Applications.**

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no known violations on the subject site at this time.

Hearings Officer: It is permissible for the county to render a land use decision approving a permit for this property.

2.00 ***Commercial Forest Use (CFU) Criteria***

2.01 **MCC 36.2030 Conditional Uses.**

The following uses may be permitted when found by the approval authority to satisfy the

applicable standards of this Chapter:

(D) The following Community Service Uses pursuant to the applicable provisions of MCC 36.2045, 36.2105, 36.6000 through 36.6020. The applicable criteria of 36.6010 shall be limited to (A) through (H) for uses in this section.

(11) Radio and television transmission towers subject to the definitions, restrictions and standards in MCC 36.6010, 36.6015 (A) (8) and 36.6100 through 36.6130 and wireless communications facilities when found to satisfy the requirements of MCC 36.6175 through 36.6188.

Staff: The applicant has applied for a community service use to establish a radio and telecommunication tower.

2.02 MCC 36.2045 Use Compatibility Standards.

Specified uses of MCC 36.2025 (C), (D), and (E) and MCC 36.2030 (D), (E) and (F) may be allowed upon a finding that:

(A) The use will:

- (1) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;**
- (2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel;**
and

Applicant: The proposed use of the structure (A)

- 1. Will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the surrounding forest or agricultural lands. The proposed use will be inside an existing fenced facility, with no additional vehicle or human traffic once project is complete.
- 2. Will not significantly increase fire hazard, or significantly increase risks to fire suppression personnel. The structure will be 50' away from any burnable material and is made of steel.

Staff: The properties to the east and north are resource lands (EFU & CFU). To the northwest of the subject site appears to be predominately nursery stock farms. To the east and northeast are forest uses (Exhibit B.2). The subject site is primarily used for an ammonia treatment facility for the Bull Run pipeline. The remainder of the site is in forest use. The proposed lattice tower will be located within 30 feet of the existing treatment building on-site. Staff is unable to identify any impacts to these existing farm and forest uses being created by the addition of the lattice tower to the site.

The proposed lattice tower will be made of steel and is non-combustible. Staff is unable to identify any risk to fire suppression personnel or an increase fire hazard.

Hearings Officer: At the public hearing the applicant was not able to predict whether surrounding nursery stock or forestry operations would be at risk of damage from ice or debris fall from the tower. Subsequently, the applicant submitted a memorandum dated September 15, 2006 from Stuart Greenberger, P.E., related to the fall zone for ice and tower debris. This memorandum concludes that a conservative scenario for the fall of debris from the tower requires a fall zone centered on the base of the tower with a radius of 120'. Under this scenario, ice or debris falling from the tower would remain on the subject property, and would not

threaten damage to surrounding properties. No other potential harm to surrounding resource lands has been identified as a concern with the proposed tower. I can therefore conclude that the tower would not significantly change or increase the costs of accepted farm or forest practices on surrounding agricultural or forest lands. These criteria have been met.

- 2.03 **(B) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.**

Applicant: Item (B), as the proposed structure is inside an existing fenced water treatment facility, for the general public in the city of Portland and Multnomah County, and will add no adverse affect on any farming or forestry practices, a statement has not been recorded with the division of records that the owner and successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the forest practices act and rules, and to conduct accepted farming practices.

Staff: A condition of approval is recommended requiring that the property owner, the City of Portland, record a statement acknowledging the rights of owners of nearby property to conduct forest operations and farming practices. *Through a condition, this criterion can be met.*

Hearings Officer: The applicant's post-hearing response states that the City of Portland will record the necessary statement. A condition of approval has been imposed to require this action.

2.04 **MCC 36.2060 Dimensional Requirements.**

(A) Except as provided in MCC 36.2065, 36.2070, 36.2075, and 36.2080, the minimum lot size shall be 80 acres.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

Staff: As supported by the findings under MCC 36.2070 below, the subject 14.55 acre site is a legally created parcel and is exempt from the 80 acre minimum lot size.

Hearings Officer: Pursuant to findings under MCC 36.2075, section 2.08, the site is exempt from the 80-acre minimum lot size.

2.05 **(C) Minimum Forest Practices Setback Dimensions From Tract Boundary – Feet:**

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 36.2110, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 36.2105 (A) (5) (c) 2.

(D) The minimum forest practices setback requirement shall be increased where the

yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The tower is shown at 152 feet back from the front property line adjacent to Lusted Road (Exhibit A.15.b). Based on the air photo (Exhibit B.3) and the applicant's overall site plan, the tower will be approximately 300 feet from the southern side property line, approximately 200 feet from the northern side property line and over a 1000 ft from the rear property line to the east.

Hearings Officer: These criteria have been met.

2.06 **(H) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: No alterations to the existing on-site sewage disposal, stormwater or water system are proposed. The new impervious area being created will not exceed 400 sq. ft and will be captured in the existing 70 ft by 45 ft landscape planter where the lattice tower will be located.

Hearings Officer: These criteria have been met.

2.07 **(I) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: At the time of building permit sign-off, the applicant will need to demonstrate that the application is exempt from obtaining a Grading and Erosion Control Permit. A condition of approval is recommended.

Hearings Officer: A Condition of Approval to this effect has been imposed.

2.08 **MCC 36.2075 Lot of Record.**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous

group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

(5) February 20, 1990, Lot of Record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(7) May 16, 2002, Lot of Record section amended, Ord. 982;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 36.2090, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed a Lot of Record:

(1) An area of land described as a tax lot solely for assessment and taxation

purposes;

(2) An area of land created by the foreclosure of a security interest;

(3) A Mortgage Lot;

(4) An area of land created by court decree.

Staff: The applicant has provided a deed from 1923 describing the property in its current form which includes Tax Lot 100 and 200, 1S4E22BA. The County did not have zoning until the mid-1950's. As such the property is in its legal configuration. The City of Portland's Lot of Record consists of both tax lots 100 & 200 together.

Hearings Officer: Tax lots 100 and 200 together form a Lot of Record.

2.09 MCC 36.2085 Off-Street Parking and Loading.

Off-street parking and loading permitted as an accessory use shall be provided as required by MCC 36.4100 through 36.4215.

Staff: Two parking spaces are required pursuant to MCC 36.6115(D). The applicant has marked two spaces on the site plan. The developed area of the site is certainly of a size and configuration that two additional spaces that meet the code criteria listed in MCC 36.4100 through 36.4215 can be supplied. Staff recommends that the hearings officer impose a condition which allows the applicant to demonstrate compliance with (D) above through Design Review.

Hearings Officer: A Condition of Approval requiring compliance with the Off-Street Parking and Loading standards has been imposed. As conditioned, this criterion can be met.

2.10 MCC 36.2105 Development Standards for Dwellings and Structures.

Except as provided for the alteration, replacement or restoration of dwellings under MCC 36.2020 (D) and 36.2025 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the requirements of this section. Application of these requirements shall be processed pursuant to the provisions for Type II or Type III decisions as applicable.

(A) The dwelling or structure shall be located such that:

(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of 36.2060 (C) through (G);

Applicant: It has little or no impact on nearby or adjoining forest or agricultural lands and does satisfy the minimum yard and setback requirements 36.2060 (C) through (G). The setbacks from the existing property line are at a minimum of 150'.

Staff: The proposed lattice tower is located in the area of current development on the site. The tower location exceeds all setback requirements of MCC 36.2060(C) through (G). No impacts should be generated due to the distance from nearby farm areas and the low activity level associated with the tower.

Hearings Officer: The findings for MCC 36.2045(A) at section 2.03 also address impacts on adjoining farm and forest lands, concluding that as far as ice and debris fall are concerned, there will be no impact on surrounding lands. This criterion has been met.

2.11 (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Applicant: Adverse impacts on forest operations and accepted farming practices on the tract

will be minimized and in fact have no affect.

Staff: The proposed tower is located within the area of development on the subject site. This allows for the continued use of the remainder of the site for forest practices. *This criterion has been met.*

- 2.12 **(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

Applicant: The amount of forest land used to site the dwelling (tower), access road and service corridor is completely minimized.

Staff: No additional forest lands will need to be converted for the installation of the tower. The tower is located within a landscape planter which was previously constructed for the ammonia treatment plant onsite.

Hearings Officer: This criterion has been met.

- 2.13 **(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

Applicant: Any access road or service corridor in excess of 500 feet in length does not exist at this facility.

Staff: As shown on the applicant's site plan, the service corridor is approximately 660 ft long as it circles around the treatment facility. The driveway was previously approved under CS 3-91, CS 2-95 and CS 7-97. No extension of the service corridor is necessary as the lattice tower will be located within 30 ft of the existing building.

Hearings Officer: The service corridor driveway was previously approved and developed, and it will not be lengthened because of the tower development. This criterion has been met.

- 2.14 **(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC 36.2105 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;

Applicant: The risks associated with wildfire are minimized. All applicable provisions for reducing such risk shall be include and are shown on the site plan (exhibit B).

Staff: No perennial water source exists on the subject site.

Hearings Officer: This criterion is not applicable.

- 2.15 **(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**

1. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

2. On lands with 10 percent or greater slope the primary fire safety zone

shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance in Feet
Less than 10	Not Required
Less than 20	50
Less than 25	75
Less than 40	100

Applicant: The risks associated with wildfire are minimized. All applicable provisions for reducing such risk shall be include and are shown on the site plan (exhibit B).

Staff: The slopes in the area of development are less than 5%, so the required primary fire safety zone is 30 ft. The location of the tower in a landscape planter appears to allow the development between the tower and the building and the surrounding forest. The primary fire safety zone comes to the center of the paved service corridor to the north. Staff recommends that the hearings officer require that the primary fire safety zone be added to the site plan as part of Design Review. *This criterion can be met through a condition of approval.*

Hearings Officer: During the post-hearing period the applicant submitted a new site plan that added a depiction of the primary fire safety zone. A condition of approval requiring that the primary zone be established and maintained has been imposed.

2.16

3. A secondary fire safety zone is required around all dwellings and other structures except for other structures located within a public park. The secondary fire break extends a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 36.2060 (F) and 36.2110.

4. No requirement in 1., 2., or 3. above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

Applicant: The risks associated with wildfire are minimized. All applicable provisions for reducing such risk shall be include and are shown on the site plan (exhibit B).

Staff: The secondary fire safety zone can easily be provided to the south of lattice tower. To the north, the applicant may want to apply for an Exception to the Secondary Fire Safety Zone rather than reduce the wildlife habitat the City has created on the site. *As conditioned, this criterion can be met.*

Hearings Officer: A condition of approval requires that the City either establish and maintain a secondary fire safety zone, or that it apply for an Exception to this requirement as part of Design Review. As conditioned, the criterion is satisfied.

2.17

(d) The building site must have a slope less than 40 percent.

Applicant: The risks associated with wildfire are minimized. All applicable provisions for reducing such risk shall be included and are shown on the site plan (exhibit B).

Staff: The contour information shown on Exhibit B.4 indicates that across the developed area of the property, the slopes are approximately 5 percent.

Hearings Officer: This criterion has been met.

2.18 **(B) The dwelling or structure shall:**

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Applicant: The risks associated with wildfire are minimized. All applicable provisions for reducing such risk shall be included and are shown on the site plan (exhibit B).

Staff: The property owner will need to obtain a building permit for the construction of the lattice tower. Staff recommends that a condition of approval be included by the hearings officer. The tower does not have a roof or chimney.

Hearings Officer: As conditioned, criterion (B)(1) is met.

3.00 ***Community Service (CS) Criteria***

3.01 **MCC 36.6000- Purpose.**

MCC 36.6010 through 36.6230 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate as specified in each district.

3.02 **MCC 36.6005 General Provisions.**

(A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.

Applicant: The City of Portland Water Bureau plans to construct a 120 ft. self-supporting, steel lattice tower on its Lusted Hill treatment facility property located at 6704 SE Cottrell Road in unincorporated Multnomah County. The facility is located on Tax Lot 200 in the NE1/4, NW1/4, Section 22, T1S, R4E, Willamette Meridian. The tower is designed to attach antennas for the City's 800 MHz radio system and microwave telecommunication system. The tower is needed in order to improve radio and telecommunication signals between the Water Bureau's in-town facilities, Lusted Hill treatment facility, and Bull Run Headworks treatment facility. Radio equipment will be located in the existing metal frame building that serves as treatment facility for ammonia disinfection and corrosion control for the Bull Run water supply system.

3.03 **(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 36.7000 through 36.7060.**

Staff: Staff recommends that the hearings officer impose a condition of approval requiring that the City of Portland obtain a Design Review approval for the tower prior to its construction on the site. *Through a condition, this criterion can be met.*

Hearings Officer: The recommended condition of approval has been imposed.

3.04 **MCC 36.6015 Uses.**

(A) Except as otherwise limited in the EFU and CFU districts, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority

Allowed Community Service Uses in the EFU and CFU districts are limited to those uses listed in each respective district.

(8) Radio and television transmission towers.

(a) VHF and UHF television towers, FM radio towers, two-way radio, common carrier, and cellular telephone towers, and fixed point microwave towers are permitted in any district, provided only self-supporting structures are permitted in the Exclusive Farm Use district.

(b) Low-power television towers, satellite ground stations, AM radio towers, and building-mounted towers are permitted in any district except urban residential districts, provided only self-supporting structures are permitted in the Exclusive Farm Use district.

(c) Ham radio, amateur sole source emitters, Citizen Band transmitters, and structures to support them are permitted in any district as an accessory use and do not require a Community Service use designation if used for non-commercial purposes only. Any such tower shall comply with the regulations of the district in which it is located. Non-amateur sole source emitters shall also comply with the registration requirements of MCC 36.6125 (B).

(d) Receive-only facilities in conjunction with a permitted use are exempt from the provisions of this section, but shall comply with all other requirements of MCC 36.6015 (A) (8) and 36.6100 through 36.6125.

Applicant: It would be categorized under Sec. A.

(a) VHF and UHF television towers, FM radio towers, two-way radio, common carrier, and cellular telephone towers, and fixed point microwave towers are permitted in any district, provided only self-supporting structures are permitted in the Exclusive Farm Use district.

Staff: The property is zoned Commercial Forest Use (CFU). The CFU district lists Radio and Television towers as a type of conditional use under MCC 36.2030(D)(11).

Hearings Officer: This criterion has been met.

3.05 **MCC 36.6020 Restrictions.**

A building or use approved under MCC 36.6015 through 36.6050 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, OCI, OR and PH-RC, Districts:

(1) Front yards shall be 30 feet.

(2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.

(3) Rear yards shall be as required in the district.

(B) Minimum yards in other districts shall be as required in the district.

Staff: The proposed tower location meets the above setbacks. See additional information under Finding 2.05.

Hearings Officer: These criteria are satisfied.

3.06 **(D) Off-street parking and loading shall be provided as required in MCC 36.4100 through 36.4215.**

Staff: Two parking spaces are required per MCC 36.6115(D). The applicant has marked two spaces on the site plan. The developed area of the site is certainly of a size and configuration that two additional spaces that meet the code criteria listed in MCC 36.4100 through 36.4215 can be met. Staff recommends that the hearings officer impose a condition requiring the applicant to demonstrate compliance with (D) above through Design Review. *Through a condition, this criterion can be met.*

Hearings Officer: The recommended condition of approval has been imposed. As conditioned, the criterion is satisfied.

3.07 **(E) Signs for Community Service Uses pursuant to the provisions of MCC 36.7400 through 36.7505.**

Staff: No signage has been proposed as part of this project.

4.00 ***Radio & Television Transmission Tower Community Service Criteria***

4.01 **MCC 36.6100 Purpose.**

The purposes of the Section are to:

(A) Minimize visual impacts of towers through careful design, siting and vegetative screening.

(B) Avoid potential damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structures.

(C) Lessen traffic impacts on surrounding residential areas.

(D) Ensure that the amount of non-ionizing electromagnetic radiation emitted by antennas does not exceed the amount at which human health has been found to be affected and is the minimum necessary to provide adequate access to the area's broadcasters by requiring compliance with stated emission standards and required separation standards.

4.02 **MCC 36.6110 Application Requirements.**

An application for approval of a Community Service designation for a radio or television transmission tower shall contain at least the following information before it is complete:

(A) Site plan or plans to scale specifying the location of towers(s), guy anchors (if any), transmission building and/or other accessory uses, access, parking, fences, landscaped areas, and adjacent land uses. Such plan shall also demonstrate compliance with MCC 36.6115 (I) and 36.6115 (J).

(B) Landscape plan to the scale indicating size, spacing and type of plantings required in 36.6115 (B).

(C) Report from a professional engineer licensed in the State of Oregon, documenting the following:

(1) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section

of the tower structure shall be included.

(2) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated.

(3) Evidence of structural integrity of the tower structure as required by the Building Official.

(4) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.

(5) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.

(D) Statements from the F.A.A., O.S.A.D., and F.C.C., that the standards of MCC 36.6115 (G) are met or the required good faith, timely effort it achieve such responses.

(E) Written authorization from adjoining property owners, if needed, under MCC 36.6115 (J).

(F) Responses to the applicable Comprehensive Plan Policies.

Applicant: (C)(1) Exhibit D contains the tower design, height, technical and structural specifications. A self supporting tower is being utilized so as not to disturb the existing water table as the footing is much shallower than a monopole. The cost to the city is quite substantially less utilizing a self supporting tower as well as the cost of installation. Exhibit E contains the geotechnical data and recommendations.

(C)(2) This information is provided in Exhibit D, 2nd page, under the heading "Tower Design Loading".

Staff: It appears that most of the above information has been supplied by the applicant in exhibits A.8 through A.11 and A.15.a. through d. The FCC contact may not have been adequate to meet the code criterion. It appears the FCC notification was for a determination that the tower did not need to be registered for FAA coordination. The FCC notification was to provide documentation that the radio and telecommunication tower complies with their regulations for radiation and signal strength or that no such compliance is necessary.

4.03 MCC 36.6115 Approval Criteria for New Transmission Towers.

New transmission towers in rural districts permitted under MCC 36.6015(A)(8)(a) or (b) may be allowed, based on findings by the approval authority that the following criteria are met.

(A) The site is of a size and shape sufficient to provide the following setbacks:

(1) For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site size standards of MCC 36.6115(I) and 36.6115(J) are met as to those portions of the property abutting the residential or public uses.

(2) For all other towers, the site shall be of sufficient size to provide the setback required in the underlying district between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines.

Applicant: The site is of a size and shape sufficient to provide setbacks out lined in 36.6115(A)(1) and (2). This criteria has been met and is shown in the site plan (exhibit B)

Staff: The tower location and accessory building exceed the setback requirements of the CFU zoning district as shown on Exhibit A.15.b. No guy anchors are proposed. The applicant has

demonstrated compliance with MCC 36.6115(1)(a), (1)(b), and (1)(d) but not with (1)(c). Additional information about the ice hazard and possible mitigation measures are needed to comply with (c). *At present, the above criterion under (A)(1) has not been met.*

Hearings Officer: Staff's above conclusion regarding this criterion is no longer correct. See findings at section 4.18, below. The applicant has demonstrated by submittal of a post-hearing memorandum by Stuart Greenberger, P.E., that the site size standards of MCC 36.6115(I) and 36.6115(J) are met. Criterion (A)(1) is applicable because the subject property abuts two streets, and the applicant has now demonstrated that this criterion is satisfied.

4.04

(B) The required setbacks shall be improved to meet the following landscaping standards to the extent possible within the area provided:

(1) Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property. Such landscaping plan shall demonstrate the following:

(a) For towers 200 feet tall or less, a buffer area no less than 25 feet wide shall commence at the property line. At least one row of evergreen shrubs shall be spaced not more than five feet apart. Materials should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of evergreen trees or shrubs, not less than four feet height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(b) For towers more than 200 feet tall,

(c) In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (a) and (b) above, except as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses, including but not limited to produce farms, nurseries, and tree farms.

Applicant: In lieu of these standards, my alternate plan is to plant 5' arborvitae at 5' intervals around the tower base (foundation) MCC 36.6115(B)(c). The proposed tower is setback 150' from the property line, with existing native vegetation in between the street and the existing fence, as well as inside the compound. Any intrusion of landscaping into the native vegetation area will compromise the look and feel of the forest on the property line, as well as compromise the health of existing native plantings from disturbing roots.

Staff: The subject property currently is heavily vegetated with a number of large trees along Cottrell and Lusted Roads. Instead of converting this forested area into landscaping, the applicant is proposing an alternative planting along the base of the tower. This proposal provides for adequate screen for the tower along the perimeter of the property and adjacent to its base.

Hearings Officer: Any planting within 30 feet of the tower base, which is the primary fire safety zone depicted on the amended site plan, must comply with the limitations of MCC 36.2105(A)(5)(c). This ordinance states that within the primary fire safety zone "[a]ll other

vegetation should be kept less than 2 feet in height.” The purpose of that provision is to reduce the risks of wildfire as part of minimizing overall adverse impacts on resource lands and operations within the CFU zone. The majority of the subject site is forested, as are neighboring properties to the east. To the north, west and south of the subject property, nursery stock operations occupy adjoining lands. MCC 36.6115(B)(1)(c) notes that the need to protect forested and farmed adjoining lands from the risk of fire may outweigh the screening requirements of that ordinance. In this case, the applicant has stated in the post-hearing submittal, its intention to apply for an exception to the requirements for a secondary fire safety zone. I conclude that the risks to resource lands from fire on the property are serious, and do outweigh the screening requirements within the primary fire safety zone to the extent that they preclude planting vegetative screening within that zone.

It appears that the requirements of MCC 36.2105(A)(5)(c) directly conflict with the applicant’s plan to landscape around the tower base with 5-foot arborvitae. Consequently, tower screening cannot be accomplished by that means. The applicant desires to maintain, to the extent possible, the existing forest and native vegetation on the property. It is possible that the existing vegetation can be utilized as part or all of the needed screening.

A condition of approval will require that the applicant submit a landscaping plan that does not use vegetation taller than 2 feet within the primary fire safety zone or otherwise conflict with the limitations on plantings within the primary safety zone. Such small plantings as are allowed within the zone will not provide much in the way of screening. The applicant will therefore need to demonstrate either that the existing vegetation will function as an adequate screen pursuant to the “lesser requirements” of MCC 36.6115(B)(1)(c); or that pursuant to that ordinance, the existing vegetation supplemented by some additional planting outside the primary fire safety zone will be adequate to provide desirable screening.

As conditioned, the requirement is satisfied.

- 4.05 **(C) The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. Towers shall be painted and lighted as follows:**

(1) Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from base to treeline, with the remainder painted silver or given a galvanized finish.

(2) Towers more than 200 feet in height shall be painted in accordance with regulations of the Oregon State Aeronautics Division.

Applicant: This tower shall have a galvanized finish per MCC 36.6115(C)(1).

Staff: The 120’ lattice tower is located in an area of development surrounded by trees (Exhibit A.16). It will be heavily screened from the base to approximately 90 feet. The tower should be painted green from the base to the tree line (approximately 90 ft) and galvanized or painted silver beyond that point. Staff recommends that the hearings officer condition the permit to ensure conformance with the paint treatment requirements. The tower equipment will be placed within the existing building on-site to reduce costs and impacts to the surrounding forested area. The Bureau of Water Works facilities include the Bull Run Watershed, the Lusted Hill Ammonia Treatment Facility, miles of pipelines, and reservoirs within the City Limits. In order to better communicate between these widely spread facilities, the City of Portland is proposing to construct the tower. The tower will allow for radio communication during emergency events

and will improve monitoring of the Lusted Hill facility. The City currently owns the property and believes that the tower can have the least visual impact on the environment at this location.

Hearings Officer: In the post-hearing submittal, the applicant has revised its plans, and now intends to paint the tower green to the tree line, and maintain a galvanized finish above the tree line. A condition of approval requires this. As conditioned, these criteria have been met.

- 4.06 **(3) Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency.**

Applicant: (2), (3), and (4) do not apply.

Staff: The State and Federal Aviation department have determined that no lighting is required for the proposed tower. No lighting shall be incorporated. Staff recommends a condition of approval be included to remind the property owner or future owners of this requirement.

Hearings Officer: As conditioned, this requirement is satisfied.

- 4.07 **(4) Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.**

Applicant: (2), (3), and (4) do not apply.

Staff: The proposed lattice tower is free of guyed wires. No other tower exists on the subject site so tower parity is not an issue.

- 4.08 **(D) A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel, provided additional parking may be required in accordance with MCC 36.4100 to 36.4220 if the site serves multiple purposes.**

Applicant: Item (D) (parking spaces), has been met previously.

Staff: The applicant has shown two parallel spaces on the site plan (Exhibit A.15.b). They appear to meet or exceed the dimensional standards of the off-street parking code. The size of the site ensures that it is feasible to meet these standards. Since additional information is needed to verify compliance, staff recommends that a condition of approval be included requiring Design Review. As part of Design Review, staff will verify that all the criteria listed in MCC 36.4100 to 36.4200 are met.

Hearings Officer: As conditioned, this criterion is met.

- 4.09 **(E) The applicable policies of the Comprehensive Plan are met.**

Applicant: (E), (F) see exhibit F "Radiation Standards"

Staff: Staff has not identified any applicable policies at this time.

- 4.10 **(F) The NIER standards of MCC 36.6125 are met.**

Applicant: (E), (F) see exhibit F "Radiation Standards"

Staff: The applicant has stated that the tower is exempt from this standard due to MCC 36.6125(G) which allows an exemption under that section for Industrial, Scientific and Medical equipment. Based upon the exemption, the above NIER standard criteria is not applicable at this time.

Hearings Officer: I concur that the NIER standards of MCC 36.6125 are not applicable.

4.11 **(G) The following agency coordination standards are met:**

(1) A written statement provided by the applicant from the appropriate official in the Federal Aviation Administration that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required;

Staff: The applicant has provided a written statement from the Federal Aviation Administration that the application is not a hazard to air navigation (Exhibit A.8.a).

Hearings Officer: This criterion has been met.

4.12 **(2) A written statement provided by the applicant from the appropriate official in the Oregon State Aeronautics Division that the application has been found to comply with the applicable regulations of the Division, or a statement that no such compliance is required; and,**

Staff: The applicant has provided evidence that he contacted the State Department of Aviation (Exhibit A.9).

Hearings Officer: Findings below at section 4.14 conclude that this criterion has been met.

4.13 **(3) A written statement provided by the applicant from the appropriate official in the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.**

Staff: In addition to the TOWAIR notice (Exhibit A.8.b), the City of Portland and their representative has provided information that the proposed tower is exempted from the FCC regulations as it will operate under the 5.8 GHz range and falls within the Industrial, Scientific and Medical Equipment (Exhibit A.20 & A.21).

Hearings Officer: This criterion has been met.

4.14 **(4) The statements in (1) through (3) may be waived when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further provided any subsequent response that is received is conveyed to the approval authority as soon as possible.**

Staff: The applicant has contacted all three agencies (Exhibit A.8.a., A.8.b, and A.9).

Hearings Officer: This criterion is satisfied.

4.15 **(H) For a proposed tower in the EFU, CFU and MUA-20 districts, the following restrictions on accessory uses shall be met:**

(1) Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function.

Applicant: No accessory uses are required.

Staff: The property is zoned CFU. The radio and other monitoring equipment will be placed in the existing building on site. No new building will be constructed for this use. No other accessory uses are proposed.

Hearings Officer: This criterion has been met.

- 4.16 **(2) Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.**

Staff: The applicant has not proposed any studio facilities for emergency broadcast purposes or for other special and limited purposes.

Hearings Officer: This criterion appears not to be applicable.

- 4.17 **(I) Site size and tower setbacks:**

(1) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential district, public property, or public street. Such setback shall be sufficient to:

(a) Provide for an adequate vegetative, topographic or other buffer, as provided in MCC 36.6115 (C) and 36.6115 (B),

(b) Preserve the privacy of adjoining residential property,

Applicant: Site size and setbacks have been addressed [note site plan exhibit B].

Staff: The 120 ft lattice tower will be set back from the front property line adjacent to Cottrell Road by approximately 150 feet. The setbacks to other property lines are much greater. Within these setback areas, the City has preserved large swaths of trees to screen adjacent neighbors' views of the ammonia treatment facility, protect their privacy and provide an adequate buffer for the tower.

Hearings Officer: This criterion has been met.

- 4.18 **(c) Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required in MCC 36.6110 (C) (4) and (5), and**

Staff: The applicant has submitted failure characteristics for the proposed lattice tower which indicate that at failure mode, the collapse would most likely fall within the distance from the base equal to the height of the structure. The structure is 120 ft tall. Based upon this determination by the engineer (Exhibit A.10), the collapsing structure would not fall onto adjoining properties based upon proposed setback distances exceeding 150 ft or greater.

The applicant also submitted an ice hazard letter which only looks at ice fall in a no wind condition (Exhibit A.11). The letter states *'that the current design of the structure allows large fragments of ice (under a no wind load condition) to fall at the widest point of the tower (the base).'*' The engineering letter (Exhibit A.10) states *'With regard to potential ice fall radius, we cannot evaluate the circumference of potential ice fall off of the tower, as that is dependent on many unknown factors.'* These exhibits do not provide the engineering analysis required by this criterion or under MCC 36.6110(C)(5). Using the same basic wind speed as for the failure characteristics and a ½ inch ice load would be adequate consideration for ice hazards. The other alternative would be to consider de-icing equipment or treatment that would prevent the build-up of ice and would mitigate for the unknown hazards. *At present, it does not appear that criterion MCC 36.6115(I)(1)(c) has been met.*

Hearings Officer: Staff's italicized conclusion above is no longer correct.

During the post-hearing period, the applicant submitted a memorandum dated September 15,

2006, from Stuart Greenberger, P.E., of the City of Portland Bureau of Water Works. Mr. Greenberger's memorandum states as follows:

"This memorandum is to address the code referenced 366115.I.1.C discussed in the 'staff report' from Multnomah County. This code section requires an engineer to review the tower failure characteristics and falling ice hazards to produce a fall zone. The fall zone is defined as the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. No adjoining property can be located within this fall zone.

"The tower failure characteristics have not been investigated and therefore the tower will be assumed to fall as a single element. The debris radius, which creates the fall zone, for this conservative scenario is the radius of the tower (120 feet). This fall zone is greater than what is required for falling ice. Computing a less conservative fall zone would require a structural evaluation of the tower failure characteristics.

"Therefore the required fall zone for the tower is a 120 feet radius from the tower base."

Mr. Greenberger's memorandum does not address failure of the tower itself; failure characteristics of the tower were the subject of letters from Radiant Communication Design, submitted by the applicant. (Exhibit A.10) Mr. Greenberger's analysis equates the radius of the tower fall zone with that for falling ice, and explains that this would be a conservative scenario. The debris radius for falling ice, according to Mr. Greenberger, is the height of the tower, 120 feet. This distance is less than the distance from the base of the tower to any property line. This criterion is satisfied.

4.19 **(d) Protect the public from NIER in excess of the standard of MCC 36.6125 (A).**

Staff: The applicant has specified that the proposed radio and telecommunication tower qualifies as exempt under MCC 36.6125(G) as it falls within the category of Industrial, Scientific and Medical Equipment.

Hearings Officer: Since the tower is exempt under MCC 36.6125(G), this criterion is not applicable.

4.20 **(2) A site is presumed to be of sufficient size when it:**

(a) Meets the requirements of (1) (c) and (d) above,

(b) Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential district, public property, or public street, and

(c) Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential district nor a public property or a public street.

Staff: The setback to Cottrell Road and Lusted Road is a minimum of 150 ft (Exhibit A.15.b). The tower is proposed at 120 ft (Exhibit A.15.c). This exceeds the requirement of a 20% setback from these streets. The project site is not located adjacent to any urban residential district. The adjoining property to the south is located in the MUA-20 zoning district and the adjacent property to the east is in the CFU zoning district. The rear yard setback in the MUA-20 zone is 30 ft. The rear forest practice setback in the CFU district is 130 feet. The tower is approximately 300 ft from the south property line and over a 1000 ft from the east property line

(Exhibit A.15.b). Criteria (2)(b) and (c) have been met. Staff was not able to find that the criteria under (1)(c) was met as the ice hazard study was inadequate. *At present, this criterion has not been met.*

Hearings Officer: As noted above in section 4.20, Staff's conclusion with respect to the criteria under (1)(c) is no longer correct. This criterion has been satisfied.

- 4.21 **(3) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in MCC 36.6110 (C) (4) will not lead to multiple failures in the event that one fails.**

Staff: The application only proposes one tower. *This criterion appears not to be applicable at this time.*

Hearings Officer: This criterion is not applicable.

- 4.22 **(4) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC 36.6020.**

MCC 36.6020 A building or use approved under MCC 36.6015 through 36.6050 shall meet the following requirements:

(A) Minimum yards in ...CFU..., Districts:

(1) Front yards shall be 30 feet.

(2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.

(3) Rear yards shall be as required in the district.

Staff: The existing building to be used for the transmission equipment exceeds the above setback requirements (Exhibit A.15.b).

Hearings Officer: This criterion has been met.

- 4.23 **MCC 36.6120 Design Review.**

The use shall comply with the design review provisions of MCC 36.7000 to 36.7060. This may be implemented as a condition of approval.

Staff: Staff has included the requirement of Design Review in the recommended conditions of approval.

Hearings Officer: As conditioned, this criterion is met.

- 4.24 **MCC 36.6125 Radiation Standards.**

Non-ionizing electromagnetic radiation standards.

(A) No source of non-ionizing electromagnetic radiation shall hereinafter be operating, which causes the general population to be exposed to radiation levels exceeding the mean squared electric (E2) or mean squared magnetic (H2) field strengths, or their equivalent plan wave free space power density, as specified in Table 1.

TABLE 1 Non-Ionizing Electromagnetic Radiation Standards			
Frequency (MHz)	Mean Squared Electric (E) Field Strength* (V ² /m ²) [†]	Mean Squared Magnetic (H) Field Strength* (A ² /m ²) [‡]	Equivalent Plane- Wave Power Density* (mW/cm ²)
100 kHz - 3 MHz	80,000	0.5	20
3 MHz - 30 MHz	4,000(180/f ²)	0.025(180/f ²)	180/f ²
30 MHz - 300 MHz	800	0.005	0.2
300 MHz - 1500 MHz	4,000(f/1500)	0.025(f/1500)	f/1500
1500 MHz - 300 GHz	4,000	0.025	1.0

(1) For near field exposures, measurements of the mean squared electric and magnetic field strengths are especially important to determine compliance with the standards in columns 2 and 3 of Table 1. For convenience, mean squared electric or magnetic field strengths may be specified as the equivalent plane-wave power density. At higher frequencies (e.g., above 30-300 MHz), measurement of mean-squared magnetic field strength may not be necessary if it can be reliably inferred from measurements of either mean squared electric field strength or equivalent plane-wave power density.

(2) In the event the federal government promulgates mandatory or advisory standards more stringent than those described herein, the more stringent standards shall apply.

(3) These standards are adapted from the American National Standards Institute's American National Standard C95.1-1982, Safety Levels With Respect to Human Exposure to Electromagnetic Fields (300 kHz to 100 GHz). This ANSI standard's documentation should be consulted to help resolve any future questions about the basis or interpretation of the standards in this section.

(4) Similarly, the latest revision of ANSI's American National Standards Institute's American National Standard C95.3, Techniques and Instrumentation for the Measurement of Potentially Hazardous Electromagnetic Radiation at Microwave Frequencies, is incorporated here by reference as one source of acceptable methods for measuring non-ionizing radiation levels in determining compliance with this standard.

(a) For all measurements made to ensure compliance with this section, evidence shall be submitted showing that the instrument or instruments used were calibrated within the manufacturer's suggested periodic calibration interval; that the calibration is by methods traceable to the National Bureau

of Standards; a statement that the measurements were made in accordance with good engineering practice; and a statement or statements as to the accuracy of the results of the measurements.

(6) For average times less than 0.5 hour, the allowed power density P in $\mu\text{w}/\text{cm}^2$ as a function of averaging time (in hours is given by $P = k/(\text{where in turn } K \text{ is equal to } 1/2 \text{ times the allowed power density for averaging times of } 0.5 \text{ hour and greater.}$

Applicant: The proposed transmitter is designed to operate in the frequency band, designated by the FCC, as the ISM band or industrial, scientific, and medical equipment band. Therefore, under MCC 36.6125(G)(2), the transmitter is exempt from the requirements of MCC 36.6125. Please see exhibit F.

Staff: Exhibit F has been relabeled by staff as Exhibit A.19.

- 4.25 **(C) After August 19, 1982, no installation of a new source of non-ionizing electromagnetic radiation or changes in an existing source which in any way causes increases in the NIER or radiation pattern of the NIER source shall occur without first obtaining a Community Service use designation or modification thereof, unless otherwise provided herein.**

Staff: The subject application if approved will grant a CS approval for the construction of the tower.

- 4.26 **(D) The application for the use shall be on forms provided by the Planning Director, and shall show:**

(1) The information required under (1) through (16) of subpart (B) above.

(B)(1) Name and address of owner of transmitter and/or antenna.

(B)(2) Name and address of owner of property on which the transmitter and/or antenna is located.

(B)(3) Location of transmitter.

(B)(4) Location of antenna by geographic coordinates by either latitude and longitude or state plane coordinates.

(B)(5) Output frequency of transmitter.

(B)(6) Type of modulation and class of service.

(B)(7) Power output of transmitter (average and peak).

(B)(8) Power input to antenna.

(B)(9) Manufacturer, type, manufacturer's model number of antenna and a copy of the antenna radiation patterns.

(B)(10) Gain of antenna with respect to an isotopic radiator.

(B)(11) Polarization of radiation from antenna.

(B)(12) Height of antenna above ground.

(B)(13) Horizontal and radial distance of antenna to nearest point on property line and to nearest habitable space regularly occupied by others than immediate family or employees of transmitter and/or antenna owner and/or operator.

(B)(14) Elevation above mean sea level of ground at the antenna location and the points specified in (B)(13).

(B)(15) The call letters assigned to the source.

(B)(16) Date of installation of present transmitter, and date of installation of the associated antenna, date of installation of the structure, if any, on which the antenna is located.

Applicant: (B)(4) 045° 28' 29.74" N 122° 18' 18.17" W

(B)(5) 5.8 ghz

(B)(6) 16qam and it is an unlicensed service

(B) (7) Transmitter power output = 17dBm

(B)(8) 17dBm (80 mw)

(B)(10) 22dBi

(B)(11) Yes, Vertical polarization

(B)(13) 150' horizontally from the property line, and 20' to a habitable building and 98' vertically to the same building.

(B)(14) The site elevation is 670.00 AMSO. The antennae elevation is 785' AMSL.

Staff: (B)(1), (2) & (3) See Exhibit A.1

(B)(9) See Exhibit A.12

(B)(12) 120' See Exhibit A.15.c.

(B)(16) No transmitter exists at the subject site.

4.27

(2) The measured existing non-ionizing radiation levels at the nearest point on the property lines of the predicted maximum radiation from the source, and the nearest point regularly occupied by other than the immediate family and/or employees of the transmitter owner and/or operator.

(a) These measurements shall be made at a height of 1.5 meters above the ground or at the greater height if habitation occurs at a greater height with lesser radial distance to the source.

(b) If the measured level is equal to or less than 1/5 of the limits, the measurement shall be made for the continuous period 6 a.m., to 6 p.m., on a regular business day.

(c) If the measured level is greater than 1/5 of the limits, the measurement shall be made for a continuous period of 168 hours.

(d) If there exists an operational situation which would cause higher levels to occur at some other time than the intervals of (b) or (c) above, the measurement shall be made during that time.

(e) These measurements may be made by whatever means the registered professional engineer under whose direction and supervision they are made deems appropriate. The effects of contributing sources of frequency below the lower frequency limit of broadband instruments may be appropriate separate single instant measurements of the contribution due to these sources. Further, levels below 20 microwatts/cm² or the minimum sensitivity

of the instruments used, whichever is lesser, shall be deemed zero for further computational purposes.

(3) The calculated average levels at the three points specified in (D) (2) after installation of the new source, including both the background and the new source.

(4) The calculated levels at the boundaries of other sources at which the new source may cause a detectable increase in level.

(5) The calculated level at the predicted point of maximum radiation off of the property on which the new source is located caused by the new source along with the measured background NIER at this point. This measurement shall meet the requirements of (D) (2).

(6) The geographic coordinates (latitude and longitude or state plane coordinates) of each point of measurement and/or calculation shall be furnished.

Staff: The proposed transmitter is less than 1 KW so it is exempt from MCC 36.6125(D) if it complies with (F) below.

- 4.28 (E) A Community Service use designation or modification thereof may be granted if the levels calculated in MCC 36.6125 (D), including the existing measured background, do not exceed the limits set forth in MCC 36.6125 (A), and if a new tower is required, the siting standards of this section are met. However, if the calculated levels, including existing measured background at any point specified in MCC 36.6125 (D) exceed one-third of the maximum levels of MCC 36.6125 (A), then, the approval shall be conditional upon measurements made after the new source is installed showing that the maximum levels of MCC 36.6125 (A) are not exceeded. If the calculated levels exceed the maximum level of MCC 36.6125 (A), the application shall be denied.

Staff: The proposed transmitter is less than 1 KW so it is exempt from MCC 36.6125(D) if it complies with (F) below.

- 4.29 (F) All commercial intermittent sole source emitters of less than 1 KW average output are exempt from the measurement requirements of MCC 36.6125 (D) if they comply with the separation requirement of MCC 36.6125 (F) and all other requirements of this section. Prior to issuance of a building permit for a tower to support an antenna associated with one of these uses, the Planning Director shall determine that the antenna meets the following requirements:

(1) For an effective radiated power (ERP) of less than 100 watts the highest current point of the antenna is located at least ten feet and all portions of the antenna three feet from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

Applicant: All effective transmissions are well below the federal guidelines outlined, and allowable. Please note exhibit F. This was submitted by the RF personnel for the city of Portland.

Staff: The antennae and its base are located at least 150 ft from all adjacent properties. The separation requirement is not required from the employees on the site.

Hearings Officer: This criterion has been met.

4.30 (G) The following uses are exempt from all requirements of this section:

(1) All portable, hand-held and vehicular transmission sources.

(2) Industrial, scientific, and medical equipment operating at frequencies designated for that purpose by the FCC.

(3) Radio frequency machines:

(a) Which have an effective radiated power of 7 watts or less;

(b) Which are designated and marketed as consumer products, such as microwave ovens, citizen band radios, and remote control toys, or

(c) Which are in storage, shipment or on display for sale, provided such machines are not operated.

(4) Amateur intermittent sole source emitters of less than 1 KW average output.

Applicant: Radiation Standards 36.6125

Power dBm = $10 \log_{10} (\text{Power}/1 \text{ milliwatt})$

Transmitter power output = 17dBm

Antennae gain = 22 dBi

Effective radiated power (ERP) = 17dBm + 22dBi = 39dBm power output

ERP in measured in power is: $\text{Power} = \log^{-1} (\text{dB}/10) \times 1\text{mW}$

Or

$\log^{-1}(39/10) \times .001 = 7.94 \text{ ERP}$

Since the ERP of 7.94 Watts is significantly lower than the 1 KW average output power we should be exempt from MCC 36.6125(D) NEIR requirements according to MCC 36.6125(F). The transmitter is a commercial, intermittent sole source emitter.

Also, since the ERP is less than 100 watts the highest current point of the antenna is approximately 119 feet above the ground and the building is approximately 21' high, the antenna is approximately 98' vertically above the surface of any habitable structure and 20' horizontally from a habitable structure.

Exhibit 11 is the unit being utilized.

Staff: The applicant has stated that the proposed equipment operates within the industrial, scientific, and medical equipment operating at frequencies designated for that purpose by the FCC.

Hearings Officer: The equipment is designed to be industrial, scientific or medical equipment operating under the frequencies designated for that purpose by the FCC, and therefore the applicant is exempt from this section.

5.00 **Significant Environmental Concern for wildlife Habitat Criteria**

5.01 **MCC 36.4515 Uses – SEC Permit Required.**

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that development, including but not limited to, the location and design of any use, or change, replacement or alteration of

a use, except as provided in MCC 36.4520, shall be subject to an SEC permit.

5.02 **MCC 36.4540 Application for SEC Permit.**

A decision on an application for an SEC permit shall be based upon findings of consistency with the purposes of the SEC district and with the applicable criteria for approval specified in MCC 36.4545 through 36.4560. An application for a use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

- 5.03 (A) **General SEC:** All applications for SEC permits shall include the information listed in this section in sufficient detail for County staff to evaluate the impacts of the proposal. The applicant is responsible for providing all of the required information. In addition to the information listed in this section, the application shall contain the supplemental information that is listed for the resource area in which the development is proposed.
- (1) A written description of the proposed development and how it complies with the requirements applicable to the resource area in which development is proposed as listed in SEC-sw, SEC-wr, SEC-h.
 - (2) A map of the property drawn to scale showing;
 - (a) Boundaries, dimensions, and size of the subject parcel;
 - (b) Location and size of existing and proposed structures;
 - (c) Contour lines and topographic features such as ravines or ridges;
 - (d) Location of natural drainageways, springs, seeps, and wetlands on the site. The Planning Director may require the applicant to provide the location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;
 - (e) Proposed fill, grading, site contouring or other landform changes;
 - (f) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
 - (g) Location and width of existing and proposed roads, driveways, parking and maneuvering areas, and service corridors and utilities.
 - (3) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation.
 - (4) Application for a flood hazard permit, erosion control permit, and/or other required natural hazards permit for the proposed development;

Applicant: The boundaries and dimensions of the subject parcel where the tower will be constructed are shown in Exhibit 5. Exhibit 1 through 4 shows the location and size of the existing and proposed structures on the property.

Exhibit 6 is an annotated aerial photo that shows the location of:

- Existing and proposed structures on the property
- Forested and developed areas on the property
- Location and width of driveways on the subject property and all properties located within 200 ft of the subject property
- Location, height, and type of fencing located on the subject property and all properties located within 200 ft. of the subject property.

(2) Development Design

Exhibit 2 is a scaled plan-view that shows the location of the proposed tower relative to the existing building. Exhibits 3 and 4 are site elevation drawings of the proposed tower. The tower will be located in a semi-circular shaped landscape island, approximately 50 ft by 50 ft. bordered by the Lusted Hill treatment facility on the south side and by a paved driveway/service corridor on the west, north and east sides (see Figure 1 below).

Staff: Applicant has submitted the required information listed above.

Hearings Officer: These informational requirements have been satisfied.

5.04 **(D) SEC Wildlife Habitat:** In addition to the information required in MCC 36.4540(A) above, an application to develop in SEC-h areas shall also include:

- (1) An area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:
- (2) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas. For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.
- (3) Location and width of existing driveways within 200 feet of the subject parcel's boundaries on all adjacent parcels;
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Applicant: (1) Exhibit 6 is an annotated aerial photo that shows the location and boundaries of the subject property and all properties within 200 ft. of the subject property.

(2) Approximately 80% of the parcel meets the Planning code's criteria for "forested" is occupied by mature second growth Douglas firs with an average diameter >11 inches. The remaining 20% of the property consists of cleared, developed areas or areas containing grass/shrub vegetation. The site where the proposed tower will be constructed is a cleared area.

(3) Exhibit 6 also shows the location and width of driveways on all parcels within 200 ft of the subject property.

(4) The location and type of existing fencing on the subject property and properties located within 200 ft. of the subject property are shown on Exhibit 6. No new fence construction is proposed as part of the radio tower project. The existing fencing on the Water Bureau's

property was approved as part of the Conditional Use Permit process for the Lusted Hill treatment facility in 1991.

Staff: Applicant's Exhibit 6 can be found as part of Exhibit A.7 and is labeled A.7.c. This information has been provided.

Hearings Officer: The applicant has satisfied these informational requirements.

5.05 **MCC 36.4550 General Requirements for Approval in Areas Designated as SEC-wr or SEC-h.**

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.

(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Applicant: The proposed tower construction site is located on a flat, landscaped area bordered by a 24 ft. wide paved driveway on the west, north and east sides and by the Lusted Hill treatment facility on the south side. Erosion will be controlled through use of Best Management Practices, including use of silt fences, revegetating disturbed areas with native plant species, and scheduling construction during dry weather periods.

Staff: A condition of approval has been recommended requiring the applicant to obtain a Grading and Erosion Control (GEC) permit or demonstrate that he is exempt. At minimum, the project will be a Minimal Impact Project (MIP) and require erosion control installation and inspection as part of the building permit process. The MIP will require Best Management Practices as part of the building permit approval.

Hearings Officer: As conditioned, this criterion will be met.

5.06 **(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.**

Applicant: The only additional lighting that will be installed in conjunction with the radio tower is safety lighting that will be attached to the top of the tower in order to comply with FAA permit requirements.

Staff: The FAA Determination does not require lighting of the tower (Exhibit A.8). Per MCC 36.6115(C)(3) no lighting may be placed on the tower.

Hearings Officer: No lighting will be placed on the tower. This criterion is satisfied.

5.07 **(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone: (see zoning code for more detail)**

Applicant: None of the plants listed in SEC. 36.4550(C) of the West of Sandy River Rural Plan area code will be used as landscape plantings for the project.

Staff: The applicant is proposing to plant arborvitae surrounding the tower. Arborvitae is not listed on the County's Nuisance Plants listed or on Metro's Nuisance Plant List and the Prohibited Plant List.

Hearings Officer: The applicant may not plant arborvitae as originally proposed, because it

will impinge upon the primary fire safety zone. The applicant must submit a different landscaping plan that will not involve planting screening vegetation within the primary fire safety zone. A condition of approval prohibits planting and requires control of the nuisance and prohibited plants. As conditioned, this criterion has been met.

5.08 **MCC 36.4560 Criteria for Approval of SEC-h Permit – Wildlife Habitat.**

Development within areas designated SEC-h shall comply with the provisions of this section. An application shall not be approved unless it contains the information in 36.4540(A) and (D).

(A) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Applicant: The proposed tower construction site will be entirely within a non-forested cleared area. No construction or tree removal will occur in forested areas on the property.

Staff: Staff concurs. See Exhibit A.7.

Hearings Officer: This criterion has been met.

5.09 **(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

Applicant: The proposed tower site is located within 200 ft. of SE Cottrell Road and is consistent with the proximity-to-road development standard addressed by this portion of the Planning code.

Staff: Staff concurs. The tower will be approximately 150 ft to the west of Cottrell Road (Exhibit A.15.b).

Hearings Officer: This criterion has been met.

5.10 **(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Applicant: No additional access road/driveway or service is necessary for construction and maintenance of the radio tower. The existing driveway for the Lusted Hill treatment facility is less than 500 ft. in length.

Staff: The existing driveway is over 500 feet in length as it loops around the existing improvements and reconnects with the access drive. This driveway was approved as part of previous land use approvals and the driveway is nonconforming to present day codes.

Hearings Officer: The driveway is pre-existing and nonconforming. No new driveway or access road will be constructed or utilized in connection with this development.

5.11 **(4) Fencing within a required setback from a public road shall meet the following criteria:**

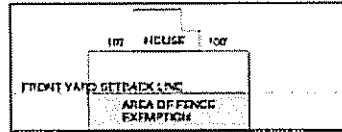
(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbles. Fences may be electrified, except as prohibited by County Code.

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.



**FIGURE 36.4570A FENCE
EXEMPTION AREA**

(f) Fencing standards do not apply where needed for security of utility facilities.

Applicant: No additional fencing will be necessary for construction and maintenance of the radio tower. The existing fence on the property, which is needed for security of the facility, was approved through the Conditional Use Permit that was issued in 1991.

Staff: The existing chain link fence surrounding the facility is required for security. One of the purposes for constructing the tower is to add security camera to monitor the facility at night.

Hearings Officer: This criterion has been met.

- 5.12 **(5) The nuisance plants listed in Table 1 shall not be planted as landscaping and shall be controlled within cleared areas of the subject property.**

Applicant: None of the nuisance plants listed in Section 36.4550(C) will be planted as landscaping. Invasive weed species located within the security fenced area on the property will be controlled.

Staff: Staff recommends that a condition of approval be included to remind the property owner to maintain cleared areas free of nuisance plants.

Hearings Officer: As conditioned, this criterion is satisfied.

- 5.13 **(B) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**

(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).

(3) The wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting

the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

(c) That no fencing will be built outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Staff: The proposed radio tower meets the development standards listed under (A) above. No Wildlife Conservation Plan is required.

Hearings Officer: This criterion is inapplicable.

Conditions of Approval:

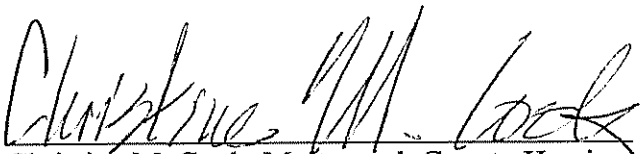
NOTE: Once conditions of approval have been met, application for building permits may be made. When ready for zoning sign-off for plan check to obtain a building permit, the applicant shall call the Staff Planner, Lisa Estrin at (503) 988-3043, for an appointment for zoning review plan check and to sign the building permit form. Please note, Multnomah County must review and sign off the building permit form and plans before the applicant submits building plans. Six (6) sets of the plans and six site plans of the building area are needed for building permit sign off.

1. Approval of this Community Service Permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents or within subsequent land use permits. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. This land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided in MCC 37.0690.
3. Prior to obtaining land use sign-off for the building permit for the lattice tower, the property owner or representative shall apply for and obtain approval of a Design Review application. [MCC 36.6005(B), MCC 36.6120]
4. Prior to obtaining land use sign-off for the building permit for the lattice tower, the property owner shall record a statement with the Multnomah County's Recorder that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. [MCC 36.2045(B)]
5. Prior to the use of the lattice tower, the property owner or representative shall apply for, obtain, and a get a final inspection a building permit for its construction. [MCC 36.2105(B)(1)]

6. Prior to land use sign off for the building permit, the property owner shall record a copy of this decision in the records of the Multnomah County Recorder and submit a copy of the recorded copy to the Land Use Planning section. [MCC 37.0670]
7. Prior to issuance of land use approval for the building permit, the applicant shall demonstrate that the project qualifies as a Minimal Impact Project or obtain a Grading and Erosion Control permit. The applicant shall show erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. [MCC 36.2060(I), MCC 36.4550(A)]
8. As part of Design Review for the lattice tower, the applicant shall amend the site plan to show the secondary fire safety zone as required pursuant to MCC 36.2105(A)(5)(c) or as modified by the approval of an Exception to the Secondary Fire Safety Zone.
9. The proposed lattice tower shall be painted green from base to treeline with the remainder painted silver or given a galvanized finish. As part of Design Review, the applicant shall amend the plans to show the color treatment and submit color chips of the green to be used on the site. The green shall be dark and should match the predominant green color found on the site within the shadows in order for the tower to reduce visual impacts on adjacent parcels. [MCC 36.6115(C)]
10. As part of Design Review, the applicant shall demonstrate that the two proposed parking spaces required for the project meet the Off-Street Parking Requirements listed under MCC 36.4100 through 36.4215. [MCC 36.2085, 36.6020(D), 36.6115(D)]
11. The tower shall not be illuminated unless the State Aviation Department requires it. If in the future the tower must be illuminated pursuant to a new FAA or State Aviation regulation, the property owner shall first contact Multnomah County Land Use Planning prior to installation. [MCC 36.6115(C)(3)]
12. The nuisance plants listed in Metro's and Multnomah County's Nuisance and/or Prohibited Plant List shall not be planted as landscaping and shall be controlled within cleared areas of the subject property. [MCC 36.4560(A)(5) & MCC 36.4550(C)]
13. Prior to the use of the lattice tower, the property owner shall establish a primary fire safety zone as specified by MCC 36.3105(A)(5)(c)(1) to extend for a radius of 30 feet out from the base of the tower. The property owner and its successors shall continuously maintain the primary fire safety zone around the tower as required by MCC 36.2105(A)(5)(c)(1) or any successor ordinance.

Hearing Officer Decision:

Based upon the evidence in the record, including the Exhibits listed below, and the applicable approval criteria, and the findings, analysis, and conclusions in this decision, and subject to the conditions of approval above, the Conditional Use Permit for the proposed 120' tall Radio Transmission Tower and the Significant Environmental Concern for Wildlife Habitat Permit are approved.



Christine M. Cook, Multnomah County Hearings Officer

Dated: November 7, 2006

6.00

Exhibits/Procedures

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	5/31/06
A.2	3	Brief Description of Project	5/31/06
A.3	1	Cover Sheet – Exhibit 1	5/31/06
A.4	1	Overall Site Plan – Exhibit 2A	5/31/06
A.5	1	Site Plan Coax Bridge – Exhibit 2B	5/31/06
A.6	1	Site Elevations – Exhibit 3 and 4	5/31/06
A.7	6	a. SEC Application Narrative b. Air Photo of Subject Property with Dimensions Added to Show Boundaries of Parcel. – Exhibit 5 c. Location of Fences, Driveways and Improvements within 200 ft of Subject Site	5/31/06
A.8	5	a. FAA Determination of No Hazard to Air Navigation – Exhibit 7 b. FCC Antennae Structure Registration	5/31/06
A.9	1	Email from Kevin Freeto to State of Oregon Department of Aviation Requesting Determination on Tower – Exhibit 8	5/31/06
A.10	2	Failure Characteristics Letter from Radian-Exhibit 9	5/31/06
A.11	3	Ice Fall Report from Radian – Exhibit 10	5/31/06
A.12	4	Airmux-200 Broadband Wireless Multiplexer – Exhibit 11	5/31/06
A.13	8	Additional Narrative	7/11/06
A.14	7	Deeds for Property – Exhibit A	7/11/06
A.15	4	Project Drawings – Exhibit B a. Project Description Sheet No. 01 b. Overall Site Plan Sheet No. 02 c. Site Plan Coax Bridge Sheet No. 03 d. Site Elevations Sheet No. 04	7/11/06

A.16	3	Photographs of Site – Exhibit C	7/11/06
A.17	20	Exhibit D	7/11/06
A.18	3	Geotechnical Summary Report – Exhibit E	7/11/06
A.19	1	Radiation Standards / Effective Radiated Power Calculations – Exhibit F	7/11/06
A.20	3	FCC Regulations Applicable to Industrial, Scientific and Medical Equipment	8/23/06
A.21	1	Email Regarding FCC Regulations from Scott Howes	8/23/06
'B'		Staff Exhibits	Date of Document
B.1	1	A&T Property Record for TL 200, 1S4E22BA	5/24/06
B.2	1	Zoning Map	8/21/06
B.3	1	2004 Air Photo	8/16/06
B.4	1	Contour Map	8/16/06
B.5	2	FCC Definitions for Industrial, Scientific and Medical Equipment	8/22/06
'C'		Administration & Procedures	Date
C.1	3	Incomplete Letter	6/27/06
C.2	1	Acknowledgement of 180 Days to Get Application Complete	6/28/06
C.3	1	Complete Letter – Day 1	7/11/06
C.4	3	Notice of Public Hearing	8/17/06
C.5	32	Staff Report	8/25/06

Type III Application Process

Pursuant to MCC 37.0530(C), the following actions have been completed:

- Application Submitted on May 31, 2006
- Incomplete Letter Mailed on June 27, 2006
- Application Deemed Complete on July 11, 2006 (Day 1)
- Newspaper Notice Published in the Oregonian on Friday, August 18, 2006
- Notice of Hearing Mailed to Parties on August 17, 2006
- Staff Report Available On August 25, 2006
- Public Hearing Held on September 8, 2006 (Day 60)