

Return to Commissioner's Journal



00070041200900101090050059

07/24/2009 03:51:36 PM

Fee: \$41.00

**BEFORE THE PLANNING DIRECTOR  
KLAMATH COUNTY, OREGON**

IN THE MATTER OF CONDITIONAL )  
USE PERMIT 59-08, RYKA )  
COMMUNICATIONS TO ESTABLISH )  
A 120 FOOT MONOPOLE CELLULAR )  
TOWER ON PROPERTY ZONED (F) )  
FORESTRY, IDENTIFIED AS: )  
R-3507-00900-00100-000 )

CUP TYPE II  
ADMINISTRATIVE  
FINAL ORDER

**1. NATURE OF THE REQUEST:**

The applicant requests a Conditional Use Permit to establish a 120 foot monopole cellular tower on a parcel zoned Forestry (F). The Planning Director reviewed the request June 9, 2009 pursuant to KCLDC Article 22 – Administrative Review Procedure, Article 32 – Public Notice, Article 44 – Conditional Use Permit, and Article 63 – Wireless Telecommunications Facilities.

**2. NAMES OF THOSE WHO PARTICIPATED:**

The Planning Director in review of this application was Leslie C. Wilson. Alyssa Boles, Planner, prepared the Planning Department Staff Report.

**3. LEGAL DESCRIPTION:**

The subject property described in Conditional Use Permit File located in the Planning Department is described as Township 35 South, Range 07 East Willamette Meridian, Section 09, Tax Lot 00100.

**4. RELEVANT FACTS:**

The applicant intends to establish a 120 foot monopole cellular tower site, located next to an existing tower site. The subject parcel does not contain wetlands and is located in Flood Zone C per FEMA map 410109 1350B (Exhibit 12). This parcel is in a High Wildfire Hazard area, so Article 69 standards apply. The property is located within a High Density Deer Winter Range; however, wireless communication towers are not considered a conflicting use in the overlay.

**Scanned to CRW**  
6/22/09  
ph

## **5. FINDINGS:**

All evidence submitted shows that the approval criteria as set out in the code have been satisfied. The Planning Director finds this application does conform to criteria set out as follows:

### KCLDC Article 44.030(A-C)

- A. The use complies with the Klamath County Comprehensive Plan Goal 1 - Citizen Involvement because of the public notification process, Goal 2 - Land Use Planning because the surrounding public was notified as part of the administrative review process and because a staff report was prepared for this application, and Goal 11 – Public Facilities and Services, for supplying a public utility service.
- B. Site plan is adequate for review and meets the minimum requirements of KCLDC Article 41. The parcel is in a High Wildfire Hazard area, so any new construction will need to comply with KCLDC Article 69 standards. This can be demonstrated through conditions of approval. The applicant provided all the required submittals for a new tower per KCLDC Article 63. The applicant will be required to meet conditions of approval as called out in KCLDC Article 63. The use is in conformance with Article 55 because wireless communication facilities are a conditional use in the zone. Because the property lies within a High Density Deer Winter Range, fencing restrictions apply and the applicant must comply with KCLDC Article 57.070(D).
- C. The proposed use will be located on the subject parcel next to the other tower already established, which will minimize impacts to the surrounding area and abutting properties. This would be the most appropriate place for the proposed development because its placement next to an existing tower lowers the impact to the wildlife habitat in the area, as well as the subject parcel itself.

## **6. ORDER:**

Therefore, upon review of the information and exhibits, it is ordered the request of Ryka Communications for approval of CUP 59-08 is **APPROVED** subject to all Federal and State law, rules, or policy; Klamath County Land Development Code and County Ordinances; Oregon Fire Codes and Appendices; Oregon Building Codes and Appendices; Klamath County Public Works Standards, Policies, and Procedures; and, subject to the following additional Conditions of Approval:

### **Condition # 1**

***Prior to any site development, final clearances from Planning and Building must be obtained.***

### **Condition #2**

*ms  
7/27/09*  
***A \$5000 bond or other security acceptable to the Planning Director shall be required for the removal of the facility until such time the facility is removed. The bond or other security such as; 1) cash or certified check; 2) time deposit certificate payable to Klamath County; 3) savings account assignment to Klamath County. The bond is to be reviewed every two years.***

### **Condition #3**

***An approval of a wireless telecommunication facility shall include a condition that if the facility is left unused or is abandoned by all wireless providers located on the facility for more than one year, the facility shall be removed by the applicant within thirty days of being declared abandoned.***

### **Condition #4**

***When required, aviation lighting will use Fresnel lenses or suitable lenses to minimize ground lighting conflicts to the maximum extent regulated by the FAA or ODOT – Aeronautics regulations.***

### **Condition #5**

***When possible, the siting of the facility will utilize existing trees, vegetation, and topo to screen facility from view of nearby residences and roadways.***

### **Condition #6**

***A wireless telecommunication facility shall be vegetated and/or camouflaged to the maximum extent practicable to screen facility from view of roadways and residences.***

### **Condition #7**

***The perimeter of the site plan shall be enclosed by a chain link security fence of not less than eight feet tall, topped by a three-strand barbed wire barrier, and to be erected within a week of construction of the tower.***

**Condition #8**

**Provide documentation of legal access.**

**Condition #9**

**The applicant shall file a restrictive covenant with the Klamath County Clerk's Office recognizing the rights of adjacent and nearby landowners to conduct farming & forest operations and prohibit the permit grantee, or successors from filing any complaint of any type concerning accepted resource management practices and farm use.**

**Condition #10**

**Tower setbacks shall be no less than the height of the tower.**

**Condition #11**

**Demonstrate compliance with KCLDC Article 57.070(D) fencing requirements. Supply proof of compliance to the Planning Department.**

**Condition #12**

**Prior to application for site development permits, this final order must be recorded to the subject property. The applicant will supply the Planning Department with the applicable County Clerk recording fees and the Planning Department will record the final order on behalf of the applicant.**

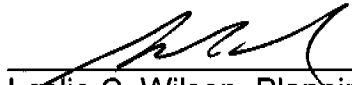
**Condition #13**

**The applicant shall record a restrictive covenant that runs with the deed agreeing to comply with Article 69 of the KCLDC. A copy of the recorded covenant must be supplied to the Planning Department.**

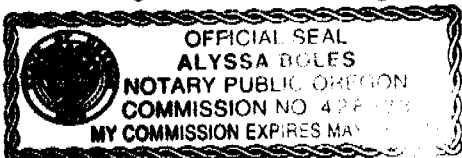
**Condition #14**

**This approval will expire two years from the date of approval unless a Building Permit has been issued.**

**DATED this 9 day of JUNE, 2009.**

  
Leslie C. Wilson, Planning Director

Signed & Acknowledged before me this 9 day of June, 2009.



My Commission Expires:

  
NOTARY PUBLIC FOR OREGON

5-13-2012

### **NOTICE OF APPEAL RIGHTS**

This decision may be appealed to the Klamath County Board of County Commissioners. Notice of intent to appeal a decision rendered under the procedures of the Klamath County Land Development Code shall be filed no later than 12 days following mailing of the final order (ORS 215.427). Failure to do so in a timely manner may affect your rights. Notice shall be in the form of a signed letter, shall state the name(s) of the party or parties appealing the decision, and must be received by the Planning Department before the close of business on the seventh day. The fee established by the Board of County Commissioners shall accompany the notice of appeal.

### **KCLDC ARTICLE 33.040 - STATEMENT OF APPEAL**

*No later than 12 days following the filing of a notice of appeal, pursuant to Section 33.030, the appellant shall file with the Planning Department a written statement of grounds for the appeal explaining:*

- A. How the Comprehensive Plan, Klamath County Land Development Code, or applicable State law was incorrectly interpreted or applied in the decision; or*
- B. What information in the record of decision was pertinent to the decision, but was not considered by the review body*

**For more information, please contact:**

**Klamath County Planning Department  
Phone 1-541-883-5121 or mail at 305 Main Street, Klamath Falls, Oregon 97601**