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**BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON  
FINAL ORDER**

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This Decision consists of Conditions, Findings of Fact and Conclusions.

**December 31, 1997**

**CS 1-97**

Conditional Use Request for Cellular Radio Communication  
Facility

Applicant seeks approval of a Conditional Use (CS) to construct a self supporting 150 foot tall cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject property.

The antennas are proposed to be mounted to the pole and to a triangular platform mounted atop the pole. The proposed total height, including the antenna, is 160 feet.

<b>Location:</b>	14443 N.W. Charlton Road
<b>Description of Property:</b>	Tax Lot 7, Section 16, T2N R1W
<b>Parcel Size:</b>	3.54 acres
<b>Site Size Requested:</b>	50' x 50'
<b>Property Owner:</b>	Sauvie Island Grange No. 840 18143 NW Reeder Road Portland, Oregon 97231
<b>Applicant:</b>	AT&T Wireless Services Attn: Real Estate Mgr. PO Box 1119 Portland, Oregon 97207
<b>Comprehensive Plan:</b>	Multiple Use Agriculture
<b>Present Zoning:</b>	MUA-20

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## PROCEDURAL ISSUES

### 1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

### 2. Jurisdiction

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing. The applicant did however contend that the Federal Telecommunications Act limited the County's ability to regulate cell towers. The effect of the Federal Telecommunications Act will be discussed in the following section, of this order.

### 3. Federal Communications Act

The applicant has raised questions regarding Multnomah County's ability to regulate cell towers because of the Federal Telecommunications Act of 1996. Mr. Hammond, an attorney for AT&T Wireless Services, has submitted a memorandum of points and authorities in regards to the Telecommunications Act. Mr. Kleinman, an attorney for opponents, Citizens United for Sauvie Island Planning, has submitted a post-hearing memorandum that also discusses some issues raised by the Telecommunications Act of 1996 (the Act).

The Act did place some limitations on local regulation of cell towers. However, the Act did not pre-empt local zoning authority in regards to regulations of cell towers.

The Act contains four broad categories of standards in regards to local regulation of the placement of cellular phone towers and related equipment. The first set of provisions prohibits local authorities from using the zoning process to unreasonably discriminate against competing service providers. The Act also tries to stop local authorities from keeping wireless providers tied up in the hearing process.

The Act requires local authorities to support their decisions with substantial evidence and written findings, and the Act also contains provisions directed at the health concerns associated with the radio emissions from wireless transmitters. The Act prohibits a local authority from considering possible effects of these emissions in its decision making. As long as the proposed facility meets Federal

Communications Commission Standards, the local authority may not consider any claim that an authorized wireless communications facility might cause local health problems. Westel-Milwaukee vs. Walworth County, 556 NW 2d 107 (1996).

As to the subject application, the Federal Telecommunications Act does not prevent the County from reviewing this application or asserting its local zoning authority.

The Act does specifically prohibit the County from considering possible effects of the emissions, provided that the facility meets the Federal Communications Commission Standards. Since the evidence clearly indicated that the facility met both the County and Federal emission standards, this may be a moot point. However, to the extent the opponents presented testimony on the issues concerning harmful emissions, that portion of the testimony will be disregarded.

There is "substantial evidence" in this matter. The Final Order and Findings of Fact document will provide specific written findings which will comply with the Federal standards set forth in the Act.

Another provision of the Act requires that local authorities make a decision on the application within a reasonable period of time. The applicant in this matter originally submitted an application in December of 1996. The following section of this opinion discusses the applicable time limitations. It is clear from the record, however, that the County has not "tied the applicant up in the hearings process". The delays have occurred as a result of the applicant revising the application twice. The applicant has also on the record, requesting continuances and stipulated to waivers of the applicable time limitations. Accordingly, I find that the County has acted within a reasonable period of time. I also find that the County's action in this matter does not in any way discriminate against competing service providers.

#### **4. Application Timeline**

This application has a fairly involved procedural history in terms of its various incarnations and submittals. Originally, an application was submitted in December of 1996. A revised application was submitted as Case No. CS 1-97 on March 13, 1997. Originally the Planning Department determined that application was complete on April 11, 1997. A hearing was originally scheduled for May 21, 1997. However, on May 13, 1997 the applicant's representative, Spencer Vale, Planning Consultant, contacted the Multnomah County Planning Department and asked the County to reschedule the public hearing on this conditional use application until the June public hearing date. Mr. Vale specifically agreed to stay the running of the 120-day time period. Although Mr. Vale, in his letter which is referenced in the file as Exhibit "A-9", did not quote the applicable ORS statute, I find that the

applicant did knowingly and intentionally agree to extend the 120-day timeline as provided in ORS 215.428. The stated reason for requesting the continuance was so that the applicant could have additional time to try and resolve many of the concerns raised in the staff report.

The hearing was rescheduled for June 18, 1997. On June 12, 1997, the applicant's representative, Spencer Vale, submitted a revised site plan to the County. A second revised application was also submitted. The revision completely relocated the proposed cell site. Planning Staff did not have sufficient time to prepare a new staff report or review the revision prior to the scheduled hearing date of June 18, 1997. On June 18, 1997, the public hearing was opened. The applicant was given the opportunity to withdraw the application submitted March 13, 1997 and proceed with a new application, or proceed with the application as submitted on March 13, 1997, or ask for a continuance and amend the application to reflect the new proposed site. The applicant chose to amend the application and stipulated during the course of the hearing that the 120-day period of time would be stayed until a hearing could be reset.

Since a substantial number of interested parties had signed up to testify at the hearing, those individuals were given the opportunity to testify or wait until they had an opportunity to review the amended application. Individuals who had signed the sign-up sheet chose to reserve their testimony until the matter could be rescheduled.

The applicant stipulated that the 120-day "clock" would not run during the period of the continuance. The matter was rescheduled for August 20, 1997.

On July 15, 1997, the County Planning Department received a revised application narrative relating to the relocated cell site.

Although the County originally determined that the application was complete as of April 11, 1997, I find that the change in the application on July 15, 1997 was so substantial that the determination previously made that the application was complete as of April 11, 1997 must be withdrawn. I find that the application was not complete until July 15, 1997. On June 18, 1997 the running of the clock was again stayed until the next hearing could be scheduled, which hearing was scheduled and held on August 20, 1997. Accordingly, as of July 15, 1997, when the application became complete, a stay of the 120-day clock was already in place. At the hearing on August 20, 1997, both the applicant's attorneys and the attorneys for the opponents, Citizens United for Sauvie Island Planning, stipulated that the 120-day period was again stayed and extended while the attorneys prepared post-hearing memorandums and submittals. The applicant's reply memorandum was received at 3:20 p.m. on October 17, 1997. Accordingly, I find that as of that time the 120-day clock started to run. As of this point in time, the

clock has 14 days in October, 30 days in November, and 31 days in December on it. As of this date, the clock has 75 days on it.

## **BURDEN OF PROOF**

In this proceeding, the burden of proof is upon the applicant.

## **FACTS**

### **1 . Applicant's Proposal**

The applicant seeks approval to site a 150 foot tall cellular telephone communications monopole with associated antennas, direct an electronic equipment building on the subject property in the MUA-20 zone. A cellular telephone tower is a community service use, pursuant to Section 11.15.7020(A)(15)(a) of the Multnomah County Zoning Ordinance. Pursuant to Section 11.15.2132 of the Multnomah County Zoning Ordinance relating to the MUA-20 zone, community service uses can be cited or sited as a conditional use pursuant to the provisions of MCC .7005 through .7041.

The proposal involves the construction of a monopole with a triangular platform mounted atop the pole. Antennas will be attached to the triangular platform. The total height, including antennas, is 160 feet. The antenna associated with the facility are as follows:

- (1) There will be three groups of four directional antenna. these antenna measure about 18" by 48" and are affixed to the triangular platform atop the pole.
- (2) There will be 3 whip antenna. This type of antenna is approximately 2.6" in diameter and 10' in length.

The area being leased by the applicant for the proposed cell site is a 50' x 50' space approximately 225 feet west of NW Charlton Road and 80 feet from the north lot line. It is situated within a stand of trees.

The electronics equipment building, which is a 12' by 28' single story concrete aggregate (10' tall) structure, is placed approximately 100 feet from and parallel to the northerly lot line. The monopole is situated at the northerly end of the equipment shelter and is approximately 90 feet from the north lot line.

Access to the cell site will be via an existing driveway servicing the fire station. The roadway, with turn around, will extend to the cell site. Two code required off-street spaces are provided in this existing parking area. These spaces will be for

the use of the company vehicle providing periodic maintenance. After the cell site is on line, this maintenance, based on a system wide average, will occur about twice a month.

No one is at the site on a daily basis as the equipment is operated by remote control from the applicant's main offices in downtown Portland.

The site plan submitted depicts the monopole and equipment building on this site as well as other features. The site plan is attached hereto as Exhibit "A" and is incorporated by this reference herein.

## **2 . Site and Vicinity Information**

The site is a 50' x 50' portion of a parcel 3.54 acres in size located at 14443 NW Charlton Road on Sauvie Island. The comprehensive plan designation for the subject parcel is Multiple Use Agriculture. The present zoning is MUA-20.

To the south and on the same parcel is a fire station. To the south of that is Sauvie Island School.

To the north and east also within the MUA-20 zone area are residential uses. The nearest dwelling is about 275 feet to the north. To the west is a church and residential use.

This small MUA-20 zoned area is surrounded by a large EFU zoned area dedicated to a variety of agricultural activities.

## **3 . Testimony and Evidence Presented**

A. The exhibits listed in Exhibit List CU 1-97, which is attached hereto as Exhibit "B" were reviewed by the Hearings Officer and received in reference to this application. Exhibit "B" contains materials submitted up to and including the date of the hearing. Subsequently, within the initial seven day period following the hearing, while the record was still open, four letters were received from opponents. Those letters are listed as exhibits on the attached Exhibit "C".

In addition, the attorneys for the applicant and the opponents submitted post-hearing memorandum, which are also listed as exhibits on the attached Exhibit "C".

At the August 20, 1997 hearing, Bob Hall testified for the County, summarized the history of the application and his staff report, and described the site and surrounding property.

- B. The applicant was represented by Frank Hammond, a partner in O'Donnell, Ramis, Crew, Corrigan and Bachrach, LLP, attorneys for the applicant. Mr. Hammond discussed some of the legal issues relating to the Federal Telecommunications Act and applicable legal precedents in regards to the imposition of conditions in land use actions.
- C. Spencer Vail, Planning Consultant, addressed the applicable ordinance criteria on behalf of applicant.
- D. Lynn Trupp, the Master of the Sauvie Island Grange, spoke in support of the application. The applicant proposes to site the cell tower on property it is leasing from the Sauvie Island Grange.
- E. Betty Franklin, another member of the Grange, also spoke in support of the application.
- F. Jean Fears spoke in support of the application, indicating that the proposed cellular tower provided a needed community service.
- G. Yvonne Cieloha also spoke in support of the application, indicating that the availability of cellular service provides a needed service when the Sauvie Island is isolated by flood or emergency.
- H. Shirley Larson suggested that the cellular tower was needed as a matter of public safety.
- I. Mary Anne Wolfe appeared and submitted written materials indicating that cellular towers were safe and are needed in case of emergency to provide cellular phone service.
- J. Jeffrey Kleinman, attorney, appeared in opposition to the application, on behalf of Citizens United for Sauvie Island Planning. Mr. Kleinman addressed evidentiary and factual issues and the applicable criteria in the matter.
- K. Donna Matrazzo testified in opposition to the application, indicating that the island's rural character should be protected and the application denied.
- L. Bill Reid spoke in opposition to the application and submitted a letter and photographs.
- M. Adrienne Keith, whose property is in close proximity to the proposed tower site, spoke in opposition to the application. Ms. Keith indicated that there

were more appropriate locations for a cellular tower site and that there are currently no problems with AT&T reception on the island.

- N. Ursula Davis owns property to the west of the cellular tower site. She spoke in opposition to the property cellular tower, indicating that it did not meet safety, noise and visual impact standards.
- O. Greg Sprando appeared in opposition to the proposed site and raised questions regarding potential soil liquefaction during an earthquake and questioned the safety of the tower siting. Mr. Sprando also raised a number of other questions and concerns.
- P. Craig Hull also spoke in opposition to the application reaffirming points raised by earlier opponents.
- Q. Tom Givens also spoke in regards to the application and suggested that AT&T could more appropriately piggy back its cellular antennas with other sited cellular towers in other locations.
- R. Cherie Sprando also spoke in opposition to the application and inquired as to why AT&T was proposing to incur the expense of siting a cellular tower with the proposed location when there were only approximately 800 homes on Sauvie Island. She also indicated that the current cellular service received from AT&T on Sauvie Island is adequate.
- S. Jeff Hook also spoke in opposition to the application.
- T. On September 10, 1997, the applicant submitted the first supplemental submittal.
- U. On October 1, 1997, Jeff Kleinman submitted a post-hearing memorandum on behalf of Citizens United for Sauvie Island Planning.
- V. On October 17, 1997, Frank Hammond of attorney for applicant AT&T Wireless Services, submitted the applicant's reply memorandum.
- W. In addition to the testimony presented at the hearing, significant amounts of written and photographic evidence was also submitted.



## **STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT**

### **A . Community Service Approval Criteria:**

The following approval criteria of MCC 11.15.7035(C) apply to applications for radio and transmission towers in districts other than urban residential districts (Transmission towers are exempted from the general approval criteria of MCC 11.15.7015):

- (1) The site is of a size and shape sufficient to provide the following setbacks:**
  - (a) 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 .7035(B)(4) and (5) are met as to those portions of the property abutting the residential or public uses.**

#### **ANALYSIS:**

The area leased for the Cell Site itself does not abut a public street. The parent parcel, however, does abut NW Charlton, a public street. The parcel does not abut an urban residential district. Therefore the code provisions of (B)(4) and (5) are deemed to apply:

- (4) Site Size and Tower Setbacks.**
  - (a) 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:**
    - (i) Provide for an adequate vegetative, topographic or other buffer as provided for in MCC.7035(B)(7) and (11).**
- (7) Visual impact - 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:**
  - (a) 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.**
  - (b) [Note: This standard applies only to towers over 200 feet in height].**

- (c) **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.**
- (d) **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.**

**ANALYSIS:**

Prior to discussing the specific requirements set forth above, it would be appropriate to review the organization of the Multnomah County Code in relation to the regulation of cell towers. Section 11.15.7035(B) sets forth the standards for the siting of new cellular transmission towers in urban residential districts. The Code is designed to discourage siting towers in urban residential districts. Section 11.15.7035 (C) sets forth the regulations and approval criteria for new transmission towers in districts other than urban residential districts. Where a transmission tower is sited in a district that is adjacent to an urban residential district or public property, or a street, some provisions of the urban residential district approval criteria become applicable. For example, .7035(C)(1)(a) utilizes provisions in the urban residential district standards as approval criteria where a tower in a district other than an urban residential district abuts an urban residential district or public property or street.

It is important to note that the standard set forth in MCC .7035(B)(4)(a) as incorporated by .7035(C)(1)(a) specifically provides that the reference point for the setback is the property line abutting an urban residential district, public property or public street. The proposed site and parcel in question do not abut an urban residential district. One of the property lines of the parent parcel abuts a public street. Accordingly, the standards in paragraph .7035(A)(i) through (iv) are only applicable to the property line that abuts the public street. There are no property lines that abut an urban residential district.

In construing Section MCC .7035(B)(7), which is made applicable by MCC .7035(B)(4)(a) (i), it is necessary to review the visual impact from the property line in question, which is the Charlton Road property line. Four subcriteria under Section MCC .7035(B)(7) all contain lighting or illumination standards that affect the possible visual impact of the tower. The least visual impact standard is a qualified one. The Code provision reviews visual impact subject to technical, engineering, economic and other pertinent factors.

The opponents submitted a great deal of testimony about the location of the parcel for the proposed site, arguing that more suitable locations existed. The standard in question speaks to tower design and location on applicant's parcel. It does not call for a comparison of alternative sites. Such a requirement can not be imposed by a hearings officer. In choosing an MUA site over an urban residential district, the applicant has

already given deference to the Code preference for locating towers outside of urban residential districts.

The applicant has already agreed to relocate the tower on the parcel in order to place it in close proximity to a grove of trees, thereby minimizing the visual impact. The applicant has also presented technical evidence indicating the need for a tower of the proposed height.

The tower will improve cellular service on the island. Cellular service involves a line of sight technology. The tower must be high enough to "see other towers". By placing the tower on higher ground, as AT&T Wireless Services proposes, it avoids having to request approval for an even taller pole. The proposed location also places the base ground equipment on high ground, above potential flood waters.

In viewing this site from the applicable property line, the one on Charlton, a finding can be made that the applicant has demonstrated 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. The applicant has also indicated an ability to comply with the standards for painting and lighting of the tower. For towers of less than 200 feet the Code requires the tower be painted green from the base to the tree line. The applicant has indicated a willingness to paint the tower any color the County desires.

In other similarly situated facilities, i.e., within a stand of trees, brown rather than green is a color that blends well with the trees. The applicant will work with the County during Design Review to select the most appropriate paint for the facility as both the pole and antenna can be painted any color without affecting the operation of the facility.

Staff has suggested that the tower should be disguised to appear as a natural tree. However, the Code requires that a portion of the tower be painted silver or be given a galvanized finish. It is questionable whether a "galvanized" artificial tree is going to look more realistic than the proposed design for the cellular tower.

Compliance with the colors set forth in the Code, green within the tree line and silver above, will be adhered to by the applicant, unless alternative colors are approved in design review.

The letter from the Oregon Aeronautics Division (OAB), states that the monopole "should" have a steady burning red light. This is a comment only and is not based on a regulation requiring such lighting. It is not mandatory that the suggested lighting be made a condition of approval. The Code language clearly states that no lighting shall be incorporated if not required by the OAB.

The FAA indicates that no lighting or hazard markings are required and that the proposal meets all regulations imposed by that agency.

A steady red burning light could be intrusive to the surrounding area. Accordingly, no condition requiring such lighting will be attached to the approval.

The applicant has presented significant evidence indicating that the cellular tower is needed to provide service to the area and to rectify service problems. Several of the opponents testified that there were no problems with service in the area. Testimony was also submitted indicating that the enhanced service would be of benefit to the emergency service providers in the area, such as the fire department. Although there was significant testimony on each side, I do find that the applicant submitted substantial evidence that the monopole is the minimum height necessary to provide service to the area, and the applicant further complies with the standard that the tower be freestanding. Accordingly, a finding can be made that the applicant has met the approval criteria set forth in Section MCC .7035(B)(7).

**MCC.7035(B)(11) Landscaping - 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 shall be required, as follows:**

- (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, a buffer area not less than 40 feet wide shall be provided at the property line with at least one row of evergreen shrubs spaced not more than five feet apart which will grow to form a continuous hedge at least five feet in height within two years of planting; one row of deciduous trees, not less than 1 ½ inch caliper measured three feet from the ground at the time of planting, and spaced not more than 20 feet apart; and at least one row of evergreen trees, not less than four feet at the time of planting, and spaced not more than 15 feet apart. 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.

- (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.

#### **ANALYSIS:**

Code Section MCC 7035(B)(11) relating to landscaping is applicable only to that portion of the "property" which abuts streets. Subparagraph (a) relating to landscaping appears to contemplate a relatively small site in that it discusses trees and shrubs in the vicinity of guy wires. However, the criteria itself refers to the "property line", not the boundaries of the "site". Accordingly, this criteria will be viewed as being applicable to the parent parcel.

Subparagraph (b), by its terms, is not applicable to the subject application since (b) is only applicable to towers more than 200 feet tall.

Subparagraph (c) is an alternative standard, in lieu of (a) or (b). The applicant would have the option of providing a detailed landscaping plan that could be approved, provided that the plan accomplished the same degree of screening achieved in subparagraph (a).

Originally the applicant proposed to address criteria (c) and to propose a buffer area only upon the subject site.

The amount of native vegetation on the site and adjacent parcels plus the height of the trees near the monopole site provide a buffer for the proposed use. The applicant submitted enhanced photos showing how the monopole would utilize these existing features to mask the visual impact of the monopole.

The applicant contended that there does not appear to be a benefit in planting a 25' wide buffer strip along Charlton as required by the Code. The site is over 225' from the public roadway and is already screened by existing vegetation. Staff did discuss the benefit of such a planting.

MCC 11.15.7035(B)(11)(a) would require a 25 foot wide area of vegetation capable of achieving a height of five feet within two years of planting along the entire Charlton Road frontage of the parcel. The applicant has indicated that in fact the Sauvie Island Grange is an "applicant", as the Multnomah County Code defines the term. It is clear that the Grange has consented to and does approve of the application. Furthermore, the applicant AT&T Wireless Services has submitted evidence indicating that the Grange has agreed to the provision of buffer landscaping and retention of trees in the grove and the stipulation to a 32 foot setback between the tower and any future structures. Accordingly, conditions will be imposed requiring landscaping in accordance with subparagraph (a) of Section MCC .7035(B)(11). Accordingly, a finding can be made that the applicant has met this approval criteria, and it is unnecessary to discuss alternative proposals under MCC .7035(B)(11)(c).

**(ii) Preserve the privacy of adjoining residential property.**

**ANALYSIS:**

The second subcriteria under Section MCC .7035(B)(4)(a) is designed to preserve the privacy of adjoining residential property in urban residential districts. Again, it is important to note that the standard of paragraph 4(a) specifically refers to urban residential districts. The proposed site and parcel in question do not abut an urban residential district. The residences in the area are located in the MUA zone, not in an urban residential district. It is questionable whether this criteria applies at all to residences in an MUA zone. The MUA zone allows residential uses, but it is not an urban residential district. The intent of Section 4(a) is to protect residences in an urban residential district.

The evidence indicates that the existing trees and additional landscaping to be installed on the cell site will preserve the privacy of the nearby residences. In addition, this will be an unmanned facility. Maintenance personnel will only visit the site about twice a month. The landscaping, secluded location of the site, and lack of personnel will protect the privacy of residential property to the extent required by the Code.

**(iii) Protect adjoining property from the potential impact of tower failure and ice falling by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required by MCC.7035(D)(3)(d) and (e).**

**MCC.7035(D)(3)(d) and (e) read as follows:**

- (d) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.**
- (e) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.**

**ANALYSIS:**

The applicant has submitted substantial credible evidence from professional engineers, using conservative standards, indicating that the likelihood of a structural failure is highly improbable. The design of the structure is such that if there is a structural failure, the tower will fold and buckle, rather than topple over.

The engineering design information also indicates that ice fall will be confined to a 20 foot radius around the base of the monopole. The amount of falling ice would be no more than experienced on power poles and telephone lines. The applicant has further provided evidence that there is no evidence or history of monopole failure from natural causes.

Staff contended that residential property, consisting of the parent parcel, must also be protected from potential monopole failure. However, I do not agree. The standard applies to adjoining property, not the subject property. The applicant is AT&T Wireless Services, and has made application with the consent and agreement of the Sauvie Island Grange No. 840. The subject parcel size is 3.54 acres.

The MUA property adjoining the subject parcel is adequately protected. The applicant has thoroughly addressed these approval criteria and a finding can be made that adjoining property is protected from the potential impact of tower failure and ice falling.

**(iv) Protect the public from NIER in excess of the standards of MCC.7035 (F)(1)**

**ANALYSIS:**

Multnomah County adopted what is considered by many to be a model ordinance dealing with radio and television towers and antennas. The ordinance lists the emission levels for the various uses and lists levels of concern of known health hazards.

These emissions are calculated in microwatts per centimeter squared (mW/cm<sup>2</sup>). Readings are taken at the lot line and at the closest residential use to determine compliance.

Exhibit 16 shows the calculations prepared and certified by the applicant's RF engineers which establish the measurement at the nearest lot line, 90 feet to the north, to be 0.151 mW/cm<sup>2</sup>. The reading at the closest dwelling, 275 feet to the north, is 0.063 mW/cm<sup>2</sup>.

These readings are well below any levels of health concern as determined by the Code.

In addition, the Federal Telecommunications Act of 1996, amongst other things, required the FCC to adopt standards for radio frequency emissions from wireless communication facilities. In a rule making procedure, the FCC adopted standards effective August 1,

1996. These standards are virtually the same as those reflected in the County Code. This indicates the proposed use is also in compliance with the new Federal standards.

There is no interference with household electronic equipment caused by proximity to cellular towers. The applicant has been providing cellular service in the Portland area for over 10 years.

Carol A. Friz, a licensed professional engineer in electrical engineering, has certified Exhibit 16 to be true. That exhibit indicates the measured levels to be 0.151 mW/cm<sup>2</sup> at the nearest property line and 0.063 mW/cm<sup>2</sup> at the closest dwelling. Both of those measurements are below the 0.50 mW/cm<sup>2</sup> and 0.5867 mW/cm<sup>2</sup> maximums allowed by Table 1 in MCC .7035 (F). Therefore, the proposal would satisfy the NIER standards of MCC .7035(F)(1).

There is evidence in the file indicating that some of the citizens opposed the cellular tower because of health concerns relating to electromagnetic emissions. However, the Telecommunications Act of 1996 specifically prohibits the County from considering possible effects of the emissions provided that the facility meets the Federal Communication Commission Standards. Since the evidence clearly indicates that the facility meets both the County and Federal emissions standards, this may be a moot point. However, the testimony submitted in opposition to the tower based on emissions standards will be disregarded.

A finding can be made that the applicant has met the standards of MCC 11.15.7035(B)(4)(iv).

**(b) MCC .7035(B)(4)(b) Site Size and Tower Setbacks: A site is presumed to be of sufficient size when it:**

**(i) Meets the requirements of (a) (iii) and (iv) above,**

**ANALYSIS:**

As indicated above, I have found that the proposed tower complies with the criteria of (a)(iii) and (iv) above.

**(ii) 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**

**ANALYSIS:**

The Cell Site does not abut an urban residential district. The access drive does abut a public street, NW Charlton, some 225 feet to the southeast.



The proposed monopole is 150 feet in height; 160 feet if the antennas are included. 20% of the maximum height is 32'. This minimum setback requirement has been met.

- (iii) 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.**

**ANALYSIS:**

The adjoining property is not in an urban residential district.

MCC .7025(A) establishes the minimum yards for Conditional Uses. The applicable yards for the proposed use are:

1. Front      30 feet
2. Side        20 feet
3. Rear        as required in the district;

in the MUA-20 zone the rear yard is 30 feet

In reviewing the standards of this criteria, I find that the setbacks must be measured from the property line. The reference to adjoining property is to surrounding property, not to the parent parcel. The "site" is not being partitioned off from the parent parcel, it remains an integral part of the larger property. These approval criteria are clearly designed to protect adjacent properties, not the parent parcel. It is clear that the proposed location of the tower meets the required setback standards.

- (c) 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 .7035(D)(3)(d) will not lead to multiple failures in the event that one fails.**

**ANALYSIS:**

This subsection is not applicable to this request.

- (d) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC .7025.**

**ANALYSIS:**

The electronics equipment building is situated outside of the required yards which are set forth above. This criteria is met.

**(5) MCC .7035(B)(5) Guy Setback**

**ANALYSIS:**

There are no guys associated with this proposal. The applicant's tower is a self-supporting monopole.

**(2) The required setbacks shall be improved to meet the landscaping standard of MCC .7035(B)(11) to the extent possible within the area provided.**

**ANALYSIS:**

The applicant has indicated that it can provide the required landscaping. Conditions will be attached to the approval to ensure that it does so.

**(3) The visual impact standard of MCC .7035(B)(7) is met.**

**ANALYSIS:**

A finding has been made earlier that the applicant meets this standard, and that discussion is incorporated by this reference herein.

**(4) The parking requirement of MCC .7035(B)(9) is met, provided additional parking may be required in accordance with MCC .6100 to .6148 if the site serves multiple purposes.**

**ANALYSIS:**

MCC .7035(B)(9) requires a minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at the facilities which require on-site personnel.

The applicant has an agreement with the Grange for two parking spaces adjacent to the Cell Site and to continue to provide such space if and when the Grange site is developed.

Historically, only one van is used by the maintenance technician during the periodic maintenance. The parking standard is met.

**(5) The applicable policies of the Comprehensive Plan are met.**

**Comprehensive Plan Policies:**

The following policies, which were discussed in the Staff Report, will be reviewed in this Opinion. Comprehensive Plan Policies 10, 13, 14, and 16 were briefly reviewed in the

Staff Report and found inapplicable, not relevant at this stage of the process, or not review criteria. I concur.

**"POLICY NO. 19: COMMUNITY DESIGN**

**THE COUNTY'S POLICY IS TO MAINTAIN A COMMUNITY DESIGN PROCESS WHICH:**

- A. EVALUATES AND LOCATES DEVELOPMENT PROPOSALS IN TERMS OF SCALE AND RELATED COMMUNITY IMPACTS WITH THE OVERALL PURPOSE BEING A COMPLEMENTARY LAND USE PATTERN.**
- B. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENTS FROM A FUNCTIONAL DESIGN PERSPECTIVE, CONSIDERING SUCH FACTORS AS PRIVACY, NOISE, LIGHTS, SIGNING, ACCESS, CIRCULATION, PARKING, PROVISIONS FOR THE HANDICAPPED AND CRIME PREVENTION TECHNIQUES.**
- C. MAINTAINS A DESIGN REVIEW PROCESS AS AN ADMINISTRATIVE PROCEDURE WITH AN APPEAL PROCESS, AND BASED ON PUBLISHED CRITERIA AND GUIDELINES. CRITERIA AND GUIDELINES SHALL BE DEVELOPED SPECIFICALLY FOR COMMERCIAL, INDUSTRIAL AND RESIDENTIAL DEVELOPMENTS.**
- D. ESTABLISHES CRITERIA AND STANDARDS FOR PRE-EXISTING USES, COMMENSURATE WITH THE SCALE OF THE NEW DEVELOPMENT PROPOSED.**
- E. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENT ACCORDING TO DESIGN GUIDELINES IN THE APPLICABLE ADOPTED COMMUNITY PLAN."**

**ANALYSIS:**

Policy 19 is a general County Comprehensive Plan policy which has previously been implemented through the use of a design review process. The policy is written strictly in terms of "process" that requires the County to develop a community design standard, evaluate it, and establish standards and criteria. Compliance with the standards and criteria adopted by the County in accordance with the requirements of Policy 19 will constitute compliance with this Comprehensive Plan provision by the applicant.

**"POLICY NO. 20: ARRANGEMENT OF LAND USES**

**THE COUNTY'S POLICY IS TO SUPPORT HIGHER DENSITIES AND MIXED LAND USES WITHIN THE FRAMEWORK OF SCALE, LOCATION AND DESIGN STANDARDS WHICH:**

- A. ASSURE A COMPLEMENTARY BLEND OF USES;**
- B. REINFORCE COMMUNITY IDENTITY;**
- C. CREATE A SENSE OF PRIDE AND BELONGING; AND**
- D. MAINTAIN OR CREATE NEIGHBORHOOD LONG TERM STABILITY."**

**ANALYSIS:**

Multnomah County Comprehensive Plan Policy No. 20 is a general plan policy which utilizes policy as opposed to approval criteria wording. The policy specifically requires the County to support higher densities and mixed land uses. The County has done so by allowing community service uses such as the cellular tower, in the MUA zone. Compliance by the applicant with the Multnomah County Zoning Ordinance provisions will constitute compliance with this plan policy.

Plan policies which are approval criteria are clearly worded as such. For example, the following policy, number 22, specifically indicates that "The County shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered: . . .". Such wording is consistently used in the Multnomah County Comprehensive Plan to distinguish policies which are to be considered as approval criteria and those policies which are to be considered general principles utilized to guide implementing land use regulations such as the Multnomah County Zoning Ordinance. I find that Policy No. 20 is not an approval criteria.

**\*POLICY NO. 22, ENERGY CONSERVATION.**

**THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASIJUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:**

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;**
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;**
- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;**
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.**
- E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES."**

**ANALYSIS:**

The proposed facility is an unmanned facility. There will be no water or sanitary sewer requirements. Electric and telephone services are already available at the site. No extension of service is required. Energy consumption will be minimal. The typical cell site uses about 1500 kw per month, which is similar to that used by a single family home.

The proposed use will not be a traffic generator. After the initial construction period, only periodic checks by a technician will be required, approximately once or twice a month.

A finding can be made that the applicant's proposal is energy efficient. Subparagraphs B, C and D of the approval criteria set forth above are not applicable to this community service use in that the use does not impose traffic or development impacts, create streets, and is not in an urban area. A finding can be made that the factors set forth in Policy No. 22 have been given the appropriate consideration, given the nature of the proposed use.

**\*POLICY NO. 31: COMMUNITY FACILITIES AND USES**

**THE COUNTY'S POLICY IS TO:**

- A. SUPPORT THE SITING AND DEVELOPMENT OF A FULL RANGE OF COMMUNITY FACILITIES AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMUNITY FACILITIES AND USES MEETING THE NEEDS OF THE COMMUNITY AND REINFORCING COMMUNITY IDENTITY.**
- B. ENCOURAGE COMMUNITY FACILITIES SITING AND EXPANSION AT LOCATIONS REINFORCING ORDERLY AND TIMELY DEVELOPMENT AND EFFICIENT PROVISION OF ALL PUBLIC SERVICES AND FACILITIES.**
- C. ENCOURAGE LAND USE DEVELOPMENT WHICH SUPPORT THE EFFICIENT USE OF EXISTING AND PLANNED COMMUNITY FACILITIES.**
- D. SUPPORT THE DEVELOPMENT OF A UNIFIED APPROACH TO LONG RANGE COMMUNITY FACILITIES PLANNING AND CAPITAL INVESTMENT PROGRAMMING IN MULTNOMAH COUNTY.**
- E. CLASSIFY COMMUNITY FACILITIES ACCORDING TO THEIR FUNCTION AND SCALE OF OPERATIONS.**

**SCALE**

**MAJOR REGIONAL**

**TYPE OF FACILITIES**

**COMMUNITY COLLEGE**

**PRIVATE COLLEGE**

**UNIVERSITY**

**LIVE-IN TRAINING FACILITIES**

**AIRPORT**

**GOVERNMENT SERVICES**

**ADMINISTRATIVE**

**HUMAN**

**JUSTICE**

**HOSPITAL**

**MINOR REGIONAL**

**CEMETERIES**

**REGIONAL PARKS**

**BOAT LAUNCHES**

**MARINAS**

**RECYCLING CENTER**

**SCALE****TYPE OF FACILITIES**

HALF-WAY HOUSES  
GENERAL AVIATION AIRPORTS

**MAJOR COMMUNITY**

FIRE STATION  
PRECINCT STATIONS  
LODGES  
AMBULANCE SERVICES  
HIGH SCHOOL  
MUSEUM  
TRANSIT STATIONS  
GOVERNMENT SERVICES  
ADMINISTRATIVE  
HUMAN  
JUSTICE  
COMMUNITY RECREATION CENTER  
RECREATION CENTER

**MINOR COMMUNITY**

LIBRARY  
GRADE SCHOOL  
MIDDLE SCHOOL  
PARKS  
NEIGHBORHOOD MEETING ROOMS  
RESIDENTIAL CARE FACILITY  
CLINICS  
CONVALESCENT HOMES  
CHURCHES  
NEIGHBORHOOD RECREATION CENTER

**COMMUNITY SERVICE  
FOUNDATIONS**

ELECTRICAL GENERATION, DISTRIBUTION AND  
TRANSMISSION  
NATURAL GAS STORAGE  
SEWAGE TREATMENT PLANTS  
TELEPHONE, COMMUNICATION STATION  
AND SWITCHING  
WATER STORAGE  
RADION & TELEVISION TRANSMITTERS\*

**SOLID WASTE MANAGEMENT**

Solid waste is a regional concern requiring regional solutions. Multnomah County recognizes METRO's responsibility and authority to prepare and implement a solid waste management plan and the METRO's procedures for siting a Sanitary Landfill and will participate in the procedures as appropriate.

The County recognizes that METRO may find a public need for a Regional Sanitary Landfill and that such a Landfill, wherever located, will entail some adverse impacts. The County further recognizes that environmental impacts are also within the review authority of other agencies, such as the Department of Environmental Quality.

The County shall provide for approval Criteria which emphasize site suitability, protection through mitigation of impacts, and reclamation. The Zoning Code shall contain appropriate and detailed implementing language for this Policy. This Policy and all applicable Plan Policies are implemented through Section 11.15.7045 to .7070 of the Zoning Code.

**F. LOCATE COMMUNITY FACILITIES ON SITES WITH AVERAGE SITE GRADES CONSISTENT WITH A PROJECT'S SCALE AND IMPACTS. SIT SLOPE REQUIREMENTS BY SCALE ARE:**

<u>SCALE</u>	<u>AVERAGE SITE SLOPE STANDARD</u>
MAJOR REGIONAL	6%
MINOR REGIONAL	6%
MAJOR COMMUNITY	10%
MINOR COMMUNITY	10%
COMMUNITY SERVICE FOUNDATION	20%

FOR SITES WITH AVERAGE SLOPES STEEPER THAN THE STANDARD THE DEVELOPER MUST BE ABLE TO DEMONSTRATE THAT THROUGH ENGINEERING TECHNIQUES ALL LIMITATIONS TO DEVELOPMENT AND THE PROVISION OF SERVICES CAN BE MITIGATED.

**G. SUPPORT THE LOCATION OF COMMUNITY FACILITIES ON EXISTING TRANSPORTATION SYSTEMS WITH VOLUME CAPACITIES AND MODAL MIX SPLITS AVAILABLE AND APPROPRIATE TO SERVE PRESENT AND FUTURE SCALES OF OPERATION. VEHICULAR ACCESS REQUIREMENTS BY SCALE OF FACILITY ARE:**

<u>SCALE</u>	<u>VEHICULAR ACCESS STANDARDS</u>
MAJOR REGIONAL	ACCESS TO A FREEWAY INTERCHANGE DIRECT ACCESS TO A COUNTY MAJOR ARTERIAL

PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE.

MINOR REGIONAL	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING OF TRAFFIC THROUGH LOCAL NEIGHBORHOOD STREETS
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PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE

**SCALE****MAJOR COMMUNITY****VEHICULAR ACCESS STANDARDS**

**DIRECT ACCESS TO A COLLECTOR STREET AND  
NO ROUTING OF TRAFFIC THROUGH LOCAL  
NEIGHBORHOOD STREETS**

**PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE**

**MINOR COMMUNITY**

**DIRECT ACCESS TO A COLLECTOR STREET AND  
NO ROUTING THROUGH LOCAL NEIGHBORHOOD  
STREETS**

**PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE**

**COMMUNITY SERVICE  
FOUNDATIONS**

**TRUCK TRAFFIC WILL NOT BE ROUTED THROUGH  
LOCAL NEIGHBORHOOD STREETS**

- H. RESTRICT THE SITING OF COMMUNITY FACILITIES IN LOCATIONS WHERE  
SITE ACCESS WOULD CAUSE DANGEROUS INTERSECTIONS OR TRAFFIC  
CONGESTION CONSIDERING THE FOLLOWING:**
- 1. ROADWAY CAPACITIES.**
  - 2. EXISTING AND PROJECTED TRAFFIC COUNTS.**
  - 3. SPEED LIMITS.**
  - 4. NUMBER OF TURNING POINTS.**
- I. SUPPORT COMMUNITY FACILITIES SITING AND DEVELOPMENT AT SITES  
OF A SIZE WHICH CAN ACCOMMODATE THE PRESENT AND FUTURE USES  
AND IS OF A SHAPE WHICH ALLOWS FOR A SITE LAYOUT IN A MANNER  
WHICH MAXIMIZES USER CONVENIENCE, ENERGY CONSERVATION, AND  
PEDESTRIAN AND BICYCLE ACCESS TO AND WITHIN THE SITE.**
- J. PROMOTE COMPATIBLE DEVELOPMENT AND MINIMIZE ADVERSE IMPACTS  
OF SITE DEVELOPMENT ON ADJACENT PROPERTIES AND THE COMMU-  
NITY THROUGH THE APPLICATION OF DESIGN REVIEW STANDARDS  
CODIFIED IN MCC 11.05.7805-11.05.7865.**
- K. PROVIDE FOR THE SITING AND EXPANSION OF COMMUNITY FACILITIES  
IN A MANNER WHICH ACCORDS WITH THE OTHER APPLICABLE POLICIES  
OF THIS PLAN."**

**ANALYSIS:**

- A. The proposed cell site will provide for enhanced cellular telephone service in the  
area. It will allow the location of a community service use on Sauvie Island.**



The opponents to the proposed use contend that the proposed structure will not reinforce "community identity". However, a significant portion of the opponents' testimony dealt with aesthetic issues. One component of the Sauvie Island identity is the fact that it is an island. Testimony was submitted by proponents of the application that during a flood or other emergency, residents of Sauvie Island rely on cellular communications. Enhanced emergency services and safety issues seem to be factors that would support such a community service use as consistent with community identity.

Paragraph A of Comprehensive Policy No. 31 is a general policy statement. It does not state that the County will prohibit uses that are not needed by the community and do not reinforce community identity. Rather, the policy is a simple statement in support of community facilities meeting the needs of the community and reinforcing community identity. Accordingly, a finding can be made that the applicant's proposal adequately addresses and is consistent with Paragraph A of the Multnomah County Comprehensive Plan Policy No. 31.

- B. The applicant points out that all public services and facilities necessary for the operation of the proposed cell site are already available at the site. Accordingly, this community facility is proposed to be sited at a location which reinforces the orderly and timely development and efficient provision of public services and facilities.
- C. This facility does not require water or sewer services and is not a traffic generator. Accordingly, a finding can be made that the proposed application supports the efficient use of existing and planned community facilities.
- D. No expenditure of County funds is proposed for the subject application. Approval of the application would allow AT&T Wireless Services to implement its long range plans for the provision of cellular service to Sauvie Island.
- E. This paragraph requires the County to classify community facilities according to their function and scale of operations and the scale and list of facilities is actually included within Paragraph E of this plan policy. A cellular tower would fall within the classification of Community Service Foundations.
- F. The proposed site does not exceed the maximum slope allowed of 20%.
- G. The location of community facilities and appropriate vehicular traffic access standards that for Community Service Foundations, truck traffic will not be routed through local neighborhood streets. The proposal is consistent with the at requirement.

- H. The traffic impact of the proposed development is so minor as to create no impact. Access will be taken from an existing driveway. The site access will not cause a dangerous intersection. Accordingly, a finding can be made that the applicant meets this criteria.
- I. The facility is sited on the parent parcel in a manner that will not curtail future development of the site or of the balance of the parent parcel. There will be no need for pedestrian or bicycle access to the facility, since it is in fact an unmanned facility.
- J. This subsection of the Comprehensive Plan Policy No. 31 is met through the implementation of the design review process.
- K. The proposed cell site has been sited in a manner that complies with other applicable policies of the Comprehensive Plan. It makes appropriate use of the existing terrain and physical characteristics of the site. It incorporates buffers and screening, utilizing landscaping and tree cover.

A finding can be made that the Comprehensive Plan Policy 31 has been met by the proposed application.

**\*POLICY 34: TRAFFICWAYS  
INTRODUCTION**

Trafficways are a major part of the transportation system, and include seven general types of streets (local, collector transit corridor streets, scenic routes, arterial streets, freeways and transitways) which serve the land uses in the County and function to move people and goods. The traffic volumes given below serve as guidelines for the functional classification. Traffic volumes are one aspect, but not the only aspect, of classification - other facts include the character of the area, future land use, possible or existing traffic intrusion on neighborhoods, circulation patterns, and topographic constraints. . . ."

**ANALYSIS:**

This Comprehensive Plan policy deals primarily with the County's need to develop an efficient trafficway system, and strategies for system design. This section does not provide approval criteria for the subject application.

**\*POLICY NO. 36, TRANSPORTATION DEVELOPMENT REQUIREMENTS.**

**THE COUNTY'S POLICY IS TO INCREASE THE EFFICIENCY AND AESTHETIC QUALITY OF THE TRAFFICWAYS AND PUBLIC TRANSPORTATION BY REQUIRING:**

- A. THE DEDICATION OF ADDITIONAL RIGHT-OF-WAY APPROPRIATE TO THE FUNCTIONAL CLASSIFICATION OF THE STREET GIVEN IN POLICY 34 AND CHAPTER 11.60.

- B. THE NUMBER OF INGRESS AND EGRESS POINTS BE CONSOLIDATED THROUGH JOINT USE AGREEMENTS,
- C. VEHICULAR AND TRUCK OFF-STREET PARKING AND LOADING AREAS,
- D. OFF-STREET BUS LOADING AREAS AND SHELTERS FOR RIDERS,
- E. STREET TREES TO BE PLANTED,
- F. A PEDESTRIAN CIRCULATION SYSTEM AS GIVEN IN THE SIDEWALK PROVISIONS, CHAPTER 11.60,
- G. IMPLEMENTATION OF THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM,
- H. BICYCLE PARKING FACILITIES AT BICYCLE AND PUBLIC TRANSPORTATION SECTIONS IN NEW COMMERCIAL, INDUSTRIAL AND BUSINESS DEVELOPMENT, AND
- I. NEW STREETS IMPROVED TO COUNTY STANDARDS IN UNINCORPORATED COUNTY MAY BE DESIGNATED PUBLIC ACCESS ROADS AND MAINTAINED BY THE COUNTY UNTIL ANNEXED INTO A CITY, AS STATED IN ORDINANCE 313."

#### **ANALYSIS:**

Staff has indicated that engineering services would require a five-foot dedication along the entire frontage of the parent parcel with Charlton Road. Pursuant to Policy No. 36(B), the County has a policy of requiring dedication of additional right of way appropriate to the functional classification of the street given in Policy 34 and Chapter 11.60. The staff report does not indicate the functional classification of Charlton Road. However, given the very limited extent of traffic to be generated by the proposed use, I do not find that the County has demonstrated that the impact of the proposed use would be proportionate to the exaction requested. Accordingly, I would find that any dedication of right of way along Charlton Road could be deferred to such time as the balance of the parent parcel develops.

#### **\*POLICY NO. 37, UTILITIES.**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

##### **WATER AND DISPOSAL SYSTEM**

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

**DRAINAGE**

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR  
F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND  
G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

**ENERGY AND COMMUNICATIONS**

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND  
I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

**ANALYSIS:**

The facility will not require water or sewer connections. It is an unmanned facility, containing electronic equipment. Appropriate service providers have indicated the availability of service. Accordingly, a finding can be made that the applicant meets the criteria set forth in Utilities Policy No. 37.

**\*POLICY NO. 38, FACILITIES.**

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

**SCHOOL**

- A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

**FIRE PROTECTION**

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND  
C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

**POLICE PROTECTION**

- D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

**ANALYSIS:**

A finding can be made that the appropriate school district has had an opportunity to review and comment on the proposal. The Sauvie Island Fire District has adequate pressure and flow for fire fighting purposes, and the subject parcel can receive adequate police protection from the Multnomah County Sheriff. Accordingly, the applicant has met this criteria.

**"POLICY NO. 40, DEVELOPMENT REQUIREMENTS.**

**THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.**
- B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.**
- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE."**

**ANALYSIS:**

As set forth in the approval criteria, there are no pedestrian or bicycle paths that would require dedication of property for connection purposes, no bicycle parking is provided or needed, since the only visitors to the site will be the technicians in a small van or service truck. Accordingly, a finding can be made that the appropriate level of consideration has been given to Multnomah County Comprehensive Plan Policy No. 40 and that no pedestrian or bike paths, benches or bicycle parking facilities would be appropriate.

- (6) The NIER standards of (F) are met.**

**ANALYSIS:**

As indicated earlier in this Opinion, the NIER standards are met. Accordingly, a finding can be made that this approval criteria has been complied with.

- (7) The agency coordination standards of MCC .7035(B)(14) are met.**

- (a) A statement from the FAA that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulation or a statement that no compliance is required.**

**ANALYSIS:**

Attached to the staff report on file in this matter is the FAA form 7450, stating that no lighting or hazard markings are required.

- (b) A statement from the Oregon State Aeronautics Division that the application has been found to be in compliance with the applicable regulations of the Division, or a statement that no such compliance is required.**

**ANALYSIS:**

Attached to the staff report on file in this matter is a copy of the Oregon State Aeronautics Division response recommending that a steady red light be attached to the top of the tower.

- (c) **A statement from the FCC that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.**

**ANALYSIS:**

Attached to the staff report on file in this matter is a copy of a portion of the applicant's FCC license which authorizes the applicant to provide cellular telephone services in the Portland-Vancouver area.

- (8) **Accessory uses - For a proposed tower in the EFU, MUF, CFU, MUA, and UF districts, the restrictions on accessory uses in MCC .7035(B)(12) shall be met.**

**MCC .7035(B)(12) stipulates: 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.**

**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.**

**ANALYSIS:**

The applicant's proposal includes only the monopole and a building to house the electronic equipment. No other uses of concern in this section will be involved at this site.

**Hearings Officer Decision:**

Based on the findings stated above, and the substantial evidence presented, the request by Applicant to site a cellular radio communication facility as a Community Service Conditional Use in the MUA-20 zone is hereby approved subject to the following conditions:

## Conditions of Approval:

1. Pursuant to MCC 11.15.7035(B)(11)(a), prior to obtaining a building permit, the applicant shall provide a 25-foot wide area of evergreen vegetation capable of achieving a height of five feet within two years of planting along the entire Charlton Road frontage of the parcel.
2. No buildings or structures shall be placed within 32 feet of the tower, other than an electronics equipment building to be located within the area currently leased from the Sauvie Island Grange.
3. The applicant shall retain all healthy Douglas fir trees within 32 feet of the tower, other than those trees marked for removal in Exhibit 2 of the application. This condition does require the applicant to replace any trees which fall, and allows the applicant to remove any trees reasonably determined by an arborist to present a health or safety risk, provided that such trees are replaced with healthy trees. Prior to removal of trees, other than those marked for removal in the application, the applicant will submit an arborist's report to the County Planning Department for review and approval.
4. Applicant shall comply with all applicable Oregon Department of Environmental Quality noise standards in the operation of any emergency electrical generating equipment or other equipment at the tower site.
5. The height of the tower with antenna, shall not exceed 160 feet.
6. No approved or required landscaping shall be removed in order to locate the accessory building or equipment or at any time the cellular tower is being utilized pursuant to this conditional use approval other than that allowed in condition 3. If any such landscaping is removed, the applicant shall be required to replace it with an equal quantity and type of landscaping on the site in a manner to achieve the original intent or to achieve sufficient screening of the facilities.
7. In the event that the use of the wireless communication facility is discontinued for a period of six (6) consecutive months or longer, it will be deemed abandoned. The applicant or property owner is hereby required to remove all abandoned facilities within ninety (90) days from the date of the abandonment. In addition to any remedies available under the Multnomah County Zoning Ordinance for violating a condition of a Conditional Use approval, the failure to remove an abandoned facility will be deemed a public nuisance subject to the applicable penalties therefor.

8. The approval of this Community Service Use shall expire two years from the date of the issuance of the Board Order in the matter, or two years from the date of the final resolution of subsequent appeals, whichever date is later, unless the project is completed as approved or the Planning Director determines that substantial construction or development has taken place.
9. This approval shall be for the specific use or uses approved, together with the limitations and conditions set forth herein. Any change of use or modification shall be subject to approval at a public hearing.
10. The applicant shall be required to provide two parking spaces on the site.
11. The applicant shall be required to comply with the design review approval process or such other process that Multnomah County may utilize in lieu of design review.
12. The applicant shall hold harmless and indemnify Multnomah County, its Board of Commissioners, its other officers and employees, from claims of any nature arising or resulting from any claims for damage or injury to property or persons arising by reason of work on the subject property, or operation of the cellular communications tower, or any work done pursuant to this order.
13. The maintenance of the landscaping and screening trees is a continuing requirement of this order. If the trees required on the parent parcel or site which have been planted or currently exist as landscaping or screening are removed in violation of the provisions of this order, it will be grounds for rescission of this Community Service Conditional Use approval.
14. The applicant will comply with the standards of MCC .7035(B)(7)(a) regarding painting of the tower.

### CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for the Community Service Use to site a cellular tower satisfies all applicable approval criteria provided that the Conditions of Approval are complied with. Accordingly, Community Service Use approval is hereby granted to the area designated on the site plan which is attached hereto as Exhibit "A", subject to the Conditions of Approval contained herein.

IT IS SO ORDERED, this 31st day of December, 1997.

  
JOAN M. CHAMBERS, Hearings Officer