

DEPARTMENT OF COMMUNITY SERVICES

Land Use Planning Division



www.multco.us/landuse ▪ Email: land.use.planning@multco.us ▪ Phone: (503) 988-3043

Notice of Hearings Officer Decision

This document provides notice of the Hearings Officer's decision in the matter of **T2-2025-0023**. The decision is effective on being mailed, and the mailing date is **July 30, 2026**. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

This notice includes the signed Hearings Officer's decision which contains the following information: the name of the applicant or owner; the appellant's name; and the street address or location of the subject property along with a brief summary of the decision and the proposed use. For additional information, please visit our Land Use Planning website at <https://multco.us/departments/land-use-planning-division>.

The Planning Director has not appealed the Hearings Officer's decision. Therefore, the Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals
201 High St SE, Suite 600
Salem, Oregon 97301-3398

503-373-1265
LUBA.Support@luba.oregon.gov
www.oregon.gov/LUBA

For further information, a copy of the final decision for inspection, or copies call or email the Multnomah County Land Use Planning Division at: 503-988-3043 or LUP-Hearings@multco.us. You can also visit our office at 1600 SE 190th Ave, Portland, OR 97233

**BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY**

Appeal of Planning Director Decision Approving with Conditions an Application for Lot of Record Verification, Significant Environmental Concern and Limited Design Review for a Wireless Communications Facility in the EFU zone

Case File: T2-2025-0023

Applicant: New Cingular Wireless PCS, LLC (“Applicant”)

FINAL DECISION

Appeal Denied
Planning Director Decision
Approved with Conditions

Introduction

On December 31, 2025, the Multnomah County Planning Director (“Director”) approved the Applicant’s request for a Lot of Record Verification, a Significant Wildlife Habitat permit and Limited Design Review to construct a new wireless communication facility, subject to conditions (the “Director's Decision”) (Ex. C.5). The subject property is located at 13937 NW Springville Rd and is identified as map and tax lot 1N1W16C-00100 (the “Property”). The Property is zoned Exclusive Farm Use (“EFU”). A map of the subject property and the surrounding area is included below.

Vicinity Map



The Property is approximately 20 acres in size and is located within two Significant Environmental Concern overlays: SEC-s (Streams) and SEC-h (Wildlife Habitat), both of which affect where the Applicant may locate the facility on the Property. According to county records and recent aerial imagery, the Property is vacant and possesses a mix of open pasture and mature tree cover. The Bonneville Power Administration (“BPA”) has a transmission corridor along the Property’s western edge.

The facility includes a 140-foot monopole designed to appear similar to a tree (a “monofir”). The total height, including camouflaging branches, will be 150 feet.¹ The monofir, antennas and associated ground equipment will be enclosed within a 50x50-foot area that the Applicant will

¹ The height is under the 200 foot maximum set by state law and as provided in MCC 39.7745(C)(2).

lease from the property owner. The leased area will be located on the western portion of the Property. A gravel driveway will provide access to the area from an existing private access road within BPA right-of-way. The facility will not be staffed, and traffic to the facility will be limited to periodic maintenance.

Hearing Summary

Two groups of people filed timely appeals of the Director's Decision.² The county scheduled a hearing for June 12, 2026, for the hearings officer to consider the appeal.³ Seven days prior to the hearing, county staff published a report recommending the hearings officer deny the appeals and affirm the Director's Decision, subject to conditions (the "Staff Report") (Ex. C.7).

At the hearing, the hearings officer described the order of proceedings and made statements required by Oregon law and the Code prior to opening the hearing. The hearings officer noted the hearing was being held de novo and was the initial evidentiary hearing pursuant to ORS 197.797. The hearings officer declared he had no ex parte contacts prior to the hearing and that he was free of any bias or conflicts of interest. The hearings officer invited any challenges to his ability to conduct the hearing and there were none.

The hearings officer received a summary of the application and recommendation at the hearing from county staff. Consistent with the Staff Report, staff recommended the hearings officer affirm the Director's Decision and approve the application, subject to conditions identified in the Staff Report. The hearings officer received testimony from the Applicant's representative, who expressed support for staff's recommendation and proposed conditions, and responded to issues raised in the appeals. The Applicant's representative noted the submission of an updated radio frequency ("RF") report (Ex. H.6) and an updated alternative sites analysis ("ASA") (Ex. H.7).

Representatives for the appellants testified and expressed their concerns with and objections to the application and the Director's Decision. The hearings officer addresses the issues raised by the appellants below. There was no testimony offered by the general public. After inviting final comments from staff and rebuttal testimony from the Applicant, the hearings officer closed the hearing but left the written record open pursuant to a request from the appellants. During the open record period, staff submitted a memo (Ex. I.2) and the appellants submitted additional testimony with respect to RF concerns, issues regarding impacts to views, the environment and habitat and issues regarding the location of the proposed facility, both on the site and on other potential properties (Ex. I.1, I.3 and I.4). The Applicant provided final written argument (Ex. K.1).

Discussion

The appellants raised several issues in opposition to the application. The hearings officer identifies and responds to them below.

² For the sake of brevity, the hearings officer addresses the concerns of both appellant groups collectively in this decision.

³ The hearing was originally scheduled for March 13 but was postponed at the request of the Applicant.

RF emissions

The appellants urge the hearings officer to deny the application because operation of the proposed wireless facility will generate RF emissions that may adversely affect human health and the surrounding environment. The applicant responds that federal law preempts the ability of local governments to consider such arguments and therefore they cannot serve as a lawful basis for denial if the facility complies with applicable federal RF emissions standards. While acknowledging the debate surrounding RF emissions, and despite the evidence and arguments the appellants submitted in the record, the Hearings Officer agrees with the Applicant.

Congress addressed this issue in the Telecommunications Act of 1996.⁴ In that act, Congress preserved state and local authority over certain land use aspects of wireless facility siting but expressly limited that authority with respect to RF emissions. The federal statutory scheme allocates regulation of RF emissions to the federal government exclusively and bars state and local governments from regulating personal wireless service facilities on the basis of the environmental effects of RF emissions where the facilities otherwise comply with federal emissions standards. In other words, local governments retain authority to apply their land use standards, but they may not deny an application based on disagreement with the federal determination of acceptable RF exposure levels.

The Applicant's discussion in Ex. H.5 notes that RF emissions are the subject of a comprehensive federal regulatory framework. That framework reflects Congress's decision to require national uniformity on the subject, rather than allowing local jurisdictions to adopt their own standards or to deny individual applications based on local disagreement with federally established exposure limits. Thus, once compliance with the applicable federal standards is established, as the Applicant has done here, objections asserting that RF emissions are unsafe or harmful to humans, animals or the environment are not grounds for local denials. The cases the Applicant cites in Ex. H.5 support this conclusion.

Therefore, the hearings officer finds that consideration of the appellants' emissions-related arguments and evidence are legally preempted. The county is ultimately limited to applying the relevant approval criteria within its lawful authority. As such, the objections of the appellants in this regard do not provide a basis to reverse the Director's Decision or deny the application.

Different Location on Property

The appellants argue that, even if the facility is permitted on the Property, it should be located further to the east on the site. The Applicant responds that the applicable approval criteria do not require a showing that the location is the optimal or least intrusive location from the standpoint of third-parties or otherwise. In addition, the Applicant and the county note that based on the environmental overlays present on the Property, relevant provisions in the

⁴ The appellants argued that due to the time that has passed since Congress passed the act, and the advances in RF technology since that time, the federal RF preemption is outdated, and the county should consider more recent evidence. Regardless of the amount of time that has passed, the law still applies to the county, and the county is bound to follow it unless and until Congress chooses to amend it.

Multnomah County Code (“Code” or “MCC”) effectively result in requiring the facility in its proposed location. The hearings officer agrees.

The issue is not whether it may be possible to place the facility elsewhere on the Property, or whether a different on-site location would be preferable. Rather, the issue is whether the proposed location satisfies the applicable approval criteria. Absent a requirement in state law or the Code that the Applicant must demonstrate the facility is sited at the least visible or least impactful location or is otherwise placed in more preferable location on the Property, the county may not impose such a requirement or deny the application on that basis. As the Applicant notes, state law does not impose such standards on the facility and prior cases have held that the applicable criteria are ultimately limited to those listed in ORS 215.275.⁵ In addition, local governments may not deny a proposed wireless facility based on visual impacts or aesthetic concerns, even if local criteria may require their consideration.⁶

As discussed in the Director's Decision, the location of the proposed facility on the Property meets the setback, dimensional and design requirements of the Code. Those provisions include designs that conceal towers, such as the monofir design the Applicant proposes. In addition, the proposed location avoids to the greatest extent practicable impacts to a protected water feature and to wildlife habitat regulated by MCC sections 39.5540 and 39.5590. The location also best meets the Code's priority of placing the facility close to existing right-of-way and in an area that is relatively degraded.

The hearings officer therefore finds that the objection to the location of the facility on the Property does not provide a basis to reverse the Director's Decision or deny the application.

Different Site

The appellants assert that the application should be denied because the facility could or should be located at another site. In response, the Applicant argues that it considered alternative sites pursuant to ORS 215.275(2) and pursuant to the county's collocation requirements at MCC 39.7740(B)(1). According to the Applicant, after examining those sites, they were rejected for reasons of feasibility, availability, or suitability, and that based upon the ASA and the RF report, they have demonstrated that the facility is necessary pursuant to ORS 215.275.

The RF report identifies a coverage gap and there is no evidence in the record to the contrary. The ASA provides a detailed analysis of potential alternative sites that the Applicant considered and evaluated, and the reasons the Applicant determined the sites were not feasible. In summary, the Applicant did not identify another urban or non-resource site where an owner was willing to enter into a lease, or that was buildable based upon zoning and site characteristics, or that was able to meet its coverage requirements. There is no substantial evidence in the record that contradicts the Applicant's conclusions regarding the infeasibility of these sites.

⁵ *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995); *Dierking v. Clackamas County*, 170 Or. App. 683, 687, 13 P.3d 1018 (2000) (towers under 200 feet in height are subject only to ORS 215.275).

⁶ *T-Mobile v. Yamhill County*, 55 Or LUBA 83 (2007) (local government precluded from assessing visual impacts under ORS 215.275).

With respect to water towers that appellants identified as a possibility for co-location, the Applicant states it evaluated that possibility but determined it likewise would not meet its coverage objective, as addressed in Figure I of Ex. H-6. As the Applicant notes, there are no other sites that have been suggested as potential reasonable alternatives.

Accordingly, the evidence shows the Applicant has met its obligation to determine whether an alternative site would meet its coverage objectives and has shown the absence of such a site allows the facility on the Property pursuant to ORS 215.275. Therefore, this issue does not provide a basis for the hearings officer to deny the application.

Application of Washington County Criteria

Because the Property borders Washington County, appellants argued the Applicant should be required to meet Washington County's criteria for wireless facilities in lieu of or in addition to Multnomah County's criteria. The appellants do not cite to any authority that would permit the county to apply another jurisdiction's criteria to approve or deny the application, and the hearings officer is not aware of any. This issue does not provide a basis to deny the application.

Property Values

Appellants asserted that the application should be denied due to the effect the facility may have on neighboring property values. The appellants do not identify any criteria in the Code that require the Applicant to evaluate the effect on property values, nor is the hearings officer aware of any in the Code or in state law. This issue does not provide a basis to deny the application.

Conclusion and Decision

The evidence in the record and the relevant findings support the Director's approval of the application.⁷ Therefore, the hearings officer rejects the appeals and approves the application, subject to the conditions of approval below.



David Doughman
Multnomah County Land Use Hearings Officer
July 27, 2026

[CONDITIONS OF APPROVAL FOLLOW BELOW]

⁷ In addition to the findings in this decision, the hearings officer adopts and incorporates by reference the following as findings in support of this decision: (1) the "Findings of Fact" in the Director's Decision at 6-30; (2) the "Findings of Fact" in the Staff Report at 5-7; and (3) the Applicant's responses to issues raised by the appellants in Ex. K.1 at 1-6.

T2-2025-0023 – Final Decision

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Permit Expiration – This land use permit shall expire as follows:

a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]

i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility.

ii. For purposes of 1.a, notification of commencement of construction shall be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of commencement. Notification shall be sent via email to LUPsubmittals@multco.us with the case no. T2-2025-0023 referenced in the subject line.

b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]

i. For the purposes of 1.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

ii. For purposes of 1.b, the property owner shall provide building permit status in support of completion of exterior surfaces of the structure and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to LUPsubmittals@multco.us with the case no. T2-2025-0023 referenced in the subject line. [MCC 39.1185]

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. Approval of this land use 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. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 39.1170(B)]

3. Prior to submitting Building Plans for Zoning Review, the property owner(s) or their representatives shall:

a. Record pages 11 through 32 and Exhibits A.7 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

b. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be submitted and uploaded when submitting Building Plans for Zoning Review and Review of Conditions of Approval **OR** The signed document shall be sent to Izze Liu at LUP-submittals@multco.us. [MCC 39.1170(A) & (B)]

c. Obtain an access permit from Multnomah County Transportation for the connection between the BPA right-of-way and NW Springville Road. [MCC 39.7740(B)(9)]

4. When submitting Building Plans for Zoning Review, the property owner(s) or their representatives shall:

a. Provide a Letter of Acknowledgement and recorded Notice of Decision as required in Condition 3.a and 3.b. [MCC 39.1170(A) & (B)]

b. Prior to any site disturbance or building permit issuance, the applicant shall obtain a Minimal Impact Project (MIP) permit and implement stormwater drainage improvements consistent with the certified design described in Exhibit A.8 and the requirements of MCC 39.6235.

5. Prior to and during construction, the property owner(s) or their representatives shall:

a. Site construction shall conform to the approved TVF&R access and turnaround standards (Permit #2022-0044). [MCC 39.7740(B)(9)]

b. The access drive and parking area shall be surfaced and maintained with a durable, dustless surface (such as ¾-inch crushed gravel or equivalent) consistent with MCC 39.7740(B)(10) and TVF&R Permit #2022-0044. [MCC 39.7740(B)(9)]

c. Any trees or vegetation identified for retention on Exhibit A.7, Sheet L1.0 shall be protected during construction with temporary fencing placed at the dripline. [MCC 39.7740(B)(9)]

d. Any modification to the approved 18-foot access width shall require verification from both TVF&R and the County Engineer that the deviation continues to satisfy MCC 39.6560(B).

e. An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.

f. Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

- g. Trees shall not be used as anchors for stabilizing construction equipment.
- h. Any nuisance and invasive non-native plants, as defined in MCC 39.5520 shall be removed within the mitigation area prior to planting.

6. Prior to issuance of the Certification of Occupancy, the property owner(s) or their representatives shall:

- a. Implement landscaping as shown on Exhibit A.7, Sheet L2.0 using specified native evergreen species or County-approved equivalents [MCC 39.7740 B.11].
- b. Implement the Mitigation Plan (Exhibit A.20) in its entirety, including all planting, invasive-species removal, monitoring, and reporting requirements [MCC 39.5540(D)(3) and MCC 39.5590(D)].
- c. The planting date for the mitigation area shall occur within one year following the approval of the application.
- d. Provide certification by a qualified riparian or environmental professional verifying that the vegetated corridor has been restored according to the approved plan and will achieve “Good Corridor” condition within five years [MCC 39.5590(E)].

7. As on-going conditions, the property owner(s) shall:

- a. Maintain all landscaping and screening vegetation in a healthy condition. Any screening vegetation that dies within five years of installation shall be replaced in kind. [MCC 39.7740(B)(9)]
- b. Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. A Yearly Report shall be provided to Multnomah County Land Use Planning for a period of five years, unless the Planning Director requires a longer reporting period.
 - i. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the migration planting is completed.
 - ii. Mitigation plantings shall be maintained and shall not be removed from the property without contacting Multnomah County Land Use Planning and receiving written approval to amend the Mitigation Plan.