



July 2, 2026

Mr. David Doughman
Hearings Official
Multnomah County Land Use Planning
1600 SE 190th Avenue
Portland, OR 97233-5910

VIA EMAIL: lup-hearings@multco.us; isabella.liu@multco.us

RE: Applicant's Final Argument
#T2-2025-0023 – AT&T Wireless Communications Tower

Dear Mr. Doughman:

On behalf of New Cingular Wireless PCS, LLC ("AT&T"), the applicant for a wireless communications tower at 13937 NW Springville Road in Multnomah County,¹ we submit this final argument in the final open record period ending July 6, 2026.

In summary:

- A substantial portion of appellants' arguments focus on alleged health impacts of radio frequency ("RF") emissions, a subject matter that is preempted by federal law, as explained in our June 11, 2026, letter.² Land use decisions may not be based, either directly or indirectly, on such alleged impacts.
- Appellants continue to argue that the proposed tower ("Tower") must be located in the "least intrusive" location, but:
 - As explained in the hearing, neither state law nor Multnomah County's code require a showing of least intrusive means or a least intrusive location.
 - Oregon state law governing placement of utilities necessary for public service on properties zoned Exclusive Farm Use ("EFU")³ imposes no such standard. In fact, state law imposes no aesthetic standards for wireless

¹ As requested at the public hearing, please issue the final decision with New Cingular Wireless PCS, LLC, named as Applicant.

² Exh. H-5.

³ ORS 215.275; ORS 215.283(1)(c).

towers at all, and visual impacts cannot be a basis to deny a wireless tower under ORS 215.275.⁴

- Further, under Oregon’s EFU statutes and cases, the *only* relevant review criteria here are those imposed by statute.⁵ In other words, local governments cannot require compliance with local standards or criteria and must rely on those set forth in ORS 215.275.⁶ As explained at the hearing, AT&T’s Tower *does* comply with Multnomah County’s criteria, even though it need not do so. AT&T wanted to propose a design consistent with the County’s preferences, and it volunteered to do so.
- In addition, the County’s code has no “least intrusive” criterion. Rather, the code preferences camouflage design/concealment technology (such as proposed for the Tower) after a showing that collocation is not feasible. The County’s design standards⁷ are intended to promote general compatibility, and as found by staff, the proposed Tower is compatible because it meets the County’s specific design preference for towers (concealment technology/camouflage) and preserves existing vegetation for buffering, and the character of the surrounding area is mixed in nature, including a prominent utility corridor adjacent to the site, as well as a mix of agricultural, rural, and urban fringe.
- Moreover, no applicable review standard requires that the Tower be located in the least intrusive location *on the subject property*.
- The “least intrusive means” standard is applicable under the federal test for preemption of local zoning authority in the event of a denial of a wireless facility.⁸ While AT&T believes its proposal meets this test, it need not do so for approval by Multnomah County.
- AT&T completed a detailed, comprehensive alternative sites analysis (“ASA”),⁹ supported by a RF Justification,¹⁰ which disqualified numerous alternatives under

⁴ *T-Mobile v. Yamhill County*, 55 Or LUBA 83, 87–88 (2007); *Oberdorfer v. Harney County*, 64 Or LUBA 47, 52 (2011). Also in *T-Mobile*, the Land Use Board of Appeals agreed that state law precludes the county from applying its local site design standards requiring assessment of visual impact.

⁵ *Dierking v. Clackamas County*, 170 Or. App. 683, 687, 13 P.3d 1018 (2000) (“[t]owers less than 200 feet [. . .] are subject only to the necessity test [of ORS 215.275.]”); *Brentmar v. Jackson County*, 321 Or. 481, 900 P.2d 1030 (1995). See also fn. 4.

⁶ *Id.*

⁷ MCC 39.8000 (Purposes).

⁸ *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995 (9th Cir. 2009).

⁹ Exh. H-7.

¹⁰ Exh. H-6.

both ORS 215.275 (lack of available urban and nonresource lands/technical and engineering feasibility) and the County’s collocation requirements.¹¹

- AT&T’s ASA reasonably considered availability (willing potential landlord), technical feasibility (is AT&T’s coverage objective met?), zoning constraints (requirements to meet setbacks, maximum heights allowed by code, etc.), and whether other potential sites were buildable (riparian corridors, etc.).¹² AT&T found no alternative urban or nonresource site that was available, technically feasible, and buildable. AT&T further found no potential collocation opportunity that was available and technically feasible.
 - In response to the one additional alternative suggested by project opponents (collocation on existing water towers), AT&T disqualified that additional alternative on the basis that it does not meet its coverage objective.¹³
 - Other alternatives suggested by appellants were limited to alternative locations *on the subject property itself*.¹⁴ As explained above, no governing criterion requires that such alternative locations be considered. Further, the specific location on this site is supported by multiple factors – among them, the environmental constraints on the parcel, which require avoidance of the riparian area to the east and the clustering of development next to the right-of-way and in an area that is already degraded;¹⁵ the adjacency of the transmission corridor, which increases the compatibility with surrounding development; and the minimization of overall impacts to the site (such as, minimizing the length of the access drive and its impacts to environmentally sensitive areas).
 - Due to federal preemption, there is no requirement to consider alternatives to “reduce potential [RF] exposure” as requested by appellants.¹⁶
 - No other alternatives have been suggested as reasonably feasible, and there is thus no evidence in the record of a reasonable alternative site under ORS 215.275.
- Appellants’ final arguments include an assertion that AT&T has not proven a public safety need for the proposed Tower,¹⁷ but there is no requirement that it do so. Addition of Band 14 to support the FirstNet network for first responders is one of

¹¹ MCC 39.7740(B)(1), which is incorporated by reference in MCC 39.7745.

¹² Exh. H-7.

¹³ Exh. H-6, Figure I. Because the water towers are located on EFU property, they need not be considered as alternatives under state law. *Dayton Prairie Water Assn. v. Yamhill County*, 170 Or. App. 6, 11 (2000). Nevertheless, AT&T disqualified them as potential collocation opportunities under the County’s code.

¹⁴ See Exh. I-4.

¹⁵ Exhs. A-20 & I-2.

¹⁶ Exh. I-3, p. 2.

¹⁷ Exh. I-3, p. 2.

several purposes of the Tower.¹⁸ In addition to proposing to add a separate frequency for public safety, and while not required to do so under any state or local standard, AT&T has demonstrated that it has a significant gap in in-building 4G wireless service to be filled by the Tower.¹⁹ Note that under ORS 215.275, AT&T has fairly wide discretion to set its technical and business objectives.²⁰ And under the County's code, a general showing of need (*without* requiring a significant gap) is generally relevant for purposes of disqualifying collocation alternatives as infeasible,²¹ but there is no definition or standard for need or the purposes for which a wireless facility is proposed.

- Appellants also generally assert aesthetic, environmental, and quality of life impacts,²² but they provide no relevant applicable criteria, just a general claim of “inconsisten[cy] with land use zoning codes”²³ and an assertion that the site must be “least intrusive.”²⁴ Appellant Strelka argues that the Tower does not blend naturally with the surrounding environment, but where this concept appears in the wireless code (“blends with the surrounding existing natural and human-made environment”²⁵), it is specifically applicable to proposals that are **not** designed with camouflage/concealment technology. The County's definition of “concealment technology”²⁶ and design preferences *provide* that a camouflage design **is consistent** with the surrounding environment. No separate finding of “blending” is required. Similarly, Appellant Graziano argues for a finding of “visual compatibility,”²⁷ but “visual compatibility” appears nowhere in the code. “Visual subordination” is required for a **non**-stealth design,²⁸ but not for AT&T's Tower.
- With regard to height, the Tower is well under the maximum height permitted under state statute²⁹ and County code³⁰ (up to 200 feet).

¹⁸ Exh. A-2 & H-1.

¹⁹ Exh. H-6.

²⁰ *Sprint PCS v. Washington County*, 186 Or. App. 470, 480-81, 63 P.3d 1261 (2003).

²¹ MCC 39.7740(B)(1)(b) (“When demonstrated that it is not feasible to co-locate the antenna(s) on an existing structure or tower...).

²² Exh. I-3.

²³ *Id.*

²⁴ Exh. I-4.

²⁵ MCC 39.7740(B)(1)(c).

²⁶ MCC 39.7715 (“The use of technology through which a wireless communications facility is designed to resemble an object which is not a wireless communications facility and which is already present in the natural environment, or designed to resemble or placed within, an existing or proposed structure.”)

²⁷ Exh. I-4, p. 2.

²⁸ MCC 39.7740(B)(1)(c).

²⁹ ORS 215.283(1)(c).

³⁰ MCC 39.7745(C)(2).

- Notably, the Tower is not subject to highly discretionary conditional use criteria. General compatibility is relevant under the County’s design criteria (the purpose of which is stated to promote compatibility³¹), which the proposal meets in this area of mixed character and by employing the County’s specifically-applicable highest preference for design. Appellant Strelka’s characterization of the proposal as a “large industrial structure in[] a residential community”³² is contrary to both the law and the facts. Instead, a wireless *utility* use including a tower up to 200 feet in height is permitted “as of right” in the EFU zone,³³ and the character of the area is mixed.
- Appellants’ arguments about environmental and habitat impacts are inconsistent. While asserting negative impacts to the environment, Appellant Graziano also claims that the Tower should be moved to the west end of the parcel in contradiction to the County’s environmental and habitat regulations.³⁴ Staff has explained in further detail why the Tower must be located as proposed for consistency with environmental and habitat requirements.³⁵ It is not an exercise of weighing habitat impacts with other factors, as argued by Mr. Graziano.
- Appellants claim impacts to viewsheds, but no protected viewsheds or scenic resources were identified.³⁶
- The border between counties is relevant only to the extent that AT&T has evaluated Washington County alternatives with respect to that county’s zoning standards and Multnomah County alternatives with respect to its zoning standards.
- As far as future collocations and upgrades,³⁷ the County’s code prefers collocation,³⁸ so AT&T’s design to accommodate it in the future is entirely consistent with the County’s code.
- “[M]aximizing separation”³⁹ between wireless facilities and residential uses despite federal preemption of RF matters is not a “reasonable planning consideration”⁴⁰ when separation standards based on RF emissions are contrary to law.
- Appellant Graziano asks for an “appropriate[] balance[of] environmental protection, visual compatibility, residential impacts, and long-term community effects,”⁴¹ but the applicable review criteria already achieve the intended balance

³¹ MCC 39.8000 (Purposes).

³² Exh. I-3, p. 3.

³³ ORS 215.283(1). *Dierking*, 170 Or. App. at 686.

³⁴ Exh I-4.

³⁵ Exh. I-2.

³⁶ Exh. I-4, p. 2.

³⁷ Exh. I-4, p. 2.

³⁸ MCC 39.7740(B)(1).

³⁹ Exh. I-4, p. 2.

⁴⁰ *Id.*

⁴¹ *Id.*

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after adoption through a legislative process. Compliance with the applicable criteria is enough.

For additional argument and evidence demonstrating compliance with all criteria, please see AT&T's Code Compliance Statement, Project Narrative, ASA, and RF Justification in Exhibits H-1, H-2, H-6, and H-7.

We appreciate your consideration of these final arguments. AT&T concurs with Staff's analysis, recommendations, and proposed conditions and respectfully requests approval of the Tower.

Sincerely,

Meridee Pabst

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