



Exhibit R - Attachment Three

August 11, 2020

Rithy Khut
Land Use Planner
Multnomah County Land Use Planning Division
1600 SE 190th Avenue
Portland, Oregon 97233

Delivered via email

RE: Verizon Wireless | POR Stinger | Cell Tower T2-2019-12701

Dear Mr. Khut,

Thank you for the opportunity to respond to the public comments that you received during the comment period for the above referenced application. Below, please find our responses:

ALTERNATIVE SITES:

Some parties inquired as to whether the antennas could instead be located on any of the existing water tanks/reservoirs owned by the Corbett Water District. Attached, please find an updated RF Usage and Facility Justification statement from Jeff Culley, Verizon Wireless RF Engineer. In the updated statement, Mr. Culley analyzes the coverage that would be achieved if Verizon were to collocate antennas on any of the following: Cabbage Hill tank, Mershon Reservoir, Loudon Rd. Reservoir, and Larch Mtn. Reservoir. As shown in Mr. Culley's propagation maps, collocating antennas on any of these structures would not satisfy the coverage objective for the proposed POR Stinger site of providing in-building service to the neighborhoods on the top of the plateau, near the Sandy River and near the Columbia River Highway.

RF EMISSIONS:

Some parties raised concerns about the health and safety impacts of the RF emissions from the wireless communication facility. The County is prohibited from considering RF emissions as part of its decision under the Federal Telecommunications Act. The Federal Telecommunications Act prohibits local governments from adopting a decision based even partially on the health effects of RF emissions. 47 U.S.C. §332(c)(7)(B)(iv). Any decision based on RF emissions, even if other legitimate reasons were listed as well, violates Section 332(c)(7)(B)(iv). *T-Mobile Ne. LLC v. Inc. Vill. of E. Hills*, 779 F.Supp.2d 256, 265 (E.D.N.Y.2011); *Firstenberg v. City of Santa Fe*, 782 F.Supp.2d 1262, 1271 (D.N.M. 2011); *T-Mobile Ne. LLC v. Town of Ramapo*, 701 F.Supp.2d 446, 460 (S.D.N.Y. 2009). As part of the Application, Verizon submitted a Non-Ionizing Electromagnetic Radiation (NIER) Analysis and Engineering Certification which confirmed that the facility will comply with all FCC standards for radio frequency emissions.

PROPERTY VALUES:

Some parties raised an issue regarding the potential impact on property values. The potential impacts on property values is not relevant under the County's approval criteria. A local government cannot consider a wireless communication facility's impact on property values unless there is a specific requirement in the code to do so. *Hill v. City of Portland*, 66 Or LUBA 250, 258-59 (2012). The Multnomah County Code does not include a requirement for a wireless communication facility to consider impacts on property values.



CONSISTENCY WITH LAND USE CODE/ZONING:

Some parties commented that the wireless communication facility is inconsistent with the purpose of the MUA-20 zone set forth in MCC 39.4300. Purpose statements are not approval criteria unless there is specific language stating that they are intended to be mandatory approval criterion. *Jones v. City of Grants Pass*, 64 Or LUBA 103, 110 (2011); *SEIU v. City of Happy Valley*, 58 Or LUBA 261, 271-72, *aff'd*, 228 Or App 367, 208 P3d 1057, *rev den*, 347 Or 42 (2009). MCC 39.4300 does not include specific language indicating that it is intended to be a mandatory approval criterion. Additionally, a wireless communication facility that employs concealment technology like the monofir in this case is an allowed Review Use in the MUA-20 zone. MCC 39.4315(F). A use expressly allowed in the zone cannot be inconsistent with the purpose of the zone.

VISUAL SUBORDINATION:

Some parties claim that the tower is not visually subordinate. MCC 33.7715 provides that “Visibly subordinate facilities may be partially visible, but not visually dominate in relation to their surroundings.” The proposed monofir, which utilizes concealment technology, will not be visually dominate in relation to the surroundings given the mature trees in the immediate area that will provide significant screening. The mere fact that the monofir tower will be partially visible does not mean that it is not visually subordinate.

DARK SKY LIGHTING STANDARDS:

Some parties commented that the proposed tower will violate the dark sky ordinance due to lighting of the tower required by the FAA. The FAA *Determination of No Hazard To Air Navigation* was included with the application as Exhibit Q. As a condition to the Determination, the FAA requires that the tower be lit with a solid red light at night and a flashing white light during the day to ensure safe air travel (dual/medium intensity). The FAA does not permit light shields, as they can create a disruption of the intended spread of the lighting, snow accumulation, and/or unwanted bird nesting. As set forth in MCC 39.6850 (9) the FAA required lighting on the tower is exempt from the Dark Sky Lighting Standards. “Lighting required by a federal, state, or local law or rule, when such lighting cannot comply with both the law or rule and the standards in paragraph (C) of this section.”

TOWER SCREENING/LANDSCAPING:

Some parties have expressed concerns that the tower will not be properly screened in the absence of a landscape plan. MCC 39.7740(11) addresses the requisite landscaping and screening required for wireless communication facilities. Per this section, the intent is to “screen the base of the tower and all accessory equipment, where necessary.” As described in the submitted narrative, additional landscaping is not proposed as there will be substantial natural landscaping preserved on site that will screen the proposed facility. Verizon is removing the minimum amount of trees and vegetation necessary to accommodate the tower and accessory equipment. The existing trees and vegetation, to be preserved via a conservation easement with the property owner, are shown on attached site plans. The submitted site plans and visual study demonstrate that the proposed facility will be screened from views of any adjacent property due to distance, topography, mature preserved vegetation, and proposed opaque fencing around equipment compound.

VISUAL STUDY/PHOTO SIMULATIONS:

Some parties have expressed concern over the adequacy of the submitted visual study/photo simulations. MCC 39.7730 (B)(2) provides that a visual study must contain a graphic simulation showing the appearance of the proposed tower, antennas, and ancillary facilities from various points within a five-mile radius. “Such points shall include views from public places including but not limited to parks, rights-of-way, and waterways and chosen by the Planning Director at the pre-application conference to ensure that various potential views are represented.”

A visual study was submitted with the application as Exhibit I. The visual study contained four locations within a five-mile radius, as chosen by the County, to ensure that various potential views were represented. The County accepted the submitted visual study and deemed it acceptable to meet the Code requirement.



SETBACK FROM RESIDENCES/PROPERTY LINES:

Some parties have expressed concern about the tower location in proximity to existing residences. MCC 39.7740 (3)(a) provides that no dwelling on the subject property shall be closer to a ground mounted facility than a distance equal to the total height of the WCF measured from finished grade or according to the yard requirements of the underlying zone, whichever is greater. The proposed tower will be located at least 290 feet from the existing dwelling on subject property, thus exceeding the 150' tower height setback.

MCC 39.7740(b) provides that all ground mounted towers shall be setback from any property line a minimum distance equal to the total height of the tower. The proposed tower will be located at least 150 feet from any property line as shown on Exhibit G – page A-1 Site Plan. The closest property line to the tower is over 211 feet setback to the east. The location of the tower, as proposed, complies with the MCC requirements.

PRE-APPLICATION CONFERENCE

Some parties have expressed concern with the timing of the pre-application conference and the filing of the application. A pre-application conference was held on April 25, 2019 (PA 2019-11705) to discuss the construction of a new 150-tall monopole, requiring a Type III Conditional Use. A Type III Conditional Use Application was filed with Multnomah County on May 30, 2019, well within the six-month window in which to file the application after the conference. In response to initial comments from the County, Verizon elected to propose a stealth design (monofir) for the facility to minimize the visual impacts. Since a stealth design tower only requires a Type II process, Verizon withdrew the Type III Conditional Use Application and filed the Type II Conditional Use Application for the stealth design with the County on November 20, 2019. MCC 39.1120 (D) provides that the Planning Director may waive the pre-application requirements if, in the Director's opinion, the development does not warrant these steps. As the pre-application conference for the facility was held just over six months from the second filing date, and the Type II application was substantially similar to the Type III application (the only difference being that the facility would now be stealth), Multnomah County did not require another pre-application conference to file the Type II application.

RADIUS FOR NOTICE MAILING

Some parties have expressed concern about the sufficiency of the radius for the notice of application that was provided to surrounding property owners. MCC 39.1105 describes the County's process for review of applications. MCC 39.1105(B) provides that upon receipt of a complete application, the County mails the notice of application, and an invitation to comment, to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The County complied with these notice requirements.

NOISE LEVELS

Some parties have expressed concern that noise levels from the facility will exceed permissible levels. MCC 39.7740(A)(3) provides that noise levels from a wireless communications facility shall not exceed 5 dBA above ambient levels or 55 dBA Sound Pressure Level (SPL), whichever is greater, on adjacent properties. Operation of a back-up generator in the event of power failure or the testing of a back-up generator between 8 AM and 8 PM are exempt from this standard. An acoustical report, prepared by SSA Acoustics, was submitted with the application as Exhibit P. The noise study extended from the proposed equipment to the nearest properties, which are zoned R-15. The proposed new equipment includes equipment support cabinets and an emergency generator. The cabinets are expected to run intermittently 24 hours a day. The generator will operate during daytime hours for maintenance testing or during a power outage. Per the noise study, the sound pressure level from the proposed equipment will meet the 55 dBA code limit at the nearest receiving property line. Noise levels from the equipment to the other receiving properties, which are further away, will be lower and within the code limit. The proposed emergency backup equipment includes one 20 kW Diesel Generator with a Level 2 enclosure. The proposed



generator has a sound level of 65 dBA at 23 feet. Test cycle operation shall occur between 8 AM and 8 PM. Noise from the generator is exempt from the code when tested during daytime hours and when operating during a power outage.

Please let me know if you have any questions or require any further information in support of our application.

Best regards,

Sophia Mekkers

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