

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application)
of Columbia 911 Communications)
District for a Modification of)
Prior Approval of a Conditional)
Use Permit and Site Design)
(CU 09-17/DR 09-09) to Construct)
a Public Safety Communications)
Tower and Related Equipment in)
the Primary Forest (PF-76) Zone)

ORDER NO. 67-2009

WHEREAS, on July 11, 2009, the Columbia County Planning Commission approved the application of Columbia 911 Communications District ("Applicant") to construct and operate a public safety communications facility on property approximately seven (7) miles southwest of the City of Clatskanie and owned by Longview Timberlands of Longview, Washington and having Tax Mad I.D. No. 7500-000-01300 (Final Order CU 09-17/DR 09-09); and

WHEREAS, as part of the abovementioned approval, the Planning Commission required the Applicant to enter into a Development Agreement ("Development Agreement") requiring the Applicant to demolish and remove the tower when it had no more useful life as a public safety communications facility as determined by the County; and

WHEREAS, legal counsel for Columbia County ("County") and the Applicant worked together and came to agreement on the final terms of the Development Agreement; and

WHEREAS, to assure compliance with the tower removal requirement, the Development Agreement required the Applicant to place in escrow or secure a bond in an amount equal to 125% of the estimated removal cost for the benefit of the County; and

WHEREAS, in efforts to comply with the terms of the Development Agreement, Applicant was unable to secure a bond in the amount of 125% of the estimated cost of tower removal; and

WHEREAS, Applicant subsequently filed an application for a Modification to Planning Commission Final Order CU 09-17/DR 09-09 to remove the condition of approval requiring the Development Agreement in its entirety; and

WHEREAS, the Columbia County Board of County Commissioners took jurisdiction of the modification application, and on September 23, 2009 held a hearing on the proposed modification; and

WHEREAS, after hearing the presentation of the Staff Report and testimony from the applicant and interested parties, the Columbia County Board of County Commissioners closed the public hearing and deliberated on the matter;

NOW THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the findings of fact and conclusions of law contained in the Land Development Services Staff Report to the Board of County Commissioners, dated September 16, 2009, which is attached hereto as "Exhibit A", and is incorporated herein by this reference.
2. Columbia County Planning Commission Final Order CU 09-17/DR 09-09 is modified as follows:

- A. Condition 2 of Columbia County Planning Commission CU 09-17/DR 09-09 is amended to read as follows:

"Applicant shall enter into a Development Agreement with Columbia County, approved by the Office of County Counsel, in which Applicant agrees to demolish or otherwise remove or cause to be demolished and removed, the tower and associated facilities from the subject property, when the tower has no more useful life as a communications tower. The Development Agreement shall be in the name of the Applicant as provided to the County on the application forms for Application CU 09-17/DR 09-09. The Development Agreement shall not require the Applicant to place any funds in escrow or secure a bond to assure tower removal, but upon the sale, assignment, sublease or other transfer of interest in the tower to a non-public entity, shall require the Applicant to require the new owner, assignee, sublessee or other interested party to post a bond or deposit funds into an escrow, for the benefit of the County, in an amount equal to 125% of the estimated cost of demolishing or otherwise removing the tower at the time the Development Agreement is signed. The bond or escrow deposit shall be continued for the lease period. The County shall determine when the tower has no more useful life as a communications tower when evidence suggests to the County that no electricity or other power source is being supplied to the tower, the lease has been terminated, or other like evidence suggests that the tower is no longer being used as a communications facility."

- B. Attachment A to County Planning Commission Final Order CU 09-17/DR 09-09 is hereby deleted in its entirety.

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3. The remainder of Columbia County Planning Commission Final Order CU 09-17/DR 09-09 shall remain unchanged except a otherwise specified in this Order.

DATED this 23rd day of Sept, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Chair

By: _____
Commissioner

By: [Signature]
Commissioner

Approved as to form

By: [Signature]
Office of County Counsel

Dr. J. H. ...

BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT
MEETING DATE: September 23, 2009

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Todd Dugdale, Director of Land Development Services 40

SUBJECT: PUBLIC HEARING

Modification of Previous Approval for 911 Communications Facilities Tower
Clatskanie Mountain, 100'x100' leased portion of Longview Timber Lands
Located off Hwy 47 South of Clatskanie, Tax Map No. 7500-000-01300
Applicant - Columbia 9-1-1 Communications District

DATE: September 17, 2009

SUMMARY:

The Planning Commission approved the Conditional Use and Site Design Review for the Clatskanie Mountain communications tower with 8 conditions. One of those conditions was to enter into a Development Agreement with the County to remove the 180 foot tower when it is no longer needed. These are typical Agreements required of all communication cell towers constructed in the County.

The Columbia 9-1-1 Communications District has had difficulty securing the security portion of the required Development Agreement. Consequently, the District has applied to modify the approvals of CU 09-17 and DR 09-09 to eliminate the requirement for a Development Agreement.

Staff recommends that the Development Agreement remain, to require the applicant to remove the tower structure when it is no longer needed or used for intended communications. The board should review other options available that the Communications District can provide that will provide a level of certainty that the demolition of the structure will occur if no longer needed.

ATTACHMENTS:

1. Board of Commissioners Staff Report, Modification of Prior Approval
2. Application for Modification
3. Planning Commission Final Order CU 09-17 & DR 09-09
4. Planning Commission Staff Report dated June 26, 2009

COLUMBIA COUNTY BOARD OF COMMISSIONERS

Modification of Prior Approval Columbia 9-1-1's Communications Radio Tower Clatskanie Mountain Site

Staff Report

September 23, 2009 Hearing Date

FILE NUMBER: DR 09-09 & CU 09-17

APPLICANT: Columbia 9-1-1 Communications District
P.O. Box 998
St. Helens, Oregon 97051

DATE: September 16, 2009

REQUEST: To Modify the Prior Planning Commission Approval and eliminate Condition #2 of the Final Order, requiring the applicant to enter into a Development Agreement

REVIEW CRITERIA: The Zoning Ordinance does not contain any applicable review criteria for the modification or elimination of Condition #2 of previously approved Conditional Use

SUMMARY: On July 6, 2009 at a regularly scheduled public hearing, the Planning Commission approved the applicant's proposed siting and construction of a public safety telecommunications tower and associated equipment on a 100' by 100' portion of an approximate 2,039-acre PF-76 zoned property owned by Longview Timberlands of Longview Washington subject to eight (8) conditions of approval.

Condition #2 required the applicant to enter into a Development Agreement with the County in which Applicant agrees to demolish or otherwise remove, or cause to be demolished or otherwise remove, the tower and associated facilities from the subject property when the tower and has no more useful life as a wireless communications services tower. To assure the faithful compliance with the Development Agreement, the Agreement contained provisions requiring the Applicant to place in escrow or secure a bond for the benefit of the County, in the amount of 125% of the estimated cost of demolishing or otherwise removing the tower at the time the Agreement is signed. The bond or escrow deposit shall be continued for the lease period. Additionally, upon sale, assignment, sublease, or any other transfer of interest in the tower, the Development Agreement required the new owner, assignee, sublessee, or other interested party, to post such bond or deposit such an amount into an escrow account for the remaining lease period before Applicant's bond is released or escrow deposit is returned to Applicant. The Planning Commission Final Order was not appealed.

On September 2, 2009 the applicant submitted the request to modify the approved DR 09-09& CU 09-17 and requesting the Board remove Condition 2 as approved by the Planning Commission on July 11, 2009.

The submitted request for modification summarizes steps the applicant has undertaken to assure the financial security including their attempts to obtain a performance bond, line of credit with a bank, and a certificate of deposit, none of which have been successful. Consequently, and because they have not been able to secure a financial solution, the applicant is requesting the Board remove Condition # 2 in its entirety. The submitted request states although they have made every effort to comply with this condition and understand the intent of

the Development Agreement, they ask the Board to remove this Condition because they believe “the development agreements was created to address the placement of private enterprise cellular communications towers and does not apply to public safety radio communications systems” and because they “have not been able to find a reasonable solution to the financial requirements of this agreement”.

CONSIDERATIONS:

Land Development Services has received no comments from notified parties concerning this request.

The Zoning Ordinance treats “radio or television stations, transmitters or towers” as allowable uses in the Primary Forest Zone through the Conditional Use process. The impacts of the tower must be minimized by using only a small site, use existing roads as much as possible, will not alter the character of surrounding in a manner which substantially impedes forestry operations and the level of facilities and services be appropriate for, but limited to, the needs and requirements of the area(s) to be served. Over the years, in support of public policy, the Board has maintained a directive to Planning Commission and LDS that when the purpose for these communication towers are no longer exists, the tower(s) must be removed.

Although Land Development Services understands the applicant’s unique circumstances and difficulties encountered while trying to comply with the financial requirements of the proposed Development Agreement, it is still critical that the communications tower and its related equipment and facilities be removed from the PF-76 zoned subject property when the tower has no more useful life as a public safety communications facility. LDS considers the critical elements of the Agreement, included in the 4-page Development Agreement, are its first and sixth elements summarized below:

Developer shall demolish or otherwise remove or cause to be demolished or otherwise remove the tower from the property when the tower has no more useful like as a public utility or facility tower as determined by the County (through its Land Development Services) when evidence suggests that no electricity or other power source is being supplied to the tower, the lease has been terminated, or other like evidence suggests that the tower is no longer being used as a public utility or facility.

Neither the Comprehensive Plan or the Zoning Ordinance has different definitions and/or regulatory requirements for *public safety* communications towers versus *private/personal* communications towers. Consequently, if the Board decides to approve the applicant’s request and does not require a Development Agreement ensuring the removal of this communications tower when it no longer needed, the Board may be setting prescience for not requiring the same assurance for any future communications towers.

In the past, the County and various developers have entered into separate and distinct Development Agreements in order to assure each communication tower will be removed or demolished when it is no longer useful as a utility. Each and every one of these previous signed and recorded Development Agreements have been separate and distinct from one another. Each Development Agreement is also prepared, revised, and finalized in order to accurately address the various communications towers’ and/or developers’ unique circumstances that may be site-specific or developer-specific.

Staff recommends the Board consider all evidence and issues prior to making their decision; but, a Development Agreement should be imposed which includes, at least, the critical elements noted above.

Attachments:

Submitted Request to Modify DR 09-09 & CU 09-17 dated September 2, 2009
July 11, 2009 Final Order for DR 09-09 & CU 09-17
Planning Commission Staff Report

RECEIVED

SEP 02 2009

modification

File No. CU 09-17

PR 09-09

CONDITIONAL USE PERMIT APPLICATION

LAND DEVELOPMENT SERVICES

Request for Modification of Prior Approval

PROPOSED USE: Public Safety Communications Radio Site

APPLICANT: Name: Columbia 9-1-1 Communications District

Mailing address: PO Box 998

St. Helens

Oregon

97051

City

State

Zip Code

Phone No.: Office 503-397-7255

Home

Are you the property owner? owner's agent?

PROPERTY OWNER: same as above, OR:

Name: Longview Timberlands

Mailing Address: PO Box 667

Longview

Washington

98632

City

State

Zip Code

Phone No.: Office

Home

PROPERTY ADDRESS (if assigned): NE Corner, Section 27

City

State

Zip Code

TAX ACCOUNT NO.: 7500-000-1300

Acres: 2039

Zoning: PF-76

Acres:

Zoning:

Acres:

Zoning:

PRESENT USES: (farm pasture, forest, residential, etc.)

Use:

Approx. Acres

Forest - Tree Farm

2039

Total acres (must agree with above):

2039

MODIFY

UR - 09-09

File No. CU 09-17

WATER SUPPLY: _____ Private well. Is the well installed? ____ Yes ____ No
_____ Community system. Name N/A

METHOD OF SEWAGE DISPOSAL: _____ Community Sewer. Name _____
 Not applicable.
_____ Septic System.

If Septic, does the subject property already have a system? ____ Yes ____ No
If no, is the property approved for a Septic System? ____ Yes ____ No

ELECTRICITY SUPPLIER: West Oregon Electric

CONTIGUOUS PROPERTY: List all other properties you own which have boundary lines touching this property:

Tax Account No.	Acres	Co-owners (if any)
<u>N/A</u>		

ACCESS CONSULTATION: The applicant has consulted with the local Rural Fire Protection District regarding emergency apparatus access.

Fire Official's Signature: _____ Date: _____

CERTIFICATION:

I hereby certify that all of the above statements, and all other documents submitted, are accurate and true to the best of my belief and knowledge.

Date: 9-2-09 Signature: Steve Watson

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Planning Department Use Only

Date Rec'd. SEP 02 2009 BCC Hearing Date: _____

Receipt No. 2340 CK# 21066 Or: Administrative _____

Zoning: PF-76 Staff Member: [Signature]

Previous Land Use Actions: CU 09-17 & DR 09-09

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Columbia 9-1-1 Communications District

P.O. Box 998
St. Helens, OR 97051

RECEIVED

SEP 02 2009

September 2, 2009

Providing 9-1-1 call answering, emergency dispatch and other support services for:

Clatskanie Fire & Medical
Clatskanie Police
Columbia City Police
Columbia County Sheriff
Columbia River Fire & Rescue
Mist-Birkenfeld Fire & Medical
Rainier Police
City of Prescott
Scappoose Fire & Medical
Scappoose Police
St. Helens Police
Vernonia Fire & Medical
Metro-West Ambulance
Vernonia Police
Columbia Co. District Attorney
Columbia Co. Emergency Services
Columbia Co. Juvenile Division
Columbia Co. Road & Parks
Columbia Community Mental Health
Oregon State Police
Oregon State Forestry,
Columbia Unit
& Probation
PGE Trojan Facility

To: Columbia County Land Development Services
From: Steve Watson, Systems and Facilities Specialist LAND DEVELOPMENT SERVICES
Request for Modification of Prior Approval DR09-09 and CU09-17

The Columbia County Planning Commission granted approval to Columbia 9-1-1 Communications District (C911CD) and signed final order for DR09-09 and CU 09-17 on July 11, 2009. The approval was granted to C911CD subject to eight conditions. C911CD has/will be complying with 7 of the 8 conditions and is now requesting a Modification of Approval regarding condition #2, Development Agreement.

The development agreement is included below for reference. This version was created jointly by Peter Livingston, representing C911CD and Spencer Parsons, Assistant County Counsel for Columbia County. Only the text portions are included here, signature sections were deleted for clarity.

Condition #2, DR 09-09 and CU 09-17

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made by and between Columbia County, a political subdivision of the State of Oregon, having a mailing address of 230 Strand Street, St. Helens, OR 97051, hereinafter referred to as "County," and Columbia 911 Communications District, hereinafter referred to as "Developer."

WHEREAS, Developer filed an application for a Conditional Use Permit and Site Design Review to site a public safety communications facility, hereinafter referred to as the "tower," located at Clatskanie Mountain, Columbia County Oregon, Tax Account Number 7500-000-01300, hereinafter referred to as the "property"; and

WHEREAS, the Columbia County Planning Commission reviewed and approved the applications for Conditional Use Permit (CU 09-17) and Site Design Review (DR 09-09) on July 11, 2009, subject to eight (8) conditions of approval; and

BOARD OF DIRECTORS

Zone 1 (Clatskanie), Dee Wooley
Zone 2 (Rainier), Wes McMahan
Zone 3 (St. Helens), Henry Heimüller
Zone 4 (Vernonia-Mist), Kathy Denckla
Zone 5 (Scappoose), Rob Anderson

ADMINISTRATOR

Sally J. Jones
(503) 397-7255 ext. 2223
sjones@columbia911.com

OPERATIONS MANAGER

Lee Knowlton
(503) 397-7255 ext. 2222
lknowlton@columbia911.com

ADMIN. SERVICES MANAGER

Nancy Edwards
(503) 397-7255 ext. 2225
nedwards@columbia911.com

DATA SPECIALIST

Susan Reedy
(503) 397-7255 ext. 2224
sreedy@columbia911.com

SYSTEMS & FACILITIES SPECIALIST

Steve Watson
(503) 397-7255 ext. 2240
swatson@columbia911.com

Administrative Office: (503) 397-7255 • Fax (503) 366-7196

Non-emergency Dispatch: (503) 397-1521 or 1-800-696-7795

Dispatch Fax (503) 397-7797 or 1-800-734-7795

www.columbia911.com

WHEREAS the property is subject to a Telecommunications Ground Lease ("Lease") with Longview Timberlands, LLC, dated April 24, 2009, which provides for removal of Developer's improvements on the property by the expiration date of the Lease or any earlier termination date;

WHEREAS, a condition of approval of Developer's Conditional Use Permit is to enter into an agreement, prior to obtaining a building permit, whereby Developer will demolish or otherwise remove, or cause to be demolished or otherwise removed, the tower from the property when the tower has no more useful life as a public safety communications facility; and

WHEREAS, said condition of approval is attached hereto as ATTACHMENT 1, and is incorporated herein by this reference;

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. Developer shall demolish or otherwise remove, or cause to be demolished or otherwise removed, the tower from the property when the tower has no more useful life as a public safety communications facility, as determined by the County in accordance with the terms of Paragraph 6, below.

2. To assure compliance with this Agreement, Developer shall place in escrow or secure a bond, for the benefit of the County, in an amount equal to 125% of the estimated cost of demolishing or otherwise removing the tower on the date this Agreement is signed. Developer shall submit evidence of the estimated cost to demolish or otherwise remove the tower for County approval when evidence of the bond or escrow account is submitted as provided herein. The bond or escrow account shall remain in effect until the end of the Developer's Lease period on the property. Upon expiration of the Lease period, if the Lease is renewed, the bond or escrow account shall be maintained for the additional Lease period or until such time as the tower is removed. At any time during the Lease period, including any renewals, Developer may alternate between the bond or escrow account, so long as one or the other is maintained.

3. If a bond is purchased in lieu of establishing an escrow account, the bond must comply with all statutory requirements and shall be satisfactory to the County Counsel as to form, sufficiency, and manner of execution. The bond must be purchased through a company lawfully permitted to sell bonds in Oregon. Evidence of the bond must be obtained and delivered to the Columbia County Land Development Services Department prior to the issuance of a building permit for the tower.

4. If funds are placed in escrow in lieu of purchasing a bond, this Agreement shall act as escrow instructions, unless County Counsel approves other instructions. The escrow account must comply with all statutory requirements. The Developer shall pay all fees and costs associated with establishing the escrow account. Evidence of the establishment of an escrow account must be obtained and delivered to the Columbia County Land Development Services Department prior to the issuance of a building permit for the tower.

5. Upon the sale, assignment, sublease, or any other transfer of interest in the tower to any non-governmental entity, Developer shall require any new non governmental entity, assignee, sub lessee, or other interest holder to purchase a bond or deposit money in escrow for the benefit of the County in the amount of 125% of the estimated cost of demolishing or otherwise removing the tower according to the terms of this agreement, before the Developer's bond or escrow account can be released. Developer shall notify the County upon such sale, assignment, sublease or other transfer, and shall provide the County with evidence that the new owner, assignee, sub lessee, or other interest holder has purchased a bond or deposited the required amount in escrow according to this Agreement, with a letter requesting that the Board of County Commissioners release the bond or escrow funds to the Developer. The Board shall issue an order releasing the bond or escrow funds if the requirements of this Agreement have been met.

6. As provided in the Lease, Developer shall remove all improvements on the property by the expiration date of the Lease, including any renewals, or any earlier termination date. In the event Developer fails to do so, the County, through its Land Development Services Department, may determine that the tower has no more useful life as a public safety communications facility, when evidence suggests that no electricity or other power source is being supplied to the tower, the Lease has been terminated, or other like evidence suggests that the tower is no longer being used as a public safety communications facility.

7. The County, upon making a determination that the tower has no more useful life as a public safety communications facility as described in Paragraph 6, shall notify the Developer or other subsequent interest holder of the determination, and shall require the tower to be removed or otherwise demolished by a date certain unless the Developer or other subsequent interest holder requests a hearing before the Columbia County Planning Commission in accordance with the Columbia County Zoning Ordinance to determine whether the tower has no more useful life as a public safety communications facility. The Planning Commission's determination may be appealed to the Board of County Commissioners. If the Developer or interest holder does not request a hearing, or if after the conclusion of all appeals, the Land Development Services Department's determination is upheld, the Developer or interest holder shall demolish or otherwise remove the tower from the property by the date specified.

8. If, after the expiration of the date specified for demolition or removal, the tower has not been demolished or otherwise removed, and no appeal has been filed, the County may collect on the bond or escrow account and cause the tower to be demolished or otherwise removed, by order issued by the Board of County Commissioners authorizing release of the escrow funds to the County, or authorizing collection on the bond. Any costs associated with demolishing or otherwise removing the tower over and above the bond or escrow account funds shall be collected from the current interest holder or the Developer if no bond or escrow funds are available from the current interest holder.

9. Upon signature of this Agreement by County and Developer, Developer shall be eligible to apply for and receive a building permit to construct the tower if all other applicable requirements have been met.

10. This Agreement shall be binding upon Developer, Developer's successors, and assigns, and shall be recorded in the Official Deed Records for Columbia County, Oregon, at Developer's sole cost and expense.

Columbia 9-1-1 Communications District has made every effort to comply with this condition. C911CD understands the intent of this agreement and is aware of the circumstances that led to the creation of this agreement. Columbia 9-1-1 is requesting that the development agreement in its entirety be removed as one of the 8 conditions of this approval. C911CD requests this based on 2 reasons: 1) C911CD believes that this document was created to address the placement of private enterprise cellular communications towers and does not apply to public safety radio communications systems and 2) C911CD has not been able to find a reasonable solution to the financial requirements of the agreement.

The agreement states: "To assure compliance with this Agreement, Developer shall place in escrow or secure a bond, for the benefit of the County, in an amount equal to 125% of the estimated cost of demolishing or otherwise removing the tower on the date this Agreement is signed". C911CD has investigated several options that would meet this requirement and has had negative results in each case.

The following summarizes the steps we have taken and the outcome of each option.

1. Performance Bond. The development agreement offers one suggestion as the purchase of a bond as a form of security. Our insurance agent, Insurance Services NW of St Helens was not able to find a company that was willing to write a performance bond in this case for the following reasons:

- i. Recent changes in the bond market have eliminated the ability to secure long term bonds. Our need in this case is at least 20 years. None of the companies would be willing to carry a bond for that length of time.
- ii. None of the bonding companies would write a bond between 2 government entities. In fact several of the companies commented that they had never heard of this arrangement and questioned whether it would even be legally possible.
- iii. All of the sample bonds provided by the county for other developments involved private citizens or corporations, but no other public entities.
- iv. C911CD was also advised that the premium for this type of bond, if available would be cost prohibitive.

2. Escrow Account: The section option outlined by the Development agreement would be to place funds into an escrow account. This option was not favorable for the following reasons:
 - i. Placing a substantial amount of money into an escrow account and committing that money for 20 years is not good public financial practice.
 - ii. C911CD was able to find a contract servicing company that would service an escrow account. However the setup fees and monthly service fees are costs that are unreasonable expenses to C911CD.

3. Line of Credit with Bank: At the suggestion of our insurance agent and after checking with the county we inquired with US Bank on a line of credit option. Our findings
 - i. US Bank has changed their policy and have reduced this practice. They advised that they would need to do a full financial review of our agency at our cost.
 - ii. If US Bank agreed to issue a letter of credit, the annual premium would be at least \$2,000.
 - iii. The setup fees and monthly service fees are costs that are unreasonable expenses to C911CD.

4. Certificate of Deposit: Another option that was suggested was to purchase a Certificate of Deposit (CD).
 - i. C911CD uses US Bank for a share of its banking services including money market accounts and checking account. US Bank informed us that they do not issue CD's for government entities due to changes in the collateral laws that secure CD's.

As outlined above, C911CD has researched many options and have not been able to secure a solution. C911CD is requesting that Condition 2 be removed from CU09-17 and DR 09-09 as approved by the Columbia County Planning Commission on July 11, 2009. Our understanding is that this information will be distributed for public comment and sent to the Planning Commission today for action at the meeting on September 23, 2009. As you know, we are under a tight timeline which was established by the Federal grant that has funded this project.

We respectfully request action as soon as possible so that we can take full advantage of what is remaining of the weather window allowing construction on the mountain top.

BEFORE THE
COLUMBIA COUNTY PLANNING COMMISSION
ST. HELENS, OREGON

In the matter of an application of)
Columbia 9-1-1 Communications)
District to construct and operate)
a public safety communications)
facility consisting of a 180' tower and)
associated equipment within a 100' by)
100' leased portion of an approximate)
2,039-acre property in the Primary)
Forest (PF-76) Zone)

Final Order CU 09-17 & DR 09-09

This matter came before the Columbia County Planning Commission on the application of Columbia 9-1-1 Communications District to construct and operate public safety communications facility consisting of a 180 telecommunications tower, a 12' by 36' equipment building, 1,000 gallon propane tank, and a propane back-up generator within a 100' by 100' leased portion of an approximate 2,039-acre property zoned for Primary Forest. The subject property is owned and managed for commercial forest operations by Longview Timberlands of Longview, Washington and is located approximately 7 miles Southwest of the City of Clatskanie. The proposed facility will be sited on Clatskanie Mountain in the NE corner of Section 27, Township 7 North Range 5 West of the Willamette Meridian and is further described and associated with Map Identification Number 7500-000-01300.

Notification of this land use application was sent to the Clatskanie - Quincy CPAC, affected agencies and surrounding property owners. A Public Hearing was held on July 6, 2009 where the Planning Commission heard testimony from the applicant and interested parties and considered written materials including the Staff Report dated June 26, 2009.

After due consideration, the Columbia County Planning Commission hereby adopts the findings in the Staff Report dated June 26, 2009 and orders this application for **CU 09-17 & DR 09-09** to erect a 180' telecommunications tower and associated equipment on the 100' by 100' portion of an approximate 2, 039 PF-76 zoned property be **APPROVED** subject to the following conditions:

CONDITIONS OF APPROVAL:

1. This Conditional Use Permit & Design Review shall remain valid for two (2) years from the date of the final decision. This permit shall become void, unless a building permit has been issued and the proposal has commenced in conformance with all conditions and restrictions established herein within the two-year validity period.

Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.

2. Applicant shall enter into the attached **Development Agreement** (Attachment A) with Columbia County, in which Applicant agrees to demolish or otherwise remove, or cause to be demolished or otherwise remove, the tower and associated facilities from the subject property when the tower has no more useful life as a wireless communications services communication tower. These documents shall be in the applicant name as provided to the County on the submitted application forms for CU 09-17 & DR 09-09. To assure the faithful compliance with the **Development Agreement**, the Agreement shall specify that Applicant shall place in escrow or secure a bond for the benefit of the County, in the amount of 125% of the estimated cost of demolishing or otherwise removing the tower at the time the Agreement is signed. The bond or escrow deposit shall be continued for the lease period. Upon sale, assignment, sublease, or any other transfer of interest in the tower, Applicant shall agree to require the new owner, assignee, sublessee, or other interested party, to post such bond or deposit such an amount into an escrow account for the remaining lease period before Applicant's bond is release or escrow deposit is returned to Applicant. Upon expiration of the lease period, if the lease is renewed, the bond or escrow deposit shall continue for the additional lease period. The County shall determine when the tower has no more useful life as a PCS communication tower when evidence suggests that no electricity or other power source is being supplied to the tower, the lease has been terminated, or other like evidence suggests that the tower is no longer being used to provide wireless communication coverage.
3. A primary fuel-free fire break shall be required around the perimeter of the communications facility pursuant to OAR 660-006-0035 and Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, dated March 1991 and published by the Oregon Department of Forestry, or Columbia County Equivalent Fire Buffers approved by the Board Order 239-97.
4. All lighting associated with the communication facility, not required by the Oregon Department of Aviation for airplane safety, shall be shielded to prevent glare onto neighboring properties and rights-of-way.
5. The responsibility for protection from wildlife damage on the project site shall be assumed by the communication facility's owner/operator.
6. The 6' high chain link fence surrounding the communication facility shall include full-height sight-obstructing slats that are brown or green in color.
7. All activity, equipment and storage associated with the communication facility shall be kept entirely within the fence enclosed area of the facility.

8. The following shall be completed prior to issuance of any Building Permit:

- a. The site plan shall demonstrate compliance with the primary fuel-free fire break requirement of Condition No. 3 above.
- b. Applicant shall submit proof of an executed and recorded Telecommunications Ground Lease with Longview Timberlands, LLC that includes a long-term non-exclusive easement for ingress/egress using the existing private access road(s) starting from Highway 47 up to and including the 100' by 100' leased property.
- c. The recorded Telecommunications Ground Lease shall include a non-exclusive easement for utilities to be extended to the proposed communications facility lease site.
- d. The applicant shall provide documentation from the Oregon Department of Aviation indicating compliance with applicable State Aviation rules and regulations.

COLUMBIA COUNTY PLANNING COMMISSION



GUY LETOURNEAU, CHAIRMAN

11-JUL-09
DATE

Columbia County Planning Commission
STAFF REPORT
June 26, 2009
Conditional Use Permit and Site Design Review

HEARING DATE: July 6, 2009

FILE NUMBER: CU 09-17 and DR 09-09

APPLICANT: Columbia 9-1-1 Communications District
P.O. Box 998
St. Helens, OR 97051

PROPERTY OWNER: Longview Timberlands LLC
P.O. Box 667
Longview, WA 98632

TAX ACCT. NUMBER: 7500-000-01300

ZONING: Primary Forest (PF-76)

SIZE: Approximately 3.0 acres

LOCATION: The communications tower is proposed to be sited on Clatskanie Mountain in the very NE corner of Section 27, Township 7 North Range 5 West, approximately 300' West of the East property line.

REQUEST: The applicant is requesting a conditional use permit to construct and operate a public safety communications facility consisting of a 180 foot tower, a 12' x 36' communications/equipment building, 1,000 gallon propane tank, and a propane back-up generator within a 100' x 100' leased area of an approximate 2,039 acres of Primary Forest (PF-76) zoned land.

APPLICATION COMPLETE: 05/28/09

150 DAY DEADLINE: 010/25/09

APPLICABLE CRITERIA:

<u>Columbia County Zoning Ordinance (CCZO)</u>		<u>Pages</u>
Section 500	Primary Forest (PF-76)	3 - 6
Section 1190	Big Game Range Overlay	6 - 7
Section 1503	Conditional Uses	8 -10
Section 1550	Site Design Review	10 - 14
<u>Oregon Administrative Rules (OAR)</u>		
660-006-0025		14

660-006-0029
660-006-0035
660-006-0040

15
16
16

BACKGROUND:

The applicant is proposing to construct and operate a public safety communications radio site on Clatskanie Mountain in the NE corner of Section 27, Township 7 North Range 5 West. Columbia 9-1-1 Communications District (C911CD) provides radio microwave communications for 9-1-1 call taking and dispatching services for all public safety agencies based in Columbia County as well as to the County Roads & Parks Department and the Columbia County Rider Service. Cowlitz County Washington also leases space on the C911CD radio network controller to support their wireless data system. C911CD is also a member of the Portland Urban Area Security Initiative (UASI) which includes 9-1-1 dispatch centers in Multnomah, Washington, Clackamas and Columbia Counties in Oregon and in Clark County in Washington.

The new Columbia 9-1-1 communication facility consists of a 180 foot tall tower, a 12' x 36' communications/equipment building, 1,000 gallon propane tank, and a propane back-up generator within a 100' x 100' fenced compound. The closest property line for the proposed fenced communications facility is over 200' East of this facility. The subject property surrounding this 100' x 100' compound is an approximate 2,039 acres of Primary Forest (PF-76) zoned land associated with Map Identification Number 7500-000-01300 which is owned by Longview Timberlands LLC. The Planning Commission must approve a Conditional Use Permit and Site Design Review for the establishment and operation of the proposed Columbia 9-1-1 Communications District's radio communications facility on the PF-76 zoned property according to the provisions in Section 503.7 of the Zoning Ordinance.

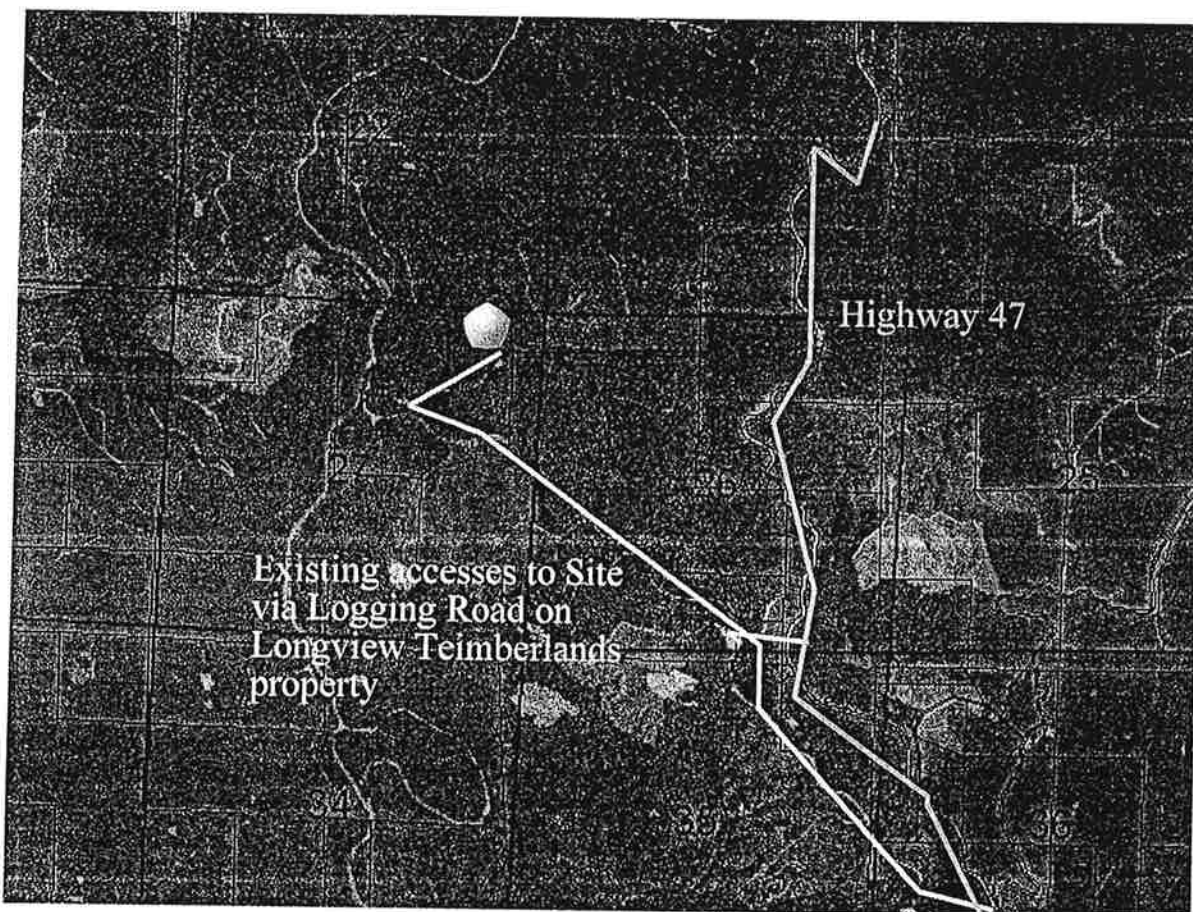
The project site's 2,039 foot elevation is near the top of Clatskanie Mountain approximately 7 miles Southwest of the City of Clatskanie and West of State Highway 47. The 2,039 acre subject property is owned and managed for commercial forest operations by Longview Timberlands of Longview Washington. The communications facility site is in a clear cut area that was also the location of a fire lookout tower until 1994. Access to the site will be from two locations off Highway 47 via improved an logging road (shown on the attached Vicinity Map) that is maintained by Longview Timberlands. The applicant submitted LDS with a copy of a proposed "Telecommunications Ground Lease" they will need to execute with Longview Timberlands LLC prior to final approval which includes the right of access for the term of the lease over the existing roadway accessing the 100' by 100' leased area. One condition of approval will require the applicant to submit proof of a recorded long-term non-exclusive easement for ingress/egress to the proposed communications facility site using the existing logging road(s) starting from Highway 47 up to and including the communication facility lease site. The Mist-Birkenfeld Rural Fire District responded to this proposal and will require the applicant to notify them of specific days they will be working on site so the Fire District can respond if necessary. Staff verified on June 12, 2009 via a phone conversation with the Mist-Birkenfeld Fire Marshall that the existing private access(es) to the proposed communications facility complies with the County Road Standards Ordinance's specifications for Fire Apparatus Access Standards.

According to FEMA Map # 41009CO110 C the subject property is not within a flood hazard area. The National Wetlands Inventory's Marshland Map # 14 and the 1995 Clatskanie- Quincy CPAC Beak Map reveal no wetlands or the existence of environmentally sensitive plants and soils on the subject property.

The 2,039 acre subject property is outside an Urban Growth Boundary, within a Big Game Habitat area, and emergency services are provided by the Sheriff and the Mist-Birkenfeld Rural Fire Protection District.

The remainder of this report will address the degree to which this request for a Conditional Use Permit to construct and operate a new wireless communication facility in PF-76 zones satisfies the requirements of the applicable Sections of the Columbia County Zoning Ordinance.

2005 Aerial Map of Proposed 9-1-1 Communications Tower Facility



REVIEW CRITERIA:

The following sections of the Columbia County Zoning Ordinance apply to this application:

Section 500 PRIMARY FOREST - 76

- 501 **Purpose:** The purpose of this zone is to retain forest land for forest use and to encourage the management of forest land for the growing, harvesting, and processing of forest crops consistent with the Oregon Forest Practices Act. And to provide for other forest uses including

watershed protection, soil protection, maintenance of clean air and water, wildlife and fisheries habitat, outdoor recreation activities, open space and scenic preservation, and agricultural activities free from the encroachment of conflicting non-forest uses and influences.

- .3 Locationally dependent uses, such as communication towers, mineral and aggregate resources; etc.

503 Conditional Uses: In the PF-76 Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 504 and 505. A conditional use shall be reviewed according to the procedures provided in Section 1503.

- .7 Radio or television stations, transmitters or towers, except those installations used for the purpose of commercial forest management which are allowed outright.

Finding 1: Within the purpose section of the PF-76 zone communication towers are recognized as locationally dependent uses due to the need for siting within rural areas of higher elevations in order to achieve the broadest range of coverage. While possible in the PF-76 zone, many factors must be considered in the siting of a communications tower with regards to factors such as suitability and impact. Therefore, 'transmitters or towers' are conditionally allowed in accordance with Section 503.7 of the Columbia County Zoning Ordinance (CCZO). Staff finds that the proposed transmission tower is possible given approval of a conditional use permit in accordance with all conditions of approval thereof.

504 All Conditional Uses Permitted in the PF-76 Zone Shall Meet the Following Requirements:

- .1 The use is consistent with forest and farm uses and with the intent and purposes set forth in the Oregon Forest Practices Act.

OREGON FOREST PRACTICES ACT

527.630 Policy

(1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forest land for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.

Finding 2: The applicant requests the siting of a new 9-1-1 Radio Communications Facility on 10,000 square feet or .023 of an acre, leased portion of a 2,039 acre forest practice operation. The site is also known as Clatskanie Mountain, its elevation is 2,080 feet, and the trees that have been removed will not be replanted. The applicant submitted a copy of the proposed Telecommunications Ground Lease with Longview Timberlands LLC which states on Page 4 in part "*Columbia 9-1-1 Communications District's rights to utilize the Premises are specifically subject to its agreement with and actual compliance with each and every Longview Timberlands LLC (LTC) Forest Management Rule...*" This proposed Telecommunications Ground Lease Contract will ensure the new communications facility will ensure the continuous growing and harvesting of forest tree species and the maintenance of the surrounding forest land and its resources remains consistent

with the Oregon Forest Practices Act. Staff finds that this criterion has been met.

- .2 The use will not significantly increase the cost, nor interfere with accepted forest management practices or farm uses on adjacent or nearby lands devoted to forest or farm use.

Finding 3: The project, once completed, will occupy an area of 100 feet by 100 feet (10,000 square feet) and the closest property line is approximately 200 feet East of this leased area. Prior to final approval, the applicant will be required to provide LDS with a copy of a signed Telecommunications Ground Lease which will help to ensure the proposed communications facility will not detrimentally impact on the forest practices occurring on the adjacent Longview Timberlands properties satisfying this criterion for this conditional use.

- .3 The use will be limited to a site no larger than necessary to accommodate the activity, and as such will not materially alter the stability of the overall land use pattern of the area or substantially limit or impair the permitted uses of surrounding properties. If necessary, measures will be taken to minimize potential negative effects on adjacent forest lands.

Finding 4: An insignificant portion of land, less 0.23 of an acre, will be affected throughout the proposed development and the applicant has stated that a few slash piles will need to be removed for the construction of the communications facility and for the establishment of the 30' Primary Firebreak surrounding all sides of this fenced compound. Staff finds that this criterion has been met.

- .4 The use does not constitute an unnecessary fire hazard, and provides for fire safety measures in planning, design, construction, and operation.

Finding 5: As submitted in the application, the 180 foot communications facility and all associated equipment will be within an approximately 100' x 100' area to be enclosed by a 6' high chain link fence with three strands of barbed wire. Various elements within the enclosure include the 180' tower, a 12' by 36' communications/equipment building, a 1,000 gallon propane generator, and a back-up propane generator. Although propane and gasoline are both flammable, propane has both a much narrower range of flammability and a higher ignition temperature than gasoline. These ranges are between 920 - and 1020 degrees Fahrenheit for propane versus 80 - 300 degrees for gasoline. Additionally, propane will only burn with a fuel-to-air ratio of between 2.2% and 9.6% and will rapidly dissipate beyond its flammability range in the open atmosphere, making ignition unlikely.

<http://www.medcorpgreen.com/education.htm>

During a telephone conversation on June 15, 2009 between LDS staff and Tad Pedersen, State of Oregon Fire Marshall in Astoria, the Fire Marshall stated that the proposed facility's utilization of propane, as opposed to diesel, generators and the establishment and maintenance of the Primary Firebreak will help to minimize the wildfire risks associated with the new communications tower in the forest zone. His office had no other concerns for this new facility at Clatskanie Mountain. The attached Telecommunications Ground Lease also prohibits having any diesel generators and/or storage tanks on the leased premises which will help ensure the proposed cellular tower will not constitute an unnecessary fire hazard. Staff finds that this criterion has been met.

- .5 Public utilities are to develop or utilize rights-of-way that have the least adverse impact on forest resources. Existing rights-of-way are to be utilized wherever possible.

Finding 6: The applicant will need to utilize only the existing rights of way already established by the property owner's (Longview Timberlands LLC) private logging road(s) and will not need to develop additional rights of way for this telecommunications facility. Staff finds that this criterion has been met.

6. Development within major and peripheral big game ranges shall be sited to minimize the impact on big game habitat. To minimize the impact, structures shall: be located near existing roads; be as close as possible to existing structures on adjoining lots; and be clustered where several structures are proposed.

Finding 7: The proposed site is located within the Big Game Habitat Area identified by the 1995 Clatskanie-Quincy CPAC BEAK maps. Conformance with siting standards of the Big Game Range overlay will be reviewed in greater detail later in the following section of this report.

Continuing with the Columbia County Zoning Ordinance:

Section 1190 BIG GAME RANGE OVERLAY

- 1191 **Purpose:** To protect sensitive habitat areas for the Columbian white-tailed deer and other Big Game by limiting uses that conflict with maintenance of the areas. This section shall apply to all areas identified in the Comprehensive Plan, as major and peripheral big game range or Columbian white-tailed deer range. (See Comprehensive Plan Map 44 for general location of big game range. For detailed analysis see the 1995 Beak Consultants maps titled "Wildlife Game Habitat" found in Appendix the Technical Appendix Part XVI, Article VIIIA of the Comprehensive Plan.
- 1192 **Permitted Uses:** All uses permitted in the underlying zone either outright or conditionally shall be permitted if they are shown to be consistent with the maintenance of big game and Columbian white-tailed deer habitat values identified in the Comprehensive Plan.
- 1193 **Development Standards:**

All new development located in Major and Peripheral Big Game Habitat shall implement the following siting standards:

1. Dwellings and structures shall be located as near each other and existing developed areas as possible considering topography, water features, required setbacks and firebreaks.

Finding 8: The 100' by 100' area leased area intended for the location of the proposed telecommunications facility is in a Major Big Game Habitat Area according to the 1995 BEAK Maps of the Clatskanie - Quincy CPAC Area. The proposed 0.23 acre radio communications facility site is also surrounded by over 2,039 acres of forestland and will be located on a clear cut 0.23 acre-portion of Clatskanie Mountain at 2,080 feet above sea level. Trees on this portion of Clatskanie Mountain have already been removed by Longview Timberlands and the applicant will need to remove the remaining slash piles in close proximity to their leased area. No new rights of way are required to develop this site for the radio communications facility. This location demonstrates the applicant has selected to site their facility on the portion of the 2,039 acre property that is appropriate for its intended use because it will not require additional removal of forest resources, its elevation, and the entire

10,000 square foot compound will be fenced preventing potential detrimental impacts to the surrounding property's Big Game Habitat. Staff finds this siting criterion has been satisfied for the proposed telecommunications facility in the forest zone.

- .2 Dwellings and structures shall be located to avoid habitat conflicts and utilize least valuable habitat areas.

Finding 9: The location of the proposed tower and its related components will be in a 0.23 acre portion of Clatskanie Mountain that the property owner, Longview Timberlands has already removed trees from. No additional rights of way will be needed for this proposal nor will any additional trees need to be removed. The 6' fence enclosing these communications facilities will also safeguard any injuries to big game frequenting this area of the 2,039 acre forest operation surrounding the site. Staff finds that this criterion can be met.

- .3 Road development shall be minimized to that which is necessary to support the proposed use and the applicant shall utilize existing roads as much as possible.

Finding 10: The proposed wireless communication facility will not likely generate a significant number of vehicle trips to and from the project site; therefore, it is not anticipated that the use will place a high demand on the existing logging roads accessing it from Highway 47. Condition # 19 of the Telecommunications Ground Lease specifically states that Longview Timberlands will grant an access and utility easement to CR911CD allowing them to install electrical utility to the telecommunications site. Staff also encourages the applicants to extend the power lines along the existing logging roads' rights of way as much as possible in order to minimize impacts to the property's natural resources and wildlife. Staff finds that this criterion can be met, with the applicable conditions of approval.

- .4 The owner/occupant of the resource parcel shall assume responsibility for protection from damage by wildlife.

Finding 11: Staff notes that the CR911CD shall assume full responsibility for protection from damage by wildlife, satisfying this criterion.

- .5 Riparian and Wetland areas shall be protected in accordance with Sections 1170 and 1180.

Finding 12: The subject property does not contain any riparian or wetland areas. Staff finds that this criterion does not apply to this conditionally permitted use in the forest zone.

- .7 Columbia County shall notify the Oregon Department of Fish and Wildlife (ODFW) and the U.S. Fish and Wildlife (USFW) of all proposed uses or activities located within the Columbian White-Tailed Deer habitat. The County will consider the comments and recommendations of ODFW and USFW before making a decision concerning the requested use or activity.

Finding 13: This condition does not apply because the project site is not within the Columbian White-Tailed Deer Habitat.

Continuing with the Columbia County Zoning Ordinance:

Section 1503 CONDITIONAL USES

.5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

A. The use is listed as a Conditional Use in the zone which is currently applied to the site;

Finding 14: Communication towers are addressed as locationally dependent uses within the purpose section of the PF-76 zone. The Columbia County Zoning Ordinance identifies "Radio or television stations, transmitters or towers, except those installations used for the purpose of commercial forest management which are allowed outright" as a conditional use in the Primary Forest (PF-76) zone. The use is listed as a Conditional Use in the zone which is currently applied to the site. Staff finds that this criterion has been met.

B. The use meets the specific criteria established in the underlying zone;

Finding 15: The proposal has been determined compliant with the specific criteria of the Primary Forest zone (PF-76), within the discussion of Findings 1 through 7. Staff finds that this criterion has been met.

C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

Finding 16: Per the information submitted for this land use application, the proposed location of the new cellular tower at an elevation of 2,080 on the 0.23 acre already logged (and not replanted) portion of Clatskanie Mountain appears to be very well-suited portion for its new use specifically because of its location, topography, and natural features. Staff finds that this criterion has been met.

D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

Finding 17: Columbia 9-1-1 Communications District (C911CD) provides radio microwave communications for 9-1-1 call taking and dispatching services for all public safety agencies based in Columbia County as well as to the County Roads & Parks Department and the Columbia County Rider Service. Cowlitz County Washington also leases space on the C911CD radio network controller to support their wireless data system. C911CD is also a member of the Portland Urban Area Security Initiative (UASI) which includes 9-1-1 dispatch centers in Multnomah, Washington, Clackamas and Columbia Counties in Oregon and in Clark County in Washington. During the Background section, the applicant states that the Oregon Wireless Infrastructure Network (OWIN) also wishes to establish a co-location site in Columbia County; this proposed facility will be able to provide this service which will also enhance interoperable communications capability between C911CD, Clatsop County and Tillamook County. This proposed facility at Clatskanie Mountain will help to establish a stable site leasing arrangement for a hub site of the C911CD system.

The 100' by 100' leased area is already substantially cleared and has access to Highway 47 via existing logging roads that are also regularly used in the ongoing forest operation surrounding the proposed telecommunication facility. Although the Oregon Department of Transportation (ODOT) was notified of this proposal, LDS has yet to receive any comments stating these existing access permits to Highway 47 need to be modified to reflect the changes in the use of these accesses due to the proposed telecommunications facility. Nevertheless, the applicant will be required to consult with ODOT and obtain documentation of their authorization for the new use of these accesses to Highway 47 before a building permit may be issued. Utilities are available along Highway 47 and can be extended to the new facility along the existing rights of way. For these reasons, Staff finds the proposal is timely provided the applicable conditions of approval are met prior to the issuance of any building permits.

- E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;

Finding 18: The project, once completed, will occupy an area of 100' by 100' (10,00 square feet) and will be over 200' away from the closest property line. Notification was sent to adjacent property owners within 750 feet and has yet to receive any comments. Therefore, Staff concluded that the use will not alter the character of the surrounding area in a manner which substantially limits, or precludes the use of surrounding properties. Staff finds that the use will have no impact on adjacent lands devoted to forest uses and that this criterion has been met.

- F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;

Finding 19: The Columbia County Comprehensive Plan, Public Facilities and Services, Policy 2 states, it shall be County policy to: "Require that the level of facilities and services provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served ..." The intention of this policy, as it relates to communication towers, is interpreted as requiring proof of co-location information in order to validate the need for a new tower as opposed to using existing facilities. As stated previously for Finding 17, the proposed telecommunications facility will provide radio microwave communications for 9-1-1 call taking and dispatching services for public safety agencies based in Columbia, Clatsop, Tillamook, Washington, Multnomah, and Clackamas Counties in Oregon as well as Cowlitz and Clark Counties in Washington. This proposed facility at Clatskanie Mountain will help to establish a stable site leasing arrangement for a hub site of the C911CD system. Staff finds the proposal satisfies the applicable goals and policies of the Comprehensive Plan satisfying this siting criterion for conditional uses in the PF-76 Zone.

Finding 20: The primary potential hazards associated with the proposed communications facility are related to the increase in fire hazards on the ongoing forest practices surrounding the 10,000 square-foot fenced compound. The proposed tower and all associated structures including the 2 propane generators will be sited entirely within the fenced compound that will also be surrounding by an established and maintained 30' Primary Firebreak required by OAR 660-006-0035(3) according to provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

Additionally, the applicant submitted a letter dated May 8, 2009 (attached) from the Oregon Department of Aviation (DOA) which states ODA has determined that because the proposed 190' antenna tower near

Clatskanie Oregon does not exceed any Obstructions to Air Navigation identified in OAR 738-070-0100, it would not be a hazard to air navigation. This letter also stated that ODA will not need marking and/or lighting on the proposed communications facility but recommends that if any marking and lighting are installed that they be consistent with the Federal Aviation Administration (FAA) Advisory Circular AC70/7460-1K, Change 2. Staff finds the proposal satisfies this criterion provided the applicant consult with the ODA to determine compliance with safety precautions. Staff finds that this criterion can be met, with the applicable conditions of approval.

Continuing with the Columbia County Zoning Ordinance:

Section 1550 SITE DESIGN REVIEW

The Site Design Review process shall apply to all new development, redevelopment, expansion, or improvement of all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses in the County.

.1 Types of Site Design Review:

Type 1: Projects, developments and building expansions which meet any of the following criteria:

1. are less than 5,000 sq.ft., and are less than 10% of the square footage of an existing structure.
2. Increase the number of dwelling units in a multi-family project.
3. Increase the height of an existing building.

Type 2: Projects, developments and building expansions which meet any of the following criteria:

1. have an area of 5,000 sq.ft. or more, or are 10% or more of the square footage of an existing structure.
2. Change the category of use (e.g., commercial to industrial, etc.).
3. New off-site advertising signs or billboards.
4. Any project meeting any of the Type 2 criteria shall be deemed a Type 2 Design Review application.

.2 Design Review Process: The Planning Director shall review and decide all Type 1 Site Design Review applications. The Planning Commission shall review all Type 2 Design Review applications. Applications shall be processed in accordance with Sections 1600 and 1700 of this ordinance.

.11 Proposed Site Plan: A complete application for design review shall be submitted, including the following plans, which may be combined, as appropriate, onto one or more drawings, unless it is determined by the Planning Director that the information is not applicable or is not necessary to

determine compliance with County and State standards, and a short explanation will be given for each item so determined:

- A. Site Plan: The site plan shall be drawn at a suitable scale (i.e. 1"=100', 1"=50', or 1"=20') and shall include the following:
1. The applicant's entire property and the surrounding area to a distance sufficient to determine the relationships between the applicant's property and proposed development and adjacent properties and developments.
 2. Boundary lines and dimensions of the property and all proposed property lines. Future buildings in phased development shall be indicated.
 3. Identification information, including names and addresses of project designers.
 4. Natural features which will be utilized in the site plan.
 5. Location, dimensions and names of all existing or platted roads or other public ways, easements, and railroad rights-of-way on or adjacent to the property, city limits, section lines and corners, and monuments.
 6. Location and dimensions of all existing structures, improvements, or utilities to remain, and structures to be removed, all drawn to scale.
 7. Historic structures, as designated in the Comprehensive Plan.
 8. Approximate location and size of storm water retention or detention facilities and storm drains.
 9. Location and exterior dimensions of all proposed structures and impervious surfaces.
 10. Location and dimension of parking and loading areas, pedestrian and bicycle circulation, and related access ways. Individual parking spaces shall be shown.
 11. Orientation of structures, showing entrances and exits.
 12. All exterior lighting, showing type, height, wattage, and hours of use.
 13. Drainage, including possible adverse effects on adjacent lands.
 14. Service areas for waste disposal and recycling.
 15. Noise sources, with estimated hours of operation and decibel levels at the property boundaries.
 16. A landscaping plan which includes, if applicable:
 - a. Location and height of fences, buffers, and screening;

- b. Location of terraces, decks, shelters, play areas, and common open spaces;
 - c. Location, type, size, and species of existing and proposed shrubs and trees; and
 - d. A narrative which addresses soil conditions and erosion control measures.
- B. Grading Plans: A preliminary grading plan indicating where and to what extent grading will take place, including general contour lines, slope ratios, slope stabilization proposals, and natural resource protection proposals.
- C. Architectural Drawings:
- 1. Building elevations and sections;
 - 2. Building materials (color and type);
 - 3. Floor plan.
- G. The proposal will not create any hazardous conditions.

Finding 21: The scale of development proposed for the subject property requires a Type 2 Site Design Review for approval and implementation. The applicant submitted site plans that address all provisions of the Columbia County Zoning Ordinance Section 1550.11. The proposed site plan indicates the location of the communications tower in relation to the subject property, neighboring properties and related natural features. The property is surrounded on all sides by a 2,039 acre forest operation and there is no other development on adjacent properties. The area to be leased is approximately 100' x 100' and will contain the 180 foot tower, communications/equipment structure, 2 propane generators all of which will be enclosed by a 6 foot chain link fence with 3 strands of barb wire on top. The tower site will be accessed via the property's existing logging roads connecting to Highway 47. There are not any significant natural features that will be disturbed as a result of this development. There is not a significant amount of impervious surface associated with the development, therefore a stormwater retention or detention facility is not warranted. Exterior lighting is not indicated in site plans nor is it determined necessary for the 180' communications tower. Minimal grading will be required for siting of the tower. Staff finds that these criterion have been met.

12 Landscaping: Buffering, Screening and Fencing:

A. General Provisions:

- 1. Existing plant materials on a site shall be protected to prevent erosion. Existing trees and shrubs may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the trees or shrubs.
- 2. All wooded areas, significant clumps or groves of trees, and specimen conifers, oaks or other large deciduous trees, shall be preserved or replaced by new plantings of similar size or character.

B. Buffering Requirements:

1. Buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type. When different uses are separated by a right of way, buffering, but not screening, may be required.
2. A buffer consists of an area within a required setback adjacent to a property line, having a width of up to 10 feet, except where the Planning Commission requires a greater width, and a length equal to the length of the property line adjacent to the abutting use or uses.
3. Buffer areas shall be limited to utilities, screening, pedestrian and bicycle paths, and landscaping. No buildings, roads, or parking areas shall be allowed in a buffer area.
4. The minimum improvements within a buffer area shall include:
 - a. One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than 10 feet high for deciduous trees and 5 feet high for evergreen trees, measured from the ground to the top of the tree after planting. Spacing of trees at maturity shall be sufficient to provide a year-round buffer.
 - b. In addition, at least one 5-gallon shrub shall be planted for each 100 square feet of required buffer area.
 - c. The remaining area shall be planted in grass or ground cover, or spread with bark mulch or other appropriate ground cover (e.g. round rock). Pedestrian and bicycle paths are permitted in buffer areas.

C. Screening Requirements:

1. Where screening is required, the following standards shall apply in addition to those required for buffering:
 - a. A hedge of evergreen shrubs shall be planted which will form a four-foot high continuous screen within two years of planting; or,
 - b. An earthen berm planted with evergreen plant materials shall be provided which will form a continuous screen six feet in height within two years. The unplanted portion of the berm shall be planted in lawn, ground cover or bark mulch; or,
 - c. A five foot or taller fence or wall shall be constructed to provide a continuous sight obscuring screen. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.
2. When the new use is downhill from the adjoining zone or use being protected,

the prescribed heights of required fences, walls, or landscape screening along the common property line shall be measured from the actual grade of the adjoining property at the common property line. This requirement may be waived by the adjacent property owner.

3. If four or more off-street parking spaces are required, off-street parking adjacent to a public road shall provide a minimum of four square feet of landscaping for each lineal foot of street frontage. Such landscaping shall consist of landscaped berms or shrubbery at least 4 feet in total height at maturity. Additionally, one tree shall be provided for each 50 lineal feet of street frontage or fraction thereof.
4. Landscaped parking areas may include special design features such as landscaped berms, decorative walls, and raised planters.
5. Loading areas, outside storage, and service facilities must be screened from adjoining properties.

D. Fences and Walls:

1. Fences, walls or combinations of earthen berms and fences or walls up to four feet in height may be constructed within a required front yard. Rear and side yard fences, or berm/fence combinations behind the required front yard setback may be up to six feet in height.
2. The prescribed heights of required fences, walls, or landscaping shall be measured from the lowest of the adjoining levels of finished grade.
3. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.

- E. Re-vegetation: Where natural vegetation or topsoil has been removed in areas not occupied by structures or landscaping, such areas shall be replanted to prevent erosion.

Finding 22: A landscape plan was not submitted with the design review application, nor is it warranted. A 6-foot chain link fence with 3 strands of barbed wire on top will enclose the tower and associated facilities. The chain link fence shall incorporate a method of site obscuring such as installing slats of a natural color such as green or brown that will blend with the surrounding environment. Given the remote location of the tower buffering or a hedge, in addition to the chain link fence, is not warranted. Staff finds that this criterion has been met, with the applicable conditions of approval.

OREGON ADMINISTRATIVE RULES (OAR)

660-006-0025

Uses Authorized in Forest Zones

(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

(h) Television, microwave and radio communication facilities and transmission towers;

(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

© A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

Finding 23: Subject to the review standards of 660-006-0025(5) communications facilities and transmission towers are permitted in forest zones. Throughout the evaluation of this proposal staff has consistently found and determined that the proposed use will not significantly impact surrounding property owners, fire hazards shall be mitigated with 30' Primary Firebreaks, and the proposed structure will not be an obstruction air navigation. The other uses authorized in OAR 660-006-0025(5) (c) include private parks and campgrounds,, reservoirs and water impoundments, home occupations, temporary dwelling for the care of relative, and private fishing lodges, none of which are likely to occur on the Longview Timberlands' 2,039 acres surrounding the proposed 9-1-1 communications tower. Consequently; a written statement/contract protecting these rights on adjacent properties will not be required for this proposal. Staff finds that this criterion has been met.

Continuing with Oregon Administrative Rules (OAR):

660-006-0029

Siting Standards for Dwellings and Structures in Forest Zones

(1) Dwellings and structures shall be sited on the parcel so that:

(a) They have the least impact on nearby or adjoining forest or agricultural lands;

(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

© The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

(d) The risks associated with wildfires are minimized.

(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a

private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

OAR 660-006-0035

Fire Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent shall apply to new dwelling or structures in a forest or agriculture/forest zone:

- (3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

OAR 660-006-0040

Fire Safety Design Standards for Roads

The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

Finding 24: As previously documented in this staff report the communications tower will not adversely affect adjoining forest lands or inhibit accepted forest practices occurring in the immediate vicinity. Minimal land will be disturbed as a result of the establishment of the proposed 911 communications facility site. ODOT has not submitted documentation indicating the existing (logging road) accesses to Highway 47 are not adequate for the proposed new forest use of the subject property, nor will the Mist Birkenfeld Fire District or the County Roadmaster require any improvements to ensure these roads comply with the County Road Standard's Fire Apparatus Access Standards. Staff finds that these criteria can be satisfied with the establishment of the 30' Primary Firebreak Area on all sides of the fenced compound.

COMMENTS:

1. The Mist Birkenfeld Fire District has reviewed the application, has no objections to its approval as submitted, and would like to be notified of the dates the proposed facilities will be constructed.
2. The Roadmaster has reviewed the application and has no objections to its approval as submitted.
3. The Building Official has reviewed the application and has no objections to its approval as

submitted, with comments that a building permit is required.

4. The City of Clatskanie has reviewed the application and has no objection to its approval as submitted.
5. During a June 15, 2009 phone conversation with LDS staff, Tad Petersen, the State Fire Marshall in Astoria stated his office had no concerns with the proposed facility at Clatskanie Mountain provided the facility would minimize potential wildfire risks by utilizing propane, as opposed to diesel, generators and by establishing and maintaining the full 30' Primary Firebreak surrounding the fenced compound in the forest zone.

No other comments have been received from notified nearby property owners or government agencies as of the date of this staff report (June 26, 2009).

STAFF CONCLUSIONS & RECOMMENDATION:

Based upon research about the property and findings of the above staff report (CU 09-17 & DR 09-09), staff recommends **Approval** of this request to site a wireless communication facility to include a 180' telecommunications tower and associated equipment and structures on a 100' by 100' leased fenced compound in the Primary Forest (PF-76) zone, subject to the following conditions:

CONDITIONS OF APPROVAL:

1. This Conditional Use Permit & Design Review shall remain valid for two (2) years from the date of the final decision. This permit shall become void, unless a building permit has been issued and the proposal has commenced in conformance with all conditions and restrictions established herein within the two-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.
2. Applicant shall enter into the attached **Development Agreement** (Attachment A) with Columbia County, in which Applicant agrees to demolish or otherwise remove, or cause to be demolished or otherwise remove, the tower and associated facilities from the subject property when the tower and has no more useful life as a wireless communications services communication tower. These documents shall be in the applicant name as provided to the County on the submitted application forms for CU 09-17 & DR 09-09. To assure the faithful compliance with the Development Agreement, the Agreement shall specify that Applicant shall place in escrow or secure a bond for the benefit of the County, in the amount of 125% of the estimated cost of demolishing or otherwise removing the tower at the time the Agreement is signed. The bond or escrow deposit shall be continued for the lease period. Upon sale, assignment, sublease, or any other transfer of interest in the tower, Applicant shall agree to require the new owner, assignee, sublessee, or other interested party, to post such bond or deposit such an amount into an escrow account for the remaining lease period before Applicant's bond is release or escrow deposit is returned to Applicant. Upon expiration of the lease period, if the lease is renewed, the bond or escrow deposit shall continue for the additional lease period. The County shall determine when the tower has no more useful life as a PCS communication tower when evidence suggests that no

electricity or other power source is being supplied to the tower, the lease has been terminated, or other like evidence suggests that the tower is no longer being used to provide wireless communication coverage.

3. A primary fuel-free fire break shall be required around the perimeter of the communications facility pursuant to OAR 660-006-0035 and Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, dated March 1991 and published by the Oregon Department of Forestry, or Columbia County Equivalent Fire Buffers approved by the Board Order 239-97.
4. All lighting associated with the communication facility, not required by the Oregon Department of Aviation for airplane safety, shall be shielded to prevent glare onto neighboring properties and rights-of-way.
5. The responsibility for protection from wildlife damage on the project site shall be assumed by the communication facility's owner/operator.
6. The 6' high chain link fence surrounding the communication facility shall include full-height sight-obstructing slats that are brown or green in color.
7. All activity, equipment and storage associated with the communication facility shall be kept entirely within the fence enclosed area of the facility.
8. The following shall be completed prior to issuance of any Building Permit:
 - a. The site plan shall demonstrate compliance with the primary fuel-free fire break requirement of Condition No. 3 above.
 - b. Applicant shall submit proof of an executed and recorded Telecommunications Ground Lease with Longview Timberlands, LLC that includes a long-term non-exclusive easement for ingress/egress using the existing private access road(s) starting from Highway 47 up to and including the 100' by 100' leased property.
 - c. The recorded Telecommunications Ground Lease shall include a non-exclusive easement for utilities to be extended to the proposed communications facility lease site.
 - d. The applicant shall provide documentation from the Oregon Department of Aviation indicating compliance with applicable State Aviation rules and regulations.

Attachments:

Attachment A - Development Agreement
Application for CU 09-17 and DR 09-09 with maps
May 8, 2009 Letter from Oregon Department of Aviation

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Appointing a New)
Administrator of the Columbia County)
Ambulance Service Ordinance)
_____)

AMENDED RESOLUTION NO. 66 - 2009

WHEREAS, on September 19, 1990, the Board of County Commissioners for Columbia County, Oregon, adopted Ordinance No. 90-23, the Ambulance Service Ordinance; and

WHEREAS, the Ordinance provides that the administrator of the Ordinance shall be designated by resolution of the Board of County Commissioners; and

WHEREAS, the Columbia County Emergency Management Director has the knowledge and experience necessary to administer the Ordinance and would be an appropriate person to be appointed as the Administrator of the Ordinance; and

WHEREAS, Derek White has been appointed the Interim Emergency Management Director by the Board effective July 13, 2009; and

WHEREAS, it is appropriate that the Interim Emergency Management Director be appointed as Administrator of the Ordinance until an Emergency Management Director has been hired; and

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- 1) Derek White, Interim Emergency Management Director, is hereby appointed as the Administrator of the Columbia County Ambulance Service Ordinance until such time as an Emergency Management Director is appointed.
- 2) Thereafter, the Emergency Management Director shall be appointed as the Administrator of the Ambulance Service Ordinance without further action of the Board. [Amended to correct scrivener's errors.]

DATED this 10th day of November, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Chair

By: _____
Commissioner

By: [Signature]
Commissioner

Approved as to form

By: [Signature]
Office of County Counsel