

W. T. A.

**AGENDA COVER MEMO**

**DATE OF MEMO:** October 6, 2004

**FIRST READING:** October 20, 2004

**HEARING DATE:** November 3, 2004

**TO:** Board of County Commissioners

**DEPT.:** Public Works Department/Land Management Division

**PRESENTED BY:** Steve Hopkins, AICP

**AGENDA ITEM TITLE:**

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE APPLICABLE STANDARDS FOR TELECOMMUNICATION FACILITIES (LC 16.264).

**STRATEGIC PLAN:**

This amendment implements the goals of citizen participation and appropriate community development, as identified in the Lane County Strategic Plan.

**I. MOTION**

MOVE TO ADOPT ORDINANCE No. 17-04.

**II. ISSUE OR PROBLEM**

The telecommunication regulations have been reformatted and three issues have been resolved.

**III. DISCUSSION**

**A. Background**

On July 30, 2003, the Board approved a work program for the newly expanded long-range planning program. As part of that work program, the Board identified three issues in the current telecommunications ordinance. The issues are:

1. Notice on large forestlands. Refer to proposed LC 16.264(3)(j). Construction of a new tower or collocation requires notice to landowners within ½ mile (2640 feet) of the leased area. Previously, notice was required on all adjacent land under the same ownership. For a site on federal or state owned land, this resulted in a notification list that contained hundreds of names. Some of those people owned land miles from the tower site.

2. Peer review of radiation limits and tower design. Refer to proposed LC 16.264(4)(c)(iv) and (viii). A registered engineer must certify the proposal will meet structural standards and FCC radiation limits. Mona Linstromberg has voiced concerns about not having additional engineers verify the emissions and structural requirements of new towers and collocations. The engineer's stamp is legally binding. The extra review would be redundant and costly.
3. Signature of the USFS/BLM on the land use application. Refer to proposed LC 16.264(4)(c)(v). A lease agreement with the federal government may be substituted for the signature of the landowner.

The entire chapter has been reformatted for clarity, but the wording from the current code has been retained whenever possible.

On July 6, 2004, the LCPC held a public hearing. After taking public testimony, the LCPC requested additional information. The hearing was closed on July 13, 2004, except for comments on the requested information, which were allowed until August 10, 2004. The LCPC held deliberations on September 7, 2004, and recommended approval of the amendment.

## **B. Analysis**

There were several issues identified in the public hearing. Two of those issues were peer review and change-outs.

### *Peer review.*

Mona Linstromberg voiced concern that an engineer paid by the applicant may not be impartial when reviewing the structural plans and emission limits of a proposed tower or collocation. She has proposed including language similar to what is in Section 9.5750(11) of the Eugene City Code. This section states:

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

The proposed amendment requires an engineer to verify the emissions from the tower do not exceed FCC limits, and that the tower is capable of supporting the collocation. Hiring another engineer would be redundant for structural review since a building permit is required. For the emissions statement, the engineer who knowingly submits false information can be held responsible. Neither the LCPC nor staff recommend this change.

### *Change-outs*

A change-out is the replacement of a collocation or a tower with similar equipment. This is proposed by Ron Fowler. According to the Building Official, a change-out would require a building permit. For planning purposes, there is no way to know if the new

equipment is similar to the existing equipment unless there is some type of review. The amendment can be altered to include an abbreviated review process for change-outs that are similar to existing equipment, or for placement of mandated equipment, such as a GPS unit. The LCPC did not recommend this change. In addition, staff does not recommend allowing change-outs without planning review.

There were additional comments from the public that requested revisions to the ordinance that exceeded the scope of the Board's directive. The Lane County Planning Commission did not recommend including any of those items in the amendment.

### **C. Alternatives/Options**

1. Adopt the amendment as presented.
2. Adopt the amendment with changes.
3. Deny the amendment.

### **D. Recommendations**

On September 7, 2004, the Lane County Planning Commission voted 4-1 to recommend approval of the amendment. Staff also recommends approval.

### **E. Timing**

The amendment does not contain an emergency clause and will become effective 30 days after adoption.

## **IV. IMPLEMENTATION/FOLLOW-UP**

A notice of the County Commissioners action will be provided to DLCD.

## **V. ATTACHMENTS**

Ordinance No. 17-04 with attachments, including Exhibit "A", Findings of Fact.

1. Current code with issues identified.
2. Summary outline.
3. Current code with references to the proposed amendment.
4. Proposed amendment with references to the current code.
5. Record of testimony.
6. Written Comments.
  - a. Mona Linstromberg 6/28
  - b. Paul Slotemaker, 7/2

- c. Ron Fowler, 7/12
  - d. Mona Linstromberg 7/12
  - e. LeAndra Bell Matson 7/13
  - f. Ron Fowler, 7/26
  - g. Ron Fowler, 8/4
  - h. Mona Linstromberg 8/9
  - i. Mona Linstromberg 8/16
  - j. Ron Fowler, 9/29
7. Staff Response to Comments
- a. Mona Linstromberg 7/12
  - b. Ron Fowler, 8/4
  - c. Ron Fowler, 9/29
8. LCPC minutes, July 6, 2004.
9. LCPC minutes, Sept. 7, 2004.

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 17-04

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE  
CODE TO REVISE THE APPLICABLE STANDARDS FOR  
TELECOMMUNICATION FACILITIES (LC 16.264)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

**REMOVE THESE SECTIONS**

16.264  
as located on pages 16-579 through 16-583  
(a total of 5 pages)

**INSERT THESE SECTIONS**

16.264  
as located on page 16-579 through 16-584  
(a total of 6 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions and additions is to revise the applicable standards for telecommunication facilities. (LC 16.264)

While not part of this Ordinance, findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this decision.

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

\_\_\_\_\_  
Chair, Board of County Commissioners

\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 10-5-2004 Lane County

  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

(9) Remedies Cumulative. It is the intent of this chapter that the remedies provided be cumulative and not mutually exclusive. *(Revised by Ordinance No. 7-87, Effective 6.17.87; 1-93, 4.16.93)*

### ENFORCEMENT RURAL COMPREHENSIVE PLAN

#### 16.263 Failure to Comply.

Failure to comply with any of the requirements of this chapter may be subject to an administrative civil penalty as provided by LC 5.017. Failure to comply with a condition of an approved Special Use application or other discretionary permit issued pursuant to the requirements of any of the sections of this chapter may also be subject to an administrative civil penalty. Continued failure to comply with this chapter 10 days from the mailing of the notice of the failure to comply by registered or certified mail to the last known address of the alleged responsible person or after personal service, and continued failure to comply after an order has been entered constitutes a separate failure to comply for each day the occurrence continues. The Manager of the Lane County Land Management Division, Department of Public Works, or said Manager's duly authorized representatives, shall have the authority to issue a notice of failure to comply. *(Revised by Ordinance No. 7-87, Effective 6.17.87; 1-93, 4.16.93)*

### TELECOMMUNICATION TOWER STANDARDS RURAL COMPREHENSIVE PLAN

#### 16.264 Telecommunication Tower Standards.

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

- (a) Recognizes the public need for provision of telecommunication facilities;
- (b) Allows appropriate levels of service to be obtained throughout the County;
- (c) Minimizes the number of transmission towers throughout the County;
- (d) Encourages the collocation of telecommunication facilities; and
- (e) Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the county. Nothing in this section shall preclude collocation opportunities nor adversely affect multiple use towers. Nothing in this section shall apply to amateur radio antennae, or facilities used exclusively for the transmission of television and radio signals.

(2) Definitions. As used in LC 16.264, the following words and phrases mean:  
Ancillary facilities. The buildings, cabinets, vaults, closures and equipment required for operation of telecommunication facilities including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.  
Antennae. An electrical conductor or group of electrical conductors that transmit or receive radio signals, excluding amateur radio antennae.  
Attachment. An antenna or other piece of related equipment affixed to a transmission tower.

Collocation. Placement of an antenna or related telecommunication equipment on an existing structure or building where the antennas and all supports are located on the existing structure or building.

Provider. A person in the business of designing and/or using telecommunication facilities including cellular radiotelephones, personal communications services, enhanced/specialized mobile radios, and commercial paging services.

Telecommunication Facility. A facility designed and/or used for the purpose of transmitting, receiving, and relaying voice and data signals from antennae, related telecommunication equipment, towers and ancillary facilities. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

Tract. A unit of land comprised of adjacent parcels and lots under the same ownership.

Transmission Tower. The structure, such as a monopole or lattice framework, designed to support transmitting and receiving antennae and related telecommunication equipment. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers." (*Revised by Ordinance No. 4-02, Effective 4.10.02*)

(3) Standards applicable to all telecommunication facilities.

(a) Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level.

(b) Based on the existing conditions and vegetation at the site, telecommunication facilities shall be designed and constructed to reduce visibility of the facilities. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.

(i) The transmission tower shall be surfaced in a non-reflective material that minimizes glare and is colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background.

(ii) The antenna, related telecommunication equipment and ancillary facilities shall be surfaced in non-reflective material to match the transmission tower. If not attached to a transmission tower, they shall be colored similar to the adjacent background.

(c) Consideration shall be given to other sites and equipment that would have less visual impact than those proposed. The applicant shall demonstrate that less intrusive sites and equipment are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations.

(d) No lighting of telecommunication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agencies. Required lighting shall be shielded from the ground to the extent it does not violate state or federal requirements.

(e) Equipment areas shall be enclosed by a chain link fence or equivalent.

(f) Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited.

(g) When located within 14,000 feet of an airport, the telecommunication facility shall not penetrate the imaginary surfaces of that airport, unless the airport approves that encroachment.

(h) Maintenance and repair of a lawfully existing telecommunication facility does not require a land use application approval.

(i) Within a forest zone, the following standards shall apply:

(i) A fuel break shall extend 50 feet surrounding ancillary facilities containing propane or gas powered generating equipment. Except for trees, vegetation within the fuel break shall be maintained at less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet above ground) branches. Nonflammable materials (i.e., gravel) shall be placed within 30 feet surrounding ancillary facilities that contain propane or gas powered generating equipment.

(ii) Private roads and driveways that provide access to transmission towers in the forest zones shall comply with the Fire Safety Design Standards of LC 16.211(8)(e)(i) through (vii).

(j) Notice. In lieu of the notice area in LC 14.100(4) and 14.300(3)(d), when the application involves a leased area notice shall be sent to landowners and applicable community organizations recognized by the Lane County Board of Commissioners in LM 3.513, within ½ mile of the leased area. If the property does not contain a leased area, notice shall be sent as required by LC 14.100(4) or 14.300(3)(d), as applicable.

(4) Standards for a new or replacement transmission tower.

(a) Review & notice process. An application for placement of a transmission tower requires submittal of an application in accordance with LC 14.050 and a hearing with the Director in accordance with LC 14.300, excluding LC 14.300(3)(d) for applications involving a leased area. To be approved, the application must comply with LC 16.264(3) and 16.264(4).

(b) Neighborhood meeting. Prior to submittal of a land use application, the applicant shall conduct a neighborhood meeting in the general area of the proposed telecommunication tower.

(i) The applicant shall, at least fourteen (14) days but not more than thirty (30) days in advance of the meeting, mail notice of the meeting in conformance with 16.264(3)(j). In addition, the notice shall be sent to tenants living within the noticed area. The notice shall state the date, time, and location of the meeting and that the topic of the meeting is to discuss the proposed location of a telecommunication facility on the subject property and to hear from area residents about any concerns they might have with the proposal. The notice shall state the Lane County map and tax lot numbers for the subject property and the address for the subject property.

(ii) The applicant shall, at least ten (10) days in advance of the meeting, publish notice of the meeting in a newspaper of general circulation serving the area. The published notice shall contain the information required by LC 16.264(4)(b)(i) for the mailed notice.

(iii) Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents.

(c) Required submittals. The application shall contain the following information:

(i) A site plan, drawn to scale, showing:

- (A) Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower;
- (B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site; and
- (C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road.

(ii) A description of the tower design and height. The description shall include:



(A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower and ancillary facilities;

(B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate;

(C) Documentation in the form of lease agreements for a minimum of two collocations on the proposed telecommunication tower.

(iii) If the transmission tower is within 14,000 feet of an airport, show the tower height in relation to the imaginary surfaces for that airport.

(iv) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by any proposed collocations, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).

(v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(4)(f)(iv). A lease agreement or similar authorization for the proposed use from the federal government that includes a removal requirement may be substituted for applications involving telecommunication facilities located on federal land.

(vi) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement or similar authorization for the proposed use from the federal government may be substituted for applications involving telecommunication facilities located on federal land.

(vii) A map of all transmission towers and properties that have obtained approval for a transmission tower, within ten (10) miles of the proposed facility.

(viii) Certification by an Oregon-registered professional engineer that the design of the tower will support at least three users (the primary user and two collocation sites).

(ix) Evidence of the notification and the neighborhood meeting.

(x) A performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the telecommunication tower, ancillary facilities, and restoration of the site.

(xi) Other information requested in the application form provided by the Director.

(d) Performance standards. The transmission tower shall comply with the following:

(i) The tower shall be necessary to provide service to the intended area. The applicant shall provide evidence the existing and approved telecommunication facilities within ten miles would not provide an adequate level of service, based on the following:

(A) Lack of useable and compatible collocation space;

(B) Inability to meet service coverage area and capacity needs; or

(C) Technical reasons such as channel proximity and inter-modulation.

(ii) The transmission tower shall be designed to accommodate at least three users (the primary user and two collocation sites).

(iii) The cumulative radio frequency emissions from all the collocations on a single structure shall not exceed the maximum exposure limits of the FCC.

(iv) When access is provided by a private road, all necessary access easements and roadways shall be maintained.

(v) Prior to land use approval of a building permit for a telecommunication tower, the applicant shall:

(A) Provide documentation showing the FAA, the ODA, and any other applicable state agency, have approved the tower, or that the tower does not require approval by these agencies;

(B) When the tower is within 14,000 feet of an airport, provide the FAA registration number for the transmission tower, or documentation showing the tower does not require registration.

(e) Setbacks and separation requirements. The transmission tower shall be setback from property lines the greater distance of either the height of the tower or the setback of the zone. The minimum separation from residences and schools also shall be the greater distance of either:

(i) 1200 feet from any residence or school not on the property owner/applicant's tract; or

(ii) As far away from residences and schools not on the property owner/applicant's tract as it is sited from the closest dwelling on the property owner's/applicant's tract.

(f) Expiration and Renewal of the Special Use Permit.

(i) If a telecommunications tower is not placed into service within 2 years of issuance of a building permit, the special use permit shall expire.

(ii) In lieu of LC 14.700(4), all conditions of approval must be completed by December 31st of the year following the date of final special use permit approval. No time extensions are allowed. The special use permit shall be renewed every two (2) years thereafter.

(iii) To renew the special use permit, an application shall be submitted in accordance with LC 14.050. To be approved, the application shall contain documentation showing:

(A) The telecommunications facility has complied with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC); and

(B) The tower continues to meet any applicable conditions of approval by Lane County, including provision of an adequate current performance bond for removal of the facility and restoration of the site.

(iv) If a transmission tower authorized under this section is not used as a telecommunication facility for a period of one (1) year, the special use permit shall expire and the tower shall be removed.

(5) Collocation. A new or replacement collocation shall comply with the following:

(a) Review process. Collocation requires submittal of a land use application pursuant to LC 14.050. Director approval is required pursuant to LC 14.100, excluding LC 14.100(4) for applications involving a leased area. To be approved, the application must comply with LC 16.264(3) and 16.264(5).

(b) Required submittals. An application for a collocation shall include the following information:

(i) A site plan, drawn to scale, showing:

(A) Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower;

(B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site; and

(C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road.

- (ii) A description of the tower design and height. The description shall include:
- (A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower, collocation, and ancillary facilities;
  - (B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate.
- (iii) If the collocation is within 14,000 feet of an airport:
- (A) Show the height of the collocation in relation to the imaginary surfaces for that airport; and
  - (B) Provide the FAA registration number for the tower structure, or documentation showing that the tower does not require registration.
- (iv) Documentation demonstrating that the Oregon Department of Aviation has reviewed the proposal. When the proposed collocation does not increase the height of the tower, documents from the ODA approving the tower may be substituted.
- (v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(5)(c)(ii). A lease agreement or similar authorization for the proposed use from the federal government that includes a removal requirement may be substituted for applications involving telecommunication facilities located on federal land.
- (vi) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement or similar authorization for the proposed use from the Federal government may be substituted for applications involving telecommunication facilities located on federal land.
- (vii) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by the proposed collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).
- (viii) Certification by an Oregon-registered professional engineer that the telecommunication facility will support the proposed collocated equipment.
- (ix) Documentation showing that the applicant has an FCC license for the geographic region and for the service proposed by the collocation.
- (x) A performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the collocation, ancillary facilities, and restoration of the site to the way it appeared before collocation approval.
- (xi) Other information requested in the application form provided by the Director.
- (c) Performance standards. Collocations shall comply with the following:
- (i) All collocations on the structure shall comply with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).
  - (ii) Any collocation and ancillary facilities authorized under this subsection shall be removed after one year of non-use and the approval shall expire.
  - (iii) The provider shall maintain an FCC license for the geographic region and for the service provided by the collocation.

## FINDINGS OF FACT

**Finding 1. Lane Code 16.252(2):** This subsection of Lane Code requires that the adoption of amendments to land use regulations implementing the Lane County Rural Comprehensive Plan (RCP), and components thereto, be by ordinances. The adoption of Ordinance No. 17-04 would amend the Lane Code 16.264 by ordinance and therefore complies with this code requirement.

**Finding 2. Lane Code 16.252(2).** This section of Lane Code requires Ordinance No. 17-04 to comply with applicable state laws and the Statewide Planning Goals. Based on the findings below, Ordinance No. 17-04 complies with applicable state laws and Statewide Planning Goals.

- a. Statewide Planning Goal 1 ensures citizen participation and Goal 2 requires, “Opportunities shall be provided for review and comment by citizens during the preparation, review and revision of plans and implementation ordinances.” Lane County followed its acknowledged citizen involvement program and provided the opportunities identified below for citizens to review and comment on the preparation, review and revision of Ordinance No. 17-04. These opportunities were adequate to comply with Goals 1 and 2.
  - Beginning June 16, 2004, copies of the proposed changes to LC 16.264 were available at the LMD for distribution to citizens.
  - A legal ad was published in the *The Register-Guard* on June 16, 2004, providing notice of the Lane County Planning Commission (LCPC) public hearing in Harris Hall of the Lane County Public Service Building on July 6, 2004.
  - On July 6, 2004, LCPC held a public hearing in Harris Hall of the Lane County Public Service Building in Eugene to receive citizen comments on proposed amendments to Lane Code Chapter 16.264. The LCPC also requested additional information regarding the proposed changes to the Lane Code.
  - At the public hearing on July 6, 2004, Mona Linstromberg requested an extension to submit additional comments into the record. The LCPC granted the request and kept the record open until July 13, 2004.
  - On July 6, 2004, the LCPC tabled the item to September 7, 2004.
  - On August 3, 2004, a packet containing the requested information was mailed to the LCPC members.
  - On August 10, 2004, the public comment period on the requested information ended.

- On September 7, 2004, the LCPC voted 4-1 to recommend approval of the amendment to the Board of County Commissioners.
  - On July 20, 2004, at least 45 days in advance of the Board of County Commissioners’ November 3, 2004 public hearing, LMD mailed a 45-day post-acknowledgment amendment notice and two copies of the proposed changes to Lane Code 16.264 to DLCDC.
  - At least 20 days in advance of the First Reading, a legal ad was published in the *The Register-Guard* (on September 29, 2004) providing notice of the Board of Commissioners’ First Reading on October 20, 2004, and the Second Reading and public hearing on November 3, 2004 in Harris Hall of the Lane County Public Service Building.
  - On November 3, 2004, a public hearing was held by the Board of Commissioners in Harris Hall of the Lane County Public Service Building of Eugene to receive citizen comments on the proposed amendments to Lane Code Chapter 16.264.
- b. Ordinance No. 17-04 acknowledges citizen comments received during citizen information meetings, written testimony submitted into the record, and testimony during the Lane County Planning Commission public hearings on July 6, 2004. Board action also considers the testimony and evidence received in the record and at the November 3, 2004 public hearing. These findings establish an adequate basis for a Board action taken to enact Ordinance No. 17-04 and comply with Goal 2.
- c. The changes to the standards made applicable to telecommunication facilities by Ordinance No. 17-04 do not otherwise affect compliance with Statewide Planning Goals 3-19.

**Finding 3. Lane Code 16.252(2).** This subsection of Lane Code requires the Board to find the amendment achieves the general purposes of LC Chapter 16, is consistent with applicable RCP elements or components and is not contrary to the public interest. Ordinance No. 17-04 is appropriate and proper as set forth in subsections III(A) and III(B) of the staff report, dated October 6, 2004, prepared for the October 20, 2004 and November 3, 2004 Board meetings, and incorporated here by this reference. By resolving the three issues identified by the Board, this amendment will promote public participation on the planning process. No one has identified any inconsistency with the purposes of LC Chapter 16 or any RCP elements and components. For those reasons and the reasons stated above, the amendments are not contrary to the public interest and should be adopted.

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**Bold** indicates material being added  
~~Strikethrough~~ indicates material being deleted  
16.26316.264 Lane Code

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(9) Remedies Cumulative. It is the intent of this chapter that the remedies provided be cumulative and not mutually exclusive. (*Revised by Ordinance No. 7-87, Effective 6.17.87; 1-93, 4.16.93*)

## ENFORCEMENT RURAL COMPREHENSIVE PLAN

### 16.263 Failure to Comply.

Failure to comply with any of the requirements of this chapter may be subject to an administrative civil penalty as provided by LC 5.017. Failure to comply with a condition of an approved Special Use application or other discretionary permit issued pursuant to the requirements of any of the sections of this chapter may also be subject to an administrative civil penalty. Continued failure to comply with this chapter 10 days from the mailing of the notice of the failure to comply by registered or certified mail to the last known address of the alleged responsible person or after personal service, and continued failure to comply after an order has been entered constitutes a separate failure to comply for each day the occurrence continues. The Manager of the Lane County Land Management Division, Department of Public Works, or said Manager's duly authorized representatives, shall have the authority to issue a notice of failure to comply. (*Revised by Ordinance No. 7-87, Effective 6.17.87; 1-93, 4.16.93*)

## TELECOMMUNICATION TOWER STANDARDS RURAL COMPREHENSIVE PLAN

### 16.264 Telecommunication Tower Standards.

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

- (a) Recognizes the public need for provision of telecommunication facilities;
- (b) Allows appropriate levels of service to be obtained throughout the County;
- (c) Minimizes the number of transmission towers throughout the County;

(d) Encourages the collocation of telecommunication facilities; and  
(e) Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the county. Nothing in this section shall preclude collocation opportunities nor adversely affect multiple use towers. Nothing in this section shall apply to amateur radio antennae, or facilities used exclusively for the transmission of television and radio signals; ~~however, these uses are not exempted from applicable provisions in other sections of the code, including the requirement to obtain a conditional use permit to construct transmission facilities or modify existing installations.~~

(2) Definitions. As used in LC 16.264, the following words and phrases mean:  
Ancillary facilities. The buildings, cabinets, vaults, closures and equipment required for operation of telecommunication facilities including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.

Antennae. An electrical conductor or group of electrical conductors that transmit or receive radio signals, excluding amateur radio antennae.

Attachment. An antenna or other piece of related equipment affixed to a transmission tower.

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**Collocation.** Placement of an antenna or related telecommunication equipment on an existing structure or building where the antennas and all supports are located on the existing structure or building.

**Provider.** A person in the business of designing and/or using telecommunication facilities including cellular radiotelephones, personal communications services, enhanced/specialized mobile radios, and commercial paging services.

**Telecommunication Facility.** A facility designed and/or used for the purpose of transmitting, receiving, and relaying voice and data signals from antennae, related telecommunication equipment, towers and ancillary facilities. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

**Tract.** A unit of land comprised of adjacent parcels and lots under the same ownership.

**Transmission Tower.** The structure, such as a monopole or lattice framework, designed to support transmitting and receiving antennae and related telecommunication equipment. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers." (*Revised by Ordinance No. 4-02, Effective 4.10.02*)

~~(3) Application, Information and Processing Requirements. A new or replacement telecommunication facility may be allowed provided an application is submitted for Director approval pursuant to LC 14.050, the application complies with the requirements specified in LC 16.264(3)(6) below, and provided the application is approved pursuant to the requirements of LC 14.300 for a hearing with the Director. Notice of the hearing shall be provided pursuant to the requirements of LC 14 and to the owners of property within one half mile radius of the exterior boundaries of the subject property and any property contiguous to and in the same ownership as the subject property. (Maintenance and repair of lawfully (per LC Chapter 16) existing uses and development is considered a permitted use.)~~

~~(a) Prior to submission of an application, the applicant shall provide notice and hold a meeting with area property owners as required in LC 16.264(3)(a)(i) (iii), below. The applicant shall submit evidence of the notification and meeting with the application. The application shall include evidence of compliance with this requirement.~~

~~(i) The applicant shall, at least fourteen (14) days but not more than thirty (30) days in advance of the meeting, mail notice of the meeting to property owners and tenants living on property that would otherwise be notified pursuant to the requirements of LC 14.100 and to the applicable community organization recognized by the Lane County Board of Commissioners in Lane Manual 3.513 within the area in which the proposed site is located. The notice shall state the date, time, and location of the meeting and that the topic of the meeting is to discuss the proposed location of a telecommunication facility on the subject property and to hear from area residents about any concerns they might have with the proposal. The notice shall state the Lane County map and tax lot numbers for the subject property and the address for the subject property.~~

~~(ii) The applicant shall, at least ten (10) days in advance of the meeting, publish notice of the meeting in a newspaper of general circulation serving the area. The published notice shall contain at least the same information as required by LC 16.264(3)(a)(i) above for the mailed notice.~~

~~(iii) The applicant shall conduct a meeting within the general area of the proposed location of the telecommunication facility with the area property owners, tenants living on surrounding properties and interested parties to discuss the proposed~~

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~~application to allow community concerns regarding the proposed tower to be addressed. Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents.~~

- ~~(b) An application shall include the following information:~~
- ~~(i) A description of the proposed tower location, design and height. When the proposed tower location is within 14,000 feet of an airport, the applicant shall show the tower height in relation to the imaginary surfaces for that airport and demonstrate that the tower does not penetrate those surfaces.~~
  - ~~(ii) The engineered design capacity of the tower in terms of the number and type of antennas it is designed to accommodate and constructed in such a manner as to optimize performance and minimize visual impact;~~
  - ~~(iii) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with land use and building permit application;~~
  - ~~(iv) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(7)(d);~~
  - ~~(v) Documentation in the form of lease agreements for the telecommunications facility that provide space for a minimum of three (3) users (the primary user and two (2) collocation sites);~~
  - ~~(vi) Documentation of lease agreements with a Federal Communications Commission (FCC) licensed provider;~~
  - ~~(vii) Documentation demonstrating that the Federal Aviation Administration (FAA) has reviewed and commented on the proposal, and the Oregon Department of Aviation has reviewed and provided comment on the proposal.~~
  - ~~(viii) Plans showing how vehicle access will be provided and documents demonstrating that necessary easements have been obtained; and~~
  - ~~(ix) Other information requested in the application form provided by the Director, such as but not limited to, peer review by an independent engineering firm of the proposed telecommunications facility system design.~~
- ~~(c) The applicant shall identify all existing towers, or properties that have obtained approval for a tower within ten (10) miles of the proposed tower location. The applicant shall provide evidence that collocation at all existing or approved towers within ten miles is not feasible, and provide documentation for locating a new tower, based on either of the following:~~
- ~~(i) Lack of useable and compatible collocation space;~~
  - ~~(ii) Inability to meet service coverage area and capacity needs; or~~
  - ~~(iii) Technical reasons such as channel proximity and inter-modulation.~~
- ~~(d) The tower shall comply with all required State of Oregon and Federal licenses for telecommunication tower facilities. The application shall include a certification that the completed installation will comply with all Federal, state and local standards. The applicant shall submit documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).~~

~~(e) Factual information addressing compliance with requirements in LC 16.264 (4) and (5), below.~~

~~(4) Collocation Requirements for Telecommunication Facilities. Collocation of a telecommunications facility on an existing structure or building is not subject to the land use application and approval provisions of LC 16.264 (3). However, collocation of a new or replacement telecommunication facility may be allowed provided a land use~~



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~~application is submitted pursuant to LC 14.050 and approved pursuant to LC 14.100. The application for collocation may be allowed provided the requirements in LC 16.264(4)(a) and (b) are met.~~

~~(a) An application for collocation of a new or replacement telecommunications facility shall provide the information required in LC 16.264(3)(b)(i)-(ix) and (d).~~

~~(b) Factual information addressing compliance with requirements in LC 16.264 (5) and (6), below.~~

~~(5) Siting Standards for Height, Setbacks and Access to Telecommunication Facilities. The following standards shall apply to all new or replacement telecommunication facilities.~~

~~(a) Consideration shall be given to other sites in the service area that would have less visual impact than the site proposed as viewed from nearby residences and that the applicant has demonstrated that less intrusive sites are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations.~~

~~(b) Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level.~~

~~(c) Directional / parabolic antennae shall be selected to optimize performance and minimize visual impact.~~

~~(d) The setbacks for a tower shall be the setback otherwise allowed for all other structures in the zone except that:~~

~~(i) The tower shall be setback at least the height of the tower from an adjacent property line.~~

~~(ii) A tract (contiguous property under the same ownership) shall be considered as a single parcel for purposes of setbacks.~~

~~(e) The proposed telecommunication tower is sited at least 1200 feet from nearby residences and schools not on the property owner/applicant's tract or as far away from nearby residences and schools as it is sited from the closest dwelling on the property owner/applicant's tract, whichever is greater.~~

~~(f) If access is obtained from a private road, the applicant shall be responsible as required by Oregon law for providing for improvements and maintenance to the private road that provides access to the subject property. In general, the applicant is responsible for impacts to the private road as a result of activities conducted by the applicant. The applicant shall maintain all necessary access easements and maintenance agreements for the private road as required by State law.~~

~~(g) In Forest zones, access from private roads and driveways shall comply with the Fire Safety Design Standards of LC 16.211(8)(e).~~

~~(h) In Forest zones, a fuel break shall extend 50 feet in all directions surrounding ancillary facilities containing propane or gas powered generating facilities. Vegetation within the fuel break may allow low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Nonflammable materials (i.e., rock) shall be placed next to the ancillary facilities.~~

~~(6) Standards for Construction, Lighting, Signage and Fencing of Telecommunication Facilities. The following standards shall apply to all new or replacement telecommunication facilities.~~

~~(a) The applicant shall submit a site specific study of the tower site identifying the proposed color and surfacing of the tower and associated fixtures. Based~~

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~~on the existing conditions and vegetation at the proposed site, the tower must be constructed with material to reduce visibility of the tower by:~~

~~(i) Use of non-reflective materials that minimize glare and are colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation;~~

~~(ii) Use of non-reflective materials painted to match the existing or attached structure to blend into the surrounding environment; and~~

~~(iii) Antenna and associated equipment located on the same structure as the antenna shall be surfaced in a non-reflective material color to match the structure on which it is located.~~

~~(b) An Oregon registered professional engineer shall certify that the construction of the tower complies with building code structural standards.~~

~~(c) Prior to issuance of building permits for the tower, the applicant shall submit to the Building Official documentation from the Federal Aviation Administration, the Oregon Department of Aviation and any other local or state agency with jurisdiction that the tower has been reviewed and is not determined to be a hazard if constructed as proposed.~~

~~(d) No lighting of communication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agency. Required lighting shall be shielded from the ground, to the extent practicable. Shielding of tower lighting onto nearby properties shall be installed as part of construction of the tower.~~

~~(e) Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited.~~

~~(f) Equipment areas must be enclosed by a chain link fence or equivalent with or without slats for screening.~~

~~(7) Permit Renewal and Expiration Requirements for Telecommunication Towers.~~

~~(a) Approved applications for telecommunication towers shall be valid until December 31<sup>st</sup> of the year following the date of final Lane County approval and shall be renewed every two (2) years, thereafter.~~

~~(b) Permit renewal is based upon the applicant submitting documentation that the telecommunications facility has complied with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC) and continues to meet any applicable conditions of approval by Lane County, including provision of an adequate current performance bond for removal of the facility and restoration of the site.~~

~~(c) If a telecommunications tower is not constructed and placed into service within 2 years of issuance of an approved permit, the land use approval expires.~~

~~(d) If the tower is discontinued from being used as a telecommunication facility for a period of one (1) year, the tower shall be removed. To insure removal of the telecommunication facility, the applicant shall, as a condition of the Special Use Permit, provide a performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the telecommunications facility and restoration of the site at the time the facility is removed. The property owner shall be notified of the determination of discontinued use and the property owner shall be responsible for removal of the telecommunication tower and equipment facilities and securing any required demolition permits within the six (6) months immediately following cessation of~~

~~the operation of the telecommunication facility. The property owner shall bear the ultimate responsibility for removal of the facilities and shall sign a document that is recorded in the deed history of the subject property with Lane County Deeds and Records recognizing such responsibility. Any Special Use Permit granted for the property will automatically expire upon removal. (Revised by Ordinance 4-02, Effective 4.10.02)~~

**(3) Standards applicable to all telecommunication facilities.**

**(a) Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level.**

**(b) Based on the existing conditions and vegetation at the site, telecommunication facilities shall be designed and constructed to reduce visibility of the facilities. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.**

**(i) The transmission tower shall be surfaced in a non-reflective material that minimizes glare and is colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background.**

**(ii) The antenna, related telecommunication equipment and ancillary facilities shall be surfaced in non-reflective material to match the transmission tower. If not attached to a transmission tower, they shall be colored similar to the adjacent background.**

**(c) Consideration shall be given to other sites and equipment that would have less visual impact than those proposed. The applicant shall demonstrate that less intrusive sites and equipment are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations.**

**(d) No lighting of telecommunication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agencies. Required lighting shall be shielded from the ground to the extent it does not violate state or federal requirements.**

**(e) Equipment areas shall be enclosed by a chain link fence or equivalent.**

**(f) Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited.**

**(g) When located within 14,000 feet of an airport, the telecommunication facility shall not penetrate the imaginary surfaces of that airport, unless the airport approves that encroachment.**

**(h) Maintenance and repair of a lawfully existing telecommunication facility does not require a land use application approval.**

**(i) Within a forest zone, the following standards shall apply:**

**(i) A fuel break shall extend 50 feet surrounding ancillary facilities containing propane or gas powered generating equipment. Except for trees, vegetation within the fuel break shall be maintained at less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet above ground) branches. Nonflammable materials (i.e., gravel) shall be placed within 30 feet surrounding ancillary facilities that contain propane or gas powered generating equipment.**

**(ii) Private roads and driveways that provide access to transmission towers in the forest zones shall comply with the Fire Safety Design Standards of LC 16.211(8)(e)(i) through (vii).**

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(j) Notice. In lieu of the notice area in LC 14.100(4) and 14.300(3)(d), when the application involves a leased area notice shall be sent to landowners and applicable community organizations recognized by the Lane County Board of Commissioners in LM 3.513, within ½ mile of the leased area. If the property does not contain a leased area, notice shall be sent as required by LC 14.100(4) or 14.300(3)(d), as applicable.

(4) Standards for a new or replacement transmission tower.

(a) Review & notice process. An application for placement of a transmission tower requires submittal of an application in accordance with LC 14.050 and a hearing with the Director in accordance with LC 14.300, excluding LC 14.300(3)(d) for applications involving a leased area. To be approved, the application must comply with LC 16.264(3) and 16.264(4).

(b) Neighborhood meeting. Prior to submittal of a land use application, the applicant shall conduct a neighborhood meeting in the general area of the proposed telecommunication tower.

(i) The applicant shall, at least fourteen (14) days but not more than thirty (30) days in advance of the meeting, mail notice of the meeting in conformance with 16.264(3)(j). In addition, the notice shall be sent to tenants living within the noticed area. The notice shall state the date, time, and location of the meeting and that the topic of the meeting is to discuss the proposed location of a telecommunication facility on the subject property and to hear from area residents about any concerns they might have with the proposal. The notice shall state the Lane County map and tax lot numbers for the subject property and the address for the subject property.

(ii) The applicant shall, at least ten (10) days in advance of the meeting, publish notice of the meeting in a newspaper of general circulation serving the area. The published notice shall contain the information required by LC 16.264(4)(b)(i) for the mailed notice.

(iii) Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents.

(c) Required submittals. The application shall contain the following information:

(i) A site plan, drawn to scale, showing:

(A) Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower;

(B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site; and

(C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road.

(ii) A description of the tower design and height. The description shall include:

(A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower and ancillary facilities;

(B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate;

(C) Documentation in the form of lease agreements for a minimum of two collocations on the proposed telecommunication tower.

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(iii) If the transmission tower is within 14,000 feet of an airport, show the tower height in relation to the imaginary surfaces for that airport.

(iv) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by any proposed collocations, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).

(v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(4)(f)(iv). A lease agreement or similar authorization for the proposed use from the federal government that includes a removal requirement may be substituted for applications involving telecommunication facilities located on federal land.

(vi) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement or similar authorization for the proposed use from the federal government may be substituted for applications involving telecommunication facilities located on federal land.

(vii) A map of all transmission towers and properties that have obtained approval for a transmission tower, within ten (10) miles of the proposed facility.

(viii) Certification by an Oregon-registered professional engineer that the design of the tower will support at least three users (the primary user and two collocation sites).

(ix) Evidence of the notification and the neighborhood meeting.

(x) A performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the telecommunication tower, ancillary facilities, and restoration of the site.

(xi) Other information requested in the application form provided by the Director.

(d) Performance standards. The transmission tower shall comply with the following:

(i) The tower shall be necessary to provide service to the intended area. The applicant shall provide evidence the existing and approved telecommunication facilities within ten miles would not provide an adequate level of service, based on the following:

(A) Lack of useable and compatible collocation space;

(B) Inability to meet service coverage area and capacity needs; or

(C) Technical reasons such as channel proximity and inter-modulation.

(ii) The transmission tower shall be designed to accommodate at least three users (the primary user and two collocation sites).

(iii) The cumulative radio frequency emissions from all the collocations on a single structure shall not exceed the maximum exposure limits of the FCC.

(iv) When access is provided by a private road, all necessary access easements and roadways shall be maintained.

(v) Prior to land use approval of a building permit for a telecommunication tower, the applicant shall:

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(A) Provide documentation showing the FAA, the ODA, and any other applicable state agency, have approved the tower, or that the tower does not require approval by these agencies;

(B) When the tower is within 14,000 feet of an airport, provide the FAA registration number for the transmission tower, or documentation showing the tower does not require registration.

(e) Setbacks and separation requirements. The transmission tower shall be setback from property lines the greater distance of either the height of the tower or the setback of the zone. The minimum separation from residences and schools also shall be the greater distance of either:

(i) 1200 feet from any residence or school not on the property owner/applicant's tract; or

(ii) As far away from residences and schools not on the property owner/applicant's tract as it is sited from the closest dwelling on the property owner's/applicant's tract.

(f) Expiration and Renewal of the Special Use Permit.

(i) If a telecommunications tower is not placed into service within 2 years of issuance of a building permit, the special use permit shall expire.

(ii) In lieu of LC 14.700(4), all conditions of approval must be completed by December 31st of the year following the date of final special use permit approval. No time extensions are allowed. The special use permit shall be renewed every two (2) years thereafter.

(iii) To renew the special use permit, an application shall be submitted in accordance with LC 14.050. To be approved, the application shall contain documentation showing:

(A) The telecommunications facility has complied with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC); and

(B) The tower continues to meet any applicable conditions of approval by Lane County, including provision of an adequate current performance bond for removal of the facility and restoration of the site.

(iv) If a transmission tower authorized under this section is not used as a telecommunication facility for a period of one (1) year, the special use permit shall expire and the tower shall be removed.

(5) Collocation. A new or replacement collocation shall comply with the following:

(a) Review process. Collocation requires submittal of a land use application pursuant to LC 14.050. Director approval is required pursuant to LC 14.100, excluding LC 14.100(4) for applications involving a leased area. To be approved, the application must comply with LC 16.264(3) and 16.264(5).

(b) Required submittals. An application for a collocation shall include the following information:

(i) A site plan, drawn to scale, showing:

(A) Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower;

(B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site; and

(C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road.

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(ii) A description of the tower design and height. The description shall include:

(A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower, collocation, and ancillary facilities;

(B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate.

(iii) If the collocation is within 14,000 feet of an airport:

(A) Show the height of the collocation in relation to the imaginary surfaces for that airport; and

(B) Provide the FAA registration number for the tower structure, or documentation showing that the tower does not require registration.

(iv) Documentation demonstrating that the Oregon Department of Aviation has reviewed the proposal. When the proposed collocation does not increase the height of the tower, documents from the ODA approving the tower may be substituted.

(v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(5)(c)(ii). A lease agreement or similar authorization for the proposed use from the federal government that includes a removal requirement may be substituted for applications involving telecommunication facilities located on federal land.

(vi) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement or similar authorization for the proposed use from the Federal government may be substituted for applications involving telecommunication facilities located on federal land.

(vii) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by the proposed collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).

(viii) Certification by an Oregon-registered professional engineer that the telecommunication facility will support the proposed collocated equipment.

(ix) Documentation showing that the applicant has an FCC license for the geographic region and for the service proposed by the collocation.

(x) A performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the collocation, ancillary facilities, and restoration of the site to the way it appeared before collocation approval.

(xi) Other information requested in the application form provided by the Director.

(c) Performance standards. Collocations shall comply with the following:

(i) All collocations on the structure shall comply with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).

(ii) Any collocation and ancillary facilities authorized under this subsection shall be removed after one year of non-use and the approval shall expire.

(iii) The provider shall maintain an FCC license for the geographic region and for the service provided by the collocation.

**TELECOMMUNICATION TOWER STANDARDS  
RURAL COMPREHENSIVE PLAN**

This is the current code with comments in italics. The comments identify the issues within the code that the amendment will resolve.

The following terms are uses in the analysis:

Performance standards: If approved, the tower or collocation must operate within these parameters.

Review criteria: The standards that staff uses to evaluate an application. The application must meet all the criteria or it is denied.

Submittal requirements: Items that must be submitted with an application. Each submittal requirement must have a corresponding performance standard. For example, a submittal that shows the tower height in relation to the imaginary surfaces of the airport is irrelevant if the performance standards do not prohibit the tower from penetrating the imaginary surfaces of the airport.

**CURRENT**

**16.264 Telecommunication Tower Standards.**

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

- (a) Recognizes the public need for provision of telecommunication facilities;
- (b) Allows appropriate levels of service to be obtained throughout the County;
- (c) Minimizes the number of transmission towers throughout the County;
- (d) Encourages the collocation of telecommunication facilities; and
- (e) Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the county. Nothing in this section shall preclude collocation opportunities nor adversely affect multiple use towers. Nothing in this section shall apply to amateur radio antennae, or facilities used exclusively for the transmission of television and radio signals; however, these uses are not exempted from applicable provisions in other sections of the code, including the requirement to obtain a conditional use permit to construct transmission facilities or modify existing installations.

*Everything in the last sentence after "however" is redundant. Also, Lane Code 16 does not mention "conditional use" permit; it uses the term "special use" permit. There is no definition of the terms "existing installations" or "transmission facilities".*

(2) Definitions. As used in LC 16.264, the following words and phrases mean:

Ancillary facilities. The buildings, cabinets, vaults, closures and equipment required for operation of telecommunication facilities including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.



**Antennae.** An electrical conductor or group of electrical conductors that transmit or receive radio signals, excluding amateur radio antennae.

**Attachment.** An antenna or other piece of related equipment affixed to a transmission tower.

**Collocation.** Placement of an antenna on an existing structure or building where the antennas and all supports are located on the existing structure or building.

**Provider.** A person in the business of designing and/or using telecommunication facilities including cellular radiotelephones, personal communications services, enhanced/specialized mobile radios, and commercial paging services.

**Telecommunication Facility.** A facility designed and/or used for the purpose of transmitting, receiving, and relaying voice and data signals from antennae, towers and ancillary facilities. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

**Transmission Tower.** The monopole or lattice framework designed to support transmitting and receiving antennae. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers."

CURRENT

(3) Application, Information and Processing Requirements. A new or replacement telecommunication facility may be allowed provided an application is submitted for Director approval pursuant to LC 14.050, the application complies with the requirements specified in LC 16.264(3)-(6) below, and provided the application is approved pursuant to the requirements of LC 14.300 for a hearing with the Director. Notice of the hearing shall be provided pursuant to the requirements of LC 14 and to the owners of property within one half-mile radius of the exterior boundaries of the subject property and any property contiguous to and in the same ownership as the subject property. (Maintenance and repair of lawfully (per LC Chapter 16) existing uses and development is considered a permitted use.)

*When the tower is located on BLM or Forest Service land, this notice requirement creates a notification list that contains hundreds of names. In addition, some of those people may not be affected because they own land miles from the tower site. Refer to proposed LC 16.264(3)(j). The amendment requires notice to landowners within ½ mile (2640 feet) of the leased area.*

(a) Prior to submission of an application, the applicant shall provide notice and hold a meeting with area property owners as required in LC 16.264(3)(a)(i)-(iii), below. The applicant shall submit evidence of the notification and meeting with the application. The application shall include evidence of compliance with this requirement.

(i) The applicant shall, at least fourteen (14) days but not more than thirty (30) days in advance of the meeting, mail notice of the meeting to property owners and tenants living on property that would otherwise be notified pursuant to the requirements of LC 14.100 and to the applicable community organization recognized by the Lane County Board of Commissioners in Lane Manual 3.513 within the area in which the proposed site is located. The notice shall state the date, time, and location of the meeting and that the topic of the meeting is to discuss the proposed location of a telecommunication facility on the subject property and to hear from area residents about any concerns they might have

with the proposal. The notice shall state the Lane County map and tax lot numbers for the subject property and the address for the subject property.

(ii) The applicant shall, at least ten (10) days in advance of the meeting, publish notice of the meeting in a newspaper of general circulation serving the area. The published notice shall contain at least the same information as required by LC 16.264(3)(a)(i) above for the mailed notice.

(iii) The applicant shall conduct a meeting within the general area of the proposed location of the telecommunication facility with the area property owners, tenants living on surrounding properties and interested parties to discuss the proposed application to allow community concerns regarding the proposed tower to be addressed. Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents.

(b) An application shall include the following information:

*This subsection does not indicate if the application requirements are for a tower or collocation. There should be separate submittal requirements for towers and collocations. In addition, they should be contained in a single section, not scattered throughout the chapter.*

(i) A description of the proposed tower location, design and height. When the proposed tower location is within 14,000 feet of an airport, the applicant shall show the tower height in relation to the imaginary surfaces for that airport and demonstrate that the tower does not penetrate those surfaces.

(ii) The engineered design capacity of the tower in terms of the number and type of antennas it is designed to accommodate and constructed in such a manner as to optimize performance and minimize visual impact;

*This paragraph uses the term "antennas". The amendment uses the term "collocation".*

(iii) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with land use and building permit application;

*The signature of the owner is not available when the tower or collocation is on federal land. The amendment states that a lease agreement with the federal government is acceptable.*

(iv) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(7)(d);

*The amendment states that a lease agreement with the federal government is acceptable.*

(v) Documentation in the form of lease agreements for the telecommunications facility that provide space for a minimum of three (3) users (the primary user and two (2) collocation sites);

(vi) Documentation of lease agreements with a Federal Communications Commission (FCC) licensed provider;

(vii) Documentation demonstrating that the Federal Aviation Administration (FAA) has reviewed and commented on the proposal, and the Oregon Department of Aviation has reviewed and provided comment on the proposal.

*The FAA does not comment on collocations, only new towers. This is one example of the difference in submittal requirements between collocations and towers.*

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(viii) Plans showing how vehicle access will be provided and documents demonstrating that necessary easements have been obtained; and

*This is not needed for collocations. This is another example of the difference in submittal requirements between collocations and towers.*

(ix) Other information requested in the application form provided by the Director, such as but not limited to, peer review by an independent engineering firm of the proposed telecommunications facility system design.

*The amendment requires the signature of an engineer to verify the tower is designed to carry at least 3 collocations (the main provider and others). The engineer must show the tower, as amended by a collocation, meets the FCC radiation requirements.*

(c) The applicant shall identify all existing towers, or properties that have obtained approval for a tower within ten (10) miles of the proposed tower location. The applicant shall provide evidence that collocation at all existing or approved towers within ten miles is not feasible, and provide documentation for locating a new tower, based on either of the following:

- (i) Lack of useable and compatible collocation space;
- (ii) Inability to meet service coverage area and capacity needs; or
- (iii) Technical reasons such as channel proximity and inter-modulation.

*This paragraph mixes submittal requirements and review criteria. These are separate issues that need to be in separate sections.*

(d) The tower shall comply with all required State of Oregon and Federal licenses for telecommunication tower facilities. The application shall include a certification that the completed installation will comply with all Federal, state and local standards. The applicant shall submit documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).

*This paragraph mixes submittal requirements, review criteria and performance standards. To what does the term "local standards" refer? LC 16.264 is the local standard.*

(e) Factual information addressing compliance with requirements in LC 16.264 (4) and (5), below.

(4) Collocation Requirements for Telecommunication Facilities. Collocation of a telecommunications facility on an existing structure or building is not subject to the land use application and approval provisions of LC 16.264 (3). However, collocation of a new or replacement telecommunication facility may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved pursuant to LC 14.100. The application for collocation may be allowed provided the requirements in LC 16.264(4)(a) and (b) are met.

*This paragraph combines review criteria and submittal requirements, and is confusing. What is it saying? Does it exempt certain collocations from review?*

(a) An application for collocation of a new or replacement telecommunications facility shall provide the information required in LC 16.264(3)(b)(i)-(ix) and (d).

(b) Factual information addressing compliance with requirements in LC 16.264 (5) and (6), below.

CURRENT

(5) Siting Standards for Height, Setbacks and Access to Telecommunication Facilities. The following standards shall apply to all new or replacement telecommunication facilities.

(a) Consideration shall be given to other sites in the service area that would have less visual impact than the site proposed as viewed from nearby residences and that the applicant has demonstrated that less intrusive sites are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations.

(b) Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level.

(c) Directional / parabolic antennae shall be selected to optimize performance and minimize visual impact.

*Regulating the type of antennae will impede the replacement of existing collocations with new technology. This should be removed.*

(d) The setbacks for a tower shall be the setback otherwise allowed for all other structures in the zone except that:

(i) The tower shall be setback at least the height of the tower from an adjacent property line.

(ii) A tract (contiguous property under the same ownership) shall be considered as a single parcel for purposes of setbacks.

(e) The proposed telecommunications tower is sited at least 1200 feet from nearby residences and schools not on the property owner/applicant's tract or as far away from nearby residences and schools as it is sited from the closest dwelling on the property owner/applicant's tract, whichever is greater.

*The term "nearby" is subjective and must be removed or defined. Also, is it the intention of the planning commission to preclude schools as collocation sites?*

(f) If access is obtained from a private road, the applicant shall be responsible as required by Oregon law for providing for improvements and maintenance to the private road that provides access to the subject property. In general, the applicant is responsible for impacts to the private road as a result of activities conducted by the applicant. The applicant shall maintain all necessary access easements and maintenance agreements for the private road as required by State law.

*If the applicant sells the tower or collocation, this paragraph is irrelevant. The burden should fall on the tower owner and/or landowner. This will not be an issue for a collocation since the access issue will be resolved prior to approval of the tower.*

(g) In Forest zones, access from private roads and driveways shall comply with the Fire Safety Design Standards of LC 16.211(8)(e).

(h) In Forest zones, a fuel break shall extend 50 feet in all directions surrounding ancillary facilities containing propane or gas powered generating facilities. Vegetation within the fuel break may allow low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Nonflammable materials (i.e., rock) shall be placed next to the ancillary facilities.

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*The term "next to the ancillary facilities" is subjective. Remove it or use an objective measurement. For example, it should say: "Nonflammable materials (i.e., gravel) shall be placed within 30 feet surrounding the ancillary facilities containing propane or gas powered generating equipment."*

(6) Standards for Construction, Lighting, Signage and Fencing of Telecommunication Facilities. The following standards shall apply to all new or replacement telecommunication facilities.

(a) The applicant shall submit a site-specific study of the tower site identifying the proposed color and surfacing of the tower and associated fixtures. Based on the existing conditions and vegetation at the proposed site, the tower must be constructed with material to reduce visibility of the tower by:

*This paragraph contains submittal requirements for towers and collocations. It also contains performance standards for towers.*

(i) Use of non-reflective materials that minimize glare and are colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation;

(ii) Use of non-reflective materials painted to match the existing or attached structure to blend into the surrounding environment; and

(iii) Antenna and associated equipment located on the same structure as the antenna shall be surfaced in a non-reflective material color to match the structure on which it is located.

(b) An Oregon registered professional engineer shall certify that the construction of the tower complies with building code structural standards.

(c) Prior to issuance of building permits for the tower, the applicant shall submit to the Building Official documentation from the Federal Aviation Administration, the Oregon Department of Aviation and any other local or state agency with jurisdiction that the tower has been reviewed and is not determined to be a hazard if constructed as proposed.

*The Building Official does not implement LC 16. The comments of the FAA and the ODA should go to the Planning Director prior to zoning approval on a building permit.*

(d) No lighting of communication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agency. Required lighting shall be shielded from the ground, to the extent practicable. Shielding of tower lighting onto nearby properties shall be installed as part of construction of the tower.

(e) Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited.

(f) Equipment areas must be enclosed by a chain link fence or equivalent with or without slats for screening.

*Does this mean the chain link fence does not have to have slats, or does it mean the equivalent does not have to have slats? In any case, if slats are not required, don't mention them.*

(7) Permit Renewal and Expiration Requirements for Telecommunication Towers.

(a) Approved applications for telecommunication towers shall be valid until December 31st of the year following the date of final Lane County approval and shall be renewed every two (2) years, thereafter.

*This paragraph appears to conflict with 7(c). This needs clarification.*

(b) Permit renewal is based upon the applicant submitting documentation that the telecommunications facility has complied with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC) and continues to meet any applicable conditions of approval by Lane County, including provision of an adequate current performance bond for removal of the facility and restoration of the site.

*This does not state if the renewal requires an application or how it shall be reviewed. Is director approval required? Is it merely a review of conditions? This needs clarification.*

(c) If a telecommunications tower is not constructed and placed into service within 2 years of issuance of an approved permit, the land use approval expires.

*This paragraph appears to conflict with 7(a). This needs clarification.*

(d) If the tower is discontinued from being used as a telecommunication facility for a period of one (1) year, the tower shall be removed. To insure removal of the telecommunication facility, the applicant shall, as a condition of the Special Use Permit, provide a performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the telecommunications facility and restoration of the site at the time the facility is removed. The property owner shall be notified of the determination of discontinued use and the property owner shall be responsible for removal of the telecommunication tower and equipment facilities and securing any required demolition permits within the six (6) months immediately following cessation of the operation of the telecommunication facility. The property owner shall bear the ultimate responsibility for removal of the facilities and shall sign a document that is recorded in the deed history of the subject property with Lane County Deeds and Records recognizing such responsibility. Any Special Use Permit granted for the property will automatically expire upon removal. (Revised by Ordinance 4-02, Effective 4.10.02)

*This paragraph mixes performance standards and submittal requirements.*

*Sentence 1 requires removal of the tower 12 months after cessation of operations, but sentence 3 requires a demolition permit 6 months after cessation of operations.*

*Sentence 2 requires the applicant to submit a performance bond, but sentence 3 says the landowner is responsible for removal of the tower. Submittal of a performance bond determines the responsibility for removal.*

*Sentence 3 is redundant. Chapter 5 of the Lane Code and Chapter 5 of the Lane Manual contain procedures for notice of violations.*

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### Summary Outline

A summary of the amendment is presented below. This is only a general explanation of the amendment. Section 1 of the outline refers to section 1 of the amendment; section 2 of the outline refers to section 2 of the amendment, etc. For the legislative format, refer to Attachment #3.

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1. **Purpose:** The last sentence has been removed because it is redundant and contains undefined terms.
2. **Definitions:** The definitions of "telecommunication facility" and "collocation" have been changed to be flexible enough to allow new technology. The term "tract" is new and is used when determining setback and separation requirements for a tower.
3. **Standards applicable to all telecommunication facilities.** All collocations and towers must comply with the standards in this section. Each subsection is summarized below:
  - a. Maximum of 200 feet in height.
  - b. Must use least visually invasive materials and comply with FAA and ODA coloring standards.
  - c. Must consider other sites and equipment that would be less visually invasive.
  - d. No lighting unless required by federal or state authority.
  - e. Enclose equipment areas with a fence.
  - f. Only warning signs allowed.
  - g. Height limit near airports.
  - h. Maintenance and repair exemption.
  - i. Special rules for forest zones (fire break, access)
  - j. Special notice standard for towers and collocations. Notice is required within ½ mile of the leased area. If the property does not contain a leased area, LC 14.100(4) and LC 14.300(3)(d) apply.
4. **Towers.** This section only applies to new and replacement towers.
  - a. A hearing with the director is required.
  - b. A neighborhood meeting is required prior to submittal of an application.
  - c. This subsection states what must be submitted with the application. Submittal standards are scattered throughout 16.264, the rest are existing practice.
  - d. If a tower is approved, it must operate within these standards. Currently, these standards are scattered throughout LC 16.264. Only performance standards specific to towers are in this subsection.
  - e. Tower setbacks from property lines. Separation requirements between towers and schools/residences.

- f. Once approved, the applicant has until Dec. 31 of the following year to complete the conditions of approval and apply for a building permit. Once the building permit is issued, the applicant has two years to place a collocation or the tower loses zoning approval and must be removed. If the tower ceases operations for one year, it loses zoning approval and must be removed. The references to enforcement are not included because they are redundant. Chapter 5 of the Lane Manual and Chapter 5 of the Lane Code contain enforcement procedures.
5. **Collocations.** This section applies only to new and replacement collocations.
- a. Director approval is required. No public hearing.
  - b. This subsection states what must be submitted with the application. Some standards are scattered throughout 16.264, the rest were suggested by staff who process the applications.
  - c. If a collocation is approved, it must operate within these standards. Currently, these standards are scattered throughout LC 16.264. Only performance standards that are specific to collocations are in this subsection.



**TELECOMMUNICATION TOWER STANDARDS  
RURAL COMPREHENSIVE PLAN**

The underlined citations show where, in the amendment, that portion of existing code has been moved. (Code followed by amendment citation.)

**16.264 Telecommunication Tower Standards.**

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

- (a) Recognizes the public need for provision of telecommunication facilities;
- (b) Allows appropriate levels of service to be obtained throughout the County;
- (c) Minimizes the number of transmission towers throughout the County;
- (d) Encourages the collocation of telecommunication facilities; and
- (e) Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the county. Nothing in this section shall preclude collocation opportunities nor adversely affect multiple use towers. Nothing in this section shall apply to amateur radio antennae, or facilities used exclusively for the transmission of television and radio signals; however, these uses are not exempted from applicable provisions in other sections of the code, including the requirement to obtain a conditional use permit to construct transmission facilities or modify existing installations.

(2) Definitions. As used in LC 16.264, the following words and phrases mean:

Ancillary facilities. The buildings, cabinets, vaults, closures and equipment required for operation of telecommunication facilities including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.

Antennae. An electrical conductor or group of electrical conductors that transmit or receive radio signals, excluding amateur radio antennae.

Attachment. An antenna or other piece of related equipment affixed to a transmission tower.

Collocation. Placement of an antenna on an existing structure or building where the antennas and all supports are located on the existing structure or building.

Provider. A person in the business of designing and/or using telecommunication facilities including cellular radiotelephones, personal communications services, enhanced/specialized mobile radios, and commercial paging services.

Telecommunication Facility. A facility designed and/or used for the purpose of transmitting, receiving, and relaying voice and data signals from antennae, towers and ancillary facilities. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities."

Transmission Tower. The monopole or lattice framework designed to support transmitting and receiving antennae. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers."

**CURRENT**

(3) Application, Information and Processing Requirements. A new or replacement telecommunication facility may be allowed provided an application is submitted for Director approval pursuant to LC 14.050, the application complies with the requirements specified in LC 16.264(3)-(6) below, and provided the application is approved pursuant to the requirements of LC 14.300 for a hearing with the Director. Notice of the hearing shall be provided pursuant to the requirements of LC 14 and to the owners of property within one half-mile radius of the exterior boundaries of the subject property and any property contiguous to and in the same ownership as the subject property. (Maintenance and repair of lawfully (per LC Chapter 16) existing uses and development is considered a permitted use.) 4(a); 4(c)(ix);

(a) Prior to submission of an application, the applicant shall provide notice and hold a meeting with area property owners as required in LC 16.264(3)(a)(i)-(iii), below. The applicant shall submit evidence of the notification and meeting with the application. The application shall include evidence of compliance with this requirement. 4(b)

(i) The applicant shall, at least fourteen (14) days but not more than thirty (30) days in advance of the meeting, mail notice of the meeting to property owners and tenants living on property that would otherwise be notified pursuant to the requirements of LC 14.100 and to the applicable community organization recognized by the Lane County Board of Commissioners in Lane Manual 3.513 within the area in which the proposed site is located. The notice shall state the date, time, and location of the meeting and that the topic of the meeting is to discuss the proposed location of a telecommunication facility on the subject property and to hear from area residents about any concerns they might have with the proposal. The notice shall state the Lane County map and tax lot numbers for the subject property and the address for the subject property. 4(b)(i)-(iii)

(ii) The applicant shall, at least ten (10) days in advance of the meeting, publish notice of the meeting in a newspaper of general circulation serving the area. The published notice shall contain at least the same information as required by LC 16.264(3)(a)(i) above for the mailed notice. 4(b)(i)-(iii)

(iii) The applicant shall conduct a meeting within the general area of the proposed location of the telecommunication facility with the area property owners, tenants living on surrounding properties and interested parties to discuss the proposed application to allow community concerns regarding the proposed tower to be addressed. Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents. 4(b)(i)-(iii)

(b) An application shall include the following information: 4(c)(i); 5(b)(i); 5(b)(i)(A); 5(b)(iii);

(i) A description of the proposed tower location, design and height. When the proposed tower location is within 14,000 feet of an airport, the applicant shall show the tower height in relation to the imaginary surfaces for that airport and demonstrate that the tower does not penetrate those surfaces. 3(g); 4(c)(i)(A); 4(c)(i)(C); 4(c)(ii); 4(c)(iii); 5(b)(i)(A); 5(b)(ii)(B); 5(b)(iii)(A);

(ii) The engineered design capacity of the tower in terms of the number and type of antennas it is designed to accommodate and constructed in such a manner as to optimize performance and minimize visual impact; 4(c)(ii)(C);

(iii) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with land use and building permit application; 4(c)(v); 5(b)(v);

(iv) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(7)(d); 4(c)(vi); 5(b)(vi);

(v) Documentation in the form of lease agreements for the telecommunications facility that provide space for a minimum of three (3) users (the primary user and two (2) collocation sites); 4(c)(ii)(B); 4(c)(ii)(C); 4(c)(viii); 4(d)(ii); 5(b)(ii)(B);

(vi) Documentation of lease agreements with a Federal Communications Commission (FCC) licensed provider; 4(c)(ii)(C); 5(b)(ix);

(vii) Documentation demonstrating that the Federal Aviation Administration (FAA) has reviewed and commented on the proposal, and the Oregon Department of Aviation has reviewed and provided comment on the proposal. 5(b)(iv);

(viii) Plans showing how vehicle access will be provided and documents demonstrating that necessary easements have been obtained; and 4(c)(i)(B); 5(b)(i)(B);

(ix) Other information requested in the application form provided by the Director, such as but not limited to, peer review by an independent engineering firm of the proposed telecommunications facility system design. 4(c)(xi); 5(b)(xi);

(c) The applicant shall identify all existing towers, or properties that have obtained approval for a tower within ten (10) miles of the proposed tower location. The applicant shall provide evidence that collocation at all existing or approved towers within ten miles is not feasible, and provide documentation for locating a new tower, based on either of the following: 3(c); 4(c)(vii); 4(d)(i);

(i) Lack of useable and compatible collocation space; 3(c); 4(d)(i)(A);

(ii) Inability to meet service coverage area and capacity needs; or 3(c); 4(d)(i)(B);

(iii) Technical reasons such as channel proximity and inter-modulation. 3(c); 4(d)(i)(C);

(d) The tower shall comply with all required State of Oregon and Federal licenses for telecommunication tower facilities. The application shall include a certification that the completed installation will comply with all Federal, state and local standards. The applicant shall submit documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). 4(c)(iv); 4(d)(iii); 5(b)(vii); 5(c)(i); 5(c)(iii);

(e) Factual information addressing compliance with requirements in LC 16.264 (4) and (5), below. 4(a); 5(a);

(4) Collocation Requirements for Telecommunication Facilities. Collocation of a telecommunications facility on an existing structure or building is not subject to the land use application and approval provisions of LC 16.264 (3). However, collocation of a new or replacement telecommunication facility may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved pursuant to LC 14.100. The application for collocation may be allowed provided the requirements in LC 16.264(4)(a) and (b) are met. 3(h); 3(j); 4(a); 5(a);

(a) An application for collocation of a new or replacement telecommunications facility shall provide the information required in LC 16.264(3)(b)(i)-(ix) and (d). 4(a)

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(b) Factual information addressing compliance with requirements in LC 16.264 (5) and (6), below. 4(a)

(5) Siting Standards for Height, Setbacks and Access to Telecommunication Facilities. The following standards shall apply to all new or replacement telecommunication facilities.

(a) Consideration shall be given to other sites in the service area that would have less visual impact than the site proposed as viewed from nearby residences and that the applicant has demonstrated that less intrusive sites are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations. 3(b), 3(c)

(b) Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level. 3(a)

(c) Directional / parabolic antennae shall be selected to optimize performance and minimize visual impact. (DELETED)

(d) The setbacks for a tower shall be the setback otherwise allowed for all other structures in the zone except that: 4(e);

(i) The tower shall be setback at least the height of the tower from an adjacent property line. 4(e)(i)

(ii) A tract (contiguous property under the same ownership) shall be considered as a single parcel for purposes of setbacks. 4(e)(ii)

(e) The proposed telecommunications tower is sited at least 1200 feet from nearby residences and schools not on the property owner/applicant's tract or as far away from nearby residences and schools as it is sited from the closest dwelling on the property owner/applicant's tract, whichever is greater. 4(c)(i)(A); 4(e); 5(b)(i)(A);

(f) If access is obtained from a private road, the applicant shall be responsible as required by Oregon law for providing for improvements and maintenance to the private road that provides access to the subject property. In general, the applicant is responsible for impacts to the private road as a result of activities conducted by the applicant. The applicant shall maintain all necessary access easements and maintenance agreements for the private road as required by State law. 4(c)(i)(B); 4(d)(iv); 5(b)(i)(B);

(g) In Forest zones, access from private roads and driveways shall comply with the Fire Safety Design Standards of LC 16.211(8)(e). 3(i)(ii)

(h) In Forest zones, a fuel break shall extend 50 feet in all directions surrounding ancillary facilities containing propane or gas powered generating facilities. Vegetation within the fuel break may allow low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Nonflammable materials (i.e., rock) shall be placed next to the ancillary facilities. 3(i)(i)

(6) Standards for Construction, Lighting, Signage and Fencing of Telecommunication Facilities. The following standards shall apply to all new or replacement telecommunication facilities. 4(c)(ii)(A);

(a) The applicant shall submit a site-specific study of the tower site identifying the proposed color and surfacing of the tower and associated fixtures. Based on the existing conditions and vegetation at the proposed site, the tower must be constructed with material to reduce visibility of the tower by: 5(b)(ii);

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(i) Use of non-reflective materials that minimize glare and are colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation; 3(b)

(ii) Use of non-reflective materials painted to match the existing or attached structure to blend into the surrounding environment; and 3(b)

(iii) Antenna and associated equipment located on the same structure as the antenna shall be surfaced in a non-reflective material color to match the structure on which it is located. 3(b)

(b) An Oregon registered professional engineer shall certify that the construction of the tower complies with building code structural standards. 5(b)(viii);

(c) Prior to issuance of building permits for the tower, the applicant shall submit to the Building Official documentation from the Federal Aviation Administration, the Oregon Department of Aviation and any other local or state agency with jurisdiction that the tower has been reviewed and is not determined to be a hazard if constructed as proposed. 4(d)(v)(A);

(d) No lighting of communication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agency. Required lighting shall be shielded from the ground, to the extent practicable. Shielding of tower lighting onto nearby properties shall be installed as part of construction of the tower. 3(d)

(e) Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited. 3(f)

(f) Equipment areas must be enclosed by a chain link fence or equivalent with or without slats for screening. 3(e)

(7) Permit Renewal and Expiration Requirements for Telecommunication Towers.

(a) Approved applications for telecommunication towers shall be valid until December 31st of the year following the date of final Lane County approval and shall be renewed every two (2) years, thereafter. 4(f)(i) & (ii)

(b) Permit renewal is based upon the applicant submitting documentation that the telecommunications facility has complied with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC) and continues to meet any applicable conditions of approval by Lane County, including provision of an adequate current performance bond for removal of the facility and restoration of the site. 4(c)(v); 4(f)(iii)(B)

(c) If a telecommunications tower is not constructed and placed into service within 2 years of issuance of an approved permit, the land use approval expires. 4(f)(i) & (ii);

(d) If the tower is discontinued from being used as a telecommunication facility for a period of one (1) year, the tower shall be removed. To insure removal of the telecommunication facility, the applicant shall, as a condition of the Special Use Permit, provide a performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the telecommunications facility and restoration of the site at the time the facility is removed. The property owner shall be notified of the determination of discontinued use and the property owner shall be responsible for removal of the telecommunication tower and equipment facilities and securing any required demolition

permits within the six (6) months immediately following cessation of the operation of the telecommunication facility. The property owner shall bear the ultimate responsibility for removal of the facilities and shall sign a document that is recorded in the deed history of the subject property with Lane County Deeds and Records recognizing such responsibility. Any Special Use Permit granted for the property will automatically expire upon removal. (Revised by Ordinance 4-02, Effective 4.10.02) 4(c)(x); 4(f)(i) & (ii); 4(f)(iv); 5(b)(x); 5(c)(ii);

CURRENT

**PROPOSED**  
**REGULATIONS FOR TELECOMMUNICATION FACILITIES**  
**RURAL COMPREHENSIVE PLAN**

The underlined citations show where, in the existing code, that portion of the amendment originated. (Amendment followed by code citation.)

**16.264 Telecommunication Facility.**

1. Purpose. The provisions of this section are intended to ensure that telecommunication facilities are located, constructed, maintained and removed in a manner that:

- a. Recognizes the public need for provision of telecommunication facilities;
- b. Allows appropriate levels of service to be obtained throughout the County;
- c. Minimizes the number of transmission towers throughout the County;
- d. Encourages the collocation of telecommunication facilities; and
- e. Ensures that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the county. Nothing in this section shall preclude collocation opportunities nor adversely affect multiple use towers. Nothing in this section shall apply to amateur radio antennae, or facilities used exclusively for the transmission of television and radio signals. REVISED

2. Definitions. As used in LC 16.264, the following words and phrases mean:

Ancillary facilities. The buildings, cabinets, vaults, closures and equipment required for operation of telecommunication facilities including but not limited to repeaters, equipment housing, and ventilation and other mechanical equipment.

Antennae. An electrical conductor or group of electrical conductors that transmit or receive radio signals, excluding amateur radio antennae.

Attachment. An antenna or other piece of related equipment affixed to a structure.

Collocation. Placement of telecommunication equipment on an existing structure or building where the equipment and all supports are located on the existing structure or building.

Provider. A person in the business of designing and/or using telecommunication facilities including cellular radiotelephones, personal communications services, enhanced/specialized mobile radios, and commercial paging services.

Telecommunication Facility. A facility designed and/or used for the purpose of transmitting, receiving, and relaying voice and data signals from antennae, towers and ancillary facilities. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "telecommunication facilities." REVISED

Tract. A unit of land comprised of adjacent parcels and lots under the same ownership. NEW

**PROPOSED**

Transmission Tower. The structure, such as a monopole or lattice framework, that supports telecommunication equipment. For purposes of this section, amateur radio transmission facilities and facilities used exclusively for the transmission of television and radio signals are not "transmission towers." REVISED

3. Standards applicable to all telecommunication facilities.
- a. Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level. 16.264(5)(b)
  - b. Based on the existing conditions and vegetation at the site, telecommunication facilities shall be designed and constructed to reduce visibility of the facilities. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation: 16.264(5)(a), 16.264(6)(a)(i)-(iii)
    - (i) The transmission tower shall be surfaced in a non-reflective material that minimizes glare and is colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background. 16.264(6)(a)(i)-(iii)
    - (ii) The antenna and ancillary facilities shall be surfaced in non-reflective material to match the transmission tower. If not attached to a transmission tower, they shall be colored similar to the adjacent background. 16.264(6)(a)(i)-(iii)
  - c. Consideration shall be given to other sites and equipment that would have less visual impact than those proposed. The applicant shall demonstrate that less intrusive sites and equipment are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations. 16.264(3)(c); 16.264(5)(a)
  - d. No lighting of telecommunication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agencies. Required lighting shall be shielded from the ground to the extent it does not violate state or federal requirements. 16.264(6)(d)
  - e. Equipment areas shall be enclosed by a chain link fence or equivalent. 16.264(6)(f)
  - f. Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited. 16.264(6)(e)
  - g. When located within 14,000 feet of an airport, the telecommunication facility shall not penetrate the imaginary surfaces of that airport, unless the airport approves that encroachment. 16.264(3)(b)(i); NEW
  - h. Maintenance and repair of a lawfully existing telecommunication facility does not require a land use application. 16.264(4)
  - i. Within a forest zone, the following standards shall apply:
    - (i) A fuel break shall extend 50 feet surrounding ancillary facilities containing propane or gas powered generating equipment. Except for trees, vegetation within the fuel break shall be maintained at less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet above

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ground) branches. Nonflammable materials (i.e., gravel) shall be placed within 30 feet surrounding ancillary facilities that contain propane or gas powered generating equipment. 16.264(5)(h); NEW

- (ii) Private roads and driveways that provide access to transmission towers in the forest zones shall comply with the Fire Safety Design Standards of LC 16.211(8)(e)(i) through (vii). 16.264(5)(g)
- j. Notice. In lieu of LC 14.100(4) and LC 14.300(3)(d), notice shall be sent to landowners and applicable community organizations recognized by the Lane County Board of Commissioners in Lane Manual 3.513, within ½ mile of the leased area. If the property does not contain a leased area, this subsection shall not apply. 16.264(4); NEW

4. Standards for a new or replacement transmission tower.

- a. Review & notice process. An application for placement of a transmission tower requires submittal of an application in accordance with LC 14.050 and a hearing with the Director in accordance with LC 14.300, excluding LC 14.300(3)(d). To be approved, the application must comply with LC 16.264(3) and 16.264(4). 16.264(3); 16.264(3)(e); 16.264(4); 16.264(4)(a) & (b)
- b. Neighborhood meeting. Prior to submittal of a land use application, the applicant shall conduct a neighborhood meeting in the general area of the proposed telecommunication tower. 16.264(3)(a)
  - (i) The applicant shall, at least fourteen (14) days but not more than thirty (30) days in advance of the meeting, mail notice of the meeting in conformance with 16.264(3)(j). In addition, the notice shall be sent to tenants living within the noticed area. The notice shall state the date, time, and location of the meeting and that the topic of the meeting is to discuss the proposed location of a telecommunication facility on the subject property and to hear from area residents about any concerns they might have with the proposal. The notice shall state the Lane County map and tax lot numbers for the subject property and the address for the subject property. 16.264(3)(a)(i)-(iii)
  - (ii) The applicant shall, at least ten (10) days in advance of the meeting, publish notice of the meeting in a newspaper of general circulation serving the area. The published notice shall contain the information required by LC 16.264(4)(b)(i) for the mailed notice. 16.264(3)(a)(ii)-(iii)
  - (iii) Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents. 16.264(3)(a)(iii)
- c. Required submittals. The application shall contain the following information:
  - (i) A site plan, drawn to scale, showing: 16.264(3)(b)
    - (A) Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower. 16.264(3)(b); 16.264(5)(e)
    - (B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site. 16.264(3)(b)(viii); 16.264(5)(f)

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- (C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road. 16.264(3)(b)(i)
  - (ii) A description of the tower design and height. The description shall include: 16.264(3)(b)(i)
    - (A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower and ancillary facilities; 16.264(6)(a)
    - (B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate; 16.264(3)(b)(ii) & (v)
    - (C) Documentation in the form of lease agreements for a minimum of two collocations on the proposed telecommunication tower. 16.264(3)(b)(v) & (vi)
  - (iii) If the transmission tower is within 14,000 feet of an airport, show the tower height in relation to the imaginary surfaces for that airport, and 16.264(3)(b)(i)
  - (iv) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by the proposed collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). 16.264(3)(d); 16.264(7)(b)
  - (v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(4)(f)(iii). A lease agreement with the Federal government that includes a removal requirement may be substituted; 16.264(3)(b)(iii); NEW
  - (vi) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement with the federal government may be substituted; 16.264(3)(b)(iv); NEW
  - (vii) A map of all transmission towers and properties that have obtained approval for a transmission tower, within ten (10) miles of the proposed facility; 16.264(3)(c)
  - (viii) Certification by an Oregon-registered professional engineer that the design of the tower will support at least three users (the primary user and two collocation sites); 16.264(3)(b)(v), NEW
  - (ix) Evidence of the notification and the neighborhood meeting; 16.264(3)
  - (x) A performance bond payable to Lane County and acceptable to the Director, to cover the cost of removal of the telecommunication tower and restoration of the site. 16.264(7)(d)
  - (xi) Other information requested in the application form provided by the Director. 16.264(3)(b)(ix)
- d. Performance standards. The transmission tower shall comply with the following:
- (i) The tower shall be necessary to provide service to the intended area. The applicant shall provide evidence the existing and approved

telecommunication facilities within ten miles would not provide an adequate level of service, based on the following: 16.264(3)(c)

(A) Lack of useable and compatible collocation space, 16.264(3)(c)(i)

(B) Inability to meet service coverage area and capacity needs, 16.264(3)(c)(ii)

(C) Technical reasons such as channel proximity and inter-modulation. 16.264(3)(c)(iii)

(ii) The transmission tower shall be designed to accommodate at least three users (the primary user and two collocation sites); 16.264(3)(b)(v)

(iii) The cumulative radio frequency emissions from the collocations on a single structure shall not exceed the maximum exposure limits of the FCC. 16.264(3)(d)

(iv) If access is obtained from a private road, the applicant shall be responsible for improving and maintaining the private road. The applicant shall maintain all necessary access easements and maintenance agreements for the private road. 16.264(5)(f)

(v) Prior to zoning approval of a building permit for a telecommunication tower:

(A) Provide documentation showing the FAA, the ODA, and any other applicable state agency, has approved the tower. 16.264(6)(c)

(B) When the tower is within 14,000 feet of an airport, provide the FAA registration number for the transmission tower, or documentation showing the tower does not require registration. NEW

e. Setbacks and separation requirements. The setbacks for a transmission tower shall be the greater of the height of the tower or the setback of the zone. The minimum separation shall be: 16.264(5)(d) & (e)

(i) 1200 feet from any residence or school not on the property owner/applicant's tract, or 16.264(5)(d)(i); 16.264(5)(e)

(ii) As far away from residences and schools as it is sited from the closest dwelling on the property owner's/applicant's tract, whichever is greater. 16.264(5)(d)(i); 16.264(5)(e)

f. Expiration and Renewal of the Special Use Permit.

(i) If a telecommunications tower is not placed into service within 2 years of issuance of a building permit, the special use permit shall expire. 16.264(7)(c)

(ii) All conditions of approval must be completed by December 31<sup>st</sup> of the year following final zoning approval, or the special use permit shall expire. No time extensions are allowed. The special use permit shall be renewed every two (2) years thereafter. 16.264(7)(a) & (d)

(iii) To renew the special use permit, an application shall be submitted in accordance with LC 14.050. To be approved, the application shall contain documentation showing: NEW

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- (A) The telecommunication facility has complied with non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC), and 16.264(7)(b)
- (B) The tower continues to meet any applicable conditions of approval by Lane County, including provision of an adequate current performance bond for removal of the facility and restoration of the site. 16.264(7)(b)
- (iv) If a transmission tower authorized under this section is not used as a telecommunication facility for a period of one (1) year, the special use permit shall expire and the tower shall be removed. 16.264(7)(d)

5. Collocation. A new or replacement collocation shall comply with the following:

- a. Review process. Collocation requires submittal of a land use application pursuant to LC 14.050. Director approval is required pursuant to LC 14.100, excluding LC 14.100(4). To be approved, the application must comply with LC 16.264(3) and 16.264(5). 16.264(3)(e); (4)
- b. Required submittals. An application for a collocation shall include the following information: 16.264(4)(a)
  - (i) A site plan, drawn to scale, showing: 16.264(3)(b)
    - (A) Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower. 16.264(3)(b); 16.264(5)(e)
    - (B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site. 16.264(3)(b)(viii); 16.264(5)(f)
    - (C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road. 16.264(3)(b)(i)
  - (ii) A description of the tower design and height. The description shall include:
    - (A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower and ancillary facilities; 16.264(6)(a)
    - (B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate; 16.264(3)(b)(ii) & (v)
  - (iii) If the collocation is within 14,000 feet of an airport: 16.264(3)(b)
    - (A) Show the height of the collocation in relation to the imaginary surfaces for that airport, and 16.264(3)(b)(i)
    - (B) Provide the FAA registration number for the tower structure, or documentation showing that the tower does not require registration. NEW
  - (iv) Documentation demonstrating that the Oregon Department of Aviation has reviewed the proposal. When the proposed collocation does not increase the height of the tower, documents from the ODA approving the tower may be substituted. 16.264(3)(b)(vii)

- (v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(5)(c)(ii). A lease agreement with the federal government that includes a removal requirement may be substituted; 16.264(3)(b)(iii); NEW
- (vi) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement with the Federal government may be substituted; 16.264(3)(b)(iv); NEW
- (vii) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by the proposed collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). 16.264(3)(d)
- (viii) Certification by an Oregon-registered professional engineer that the telecommunication facility will support the proposed collocated equipment. 16.264(6)(b)
- (ix) Documentation showing that the applicant has an FCC license for the geographic region and for the service proposed by the collocation. 16.264(3)(b)(vi)
- (x) A performance bond payable to Lane County and acceptable to the Director, to cover the cost of removal of the collocation, ancillary facilities, and restoration of the site. 16.264(7)(d)
- (xi) Other information requested in the application form provided by the Director. 16.264(3)(b)(ix)
- c. Performance standards
- (i) All collocations on the structure shall comply with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC). 16.264(3)(d)
- (ii) Any collocation and ancillary facilities authorized under this subsection shall be removed after one year of non-use and the zoning approval shall expire. 16.264(7)(c) & (d)
- (iii) The provider shall maintain an FCC license for the geographic region and for the service provided by the collocation. 16.264(3)(d)

Specific items that are not included in the amendment:

- LC 16.264(5)(c). This does not allow for new technology.
- LC 16.264(3)(b)(vii). This conflicts with 16.264(6)(c) that requires FAA review prior to submittal. In addition, the FAA only reviews new towers, not collocations.

Public Comments for:  
Telecommunication Tower Amendment

Date	Citizen(s)	Mailing address	City	Telephone	email	Notes
28-Jun-04	Mona Lindstromberg	87140 Territorial Rd, 97487	Veneta	541 935-2795		Requested ordinance. Provided.
30-Jun-04	Pat Evans, T-Mobile			503 914-8977	<a href="mailto:Pat.evans@T-mobile.com">Pat.evans@T-mobile.com</a>	Requested ordinance. Provided.
02-Jul-04	Paul Siolemaker, Realcom	506 SW 6th suite 900, 97204	Portland	503 421-2258	<a href="mailto:psiolemaker@realcomassoc.com">psiolemaker@realcomassoc.com</a>	Written comments. Included in ordinance.
06-Jul-04	Mona Lindstromberg	87140 Territorial Rd, 97487		541 935-2795	<a href="mailto:monancraig@pacinfo.com">monancraig@pacinfo.com</a>	Verbal comments at hearing
06-Jul-04	Nerna Lovinger	40093 Little Fall Creek road, 97438				Verbal comments at hearing
06-Jul-04	Darlene Schanfeld	2933 Central, 97487	Eugene			Verbal comments at hearing
07-Jul-04	Ron Fowler, Terra Quest	6940 SW Dale Ave, 97008	Beaverton	503-430-8869	<a href="mailto:tterraquest@comcast.net">tterraquest@comcast.net</a>	Requested ordinance. Provided.
12-Jul-04	Ron Fowler, Terra Quest	6940 SW Dale Ave, 97008	Beaverton	503-430-8869	<a href="mailto:tterraquest@comcast.net">tterraquest@comcast.net</a>	Written comments. Included in amendment
12-Jul-04	Mona Lindstromberg	87140 Territorial Rd, 97487	Veneta	541 935-2795		Written comments. Included in amendment
13-Jul-04	LeAndra Bell Matson	33476 Bloomberg Road, 97405	Eugene			Written comments. Included in amendment
26-Jul-04	Ron Fowler, Terra Quest	6940 SW Dale Ave	Beaverton	503-430-8869	<a href="mailto:tterraquest@comcast.net">tterraquest@comcast.net</a>	Written comments. Included in amendment
04-Aug-04	Ron Fowler, Terra Quest	6940 SW Dale Ave	Beaverton	503-430-8869	<a href="mailto:tterraquest@comcast.net">tterraquest@comcast.net</a>	Written comments. Included in amendment
09-Aug-04	Mona Linstromberg	87140 Territorial Rd	Veneta	541 935-2795	<a href="mailto:monancraig@pacinfo.com">monancraig@pacinfo.com</a>	Written comments. Included in amendment
29-Sep-04	Ron Fowler, Terra Quest	6940 SW Dale Ave	Beaverton	503-430-8869	<a href="mailto:tterraquest@comcast.net">tterraquest@comcast.net</a>	Written comments. Included in amendment

June 28, 2004

Lane County  
Public Works Department  
Land Management Division

Dear Steve:

Thanks so much for sending me information on the upcoming Telecommunications discussion at the Tuesday, July 6<sup>th</sup> Planning Commission session. Given the format of the original ordinance, I think your approach certainly makes the ordinance more approachable.

I am also providing you with a copy of a recent US District Court Decision, Voice Stream PCS v City of Hillsboro. It is a precedent setting decision having to do with a jurisdiction's ability to deny an application based on the proposed tower not being needed to fill a complete void in coverage. Aesthetic grounds were also addressed in the decision.

Since I have been involved in Lane County's Telecomm Ordinance from the beginning and attended the Task Force meetings as an observer, I have taken the liberty of reviewing your revisions. Some of my observations may be of no consequence and address items that were intentionally omitted. Others actually are of consequence. I will follow your proposed organizational outline.

1.Purpose:

(1)(e) the last portion of the last sentence starting with "however, these uses..." was dropped. As I am not familiar with other sections of LC code, I do not know its significance.

2.Definitions:

Transmission Tower. "The monopole or lattice framework....." Technically, there is another entire range of "stealth" towers that are neither monopole or lattice. Most of these have the antennae encased inside the framework as opposed to being externally visible.

3.Standards applicable to all telecommunication facilities:

d. "The telecommunication facility shall comply with all required State of Oregon and Federal licenses....." The current ordinance also refers to "all Federal, State, and local standards." This may have been cut from section 3, but I do not see reference to these standards in section 4 either, and I would think standards are separate from licenses..

i."Maintenance and repair....." I don't see this in the current ordinance and think this needs to be defined under 2. Definitions. I would want to know what prompted its inclusion in this revision so as to better understand why it has been added.

k. Notice. "In lieu of LC 14.100(4)...." My concern would be that LC14.100(4) includes both a time frame and notification requirements. I would think the intent is not to tamper with the time frame.

4. standards for a new or replacement transmission tower:

b. Neighborhood meeting:

(i) "The applicant shall, at least fourteen (14).....mail notice of the meeting in conformance with 16.031(3)(k)." The current ordinance includes not only property owners but **TENANTS, ALSO**. This is extremely important. To accomplish this, the notice is sent to "occupant" at the property address. This provision goes back to the Task Force.

(iii)"Nothing in this subsection limits the applicant ....." Prior to this statement in the current ordinance, the issue of where the meeting is to be held is given as the "general area." This maybe somewhat vague, but I do think it precludes a meeting at corporate headquarters in Wilsonville.

c. Required submittals:

(iv) "Certification by two (2) Oregon-registered professional engineers that the telecommunication facility, *as amended by the proposed collocation,.....*" First, I am not sure of the significance of the italicized phrase in this sentence. Second, I do not think it the intention of the those seeking peer review that the applicant submit verification by two **RADIO FREQUENCY ENGINEERS** that the emissions from one antennae array meets FCC standards. The concern is about monitoring the cumulative effect of multiple arrays. The concern is that the applicant's RF engineers are not unbiased. The applicant engineer's findings must be reviewed by an **INDEPENDENT** RF engineer hired by the County at the applicant's expense. As it reads now, it seems like quite a wasted effort.

(viii) "Certification by two (2) Oregon-registered professional engineers....." I should think the structural integrity of a tower would best be decided at the building permit level. I do not think peer review was ever brought up for structural integrity in terms of supporting collocation facilities.

d. Performance standards:

(iii) "The cumulative rf emissions from collocations....." This would be another instance of peer review with an independent RF engineer hired by the County at the applicant's expense.

- THE MOST IMPORTANT NOTE!!!!!!!!!!!!!!!!!!!!1

e. Setbacks and separation requirements:

- (i) 1200 feet from any residence or school not on the property owner/applicant's tract or
- (ii) **As far away from residences and schools as it is sited from the closest dwelling on the property owner/applicant's tract.**

**Yikes! Under the current ordinance it says "whichever is greater." At the time of the hearing I tried to explain that it read in such a manner that if the tower was two miles away from the owner/applicant's dwelling, it would have to be two miles from**



**other residences. Now by deleting “whichever is greater” you have managed to make it so if the tower is 100 feet away from the owner/applicant’s dwelling then it could possibly be interpreted that it would only have to be 100 feet away from other residences. (ii) was a suggestion made at the Task Force level before there was any consideration of a real setback provision. If you read the comments by the commissioners at the hearings, I think it obvious that the intention was an absolute setback of 1200 feet. (ii) should be deleted altogether.**

f. Permit Expiration and renewal:

- (i)“Approval for transmission towers.....” I think the current wording is clearer.
- (ii)“To renew a permit for a transmission tower,.....” This again would be a situation where independent technical review at the applicant’s expense would be appropriate.
- (iii)“If a transmission tower authorized under this section.....” The teeth to this provision was in the current ordinance’s requirement of a performance bond.

5.Collocation:

a.Review process:

My understanding is that (i) has been changed to “Collocation requires submittal.....” and that (ii) has been deleted.

b. Required submittals:

From actual review of applications for collocation, I would recommend that an additional submittal be a copy of the approved final building permit on the existing structure. That seems to be an item often missed.

I would go through this section item by item to see if it really applies to collocation. The current provision reads as if they do, but the current provision on collocation is beyond understanding. The main point under collocation is, again, independent technical review at the applicant’s expense of the cumulative effects of RF emissions. Again, structural integrity of the facility in supporting the arrays was never an issue in terms of peer review. It would most likely be under the purview of the Building Dept.

Thank you for reviewing this. I wanted to get something to you prior to our meeting on Wednesday just so we have something to work from. It is a first draft, sorry.

Mona Linstromberg  
Member, Citizens for the Responsible Placement of Cell Phone Transmission Towers  
87140 Territorial Rd.  
Veneta, OR 97487

935-2795



July 2, 2004

Lane County Public Services Building  
Land Management Dept.  
Attn: Steve Hopkins  
125 E 8<sup>th</sup> St.  
Eugene, OR 97401

**RE: Comments to Lane County's Proposed Regulations for Telecommunication Facilities**

Dear Steve:

I have been working as a land use planner in the wireless telecommunications industry for the past six years. In this time, I've worked in many jurisdictions throughout Oregon and Washington, including Lane County, advising and securing land use permits for the placement of wireless facilities. My experiences have required me to work with a wide variety of local zoning ordinances regulating telecommunication facilities. This variety over time has given me a first hand knowledge of what works well and what doesn't work well in regulating telecommunication facilities.

After reviewing the proposed amendments to the regulations for telecommunication facilities, I have a few comments and recommendations to enter into the record.

**Proposed Regulations for Telecommunication Facilities**

**16.264 Telecommunication Facility.**

16.264(3)(i): Maintenance and repair of a lawfully existing telecommunication facility does not require a land use application.

**Comment:** I recommend "maintenance and repair" be clarified to include antenna, pole or other telecommunication equipment replacements that will not result in a significant change in visual impact.

The City of Portland exempts "Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or replacement of transmitters, antennas, or other components of previously approved facilities which do not create a significant change in visual impact..." from their telecommunications ordinance (Portland Zoning Code Chapter 33.274.030(A))

16.264(4): Standards for a new or replacement transmission tower.

**COMMENT:** Similar to the above comment, I recommend this statement exempts the replacement of a lawfully existing transmission tower that does not result in a significant change in visual impact.

A replacement tower could be needed for maintenance or repair reasons. Proposed LC 16.264(3)(i) allows maintenance and repair without a land use application. Therefore, a tower replacement that does not result in a significant change in visual impact should be exempt from these standards.

The City of Portland exempts replacement towers that do not create a significant change in visual impact. "Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or **replacement** of transmitters, antennas, or other components of previously approved facilities which do not create a significant change in visual impact..." are exempt from the telecommunications ordinance (Portland Zoning Code Chapter 33.274.030(A))

16.264(4)(c)(i)(A): *Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower.*

**COMMENT:** This statement needs to clarify what "structures" Lane Co. wants shown on the plans. I can only assume the structures Lane Co. is looking for are existing towers to review possible collocation options.

If this is the case, the Clackamas County Zoning Ordinance has a similar requirement and addresses it with the following language "An accurate graphic (map) inventory of existing wireless telecommunication facilities within one mile of the property under consideration" (Clackamas County Zoning Ordinance Section 835.10(B)(7)).

I recommend Lane Co. uses similar language to clarify what structures should be shown on the plans.

I also recommend Lane Co. allows applicants to respond to the criterion with a map that is separate from the site plan drawing set.

16.264(4)(c)(iii)(B): *Provide the FCC registration number for the transmission tower, or documentation showing that the tower does not require registration.*

**COMMENT:** If Lane County must have a copy of the FCC registration number for the tower; make it a condition of zoning approval. It does not make sense for a tower to be registered with the FCC if it doesn't have land use approval. For example, if the land use application is withdrawn or denied, the applicant will have to go back to the FCC and remove the registration number which can lead to confusion and is a waste time and money. It makes more sense to make FCC registration a condition of approval.

Additionally, this is an FCC requirement which all wireless companies must follow. The stakes and penalties are too high for wireless companies not to register with the FCC. The FCC has jurisdiction over this requirement and it should remain in their arena.

16.264(4)(c)(iv): *Certification by two (2) Oregon-registered professional engineers that the telecommunication facility, as amended by the proposed*

*collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).*

**COMMENT:** If Lane County must have this information, what is the rationale behind requiring certification by two PE's? How are two PE's better than one PE? Are there any other uses in Lane County that require certification from two PE's?

If Lane County has issues with an individual wireless proposal, they should address the issues with the applicant, rather than imposing the extra cost burden of two certifications on every wireless facility application. This requirement is excessive, costly and unnecessary.

If Lane County must, I recommend certification from no more than one Oregon-registered professional engineer. Anything more cheapens the value of the PE's certification.

Additionally, these are FCC standards which all wireless companies must follow in order to retain their license. The stakes and penalties are too high for wireless companies to violate these standards. The FCC has jurisdiction over this requirement and it should remain in their arena.

16.264(4)(c)(viii): *Certification by two (2) Oregon-registered professional engineers that the design of the tower will support at least 3 collocations.*

**COMMENT:** What is the rationale behind requiring certification by two PE's? What has prompted the need to require certification from two PE's? Are there any other uses in Lane County that require certification from two PE's?

If Lane County has issues with the structural calculations, they should address the issues on an individual basis, rather than imposing the extra cost burden of two certifications on every telecommunication facility application. This requirement is excessive, costly and unnecessary.

I recommend certification from no more than one Oregon-registered professional engineer. Anything more would cheapen the value of the PE's certification.

16.264(4)(e)(i): *1200 feet from any residence or school not on the property owner/applicant's tract, or*

16.264(4)(e)(ii): *As far away from residences and schools as it is sited from the closest dwelling on the property owner's/applicant's tract.*

**COMMENT:** What is the rationale for a 1200-foot separation from any residence or school? Wireless transmission towers are unoccupied, passive uses which do not generate any nuisances or pose a hazard to public health and safety. The 1200-foot separation is excessive and is disproportionate to the impacts of the use. At the very least, Lane County should allow an exception to the separation standard if the tower can take advantage of screening opportunities or other advantageous siting characteristics. Does Lane County have any similar separation requirements for other passive land uses?

16.264(4)(f)(i): Approval for transmission towers shall be valid until December 31st of the year following the land use decision and may be renewed every two (2) years, thereafter. If a transmission tower is not constructed and placed into service within 2 years of the land use decision, the approval shall expire.

**COMMENT:** This section of code appears to have a contradiction in the length of time a land use decision is valid. It's either until December 31<sup>st</sup> of the following year or a length of 2 years. Making an approval valid until December 31<sup>st</sup> does not guarantee a 2 year approval. However, this section of code says the land use decision is good for 2 years. Which one is it?

I recommend making the land use decision valid for 2 years and remove the December 31<sup>st</sup> cutoff.

16.264(5): Collocation. A new or replacement collocation shall comply with the following:

**COMMENT:** As is the case with subsection 4 above, I recommend this statement exempt the replacement of lawfully existing telecommunication equipment that does not result in a significant change in visual impact.

Replacement telecommunication equipment could be needed for maintenance or repair reasons. Proposed LC 16.264(3)(i) allows maintenance and repair without a land use application. Therefore, telecommunication equipment replacement that does not result in a significant change in visual impact should be exempt from these standards.

The City of Portland exempts replacement equipment that do not create a significant change in visual impact. "Emergency or routine repairs, reconstruction, or routine maintenance of previously approved facilities, or **replacement** of transmitters, antennas, or other components of previously approved facilities which do not create a significant change in visual impact..." are exempt from the telecommunications ordinance (Portland Zoning Code Chapter 33.274.030(A))

16.264(5)(b)(i)(A): Structures. All existing and proposed structures on the site. Include any structures within 1200 feet of the tower.

**COMMENT:** No towers are proposed in collocation applications. Therefore, why does the applicant need to include any structures within 1200 feet of the tower? It appears to me this is a mistake and should be removed.

I recommend removing the requirement to include any structures within 1200 feet of the tower because it does not apply to collocations.

16.264(5)(b): (ii) A description of the tower design and height. The description shall include:

- (A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower and ancillary facilities;
- (B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate;

**COMMENT:** These sections of proposed code appear to be a mistake because they do not apply to collocations. I can only assume these sections of code were mistakenly copied from Proposed LC 16.264(4)(c)(ii) which addresses new towers.

I recommend removing these sections of code because they do not apply to collocations.

16.264(5)(b)(iii): If the collocation is within 14,000 feet of an airport:

**COMMENT:** This criterion should only apply to collocations that cause the height of the existing structure to be increased. Most collocations do not result in increased height and do not pose a hazard to aircraft.

I recommend revising this section to apply only to collocations that cause the height of the existing structure to be increase.

16.264(5)(vii): Certification by two (2) Oregon-registered professional engineers that the telecommunication facility, as amended by the proposed collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).

**COMMENT:** If Lane County must have this information, what is the rationale behind requiring certification by two PE's? Are there any other uses in Lane County that require certification from two PE's?

If Lane County has issues with an individual wireless proposal, they should address the issues with the applicant, rather than imposing the extra cost burden of two certifications on every wireless facility application. This requirement is excessive, costly and unnecessary.

If Lane County must, I recommend certification from no more than one Oregon-registered professional engineer. Anything more cheapens the value of the PE's certification.

Additionally, these are FCC standards which all wireless companies must follow in order to retain their license. The stakes and penalties are too high for wireless companies to violate these standards. The FCC has jurisdiction over this requirement and it should remain in their arena.

16.264(5)(vii): Certification by two (2) Oregon-registered professional engineers that the telecommunication facility will support the proposed collocated equipment.

**COMMENT:** What is the rationale behind requiring certification by two PE's? What has prompted the need to get certification from two PE's? Are there any other uses in Lane County that require certification from two PE's?

If Lane County has issues with the structural calculations, they should address the issues with the applicant, rather than imposing the extra cost burden of two certifications on every wireless facility application. This requirement is excessive, costly and unnecessary.

If Lane County must, I recommend certification from no more than one Oregon-registered professional engineer. Anything more cheapens the value of the PE's certification.

Thank you for the opportunity to comment on the proposed regulations for telecommunication facilities. I trust Lane County will consider these comments and recommendations as they work to create a workable telecommunications ordinance that is fair to all parties involved.

Please feel free to contact me at 503-241-0279 if you have any questions.

Sincerely,

Paul Slotemaker, AICP  
Zoning Specialist

# TERRAQUEST INTERNATIONAL

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Consultants to AT&T Wireless

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July 12, 2004

Lane County Planning Commission  
Eugene, Oregon 97401

**RE: Proposed amendments to Lane Code 16.264**

Dear Members of the Planning Commission:

We are consultants for AT&T Wireless Services of Oregon, Inc. and their affiliates. We have reviewed the proposed changes to the code and have the following comments (all references are to 16.264):

1. **16.264 2. Definitions**

Collocation- This language is confusing and its application in the code appears to require that placement of any equipment on an existing site would trigger a full land use review. A good example is the required addition of a GPS antenna to many sites (usually mounted on top of the equipment cabinets and is a small conical antenna about 6" long) or the Federal requirement that E911 antennas be added to sites. The E911 deadlines are very specific and the requirements are strict. The County should leave some flexibility in the code to allow for such occurrences.

In addition, replacing antennas with new antennas of like size, dimension and type should not create a situation where full land use approval is required. With changing technology and improving design of antennas, change-outs of antennas are a common event. In one recent case in Lane County, AT&T Wireless has been subjected to an extensive process for antenna change-outs even though the actual impact on the site is nil.

Washington County, Oregon has just amended their code to address the issues above and I would suggest similar language. Following are excerpts of the new changes to their codes:

*Sections 430-109.1 A. and B.*

- A. *Emergency or routine repairs or maintenance of lawfully established communication and broadcast towers or antennas;*



B. *Reconstruction or replacement of external transmitters, antennas, or other components of antennas or communication and broadcast towers; approved after November 26, 1992, the effective date of subject to the provisions of Ordinance 402; subject to the following:*

- (1) *Does not increase the height or bulk-base diameter of the existing tower or structure as originally approved or constructed;*
- (2) *Does not reduce existing landscape buffers unless replaced with vegetation with the same effects similar characteristics, plant densities and maturity;~~and~~*
- (3) *Does not use colors or lights that make the tower or antenna more visually obtrusive, unless required by either the Oregon Department of Aviation (ODA) or the Federal Aviation Administration (FAA), and; and*

**{NEW}** (4) *Does not increase the number of antennas or external transmitters (e.g., like antennas or transmitters may be replaced with like antennas or transmitters. Notwithstanding, existing antennas and external transmitters may remain for a period not to exceed six (6) months in order to accommodate the transfer of service from the existing antennas or transmitters to the replacement antennas or transmitters.*

~~(4) Does not result in an increase in radio frequency emissions.~~

**{NEW}** (5) *Replacement antennas or external transmitters do not exceed the size (e.g., area or length) of existing antennas or transmitters by more than twenty (20) percent.*

*Reconstruction or replacement of transmitters, antennas or other components of nonconforming antennas or communication and broadcast towers approved before November 26, 1992 is subject to the provisions of Section 440, Nonconforming Uses, and applicable provisions of 430-109 as required by Section 440.*

2. 3. g. - Issues relating to proximity to an airport are within the authority of the FAA and we would recommend leaving those issues with them. For example, in many cases the terrain will actually penetrate the "imaginary" surfaces, and/or a site may be located on the backside of a natural obstruction (hill, mountain, etc.) that violates the surface and the FAA and OBA will approve such installations up to 35' above ground level of the highest point. We would suggest that the County simply require FAA and OBA consent or approval for all installations. This provision in the code may actually limit good siting options that are acceptable to the enforcement agencies tasked with overseeing airport safety issues.
3. 3.h. - As noted above, in relation to "collocation", this section should be expanded to allow for substitution or replacement of existing antennas that may actually be considered an upgrade to the site, and not maintenance or repair. I would recommend integration of some of the sections of the new Washington County codes. With the new changes that will be required by evolving

technology and services, the expansion of this language would help alleviate the burden on planning staff.

4. 3.i – Our concerns with this section are primarily in relation to Federal lands where the policies for fire suppression, trimming of trees and removal of brush may be subject to full NEPA or FLPMA reviews. Lane County is the only jurisdiction that I am aware of on the west coast that places land use restrictions on Federal property (rights of the County for land use review are pre-empted by the Constitution) and the Federal agencies may be reluctant to agree to the fire break policies set by the County. The County code requirement would potentially impact an area ¼ of an acre or more in size.
5. 4.b. – Is a neighborhood meeting required in the cases where the property owner owns all the property for ½ mile around the site area (forest lands or large agricultural tracts)? If so, what is the notification area? Is there an exception under the code?
6. 4.c.(iii) – Would a FAA or OBA determination of “no significance” or acceptable fulfill this requirement? The County has no enforcement authority on FAA or OBA issues and we would suggest that the County simply require that the applicant provide evidence of FAA and OBA approval of the site.
7. 4.c.(vii) – This standard of ten miles appears to be arbitrary and without reasonable foundation. A 10-mile radius of the proposed site would far exceed the actual coverage of most wireless communications sites and would place an undue burden on applicants where terrain or other obstructions require the establishment of a new facility. New towers are often required to resolve service or “capacity” issues and if an applicant is filing for a new installation for that purpose, the County should be willing to recognize that communications facilities a substantial distance away may not meet that need. What is the reason for the 10-mile radius standard? Does the County place similar requirements on other similar types of uses (I.E. long haul microwave; emergency services)?
8. 4.c.(viii) – The term “collocation” needs to be clarified so that it is apparent that the intent is for tower capacity for the primary occupant of the tower and two other providers. Under standard industry terminology, this language would appear to require that a provider that is the tower owner would have to provide space for three more providers, not just two as is the apparent intent of the code.
9. 4.c.(x) – The FAA does not require (and does not want a tower owner to file) a FAA filing if the site location passes the “TOWAIR” standards on the FAA website. The County should simply require evidence of FAA and OBA acceptance of the proposed site.
10. 4.d.(i) – This section of the code appears to attempt to establish a “needs” requirement that the provider must meet when other uses are not subjected to similar requirements. The “ten-mile” standard is arbitrary and the County has not indicated the purpose or need for such a requirement, or, their ability to analyze the stated needs of the applicant. The Code places an unfair burden on the Applicant by placing vague and arbitrary standards that do not appear to fall within the parameters of their planning authority.
11. 4.d.(ii) – At a minimum, this type of clarification should be used in 4.c.(vii) noted above.
12. 4.d.(iii) – This is a FCC issue and the County has no authority over such issues. What they should consider is a standard that in the case of collocations or changes of equipment, the applicant must provide evidence that the modifications or additions comply with FCC standards.
13. 4.d.(v) – Did you mean “FAA registration number” for the transmission tower?

14. 4.e. – This section is very confusing and difficult to interpret. Which standard ((i) or (ii)) is the minimum separation requirement? In addition, schools are often excellent sites for locating towers (lighting for athletic sports, parking lot lights) and are apparently excluded by implementation of a wide separation requirement. What is the purpose of this exclusionary zone? Why are schools a focus this provision? Is the County concerned about health or safety issues?
15. 5. – Does this section apply to antenna replacements or replacing of electronic equipment when the number and size of antennas do not increase, and, the equipment area is not increased? As noted above, antenna replacements or upgrades should be exempted from review if they do not substantially increase the overall impact of the site. The requirement should pass the “nexus” test.
16. 5.b.(ix) and c.(iii)– What is the purpose of these provisions? Are collocations limited to only FCC licensed users? Is it required that an applicant be FCC licensed? What about tower companies that are building the tower on behalf of a licensed carrier, but the application and ownership of the tower will be in the tower company's name? What about other types of use that may not necessarily be subject to FCC licensing (unlicensed microwave, weather stations, monitoring)? This requirement should not be a part of the code without some specific and valid reason for its inclusion.

In your email, you indicate that the Planning Commission will not be taking public testimony. Is that correct? Are only written comments to be considered? Why isn't public testimony allowed? We are concerned that in past code amendments in other jurisdictions that the written comments have been largely ignored and we would like the opportunity to offer testimony.

Please call me if you have questions or comments. Also, please place me on your mailing list for notification of all pending actions by the County in relation to wireless ordinance changes, including dates and times for hearings and submission of comments.

Sincerely,

Ron Fowler  
Consultant for AT&T Wireless

July 12, 2004

To Whom It May Concern:

Re: Lane County Telecommunication Ordinance Revision:

I just spent hours listening to tapes of LCPC works sessions, the joint work session/ public hearing in April 2002, and reading the minutes from the September 2002 public hearing before the Board. It is unfortunate the directive from the Board (LCPC Agenda Cover Memo dated June 25, 2004) to staff was not accompanied by those same tapes and minutes to give some context to the request to make the regulations "easier to understand, simpler to implement and resolve three specific issues." The staff member assigned to this task was not given very good direction. The revision of the Telecomm. Ordinance was not well received by either those testifying at the July 6<sup>th</sup> hearing or by the Planning Commission. This background information would also be of help to those on the Planning Commission who were not present the first (and second) go around.

The most informative tape I listened to was of the joint work session held in April 2002. I have heard it before: I heard it on that tape: and I heard it at the July 6 LCPC work session. Oblique directives from the Board have happened before. Given the concerns express by both the community and the Board itself, I should have thought that before even venturing to revise this ordinance there would have been discussion on the intent and scope of the review so that there could have been constructive direction. If the intent was not to change policy, then the attempt failed. This reminds me of the circumstances that necessitated the Telecomm ordinance being noticed twice – the original ordinance and the amended version, both requiring notice within the same year. Which all leads me to ask was this directive the result of the previous public hearings; Board order; minutes; conversation with the Board; or just an item on the long range planning schedule to be crossed off? And please, please add clarity to the setback provision. It should be an absolute setback of 1200 feet, no "or", no qualifiers. Both the current and proposed provisions are only asking to be challenged – the current, by industry and the proposed, by me.

I can well understand the directive – wherever it originated - to make the "regulations easier to understand, simpler to implement." On more than one occasion I made comment on the importance of clarity in the writing of even a well-intentioned ordinance. The collocation provision especially has caused confusion as evidenced by comments from service providers and myself on several collocation applications.

However, it is one of the three specific items that most puzzles me. Items one and three are understandable though item one further illustrates the lack of knowledge of the original context. Jeannie Hunt, representing Weyerhaeuser, introduced this perspective of large tract landowners. Of course, it would also apply to state and federal lands.

It is item two "peer review of radiation limits and tower design" which truly gives me pause. This would seem to come out of discussions at both work sessions and public hearings. Mr. Hopkins, again having no context for this directive, chose to address whatever his preconceived notions were. In originally addressing this, he tried to incorporate an obviously redundant requirement for service providers. In essence, if one can hire one RF engineer to submit a design, what purpose is served in hiring two? And what does that have to do with peer REVIEW?

On the Agenda Cover Memo Addendum dated July 6, 2004, staff has altered this to require only one engineer's certification. Under New Standards in the same addendum, #2. Review of Radiation Limits and Tower Design, staff writes "the current standards do not require an engineer's review." Please see in the current ordinance 16.264 3(b)(ix) "Other information requested in the application form provided by the director, such as **peer review by an independent** engineering firm of the proposed telecommunication facility design." This would include the system's design and not necessarily the structural design as assumed by staff. During comment by the public, our express concerns were about accuracy and full disclosure on the technical aspects of a system's design. We also testified on the need to monitor the cumulative affect of multiple arrays of antennae on these facilities at the application phase of, especially, collocation facilities. From public testimony and statements by the Board it could well be construed that this aspect of peer review should be pursued in any review and revision of the Telecomm Ordinance.

It might also prove useful to trace directive from the Board at the April hearing to the subsequent Planning Commission review (including the May '02 discussion with Mr. Howe) to the September public hearing to the current directive as stated in the Agenda Cover Memo. Because of the direction this revision has taken, I am concerned the resulting first effort has deflected meaningful review. It is truly disheartening to see such a waste of energy, time, and money that could easily have been avoided with better direction, the asking of questions, and, generally, much needed oversight.

As a postscript, I contacted staff on June 28<sup>th</sup> and made an appointment to meet with Mr. Hopkins on June 30<sup>th</sup>. The evening of the 28<sup>th</sup> I e-mailed him my analysis of his revision. RealCom (an industry advocate) subsequently submitted comment dated July 2. Although I support open dialogue, I am curious if comment was solicited by staff. If so, I am wondering, if the tables had been turned, would we have been extended the same courtesy? Also, as to RealCom's assertions that "(t)he stakes and penalties are too high for wireless companies to violate these (FCC) standards," I would like to relate my communications with the FCC concerning compliance and enforcement – under funded and under staffed. And as to Mr. Slotemaker's comments on "repairs and maintenance," it is obvious that the industries benchmark is "significant" visual impact. There are other considerations of great importance, as evidenced by the recent District Court decision in Voice Stream PCS I, LLC vs the City of Hillsboro. This precedent setting decision acknowledges a jurisdiction's right to deny an application where there is no significant gap in coverage. I would expect Lane County to reject this argument advanced by RealCom.

So, I encourage all those involved in this process to review the background information so readily available on tape and in the form of minutes. I would encourage the Planning Director to take a hard look at Board Directive and maybe have a conversation with the Board so as to add clarity to that directive. Then, maybe, the ordinance can be revised to be simpler to understand and easier to implement, while still retaining its integrity.

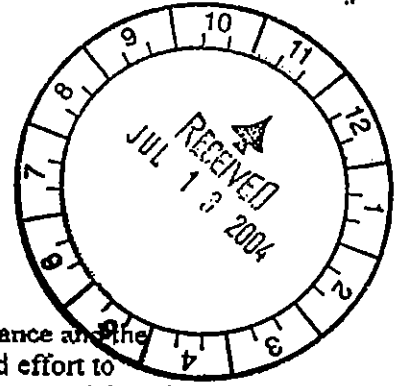
Please enter into the record.

Thank you for your attention,

Mona Linstromberg  
Member, Citizens for Responsible Placement of Cell Phone Transmission Towers  
87140 Territorial Rd.  
Veneta, OR 97487

PAZC \_\_\_\_\_  
ORD \_\_\_\_\_  
Date \_\_\_\_\_  
Exhibit No. 6e

July 13, 2004



To Mr. Hopkins, staff Lane County LMD:

Re: Revision of Lane County Telecommunication Ordinance:

Now that I have had the opportunity to review both the current ordinance and the proposed revision, I would like to encourage you to make a concerted effort to incorporate the Planning Commission's suggestions in your approach to revision. One, of course, would like to be as succinct as possible where possible, but not to the detriment of intent. And I would think, if nothing else, we can take away from both the July 6 work session and public hearing that those of us not actively involved in the original process might need to become better informed.

As mention was made of this several times, there seems some concern as to the 1200 foot setback provision. I am unclear as to why with a reasonable setback of 1200 feet one would want to confuse the issue with the second part of that requirement. If 1200 feet were the minimum requirement, I would be concerned that industry might challenge anything greater with infringing on its ability to provide coverage.

I also bemoan the obvious waste of time and effort as well as money in the first attempt at revision. It would seem critical to seek review prior to formal presentation to the Planning Commission as there seemed a great degree of misunderstanding of what is expected of you. Since Planning Commissioner Martorello apparently is well versed in the progression of this ordinance, it might seem prudent for him to do a review at some point. Hopefully, something of this nature will assure this revision greater chance of success.

Please enter into the record.

Respectfully,

Leandra Bell Matson  
33476 Bloomberg Rd.  
Eugene, OR 97405

# **TERRAQUEST INTERNATIONAL**

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July 26, 2004

Lane County Planning Commission  
125 East 8<sup>th</sup> Street  
Eugene, Oregon 97401

## **RE: Proposed amendments to Lane Code 16.264**

Dear Members of the Planning Commission:

TerraQuest International is a contracted consultant to AT&T Wireless Services of Oregon, Inc. and their affiliates. We have reviewed the proposed August 3, 2004 changes to the code and continue to have concerns about the proposed changes.

The objective in any planning code that relates to wireless telecommunications should be to weigh legitimate planning concerns with the general needs or requirements of the general population. Wireless telecommunications has become one of the most important and dynamic technologies of the last 100 years, and, a majority of the population, including the citizens of Lane County, benefit from the utilization of wireless services every day. As demands for wireless communications increase, the systems and infrastructure to support those services must also increase to meet the demand.

The overwhelming demand for services was greatly underestimated in 1984 when the first cellular telephones were placed in service. Even the most optimistic analysts predicted that the industry would have about two million subscribers in the year 2000. However, by the end of the year 2000, wireless telephone (PCS and Cellular) users in the United States numbered more than 100,000,000 and usage was increasing by about 20% per year. In order to address this incredible growth, the industry was forced to expand their networks and increased the number of telecommunications facilities from about 3000 in 1987 to over 150,000 at the end of 2003. With the introduction of new technologies (Max Wi-Fi, wireless data, fixed wireless, etc.) the demands for new communications facilities will continue to grow. County and City codes need to acknowledge the demand for these services and create codes that facilitate the expansion of the services without creating unnecessary or excessive process that inhibits the development of services. For example, Washington County, Oregon and Jefferson County, Colorado have passed recent revisions that acknowledge the growth of the industry and look to the future.

The proposed Lane County Code amendments have raised concerns that it may be difficult to meet the demands for wireless services in the County in a timely manner due to code provisions that inhibit expansion or upgrading of the systems operated by licensed

telecommunications service providers. In regards to the proposed code amendments in Lane County, we have the following comments (all references are to 16.264):

**1. IN GENERAL**

- a. The terms "Land Use Application" and "Special Use Permit" are used throughout the code. Shouldn't this be changed to be consistent language such as "Special Use Application" and "Special Use Permit"?
- b. Several provisions in the proposed code appear to exceed the scope of the legal and statutory authority of the County to regulate the standards set. Shouldn't the County leave the regulatory authority with the authorized agency? Does the County maintain that they have regulatory authority that exceeds the powers of applicable Federal and State agencies? See various comments below regarding specific code sections.
- c. The County code should encourage collocation of carriers, but several sections of the proposed code actually make collocation as difficult as building a new tower, and, does little to actively promote collocation by the carriers.

**2. 16.264 2. Definitions**

Collocation- This language has not been clarified and continues to be confusing and difficult to interpret reasonably. A literal reading of this definition appears to require full review for collocation rather than encouraging collocation. Also, it only allows for installations on existing structures or buildings without providing for the necessary equipment space on the ground.

The code appears to require that the placement of any equipment on an existing site would trigger a full land use review, although the addition of equipment may be mandated by Federal or State law. A good example is the required addition of a GPS antenna to many sites (usually mounted on top of the equipment cabinets and is a small conical antenna about 6" long) or the Federal requirement that E911 antennas be added to sites. The E911 deadlines are very specific and the requirements are strict. The County should leave some flexibility in the code to allow for such occurrences.

In addition, replacing antennas with new antennas of like size, dimension and type should not create a situation where full land use approval is required. With changing technology and improving design of antennas, change-outs of antennas are a common event. In one recent case in Lane County, AT&T Wireless has been subjected to an extensive process for antenna change-outs (they have cited the collocation language) even though the actual impact on the site is nil. I am unaware of any other planning agency that considers antenna change-outs for an existing site as a new "collocation". The County appears to be seizing on these opportunities to exact more standards or requirements on previously approved and developed sites.

Washington County, Oregon has just amended their code to address the issues above and I would suggest that you consider adopting similar language. Following are excerpts of the new changes to their codes:

*Sections 430-109.1 A. and B.*

- A. *Emergency or routine repairs or maintenance of lawfully established communication and broadcast towers or antennas;*



B. *Reconstruction or replacement of external transmitters, antennas, or other components of antennas or communication and broadcast towers approved after November 26, 1992, the effective date of Ordinance 402, subject to the following:*

- (1) *Does not increase the height or base diameter of the existing tower or structure as originally approved or constructed;*
- (2) *Does not reduce existing landscape buffers unless replaced with vegetation with similar characteristics, plant densities and maturity; ~~and~~*
- (3) *Does not use colors or lights that make the tower or antenna more visually obtrusive, unless required by either the Oregon Department of Aviation (ODA) or the Federal Aviation Administration (FAA), and*

**{NEW}** (4) *Does not increase the number of antennas or external transmitters (e.g., like antennas or transmitters may be replaced with like antennas or transmitters. Notwithstanding, existing antennas and external transmitters may remain for a period not to exceed six (6) months in order to accommodate the transfer of service from the existing antennas or transmitters to the replacement antennas or transmitters.*

**{NEW}** (5) *Replacement antennas or external transmitters do not exceed the size (e.g., area or length) of existing antennas or transmitters by more than twenty (20) percent.*

*Reconstruction or replacement of transmitters, antennas or other components of nonconforming antennas or communication and broadcast towers approved before November 26, 1992 is subject to the provisions of Section 440, Nonconforming Uses, and applicable provisions of 430-109 as required by Section 440.*

*430-109.3(A) Collocation. Collocation means the placement of two or more antennas systems and accessory equipment facilities by one or more FCC license holders (service providers) on an existing structure such as a tower or the placement of one or more antenna systems and accessory equipment facilities on a structure such as a building, water tank, utility pole or electric transmission tower.*

Provider – The proposed language does not appear to be comprehensive or complete. This language would imply that users of a wireless system are actually providers, and, limits a provider to being a person, which would exclude the majority of actual wireless providers. This language should be completely rewritten to clearly define and set the intent of the County. The Federal statutes usually refer to wireless providers as “commercial mobile radio services” (CMRS) and this would include all

present and future types of technologies that are not covered by this definition. In particular, the code does not cover wireless data systems, Wi-Fi or other future technologies.

3. 3.c. – In part, the provision states that “... or do not provide the communication coverage necessary to provide the service.” Coverage is not the only reason that new communications facilities are needed and this section appears to summarily disallow sites that are required to improve service or meet capacity objectives.
4. 3.f. – There are some instances where federal or state law may require additional signage on a site. I would suggest that language be added to this provision stating, “All other signs are prohibited unless required by federal, state or local law or regulations.”
5. 3. g. - Issues relating to proximity to an airport are strictly within the authority of the FAA and we would recommend leaving those issues with them. For example, in many cases the terrain will actually penetrate the “imaginary” surfaces, and/or a site may be located on the backside of a natural obstruction (hill, mountain, etc.) that violates the surface and the FAA and ODA will approve such installations up to 35’ above ground level of the highest point. We would suggest that the County simply require FAA and ODA consent or approval for all installations. This provision in the code may actually limit good siting options that are acceptable to the enforcement agencies tasked with overseeing airport safety issues. In addition, the County has no authority to enforce FAA regulations.
6. 3.h. – As noted above, in relation to “collocation”, this section should be expanded to allow for substitution or replacement of existing antennas that may actually be considered an upgrade to the site, and not maintenance or repair. I would recommend integration of some of the sections of the new Washington County codes. With the new changes that will be required by evolving technology and services, the expansion of this language would help alleviate the burden on planning staff.
7. 3.i – Our concerns with this section are primarily in relation to Federal lands where the policies for fire suppression, trimming of trees and removal of brush may be subject to full NEPA or FLPMA reviews. Lane County is the only jurisdiction that I am aware of on the west coast that places land use restrictions on Federal property (rights of the County for land use review are pre-empted by the Constitution) and the Federal agencies may be reluctant to agree to the fire break policies set by the County. The County code requirement would potentially impact an area ¼ of an acre or more in size.
8. 4.b. – Is a neighborhood meeting required in the cases where the property owner owns all the property for ½ mile around the site area (forest lands or large agricultural tracts)? If so, what is the notification area? Is there an exception under the code?
9. 4.c.ii (C) – This provision is confusing and is impossible to interpret. It seems to require that the applicant have two collocation lease agreements in place before they can apply for the special use permit and planning approval.
10. 4.c.(iii) – Would a FAA or ODA determination of “no significance” or acceptable fulfill this requirement? The County has no enforcement authority on FAA or ODA issues and we would suggest that the County simply require that the applicant provide evidence of FAA and ODA approval of the site. This requirement should not apply to any collocation installations on existing facilities unless the overall height of the structure is increased.

11. 4.c.(vii) – This standard of ten miles appears to be arbitrary and without reasonable foundation. A 10-mile radius of the proposed site would far exceed the actual coverage of most wireless communications sites and would place an undue burden on applicants where terrain or other obstructions require the establishment of a new facility. New towers are often required to resolve service or “capacity” issues and if an applicant is filing for a new installation for that purpose, the County should be willing to recognize that communications facilities a substantial distance away may not meet that need. What is the reason for the 10-mile radius standard? Does the County place similar requirements on other similar types of uses (I.E. long haul microwave; emergency services)?
12. 4.c.(viii) – The term “collocation” still needs to be clarified.
13. 4.c.(x) – The Code appears to be overly concerned about the removal of the tower installation and also any collocations on the tower. This is somewhat unusual and rarely a significant concern in most codes. Has this been an actual concern or problem in the past in Lane County?
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20. 4.d.(iv) – This provision may interfere unnecessarily with the private property rights of the parties (land owner and tower developer). If the property owner is a large commercial concern (logging company), the State or a Federal agency, they will usually not allow other parties to maintain their roads, and, to require maintenance of several miles of road would place an undue burden on the applicant. If the concern is about access for fire or other safety equipment, that should be addressed directly. The requirement may also violate “essential nexus” requirements as set out in *Nollan v. California Coastal Commission*, 483 U.S. 825.

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Our primary concern is the apparent discrimination against the telecommunications industry. What other commercial uses are subject to renewal of the permits every two years? Does the County require renewals for restaurants, fuel stations or other utilities? The telecommunications industry invests millions of dollars into the basic service infrastructure of the County and should not be subjected to arbitrary regulations or permitting renewal without good reason. Compliance with GCC regulations is a federal issue and compliance with the bond requirements can be readily addressed by requiring notice if the bond is terminated or cancelled. We strongly object to this provision.

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The provisions for Collocation appear to be as complex as permitting for a new tower location and require the applicant to submit excessive information in relation to the prospective impact. The code should encourage collocation through a reduced or simplified process rather than creating excessive standards for use of an existing facility.

The term “replacement collocation” is a non standard term and we are really not certain what the intent of this language is. Does the County want a person that is collocated on a tower to go through the permitting process again if they simply change antennas or upgrade their equipment? This is very unconventional language.

Does this section apply to antenna replacements or replacing of electronic equipment when the number and size of antennas do not increase, and, the equipment area is not increased? As noted above, antenna replacements or upgrades should be exempted from review if they do not substantially increase the overall impact of the site. The requirement should pass the “nexus” test.

25. 5.b.(iii) – Why does the County require information relating to airports for collocations? The responsibility for compliance with FAA registration or FAA regulations rests entirely with the tower owner, and, unless the collocation tenant increases the overall height of the facility, further FAA review is not required or

July 26, 2004

necessary. The provision simply appears to create an extra and unnecessary step in the process without substantive need.

26. 5.b.(ix) and c.(iii)– What is the purpose of these provisions? Are collocations limited to only FCC licensed users? Is it required that an applicant be FCC licensed? What about tower companies that are building the tower on behalf of a licensed carrier, but the application and ownership of the tower will be in the tower company's name? What about other types of use that may not necessarily be subject to FCC licensing (Wi-Fi, unlicensed microwave, weather stations, monitoring)? Isn't the primary objective to limit the number of towers in the County and avoid tower proliferation? This requirement should not be a part of the code without some specific and valid reason for its inclusion.

AT&T Wireless would like the code amendment process to be delayed until a task force can work together to address some of the industry's concerns. As it is currently written, some of the code sections appear to be contrary to existing federal regulations and case law. The objective of any code amendment should be to develop reasonable and necessary regulation of proposed uses, but avoiding any unnecessary requirements that serve no valid purpose, or, potentially increase the likelihood of litigation and controversy. The proposed code needs additional work in order to set reasonable standards for the further development of infrastructure for these essential communications services. Wireless communications is rapidly becoming the norm rather than the anomaly, and, codes should anticipate and encourage development of these services throughout the county in order to meet the needs of a majority of the general public.

Please call me if you have questions or comments. Also, please place me on your mailing list for notification of all pending actions by the County in relation to wireless ordinance changes, including dates and times for hearings and submission of comments.

Sincerely,

Ron Fowler  
Consultant for AT&T Wireless

# **TERRAQUEST INTERNATIONAL**

A division of Quest Energy Systems, Inc. (Est. 1980)

*Consultants to AT&T Wireless*

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August 4, 2004

Lane County Planning Commission  
125 East 8<sup>th</sup> Street  
Eugene, Oregon 97401

**RE: Proposed amendments to Lane Code 16.264**

Dear Members of the Planning Commission:

TerraQuest International is a contracted consultant to AT&T Wireless Services of Oregon, Inc. and their affiliates. We have reviewed the proposed August 3, 2004 changes to the code and continue to have concerns about the proposed changes.

The objective in any planning code that relates to wireless telecommunications should be to weigh legitimate planning concerns with the general needs or requirements of the general population. Wireless telecommunications has become one of the most important and dynamic technologies of the last 100 years, and, a majority of the population, including the citizens of Lane County, benefit from the utilization of wireless services every day. As demands for wireless communications increase, the systems and infrastructure to support those services must also increase to meet the demand.

The overwhelming demand for services was greatly underestimated in 1984 when the first cellular telephones were placed in service. Even the most optimistic analysts predicted that the industry would have about two million subscribers in the year 2000. However, by the end of the year 2000, wireless telephone (PCS and Cellular) users in the United States numbered more than 100,000,000 and usage was increasing by about 20% per year. In order to address this incredible growth, the industry was forced to expand their networks and increased the number of telecommunications facilities from about 3000 in 1987 to over 150,000 at the end of 2003. With the introduction of new technologies (Max Wi-Fi, wireless data, fixed wireless, etc.) the demands for new communications facilities will continue to grow. County and City codes need to acknowledge the demand for these services and create codes that facilitate the expansion of the services without creating unnecessary or excessive process that inhibits the development of services. For example, Washington County, Oregon and Jefferson County, Colorado have passed recent revisions that acknowledge the growth of the industry and look to the future.

The proposed Lane County Code amendments have raised concerns that it may be difficult to meet the demands for wireless services in the County in a timely manner due to code

provisions that inhibit expansion or upgrading of the systems operated by licensed telecommunications service providers. In regards to the proposed code amendments in Lane County, we have the following comments (all references are to 16.264):

### 1. IN GENERAL

- a. The terms "Land Use Application" and "Special Use Permit" are used throughout the code. Shouldn't this be changed to be consistent language such as "Special Use Application" and "Special Use Permit"?
- b. Several provisions in the proposed code appear to exceed the scope of the legal and statutory authority of the County to regulate the standards set. Shouldn't the County leave the regulatory authority with the authorized agency? Does the County maintain that they have regulatory authority that exceeds the powers of applicable Federal and State agencies? See various comments below regarding specific code sections.
- c. The County code should encourage collocation of carriers, but several sections of the proposed code actually make collocation as difficult as building a new tower, and, does little to actively promote collocation by the carriers.

### 2. 16.264 2. Definitions

Collocation- This language has not been clarified and continues to be confusing and difficult to interpret reasonably. A literal reading of this definition appears to require full review for collocation rather than encouraging collocation. Also, it only allows for installations on existing structures or buildings without providing for the necessary equipment space on the ground.

The code appears to require that the placement of any equipment on an existing site would trigger a full land use review, although the addition of equipment may be mandated by Federal or State law. A good example is the required addition of a GPS antenna to many sites (usually mounted on top of the equipment cabinets and is a small conical antenna about 6" long) or the Federal requirement that E911 antennas be added to sites. The E911 deadlines are very specific and the requirements are strict. The County should leave some flexibility in the code to allow for such occurrences.

In addition, replacing antennas with new antennas of like size, dimension and type should not create a situation where full land use approval is required. With changing technology and improving design of antennas, change-outs of antennas are a common event. In one recent case in Lane County, AT&T Wireless has been subjected to an extensive process for antenna change-outs (they have cited the collocation language) even though the actual impact on the site is nil. I am unaware of any other planning agency that considers antenna change-outs for an existing site as a new "collocation". The County appears to be seizing on these opportunities to exact more standards or requirements on previously approved and developed sites.

Washington County, Oregon has just amended their code to address the issues above and I would suggest that you consider adopting similar language. Following are excerpts of the new changes to their codes:

*Sections 430-109.1 A. and B.*

- A. *Emergency or routine repairs or maintenance of lawfully established communication and broadcast towers or antennas;*
- B. *Reconstruction or replacement of external transmitters, antennas, or other components of antennas or communication and broadcast towers; approved after November 26, 1992, the effective date of subject to the provisions of Ordinance 402; subject to the following:*
  - (1) *Does not increase the height or bulk-base diameter of the existing tower or structure as originally approved or constructed;*
  - (2) *Does not reduce existing landscape buffers unless replaced with vegetation with the same effects similar characteristics, plant densities and maturity; ~~and~~*
  - (3) *Does not use colors or lights that make the tower or antenna more visually obtrusive, unless required by either the Oregon Department of Aviation (ODA) or the Federal Aviation Administration (FAA), and; and*

**{NEW}** (4) *Does not increase the number of antennas or external transmitters (e.g., like antennas or transmitters may be replaced with like antennas or transmitters. Notwithstanding, existing antennas and external transmitters may remain for a period not to exceed six (6) months in order to accommodate the transfer of service from the existing antennas or transmitters to the replacement antennas or transmitters.*

~~(4) Does not result in an increase in radio frequency emissions.~~

**{NEW}** (5) *Replacement antennas or external transmitters do not exceed the size (e.g., area or length) of existing antennas or transmitters by more than twenty (20) percent.*

*Reconstruction or replacement of transmitters, antennas or other components of nonconforming antennas or communication and broadcast towers approved before November 26, 1992 is subject to the provisions of Section 440, Nonconforming Uses, and applicable provisions of 430-109 as required by Section 440.*

*430-109.3(A) Collocation. Collocation means the placement of two or more antennas systems and accessory equipment facilities by one or more FCC license holders (service providers) on an existing structure such as a tower or the placement of one or more antenna systems and accessory equipment facilities on a structure such as a building, water tank, utility pole or electric transmission tower.*

Provider – The proposed language does not appear to be comprehensive or complete. This language would imply that users of a wireless system are actually providers, and, limits a provider to being a person, which would exclude the majority of actual wireless providers. This language



should be completely rewritten to clearly define and set the intent of the County. The Federal statutes usually refer to wireless providers as "commercial mobile radio services" (CMRS) and this would include all present and future types of technologies that are not covered by this definition. In particular, the code does not cover wireless data systems, Wi-Fi or other future technologies.

3. 3.c. – In part, the provision states that "... or do not provide the communication coverage necessary to provide the service." Coverage is not the only reason that new communications facilities are needed and this section appears to summarily disallow sites that are required to improve service or meet capacity objectives.
4. 3.f. – There are some instances where federal or state law may require additional signage on a site. I would suggest that language be added to this provision stating, "All other signs are prohibited unless required by federal, state or local law or regulations."
5. 3.g. – Issues relating to proximity to an airport are strictly within the authority of the FAA and we would recommend leaving those issues with them. For example, in many cases the terrain will actually penetrate the "imaginary" surfaces, and/or a site may be located on the backside of a natural obstruction (hill, mountain, etc.) that violates the surface and the FAA and ODA will approve such installations up to 35' above ground level of the highest point. We would suggest that the County simply require FAA and ODA consent or approval for all installations. This provision in the code may actually limit good siting options that are acceptable to the enforcement agencies tasked with overseeing airport safety issues. In addition, the County has no authority to enforce FAA regulations.
6. 3.h. – As noted above, in relation to "collocation", this section should be expanded to allow for substitution or replacement of existing antennas that may actually be considered an upgrade to the site, and not maintenance or repair. I would recommend integration of some of the sections of the new Washington County codes. With the new changes that will be required by evolving technology and services, the expansion of this language would help alleviate the burden on planning staff.
7. 3.i – Our concerns with this section are primarily in relation to Federal lands where the policies for fire suppression, trimming of trees and removal of brush may be subject to full NEPA or FLPMA reviews. Lane County is the only jurisdiction that I am aware of on the west coast that places land use restrictions on Federal property (rights of the County for land use review are pre-empted by the Constitution) and the Federal agencies may be reluctant to agree to the fire break policies set by the County. The County code requirement would potentially impact an area ¼ of an acre or more in size.
8. 4.b. – Is a neighborhood meeting required in the cases where the property owner owns all the property for ½ mile around the site area (forest lands or large agricultural tracts)? If so, what is the notification area? Is there an exception under the code?
9. 4.c.ii (C) – This provision is confusing and is impossible to interpret. It seems to require that the applicant have two collocation lease agreements in place before they can apply for the special use permit and planning approval.
10. 4.c.iii – Would a FAA or ODA determination of "no significance" or acceptable fulfill this requirement? The County has no enforcement authority on FAA or ODA issues and we would suggest that the County simply require that the applicant provide evidence of FAA and ODA approval of the site. This

requirement should not apply to any collocation installations on existing facilities unless the overall height of the structure is increased.

11. 4.c.(vii) – This standard of ten miles appears to be arbitrary and without reasonable foundation. A 10-mile radius of the proposed site would far exceed the actual coverage of most wireless communications sites and would place an undue burden on applicants where terrain or other obstructions require the establishment of a new facility. New towers are often required to resolve service or “capacity” issues and if an applicant is filing for a new installation for that purpose, the County should be willing to recognize that communications facilities a substantial distance away may not meet that need. What is the reason for the 10-mile radius standard? Does the County place similar requirements on other similar types of uses (I.E. long haul microwave; emergency services)?
12. 4.c.(viii) – The term “collocation” still needs to be clarified.
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Sincerely,

Ron Fowler  
Consultant for AT&T Wireless



PAZC \_\_\_\_\_  
ORD \_\_\_\_\_  
Date \_\_\_\_\_  
Exhibit No. 6h

August 9, 2004

Staff: Steve Hopkins

Comments on Revised Revision of Lane County Telecommunication Ordinance:

One of the so-called directives from the Board concerns peer review. Given the opportunity for written comment and oral comment made during previous work sessions and public hearings, independent peer review was at the top of our list of concerns. Application after application makes assertions "supported" by very technical data provided by their experts. Mr. Hopkins seems to think (please refer to Attachment 1 page 4 (ix)) that peer review by an independent engineering firm has only to do with FCC radiation requirements. Mr. Hopkins, independent peer review has to do with the **ENTIRE SYSTEMS DESIGN**. Just because an applicant says something is true does not necessarily make it so. Even if what is said may be "true", often what is not said could be a deciding factor in confirming the information being provided by the applicant is accurate. In the current ordinance this often crucial aspect is left to the discretion of the Planning Director. With Mr. Hopkins' pen, any provision for independent technical has been wiped out. And, please, do not say that it could be addressed in the proposed amendment (Attachment 6) page 4 of 7, (c) (xi). Peer review was deliberately deleted from this very provision. Again, instead of addressing the Board's directive, independent peer review has been misconstrued (as evidenced by the first revision) and now deleted!!!!!!!!!!!!!!!!!!!!!! Of course, independent technical review would need to be incorporated into the County's fee schedule, expert to be selected by the County but paid for by the applicant - i.e. an arm's length transaction..

In a more orderly fashion, I will address the new revision as proposed:

16.264 3. Standards applicable to all telecommunication facilities.

j. Notice. I am unclear as to the intent of "(i)f the property does not contain a leased area, this subsection shall not apply." Since this has to do with notice, what notice provision would apply if there is no leased area? Any homeowner could have a tower built on their property without going through a leasing process (e.g Silke Communications has a tower on its property so the site is not leased property). Again, I am not sure what the implications would be of this exception.

16.264.4. Standards for a new or replacement transmission tower:

c. Required submittals:

(v) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(4)(f)(iii).

Staff in Attachment 1, page 7 argues that whoever posts the performance bond it the one ultimately responsible for removal of a tower. However, if the applicant posts the bond which at a later date is determined insufficient, the excess cost of removal should be acknowledged by the landowner to be his responsibility. The one does not preclude the other.

d. Performance standards.

(iii) The cumulative radio frequency emissions from the collocations on a single structure shall not exceed the maximum exposure limits of the FCC.

I do not see any required submittals that would in fact establish the cumulative effect of either a new facility with multiple arrays or on a collocation facility. Of course, we are most concerned with the fact that no one is monitoring the cumulative effect and are sensitive to the County's liability in regard

to the absence of this information. Actually, this provision would also be well placed under 16.264 5. Collocation, b. Required submittals

e. Setbacks.

Again, my concern with part (ii) is that this part of the setback provision might be open to challenge as it would seem on the surface to be an unreasonable requirement. This provision in an extreme case could create a setback of e.g. two miles from homes and schools. Section (ii) should be eliminated in its entirety with an absolute setback of 1200 feet from homes and schools. If it were a question of a parcel which could not accommodate a 1200 ft setback, then that would be an entirely different question and this setback provision does not address that situation.

f. Expiration and renewal of the special use permit:

- (iv) This section was discussed at the July 6, 2004 work session/public hearing. Staff's position was that by deleting the 6 month time frame from this removal provision the tower would be required to be removed even sooner than the six months in the current ordinance. In the current revision, Attachment 1 page 7 staff examines this section and seems to find some contradiction with the stipulation that after one year of non-use the applicant has 6 months to remove the tower. That is how I read that current ordinance and would re-iterate that the six months is needed. I agree with staff that this provision can be better written, but I do not think staff has managed to do it. The way staff states it removal is open-ended.

Attachment 1, (5) Siting Standards, (c) Directional /parabolic antennae.....

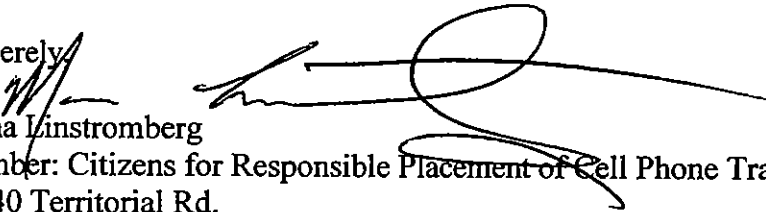
Staff deletes this. To accommodate upcoming technology, the "directional /parabolic antennae" could be eliminated but the remainder of this section should be retained and re-phrased.....

"any antennae utilized should be selected to optimize performance and minimize visual impact."

Under Collocation, Required Submittals I would add proof of final building permit approval for existing facility. In several applications I have reviewed, the existing tower never received final permit approval. Though one would think that at some point in the process this deficiency would surface, it might be possible for it to slip through the cracks. It would seem logical to require this proof during this permit application process.

In conclusion, if one had the perseverance, I am sure every aspect of the new revision could be tracked through Mr. Hopkins exhaustive and exhausting approach. Although I may not agree with some of his editing, I do agree that the current ordinance is confusing and poorly formatted. However, I would also like to point out this process managed to divert the focus from substance to form. I am still waiting for my answer as to how the specifics of this Board Directive were ascertained.

Sincerely,



Mona Linstromberg  
Member: Citizens for Responsible Placement of Cell Phone Transmission Towers  
87140 Territorial Rd.  
Veneta, OR 97487

I REQUEST THAT THIS AMENDMENT NOT BE  
APPROVED UNTIL MODIFIED.

PAZC \_\_\_\_\_  
ORD \_\_\_\_\_  
Date \_\_\_\_\_  
Exhibit No. 6h

From: Mona & Craig [monancraig@pacinfo.com]  
Sent: Monday, August 16, 2004 11:54 AM  
To: kent.howe@co.lane.or.us  
Cc: don.hampton@co.lane.or.us; bill.dwyer@co.lane.or.us;  
anna.morrison@co.lane.or.us; bobby.green@co.lane.or.us;  
Steve.hopkins@co.lane.or.us; peter.sorenson@co.lane.or.us  
Subject: Telecomm Ordinance revisited revision

Kent, thank you for your detailed response. I apologize for not making clear the nature of my concern. I had already gone back and re-listened to tapes of work sessions and hearings and re-read the minutes of others. My concern is the vagueness of the wording of Board directive number two concerning "peer" review especially since Mr. Hopkins apparently has no context in which to interpret that directive - which is obvious from his first revision of the current ordinance.

After comments from interested parties including myself and representatives from the telcomm. industry, Mr. Hopkins in his second revision has not only NOT addressed "peer" review but has eliminated the one reference to it in the current ordinance (3)(b)(ix), unless I am missing something. No doubt Mr. Hopkins eliminated all reference to "peer review by an independent engineering firm of the proposed telecommunications facility SYSTEM DESIGN" in his quest for simplicity, but I should think that would run contrary to Board directive. The concern expressed about the current ordinance and peer or independent review of technical aspects of a telecom application has to do with the existing discretionary nature of this review. In order for independent technical review to actually be meaningful, it needs to be incorporated into a fee schedule and utilized - fee to be refunded if review not necessary. As is, this Board directive has been dismissed at staff level of review.

Sincerely,

Mona Linstromberg  
Member, Citizens for Responsible Placement of Cell Phone Transmission Towers

Veneta, OR

# **TERRAQUEST INTERNATIONAL**

A division of Quest Energy Systems, Inc. (Est. 1980)

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September 29, 2004

Board of County Commissioners  
Lane County  
125 East 8<sup>th</sup> Street  
Eugene, Oregon 97401

## **RE: Proposed amendments to Lane Code 16.264**

Dear Chairman and members of the Commission:

TerraQuest International is a contracted consultant to AT&T Wireless Services of Oregon, Inc. ("AWS") and their affiliates and is representing them and acting on their behalf. We have reviewed the proposed changes to section 16.624 of the Lane County code and have presented evidence and testimony to the Planning Commission setting out several concerns about the proposed changes. The Planning Commission apparently ignored our concerns and we feel it is necessary to reaffirm and restate our objections and opposition to some of the proposed changes in the codes.

Attached is a copy of our August 4, 2004 letter that sets out the primary concerns under the proposed code. As previously stated, the objective in any planning code that relates to wireless telecommunications should be to weigh legitimate planning concerns with the general needs or requirements of industry and the service demands of the general population. The proposed amendments lack this objectivity and some provisions appear to violate existing federal laws and rulings. In addition, the code will make develop more difficult for providers to meet services objectives and facilitate necessary upgrades or modifications to their systems.

We are particularly concerned about the following issues that were set out in our letter of August 4, 2004 and continue to be unresolved:

### **1. IN GENERAL**

- a. Several provisions in the proposed code appear to exceed the scope of the legal and statutory authority of the County to regulate the standards set. Shouldn't the County leave issues of regulatory authority with the authorized agency? Does the County maintain that they have regulatory authority that exceeds the powers of applicable Federal and State agencies? See various comments below regarding specific code sections.
- b. The County code should encourage collocation of carriers, but several sections of the proposed code actually make collocation as difficult as building a new tower, and, does little to actively promote or encourage collocation by the carriers.



**2. 16.264 2. Definitions**

Collocation- This language has not been clarified and continues to be confusing and difficult to interpret reasonably. A literal reading of this definition appears to require full review for collocation rather than encouraging collocation. Also, it only allows for installations on existing structures or buildings without providing for the necessary equipment space on the ground.

The code appears to require that the placement of any equipment on an existing site would trigger a full land use review, although the addition of equipment may be mandated by Federal or State law. A good example is the required addition of a GPS antenna to many sites (usually mounted on top of the equipment cabinets and is a small conical antenna about 6" long) or the Federal requirement that E911 antennas be added to sites. The E911 deadlines are very specific and the requirements are strict. The County should leave some flexibility in the code to allow for such occurrences.

In addition, replacing antennas with new antennas of like size, dimension and type should not create a situation where full land use approval is required. With changing technology and improving design of antennas, change-outs of antennas are a common event. In one recent case in Lane County, AT&T Wireless has been subjected to an extensive process for antenna change-outs (they have cited the collocation language) even though the actual impact on the site is nil. I am unaware of any other planning agency that considers antenna change-outs for an existing site as a new "collocation". The County appears to be seizing on these opportunities to exact more standards or requirements on previously approved and developed sites.

The Washington County, Oregon Board of County Commissioners approved the amending of their code on September 28, 2004 and the new code has many provisions that should be considered by Lane County that address this issue. I can supply the language if you need it.

Provider – The proposed language does not appear to be comprehensive or complete. This language would imply that users of a wireless system are actually providers, and, limits a provider to being a person, which would exclude the majority of actual wireless providers. This language should be completely rewritten to clearly define and set the intent of the County. The Federal statutes usually refer to wireless providers as "commercial mobile radio services" (CMRS) and this would include all present and future types of technologies that are not covered by this definition. In particular, the code does not cover wireless data systems, Wi-Fi or other future technologies.

3. 3.c. – In part, the provision states that "... or do not provide the communication coverage necessary to provide the service." Coverage is not the only reason that new communications facilities are needed and this section appears to summarily disallow sites that are required to improve service or meet capacity objectives. This section ignores the reality of the technology and may clearly violate Federal regulations pertaining to development.
4. 3.f. – There are some instances where federal or state law may require additional signage on a site. I would suggest that language be added to this provision stating, "All other signs are prohibited unless required by federal, state or local law or regulations." This language remains unchanged and should be corrected.

5. 3.h. – This provision is a major issue and will cause problems for carriers in the future. As noted above, in relation to “collocation”, this section should be expanded to allow for substitution or replacement of existing antennas that may actually be considered an upgrade to the site, and not maintenance or repair. I would recommend integration of some of the sections of the new Washington County codes.

This section needs to address realities and places Lane County in the position of being the only jurisdiction that considers antenna modifications as a “collocation” and requiring an existing tower operator to go back through an application process for upgrades that do not require new building permits or electrical connections, and, will have no substantive impact on the visual nature or characteristics of the site. The wireless industry is an evolving and dynamic industry that will require upgrades and minor changes to remain current and meet consumer demands. A reasonable rewriting of this language would also help alleviate the burden on the County’s planning staff by avoiding the necessity of processing unnecessary applications.

6. We cannot concur with the County’s position on item 3.i. Lane County is the only jurisdiction that I am aware of on the west coast that places land use restrictions on Federal property (rights of the County for land use review are pre-empted by the Constitution). This has caused considerable problems in the past and we can’t understand the County’s determination to undermine the rights of the Federal government in the administration and management of Federal property. Regardless of the County’s representations to the contrary, the County does not have an unfettered right to regulate development on Federal lands and we are not certain why they maintain this position. On several occasions, Federal officials have expressed their opposition to the County position, but their objections have been ignored. This would be a good opportunity to correct this situation.
7. 4.b. – Why is a neighborhood meeting still required in the cases where the property owner owns all the property for ½ mile around the site area (forest lands or large agricultural tracts)? It would seem like the intention of the code is to maintain separation of the tower from neighboring properties, but this regulation appears to be excessive and unclearly defined. Shouldn’t the actual intent be to maintain the separation rather than create undue process?
8. 4.c.ii (C) – This provision is still confusing and is impossible to interpret. It seems to require that the applicant have two collocation lease agreements in place before they can apply for the special use permit and planning approval. This requirement is excessive and unmatched in the regulation of other types of uses under the County codes. Are there other industries, buildings or developments where the County requires tenants before they approve the application? What is the purpose of this regulation of wireless development? The requirement of “two collocation lease” agreements ignores reality and will prevent necessary development.
9. 4.c.(iii) – This requirement should not apply to any collocation installations on existing facilities unless the overall height of the structure is increased.
10. 4.c.(vii) – Although this is a provision of the current code, that does not validate the requirement. We objected to this provision when it was passed previously and continue with our objections. The standard of ten miles appears to be arbitrary and without reasonable foundation. A 10-mile radius of the proposed site would far exceed the actual coverage of most wireless communications sites and would place an undue burden on applicants where terrain or other obstructions require the establishment of a new facility. New towers are often required to resolve service or “capacity” issues and if an applicant is filing for a new installation for that purpose, the County should be willing to recognize that communications facilities a substantial distance away may not meet

- that need. What is the reason for the 10-mile radius standard? Does the County place similar requirements on other similar types of uses (I.E. long haul microwave; emergency services)?
11. 4.c.(viii) – The term “collocation” still is problematic. Addition to or modification of existing equipment is NOT a collocation under any industry definition that I am aware of. These situations are not collocations.
  12. 4.c.(x) – We have previously asked if this has been an actual concern or problem in the past in Lane County? If not, why subject the applicant to a requirement for a bond? Does the County require bonds for removal of other types of improvements on property?
  13. 4.d.(i) – This section of the code appears to attempt to establish a “needs” requirement that the provider must meet when other uses are not subjected to similar requirements. The “ten-mile” standard is arbitrary and the County has not indicated the purpose or need for such a requirement, or, their ability to analyze the stated needs of the applicant. The Code continues to place requirements on wireless that are unique and without justification or merit. The wireless carriers do not build sites indiscriminately or without justifiable need. Do you place similar standards on re
  14. 4.d.(i)(A) – In many cases, tower owners require excessive rents that make collocation economically infeasible, towers can be incapable of handling the loading, and, there may be unwilling landlords that will not lease ground space or access to the applicant. The section needs to be modified to allow for these exigent circumstances. Just because there is another tower within 10 miles, doesn’t mean that it can be used. The section must be **comprehensive and complete**, or, it should not set standards at all.
  15. 4.d.(i)(B) – As previously stated, this section should be more clearly defined to include other reasons that a site may be needed. For example, “Inability to meet the carrier’s quality of service, coverage or capacity needs or requirements.”
  16. 4.d.(i)(C) – This section should be expanded to include other examples of type of problems that may arise. I would suggest modifying this language to allow for more flexibility on these types of issues. Suggested language could be something like “Technical reasons such as interference, incompatible uses, inter-modulation or other technical problems that would prohibit use by the carrier.”
  17. 4.d.(ii) – As previously noted, term “provider” should be rewritten. Does this section mean that the applicant has to provide space for the applicant, **and** space for two other collocation tenants? The provision is still not clear.
  18. 4.d.(iii) – Although staff refers to Section 4(c)(iv) to cover this provision, this is strictly a FCC issue and the County has no authority regarding emissions or enforcement of FCC regulations.
  19. 4.d.(iv) – According to the notes supplied by staff, it appears that this concern has been addressed. However, we wish to review the final drafts before commenting.
  20. 4.d.(v)(A) – We would like to review the final draft of the ordinance.
  21. 4.e. – Although this is previous code language, the section is still very confusing and difficult to interpret. Schools are often excellent sites for locating towers (lighting for athletic sports, parking lot lights) and are apparently excluded by implementation of a wide separation requirement. What is the purpose of this exclusionary zone? Why are schools a focus this provision? **Is the County concerned about health or safety issues?** This section should be clarified and rewritten, and, the County is obligated to explain the purpose for the separation.
  22. 4.f.(iii) – What is the purpose of the requirement for renewing the permit every two years? Is this intended as an opportunity for the county to revoke the permit, or, to impose new requirements on the applicant in order for them to maintain their permit? If there are only two requirements for renewal, the County needs to clarify the Code and avoid any broad interpretation that may allow for abuse of this provision.

Our primary concern is still unresolved and the County needs to explain the apparent discrimination against the telecommunications industry. What other commercial uses are subject to renewal of the permits every two years? Does the County require renewals for restaurants, fuel stations or other utilities? The telecommunications industry invests millions of dollars into the basic service infrastructure of the County and should not be subjected to arbitrary regulations or permitting renewal without good reason. Staff has indicated that this is unique to telecommunications and accordingly, **we strongly object to this provision.**

Compliance with FCC regulations is a federal issue. Compliance with the bond requirements can be readily addressed by requiring notice if the bond is terminated or cancelled.

23. 5. – IN GENERAL

The provisions for Collocation appear to be as complex as permitting for a new tower location and require the applicant to submit excessive information in relation to the prospective impact. The code should encourage collocation through a reduced or simplified process rather than creating excessive standards for use of an existing facility. Separate approval criteria should be set out and should not be left up to the Planning Director to modify or recommend non-standard solutions.

The term “replacement collocation” is a non standard term and we are really not certain what the intent of this language is. Does the County want a party that is collocated on a tower to go through the permitting process again if they simply change antennas or upgrade their equipment? This is very unconventional language. This section remains a mystery and staff has offered no explanation.

Does this section apply to antenna replacements or replacing of electronic equipment when the number and size of antennas do not increase, and, the equipment area is not increased? As noted above, antenna replacements or upgrades should be exempted from review if they do not substantially increase the overall impact of the site. The requirement should pass the “nexus” test set out in the Dolan case.

24. 5.b.(iii) – The County needs to avoid delving into regulatory matters that are not within their enforcement or regulatory authority. Why does the County require information relating to airports for collocations? The responsibility for compliance with FAA registration or FAA regulations rests entirely with the tower owner, and, unless the collocation tenant increases the overall height of the facility, further FAA review is not required or necessary. The provision simply appears to create an extra and unnecessary step in the process without substantive need. It is irrelevant that this provision is already a part of the code. We now have the opportunity to address and modify the language.

25. 5.b.(ix) and c.(iii)– Although the following questions have been asked, staff has not responded to our questions. Specifically, we wish to know what is the purpose of these provisions? Are collocations limited to only FCC licensed users? Is it required that an applicant be FCC licensed? What about tower companies that are building the tower on behalf of a licensed carrier, but the application and ownership of the tower will be in the tower company's name? What about other types of use that may not necessarily be subject to FCC licensing (Wi-Fi, unlicensed microwave, weather stations, monitoring)? Isn't the primary objective to limit the number of towers in the County and avoid tower

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proliferation? This requirement should not be a part of the code without some specific and valid reason for its inclusion.

As we previously requested in our reply to the Planning Commission, AT&T Wireless feels that it is imperative that the code amendment process to be delayed until a task force can work together to address some of the industry's concerns. As it is currently written, some of the code sections appear to be contrary to existing federal regulations and case law. The objective of any code amendment should be to develop reasonable and necessary regulation of proposed uses, but avoiding any unnecessary requirements that serve no valid purpose, or, potentially increase the likelihood of litigation and controversy. The proposed code needs additional work in order to set reasonable standards for the further development of infrastructure for these essential communications services.

In spite of repeated requests, we are still apparently not on the County mailing or notice list for this issue. We have not been receiving notices or information without requesting it from staff. It would also help if we could obtain a copy of the latest draft ordinance, as amended or modified, prior to the next hearing. AT&T Wireless wants to see this code be as successful as possible and pledges to work with the County to address the various issues. We will assist in any manner that we can, and, are available to provide information or sample language that may be in use in other jurisdictions.

Thank you for your time and consideration.

Sincerely,

Ron Fowler  
Consultant for AT&T Wireless

Rebuttal to the letter from Mona Lindstrom, dated August 9, 2004. Each comment is addressed in the order presented in the letter.

**16.243(3)(j)**

If the landowner and the applicant are the same, there is no leased area; LC 14.100(4) and LC 14.300(3)(d) apply.

**16.264(4)(c)**

Section 4(f)(3)(B) requires an adequate bond for renewal of the tower.

**16.264(4)(d)**

The requirement is included for towers and collocations. Refer to: 4(c)(iv) and 4(d)(iii); 5(b)(vii) and 5(c)(i). This should not apply to a new tower without collocations, so 4(c)(iv) should be modified.

**16.264(4)(e)**

This is from the existing code and no changes have been made. The Commission may choose to recommend this be modified or eliminated.

**16.264(4)(f)(iv)**

Chapter 5 of the Lane Code and Chapter 5 of the Lane Manual contain procedures for notice of violations. The notification procedures in LC 16.264 are redundant.

The landowner is required to acknowledge the removal responsibilities [refer to 4(v)]. Recording a document will not increase compliance or assist in removal of the tower, especially when the tower is located on federal or state land. The performance bond is the only document that guarantees the tower will be removed.

LC 16.264(7)(d) states the landowner must obtain a demolition permit 6 months after nonuse. Then, it requires removal of the tower after 12 months of nonuse. It does not allow the tower to remain for 18 months after nonuse.

**Antennas**

Staff is not qualified to determine if the proposed antenna will optimize performance. Further, there are no standards in the Lane Code for evaluating the performance of an antenna.

There are other criteria that require the applicant to show the proposed equipment will minimize visual impact [refer to 3(c)].

**Building permits**

The building program has hired a person to close out all building permits that have not received a final inspection.

**Last paragraph**

An email was sent to Ms. Lindstrom on August 11, 2004, regarding the direction from the County Commissioners. It is included as an attachment.

Rebuttal to the comments from Ron Fowler in his letter dated July 26 and August 4. Each comment is addressed in the order presented in the letter.

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- 1) A lease agreement with the federal government contains language that requires compliance with local land use regulations. Therefore, the applicant who locates on federal land is subject to LC 16.264, and any other applicable portion of the Lane Code. This determination is also supported by the decision of the hearings official in the appeal of PA 03-5724.
- 2) The definition of "collocation" has been modified by replacing "antenna" with "telecommunication equipment". A collocation requires director approval without a hearing, but a tower requires director approval w at a hearing. A separate process can be included for specific additions, such as a GPS antenna or change outs that meet specific criteria. The definition of "provider" has not been amended.
- 3) This subsection requires the applicant to consider other sites and to show why the proposed site and equipment were chosen.
- 4) Lane County can not prohibit a sign required by a state or federal agency.
- 5) Suggestion included.
- 6) Refer to #2.
- 7) Refer to #1. The only change to the fire break standards is a specific location (30 feet) for placement of gravel.
- 8) A meeting is required.
- 9) This requirement is current county code.
- 10) 4(c)(iii) is a submittal requirement, not a standard. Mr. Fowler's suggested language is included in 4(d)(iv)(B).
- 11) Even though the 10-mile standard is arbitrary, it is part of the current code. The planning commission may recommend a different standard.
- 12) Refer to the definition.
- 13) The standards for removal of a tower are part of the current code. The planning commission may recommend a different standards.
- 14) These standards are part of the current code. They are not vague or arbitrary because they contain criteria that determine an "adequate level of service".
- 15) This standard is current county code.
- 16) This subsection is in the current county code. The planning commission may recommend additional criteria.
- 17) This subsection is in the current county code. The planning commission may recommend additional criteria.
- 18) The term "user" should be replaced with "provider". Delete the term "collocation sites" and replace with "collocations".
- 19) This is already included in the draft. Refer to 4(c)(iv).

- 20) The concern regarding a *Nollan* violation may have merit. Even though this subsection is part of the county code, staff recommends replacing 4(d)(iv) with: "All necessary access easements shall be maintained."
- 21) This should be amended to state: "Provide documentation showing the FAA, ODA, and any other applicable state agency has approved the tower, or that the tower does not require approval by these agencies."
- 22) The separation is the greater of the two listed distances, while the setback is determined by the base zone. These are the standards in the current county code.
- 23) The renewal requirement is part of the current county code. This renewal standard is unique to telecommunication towers.
- 24) Refer to #2. A collocation requires director approval without a hearing, but a tower requires director approval without a hearing. The planning commission can recommend a separate approval process for specific additions to towers.
- 25) This standard is in the current county code. The planning commission may recommend a change to this standard.
- 26) This is a new standard suggested by staff who process collocation and tower applications. The purpose is to verify the applicant is allowed to provide the service in the proposed location.



Staff response to the letter from Ron Fowler dated Sept. 29, 2004. Each item is addressed in the order presented in the letter. The text from the letter is followed by staff response.

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## 1. IN GENERAL

- a. Several provisions in the proposed code appear to exceed the scope of the legal and statutory authority of the County to regulate the standards set. Shouldn't the County leave issues of regulatory authority with the authorized agency? Does the County maintain that they have regulatory authority that exceeds the powers of applicable Federal and State agencies? See various comments below regarding specific code sections.
- b. The County code should encourage collocation of carriers, but several sections of the proposed code actually make collocation as difficult as building a new tower, and, does little to actively promote or encourage collocation by the carriers.

## 2. 16.264 2. Definitions

Collocation- This language has not been clarified and continues to be confusing and difficult to interpret reasonably. A literal reading of this definition appears to require full review for collocation rather than encouraging collocation. Also, it only allows for installations on existing structures or buildings without providing for the necessary equipment space on the ground.

The definition of "collocation" has been changed by removing "antennae" and replacing it with "telecommunication equipment". Other related equipment are called "ancillary facilities".

The code appears to require that the placement of any equipment on an existing site would trigger a full land use review, although the addition of equipment may be mandated by Federal or State law. A good example is the required addition of a GPS antenna to many sites (usually mounted on top of the equipment cabinets and is a small conical antenna about 6" long) or the Federal requirement that E911 antennas be added to sites. The E911 deadlines are very specific and the requirements are strict. The County should leave some flexibility in the code to allow for such occurrences.

In addition, replacing antennas with new antennas of like size, dimension and type should not create a situation where full land use approval is required. With changing technology and improving design of antennas, change-outs of antennas are a common event. In one recent case in Lane County, AT&T Wireless has been subjected to an extensive process for antenna change-outs (they have cited the collocation language) even though the actual impact on the site is nil. I am unaware of any other planning agency that considers antenna change-outs for an existing site as a new "collocation". The County appears to be seizing on these opportunities to exact more standards or requirements on previously approved and developed sites.

In accordance with current policy, the replacement of a collocation requires director approval. Refer to #5.

The Washington County, Oregon Board of County Commissioners approved the amending of their code on September 28, 2004 and the new code has many provisions that should be considered by Lane County that address this issue. I can supply the language if you need it.

Provider – The proposed language does not appear to be comprehensive or complete. This language would imply that users of a wireless system are actually providers, and, limits a provider to being a person, which would exclude the majority of actual wireless providers. This language should be completely rewritten to clearly define and set the intent of the County. The Federal statutes usually refer to wireless providers as "commercial mobile radio services" (CMRS) and this would include all present and future types of technologies that are not covered by this definition. In particular, the code does not cover wireless data systems, Wi-Fi or other future technologies.

The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change to the definition of "provider" is proposed.

3. 3.c. – In part, the provision states that "... or do not provide the communication coverage necessary to provide the service." Coverage is not the only reason that new communications facilities are needed and this section appears to summarily disallow sites that are required to improve service or meet capacity objectives. This section ignores the reality of the technology and may clearly violate Federal regulations pertaining to development.

This wording is from the existing code and has been used whenever possible. The existing code is adopted by Lane County and acknowledged by LCDC. Because no specific "Federal regulations" are cited, this objection can not be verified.

4. 3.f. – There are some instances where federal or state law may require additional signage on a site. I would suggest that language be added to this provision stating, "All other signs are prohibited unless required by federal, state or local law or regulations." This language remains unchanged and should be corrected.

This is the language from the current code. The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change to the definition of "provider" is proposed.

5. 3.h. – This provision is a major issue and will cause problems for carriers in the future. As noted above, in relation to "collocation", this section should be expanded to allow for substitution or replacement of existing antennas that may actually be considered an upgrade to the site, and not maintenance or repair. I would recommend integration of some of the sections of the new Washington County codes.

This section needs to address realities and places Lane County in the position of being the only jurisdiction that considers antenna modifications as a "collocation" and requiring an existing tower operator to go back through an application 125 process for upgrades that do not require new building permits or electrical connections, and, will have no substantive impact on the visual nature or characteristics of the site. The wireless industry is an evolving and dynamic industry that will require upgrades and minor changes to remain current and meet consumer demands. A reasonable rewriting of this language would also help alleviate the burden on the County's planning staff by avoiding the necessity of processing unnecessary applications.

Mr. Fowler is suggesting a new policy that allows "change-outs". This allows an existing collocation to be replaced with similar equipment without any review by LMD. According to Tony West, the Lane County Building Official, a building permit is required for this type of action. The current code requires director approval for an antennae change-out. A hearing is required for a tower change-out.

6. We cannot concur with the County's position on item 3.i. Lane County is the only jurisdiction that I am aware of on the west coast that places land use restrictions on Federal property (rights of the County for land use review are pre-empted by the Constitution). This has caused considerable problems in the past and we can't understand the County's determination to undermine the rights of the Federal government in the administration and management of Federal property. Regardless of the County's representations to the contrary, the County does not have an unfettered right to regulate development on Federal lands and we are not certain why they maintain this position. On several occasions, Federal officials have expressed their opposition to the County position, but their objections have been ignored. This would be a good opportunity to correct this situation.

A lease agreement with the federal government contains language that requires compliance with local land use regulations. Therefore, the applicant who locates on federal land is subject to LC 16.264, and any other applicable portion of the Lane Code. This determination is also supported by the decision of the hearings official in the appeal of PA 03-5724.

7. 4.b. – Why is a neighborhood meeting still required in the cases where the property owner owns all the property for ½ mile around the site area (forest lands or large agricultural tracts)? It would seem like the intention of the code is to maintain separation of the tower from neighboring properties, but this regulation appears to be excessive and unclearly defined. Shouldn't the actual intent be to maintain the separation rather than create undue process?

The intent is to encourage public participation.

8. 4.c.ii (C) – This provision is still confusing and is impossible to interpret. It seems to require that the applicant have two collocation lease agreements in place before they can apply for the special use permit and planning approval. This requirement is excessive and unmatched in the regulation of other types of uses under the County codes. Are there other industries, buildings or developments where the County requires tenants before they approve the application? What is the purpose of this regulation of wireless development? The requirement of "two collocation lease" agreements ignores reality and will prevent necessary development.

This requirement is in the current code. The intent is to prevent speculation by building unneeded towers. The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

9. 4.c.(iii) – This requirement should not apply to any collocation installations on existing facilities unless the overall height of the structure is increased.

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

10. 4.c.(vii) – Although this is a provision of the current code, that does not validate the requirement. We objected to this provision when it was passed previously and continue with our objections. The standard of ten miles appears to be arbitrary and without reasonable foundation. A 10-mile radius of the proposed site would far exceed the actual coverage of most wireless communications sites and would place an undue burden on applicants where terrain or other obstructions require the establishment of a new facility. New towers are often required to resolve service or “capacity” issues and if an applicant is filing for a new installation for that purpose, the County should be willing to recognize that communications facilities a substantial distance away may not meet that need. What is the reason for the 10-mile radius standard? Does the County place similar requirements on other similar types of uses (I.E. long haul microwave; emergency services)?

Even though the 10-mile standard is arbitrary, it is part of the current code.

11. 4.c.(viii) – The term “collocation” still is problematic. Addition to or modification of existing equipment is NOT a collocation under any industry definition that I am aware of. These situations are not collocations.

The term “telecommunication equipment” was added to the definition of “Collocation” to allow a broader range of equipment. An alternate definition has not been provided by any commenters.

12. 4.c.(x) – We have previously asked if this has been an actual concern or problem in the past in Lane County? If not, why subject the applicant to a requirement for a bond? Does the County require bonds for removal of other types of improvements on property?

A performance bond is not required for other types of development.

13. 4.d.(i) – This section of the code appears to attempt to establish a “needs” requirement that the provider must meet when other uses are not subjected to similar requirements. The “ten-mile” standard is arbitrary and the County has not indicated the purpose or need for such a requirement, or, their ability to analyze the stated needs of the applicant. The Code continues to place requirements on wireless that are unique and without justification or merit. The wireless carriers do not build sites indiscriminately or without justifiable need. Do you place similar standards on re *[sic]*

14. 4.d.(i)(A) – In many cases, tower owners require excessive rents that make collocation economically infeasible, towers can be incapable of handling the loading, and, there may be unwilling landlords that will not lease ground space or access to the applicant. The section needs to be modified to allow for these exigent circumstances. Just because there is another tower within 10 miles, doesn't mean that it can be used. The section must be **comprehensive and complete**, or, it should not set standards at all.

These requirements are in the current code. The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed

15. 4.d.(i)(B) – As previously stated, this section should be more clearly defined to include other reasons that a site may be needed. For example, "Inability to meet the carrier's quality of service, coverage or capacity needs or requirements."
16. 4.d.(i)(C) – This section should be expanded to include other examples of type of problems that may arise. I would suggest modifying this language to allow for more flexibility on these types of issues. Suggested language could be something like "Technical reasons such as interference, incompatible uses, inter-modulation or other technical problems that would prohibit use by the carrier."

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

17. 4.d.(ii) – As previously noted, term "provider" should be rewritten. Does this section mean that the applicant has to provide space for the applicant, **and** space for two other collocation tenants? The provision is still not clear.

The tower must contain space for at least 3 providers. Refer to #8.

18. 4.d.(iii) – Although staff refers to Section 4(c)(iv) to cover this provision, this is strictly a FCC issue and the County has no authority regarding emissions or enforcement of FCC regulations.

This requirement is in the current code.

19. 4.d.(iv) – According to the notes supplied by staff, it appears that this concern has been addressed. However, we wish to review the final drafts before commenting.
20. 4.d.(v)(A) – We would like to review the final draft of the ordinance.
21. 4.e. – Although this is previous code language, the section is still very confusing and difficult to interpret. Schools are often excellent sites for locating towers (lighting for athletic sports, parking lot lights) and are apparently excluded by implementation of a wide separation requirement. What is the purpose of this exclusionary zone? Why are schools a focus this provision? **Is the County concerned about health or safety issues?** This section should be clarified and rewritten, and, the County is obligated to explain the purpose for the separation.

The Board did not identify this as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

22. 4.f.(iii) – What is the purpose of the requirement for renewing the permit every two years? Is this intended as an opportunity for the county to revoke the permit, or, to impose new requirements on the applicant in order for them to maintain their permit? If there are only two requirements for renewal, the County needs to clarify the Code and avoid any broad interpretation that may allow for abuse of this provision.

Our primary concern is still unresolved and the County needs to explain the apparent discrimination against the telecommunications industry. What other commercial uses are subject to renewal of the permits every two years? Does the County require renewals for restaurants, fuel stations or other utilities? The telecommunications industry invests millions of dollars into the basic service infrastructure of the County and should not be subjected to arbitrary regulations or permitting renewal without good reason. Staff has indicated that this is unique to telecommunications and accordingly, **we strongly object to this provision.**

Compliance with FCC regulations is a federal issue. Compliance with the bond requirements can be readily addressed by requiring notice if the bond is terminated or cancelled.

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

#### 23. 5. – IN GENERAL

The provisions for Collocation appear to be as complex as permitting for a new tower location and require the applicant to submit excessive information in relation to the prospective impact. The code should encourage collocation through a reduced or simplified process rather than creating excessive standards for use of an existing facility. Separate approval criteria should be set out and should not be left up to the Planning Director to modify or recommend non-standard solutions.

The term "replacement collocation" is a non standard term and we are really not certain what the intent of this language is. Does the County want a party that is collocated on a tower to go through the permitting process again if they simply change antennas or upgrade their equipment? This is very unconventional language. This section remains a mystery and staff has offered no explanation.

Does this section apply to antenna replacements or replacing of electronic equipment when the number and size of antennas do not increase, and, the equipment area is not increased? As noted above, antenna replacements or upgrades should be exempted from review if they do not substantially increase the overall impact of the site. The requirement should pass the "nexus" test set out in the Dolan case.

The Board did not identify these concerns as an issue to be resolved in this amendment. Because it is outside the scope of the Board's direction, no change is proposed.

24. 5.b.(iii) – The County needs to avoid delving into regulatory matters that are not within their enforcement or regulatory authority. Why does the County require information relating to airports for collocations? The responsibility for compliance with FAA registration or FAA regulations rests entirely with the tower owner, and, unless the collocation tenant increases the overall height of the facility, further FAA review is not required or necessary. The provision simply appears to create an extra and unnecessary step in the process without substantive need. It is irrelevant that this

provision is already a part of the code. We now have the opportunity to address and modify the language.

This is a new standard suggested by staff who process collocation and tower applications. The purpose is to verify the applicant is allowed to provide the service in the proposed location. It is similar to the requirement addressed in #18.

25. 5.b.(ix) and c.(iii)– Although the following questions have been asked, staff has not responded to our questions. Specifically, we wish to know what is the purpose of these provisions? Are collocations limited to only FCC licensed users? Is it required that an applicant be FCC licensed? What about tower companies that are building the tower on behalf of a licensed carrier, but the application and ownership of the tower will be in the tower company's name? What about other types of use that may not necessarily be subject to FCC licensing (Wi-Fi, unlicensed microwave, weather stations, monitoring)? Isn't the primary objective to limit the number of towers in the County and avoid tower proliferation? This requirement should not be a part of the code without some specific and valid reason for its inclusion.

These requirements are contained in the existing code. The Board did not identify them as an issue. Because it is outside the scope of the Board's direction, no change is proposed.

## MINUTES

Lane County Planning Commission  
Harris Hall - Lane County Courthouse

July 6, 2004  
7 p.m.

**PRESENT:** Ed Becker, Jacque Betz, Mark Herbert, Vincent Martorello, Steve Dignam, James Carmichael, members; Steve Hopkins

**ABSENT:** Marion Esty, Juanita Kirkham,

**I. PUBLIC HEARING: In the Matter of Amending Lane Code 16.264 to adopt Revisions to the Telecommunications Tower Standards.**

Mr. Dignam convened the meeting at 7 pm. He called for general public comments.

Laurie Segel suggested that senior staff be present at meetings to provide process advice on how to proceed.

Mr. Herbert apologized to anyone from the City of Florence who was present to testify about that matter which had been postponed.

Mr. Dignam opened the public hearing.

**Nina Lovenger**, 40093 Little Fall Creek Road, Fall Creek, said that Citizens for the Responsible Placement of Cell Phone Towers had worked hard on the issue. She said she had been surprised to have notice of the hearing only eleven days prior. She commended staff efforts to simplify the code language but said the revisions were hopelessly vague and showed a complete lack of understanding and context of the intent of the Board of Commissioners request for review. She suggested that her group could have been valuable in reviewing staff efforts early in the process. She suggested that staff's revision be denied and re-reviewed by the commission and her group.

**Darlene Schanfauld**, 2933 Central Avenue, Eugene, spoke in opposition to the proposed code language changes. She said it was admirable to simplify the language but raised concern that the content of the code had been changed. She identified several specific items in the code that she wanted to be addressed.

1. She noted that the word 'Tenants' had been dropped from the code language in the notice portion of the code. She proposed that all occupants be notified instead of property owners
2. In the same section, She said the pre-application conference needed to take place in the general area of the proposed cell tower.



3. She stressed the importance of being very clear around the bond issue of who would pay for removal of the tower when it was no longer being used.
4. She said that monopoles should be classed by themselves instead of being classed with lattice.
5. She said the intent of the Board needed to be clarified regarding peer review of radiation limits and tower design.

Ms. Schanfauld Asked that the revised language be denied and asked for a recommendation that the language be reviewed and rewritten.

**Mona Lindstromberg**, 87140 Territorial Road, Veneta, spoke against the proposed code language revision. She called attention to Attachment 3, (page 4, Item 5(e)). She said there were no parameters to judge which version of the code language would prevail. She said the current setback provision had not been written as stated by the Board of Commissioners at the Fall 2002 public hearing.

She requested that the record be left open until the public had the opportunity to respond to the new proposed language.

Mr. Dignam said the record would be left open for written comment for a minimum of seven days with enough time for staff to respond to what was submitted to the record as well as address the concerns raised by the commission during work session, rebut any new written testimony, send out the new document to interested parties, and then continue commission deliberation. There would be taken up at the September 7, 2004 meeting.

The meeting adjourned at 8:15 pm.

(Recorded by Joe Sams)

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# MINUTES

Lane County Planning Commission  
Harris Hall - Lane County Courthouse

September 7, 2004  
7 p.m.

**PRESENT:** Juanita Kirkham, Chair; Ed Becker, Jacque Betz, Steve Dignam, James Carmichael, Mark Herbert, members; Bill Sage, Steve Hopkins

**ABSENT:** Marion Esty,

## **I. PUBLIC HEARING : In the Matter of Amending Lane Code 16.264 to adopt revisions to the Telecommunications Tower Standard**

Ms. Kirkham convened the meeting at 7:03 pm. She called for comments from the audience on matters other than what was featured on the agenda. Seeing no one wishing to speak she moved on to the first agenda item.

Ms. Kirkham recused herself from the voting that evening because she was not up to date on the material.

Steve Hopkins provided the staff report. He noted that he was referring to the meeting packet dated August 18, in his presentation. He noted that the hearing was closed and the nights' hearing was deliberation only. He recommended approval of the staff recommendation with two changes:

1. 4(d)(iv) referring to access
2. 4(d)(v)(a) referring to providing documentation from FAA and ODA.

In response to a question from Mr. Becker regarding whether the comments of Mona Lindstromberg from the public hearing had been addressed, Mr. Hopkins said he had addressed the material and the documentation was in the meeting packet.

Mr. Herbert commented that the staff work was much better than what had been done initially. He said the work was cleaner and much easier to understand.

Mr. Dignam said his concerns with the proposed policy had been on content and not format. He said there had been a number of good questions during public testimony and said that those issues and concerns had not been addressed in the evening's proposal. He said there were four concerns of his

1. How to encourage co-location
2. Concerns over overlaps with state and federal regulation

3. Concerned that performance standards implemented with the policy will make it more difficult to install towers in rural areas.
4. Concerns over possible discrimination against telecom industry in that there were standards that others were not required to meet.

Mr. Herbert said the work was a fair compromise of regulations. He stressed that the telecom industry was evolving faster than any other industry. He said restrictions in rural areas were important to preserve the rural nature of those areas. He said he would support the document with the amendments as proposed by staff.

Mr. Carmichael agreed with Mr. Herbert. He said Lane County would never be able to succeed without making its infrastructure viable. He said he would support approval of the document.

Mr. Becker said he would support approval. He complimented the language around non use of cell towers and expressed a hope that there would be adequate funding to remove cell towers through performance bonds.

Ms. Betz complimented the good quality of the staff work.

Mr. Herbert, seconded by Ms. Betz, moved to amend lane code 16.264 to adopt revisions to the telecommunication tower standards mentioned by Mr. Hopkins in the staff report.

Commissioner Dignam said he would not support the motion because the policy had not been simplified in the way requested by the board of county commissioners.

The motion passed 4:1:1 with Mr. Dignam voting in opposition and Ms. Kirkham abstaining.

The meeting adjourned at 7:40 pm.

(Recorded by Joe Sams)

(Recorded by Joe Sams)