

City of Klamath Falls Planning Department
Administrative Review

In the matter of an
Administrative Review for:

Final Decision and Conditions: **8-CUP-09**

New Cingular Wireless PCS LLC
AT&T Mobility
650 S.W. Columbia St.
Bend, OR 97702

Southview Properties Development
ATTN: Greg Bessert
22101 NE 150th Avenue
Battleground, WA 98604

January 12th, 2010

In accordance with the provisions of Section 10.805 and 11.100 - 11.120 of the Community Development Ordinance (CDO), the City of Klamath Falls Planning Department has reviewed this request for a Conditional Use Permit.

NATURE OF THE PROPOSAL

The applicant, New Cingular Wireless PCS, LLC (AT&T Mobility), proposes to install a temporary retractable 106' guyed tower on a mobile flatbed trailer, on property owned by Greg Bessert. This unstaffed telecommunication facility would have a 50' by 50' fenced leased area with temporary support equipment. There is a proposed 6' high chain link fence with three barbwire strands that would secure the 50' by 50' area. This request for a temporary site is due to unresolved litigation between the owner of the adjacent tower and the underlying property owner. The temporary site would be decommissioned once the dispute is resolved and the existing tower could be reviewed to determine if it would support collocation for AT&T Mobility. The property is zoned Upper Ridge Residential District within the Southview Planned Unit Development (PUD). CDO 12.367(2) states that telecommunication facilities are permitted through the approval of conditional use permits in all Planned Unit Developments. Wireless telecommunication towers are permitted within this zone with the approval of a Conditional Use Permit (CUP). The property is addressed as 5200 Highway 140 West and can be found on Assessor's Map R-3808-03600 – Tax lot 400. The tower would be located at the top of the ridge south of the existing tower.

AGENCY COMMENTS

Planning:

1. **Landscaping:** No privacy hedges or landscaping will be required because the proposed temporary tower is located in a remote location where no public access is available.
2. **Access:** Roads and parking areas serving only telecommunication facilities shall be served by the minimum necessary requirements conforming to CDO Section 14.978: Roads & Parking. Specifically, subsection (1) which states, "Access roads shall be limited to eight feet (8') in width except where safety considerations demonstrated to the satisfaction of the Director demand a greater width with turnouts as required by the Fire Marshall."
3. **Setbacks and Heights:** The proposed leased area does not encroach upon any setbacks. Per CDO 14.962: "Telecommunication towers shall be setback at least twenty percent (20%) of the tower height from all property lines and at least one hundred feet (100') from any residentially

zoned property or public park.” The proposed temporary tower is at least 400 feet from the closest property line, which meets the required setback for a 106’ high tower.

4. **Zoning:** The property is zoned Southview Planned Unit Development (PUD): Upper Ridge Residential District. Section 12.367(2) states that telecommunication facilities are permitted with the approval of a conditional use permit in all PUD zones. The proposed temporary tower is a permitted use on the subject property.
5. **Fences:** The applicant proposes to install a 6’ high chain link fence with 3 strands of barbwire. The fence height meets the CDO requirements, and barbwire is allowed. Any new fence requires a fence permit (no fee) prior to installation.
6. **Signs:** As CDO Section 14.980 requires: All telecommunication facilities shall have a permanent, weather proof, 16” by 32” facility identification sign which shall be placed on the gate of the fence. This sign shall identify the facility operator, provide his/her address, and specify a 24 hour emergency telephone contact number.

Engineering:

1. Per Community Development Ordinance 14.040(1) requires that areas used for off-street parking and maneuvering vehicles, including driveways shall have either concrete or asphalt surfaces, constructed in a manner approved by City Engineering with proper drainage.
2. Depending on the decision made by the Community Development Director regarding above item 1; the applicant at a minimum, per Public Works Engineering, shall at least pave (concrete or asphalt) the driveway apron where it connects to a paved street for a length of at least 25 feet and a width of 20 feet. The remaining driveway access to the site can then be rocked and compacted in a 12-foot minimum width. This will help in containing dirt, mud and other debris from entering the paved streets and existing underground storm drainage infrastructure.
3. Although this application is a temporary request, there is no determination as to the date of resolving the mentioned litigation, for placement of the permanent structure. The driveway construction noted in above items 1 and 2 will also serve the future permanent site once that litigation is resolved.

Building Department: “The County Building Division has no issues or concerns with this proposal at this time.”

Fire District #1: “Klamath County Fire District #1 has no comments at this time.”

Oregon Dept. of Fish & Wildlife: “The proposed temporary tower is located farther than 660 feet (recommended USFWS buffer) from the nest site # 683, which is the nest tree that has been used the past several years. If the proposed project had been within 660 feet of the nest site, we would have recommended no construction activity during the breeding season.”

City of Klamath Falls Airport: “If on top of hill – they still need to file a FAA 7460 for temporary obstruction. As it’s in proximity of existing, there may be no impact – unless they’re dismantling or somehow removing/lowering the existing – but that is determined by FAA study. Don’t have enough information to determine overall impact to Airport.”

Bureau of Reclamation: “In response to the City of Klamath Falls Planning Review request for the subject applicant to construct a temporary retractable 106-foot guyed tower on a mobile

flatbed trailer that will be an unstaffed telecommunications facility with a 50-foot by 50-foot fenced leased area with temporary support equipment, the Bureau of Reclamation has no comments and/or concerns at this time. There are no Reclamation facilities adjacent to or in the vicinity of the proposed construction site.”

Avista: No comments were received.
PP & L: No comments were received.
Qwest: No comments were received.
Charter: No comments were received.

Proponents: No comments were received.
Opponents: No comments were received.

REQUIRED FINDINGS

Criterion #1: The conditional use permit conforms to all provisions of Chapter 10 to 14 and any applicable street plan.

Staff Analysis: The applicant, New Cingular Wireless PCS, LLC (AT&T Mobility), proposes to install a temporary retractable 106’ guyed tower on a mobile flatbed trailer. This unstaffed telecommunications facility would have a 50’ by 50’ fenced leased area with temporary support equipment. There is a proposed 6’ high chain link fence with three barbwire strands that would secure the 50’ by 50’ area. This request for a temporary site is due to unresolved litigation between the owner of the adjacent tower and the underlying property owner. The temporary site would be decommissioned once the dispute is resolved and the existing tower could be reviewed to determine if it would support collocation for AT&T Mobility. Wireless telecommunication towers are permitted within the Upper Ridge Residential District within the Southview PUD through the approval of a CUP.

The applicant is responsible for the antennas meeting all Federal, State and local communications, aviation and environmental codes and requirements. The applicant shall provide notice to the FAA of the proposed addition of antennas prior to placement.

The project shall not interfere with any Airport facility. If any conflict or interference is determined, the applicant shall correct the situation immediately by removal, relocation, or other means.

The Oregon Department of Fish and Wildlife has determined that the project will not interfere with nearby Bald Eagle nesting site #683 because it is farther than 660 feet away. If the proposed project had been within 660 feet of the nest site, the applicant would have been required to delay construction activity until after the breeding season.

Access to the site is via an unimproved (gravel) drive, privately maintained. The property is within an approved Planned Unit Development and the site should be accessible by improved private roads at full PUD Development.

Finding: *The proposed conditional use permit will conform to all applicable provisions of chapters 10 – 14 of the Community Development Ordinance through conditions. **This criterion is met with conditions.***

Criterion #2: The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls, and fences, parking, loading, landscaping, and other features required to adjust said use with land and uses in the neighborhood.

Applicant: This proposal for a temporary installation is required for AT&T Mobility to provide wireless communications coverage to its customers as well as emergency service providers in this area of Klamath Falls which includes coverage of the S.W. area of the City, Lake of the Woods Road as well as coverage on Hwy 97 both North and South of the site. The temporary site proposal is needed for (2) reasons which include litigation which AT&T Mobility is not a party to as well as a Bald Eagle nesting area that exists close to the Verizon Wireless (formerly RCC) tower. This request of a temporary site is required due to the unresolved litigation between a competitor (Verizon Wireless formerly RCC) and the property owner which does not involve AT&T Mobility (AT&T Mobility is not a party to this litigation). At this time AT&T is prevented from moving forward with the original plan to collocate at the Verizon facility due to a dispute between the property owner and Verizon. Since it will take an undetermined period of time for the Landlord and Verizon Wireless (formerly RCC) to resolve their dispute we have proposed the placement of a temporary tower and equipment area. Secondly, a Bald Eagle Nesting area exists in the area which has certain protections from the Fish and Wildlife department, specifically during the nesting season and in the nesting area. After discussions with Tom Collom, the Biologist assigned to this site by the State of Oregon, it is our understanding that these protections will result in an effective “no-build area” which would not allow work on the existing Verizon Wireless (formerly RCC) until July of 2010 (no build window if from January to July). Due to the delays because of the dispute AT&T Mobility combined with the “no-build area” AT&T Mobility would not expect to be able to construct on the existing Verizon Wireless tower until at least July of 2010 which is in excess of 12 months from the original CUP application with the City and excessive by any standards for a collocation to take place with Verizon Wireless. This proposal is to remove the temporary site once the dispute is resolved and the nesting period allows for AT&T Mobility to feasibly complete their installation on the existing Verizon Wireless (formerly RCC) tower site. The temporary installation will consist of over head utilities and ground equipment with a crank up tower not to exceed 100’ located on a 10’ wide by 30’ long mobile trailer along with an access easement located on a larger host parcel (186.77 acres), located on personal property owned by Southview Properties Development, LLC with an APN: R420299 Alternate APN: R-3808-03600-00400 (site address 5200 Hwy 140 West), within the city limits of the City of Klamath Falls. AT&T Mobility will lease a portion of the ground space at this location. The proposed installation will consist of attaching up to 12 new panel antennas to the crank up tower. Please see the 3 page set of zoning drawings depicting both the antenna and ancillary equipment building location and details. This proposed site will be an unmanned facility and will be visited once monthly by a site technician for maintenance. The site is otherwise monitored remotely. The site area provides adequate space for the site equipment and does not reduce, restrict or impair any current uses of the host property around or near the proposed site area. All setbacks from property lines and / or other structures can be met or exceed the applicable codes for this type of installation.

Staff Analysis: The proposed site is a 50' by 50' leased area or 2,500 sq ft. The subject property is 166.31 acres or 7,244,464 sq ft. The proposed leased area occupies only 1/2,898th of the subject property.

This request for a temporary site is due to unresolved litigation between the owner of the adjacent tower and the underlying property owner. The temporary site would be

decommissioned once the dispute is resolved and the existing tower could be reviewed to determine if it would support collocation for AT&T Mobility. The site has been, and will continue to be, adequate in size and shape for the proposed use.

Finding: *The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, fences, parking, loading, landscaping, and other features required to adjust said use with land and uses in the neighborhood. **This criterion is met with conditions.***

Criterion #3: The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.

Applicant: This proposed site area will gain access for ingress and egress through the Southview Properties Subdivision road(s) off Orindale Road located at the base of Moore Hill with no additional road improvement necessary to accommodate the once monthly trip by a service technician to the site. (See attached site plans for details on access route) This site is an unmanned facility and therefore no increase in traffic in the general area of the site is expected.

Staff Analysis: The site is accessed by a gravel road that starts at the north end of Orange Blossom in the Southview PUD. Orange Blossom connects to Westridge Drive. Westridge Drive intersects Hwy 140 West at the entrance to the Southview PUD. The existing road conditions meet the design requirements listed in CDO 14.978 for telecommunications facilities. The facility will continue to be unmanned and the proposal will not increase the level of traffic beyond one technician vehicular trip per month.

The applicant shall install a compact gravel driveway apron where it connects to Orange Blossom Drive for a length of at least 25 feet and a width of 20 feet. This would help prevent dirt, mud and other debris from being pulled into the paved portion of the street.

Finding: *The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use. **This criterion is met with conditions.***

Criterion #4: The proposed use will have no adverse effect on abutting property or the permitted uses thereof.

Applicant: The proposed site is located on a larger host parcel (186.77 acres) and is located away from existing buildings and structures with the exception of the nearby Verizon Wireless communications site and a cinder block building. The proposed use will not interfere or disrupt traffic as this is an unmanned site.

Staff Analysis: This proposal includes the installation of a temporary tower and the installation of an equipment trailer. The proposal also includes the erection of a 50' by 50' chain link fence. To minimize visual impact to adjacent properties; the color of the panels and concealments shall not be bright, shiny, or reflective.

If collocation on the existing Verizon Wireless tower is deemed possible the temporary retractable 106' guyed tower and the support equipment being permitted by 8-CUP-09 shall be decommissioned within 90 days. If by January 1, 2013 there is no resolution to the litigation, the temporary tower shall be decommissioned. No collocations shall be allowed on the AT&T temporary retractable 106' guyed tower being permitted by 8-CUP-09.

Finding: *The proposed use will have no adverse effect on abutting property or the permitted uses thereof. **This criterion is met with conditions.***

Criterion #5: The adequate capacity of City facilities for water, sewer, paved access, electricity and storm drainage can and will be provided to and through the property.

Applicant: Adequate City facilities are available to the site area. The proposed site is unmanned and therefore no water or sewer service will be required. Electrical power is located near the site and will be provided from the power pedestal adjacent to the communication site, underground to the equipment area. Telephone service is also at the site area and will also be provided underground to the site.

Staff Analysis: The proposed temporary telecommunications site would be an unmanned facility that does not require water or sewer services. The existing adjacent Verizon Wireless communications site currently utilizes electricity and the new AT&T Mobility site will be powered by extending the existing electrical service. The new equipment shelter will access electricity from the power pedestal through a buried power line. Adjacent properties within the Southview PUD are on private water, sewer and storm systems. There is no need for water, sewer or storm drainage at this time for the site.

Finding: *The adequate capacity of City facilities for water, sewer, paved access, electricity and storm drainage can and will be provided to and through the property. **This criterion is met.***

Criterion #6: The proposed use is similar in scale, bulk, coverage and is architecturally compatible with other uses in the area.

Applicant: The proposed use is consistent with other uses on the property which include an existing wireless communications facility operated by Verizon Wireless and other pre-existing users. The proposed use utilizes the smallest foot print possible, with no ground disturbance. The proposed support structure is the minimum height needed for the site to operate efficiently within the designated coverage area.

Staff Analysis: The proposed temporary installation of a 50' by 50' leased telecommunications facility will not significantly impact the existing site. There is another telecommunication facility located to the direct north of the proposed tower, but the remainder of the property in the immediate vicinity is undeveloped at this time. The applicant shall install panels and concealments that are not bright, shiny, or reflective. All properties within 250' of the subject property were notified of the proposed temporary facility. No comments were received from notified parties.

Finding: *The proposed use is similar in scale, bulk, coverage and is architecturally compatible with other uses in the area. **This criterion is met with conditions.***

Criterion #7: Provisions of public facilities and services to the site will not cause service delivery shortage to existing developments.

Applicant: The proposed use will not cause service outages or delivery delays of existing public services to existing developments. The proposed site is a passive use, is an unmanned facility, does not generate noise, excessive auto or foot traffic nor does it interfere with other existing uses on the host parcel and nearby parcels.

Staff Analysis: The proposed site would be an unmanned facility that does not require water or sewer services. The site would utilize electricity from the existing adjacent power source.

Finding: *Provisions of public facilities and services to the site will not cause service delivery shortage to existing developments. **This criterion is met.***

Criterion #8: The conditions stated in the decision are deemed necessary to protect the public safety and general welfare.

Staff Analysis: The conditions stated in the decision are necessary to insure that all applicable laws and standards are being met by the proposal. These laws and standards are necessary to protect the public safety and general welfare.

Finding: *The conditions stated in the decision are deemed necessary to protect the public safety and general welfare. **This criterion is met.***

CONDITIONS

General conditions:

- 1) Prior to placement of the tower, the applicant shall file FAR form 7460 to ensure frequency & transmission power reviews are completed and not in conflict, and receive permission from the FAA. The applicant is responsible for the antennas meeting all Federal, State and local communications, aviation and environmental codes and requirements. The applicant shall provide notice to the FAA of the proposed addition of antennas. The applicant shall forward a copy of the FAA notice to the City of Klamath Falls Community Development Department.
- 2) The project shall not interfere with any Airport or FAA facility or conflict with FAA Guidelines. If any conflict or interference is determined, the applicant shall immediately correct the situation by removal, relocation, or other means.
- 3) The applicant shall obtain a Development Permit from City Planning prior to commencing work on the site.
- 4) All contractors and subcontractors working at this site must be licensed to do business in the City of Klamath Falls.
- 5) The applicant shall install a compact gravel driveway apron where it connects to Orange Blossom Drive for a length of at least 25 feet and a width of 20 feet.
- 6) The applicant shall install panels and concealments that are not bright, shiny, or reflective.
- 7) The applicant shall submit to the Planning Division for review and approval a fence permit (no fee) prior to installation of any fence.
- 8) The applicant shall submit to the Planning Division for review and approval a sign permit (\$25.00) prior to installation of any sign, including the required facility identification sign.

Conditions regarding collocation:

- 9) Approval of this temporary retractable 106' guyed tower being permitted by 8-CUP-09 means that 12-CUP-08 shall be terminated.
- 10) AT&T Mobility shall submit a letter every 6 months from the owner of the subject property (R-3808-03600 – Tax lot 400) to the City of Klamath Falls Community Development Department stating that collocation on the existing Verizon Wireless tower to the north is not possible, until such time litigation is complete.

- 11) Once collocation on the existing Verizon Wireless tower is deemed possible the temporary retractable 106' guyed tower and the support equipment being permitted by 8-CUP-09 shall be decommissioned within 90 days. 8-CUP-09 shall be terminated at the end of the 90 days. If by January 1, 2013 there is no resolution to the litigation, the temporary tower shall be decommissioned. The 50' by 50' chain link fence shall also be removed.
- 12) Once collocation on the existing Verizon Wireless tower is deemed possible, AT&T Mobility may apply for a conditional use permit for collocation if they so choose to remain at the subject site.
- 13) No collocations shall be allowed on the AT&T temporary retractable 106' guyed tower being permitted by 8-CUP-09.

DECISION

After consideration of all staff, agency and citizen comments, and reviewing various data, the application is **approved** as presented based on the findings.

This **Conditional Use Permit** does meet the condition and scope of the City of Klamath Falls Comprehensive Plan, acknowledged by the Oregon State Land and Conservation Development Commission on May 31, 1984. In doing so, this **Conditional Use Permit** does address the appropriate policies encompassed in the Comprehensive Plan.

APPLICANTS ARE ADVISED THAT THIS DECISION IS FINAL AS OF THE DATE OF MAILING THIS DECISION (JANUARY 12, 2010), UNLESS WRITTEN APPEAL AND A \$200 APPEAL FEE IS FILED WITH THE CITY PLANNING DEPARTMENT WITHIN 12 DAYS OF THE DATE OF MAILING.

DATED THIS 12TH DAY OF JANUARY, 2010.

KELLY O'NEILL,
PLANNER

cc: Rick Bowman, City Code Enforcement Officer
Tom Del Santo, City Development Coordinator