Eugene Hearings Official

AGENDA

Phone: 541-682-5377
www.eugene-or.gov/hearingsofficial

Meeting Location:
Sloat Room, Atrium Building
99 West 10th Avenue
Eugene, Oregon

The Eugene Hearings Official welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours' notice. To arrange for these services, contact the Planning Division at (541) 682-5481.

WEDNESDAY, AUGUST 24, 2016
(5:00 p.m.)

I. PUBLIC HEARING

VERIZON WIRELESS - NORKENZIE (CU 16-2)

Request: Conditional use permit to install a 100-foot tall mono-pine telecommunication tower and associated ancillary equipment in the R-1 Low-Density Residential zone. The applicant is requesting a variance to allow above-ground ancillary equipment (stored within a new onsite structure), a tower that exceeds 75 feet in height, and a reduced setback from the southern property line.

Location: Eugene Church of Christ at 2424 Norkenzie Road
(Assessor's Map/Tax Lot: 17-03-18-41-04100)

Applicant: Kelly Lea, Verizon Wireless

Representative: Sarah Blanchard, ACOM Consulting

Lead City Staff: Erik Berg-Johansen, Assistant Planner
Telephone: (541) 682-5437
E-mail:erik.berg@ci.eugene.or.us

Public Hearing Format:
1. Staff introduction/presentation.
2. Public testimony from applicant and others in support of application.
3. Comments or questions from neutral parties.
4. Testimony from opponents.
5. Staff response to testimony.
6. Questions from Hearings Official.
7. Rebuttal testimony from applicant.
8. Closing of public hearing.

The Hearings Official will not make a decision at this hearing. The Eugene Code requires that a written decision must be made within 15 days of close of the public comment period. To be notified of the Hearings Official's decision, fill out a request form at the public hearing or contact the lead City staff as noted above. The decision will also be posted at www.eugene-or.us/hearingsofficial

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CONDITIONAL USE PERMIT STAFF REPORT

Application File Name (Number):
Verizon Wireless - Norkenzie (CU 16-2)

Applicant's Request:
Conditional use permit to install a 100-foot tall mono-pine telecommunication tower and associated ancillary equipment in the R-1 Low-Density Residential zone. The applicant is requesting a variance to allow above-ground ancillary equipment (stored within a new onsite structure), a tower that exceeds 75 feet in height, and a reduced setback from the southern property line.

Applicant/Owner:
Kelly Lea, Verizon Wireless

Applicant's Representative:
Sarah Blanchard, ACOM Consulting,

Lead City Staff:
Erik Berg-Johansen, Assistant Planner, Eugene Planning Division, (541) 682-5437

Subject Property/Location/Size:
Tax Lot 4100 of Assessor's Map 17-03-18-41; Eugene Church of Christ at 2424 Norkenzie Road; Size of lease area is approximately 2,500 square feet; Size of subject property is approximately 8.9 acres.

Existing Zoning:
R-1 Low-Density Residential

Relevant Dates:
Application submitted March 14, 2016; application deemed complete on July 8, 2016; public hearing scheduled for August 24, 2016

<u>Purpose of Staff Report</u>
Staff reports provide community members an opportunity to learn more about the land use request and to review staff analysis of the application. Staff reports are available seven days prior to the public hearing (see EC 9.7320). The staff report provides only preliminary information and recommendations. The Hearings Official will also consider additional public

testimony and other materials presented at the public hearing before making a decision on the application. The Hearings Official's written decision on the application is generally made within 15 days following close of the public record, following the public hearing (see EC 9.7330). For reference, the quasi-judicial hearing procedures applicable to this request are described at EC 9.7065 through EC 9.7095.

Background/Present Request

The subject property is approximately 8.9 acres in size and located in Eugene's Northeast Neighbors neighborhood. The subject site abuts Norkenzie Road to the east, Beltline Highway to the south, a commercial retail center to the west (within GO General Office zoning), and single-family homes to the north. The property is currently developed with the Eugene Church of Christ. The site currently supports one structure and an associated parking lot. A vicinity map showing the project location is included as Attachment 1. A zoning map is included as Attachment 2.

The applicant is requesting Conditional Use Permit (CUP) approval to install a new telecommunications tower in order to improve signal capacity and coverage to their customers. The tower will be built as a "mono-pine," which is designed to look like a pine tree. A new shed structure will also be built to house the associated ancillary equipment, which includes a power generator. The applicant is also requesting a variance to three standards, which are outlined in the table below.

Table 1: Variance Requests

Standard	Normal Requirement	Proposed
Tower Height	75 feet maximum	100 feet
Placement of Ancillary Equipment	Underground	Above Ground
Setbacks from Property Line	100 feet minimum*	78.5 feet

* The required setback from property lines is equal to the proposed height of the tower, which in this case is 100'

Per EC 9.5750(5), the Telecommunication Standards of EC 9.5750 apply to the subject request. The telecommunications requirements adopted in the Eugene Code, which are relevant to the subject request and addressed below at EC 9.5750, have been crafted to ensure that they are consistent with the requirements of the Federal Telecommunications Act of 1996. The Act prohibits cities and states from discriminating among telecommunications providers and from erecting barriers to a provider's entry into a local market. The City's policies and ordinance ensure that all providers in similar situations are treated in a similar fashion. The City worked to design the ordinance so that no barriers to market entry were created, consistent with federal requirements under the Act. In addition, since the church property is zoned R-1 Low Density Residential and is classified as a non-residential use, per EC 9.5750(5) a Conditional Use Permit is required in order to construct a new transmission tower. The requirements of EC 9.8075 Conditional Use Permits apply to the request.

The applicant states that the proposed facility is needed to improve signal capacity and

coverage in neighborhood surrounding the subject property (Verizon Wireless sites in the area are at system capacity). According to the applicant the only way to increase capacity to an area is the installation of a new wireless communications facility. Additional details of the proposal are included on the applicant's plans, and are further addressed in the applicant's written statement and supporting documentation, all of which are included as part of the public record and located in the application file for reference.

Since this request is for a telecommunications facility, a number of details and supporting information are complex and require a depth of technical knowledge in the field of telecommunications, facility construction and operation, and complicated Federal Communication Commission (FCC) regulations. EC 9.5750(11) provides for the retention of consultants to verify the accuracy of the applicant's statements and supporting documents. The City has contracted with The Center for Municipal Solutions (CMS) to provide review of the application in relation to EC 9.5750, specifically on collocation, justification, and alternative sites and to assess radio frequency (RF) exposure limits as established by the FCC. CMS provided an analysis of the applicant's materials which is referenced in the staff report below, and included in the application file for reference. The City also contracted with The Noise Consultancy, LLC to provide analysis of the application for noise impacts; these referral documents are also included in the application file for reference.

In accordance with EC 9.7055, the Type III land use application procedures from EC 9.7300 through EC 9.7340 are applicable to the current request. Applicable to this proposal are the Conditional Use Permit criteria at EC 9.8090, and the Telecommunication Standards listed at EC 9.5750. The following evaluation also addresses details of the proposal in the context of compliance with the applicable approval criteria and related standards.

Application Referrals and Public Hearing Notice

The applicant held a neighborhood meeting on February 17, 2016 in compliance with EC 9.7007 Neighborhood/Applicant Meetings. This meeting provided neighborhood members an opportunity to review the proposal, share information, and identify issues regarding the proposal. Twelve community members attended the meeting and provided comments to the applicant's representative.

Through completeness review, staff identified that the materials presented at the applicant's neighborhood meeting were inconsistent with the land use application submittal. At the original neighborhood meeting a 75-foot mono-pole tower was presented, and in the application package a 100-foot mono-pine type tower was proposed. Based on this inconsistency, staff required the applicant to hold an additional neighborhood meeting so that the most recent proposal could be presented. The second neighborhood meeting was held on May 25, 2016, and five members of the public attended.

The applicant's representative stated that attendees were generally supportive of the proposal and provided positive feedback regarding the proposed location of the tower. However, at the second meeting a concern was raised regarding the health of the tall trees on the property.

The project representative provided written summaries for both meetings, which are included in the application file for reference. Consistent with EC 9.7005 Pre-application Conference, the applicant also met with staff on February 29, 2016 to discuss the proposal.

On March 14, 2016, the applicant submitted a CUP application. After an initial review staff determined that the application was incomplete and informed the applicant on April 13, 2016; on June 20, 2016 the applicant submitted supplemental information. Staff determined a few items were still incomplete or missing from the application package, and deemed the application incomplete for a second time on June 22, 2016; on July 8, 2016 the applicant submitted additional supplemental information and the application was deemed complete the same day.

On July 22, 2016, the Planning Division mailed and posted written notice of the public hearing, in accordance with the applicable code requirements. No public testimony has been received in response to that notice, as of the date of this staff report. Relevant referral comments received from other City departments are incorporated into the following evaluation, in the context of the applicable criteria and related standards. Any written testimony received after the date of this report but prior to the public hearing will be forwarded to the Hearings Official for consideration in making a decision on the CUP application. Public testimony, written or otherwise, may also be presented at the public hearing on this matter.

In accordance with EC 9.7330, the Hearings Official is required to approve, approve with conditions, or deny a Type III land use application. The decision must be based on, and be accompanied by, findings that explain the criteria and standards considered relevant to the decision. It must also state the facts relied upon in rendering the decision, and explain the justification for the decision based upon the criteria, standards, and facts set forth.

FCC Shot Clock

Staff deemed the application incomplete for the first time on April 13, 2016; this exhausted 29 days of the FCC shot clock. The applicant submitted supplemental materials on June 20, 2016, so the FCC shot clock started again on June 21, 2016. The application was deemed incomplete again on June 22, 2016, which means a total of 31 days of the FCC shot clock were exhausted up to that point. The applicant submitted additional supplemental materials on July 8, 2016, and the application was deemed complete the same day. Based on the timeline described above, 31 days were exhausted up to the point the application was deemed complete, and therefore the 150-day FCC shot clock will expire on November 4, 2016 unless otherwise extended as part of this land use process.

Conditional Use Permit Evaluation

To assist the Hearings Official in rendering a decision on the application, staff presents the following CUP approval criteria (shown below in **bold** typeface), with findings related to each, based on the evidence available as of the date of this staff report.

> **EC 9.8090(1): The proposal is consistent with applicable provisions of the Metro Plan and applicable refinement plans.**

The Metro Plan

The subject property is designated for low-density residential use on the land use diagram of the Metro Plan, and as noted above, is currently developed with a church. The existing church is considered a non-conforming use, as it does not have an approved CUP as required for churches in R-1 zones (see EC Table 9.2740). However, since no expansion of the existing church use is proposed, a CUP will not be required.

The current proposal is to establish a separate telecommunications use which is subject to CUP approval. Like churches, schools and other public facilities, various non-residential (i.e. "auxiliary") uses are allowed in areas designated for low-density residential use in the Metro Plan (Page II-G-3). However, these uses are subject to local controls as a CUP (which is the case here).

There is also one Metro Plan policy that is considered as a mandatory approval criterion based on the Oregon Land Use Board of Appeal's (LUBA) holding in *Northgreen v. City of Eugene* (aka: AT&T Mobility Cell Tower: Oakway Golf Course, PDT 10-2 and CU 11-1). The Planning Commission Final Order on remand, which was affirmed by both LUBA and the Oregon Court of Appeals, is instructive as to how the City must apply that policy in the case of the proposed telecommunication facility. Below are findings that address this policy as it relates to the applicant's request.

- Metro Plan Policy E.4 (page III-E-3): *Public and private facilities shall be designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas and promotes their sense of identity.*

LUBA found that that Policy E.4 constitutes an applicable Metro Plan policy that the City must separately address, because it "provides fairly specific and mandatory direction that public facilities such as the telecommunications tower 'be designed and located' to 'preserve and enhance' desirable features of the area." Based on LUBA's clear direction and past local precedent, Policy E.4 applies to this proposed telecommunications tower because it is a "communication facility" and that term is included in the Metro Plan definition of "key urban services and facilities" (see Metro Plan Glossary, Page V-3).

The proper application of general Metro Plan policies to individual development applications requires careful evaluation of whether and how a particular policy applies and what it means in the context of a particular neighborhood area. It also requires looking to the context provided by the local regulatory framework of the Metro Plan, any applicable refinement plans, and the Eugene Code regulations intended to implement those adopted land use plans. Interpreting the Metro Plan requires weighing the various components so the plans and implementing code provisions can be applied in a practical manner to a variety of proposals.

The Metro Plan Introduction includes a section called the "Use of the Metro Plan" (Page I-5), stating that:

"…A policy is a statement adopted as part of the Metro Plan to provide a consistent course of action, moving the community toward attainment of its goals…The revised goals, objectives, and policies contained in this Metro Plan are not presented in any particular order of importance. The respective jurisdictions recognize that there are apparent conflicts and inconsistencies between and among some goals and policies. When making decisions based on the Metro Plan, not all of the goals and policies can be met to the same degree in every instance. Use of the Metro Plan requires a balancing of its various components on a case-by-case basis, as well as a selection of those goals, objectives, and policies most pertinent to the issue at hand."

The City therefore views Policy E.4 in the context of other relevant policies such as Policy G.1 (Public Facilities and Services Element), which support the extension of key urban services and facilities in an orderly and efficient manner. Based on precedence, however, it should not be used in isolation or at the expense of other relevant adopted plan provisions and policies, or more detailed code provisions that require compliance with related CUP approval criteria and standards for telecommunications facilities.

The Willakenzie Area Plan (WAP)

Like the *Northgreen* case involving the Oakway Golf Course property, the Willakenzie Area Plan (WAP) serves as the applicable adopted refinement plan, which provides relevant context to help interpret the meaning and application of Policy E.4. The following General Policies of the WAP appear to apply to the request:

- General Policies and Proposed Actions for the Willakenzie Area, Policy #3 (page 15): *Retain existing significant vegetation whenever possible to provide buffering between residential and nonresidential uses, as well as between low-density and higher density residential uses.*

- General Policies and Proposed Actions for the Willakenzie Area, Policy #6 (page 15): *Minimize land use conflicts by promoting compatibility between residential and nonresidential land uses.*

A stand of existing trees serve as a buffer between the proposed cell tower location and neighboring residential properties, and the applicant proposes to preserve these trees as part of the request. Compatibility is further promoted by the tower's stealth design (a mono-pine). Based on the applicant's tower design and the tree preservation plan, the project is consistent with the above policies.

The WAP's Neighborhood Design Element (beginning on page 135) states that "The Neighborhood Design Element is concerned with environmental character, identity, and visual qualities in the Willakenzie area." The guidelines below from this "element" are directed at general commercial development such as retail outlets, offices, restaurants, and related building elements (i.e. roof-top mechanical equipment). A telecommunications tower is quite different than a traditional commercial structure; however, staff finds that while the guidelines

below are non-regulatory, certain elements of each guideline are relevant to the proposed project and should be considered.

- Willakenzie Commercial Siting/Development Guideline #5 (page 147): *Commercial structures adjacent to residential development should be in scale with the height of existing or planned residential structures. Where commercial development is adjacent to any use other than a residential use, the height limit should be consistent with the limit in the adjacent district.*

The subject property is adjacent to residential property, but the proposed tower site is approximately 300 feet from any residential use. A grove of trees exists between the nearby residential properties and the proposed tower; according to the applicant's photo simulations, these trees will obscure the new stealth mono-pine tower from view. Due to the 300-foot buffer from residential properties and the screening provided by existing trees onsite, the project is consistent with the guideline's intent.

- Willakenzie Commercial Siting/Development Guideline #12 (page 149): *Auxiliary structures such as refuse collection areas, transformers, utility meters, and other utility and mechanical equipment on the ground, should be screened from public view with plant materials or other screening materials that are compatible with the adjacent buildings. Screening enclosures for refuse collection areas should completely screen all collection bins and refuse.*

As mentioned above, existing trees onsite provide substantial screening between the subject tower and adjacent properties. Consistent with the guideline, new landscaping will also be planted around the proposed equipment shed.

- Willakenzie Commercial Siting/Development Guideline #13 (page 149): *Heating, ventilating, air condition, and other wall or roof-top mechanical equipment should meet the noise standards of the zoning ordinance. If required, a noise barrier shall be made of a material and design that is visually compatible with the building.*

The applicant's noise consultant evaluated the project and recommends mitigation measures to ensure noise-generating equipment meets the noise standards of Eugene Code Chapter 9. A condition of approval is also recommended to require noise testing after the tower is constructed to ensure compliance with the noise standards. Based on the applicant's proposal and recommended conditions of approval, the project is consistent with this guideline.

- Willakenzie Commercial Siting/Development Guideline #18 (page 151): *Where commercial development is adjacent to residential uses, the common property lines should be separated by a sight-obscuring fence or wall. The interior yard adjacent to this fence should be generously planted with trees, ground covers, and shrubs capable of attaining a minimum height of eight feet within five years.*

As discussed under Guideline #5 above, the proposed tower is buffered from residential uses by 300 feet, and is therefore not directly adjacent to a residential use. A telecommunications tower is also different than general commercial development in that there will be no impacts generated by customer visitation or daily freight deliveries. Based on the site configuration and the nature of the use, the project is consistent with the guideline's intent.

The Neighborhood Design Element also discusses "entrance corridors" within the plan area. The plan states that entrance corridors "…bring visitors and other travelers into Eugene from I-5, Mahlon Sweet Airport, Highway 126, and Highway 99," and that they are "…focal points for future highway improvement and beautification projects, including landscaping, entrance signing, and improvements to guide signing for various regional destinations" (page 136). The WAP also introduces policies specific to the Beltline Highway (between the Willamette River and I-5), and features a map that proposes specific improvements such as tree plantings (page 140-141).

While the entrance corridor improvements are an important part of the refinement plan, and the subject property is adjacent to Beltline Highway, the applicable policies are not relevant to the scope of the proposed project. The vast majority of the policies direct the City of Eugene to "Work with the State Highway Department" and to provide landscaping and sound walls in conjunction with major highway improvements.

Telecommunications Standards

In the *Northgreen* case, LUBA noted that the code provisions initially cited by the City did not appear to fully implement Policy E.4. On remand, the Planning Commission noted that in addition to the PUD and CUP approval standards cited in the initial decision(s), the City's telecommunications standards at EC 9.5750 are key components implementing the Metro Plan (and the Federal Telecommunications Act), while balancing the protection of neighborhood views and livability with the need to provide a key urban service. The stated purpose of the telecommunications standards are to ensure that telecommunication facilities are located, installed, maintained and removed in a manner that:

- Minimizes the number of transmission towers throughout the community;
- Encourages the collocation of telecommunication facilities;
- Encourages the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers;
- Recognizes the need of telecommunication providers to build out their systems over time; and
- Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the community, and minimize public inconvenience and disruption.

The telecommunications standards at EC 9.5750 address a broad range of concerns related to the provision of telecommunications service such as requiring viewshed protection, height limitations, setback minimums, noise mitigation, buffering requirements, color requirements,

graphic simulations of the proposed structure, structure capacity for collocation, ability to collocate on alternative sites, and evidence demonstrating alternative sites are unfeasible. As addressed in the following evaluation, the applicant has met its burden of demonstrating compliance with all of these standards.

CUP Requirements

The City's initial decision in the *Northgreen* case relied solely on reference to CUP (and PUD) criteria as the implementing provisions of Policy E.4. LUBA concluded that the cited provisions did not appear to fully implement the policy. As affirmed on remand, the Planning Commission found that CUP (and PUD) provisions still had value in at least implementing a part of the policy.

Acknowledging that the CUP criteria in this case may not fully implement or address the requirements of Policy E.4, they nonetheless ensure that subjective issues such as compatibility, screening, aesthetics and visual impact must be appropriately addressed beyond the more basic telecommunications standards. In this case (and further addressed below), staff finds that the application meets all of the applicable CUP approval criteria as relevant to Policy E.4.

Based on the findings above, EC 9.8090(1) is met.

> **EC 9.8090(2): The location, size, design, and operating characteristics of the proposal are reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property, as they relate to the following factors:**
>
> **(a) The proposed building(s) mass and scale are physically suitable for the type and density of use being proposed.**

This subsection of the code is intended to address the compatibility and livability issues of proposed developments with surrounding areas by assessing the mass, size and density of buildings. Upon closer review of the definition of "building" versus "structure" staff notes that the proposed mono-pine cell tower does not appear to meet the definition of a building as defined in EC 9.0500. Although the cell tower is therefore not required to meet the criteria of EC 9.8090(2)(a) as a building, it should be noted that the proposal is a stealth mono-pine instead of a lattice type structure, which helps the facility blend in with the site's existing trees.

The project also proposes a new building to house the tower's ancillary equipment[1]. The structure is 312 square feet and 15.5 feet tall; staff finds the size of the shed is suitable (and reasonable) for its purpose of equipment storage.

> **(b) The proposed structures, parking lots, outdoor use areas or other site improvements which could cause substantial off-site impacts such as noise, glare and odors are oriented away from nearby residential uses and/or are adequately**

[1] In accordance with EC 9.5750(8), a variance request is required to locate ancillary facilities above ground; the variance request is addressed in this report under criterion EC 9.5750(9)(c).

mitigated through other design techniques, such as screening and increased setbacks.

This subsection of the code is intended to address site improvements which could cause substantial offsite impacts related to noise, glare and odors. Below is staff's evaluation of potential impacts related to noise, appearance, and radio frequency (RF) exposure.

Noise – Since the applicant has proposed locating ancillary facilities above ground a variance is required per EC 9.5750(8). One of the primary reasons a variance is required is due to the fact that common ancillary equipment (i.e. emergency power generators) are known to produce relatively high levels of sound. The variance request is further evaluated under telecommunication standard EC 9.5750(9). There is also a telecommunication standard (EC 9.5750(7)(f)) that limits the sound level at property lines adjacent to residential uses to a maximum of 45dBa. In this case, the northern property line is adjacent to residential zoning and uses.

To address the 45dBa standard required per EC 9.5750(7)(f), the applicant submitted an acoustical report from SSA Acoustics dated January 19, 2016. Three sources of sound are discussed in the report, including one emergency generator and two air conditioning/compressor units. The City's noise consultant, The Noise Consultancy, LLC (TNC), reviewed the SSA report and provided comments in a letter dated July 29, 2016. The applicant reviewed this letter and directed SSA to craft a revised report that responds to TNC's comments. The applicant submitted a revised report from SSA dated August 8, 2016. TNC reviewed the revised report and provided a final analysis; this letter, dated August 15, 2016, both analyzes the SSA report and recommends mitigations to ensure noise generation meets the 45dBa threshold. All of the documents referenced above are included in the application file for reference.

As mentioned, the telecommunication standard for noise reduction (EC 9.5750(7)(f)) limits noise received on adjacent R-1 residential property lines to 45dBa. The SSA analysis took into account the location and height of the equipment, nearby reflective surfaces, and the level of sound generated (based on manufacturer's data). SSA correctly states that the nearest property line shared with a residential property is approximately 300 feet north of the proposed noise-generating equipment. SSA's August 8, 2016 report predicts that the air-conditioning units would produce a sound level of 37dBA at the northern property line, and that the emergency generator would produce a sound level of 60dBA at the northern property line[2] (during testing or an emergency event when the generator is running). However, the report states that with certain noise control measures (i.e. sound mufflers on equipment and building insulation), the noise level at the northern property line could be reduced to 40dBA, which is below the 45dBa maximum.

[2] The generator would only run during weekly testing and during emergency events. The SSA report also states that weekly generator testing "…will not be typically perceptible at the nearest residences because the generator will produce a sound level that is 15dBA or more quieter than the average background noise level of 67dBA from traffic on Highway 569 [the Beltline Highway]."

TNC reviewed SSA's revised report dated August 8, 2016, and found a number of errors and inconsistencies. TNC believes that some of the analysis errors result in a *lower* reported sound level at the northern property line than what would actually be observed after the tower is constructed. For example, TNC notes that "The SSA report does not sum the total sound levels from the air conditions units and generator," but instead treats them independently which results in lower predicted sound levels. That said, TNC also found that SSA *overestimated* the noise produced by the diesel emergency generator. TNC states: "That data sheet [for the emergency generator] reports a sound level for the OPU (Open Power Unit) of 84.1dBa at a distance of 1 meter. SSA used the sound level of 84dBA as their model input (pages 4 & 6) for the intake and discharge of the unit, however they incorrectly input an initial distance of 7 meters for that sound source. The result of this error is overstating the sound level from this source by 17dBA."

In conclusion, the overestimated and underestimated sound levels will to some extent balance each other out. However, TNC finds that the Marvair air conditioning units "…may be close to the regulatory compliance limits [45dBa]", and therefore recommends that a "ELNB 42-60 External Low Noise Blower" be installed on the proposed air conditioning units to reduce sound output.

In regards to the MTU DS30 emergency generator, TNC found that SSA overestimated the expected noise generation. Therefore, TNC finds that the building insulation, as recommended by SSA, will not be necessary. In lieu of insulation, TNC recommends a number of construction materials for the equipment shed that are mentioned in the SSA report. These materials will reduce the level of sound received on the north property line. The following condition of approval is recommended to ensure adequate sound mitigation measures are implemented:

- The following noise control measures for the building that houses the ancillary equipment shall be noted on the final site plans, detailed on plans submitted for a development permit, and installed before tower operations begin:

    a. Building exterior walls and roof shall be constructed of plywood with siding, wood framing and GWB or plywood on the interior walls and ceiling.
    b. Price QAF1245 (or equivalent) acoustical louvers shall be installed for generator intake and discharge. The performance of the louvers shall be consistent with the table on page 5 of the SSA Acoustics report dated August 8, 2016.
    c. A GT Exhaust systems GT 201-5100 series Critical Grade muffler (or equivalent) shall be provided for the exhaust stack.

While the mitigated ancillary equipment is expected to comply with the noise standard, sound testing should be conducted on the northern property line to ensure compliance with the 45dBa threshold. The following conditions of approval are therefore recommended:

- Within 30 days of the installation and operation of the ancillary equipment, the applicant shall submit a sound measuring report conducted by a certified sound expert that documents the sound emission from the equipment building at the northern

property line. The sound testing shall be conducted with all units on and all units off. These tests should be conducted in quick succession to insure comparable levels of activity in the immediate area. If a long-term noise event occurs during one of the measurements (e.g., a tour bus parks and idles near the test site), the testing should be suspended until that noise source passes. The relevant metric shall be a 5 or 10 minute L90 (the level exceeded 90% of the time). Sound measurements of relevant ambient sound levels at the same location shall be included in the report.

- If the noise levels are found to exceed the limitations of EC 9.5750(7)(f) Noise Reduction at any time, the applicant will be required to install additional mitigation measures to ensure compliance. If additional mitigation measures cannot bring the facility into compliance, the City may issue civil penalties, require further corrective action to mitigate the noise, or potentially revoke the Condition Use Permit Approval if the violation is not remedied.

Visual Impacts –The applicant provided photo simulations showing the appearance of the proposed tower from ten different views. The photos contain a virtual model of the proposed tower that resemble the proposed tower design. The following photo simulations were provided, and are included in the application file for reference:

Table 2: Summary of Applicant's Photo Simulations

#	Location	Direction of View	Visibility
1	Beltline Highway	Northwest	Fully Visible
2	Norkenzie Road	Northwest	Mostly Visible
3	Acacia Avenue	South	Not Visible
4	Ironwood Street	Northeast	Not Visible
5	Tabor Street	East	Mostly Visible
6	Beltline Highway	Southeast	Fully Visible
7	Nearby shopping center	Southeast	Partially Visible
8	Holly Avenue	South	Partially Visible
9	Acacia Avenue	Southwest	Partially Visible
10	Beltline Highway	Northeast	Fully Visible

Setbacks: Based on the tower's 100-foot height, a 100-foot setback from all property lines is required. The applicant's site plans indicate that the tower will be located approximately 78.5 feet from the south property line (which abuts Beltline Highway), which is the closest property line to the proposed tower location. The applicant requests a variance to the setback standard, which is further evaluated below under EC 9.5750(9)(b). To summarize, staff finds that a reduced setback from the southern property line is acceptable given this property line is shared with the Beltline Highway. Unlike a residential use, the Highway does not support permanent

residents and generates a high amount of noise; this makes it arguably less sensitive to the potential noise and visual impacts imposed by a new telecommunication facility.

The proposed tower is located approximately 300 feet from the north property line; this is the only property boundary directly adjacent to residential properties. The setback exceeds the minimum requirement (100 feet) by three times, which will minimize potential visual and noise impacts to the residential neighborhood.

The tower is sited approximately 370 feet from the west property line. As mentioned, this property line is shared with a commercial center that supports large retail outlets, offices and restaurants. Given that the setback requirement is exceeded by more than three times, and a Walmart store is the closest structure to the property line, staff has no concerns with the tower's impact on this adjacent site.

The tower is sited approximately 500 feet from the eastern property line. This property line is adjacent to Norkenzie Road, which begins to rise above grade as it approaches the Beltline Highway overpass to the south. Given the substantial setback from this property line, staff has no concerns with the impact of the tower on properties east of subject site.

Screening: These photo simulations are representative of what the proposal might look like from a distance, and how existing trees and development will obscure the tower from certain viewpoints. View #3 is especially informative because it illustrates that the existing tress onsite are tall enough to provide screening between the proposed tower location and the residential neighborhood to the north. Additional landscaping proposed around the tower's base will provide partial screening from all directions. A condition of approval is also recommended to ensure the perimeter landscaping meets the requirements specified by the approval criteria (see Condition #11).

Existing evergreen trees provide screening along the eastern property line (adjacent to Norkenzie Road). However, it should be mentioned that substantial screening is not particularly important at this location because only one residence exists directly across Norkenzie Road, and it is already obscured by a number of mature trees (presumably planted by the owner to shield the property from Norkenzie Road and the Beltline Highway).

A substantial stand of trees also exists along the property's western edge which provide a screening function between the project site and the shopping center. Considering the setback between the tower and the western property line (approximately 370 feet) paired with the number of mature trees within this buffer, staff expects the tower will impose no negative impacts to users of the shopping center.

In the *Northgreen I* decision, LUBA held that "adequate" screening for a cell tower "…means that the entire tower is not required to be screened, but rather that the tower must be screened 'to a reasonable extent' considering the proposed use." While this finding was in regards to a PUD criterion that does not apply here, LUBA's analysis is still relevant. In the Verizon Wireless – 815 Irving (CU 14-4) decision, (where a 75-foot mono-pine tower was

approved), the Hearings Official interpreted LUBA's findings to mean that "…the 'reasonably compatible' approval standard was satisfied when: (1) the objective standards of EC 9.5750 were met *and* (2) the screening of the bottom two-thirds of the tower and the trees planted on neighbors' property made what might have otherwise been incompatible – reasonably compatible." In his decision, the Hearings Official also stated "…that just because a cell tower is visible to surrounding properties does not mean it is incompatible. The reasonably compatible standard does not require that there are no impacts on surrounding properties, just that any such impacts be adequately mitigated" (CU 14-4 Hearings Official Decision, page 12).

Based direction from LUBA and the Eugene Hearings Official, staff finds that the tower is adequately (and reasonably) screened from surrounding properties to the east, west and north. The ample setback buffers between the tower and the aforementioned property lines also contribute to the compatibility factor. That said, the tower will be more visible from the Beltline Highway. Therefore, staff finds that mitigation is warranted to increase the level of screening between the subject property and Beltline Highway, and recommend the following condition of approval:

- Evergreen trees (at 1.5-inch caliper minimum) shall be planted along the southern property line between the southwestern corner of the property and the western edge of the existing church building (approximately 550 linear feet). Trees shall be planted within 10 feet of the property line at a rate of 1 tree per every 50 linear feet. Selected evergreen tree species must be included on the City of Eugene "Approved Street Tree Species List," and shall not be defined as an under-story tree.

Staff also recommends the following condition of approval to ensure the applicant will construct the tower as it is proposed through this CUP application:

- The approved telecommunications facility shall be constructed in conformance with the applicant's approved site plans, elevations, graphic simulations and all other specific submitted evidence provided in the record that represents height, dimensions, colors, textures and materials used for the mono-pole design, and including fencing and the construction of ancillary facility building. The facility shall also be in compliance with all submitted supporting documents regarding RF exposure, noise generation, and structural findings.

Radio Frequency (RF) Exposure – The telecommunications standards set forth in EC 9.5750 require the submittal of documentation that demonstrates compliance with Federal Communication Commission (FCC) standards regarding non-ionizing electromagnetic radiation emissions. The applicant provided a non-ionizing electromagnetic exposure analysis (also known as Radiofrequency, or "RF") by Hatfield & Dawson Consulting Electrical Engineers. This analysis, dated March 8, 2016, is included in the application file for reference.

The analysis states that "The maximum worst case cumulative Public RF exposure condition near the project tower resulting from all Verizon wireless operations at the project site will be less than 5% of the Public MPE limit...Therefore the Verizon wireless operations at the project

site will not have a significant environmental impact as defined by the FCC Public MPE limits" (page 4). The FCC exempts such facilities from conducting an environmental assessment when the calculated RF emissions are less than 5 percent of the permissible standard. Based on these findings, and as stated by the applicant's consulting electrical engineers, the proposal demonstrates compliance with Federal Communication Commission (FCC) standards regarding non-ionizing electromagnetic radiation emissions.

(c) If the proposal involves a residential use, the project is designed, sited and/or adequately buffered to minimize off-site impacts which could adversely affect the future residents of the subject property.

This standard does not apply as the project does not include a residential use.

Based on the above findings and conditions, EC 9.8090(2) is met.

<u>EC 9.8090(3)</u>: The location, design, and related features of the proposal provides a convenient and functional living, working, shopping or civic environment, and is as attractive as the nature of the use and its location and setting warrant.

This subsection of the code relates to the nature of the proposed use and its functionality with the location and setting. The location and design of the proposed cell tower is such that it will have minimal impact on the remainder of the site. In other words, the use should have no direct impact on the day-to-day operations of the church. The stealth design of the tower and its location next to large existing trees further supports staff's finding that the tower is attractive as the nature of the use and its location and setting warrant.

Based on these findings, this criterion is met.

<u>EC 9.8090(4)</u>: The proposal demonstrates adequate and safe circulation exists for the following:

(a) Vehicular access to and from the proposed site, and on-site circulation and emergency response.
(b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the City makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.

Access to the development site will be provided by existing access from Norkenzie Road. The proposal will not impact existing circulation patterns, and revisions to existing access connections are neither proposed nor required. It is estimated that the cell tower facility will generate an additional one trip per month for maintenance testing by Verizon personnel. The

proposal will not significantly impact existing circulation patterns, and revisions to existing access connections are neither proposed nor required. Evaluation of access and on-site circulation for emergency response will be further evaluated by the Fire Marshal's Office and Public Works staff at the time of building permit.

Based on these findings, this criterion is met.

<u>EC 9.8090(5)</u>: The proposal is designed and sited to minimize impacts to the natural environment by addressing the following:

(a) <u>Protection of Natural Features</u>.

1. For areas not included on the City's acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:

a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under state or federal law), and native plant communities.

b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under state or federal law).

c. Prominent topographic features, such as ridgelines and rock outcrops.

d. Wetlands, intermittent and perennial stream corridors and riparian areas.

e. Natural resource areas designated in the Metro Plan diagram as "Natural Resource" and areas identified in any City-adopted natural resource inventory.

2. For areas included on the City's acknowledged Goal 5 inventory, the preservation of natural features shall be consistent with the acknowledged level of preservation provided for the area.

A Goal 5 Water Resource Conservation area exists on the western and northwestern portions of the subject property. The boundary extent mostly coincides with the canopy of existing trees onsite, but a linear "strip" of Goal 5 area also exists along the northern property line. Regardless, the Goal 5 riparian area onsite is "not protected," which means no conservation setbacks exist on the subject property. It should also be noted that while a part of the telecommunication lease site is within the defined Goal 5 area, the proposed tower is sited south of the boundary. Based on these facts, both subsection (1) and subsection (2) apply to the project.

In regards to subsection (1), there are no wetlands, streams, documented rare plants, prominent topographic features, or documented habitats for rare animal species. There is a documented riparian habitat onsite, but as mentioned it is not designated for protection under the Goal 5 provisions. Further, and as discussed in more detail under subsection (b) below, the applicant proposes to preserve all existing trees onsite.

In regards to subsection (2), the "acknowledged level of preservation provided for the area" is defined by the "no protection" Goal 5 designation (discussed above). In other words, the Goal 5 designation in this case provides no special level of protection for natural resources.

(b) <u>Tree Preservation</u>. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:

1. **Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria.**
2. **Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow.**
3. **Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement.**
4. **Trees that provide a buffer between potentially incompatible land uses.**
5. **Trees located along the perimeter of the lot(s) and within building setback areas.**
6. **Trees and stands of trees located along ridgelines and within view corridors.**
7. **Trees with significant habitat value**
8. **Trees adjacent to public parks, open space and streets.**
9. **Trees along water features.**
10. **Heritage trees.**

The applicant proposes no tree removals, and tree protection fencing is shown on the Site Plan (sheet A-0) just north of the tower site and along the proposed gravel road to the east of the lease site. In response to staff's comments, the applicant provided an arborist report from David D. Hunter dated June 1, 2016. In response to additional staff comments, the arborist revised the Site Survey (sheet SV-1) to include an analysis of potential critical root zone (CRZ) impacts. Overall, staff concurs with the arborist's findings and recommendations.

The arborist report also includes a tree inventory, which discusses the size, species and health of existing trees onsite. The arborist notes that trees greater than 6-inch DBH[3] were inspected, and that only trees adjacent to the project site were included on the inventory. His reasoning for the limited scope is that "Other trees are located well out of the project area, and I see no conflicts for these tree roots or trees". In conclusion, the report finds that with implementation of measures to protect trees during the construction phase, no trees should, or would need to be, removed as a result of the project.

Based on the predicted CRZ impacts for the southernmost trees (the trees adjacent to the project site), the recommendation to retain all existing trees seems reasonable. Chapter 9 of the Eugene Code states "Substantial destruction[4] [of trees] includes actions that destroy more

[3] DBH stands for "Diameter Breast Height," which is the accepted method of measurement for tree size.
[4] According to code, a "substantial destruction" constitutes as a tree removal (also known as a "technical felling").

than 30% of the critical root zone of a tree" (page 9.0-38). Where less than a 30% impact to the CRZ occurs, it is assumed that the tree can be saved.

In this case, the consulting arborist estimates that CRZ impacts to the studied trees are 30% or less, which means that technically, no tree removals should occur. That said, staff notes that two of the studied trees (#2 and #3) have a predicted impact at the threshold of 30%, and that survivability of these trees (or any other tree onsite for that matter) cannot be guaranteed. This is an important factor because the existing trees onsite are expected to serve a screening function between the subject site and neighboring properties.

While replacement trees can be effective in achieving certain mitigation goals, such tree plantings would not be immediately impactful in this case because new trees will be smaller (and less suitable to block views) than the mature trees currently growing onsite. So in other words, staff believes certain measures should be taken to prioritize *preservation* of trees, as opposed to relying on replanting requirements. Hence, staff recommends the following condition of approval to ensure protection measures be implemented during the construction phase:

- The following notes shall be included on the final site plans:
    - "Protective fencing for trees identified to be preserved shall be installed under the direction of a certified arborist and inspected and approved by the City prior to beginning any construction related activities. All protective tree fencing shall remain in place until completion of all construction activities; any relocation or removal of the protective fencing shall also occur under the direction of a certified arborist, with approval by the City."
    - "All tree trimming and pruning shall be completed by a certified arborist."
    - "No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the City."
    - "Before construction activities begin, all trees included in the tree inventory (David S. Hunter arborist report dated June 1, 2016) shall be fertilized by a certified arborist to improve tree vigor and health."
    - "A certified arborist shall be present onsite during all grading activities to ensure the impacts to tree critical root zones are minimized. Per the arborist's direction, hand excavation and other techniques shall be employed to reduce impacts where necessary."

Based on the findings and recommended conditions above, this standard is met.

(c) <u>Restoration or Replacement</u>.

1. **For areas not included on the City's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:**
   a. **Planting of replacement trees within common areas; or**
   b. **Re-vegetation of slopes, ridgelines, and stream corridors; or**
   c. **Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.**

   To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320 and rules adopted thereunder.
2. **For areas included on the City's acknowledged Goal 5 inventory, any loss of natural features shall be consistent with the acknowledged level of preservation provided for the resource.**

As discussed under subsection (b) above, the applicant proposes no tree removals or other activities that would impact other natural resources onsite. However, staff notes that the screening function provided by existing trees onsite is an important aspect of the project. To ensure the long-term presence of trees onsite, the following condition is recommended:

- The following note shall be included on the final site plans: "In the event a tree greater than 6-inch DBH must be removed (i.e. dead, diseased, or hazardous trees), justification of the removal must be documented by a certified arborist. Documentation must be provided to the City for review and approval prior to tree removal activity. The tree(s) shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species, with a minimum caliper of 2 inches for deciduous trees and a minimum height of 5 feet for coniferous or evergreen trees. The proposed location(s) of replacement plantings shall be approved by City of Eugene planning staff to ensure a screening function is provided. Planting, watering and general maintenance of replacement trees shall be conducted by the property owner in manner that ensures their establishment and long-term survival."

Based on the findings and recommended condition above, this standard is met.

(d) <u>Street Trees</u>. If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305 of this code.

Since the proposal does not involve the removal of trees located within existing public rights-of-way, this criterion is not applicable.

<u>EC 9.8090(6)</u>: The proposal provides adequate public facilities and services including, but not limited to utilities, streets, and other infrastructure.

Public Works staff confirms that although no public improvements are proposed, the existing street system and public utilities can adequately serve the proposed development per the findings provided at EC 9.8090(8)(b), (8)(d) and (8)(e).

<u>EC 9.8090(7)</u>: The proposal does not create any significant risk to public health and safety, including but not limited to soil erosion and flood hazard, or an impediment to emergency response.

The previous findings related to RF exposure are incorporated herein by reference. To the extent that the applicant has demonstrated compliance with applicable federal standards for RF emissions, the City does not have the authority to further address potential health effects of the proposed facility. The subject property is not located within a regulatory Special Flood Hazard Area, as mapped by the Federal Emergency Management Agency (FEMA) on Flood Insurance Rate Map (FIRM) 41039C-1129-F, dated June 2, 1999. There are no known geological hazards, as slopes on the development site are less than five percent. The Fire Marshal's Office indicates that construction permits will be required for the installation of the diesel powered emergency generator and a hazardous materials permit (annual) for flammable liquids will be required for the storage and use of the diesel powered emergency generator.

Based on these findings, this criterion is met.

<u>EC 9.8090(8)</u>: The proposal complies with all applicable standards, including but not limited to:

(a) EC 9.2000 through 9.3915 regarding lot dimensions, solar standards, and density requirements for the subject zone;

This criterion is not applicable as the proposal does not include a land division or residential development.

(b) EC 9.6500 through EC 9.6505 Public Improvement Standards;

This section authorizes the City to require dedication of easements for public utilities and access under certain circumstances. The applicant does not propose nor has Public Works staff identified the need for additional public easements to address stormwater or wastewater needs for present or future development of the area.

However, in the event a public utility easement is required by a referral agency other than Public Works, the final site plans should show this easement. The following condition of approval is also recommended to ensure the easement is property noted:

- In the event a Public Utility Easement is required by a referral agency other than Public Works, the following informational note is pertinent. Pursuant to EC 9.6500(3), the final site plan shall note the following restriction: No permanent building, structure, tree or other obstruction shall be placed or located on or in a public utility easement.

1) Water Supply. EWEB notes that there are existing 6-inch and 12-inch water mains on the east side of Norkenzie Road and 36-inch transmission main on the north side of Beltline Road. The proposed telecommunication facility will be more than 80 feet away from any water main.

2) Sewage. The proposed cell tower and equipment shelter will not contain plumbing fixtures and do not trigger the need for wastewater facilities.

3) Streets and Alleys and 4) Sidewalks. EC 9.6505(3)(a) does not apply because there are no streets within the development. As noted in EC 9.6870, which is incorporated herein by reference, Norkenzie Road is improved with paving and gutters, sidewalks, and street lights. As such, this criterion is met and the standards of EC 9.6505(4) do not apply.

5) Bicycle Paths and Accessways. No bicycle paths or public access ways are required per the findings at EC 9.6835, which are incorporated by reference.

(c) EC 9.6735 Public Access Required

(1) Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.

The development site abuts Norkenzie Road, a public street. This criterion is satisfied.

(2) Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.

The applicant has indicated the proposed facility will generate approximately 1 vehicle trip per month. The site's peak hour trip generation will increase by less than 50% and will generate less than 20 additional peak hour trips. Public Works staff concur with the analysis provided and the conclusion that the site qualifies for the exemption provided in EC 9.6735(2).

(3) The standard at (2) may be adjusted if consistent with the criteria of EC 9.8030(28).

Based on the foregoing findings, the development complies with these standards and no adjustment is necessary.

(d) EC 9.6791 through EC 9.6797 Stormwater Management

EC 9.6791 Stormwater Flood Control: The proposed development is located in sub-basin WKDH-050 of the City's Willakenzie Basin. Public Works staff confirms that no downstream capacity deficiencies are identified in Volume VI, Willamette River Basin or Volume II, Amazon Basin of the City's Stormwater Basin Master Plan.

The applicant proposes to retain stormwater runoff on-site by discharging to an infiltration system, which will be further through the building permit review process.

EC 9.6792 Stormwater Pollution Reduction: The standard in EC 9.6792(3)(a) applies to all land use applications *not* proposing construction of a public street, private street or shared driveway. Staff confirms that the development area is not shown on the map of infiltration-limited areas in the City's Stormwater Management Manual. At the time of building permit, the development will be evaluated for the applicability standards of EC 9.6792(2)(d) to determine whether the standards of EC 9.6792(3) apply.

The applicant submitted design information for an infiltration facility to provide water quality treatment and flood control for the proposed development. Two informational items regarding stormwater treatment are provided at the end of this report.

EC 9.6793 through EC 9.6796: Because the proposed development is at an elevation less than 500 feet and does not drain to a headwaters facility, does not generate high concentrations of oil and grease, will not result in new uses or characteristics listed in EC 9.6795 (2)(a)-(h), and does not employ public maintenance of a pollution reduction facility, these standards are not applicable.

EC 9.6797 Stormwater Operations and Maintenance: Any Stormwater facilities constructed within the proposed development shall be operated and maintained in accordance with Eugene Code Chapters 6 and 7, and the Stormwater Management Manual. The applicability of this standard will be evaluated at the time of building permit.

(e) EC 9.6800 through EC 9.6870 Standards for Streets, Alleys, and Other Public Ways

This subsection requires that the applicant comply with the street, alley and other public way standards set forth in EC 9.6800 through 9.6870. Since no streets, alleys or other public ways are proposed, this code section does not apply. Additional findings in regards to these standards are in the Public Works referral, which is included in the application file for reference.

(f) Where the proposal is to establish non-residential uses subject to residential density requirements on development sites in the residential zone category, it shall achieve the minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards, unless specifically exempted elsewhere in this code or granted a modification through an approved conditional use permit. For purposes of calculating "net density," the acreage of land considered shall include the entire development site and exclude public property, such as public streets, parks, and other public facilities. In considering

whether to grant a modification to the density requirements, the hearings official shall evaluate the following factors:

1. **The availability of the development site for residential use on August 1, 2001. The term "availability" in this section shall include consideration of whether the site was already developed with non-residential uses or had other site constraints impacting its suitability for residential use.**
2. **The necessity of the development site to be developed with residential uses to be able to achieve the minimum residential density for the area designated on the Metro Plan Land Use Diagram for either medium- or high-density residential use.**
3. **Adopted plan policies indicate the suitability and appropriateness of the site for non-residential use.**

EC Table 9.2740 does not subject telecommunications facilities to residential density requirements; therefore this criterion is not applicable.

An approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard. Additional criteria may also be required based on the applicability of other sections of this land use code.

All applicable development standards for the proposed facility are addressed in this evaluation. No adjustments are proposed by the applicant, although a variance is requested to allow above-ground ancillary facilities, a tower that exceeds 75 feet in height, and a setback reduction. The standards for telecommunications facilities beginning at EC 9.5750 are applicable to the proposed new cell tower, and addressed below. To provide useful context, the purpose of these standards are cited below but staff emphasizes that these statements do not serve as mandatory approval criteria for the request (see EC 9.0050).

<u>EC 9.8090(9)</u>: The proposal complies with the Traffic Impact Analysis Review provisions of EC 9.8650 through 9.8680 where applicable.

Public Works staff concur with the applicant's assertion that the proposal does not meet any of the thresholds established in EC 9.8650 through 9.8680. Accordingly, there is no requirement for a Traffic Impact Analysis.

<u>EC 9.5750 Telecommunication Devices-Siting Requirements and Procedures</u>.

(1) <u>Purpose</u>. The provisions of this section are intended to ensure that telecommunication facilities are located, installed, maintained and removed in a manner that:

(a) Minimizes the number of transmission towers throughout the community;

(b) Encourages the collocation of telecommunication facilities;

(c) Encourages the use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers;

(d) Recognizes the need of telecommunication providers to build out their systems over time; and

(e) Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the community, and minimize public inconvenience and disruption. Nothing in this section shall apply to amateur radio antennas, or facilities used exclusively for the transmission of television and radio signals.

(2) <u>Siting Restricted</u>. No telecommunication facility, as defined in this land use code, may be constructed, modified to increase its height, installed or otherwise located within the city except as provided in this section. Depending on the type and location of the telecommunication facility, the telecommunication facility shall be either an outright permitted use, subject to site review procedures, or require a conditional use permit.

(c) <u>Conditional Use Permit</u>. A telecommunication facility which, pursuant to subsections (4) or (5) of this section, requires a conditional use permit shall be processed in accordance with the conditional use permit procedures of this land use code, except that the variance provisions shall not apply. The criteria contained in EC 9.8090 <u>Conditional Use Permit Approval Criteria - General</u> and subsections (6) and (7) of this section shall govern approval or denial of the conditional use permit application. In the event of a conflict in criteria, the criteria contained in subsections (6) and (7) of this section shall govern. No development permit shall be issued prior to completion of the conditional use permit process, including any local appeal.

As noted previously, and consistent with EC 9.5750(2)(c) above, the proposed facility is subject to CUP approval. In addition to the CUP approval criteria at EC 9.8090, relevant EC 9.5750 subsections also govern approval or denial of the request and are addressed below.

(5) <u>Construction of Transmission Tower</u>. Construction of a transmission tower, or a modification of an existing transmission tower to increase its height, shall be allowed as follows:

(c) <u>Conditional Use Permit</u>. Such construction shall require a conditional use permit in the R-1, C-1, S (other than S-WS) and GO zones.

The applicant requests CUP approval for the construction of a new transmission tower in the R-1 zone, as required by this subsection.

(6) <u>Application Requirements</u>.

(b) <u>Construction of Transmission Tower</u>. In addition to standard required

application material, an applicant for a transmission tower shall submit the following information; additional application material is required, as specified in paragraph (c) below, for applications requiring a site review or conditional use process:

1. **A description of the proposed tower location, design and height.**

The applicant's materials accurately describe the proposed tower location and design. However, the applicant incorrectly states the tower's height at 95-feet. As mentioned earlier in this report, the 95-foot figure is based on the height of the antenna array. Staff clarifies in this report that the top "branches" of the mono-pine must be considered as part of the total height, which brings the total tower height to 100 feet.

2. **The general capacity of the tower in terms of the number and type of antennas it is designed to accommodate.**

The proposed tower is designed to accommodate Verizon's own antenna array and two (2) additional collocated antennas. In response to staff's comments, the applicant submitted a structural report that confirms the tower's ability to accommodate a total of three carriers. The City's consultant, CMS, also reviewed the structural report and confirms that collocations are feasible.

3. **Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emissions standards as set forth by the Federal Communications Commission (FCC).**

The applicant provided a non-ionizing electromagnetic radiation (NIER) emissions report by Hatfield & Dawson Consulting Electrical Engineers. This analysis, dated March 8, 2016, is included in the application file for reference. An analysis of NIER emissions (also known as RF exposure) is under CUP criterion EC 9.8090(2)(b) and is incorporated herein by reference.

Staff notes that regarding the negative health impacts from RF emissions on people and wildlife, the City's authority is limited and the City does not have the ability to impose more stringent standards than the FCC regulations. The City also does not have the authority to dictate a new location for the facility. The scope of the City's review is limited to whether the applicant's proposal (i.e. the need, design and location) meets the applicable approval criteria of the Eugene Code. Consistent with the Telecommunications Act (1996), consistency with standards set forth by the Federal Communications Commission (FCC) must be demonstrated by the applicant, but a locality cannot further limit RF emissions or deny a request for a telecommunications facility based on perceived health effects related to RF emissions.

The applicant has met this approval criterion.

4. **A signed agreement, as supplied by the city, stating that the applicant will allow collocation with other users, provided all safety,**

structural, and technological requirements are met. This agreement shall also state that any future owners or operators will allow collocation on the tower.

A signed agreement by Verizon is required to allow collocation with other users, provided all safety, structural and technological requirements are met. To ensure the applicant submits the required agreement, the following condition of approval is recommended:

- Prior to the submission of building permits for the construction of the cell tower, a signed Letter of Assurance shall be submitted to staff that includes "any future owners or operators will allow collocation on the tower."

With this condition the standard is met.

5. **Documentation that the ancillary facilities will not produce sound levels in excess of those standards specified in subsection (7) of this section, or designs showing how the sound is to be effectively muffled and reduced pursuant to those standards.**

The applicant submitted an acoustical report from SSA Acoustics dated January 19, 2016. In response to comments provided by the City's noise consultant (The Noise Consultancy, LLC), SSA Acoustics provided a revised acoustical report dated August 8, 2016. This revised report was also reviewed by the City's noise consultant. With recommended conditions of approval, staff finds that documentation has been provided to show how sound will be mitigated to a level that meets the City's standards. All documentation related to noise generation is evaluated above under CUP criterion EC 9.8090(2)(b).

6. **A landscape plan drawn to scale showing proposed and existing landscaping, including type, spacing, size and irrigation methods.**

The submittal includes a landscaping plan (sheet A-1.1) consistent with the above requirement.

7. **Plans showing the connection to utilities/right-of-way cuts required, ownership of utilities and easements required.**

The applicant's site plans dated July 6, 2016 show all proposed and existing easements. EWEB comments indicate there are no outstanding issues regarding electric or water service. Electric service can be extended to meet the applicant's need provided an easement is granted across all properties involved.

8. **Documents demonstrating that necessary easements have been obtained.**

No easements are required at this time.

9. **Plans showing how vehicle access will be provided.**

The applicant's plans show an existing driveway accessing Norkenzie Road which currently provides vehicular access to and from the site. The plans also show a new gravel drive from the existing parking lot to the proposed tower location.

10. **Signature of the property owner(s) on the application form or a statement from the property owner(s) granting authorization to proceed with development permit and land use processes.**

A statement from the property owner (Michael Duffield on behalf of the Eugene Church of Christ) granting authorization to proceed was submitted.

11. **Documents demonstrating that the FAA has reviewed and approved the proposal, and Oregon Department of Aviation has reviewed the proposal. Alternatively, when a site review or conditional use process is required, submit a statement documenting that notice of the proposal has been submitted to the FAA and Oregon Department of Aviation. The site review or conditional use process may proceed and approval may be granted for the proposal as submitted, subject to FAA approval. If FAA approval requires any changes to the proposal as initially approved, then that initial approval shall be void. A new application will need to be submitted, reviewed and approved through an additional site review or conditional use process. No development permit application shall be submitted without documents demonstrating FAA review and approval and Oregon Department of Aviation review.**

According to the FCC's website, "TOWAIR (or Landing Slope Facility Calculator) allows antenna structure owners to determine whether their structures are close enough to an airport or heliport to require an aeronautical study by the Federal Aviation Administration (FAA) and registration with the FCC." The applicant made use of this tool and submitted a TOWAIR determination letter, which states that the structure does not require FAA registration because there are no airports within 5 miles of the subject site. Staff further notes that based on FAA standards, no marking or lighting of the tower is necessary for aviation safety because the tower is less than 200 feet tall. However, staff recommends the following condition of approval to ensure official FAA documentation has been provided before a development permit is issued:

- Documents demonstrating that the FAA and Oregon Department of Aviation have reviewed the proposal shall be submitted before the issuance of a development permit.

Staff also notes that a notice of Actual Construction or Alteration will need to be filed with the FAA within 5 days after construction of the tower.

(c) <u>Site Review and Conditional Use Permit Applications</u>. In addition to the application requirements specified in paragraph (b) above, applications for site review or conditional use permits also shall include the following information:

1. A visual study containing, at a minimum, a graphic simulation showing the appearance of the proposed tower, antennas, and ancillary facilities from at least 5 points within a 3 mile radius. Such points shall be chosen by the provider with review and approval by the planning director to ensure that various potential views are represented.

The applicant has provided photo simulations showing the appearance of the proposed tower from ten (10) different views, which is twice the number of views required. The Planning Director has reviewed the photo simulations and believes that various potential views are represented. Based on these findings, this standard is met.

2. Documentation that alternative sites within a radius of at least 2000 feet have been considered and have been determined to be technologically unfeasible or unavailable. For site reviews, alternative sites zoned C-4, I-1, I-2, and I-3 must be considered. For conditional use permits, alternative sites zoned PL, C-2, C-3, C-4, I-1, I-2, I-3 must be considered.

To address the above standard, the applicant submitted an "Alternative Sites Analysis" on June 20, 2016 as part of their supplemental application materials. The applicant states that potential site candidates were considered but disqualified either because the owners of these sites were not willing to lease a site, or because the sites were not physically viable due to zoning restrictions (i.e. structure height), signal coverage and RF emission limitations, and various environmental constraints.

The applicant submitted a RF engineer's report dated March 1, 2016, which is included in the application file for reference. The report includes maps showing the current available bandwidth to Verizon customers in the area, and predicted bandwidth if the proposed tower is installed. The current coverage maps clearly show a lower level of service to the south and southeast of the subject site. "Slide 3," an attachment to RF report, shows that the estimated level of service will be increased in these areas if the proposed tower is constructed. The engineer's report concludes that "…this location at the desired tip height of 95 feet meets the gap in coverage of signal and data needs of Verizon Wireless' customers within the desired coverage area." Staff further deduces that if the tower was placed somewhere within the adjacent shopping center (located west of the subject site), it is likely that the coverage gap (which exists to the east and south) would not be adequately addressed.

Finally, staff also notes that the majority of land within 2,000 feet of the subject site is zoned R-1 Low-Density Residential; according to the above standard, alternative sites within the R-1

zone do not need to be explored. C-2 Community Commercial zoning, which does need to be considered, exists within the 2000-foot search radius (directly west of subject site). The portion of adjacent C-2 property within the search radius is currently developed with a shopping center and an associated parking lot. A Walmart store is the closest commercial building to the subject site; the applicant's representative informed staff that they attempted to contact Walmart and other business within the shopping center, but received no positive responses.

Based on the findings above, this standard is met.

3. Evidence demonstrating collocation is impractical on existing tall buildings, light or utility poles, water towers, existing transmission towers, and existing tower facility sites for reasons of structural support capabilities, safety, available space, or failing to meet service coverage area needs.

Eugene's Telecommunication Standards place a priority on collocation as the first option for considering new telecommunication facilities. The applicant asserts that there are no alternative locations in the area with existing structures or utility poles of a similar height that would afford collocation of an antenna. The applicant's "Alternative Sites Analysis" states that the only existing wireless facility within 2,000 feet of the subject site is a Sprint collocation on an existing utility pole. The analysis provides photos of this facility, and discusses various physical constraints that make a collocation infeasible on the 59-foot tall pole. Staff agrees that a collocation is impractical at this location.

As mentioned, the applicant also states that other sites in the general vicinity would not meet the service coverage area needs (their service needs are pinpointed on this specific neighborhood).

Based on the findings above, this standard is met.

4. A current overall system plan for the city, showing facilities presently constructed or approved and future expansion plans.

The applicant provided the locations of three existing towers in the vicinity of the proposed facility. No other locations for future planned towers were noted (see Attachment 4).

5. A statement providing the reasons for the location, design and height of the proposed tower or antennas.

To address the above standard, the applicant submitted two different documents that are included in the application file for reference: An "Alternative Sites Analysis" and a RF engineer's report. Staff evaluated the documents under EC 9.5750(6)(c)2 and finds that adequate information regarding the reasons for the location, design and height of the proposed tower is provided. This standard is met.

(7) <u>Standards for Transmission Towers and Antennas</u>. Installation, construction or modification of all transmission towers and antennas shall comply with the following standards, unless a variance is obtained pursuant to the provisions of subsection (9) of this section:

(a) <u>Separation Between Transmission Towers</u>. No transmission tower may be constructed within 2000 feet of any pre-existing transmission tower. Tower separation shall be measured by following a straight line from the portion of the base of the proposed tower which is closest to the base of any pre-existing tower. For purposes of this paragraph, a tower shall include any transmission tower for which the city has issued a development permit, or for which an application has been filed and not denied. Transmission towers constructed or approved prior to February 26, 1997 may be modified to accommodate additional providers consistent with provisions for collocation in this section.

Based on available information, the nearest tower is located more than 2,000 feet from the proposed location. This standard is met.

(b) <u>Height Limitation</u>: Transmission tower heights shall be governed by this section except as provided for below. No transmission tower shall exceed the maximum heights provided below. In no case shall a variance be granted from the limitations of subparagraphs (1) through (4) below.

1. In any zones, no transmission tower shall exceed the height limitations established for buildings and structures in the specified areas surrounding Skinner Butte contained in EC 9.6715 <u>Height Limitation Areas</u> of this land use code to protect views to and from Skinner Butte.

The proposed tower is not within the Height Limitation Area shown on EC Map 9.6715(3). This standard does not apply.

2. In any zone within the area east of Willagillespie Road, south of Cal Young Road, west of Oakway Road, and north of Southwood Lane and Country Club Road, no transmission tower shall exceed 75 feet in height to protect views to and from Gillespie Butte.

The proposed transmission tower is not located within this area; this standard is not applicable.

3. If located within a PL, C-2, C-3, C-4, R-4, I-1, I-2, or I-3 zone, the height limitation for that zone shall apply.

This standard does not apply as the subject site is located within the R-1 zoning district.

4. **If located within a C-1, S or GO zone, the maximum height of a transmission tower, including antennas, is 100 feet.**

This standard does not apply as the subject site is located within the R-1 zoning district.

5. **If located within an R-1 zone, the maximum height of a transmission tower, including antennas, is 75 feet, unless a variance is granted pursuant to the provisions of subsection (9) of this section. In no event shall a variance be granted to construct such a tower in excess of 100 feet.**

The applicant requests a variance to construct a 100-foot mono-pine tower. Staff's evaluation of the variance request is included under EC 9.5750(9)(c) below.

(c) <u>Collocation</u>. New transmission towers shall be designed to accommodate collocation of additional providers:

1. **New transmission towers of a height of 80 feet or more shall be designed to accommodate collocation of a minimum of 2 additional providers either outright or through future modification to the tower.**

The mono-pine antenna structure is proposed to be 100 feet in height. As noted in the applicant's June 18, 2016 narrative, the tower is designed to accommodate three (3) carriers (i.e. two additional providers). As evidence, the applicant supplied a structural report that confirms additional carriers can be supported on the proposed tower.

The applicant has met the applicable standards and related approval criteria.

2. **New transmission towers of a height of at least 60 feet and no more than 80 feet shall be designed to accommodate collocation of a minimum of 1 additional provider either outright or through future modification to the tower.**

This standard does not apply as the proposed tower exceeds 80 feet in height.

(d) <u>Setback</u>. The following setbacks from adjacent property lines and adjacent streets shall be required unless a variance is granted pursuant to the provisions of subsection (9) of this section:

1. **If located within a PL, S, C-2, C-3, E-1, E-2, I-2, I-3 or S-WS zone, no setback from adjacent property lines shall be required beyond that required by this land use code or the provisions applicable to the S zone.**

This standard does not apply as the subject site is located within the R-1 zoning district.

2. If located within an R-1, C-1, or GO zone, the transmission tower shall be set back from adjacent property lines a minimum number of feet that is equal to the height of the transmission tower.

The proposed tower height is 100 feet, which translates to a setback requirement of 100 feet from the nearest property line. The applicant requests a variance to this setback standard to allow the tower to be sited approximately 78.5 feet from the southern property line. The variance request is further evaluated below under EC 9.5750(9)(b).

3. If located within an R-1, PL, C-1 and GO zone, the transmission tower shall be set back from the adjacent public streets a minimum number of feet equal to the height of the transmission tower.

The proposed tower height is 100 feet, which translates to a setback requirement of 100 feet from adjacent public streets. The applicant requests a variance to this setback standard to allow the tower to be sited approximately 78.5 feet from the southern property line, which is adjacent to the Beltline Highway. The variance request is evaluated below under EC 9.5750(9)(b).

(e) <u>Buffering</u>. In all zones, existing vegetation shall be preserved to the maximum extent possible. In the C-4, I-1, I-2 and I-3 zones, no buffering is required beyond that required by this land use code. In all other zones, landscaping shall be placed completely around the transmission tower and ancillary facilities located at ground level except as required to access the facility. Such landscaping shall consist of evergreen vegetation with a minimum planted height of 6 feet placed densely so as to form a screen. Landscaping shall be compatible with other nearby landscaping and shall be kept healthy and well maintained.

The applicant's "Proposed Compound Landscape Plan" (sheet A-1.1) proposes the planting of shrubs around the perimeter of the lease space. However, it is not clear whether or not the proposed landscaping palette complies with the above standard. Staff identified the following issues:

a) While two of the proposed species (dwarf mugo pine and Oregon grape) can reach 6 feet in height at maturity, the plans do not confirm the planting of 6-foot tall specimens (only that the plantings are 5 gallon in size).

b) It appears that the proposed landscaping is not "…placed densely so as to form a screen" because many of the proposed specimens do not reach 6 feet in height at maturity.

c) The "landscape schedule" on sheet A-1.1 indicates the planting of 41 shrubs; however, the actual plan diagram shows a much higher volume of shrub plantings. The planting schedule and the diagram should be made consistent.

d) The arborist report states that landscape plantings on the northern side of the lease area may not be viable because of shading impacts (there are large oak trees in this area).

Based on the above findings, the following condition of approval is recommended to remedy the inconsistencies identified by staff:

- The final site plans shall propose landscaping consistent with EC 9.5750(7)(e) Buffering. Further, selected plant species for the northern half of the lease area perimeter landscaping shall be shade tolerant, as determined by a certified arborist.

Based on these findings, this standard is met.

(f) Noise Reduction. In R-1, R-2, R-3, R-4, C-1, and GO and in all other zones when the adjacent property is zoned for residential use or occupied by a dwelling, hospital, school, library, or nursing home, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to 45dBa.

Noise impacts are evaluated above under CUP criterion EC 9.8090(2)(b). Staff finds that with the recommended conditions of approval, the noise reduction standard is met.

(g) Status of Location. No permit may be issued for the location of a new telecommunications facility within an R-1 or C-1 zone unless the lot on which it is to be placed is vacant or developed with a non-residential use at the time the permit application is submitted. This restriction does not apply within other zones.

The property is zoned R-1 but is developed with a church (a non-residential use). This standard is met.

(h) Lighting. No lighting shall be permitted on transmission towers except that required by the Federal Aviation Administration. No high intensity white lights may be located on transmission towers in an R-1, C-1, or PRO zone.

No tower lighting is proposed, and the application materials (TOWAIR Report dated March 3, 2016) indicate that no lighting of the tower is required by FAA regulations. This standard is met.

(i) **<u>Color</u>. The transmission tower and attached antennas shall be unpainted galvanized steel or painted neutral colors or such shades as are appropriate and compatible with the surrounding environment, as approved by the city.**

The proposed mono-pine attempts to replicate a pine tree; hence, the applicant states in their written narrative that the mono-pine "…shall be malt brown with green limbs. Antennas shall be painted matte green and any attachments directly to the pole component of the faux tree shall be painted matte brown to match. Please see the attached photo simulations."
Due to the fact that paint colors are not specified on the elevation drawings (only in the written narrative), the following condition is warranted:

- Plans submitted for a building permit shall specify the following paint colors: 1) mono-pine tower structure = malt brown color to match trunks of existing fir trees on site; 2) mono-pine limbs = green color to match limbs of existing fir trees on site; 3) mono-pine antennas = green color to match mono-pine limbs; 4) components attached to mono-pine = brown color to match mono-pine trunk; 5) equipment shed siding = dark brown; 6) equipment shed roof = brown or gray color (no bright or reflective materials or colors).

(j) **<u>Viewshed.</u> The transmission tower shall be located down slope from the top of a ridgeline so that when viewed from any point along the northern right-of-way line of 18th Avenue, the tower does not interrupt the profile of the ridgeline or Spencer Butte. In addition, a transmission tower shall not interrupt the profile of Spencer Butte when viewed from any location in Amazon Park. Visual impacts to prominent views of Skinner Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the transmission tower is limited in height to the minimum height necessary to provide the approximate coverage the tower is intended to provide.**

The mono-pine antenna is not located in an area that can impact the views of Skinner's Butte, Judkins Point or Gillespie Butte. This standard does not apply.

(k) **<u>Display.</u> No signs, striping, graphics or other attention getting devices are permitted on the transmission tower or ancillary facilities except for warning and safety signage with a surface area of no more than 3 square feet. Such signage shall be affixed to a fence or ancillary facility and the number of signs is limited to no more than 2.**

The applicant's written statement notes that there will be no signs, striping or graphics associated with the facility. However, the following condition of approval is recommended to ensure compliance upon construction:

- No signs, striping or graphics associated with the facility shall be installed on the tower structure.

With this condition the standard is met.

(8) <u>Standards for Ancillary Facilities</u>. All ancillary facilities shall comply with the standards of subsections (7)(e) and (7)(f) of this section. In addition, all ancillary facilities within an R-1, PL, C-1, GO, and PRO zone must be located underground to the maximum extent technology allows, unless a variance is obtained pursuant to the provisions of subsection (9) of this section. This restriction does not apply within other zones.

This subsection of the code regulates the placement and impact of ancillary facilities associated with telecommunication towers. This code section also references regulations that describe landscape buffering and restrictions on noise originating from the facility. The applicant has proposed an above ground structure to contain the ancillary facilities; since the subject property is zoned R-1 the applicant is requesting a variance to the undergrounding requirement. Staff's evaluation of this variance request is below at subsection (9) <u>Variance</u>.

(9) <u>Variance</u>.

(a) Any variance to the requirements of this section shall be granted only pursuant to the following provisions. The criteria for granting a variance shall be limited to this section, and shall not include the standard variance criteria beginning at EC 9.8750 <u>Purpose of Variances</u>.

(b) The city may grant a variance to the setback and undergrounding requirements of subsections (7)(d) or (8) upon finding that stealth design, proposed landscaping, configuration of the site, or the presence of mature trees obviates the need for compliance.

<u>Variance to Undergrounding Requirement</u>

The applicant requests a variance to the undergrounding requirements at EC 9.5750(8), citing the following reasons: "First undergrounding would require a large vault type system with an internal elevator system for equipment access and maintenance. This would have large doors at ground level, air exchange systems, dewatering systems, etc. These systems would require added ground space. Placement of the generator underground has similar constraints with exhaust systems, ambient air circulation for system cooling, and a below ground fuel system."

<u>Variance to Setback Requirement</u>

Per EC 9.5750(7)(d), the required setback between a new tower and all property lines is equal to the height of the tower. In this case, the proposed tower is 100 feet in height, which means the required setback is 100 feet. The applicant requests a variance to the setback requirements,

stating that the reduced setback from the southern property line is warranted due to the existing grove of trees. The applicant also states that constructing a 75-foot tower at this location (which would bring the tower into compliance with the setback standard) would not allow for any realistic collocation opportunities.

EC 9.5750(9)(c) allows a variance to the standards discussed above upon finding the following design or locational features exist: Stealth design, proposed landscaping, configuration of the site, and the presence of mature trees. Staff concurs with the applicant's reasoning, and finds that all of the "design or location features" required for the variance are present in the subject project.

Stealth Design: The project proposes a mono-pine stealth tower as opposed to a lattice tower or mono-pole type structure. In Oregon, where evergreen trees are prevalent, the mono-pine is a commonly used stealth tower that is designed to blend in with the landscape.

Proposed Landscaping: In accordance with EC 9.5750(7)(e), the applicant proposes landscaping around the perimeter of the cell tower lease site. Staff finds that this standard was not entirely complied with, and therefore recommends a condition of approval under EC 9.5750(7)(e) to ensure the required landscaping meets the perimeter landscaping standard. To ensure compliance with CUP criterion EC 9.8090(2)(b), which is evaluated earlier in this report, staff recommends another condition to require additional landscaping along the southern property boundary. Considering both the proposed and conditioned landscaping, staff finds that adequate landscaping will be provided.

Configuration of the Site: As mentioned, the site is bounded by public right-of-ways to the east and south, a commercial shopping center to the west, and single-family residences to the north. The applicant has sited the tower near the center of the site, and closer to the Beltline Highway than to the residential neighborhood. There is also an existing grove of trees between the proposed tower and residential uses. Based on the configuration of the site and surrounding uses, the applicant has sited the tower at a sensible location.

Presence of Mature Trees: As noted throughout this report, a grove of evergreen and deciduous trees exists on the western portion of the site. The applicant proposes to construct a mono-pine tower at the southeastern end of the existing grove with the intention to screen the tower from surrounding properties and help it blend in with existing vegetation.

Noise: Noise impacts related to the above ground ancillary equipment should also be considered in this variance request. Potential noise impacts and noise mitigations are addressed above at CUP criterion EC 9.8090(1)(2)(b). Based on this evaluation, staff finds that with the recommended conditions of approval, the ancillary equipment will meet the noise threshold established by the telecommunication standards.

Based on these findings, staff supports a variance to the setback and undergrounding requirements.

(c) The city may grant a variance to the 75 foot height limitation in the R-1 zone to a maximum of 100 feet providing the applicant demonstrates that a transmission tower taller than 75 feet will directly eliminate the need for 1 or more additional transmission towers in an R-1 zone.

The applicant states that increasing the height will "…allow for the structure to be placed adjacent to the existing grove of large evergreen trees and still be capable of transmitting effective radio frequency as well as providing adequate and realistic colocation opportunities for future providers to locate on the tower." The applicant provided a structural report that verifies the proposed tower can support two additional collocations.

Staff concurs with this statement, and finds that a 100-foot tower will increase the potential for collocations, which in turn eliminates the need for additional towers in the area. Staff understands that placing antennas at higher heights improves their ability to transmit radio frequencies; providing collocation opportunities 25 feet higher than would normally be permitted (100-foot versus 75-foot tower) increases the chance that other carriers will be interested in pursuing a collocate (as opposed to pursuing a new tower).

Based on these findings, staff supports a variance to the 75-foot height limitation.

(10) <u>Removal of Facilities</u>.

(a) All transmission towers and antennas shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas.

(b) If a transmission tower is located within an R-1, PL, C-1 or GO zone, the provisions of subparagraph (a) also shall apply to the tower substructure and all above ground ancillary facilities.

(c) The city may require the posting of an open ended bond before development permit issuance to insure removal of the transmission tower, substructure or antennas after the facility no longer is being used.

The applicant has indicated they will comply with this requirement; however, the following condition of approval is recommended to ensure compliance:

- The following note shall be added to the final site plan: "All transmission towers, antennas, the tower substructure and all above ground ancillary facilities shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a

written request has been filed, within the initial 6-month period, to reuse the tower or antennas."

With this condition the standard is met.

(11) <u>Application Review and Fees</u>. Notwithstanding any other provision of this code, the city manager may require, as part of application fees for building or land use permits for telecommunication facilities, an amount sufficient to recover all of the city's costs in retaining the consultants to verify statements made in conjunction with the permit application, to the extent that verification requires telecommunications expertise.

The Noise Consultancy, LLC was retained to verify the accuracy of statements made in the applicant's submitted acoustical report. The Center for Municipal Solutions (CMS) was retained to verify the accuracy of the applicant's submitted materials and statements made related to EC 9.5750 Telecommunication Devices-Siting Requirements and Procedures, and the RF emissions report.

<u>EC 9.8090(9)</u>: The proposal complies with the Traffic Impact Analysis Review provisions of EC 9.8650 through 9.8680 where applicable.

Based on EC 9.8670 Public Works staff confirms that the proposed development does not require a Traffic Impact Analysis.

<u>Staff Recommendation</u>

Based on the available evidence, and consistent with the preceding findings, staff recommends the Hearings Official approve the conditional use permit with the following conditions of approval:

1. The following noise control measures for the building that houses the ancillary equipment shall be noted on the final site plans, detailed on plans submitted for a development permit, and installed before tower operations begin:

    a. Building exterior walls and roof shall be constructed of plywood with siding, wood framing and GWB or plywood on the interior walls and ceiling.
    b. Price QAF1245 (or equivalent) acoustical louvers shall be installed for generator intake and discharge. The performance of the louvers shall be consistent with the table on page 5 of the SSA Acoustics report dated August 8, 2016.
    c. A GT Exhaust systems GT 201-5100 series Critical Grade muffler (or equivalent) shall be provided for the exhaust stack.

2. Within 30 days of the installation and operation of the ancillary equipment, the applicant shall submit a sound measuring report conducted by a certified sound expert that documents the sound emission from the equipment building at the northern

property line. The sound testing shall be conducted with all units on and all units off. These tests should be conducted in quick succession to insure comparable levels of activity in the immediate area. If a long-term noise event occurs during one of the measurements (e.g., a tour bus parks and idles near the test site), the testing should be suspended until that noise source passes. The relevant metric shall be a 5 or 10 minute L90 (the level exceeded 90% of the time). Sound measurements of relevant ambient sound levels at the same location shall be included in the report.

3. If the noise levels are found to exceed the limitations of EC 9.5750(7)(f) Noise Reduction at any time, the applicant will be required to install additional mitigation measures to ensure compliance. If additional mitigation measures cannot bring the facility into compliance, the City may issue civil penalties, require further corrective action to mitigate the noise, or potentially revoke the Condition Use Permit Approval if the violation is not remedied.

4. Evergreen trees (at 1.5-inch caliper minimum) shall be planted along the southern property line between the southwestern corner of the property and the western edge of the existing church building (approximately 550 linear feet). Trees shall be planted within 10 feet of the property line at a rate of 1 tree per every 50 linear feet. Selected evergreen tree species must be included on the City of Eugene "Approved Street Tree Species List," and shall not be defined as an under-story tree.

5. The approved telecommunications facility shall be constructed in conformance with the applicant's approved site plans, elevations, graphic simulations and all other specific submitted evidence provided in the record that represents height, dimensions, colors, textures and materials used for the mono-pole design, and including fencing and the construction of ancillary facility building. The facility shall also be in compliance with all submitted supporting documents regarding RF exposure, noise generation, and structural findings.

6. The following notes shall be included on the final site plans:

    a. "Protective fencing for trees identified to be preserved shall be installed under the direction of a certified arborist and inspected and approved by the City prior to beginning any construction related activities. All protective tree fencing shall remain in place until completion of all construction activities; any relocation or removal of the protective fencing shall also occur under the direction of a certified arborist, with approval by the City."
    b. "All tree trimming and pruning shall be completed by a certified arborist."
    c. "No excavation, grading, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the City."
    d. "Before construction activities begin, all trees included in the tree inventory (David S. Hunter arborist report dated June 1, 2016) shall be fertilized by a certified arborist to improve tree vigor and health."

e. "A certified arborist shall be present onsite during all grading activities to ensure the impacts to tree critical root zones are minimized. Per the arborist's direction, hand excavation and other techniques shall be employed to reduce impacts where necessary."

7. The following note shall be included on the final site plans: "In the event a tree greater than 6-inch DBH must be removed (i.e. dead, diseased, or hazardous trees), justification of the removal must be documented by a certified arborist. Documentation must be provided to the City for review and approval prior to tree removal activity. The tree(s) shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species, with a minimum caliper of 2 inches for deciduous trees and a minimum height of 5 feet for coniferous or evergreen trees. The proposed location(s) of replacement plantings shall be approved by City of Eugene planning staff to ensure a screening function is provided. Planting, watering and general maintenance of replacement trees shall be conducted by the property owner in manner that ensures their establishment and long-term survival."

8. In the event a Public Utility Easement is required by a referral agency other than Public Works, the following informational note is pertinent. Pursuant to EC 9.6500(3), the final site plan shall note the following restriction: No permanent building, structure, tree or other obstruction shall be placed or located on or in a public utility easement.

9. Prior to the submission of building permits for the construction of the cell tower, a signed Letter of Assurance shall be submitted to staff that includes "any future owners or operators will allow collocation on the tower".

10. Documents demonstrating that the FAA and Oregon Department of Aviation have reviewed the proposal shall be submitted before the issuance of a development permit.

11. The final site plans shall propose landscaping consistent with EC 9.5750(7)(e) Buffering. Further, selected plant species for the northern half of the lease area perimeter landscaping shall be shade tolerant, as determined by a certified arborist.

12. Plans submitted for a building permit shall specify the following paint colors: 1) mono-pine tower structure = malt brown color to match trunks of existing fir trees on site; 2) mono-pine limbs = green color to match limbs of existing fir trees on site; 3) mono-pine antennas = green color to match mono-pine limbs; 4) components attached to mono-pine = brown color to match mono-pine trunk; 5) equipment shed siding = dark brown; 6) equipment shed roof = brown or gray color (no bright or reflective materials or colors).

13. No signs, striping or graphics associated with the facility shall be installed on the tower structure.

14. The following note shall be added to the final site plan: "All transmission towers, antennas, the tower substructure and all above ground ancillary facilities shall be removed by the person who constructed the facility, by the person who operates the facility, or by the property owner, within 6 months of the time that the facilities have ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices. The city manager may grant a 6-month extension where a written request has been filed, within the initial 6-month period, to reuse the tower or antennas."

Informational Items

- ✓ Before a development permit can be issued, the applicant shall verify that a fire hydrant is available within 600 feet of the furthest point on their facility along an approved route per 2014 Eugene Fire Code 507.5.1, Exception 1.

- ✓ At the time of building permit submittal, the applicant shall submit an application for a hazardous materials permit for Flammable and Combustible Liquids due to the proposed installation of a diesel generator. The approved permit shall be in place prior to issuance of Certificate of Occupancy.

- ✓ The Stormwater Flood Control, Stormwater Quality, and Stormwater Operations and Maintenance standards of EC 9.6791, EC 9.6792, and EC 9.6797 will be further evaluated through the building permit process.

- ✓ When using the Stormwater Surface Filtration/Infiltration Facility Sizing Spreadsheet, a sizing factor of 2 inches per hour is acceptable. The SIM form (in Appendix C of Eugene's Stormwater Management Manual) may be another option, which uses a sizing factor of 0.13.

Consistent with EC 9.7330, unless the applicant agrees to a longer time period, within 15 days following close of the public record, the Eugene Hearings Official shall approve, approve with conditions, or deny this Type III application. The decision shall be based upon and be accompanied by findings that explain the criteria and standards considered relevant to the decision, stating the facts relied upon in rendering a decision and explaining the justification for the decision based upon the criteria, standards, and facts set forth.

Notice of the written decision will be mailed in accordance with EC 9.7335. Within 12 days of the date the decision is mailed, it may be appealed to the Eugene Planning Commission as set forth in EC 9.7650 through EC 9.7685.

Attachments

Vicinity and Zoning maps are attached. The applicant's full-size site plans, and the entire application file, are available for review at the Eugene Planning Division offices. The Hearings

Official will receive a full set of application materials for review prior to the public hearing. These materials will also be made available for review at the public hearing.

For More Information

Please contact Erik Berg-Johansen, Assistant Planner, City of Eugene Planning Division, at: (541) 682-5437; or by e-mail, at: erik.berg@ci.eugene.or.us

You may also visit the City's website to view the posted application materials at: http://pdd.eugene-or.gov/LandUse/SearchApplicationDocuments?file=CU-16-0002

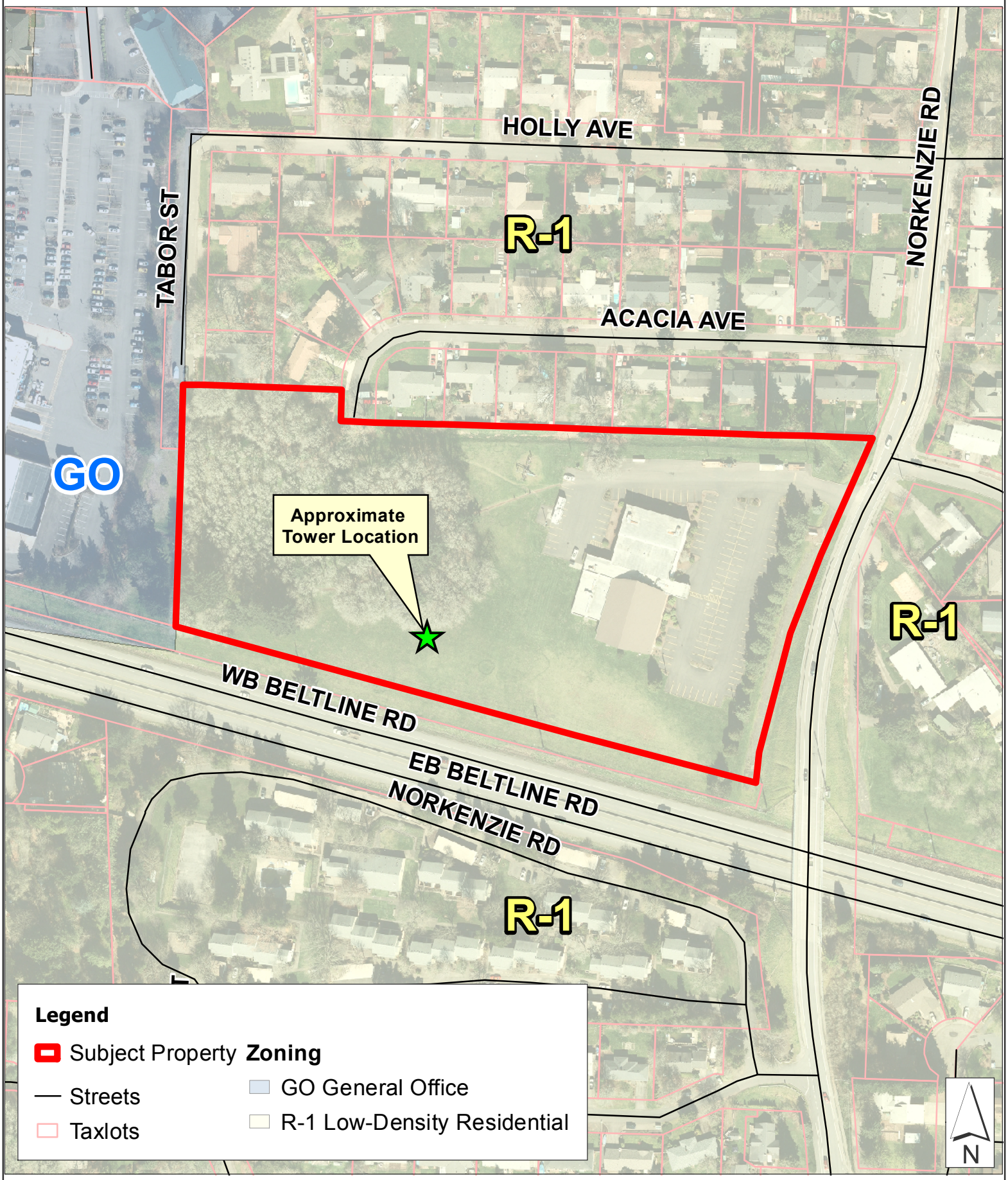
Attachment A - Vicinity Map

0 250 500 1000 Feet

Caution:
This map is based on imprecise source data, subject to change, and for general reference only.

August 2016

Attachment B - Zoning Map



0 125 250 500 Feet

Caution:
This map is based on imprecise source data, subject to change, and for general reference only.

August 2016