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Fee: \$41.00

BEFORE THE PLANNING DIRECTOR KLAMATH COUNTY, OREGON

IN THE MATTER OF CONDITIONAL)
USE PERMIT 26-09, RCC ATLANTIC)
TO MODIFY, UPGRADE AND)
REPLACE FIXTURES ON AN)
EXISTING CELLULAR TOWER ON)
PROPERTY ZONED FORESTRY/)
RANGE (FR), IDENTIFIED AS: R-)
4111-00300-01200-000)

CUP TYPE II
ADMINISTRATIVE
FINAL ORDER

1. NATURE OF THE REQUEST:

The applicant requests a Conditional Use Permit to modify, upgrade and replace fixtures on an existing cellular tower on a parcel zoned Forestry Range (FR). The Planning Director reviewed the request June 22, 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. Mark Gallagher, 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 41 South, Range 11 East Willamette Meridian, Section 03, Tax Lot 01200.

4. RELEVANT FACTS:

The applicant intends to replace the existing equipment shelter, add an emergency backup power generator and modify other equipment on site, including additions to tower equipment such as antennas and microwaves. The upgrades will improve network coverage, including E-911 location and response services. The property has no designated wetlands and a Wildfire Hazard Rating of Low (1). There are no other overlay zones on this property.

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 findings were prepared for this application; and Goal 11 - Public Facilities and Services, Policy 4 by encouraging the location of cellular facilities on or adjacent to existing public or private rights-of-way to avoid dividing existing economic farm units, and avoiding residential areas.
- B. The site plan is adequate for review and meets the minimum requirements of KCLDC Article 41. The applicant provided all the required submittals for revisions to the tower and related equipment 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 54 because wireless communication facilities are a conditional use in the zone.
- C. The existing cellular facilities were originally approved per CUP 15-99 in April 1999. The approved tower height was a maximum of 40 feet.
- D. The facilities are located within the Forestry/Range Zone, therefore it will be appropriate to have the property owner record a restrictive covenant recognizing the rights of adjacent and nearby landowners to conduct standard farming & forest operations.
- E. The site is located within the Wildfire Hazard Rating of Low (1).

6. ORDER:

Therefore, upon review of the information and exhibits, it is ordered the request of RCC Atlantic for approval of CUP 30-09 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 modifications, final clearances from Planning and Building must be obtained.

Condition #2

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 revisions to the 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, any revisions to the facility will utilize existing trees, vegetation, and topography to screen the facility from view of nearby residences and roadways.

Condition #6

✓ Any revisions to the 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 any revisions to the tower.

Condition #8

Provide documentation of legal access prior to issuance of any Planning or Building approvals.

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 #11

Prior to application for permits for any revisions, 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 #12

✓ The maximum height shall not exceed 40 feet above average ground level at the base of the pole. The height limitation shall include tower, antenna, and all other components.

Condition #13

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

Condition #14

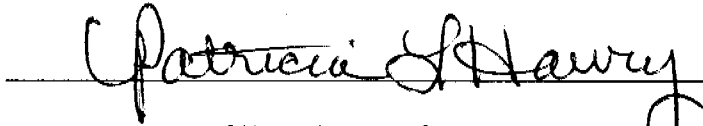
✓ The applicant must comply with conditions of CUP 15-99. If a conflict with the conditions of approval are identified, the most restrictive condition shall apply.

DATED this 28 day of July, 2009.



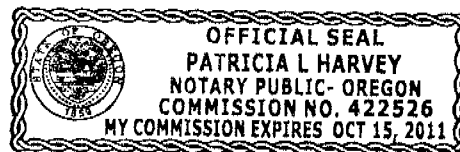
Leslie C. Wilson, Planning Director

Signed & Acknowledged before me this 28th day of July, 2009.



NOTARY PUBLIC FOR OREGON

My Commission Expires: Oct 15, 2011



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**

Exhibits:

Administrative Review Application	Exhibit 1
Ownership Warranty Deed	Exhibit 2
Site Plan	Exhibit 3
Copy of Lease Agreement	Exhibit 4
Parcel Map	Exhibit 5
Oregon Department of Aviation Response	Exhibit 6
Building Division Response Letter	Exhibit 7
Public Works Department Response	Exhibit 8