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November 6, 2020

**VIA EMAIL ONLY**

**MULTNOMAH COUNTY Land Use Planning Division – Hearings Officer**  
**1600 SE 190th Ave., Suite 116, Portland, OR 97233**  
**Phone: (503) 988-3043**

**Attn: Mr. Dan Kearns, Hearings Officer**  
**c/o Rithy Khut, Land Use Planner [rithy.khut@multco.us](mailto:rithy.khut@multco.us)**

**Submittal Email: [LUP-Submittals@multco.us](mailto:LUP-Submittals@multco.us)**  
**[land.use.planning@multco.us](mailto:land.use.planning@multco.us)**

**Re: Follow-Up and Rebuttal Written Testimony - Post-Hearing Record before Hearings Officer**  
**Case File No. T2-2019-12701**  
**Applicant: Kimberly Spongberg, BlackRock, LLC.**  
**Appellants: Woodard Seidl Roads Neighbors (My Clients)**

Dear Mr. Kearns:

Please accept this letter as my client's (Woodard/Seidl Roads Neighbors) follow-up and rebuttal written testimony for the post-Public Hearing record on their Appeal in the above reference Case File.

As a point of order, I expect that Mike Connor may raise an issue related to process and attempt to use it to have portions of this letter and attached exhibits removed from the record. From my perspective, our written testimony submitted into the record just before the hearing was responding to the original application materials and the Notice of Decision. My understanding of your instructions on keeping the record open was that Mr. Connor and the applicant would have two weeks after the hearing to respond to our written and oral testimony. Because we did not have the benefit of anything other than Mr. Connor's oral testimony at the hearing which rebutted some of our arguments and reasserted the applicant's position, we needed to wait to review Mr. Connor's expected more full-throated written rebuttal last Friday. Now that we have received that, we are now supplementing the record with additional findings of facts and argument mostly related to Mr. Connor's oral and subsequent last Friday written testimony. Then, in the final week ending on the 13th, Mr. Connor will have the opportunity to rebut this our last submittal into the record. With the Applicant and Mr. Connor having the "last word", there should be no reasonable basis for not including into the record this our Follow-up and Rebuttal Written Testimony as the rights of the applicant are preserved and not adversely affected.

**Rebuttal to Blackrock LLC. Verizon Wireless Supplemental Evidence Dated October 30, 2020:**

1. Verizon's Jeff Cully's Updated RF Usage and Facility Justification for the Stinger Site responding to issues raised our expert, Dr. Gordon Fulks, in his written testimony Statement on Proposed

Verizon 'POR Stringer' Cell Phone Tower submitted prehearing as our Exhibit J and in his oral testimony at hearing. Please see Dr. Fulks' response letter to this update attached as our Exhibit P.

In his supplemental letter, Dr. Fulks confirms that Verizon's Jeff Cully fails to address the issues Dr. Fulks raised in his Exhibit J which among other things provided findings of fact and argument that Verizon's application fails to scientifically prove that the proposed POR Stinger WCF has complied with the MCZC 39.7735(B)(4) requiring "a report/analysis from a licensed professional engineer documenting...the reasons why the WCF must be located at the proposed site" related to "service demands, topography, dropped coverage, etc.)" and "why the WCF must be constructed at the proposed height" and why co-location is not viable. Emphasis added. Dr. Fulks presents solid countervailing evidence including related to signal coverage mapping and locational issues that the proposed WCF being moved to a more viable alternative site and Dr. Fulks presents viable alternatives. Furthermore, as Dr. Fulks points out Mr. Cully is not a registered professional engineer but a Verizon network division employee, who provides no scientifically established methodology to support his claims and that of Verizon.

By not addressing Dr. Fulks' evidence and argument in his initial Statement (Exhibit J), Mr. Cully appears to concede and confirm that Verizon has no additional rebuttal facts or argument to make.

By failing to comply with the requirements of MCZC 39.7735(B)(4), this application should be denied.

2. EBI Consulting (EBI) update to the Protected Species Impact Evaluation or Natural Resources Review (NRR Update) dated September 16, 2020, responding to our claims that Verizon failed to address the environmental impacts of the Stinger site in their entirety. Prehearing we submitted substantial countervailing evidence in our Exhibits B, C and D – "evidence that confirms the character of the rural area and confirms the existence of and potential impacts of the proposed WCF on existing SEC and natural resources on the subject property as well as on adjacent properties which is supported among other sources by the County's own East Sandy Rural Plan (created in part or whole by Planner Rithy Khut) and Metro's Title 13 Inventory showing all of the land surrounding the proposed site and including the site itself as designated Class B Upland Wildlife." EBI provides some history and background in its NRR Update, and provides a table of the three avian species that EBI states USFWS's IPaC report identified, but its analysis is limited and falls far short of the more comprehensive countervailing evidence provided by the appellants described below and attached.

From EBI's NRR update, we note that following points:

a. EBI's original Natural Resource Review report was dated May 16, 2017 over three years ago and even back then recognized and confirmed for us the County requirement that Verizon needed to address the potential impacts of the proposed Stinger tower on natural resources which confirms that the County must address those impacts when evaluating Verizon's application.

b. See MCZC 39.7740(A)(4) which generally requires that "All wireless communication facilities shall be sited so as to minimize the effect on environmental resources" and specifically requires in subsection (a) that "The facility shall comply with Significant Environmental Concern regulations when applicable." We argue that the County and you as its Hearings Officer have the discretion to determine when SEC and related state and federal regulations are applicable, based on substantial evidence a reasonable person would accept as demonstrative of potential impacts on natural resources.

c. As we have asserted on page 2 of our original prehearing letter and evidence and in Schott and Associates' email and Exhibit D:

"[T]he subject property and adjacent properties to the subject contain upland wildlife

habitat and wildlife, including migratory and other bird populations, including potentially threatened and/or endangered species, which at a maximum supports the County to require the applicant to perform an Environmental Assessment or Survey to determine the quality and quantity of that wildlife on site; and because most wildlife typically travel freely through any existing habitat without respect to property boundaries and SEC overlays, at a minimum, the County should require the applicant to mitigate the adverse impacts caused by the siting of the WCF on the subject and on the adjacent properties.”

d. Once again, EBI incorrectly states in paragraph 4 on page 1 that “As of the date of this NR Update, no changes have been made to the proposed facility design or location.” Then, EBI goes on to describe the project and fails to mention the most important change – the FAA requirement for aircraft lighting which is most impactful to the local and migratory bird populations as we have demonstrated relative to the need for an Environmental Assessment and USFWS approval of the WCF with full compliance with the applicable USFWS siting and construction and lighting guidance. See our Exhibit G for that information which we believe must be provided by Verizon before this application can be approved by the County.

e. EBI admits on page 4 under “Streaked Horned Lark” and under “Yellow-billed Cuckoo” that “Although potentially suitable habitat does occur within the vicinity of the Project Site, no such suitable habitat (i.e. grasslands, tundra, sandy regions with low shrubs) exists at the Project Site and then reaches the “NO EFFECT” conclusion without additional documentation or analysis and without acknowledging the well settled reality noted in c. above that wildlife, particularly migratory and other bird populations, are no respecters of artificial zoning and overlay designations and that all local, state and federal agencies including the County recognize that the entire East Sandy area is a significant wildlife and migratory and other bird populations habitat.

f. To EBI’s credit, they did contact Chelsea Waddell, USFWS Wildlife Biologist but apparently only discussed the habitat and impacts on the spotted owl species, which is explained by Ms. Waddell in our Exhibit Q below and refuted by our countervailing evidence.

g. Then, EBI without additional analysis of other wildlife issues and of our earlier NR exhibits and evidence or obtain full review and approval by USFWS, draws the unsupportable conclusion that the siting of the Stinger WCF will “NO EFFECT” on the limited list of wildlife reviewed.

h. Please also see our Exhibit Q compiled by JoAnne Vincent with three attachments which confirms the following:

i. EBI’s “No Effect” conclusion relative to natural resources was limited to “threatened /endangered species on the list and did not consider the Migratory birds of this area also on the IPaC list”.

ii. On page 17 of EBI’s original NRR, EBI admits that “BLM did recommend that EBI follow the most current migratory bird guidance for tower construction”, which is that guidance from USFWS we submitted in our Exhibit G which also requires Verizon communicate project plans to the nearest USFWS Field Office, requires co-location as the preferred siting alternative and special placement and construction instructions, and as we stressed in our first testimony, requires no lighting system or in the alternative, the Aircraft Detection Lighting System (ADLS)

iii. On page 18 of the original NRR, John Huston from BLM confirms that in 2017, the proposed WCF had “no lighting” and therefore met most of the USFWS tower siting and design recommendations and is therefore not anticipated to adversely affect migratory birds”. So, EBI and Verizon were aware of the USFWS and migratory bird issues in the area that might adversely impact the

Stinger current site as early as 2017.

iv. See Ms. Vincents' Attachment One which is USFS' Brett Carre's 2013 Checklist of Birds at Sandy River Delta, May-June, (R = resident; N = neotropical migrant; S = short distance migrant documentation for the many birds listed on the checklist), which confirms the presence of many birds local and migratory in the Sandy River East Area, and the email chains attached between Ms. Vincent and ODFW and USFWS confirming the limited conversations between those agencies and Verizon, and the fact that those agencies were basically responding to Verizon's EBI's general description of the area (i.e. "The action area is in close proximity to residential properties, farmland and suburban development" and therefore ODFW concludes in a limited manner that the site and area "lacks suitable habitat to support spotted owls". See Ms. Vincents' Attachment Two which is the USFS data point map of the SRD area. (Sandy River Delta) which is approx. 1.2 miles from the WCF. Please note that several listed species of migratory birds (8) were identified in our initial evidence submittals.

v. In an email exchange with David Leal of migratory bird expert with ODFW, Mr. Leal states to Ms. Vincent that "Some of those species pictured [in the IPaC list] can occur there as breeders (rufous hummingbird, bald eagle and great blue heron) while others may pass through in migration (olive-sided flycatcher, shorebirds). There are many bird species that use that area for breeding and pass through in migration. It is a valuable bird area and that's probably how you should comment to the FAA, that if they are requiring lighting that it follow our recommended guidelines [meaning the USFWS guidance]."

vi. See Ms. Vincents' Attachment Three which includes more significant detail on the eight migratory birds found in the area, as well as important evidence of the New FAA Guidance related to ADLS safety lighting systems and its intersection with USFWS guidance, which we assert must be addressed directly with USFWS and FAA before this proposed Stinger application is approved by the County.

vii. EBI failed to re-analyze the siting of the Stinger at the proposed site after FAA required its full lighting requirements, failed to analyze the resulting impacts on natural resources including local and migratory birds, failed to communicate its plans to USFWS and follow its guidance, and thus failed to comply with MCZC 39.7740(B)(8) which requires "A new WCF shall only be illuminated as necessary to comply with FAA or other applicable state and federal requirements." Emphasis added. And therefore also failed to address the MCZC 39.6850 Dark Sky Lighting Standards, specially subsection (B)(9) which though in the context of this section is stated as an exception to those standards, still confirms that Verizon's must again comply with any applicable "federal, state, or local law or rule".

By failing to adequately analyze the impacts of the Stinger WCF on natural resources as required by MCZC 39.7740(A)(4) and MCZC 39.7740 and the applicable state and federal agency guidance noted above, this application should be denied.

3. Mike Connor in the last two paragraphs of his letter dated October 30, 2020 addresses the FAA lighting approval and the appellant's substantial evidence that FAA and the USFWS have resolved any conflicting agency requirements between aircraft and wildlife impacts on the siting of the Stinger on the subject site. Mr. Connor discusses the feasibility of ADLS lighting but fails to address the USFWS Guidance that is applicable to the siting of the Stinger and fails to provide any conclusive findings of fact or supportable argument.

4. Follow-Up Additional Evidence regarding Verizon's Proposed Lighting, Visually Subordinate Criteria, Comparison with Evans Road WCF Notice of Decision and the Visual Study Criteria prepared by Mark and Alison Knieriem. Please see our Exhibit R – Attachment One for the evidence and summary of argument, Attachment Two for the original 2019 Verizon application for the Stinger, Attachment Three for Blackrock's August 11, 2020 letter responding to public comments, and

Attachment Four for the Evan's Road WCF Notice of Decision to compare to the subject Notice of Decision.

Our additional supplemental evidence and argument under #4 above supports a finding that the subject Verizon Application and Notice of Decision by the County does not comply with the additional following MCZC sections:

MCC 39.7715 – Definitions

MCC 39.7740 (8) (a) & (b) - Approval Criteria for non-EFU land, Lighting

MCC 39.7735 (B) (2) – Visual Study

**5. Conclusion and Request:** Based on the previously submitted and above additional and countervailing findings, we respectfully request that you reverse the Multnomah County Planning Director's Decision and deny the Wireless Cellular Facility as proposed on the subject property (Case File No. T2-2019-12701).

If, in the alternative, you find that our findings of facts and conclusions of law may have merit but you need additional information and response from the Applicant, then we are willing to support your decision to continue the open record for a reasonable time for the Applicant and its representatives to adequately respond to our objections and any other requirements you think are appropriate, and then to give us the same length of time to review and evaluate and rebut the Applicant's responses before closing the record and making your decision.

If at any point in your consideration and decision making process, you intend to approve this application as the final decision at the local level, then at a minimum, we request that you add to or modify the existing Conditions of Approval at a minimum to include the following requirements:

1. Under the original Condition of Approval #2, insert the following new conditions based on our testimony:

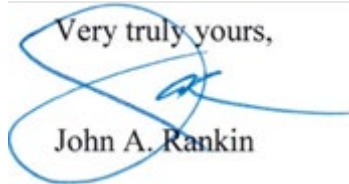
a. "Revise the plans and specifications by deleting the Night and Daytime Strobe LED on the top of the proposed tower and the two similar lights at the midpoint of the tower; and replacing both with the new FAA standard approved Aircraft Detection Lighting System (ADLS) which is radar activated to mitigate impacts on migratory and other bird populations."

b. "The Applicant shall be required to cause a licensed professional engineer to prepare and submit to the County Planning Division and Hearings Officer an Amended Updated RF Usage and Facility Justification for the Stinger Site addressing the Service Area and Signal Coverage issues raised by the appellants in sufficient detail to convince the County that the Applicant has submitted response and substantial evidence into the record to support land use signoff for building plan check."

c. "The Applicant shall be required to cause a licensed professional biologist to prepare and submit to the USFWS an Environment Assessment for the Stinger Site addressing the significant environmental concerns raised by the appellants in sufficient detail to obtain USFWS and FAA approval relative the propose lighting and mitigation of adverse impacts to wildlife, including migratory bird populations."

d. "The applicant shall amend the propose Stinger WCF design and configuration to comply with the applicable Visual Subordination and Dark Sky Lighting and Visual Study criteria."

If we have made some technical error in our submittal or if you have any questions or need additional information, please call or email me at the above contact information. Thank you for your time and consideration of our countervailing findings of fact and conclusions of law.



Very truly yours,  
John A. Rankin

JAR/bhs

Encl: Follow-up and Rebuttal Written Testimony and Individual Exhibits  
Updated Exhibit List

Pc: Clients – Woodard/Seidl Roads Neighbors  
Katherine Thomas, Asst. Co. Counsel [katherine.thomas@multco.us](mailto:katherine.thomas@multco.us)  
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