



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

07/30/2012

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Josephine County Plan Amendment
DLCD File Number 003-12

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, August 09, 2012

This amendment was submitted to DLCD for review prior to adoption with less than the required 35-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Dave Wechner, Josephine County
Jon Jinings, DLCD Community Services Specialist
Josh LeBombard, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within 5-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE STAMP

DEPT OF

JUL 23 2012

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **JOSEPHINE COUNTY**

Local file number: **n/a**

Date of Adoption: **7/18/2012**

Date Mailed: **7/19/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: **4/30/2012**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amendment to the Rural Land Development Code to provide standards and procedures for review and development of wireless communication facilities and towers

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **n/a**

to: **n/a**

Zone Map Changed from: **n/a**

to: **n/a**

Location: **n/a**

Acres Involved: **0**

Specify Density: Previous: **n/a**

New: **n/a**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 003-12(19322) [17112]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Department of Land and Conservation District (DLCD); Federal Communications Commission

Local Contact: **David Wechner**

Phone: (541) 474-5421 Extension: 5428

Address: 700 NW Dimmick St Suite C

Fax Number: 541-474-5422

City: Grants Pass

Zip: 97526-

E-mail Address: dwechner@co.josephine.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

<http://www.oregon.gov/LCD/forms.shtml>

Updated April 22, 2011

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR JOSEPHINE COUNTY
STATE OF OREGON**

ORDINANCE NO. 2012-002

**AN ORDINANCE AMENDING THE TEXT OF THE JOSEPHINE COUNTY RURAL
LAND DEVELOPMENT CODE (ORDINANCE 94-4) REGARDING WIRELESS
COMMUNICATIONS FACILITIES**

WHEREAS, the Board of County Commissioners initiated the original request for an amendment to the Rural Land Development Code to provide specific standards and procedures for review and development of Wireless Communication facilities and towers by Board Resolution No. 2010-056 on September 22, 2010; and

WHEREAS, the Planning Commission, pursuant to the review authority granted in Section 46.020 of the RLDC, conducted a public hearing on November 15, 2010 regarding the proposed text amendments after required notice by publication, community advertisement, and mailing to interested persons, agencies and organizations; and

WHEREAS, the Planning Commission found that a sub-committee should be formed to consider revisions to the proposed ordinance; and

WHEREAS, the Planning Commission sub-committee authored such revisions to the proposed ordinance; and

WHEREAS, the Planning Commission, pursuant to the review authority granted in Section 46.020 of the RLDC, conducted a second public hearing on May 21, 2012 regarding the proposed text amendments after required notice by publication, community advertisement, and mailing to interested persons, agencies and organizations; and

WHEREAS, after due consideration of the proposed ordinance and the testimony and evidence from those participating at the hearing, the Planning Commission proposed five specific language changes to the ordinance and voted 4-3 to approve the amendments; and

WHEREAS, written findings of approval were approved and signed by the Rural Planning Commission Vice-Chair and entered into the official record of the proceedings kept by the Planning Director; and

WHEREAS, notice of the Planning Commission's decision was given as required by law, and the decision having now become final without appeal; and

WHEREAS, this Board, having reviewed the record of the foregoing matters, find the approved ordinance advances the policies and purposes of the Josephine County Comprehensive Plan;

NOW, THEREFORE, based upon all of the foregoing recitals, the Board does hereby adopt the following text amendment to Goal 3 of the Josephine County Comprehensive Plan:

Policy 11: The County shall regulate and coordinate the provision of wireless communication services in accordance with the Telecommunications Act of 1996, as amended, to provide adequate wireless communication services to County residents.

NOW, THEREFORE, based upon all of the foregoing recitals, the Board does hereby adopt an amendment to the text of the Josephine County Rural Land Development Code as Article 99, depicted in the attached *Exhibit A*.

Section 2. Affirmation

Except as specifically amended by the provisions of this Ordinance, the Comprehensive Plan (Ordinance 81-11) is hereby affirmed in all other respects.

Section 3. Effective Date:

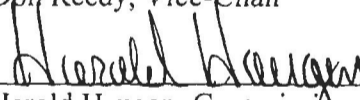
First reading by the Board of County Commissioners this 27th day of June 2012.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this 18th day of July 2012. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COUNTY COMMISSIONERS:

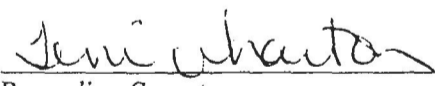


Simon Hare, Chair
Absent at Signing

Don Reedy, Vice-Chair


Harold Haugen, Commissioner

ATTEST:



Recording Secretary

APPROVED AS TO FORM:



Steven E. Rich, Legal Counsel

- EXHIBIT A -

Article 99 – Wireless Communications

99.010 Purpose

A. Purpose. In addition to accomplishing the general purposes of the Comprehensive Plan, the Rural Land Development Code of Josephine County, and the Federal Telecommunications Act of 1996, the purpose of this Article is to set forth the regulations for the placement, development, permitting, and removal of wireless cellular/ personal communication service (PCS) facilities, including support structures and antennas. The purposes of this Article are to:

1. Minimize the adverse visual, aesthetic and safety impacts of wireless cellular / PCS facilities;
2. Establish clear and objective standards for the placement, design and continuing maintenance of wireless cellular / PCS facilities;
3. Ensure that such standards allow competition and do not unreasonably discriminate among providers of wireless cellular / PCS services;
4. Encourage the design of such facilities to be aesthetically and architecturally compatible with surrounding areas;
5. Encourage the location of wireless cellular / PCS towers in areas that do not present potential hazard or adverse visual impacts; and,
6. Encourage the colocation or attachment of wireless antennae on existing wireless cellular / PCS towers or structures.

99.020 Applicability

A. Exemptions. The requirements of this ordinance shall apply to all new wireless cellular/PCS communication facilities and the expansion and/or alteration of any existing facilities within the County, subject to the following exemptions:

1. Satellite earth stations;
2. Send-and-receive citizen band radio antennae operated by federally licensed amateur (ham) radio operators; amateur sole source emitters, citizen band transmitters;

3. Two-way broadband antennae for personal use as land mobile services, regulated by the FCC Rules Part 90;
4. Industrial, scientific and medical equipment as regulated by the FCC in 47 CFR Part 18;
5. Military and government radar antennae and associated communication towers used for navigational purposes as regulated by the FCC by 47 CFR Parts 97 and 95 respectively:
 - a. Military and federal, state and local government communications facilities used for emergency preparedness, first-responders and public safety purposes; and
6. Normal, routine and/or emergency maintenance and repair, of existing wireless cellular / PCS facilities which do not increase the height, visibility or further intrusion into a setback area, do not increase radio frequency emissions, and otherwise comply with County, state and federal law and regulations.
7. Commercial broadcast radio, television and translator towers, further defined in Article 11 as a 'communication facility', that is not specifically designated as a wireless cellular / PCS support structure or facility.

99.030 Definitions

- A. Abandonment. A support structure or facility is considered abandoned when it has not been utilized by a carrier licensed or recognized by the Federal Communications Commission (FCC) for any continuous period of 365 days.
- B. Antenna. An electrical conductor or group of electrical conductors that transmit or receive radio signals.
- C. Camouflage. A method of concealment that allows otherwise visible components of the wireless cellular / PCS facility to remain unnoticed by blending with the surrounding dominant built or natural environment.
- D. Carrier. A company authorized by the FCC to build and/or operate a commercial cellular / PCS mobile radio services system.
- E. Colocation. The use of a single wireless communication support structure for the placement of multiple cellular/PCS antennae or equipment involving different carriers.
- F. Commercial Mobile Radio Services. Any of several technologies using radio signals at various frequencies to send and receive voice, data and/or video, as regulated by the FCC by 47 CFR part 90.

- G. Equipment Shelter. A structure housing power lines, cable, connectors, emergency generators and other equipment ancillary to the transmission and reception of telecommunications.
- H. Essential Public Communication Services. Police, fire, medical and similar emergency communication networks.
- I. Excluded Uses and Structures. Exclusion of uses and structures listed in Section 99.020 does not exclude them from other applicable provisions of the RLDC.
- J. Facility. Synonymous with Wireless Cellular/PCS Communication Facility
- K. Feasible. Probable, likely and reasonably certain to succeed.
- L. FCC. Federal Communications Commission.
- M. Gap in Service. A significant area within the service area of the applicant in which a large number of subscribers are not able to connect or maintain a connection through the applicant's telecommunications network.
- N. Microcell. An element of a wireless communication facility consisting of an antenna that is either: (1) four feet in height and with an area of not more than 580 square inches; or (2) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.
- O. Minor Modification. Improvement or modification of a lawfully existing facility that does not increase in height or visibility or intrude (or cause further intrusion) into a setback area, including additional antennae on an existing sector antenna array.
- P. RF Engineer. An engineer licensed in Oregon in the field of telecommunications or radio frequency engineering.
- Q. RF propagation map. A map showing the geographic coverage area of the radio frequency waves from one or more wireless communication facilities.
- R. Search Ring. An area drawn on a map that indicates where a wireless communication facility could be located to meet requirements given to an RF Engineer to provide service to an area. The dimensions of a search ring vary, depending upon topography, the service to be provided, and other factors, including whether the area is urban, suburban or rural in nature.
- S. Sector antennae array. A sector antennae array means a structure mounted on a building or support structure used for mounting antennae.
- T. Stealth technology. A combination of technologies that reduce the visual detection of cellular / PCS equipment; a combination of small size, reduced acoustic, thermal or other aspects of the presence of cellular / PCS wireless facilities.
- U. Support Structure. A tower, building or other structure that supports antennae used for cellular / PCS transmission.
- V. TCA. The Telecommunications Act of 1996, as amended.
- W. Wireless Cellular/PCS Facility. An unstaffed facility for the transmission or reception of radio frequency (RF) signals usually consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a support structure such as a self-supporting monopole or lattice tower, antennas, microwave dishes or other transmission and reception devices, and all ancillary equipment. This definition includes "personal wireless services facilities" as defined under the Telecommunications Act of

1996.

99.040 Review Types

Application for new or modified facilities shall utilize the following procedures named below, and detailed in Article 42 Permit Review Procedures.

- A. Ministerial. Applications for colocation, minor modifications and temporary wireless communication facilities shall be subject to a ministerial review of compliance with the general development standards of Section 99.060.
- B. Quasi-judicial. Applications for new wireless cellular/PCS communications facilities that include support structures, modification to existing facilities that do not qualify as minor modifications, and the addition of cellular / PCS antennae to existing support structures that do not currently have them shall be subject to a quasi-judicial review procedure of compliance with the general development standards of Section 99.060, development standards by zoning district of Section 99.070, and the approval criteria of Section 99.090.

99.050 Application Requirements and Permit Review

- A. Pre-application. Pre-application review is required for all proposed cellular /PCS communication facilities except for colocated antennae proposed on existing cellular / PCS support structures. In addition to the requirements of Article 21 and the pre-application form provided by the County, the applicant shall submit:
 - 1. A detailed map showing the applicant's current coverage area, clearly indicating the area of gap in service, and nearest existing antennae / support structures used by the applicant.
 - 2. A graphic representation of the search ring for wireless communication services proposed.
- B. Siting Priorities. When an applicant demonstrates new cellular /PCS antennae are necessary to provide adequate coverage to an area with a service gap, the following list of priorities (in descending order of preference) shall be used to determine the type of facility permitted. In all instances, mounting antennae on an existing structure is preferred to a new free-standing structure.
 - 1. Collocation on an existing cellular/PCS support structure.
 - 2. Installation of a new cellular/PCS support structure on a site where a cellular / PCS structure exists.

3. A new site in an Industrial or Commercial zone.
4. A new site in a Forest Zone.
5. A new site in a Farm, Residential or other non-resource zone.

C. Colocation application requirements. Applications for colocation of additional antennas and/or cellular/PCS equipment on existing facilities or support structures of cellular/PCS facilities shall include:

1. A copy of the original site plan map (or a new map if site plan was not done) for the approved existing facility and tower updated to reflect current and proposed conditions on the property. The site plan map requirements of Section 42.060 shall apply.
2. A depiction of the tower showing placement of the collocated antenna and associated equipment, together with other existing colocations. The depiction must note the height, color and physical arrangement of the antenna and equipment.
3. If existing vegetation, screening, fencing, enclosure, lighting, drainage, wetlands, grading, driveways, or roadways, parking, or other infrastructure is to be removed or modified by the colocation, the site plan shall identify the kind and extent of proposed changes.
4. A statement from a licensed engineer certifying under professional seal:
 - a. The existing tower structure will support the additional antenna and equipment; and
 - b. The facility with collocated antenna and equipment continues to comply with the non-ionizing electromagnetic radiation emission standards as specified by the FCC; and
 - c. The modified facility and support structure meets the most recent EIA/TIA 222 safety standards.

D. Colocation Performance Standards. Collocated cellular/PCS facilities must satisfy the following standards:

1. Comply with the non-ionizing electromagnetic radiation emission standards as specified by the FCC.
2. The centerline of the antennae is not to exceed the height of the host tower.

3. Otherwise qualify as a minor modification as proposed or performed.
 4. Conform to the General Development Standards of Section 99.060, as applicable.
- E. New wireless/PCS facility permit application requirements. In addition to the requirements of Article 42 and the information required by Section 99.050.A above, the applicant shall provide the following for quasi-judicial permit review:
1. Coverage maps.
 - a. A map showing the applicant's current coverage area from the nearest existing antennae/support structure in all directions used by the applicant, clearly indicating the area of the purported significant gap in existing coverage.
 - b. Detailed RF propagation map showing the area to be serviced by the proposed facility structure.
 - c. Detailed RF propagation maps from the closest existing or permitted cellular/PCS support structures in all directions, indicating which support structure are currently used by the applicant company.
 2. A narrative describing how the proposal complies with the Development Standards of Article 99.050 and 99.070.
 3. A collocation access study pertaining to the subject site, including:
 - a. Available sites map.
 - b. Report from a qualified licensed structural engineer demonstrating the ability of the support structure to meet the standards of the Oregon Building and Specialty Codes.
 - c. Plans demonstrating the proposed support structure can accommodate collocation of two additional sector arrays on the structure.
 - d. Assessment of the anticipated capacity of the support structure, including number and types of antennae to be accommodated.
 4. A report from a qualified licensed RF engineer demonstrating:
 - a. That the proposed facility, including all antennae at the site combined will be in compliance with non-ionizing electromagnetic radiation emission standards and other regulations regarding wireless communication facilities as regulated by the FCC.
 - b. That the proposed facility is in compliance with the development standards of this Article.
 - c. An analysis of the use of all appropriate technology for filling a gap in service area, demonstrating the proposed site is the least intrusive option

when considering alternatives, addressing the siting priorities of Section 99.050.B.

5. A deposit to cover the cost of independent consultation and review by a licensed engineer under Article 99.080, if such review required.
 6. A signed statement from the property owner and the service provider acknowledging liability for removal of the facility and support structure. The County may review the performance agreement and require modification of the agreement or, if no agreement exists, require a new performance agreement to achieve adequate security.
 7. A signed statement from the applicant that the facility meets the most recent EIA/TIA 222 safety standards.
 8. Visual Impact Study. A simulation of the potential visual impacts of the proposed facility, describing methods for mitigation of the resulting impacts. Photographs or drawings shall be submitted demonstrating the visual presence of the proposed facility at property lines and from visually accessible public rights-of-way.
 9. A site plan map meeting the requirements of Section 42.060 RLDC, and accompanying materials, including:
 - a. Proposed facility layout and grading plan, including the location of support structures, buildings or equipment shelters, setback from the base of support structure, exterior lighting and signage.
 - b. Location of utility lines.
 - c. Elevation plan, including proposed height of all structures, including proposed antennae sector arrays.
 - d. Detail of proposed exterior finish of support structure.
 - e. Details of backup power system and fuel storage.
 - f. Assessor parcel map indicating all residences (if present) within 1,200 feet of the proposed wireless / PCS facility.
 10. Detailed statement by the RF engineer confirming the maximum power output for each antenna, and all combined, and output frequencies of the transmitter.
- F. Permit issuance. Prior to the issuance of a development permit, the applicant shall provide the following:
1. A copy of the applicant's license issued by the FCC.

2. A copy of the findings from the FAA's Aeronautical Study Determination regarding the proposed support structure.
3. In the case of a proposed leased site, the applicant shall demonstrate that the lease agreement does not preclude the site owner from entering into leases of the proposed facility with other providers.
4. Recorded covenant signed by property owner and applicant whereby they agree to remove any abandoned cellular / PCS facility in conformance with the requirements of Section 99.140.

99.060 General Development Standards

Development standards. The following minimum development standards shall apply to all cellular / PCS communication facilities in addition to any development standards that apply in the underlying zoning district in which a cellular / PCS facility is located and/or additional requirements in any conditions of approval attached to a development approval. In the event of a conflict between the standards of this section and other applicable development standards of the RLDC, the provisions of Article 99 shall govern.

- A. Anti-climbing devices. All wireless communications support structures shall be designed to prevent climbing by unauthorized persons.
- B. Attachment to trees prohibited. It is prohibited to attach any wireless communications facility or portion thereof to any tree.
- C. Signs. All facilities shall be identified (and limited to) one non-illuminated sign not exceeding four square feet. The sign shall only list the wireless service provider's name and emergency telephone number and shall be posted in a place clearly visible to emergency response personnel. Any other signage required by the FCC or federal Occupational Health and Safety Administration (OSHA) rules may be posted on the site.
- D. Historical registry/district. Wireless communications facilities locating on any site or existing building that is on a historic register or in a historic district shall be subject to the applicable design standards prescribed by the local, state or federal agency with jurisdiction over such register or district.
- E. Lighting. Wireless communications facilities shall not be illuminated except where required by the FAA, the Oregon Department of Aviation, or County Airport Authority.
- F. Exterior Finish. Wireless communications facilities and antennae shall be painted or finished in a non-reflective surface that blends with the dominant background, except where otherwise required by the Federal Aviation Administration or Oregon Department of Aviation. The applicant and the operator of the facility shall have a

continuing duty to maintain such paint or finish, in accordance with visual blending or camouflage as required in each approved permit.

G. Setback Limitation The location of support structures shall meet the following minimum setback standards:

1. The minimum setback from all adjacent property lines in different ownership for a proposed cellular / PCS support structure shall be fifty (50) feet plus total permanent design height. In no instance shall a cellular / PCS support structure be sited closer to any property line than this distance.
2. In all zones other than Commercial and Industrial, the minimum setback from an existing, proposed or planned residential dwelling unit, public or private school, licensed day care facility, public or private park shall be twelve hundred (1,200) feet. For the purpose of this requirement, a proposed or planned residential dwelling is a development deemed to satisfy the definition of 'substantial development' for residential structures as defined in Article 11.

There may be an exception to the minimum setback administered in this section in the following cases:

- a. If an applicant can demonstrate an identified gap in service area cannot be served with the setback in place, as verified by an independent RF engineer, and either:
 - i. The legal owner(s) of a private property listed herein within 1,200 feet of a proposed cellular/PCS facility has waived any amount of this setback from their use in a notarized, written form; or,
 - ii. If good faith efforts have been made to obtain waivers from listed property owners to allow siting, but have been unsuccessful, then the required setback from the above listed uses may be reduced by the minimum amount necessary to serve the gap in service.
3. The minimum setback from the nearest state / county inventoried historic place or structure, or known archaeological site is twelve hundred (1,200) feet. Alternative setbacks may be approved by the Planning Director where it can be demonstrated that the location of the proposed facility will take advantage of an existing natural feature to conceal the facility or minimize its visual impacts.
4. The minimum setback of a facility and/or support structure within a Commercial or Industrial zone from other structures and/or properties within that zone shall be the standard set forth in the applicable zoning district. The proximity of a

facility / support structure located within a Commercial or industrial zone to a use in another zone shall also apply the adjacent base zone's required setback from that use.

5. Setbacks for free-standing wireless communications support structures shall be measured from the ground-level base of the structure.
- H. Height standards. The maximum height of a support structure shall be 200'. A support structure shall be no more than the minimum height necessary to achieve the intended / demonstrated purpose of the facility and allow collocation of antennae.
- I. Wildfire safety. A wildfire safety plan and driveway access plan is required for all facilities per the requirements of Article 76, as applied to new structures within a forest zone.
- J. Parking and Access. Each facility shall include one parking space. Whenever possible, vehicular access to the facility shall be incorporated into the existing driveway of a site.
- K. Insurance. Liability insurance in an amount not less than \$1,000,000 shall be maintained by the owner and operator of the facility until such facility is dismantled and removed from the site.
- L. Performance bond. A performance bond shall be required of all applicants for new wireless communication facilities, in accordance with Article 15 of the RLDC.
- M. Building and utility permits. Building and utility permits are required for all wireless communications facilities in compliance with adopted Oregon Building Codes and the requirements of individual utility providers.
- N. Replacement of existing structures. Wireless communications facilities lawfully placed that pre-existed this ordinance may be replaced, after a standards-only review through a ministerial process, if the dimensions of the facility or support structure do not increase in height or visibility or intrude (or cause further intrusion) into a setback area.
- O. Colocation access study. Access to all new wireless communication facilities shall be provided for purposes of collocation by other carriers. The applicant shall demonstrate collocation is available by submitting an assessment which includes:
 1. The anticipated capacity of the support structure, including the number and types of antennae which can be accommodated; at a minimum, the structure must be designed to accommodate at least two additional wireless sector antennae arrays.

2. A projection of the wireless communication facilities within the coverage area of the facility proposed by the carrier that can be reasonably anticipated to be sited during the next five years.
 3. A summary of findings that support the need for the facility at the location proposed.
- P. Compliance with state and federal regulations. New wireless / PCS facilities, as well as the maximum capacity of all antennas on the premises combined, must specifically meet the non-ionizing electromagnetic radiation emission standards specified by the FCC.
- Q. Hazardous materials and safety. Upon initial placement in the facility, the location, type and amount of any and all materials that area considered hazardous by federal and state regulation shall be reported by the facility owner to appropriate local and federal authorities. State-of-the-art safeguards relevant to all hazardous materials will be in force at all times. For all components of the facility, all relevant up-to-date industry safety recommendations, including the full IEEE safety program and the most recent revision of the EIA/TIA222 standards shall be implemented at all times.
- R. Placement of utility lines. Other than those required to supply electrical service to antennae, utility and service lines for the facility shall be placed underground.
- S. Noise level. Wireless cellular/PCS facility equipment shall not produce an increase in ambient noise level at the property line.

99.070 Development Standards by Zoning District

- A. In Exclusive Farm and Farm Resource Districts The following standards and criteria apply to new facilities proposed to be located in Farm Zones, as stipulated in ORS 215.275 and 215.283, and OAR 660-033-130:
1. A utility facility established under ORS 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.
 2. To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
 - a. Technical and engineering feasibility;

- b. *The proposed facility is location-dependent. A utility facility is location-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*
 - c. Lack of available urban and non-resource lands;
 - d. Availability of existing rights of way;
 - e. Public health and safety; and
 - f. *Other requirements of state or federal agencies.*
3. Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.
 4. The owner of a utility facility approved under ORS 215.283(1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
 5. The County will impose clear and objective conditions on an application for utility facility siting under ORS 215.283(1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

B. Forest Resource Districts

1. *The proposed use will not force a significant change or increase in the cost of, accepted farming or forest practices on forest lands.*
2. The proposed use will not significantly increase fire hazards or fire suppression costs or increase risks to fire suppression personnel.

- C. Other Zoning Districts Wireless communications facilities in Special Districts, including Airport Hazard Overlay, Flood Hazard Overlay, Limited Development Zone and Scenic Waterway Overlay are regulated according to the underlying district standards, and further regulated as follows:
1. Wireless Communication support structures are prohibited in the Flood Hazard Overlay zone. Colocation or antennae mounts on existing structures are allowed per the general development standards of Section 99.060.
 2. Wireless Communication support structures are prohibited in the Scenic Waterway Overlay zone.

99.080 – Requirement for Independent Consultation

The assessment of wireless communication facilities may require highly specialized engineering expertise. The County may require the services of a licensed engineer as an independent consultant in order to interpret the requirements of the Telecommunications Act of 1996 as subsequently amended and applied by federal courts, and to review applications under the pertinent criteria and requirements of this Article. If such services are required in order to evaluate an application, then the County shall proceed as follows:

- A. Upon the completion of pre-application review or at any time thereafter but prior to final decision, the Director or Hearing body may require the application to be reviewed by an engineer who is licensed and certified in the State of Oregon in any one or more of the following fields: telecommunication/radio frequency engineering, structural engineering, the assessment of electromagnetic fields, or other related fields of expertise. The licensed engineer shall act as an independent consultant, and shall disclose to the County any current or past employment with an applicant and/or in the wireless cellular/PCS industry.
- B. The Planning Director shall notify the applicant in writing of the County's decision to obtain an independent consultation by a licensed engineer, and shall require a deposit to cover the anticipated cost of this review. The applicant shall provide written consent by the landowner for the engineer to enter the subject property for purposes of investigation and assessment. The consent and payment of the deposit shall be a requirement for a completed application. The deposit shall be used for actual costs incurred in obtaining the independent consultation of the licensed engineer, and any unused portion of the deposit shall be returned. The County shall provide a copy of the engineer's report to the applicant as soon as it is received.

99.090 Wireless Facility Site Plan Approval Criteria

- A. Criteria. In addition to the General Development standards of Article 99.060 and the underlying Zoning District Standards of Section 99.070, new wireless cellular / PCS facilities that are not exempt per Section 99.020, or considered minor modifications per Section 99.030, are subject to the following criteria, to be satisfied before issuance of a development permit:
1. Requirements for Colocation. A new facility with support structure shall not be authorized unless the applicant first demonstrates existing support structures cannot accommodate the gap in service and capacity requirements by colocation. Evidence to substantiate this must meet or address all of the following requirements:
 - a. The application must be prepared by an expert in the field of telecommunication facilities.
 - b. The applicant must demonstrate that colocation sites are too far from the area needing coverage or capacity to accommodate the necessary equipment at an adequate elevation necessary to fill a gap in service.
 - c. The proposed equipment would exceed the structural or spatial capacity of existing facilities/support structures, and the existing facilities/support structures cannot be reinforced, modified, or replaced to accommodate collocation.
 - d. The proposed equipment would significantly impact the usefulness of other equipment at the existing facility and the impact cannot be mitigated or prevented.
 - e. The proposed equipment alone or together with the existing equipment would create radio frequency interference and/or radio frequency radiation that violate FCC standards.
 - f. The fees or costs required to share an existing tower or structure, or to adapt an existing tower or structure for colocation are unreasonable.
 2. Justification of Need and Location. The applicant must justify the need for the proposed facility or support structure at the proposed location, by demonstrating with substantial evidence:
 - a. That the proposed facility and support structure is necessary to fill a gap in service; and, available alternative technologies which could be employed to provide adequate coverage from existing support structures

- on other sites have been studied per 2.c. below and are not technologically feasible.
- b. That the disruption results from a lack of coverage and not a lack of capacity to achieve adequate service. If the proposed cellular/PCS facility is to improve capacity, the applicant must provide substantive information on the usage by neighboring cell sites in all directions used by the applicant company and other information used to demonstrate capacity deficiencies.
 - c. That a comprehensive study of coverage submitted to the County identifies and evaluates less intrusive alternatives, such as: sites with alternative support structures or design systems, or upgrading existing facilities.
 - d. That based upon the study required in 2.c above, less intrusive alternatives are not available and/or technologically feasible.
3. Siting Criteria. If the criteria of 99.090.A.1 and 2 above are satisfied, the County shall consider and compare the location, size, design and operating characteristics of a proposed new wireless cellular / PCS facility with other available sites identified by the applicant to determine which site is least intrusive. In determining the preferred site, the County shall consider the following criteria:
- a. Whether the proposed site location creates significant adverse impacts (as defined in Article 11, RLDC) to surrounding properties, including but not limited to: noise, excessive drainage or erosion, light, glare, or property values within 1,200 feet of the subject property, as documented from an independent Oregon licensed appraiser.
 - b. Whether the proposed site location creates significant adverse impacts to the following resources, on or near the property: wildlife habitat, riparian areas or bird nesting sites, state and federally-inventoried wetlands, or federally-listed endangered animal or plant species, as determined by Oregon Departments of: State Lands; and, Fish and Wildlife.
 - c. Whether visual impacts have been mitigated to the greatest extent possible by using camouflage or screening, including but not limited to: fencing, landscaping, strategic placement adjacent to existing buildings or vegetation, other screening of accessory equipment structures, incorporating facilities into the architectural features of existing buildings or structures. Mitigation may also include design

compatibility with key elements in the surrounding area, such as use of material similar to that of adjacent buildings or structures; visually blending support structures with architectural features such as flag poles, bell towers or cornices; or using existing vegetation to camouflage support structures.

- d. Whether the proposed location minimizes visibility of the facility to residentially-zoned land, and the obstruction of scenic views from residentially-zoned land.
- e. That the site complies with the siting priorities listed in Section 99.050.B.

99.100 Permit Limitations/Expiration

- A. Expiration of permits. Any permit for a wireless communication facility shall expire if the facility is abandoned and/or removed per Section 99.140.
- B. Period of review. Any permit for a wireless communications facility issued pursuant to this Article shall be reviewed after 10 years from effective date of the permit approval. Such review shall be initiated by the applicant within 30 days of the 10-year period, and completed by the County within the timelines established for ministerial review of land use permits. The facility shall be reviewed for compliance with the ordinance in effect at the time of review, and in particular, to determine if opportunities for replacement with "stealth" technology or micro-cell antennae are technologically feasible. If stealth or micro-cell antennae are feasible for the site, then these antennae shall be utilized as a replacement, and the existing support structure removed.

99.110 Nonconforming Uses and Structures

Nonconforming Uses / Structures. Wireless Cellular/PCS communication uses and structures in existence as of the effective date of this Article which are nonconforming as to the use or development standards of this Article shall be subject to the provisions of Article 13, Nonconforming Uses and Structures, except that new antennae may be permitted to colocate on existing support structures already hosting cellular / PCS antennae, subject to ministerial review under the general development standards of Section 99.060.

99.120 Temporary Uses

Temporary wireless / PCS facilities. Temporary wireless / PCS facilities are permitted as a temporary use with review by the Planning Director in order to assure continuity in service during repair or maintenance of existing wireless communications facilities or for testing purposes prior to completion of construction of new facilities. Temporary wireless

communications facilities shall operate for not more than 60—days commencing when transmission from such facility begins except when needed for emergency services, as determined by the Josephine County Emergency Services Manager. The temporary facility shall be removed within 30 days after it is no longer needed for telecommunications purposes. Such temporary permits shall be subject to the performance bond requirements of Article 15.

99.130 Federal Requirements.

- A. Compliance with federal regulations and penalties. All wireless communications support structures must meet or exceed current standards and requirements of the Telecommunications Act, regulations of the Federal Aviation Administration, the FCC and any other agency of the federal government with the authority to regulate wireless communications support structures and antennae.
- B. Required environmental assessment. Carriers and owners of wireless communications support structures, antennae and electronic equipment shall provide the County with documentation of any Environmental Assessment (EA) required to be submitted to the FCC or FAA regarding locations within the County simultaneous with any filing with the federal agencies pursuant to 47 CFR Part I, and Sections 1.1307 and 1.1308(a) of the Telecommunications Act.

99.140 Removal of Antennas and Support Structures.

Any antenna or wireless communications support structure that is determined by the Director to be abandoned as defined in Section 99.030 shall be removed by the owner of the property on which the support structure or antenna is situated, or by the owner or lessee of the support structure or antenna, within 90 days of receipt of notice to remove from the County. If the antenna and/or support structure is not removed within 90 days, the County may remove the antenna or support structure at the owner and lessee's expense.

99.150 Subsequent Review of Ordinance

Communication technologies are subject to rapid change. Future innovations may render specific portions of this ordinance obsolete, or require amendment to existing standards. Subsequent review and revision of this ordinance shall occur at least every five years hereafter or more frequently at the request of the Planning Commission or Board of County Commissioners.



Josephine County, Oregon

PLANNING OFFICE

700 NW Dimmick Street Suite C/Grants Pass, OR 97526
(541) 474-5421 / Fax (541) 474-5422
E-mail: planning@co.josephine.or.us

June 6, 2012

Planning Commission Members
Lower Applegate CAC
Williams CAC

Plan Amendment Specialist/DLCD/Salem
DLCD/Josh LeBombard
Mailing List as shown on Certificate of Mailing

NOTICE OF LEGISLATIVE LAND USE DECISION

Josephine County Planning Commission

Notice is hereby given that a legislative land use decision regarding certain changes to the county's comprehensive plan or land use regulations has been made by the Josephine County Planning Commission.

DECISION: Approval of text amendment to the Josephine County Rural Land Development Code as follows:

- [1] A new text amendment (Article 99) to the Josephine County Rural Land Development Code providing standards and procedures for review and development of wireless communications facilities and towers

DATE OF DECISION: May 21, 2012

FINDINGS SIGNED: June 5, 2012

APPEAL INFORMATION: Any person who participated, either orally or in writing, and was granted party status in the Planning Commission proceedings may appeal this decision to the Josephine County Board of Commissioners. The appeal must be in writing using forms provided by the planning office. The fee is a non-refundable \$2,000 and the appeal must satisfy all ordinance requirements. Land use regulations governing appeals are available at the planning office. The decision is not final until the appeal period expires without an appeal. The Board of Commissioners decision may be appealed to LUBA.

DEADLINE DATE FOR FILING AN APPEAL: 5:00 pm June 18, 2012, *as determined by the postmark date*

CERTIFICATE OF MAILING

I hereby certify that individual copies of the attached *Notice of Legislative Land Use Decision* issued on behalf of the Josephine County Planning Commission and dated **June 6, 2012** were deposited in the United States mail and/or electronically mailed on the 6th day of June, 2012 addressed to the following persons or organizations:

DLCD/Regional Representative
via email

Charlie Chase
State Fire Marshal
via email

Plan Amendment Specialist/DLCD
635 Capitol Street NE, Suite 150
Salem OR 97301-2450

Dr. Shavana Fineberg
PO Box 474
Williams Or 97544

Josephine County Planning
700 NW Dimmick Street Ste C
Grants Pass, OR 97526

Bryan Hawkins
PO Box 1367
Merlin OR 97532

Planning Commissioners
via email

Steve Porter
600 Lance Lane
Grants Pass OR 97526

Williams CAC/Stephen Williams
PO Box 472
Williams OR 97544

Julia Jones
PO Box 464
Grants Pass OR 97528

Lower Applegate CAC
Olaf Ahlstrom
5713 Fish Hatchery Road
Grants Pass OR 9752

Alan Renwick
PO Box 507
Williams OR 97544

Tazz Allen/Cavenet LLC
PO Box 1459
Cave Junction OR 97523
via email

Jennifer Smith
PO Box 553
Williams OR 97544



Anne Ingalls/Planning Specialist
Josephine County Planning

**BEFORE THE RURAL PLANNING COMMISSION
For Josephine County, Oregon**

IN THE MATTER OF A REQUEST FOR A
COMPREHENSIVE PLAN AMENDMENT AND
TEXT AMENDMENT TO THE RURAL LAND
DEVELOPMENT CODE REGARDING WIRELESS
COMMUNICATIONS FACILITIES

}
}
}
}
}
}
}
}

**FINDINGS OF FACT
& DECISION**

SECTION 1. APPLICATION INFORMATION

- 1.1 The proponent of this amendment to the Comprehensive Plan and Text Amendment is Josephine County.
- 1.2 The amendment as proposed and heard in public hearing by the Planning Commission is applicable to all plan designations of the Comprehensive Plan, except the Grants Pass UGB designation; and, is applicable to all zoning districts identified in Chapter 6 of the Rural Land Development Code.
- 1.3 The Board of County Commissioners initiated the original request for an amendment to the Rural Land Development Code to provide specific standards and procedures for review and development of Wireless Communication facilities and towers by Board Resolution No. 2010-056 on September 22, 2010.
- 1.4 The application was initiated with the Planning Director, who then presented the original ordinance to the Planning Commission on November 15, 2010. The Planning Commission then formed a Wireless Communications sub-committee, charged with researching and drafting a new Article 99 of the RLDC, tentatively titled: 'Wireless Communication Facilities and Towers'.

SECTION 2. EVIDENCE PRESENTED

- 2.1 The record includes but is not limited to: the application; staff reports to the Planning Commission; an audio-recording of the public hearing, including oral testimony; written testimony and materials submitted by the County to the Planning Commission for consideration. The record is contained in the Planning Director's file, along with all other documentation and evidence received and reviewed as part of this legislative action. Public notices and news releases preceding these hearings are contained in the Planning

Director's file and are included in these findings by reference. Other documentation includes Geographic Information System maps, information submitted to the Wireless Communications sub-committee, agendas and audio recordings of those meetings.

- 2.2 The request was reviewed in a public hearing before the Josephine County Planning Commission on November 15, 2010. The formation of a sub-committee was decided during that hearing, and the work of the sub-committee commenced in December 2010.
- 2.3 The request came before the Rural Planning Commission in public hearing on May 21, 2012. After deliberations, findings were voiced and motions forwarded to approve the amendment of the text of the Rural Land Development Code, adopting a new Article 99, with several specific text changes to the sub-committee proposal presented as the 'May 11, 2012 Draft'. The Planning Commission recommended approval by a vote of 4-3.

SECTION 3. SUMMARY OF TESTIMONY

- 3.1 Oral and written testimony of David Wechner, Josephine County Planning Director: He presented the May 11, 2012 Staff Report (Document 1) and Draft Ordinance, noted as Exhibit A. He referenced the law and rules applicable to this proposal, including: the federal Telecommunications Act of 1996 (as amended) and Middle Class Tax Relief and Job Creation Act of 2012; Statewide Planning Goals 1, 2 and 11 cited in the Notice of Proposed Amendment to DLCD, but acknowledged the state has since ruled Goal 11 is inapplicable. He noted the staff report includes analysis and findings of Oregon Revised Statute 215.283 and Oregon Administrative rule 660-006-0033-130; and Goal 3 of the Comprehensive Plan, applicable to this action.
- 3.2 Oral testimony of Steve Porter, a member of the Wireless Communications sub-committee: He discussed the development of the Ordinance in the sub-committee, and offered his general support of the ordinance as drafted. He did highlight the issue of setbacks to residential, and what he feels is the potential for areas of the County to not be served with wireless technologies because of the position of towers and antennae far enough away that the signal will not carry to all properties. He discussed some technical aspects of transmission of wireless signals.
- 3.3 Oral and written testimony of Julia Jones who provided written testimony to the Planning Commission, and the following remarks addressing the proposal:
 - (1) A 'loophole' exists in section 99.090.A.1.f. on page 14 of the Draft, offering a reason for not requiring wireless companies to collocate their facilities; the word 'unreasonable' is too subjective to be in a law. Cell companies may collude to put antennas wherever they want by proposing to charge one another 'unreasonable' rates for collocating on their tower, and use this clause to nix the County's requirement for collocation.

(2) The mandate of the County is to protect its citizens, to balance their access to service, their feelings of safety regarding proximity to cellular/PCS antennas, and the beauty of the terrain of the County.

(3) In oral testimony, she offered her general support of the ordinance as written with the exception of Section 99.090.A.1.f, and added that the 1,200-foot setback written into the May 11, 2012 ordinance draft is similar to that currently used in Los Angeles County and it seems to be working there.

3.4 Oral and written testimony of Steve Williams, representing the William Citizen Advisory Committee (CAC):

(1) He requested the Planning Commission remove section 99.090.A.1.f. from the ordinance, as he opined the section creates a 'loophole' for providers to deny each other collocation by charging each other large sums for collocation, so as to justify the placement of new towers.

(2) The ordinance should include a provision allowing the County or private citizens to monitor wireless communication facilities on the property, and presented proposed language addressing this issue.

3.5 Oral testimony in support of the ordinance by Shavana Fineberg of Williams, a member of the Wireless Communications sub-committee:

(1) She requested the Planning Commission approve the ordinance as written.

(2) She noted that a consultant challenged provisions of the ordinance regarding the independent consultant, and deemed his comment inaccurate. She disputed his claim that wireless antennae are a utility and therefore add to property values, stating this finding is not substantiated. She acknowledged that setback provisions would eliminate areas where cell tower could be located, as that is the purpose of setbacks.

(3) She noted the federal Telecommunications Act ensures that carriers can fill documented gaps in their service, but does not guarantee a certain distance to towers; that is a function of local government.

(4) She noted the compromises that went into drafting the proposed ordinance, and that a wide range of setbacks were contemplated, from 250 -1,500 feet, but the sub-committee settled on 1,200 feet with a waiver-provision as a way to encourage development in commercial and industrial zones, and protect property values.

3.6 Oral and written testimony in support of the ordinance by Alan Renwick of Williams: He described a proposed 120-foot tower on his neighbor's property that would be 30 feet from a shared property line, and 300 feet from the front window of his (planned) home site. He referred to letters (not presented) from real estate brokers who told him there

was no absolute number they could cite in the devaluation of his property, but convinced him that a cell tower on adjacent property would devalue his.

- 3.7 Oral and written testimony in support of the ordinance by Jennifer Smith of Williams: She supports the ordinance as written, and feels it is a compromise between people of different opinions and priorities in a diverse community.
- 3.8 The Planning Commission noted the Exhibit list of documents received in response to public notice and the staff report. Documents 1-7 as noted were submitted prior to the public hearing, and copies made available by staff to the Planning Commission. Documents 8 and 9 were submitted during the hearing, with copies provided for the staff and Commission.
- 3.9 Minutes and recordings of public hearings, all other documentation and evidence received and reviewed as part of this action for the Planning Commission hearing held on May 21, 2012 are incorporated into these findings by reference.

SECTION 4. STANDARDS & CRITERIA

- 4.1 The criteria for comprehensive plan and zone amendments are contained in the Rural Land Development Code (*RLDC*) Sections (§) 46.30, 46.040, and 46.050 and the Josephine County Comprehensive Plan. Requests for Post-Acknowledgement Plan amendments must be consistent with the State Land Use Goals, contained in Oregon Administrative Rule (OAR) 660-015.

SECTION 5. FINDINGS OF FACT

The Planning Commission makes the following findings of fact in support of the decision:

- 5.1 The Commission finds that the application, staff report and ordinance language as proposed satisfies the requirements for a Comprehensive Plan / *RLDC* text amendment, per *RLDC* §46.030.
- 5.2 The Commission finds the proposed amendment satisfies the Plan Amendment Review Criteria of *RLDC* §46.040 as follows:
 - A. The staff report accompanying the request addresses applicable statewide and county goals and policies, specifically Goal 1 and 2 of the Statewide Planning Goals (OAR 660, Division 15). The proposal is consistent with ORS 215.283 and OAR 660-006-0033-130, by including the standards of this Administrative Rule that establish criteria the applicant must satisfy to demonstrate a utility facility is necessary for public service to place it in a farm zone. The applicable goal of the Josephine County Comprehensive Plan, Goal #3 is satisfied with the amendment as proposed in the May 11, 2012 staff report, written in Section 6.2 below.

- B. The application demonstrates consistency with state statute and rule; therefore, an exception to statewide goals pursuant to ORS 197.732 is not required.
- C. The proposal is not specific to a particular parcel of land, but that regulation inherent in the development standards and criteria of the ordinance will ensure that adequate carrying capacity for wireless telecommunications services is available for County residents, and that development according to the regulations adopted herein will not significantly increase the risk from hazards to residents of the area or general public.

Wireless communication services as regulated under the proposed amendment to the RLDC will not result in future maintenance cost to the public for infrastructure needed to serve the development, and that the land in its natural state may accommodate the proposed uses addressed by the ordinance, without special alterations or mitigation to make the land achieve carrying capacity.

- D. The type of use authorized, and as regulated by the proposed amendment, will be consistent with the character of the County's land area. Mitigation for potential impacts to other uses, and standards that minimize the intrusion of wireless communication facilities in residential areas, are inherent in the text amendment as proposed.
 - E. The proposed amendments do not involve a change to the Comprehensive Plan or zone maps within established exception areas; this criterion does not apply.
- 5.3 The Commission finds that no notified agency opposed the application. Josephine County Public Works had no objections to the application.
- 5.4 The Commission finds that the proposal by Williams CAC to include a new section 99.160 should not be added to the text amendment, as County residents may monitor electro-magnetic field radiation at the property line or other off-site locations whenever they choose, and file complaints with the FCC as they see fit. The Commission agreed the County should not be requiring access onto private property for this purpose, and that such a provision might put the County in the position of enforcing a federal regulation.
- 5.5 The Commission finds that three sections of the May 11, 2012 draft of Article 99 as presented with the staff report should be changed as follows (new language underlined):
1. Section 99.030.L shall read: 'Gap in service. A significant area within the service area of the applicant in which a large number of subscribers are not able to connect or maintain a connection through the applicant's telecommunications network.'
 2. Section 99.090.A.3. shall read: 'If the criteria of 99.090.A.1 and 2 above are satisfied, the County shall consider and compare the location, size, design and operating characteristics of a proposed new wireless cellular / PCS facility with other

available sites as identified by the applicant to determine which site is least intrusive. In determining the preferred site, the County shall consider the following criteria:

3. Add a definition of 'camouflage' to Section 99.030: 'Camouflage. A method of concealment that allows otherwise visible components of the wireless cellular / PCS facility to remain unnoticed by blending with the surrounding dominant built or natural environment.'
4. Add a definition of 'stealth technology' to Section 99.030: 'Stealth technology' is a combination of technologies that reduce the visual detection of cellular / PCS equipment; a combination of small size, reduced acoustic, thermal or other aspects of the presence of cellular / PCS wireless facilities.'
5. Strike the word 'residential' from Section 99.060.G.2.b., which shall read: 'The legal owner(s) of a private property listed herein within 1,200 feet of a proposed cellular / PCS facility has waived any amount of this setback from their ~~residential~~ use in a notarized, written form; or,'

SECTION 6. DECISION

- 6.1 Based on the staff report, a review of evidence submitted into the record and testimony of witnesses, the Josephine County Rural Planning Commission, upon a motion by Commissioner Goodwin to approve the request, seconded by Commissioner Drake, voted 4 (in favor) to 3 (against) on the request to amend the Comprehensive Plan and text of the Rural Land Development Code to adopt proposed Article 99 – Wireless Communications as written in the attached Exhibit A.
- 6.2 Goal 3 of the Comprehensive Plan of Josephine County shall be amended by adding the proposed Policy:

Policy 11: *The County shall regulate and coordinate the provision of wireless communication services in accordance with the Telecommunications Act of 1996, as amended, to provide adequate wireless communication services to County residents.*

Decided this 6th day of June, 2012. The proposed text amendment adding Article 99 to the Rural Land Development Code is hereby forwarded to the Board of County Commissioners for adoption.

JOSEPHINE COUNTY RURAL PLANNING COMMISSION


FOR Stan Wolfe, Chair

Article 99 – Wireless Communications

99.010 Purpose

A. Purpose. In addition to accomplishing the general purposes of the Comprehensive Plan, the Rural Land Development Code of Josephine County, and the Federal Telecommunications Act of 1996, the purpose of this Article is to set forth the regulations for the placement, development, permitting, and removal of wireless cellular/ personal communication service (PCS) facilities, including support structures and antennas. The purposes of this Article are to:

1. Minimize the adverse visual, aesthetic and safety impacts of wireless cellular / PCS facilities;
2. Establish clear and objective standards for the placement, design and continuing maintenance of wireless cellular / PCS facilities;
3. Ensure that such standards allow competition and do not unreasonably discriminate among providers of wireless cellular / PCS services;
4. Encourage the design of such facilities to be aesthetically and architecturally compatible with surrounding areas;
5. Encourage the location of wireless cellular / PCS towers in areas that do not present potential hazard or adverse visual impacts; and,
6. Encourage the colocation or attachment of wireless antennae on existing wireless cellular / PCS towers or structures.

99.020 Applicability

A. Exemptions. The requirements of this ordinance shall apply to all new wireless cellular/PCS communication facilities and the expansion and/or alteration of any existing facilities within the County, subject to the following exemptions:

1. Satellite earth stations;
2. Send-and-receive citizen band radio antennae operated by federally licensed amateur (ham) radio operators; amateur sole source emitters, citizen band transmitters;
3. Two-way broadband antennae for personal use as land mobile services, regulated by the FCC Rules Part 90;

4. Industrial, scientific and medical equipment as regulated by the FCC in 47 CFR Part 18;
5. Military and government radar antennae and associated communication towers used for navigational purposes as regulated by the FCC by 47 CFR Parts 97 and 95 respectively:
 - a. Military and federal, state and local government communications facilities used for emergency preparedness, first-responders and public safety purposes; and
6. Normal, routine and/or emergency maintenance and repair, of existing wireless cellular / PCS facilities which do not increase the height, visibility or further intrusion into a setback area, do not increase radio frequency emissions, and otherwise comply with County, state and federal law and regulations.
7. Commercial broadcast radio, television and translator towers, further defined in Article 11 as a 'communication facility', that is not specifically designated as a wireless cellular / PCS support structure or facility.

99.030 Definitions

- A. Abandonment. A support structure or facility is considered abandoned when it has not been utilized by a carrier licensed or recognized by the Federal Communications Commission (FCC) for any continuous period of 365 days.
- B. Antenna. An electrical conductor or group of electrical conductors that transmit or receive radio signals.
- C. Camouflage. A method of concealment that allows otherwise visible components of the wireless cellular / PCS facility to remain unnoticed by blending with the surrounding dominant built or natural environment.
- D. Carrier. A company authorized by the FCC to build and/or operate a commercial cellular / PCS mobile radio services system.
- E. Colocation. The use of a single wireless communication support structure for the placement of multiple cellular/PCS antennae or equipment involving different carriers.
- F. Commercial Mobile Radio Services. Any of several technologies using radio signals at various frequencies to send and receive voice, data and/or video, as regulated by the FCC by 47 CFR part 90.
- G. Equipment Shelter. A structure housing power lines, cable, connectors, emergency generators and other equipment ancillary to the transmission and reception of telecommunications.
- H. Essential Public Communication Services. Police, fire, medical and similar emergency communication networks.
- I. Excluded Uses and Structures. Exclusion of uses and structures listed in Section 99.020 does not exclude them from other applicable provisions of the RLDC.

- J. Facility. Synonymous with Wireless Cellular/PCS Communication Facility
- K. Feasible. Probable, likely and reasonably certain to succeed.
- L. FCC. Federal Communications Commission.
- M. Gap in Service. ~~For the purpose of exceptions to the regulations herein, 'gap in service' is defined as minimum coverage required for a service provider to retain their FCC license.~~ A significant area within the service area of the applicant in which a large number of subscribers are not able to connect or maintain a connection through the applicant's telecommunications network.
- N. Independent RF Engineer Review. A technical site plan or application review by a 'third party' expert approved by the County, who shall be a Professional Engineer licensed in the State of Oregon, and must divulge any current or past employment with an applicant and/or in the wireless cellular/PCS industry.
- O. Microcell. An element of a wireless communication facility consisting of an antenna that is either: (1) four feet in height and with an area of not more than 580 square inches; or (2) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.
- P. Minor Modification. Improvement or modification of a lawfully existing facility that does not increase in height or visibility or intrude (or cause further intrusion) into a setback area, including additional antennae on an existing sector antenna array.
- Q. RF propagation map: A map provided by the applicant showing the geographic coverage area of the radio frequency waves from one or more of the applicant's existing and/or proposed wireless communication facilities.
- R. Search Ring. An area drawn on a map that indicates where a wireless communication facility could be located to meet requirements given to an RF Engineer to provide service to an area. The dimensions of a search ring vary, depending upon topography, the service to be provided, and other factors, including whether the area is urban, suburban or rural in nature.
- S. Sector antennae array. A sector antennae array means a structure mounted on a building or support structure used for mounting antennae.
- T. Stealth technology. A combination of technologies that reduce the visual detection of cellular / PCS equipment; a combination of small size, reduced acoustic, thermal or other aspects of the presence of cellular / PCS wireless facilities.
- U. Support Structure. A tower, building or other structure that supports antennae used for cellular / PCS transmission.
- V. TCA. The Telecommunications Act of 1996, and amendments.
- W. Wireless Cellular/PCS Facility. An unstaffed facility for the transmission or reception of radio frequency (RF) signals usually consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a support structure such as a self-supporting monopole or lattice tower, antennas, microwave dishes or other transmission and reception devices, and all ancillary equipment. This definition includes "personal wireless services facilities" as defined under the Telecommunications Act of 1996.

99.040 Review Types

Application for new or modified facilities shall utilize the following procedures named below, and detailed in Article 42 Permit Review Procedures.

A. Ministerial. Applications for colocation, minor modifications and temporary wireless communication facilities shall be subject to a ministerial review of compliance with the general development standards of Section 99.060.

B. Quasi-judicial. Applications for new wireless cellular/PCS communications facilities that include support structures, modification to existing facilities that do not qualify as minor modifications, and the addition of cellular / PCS antennae to existing support structures that do not currently have them shall be subject to a quasi-judicial review procedure of compliance with the general development standards of Section 99.060, development standards by zoning district of Section 99.070, and the approval criteria of Section 99.090.

99.050 Application Requirements and Permit Review

A. Pre-application. Pre-application review is required for all proposed cellular /PCS communication facilities except for collocated antennae proposed on existing cellular / PCS support structures. In addition to the requirements of Article 21 and the pre-application form provided by the County, the applicant shall submit:

1. A detailed map showing the applicant's current coverage area, clearly indicating the area of gap in service, and nearest existing antennae / support structures used by the applicant.
2. A graphic representation of the search ring for wireless communication services proposed.

B. Siting Priorities. When an applicant demonstrates new cellular /PCS antennae are necessary to provide adequate coverage to an area with a service gap, the following list of priorities (in descending order of preference) shall be used to determine the type of facility permitted. In all instances, mounting antennae on an existing structure is preferred to a new free-standing structure.

1. Collocation on an existing cellular/PCS support structure.
2. Installation of a new cellular/PCS support structure on a site where a cellular / PCS structure exists.
3. A new site in an Industrial or Commercial zone.
4. A new site in a Forest Zone.
5. A new site in a Farm, Residential or other non-resource zone.

C. Colocation application requirements. Applications for colocation of additional antennas and/or cellular/PCS equipment on existing facilities or support structures of cellular/PCS facilities shall include:

1. A copy of the original site plan map (or a new map if site plan was not done) for the approved existing facility and tower updated to reflect current and proposed conditions on the property. The site plan map requirements of Section 42.060 shall apply.
2. A depiction of the tower showing placement of the collocated antenna and associated equipment, together with other existing colocations. The depiction must note the height, color and physical arrangement of the antenna and equipment.
3. If existing vegetation, screening, fencing, enclosure, lighting, drainage, wetlands, grading, driveways, or roadways, parking, or other infrastructure is to be removed or modified by the colocation, the site plan shall identify the kind and extent of proposed changes.
4. A statement from a registered engineer certifying under professional seal:
 - a. The existing tower structure will support the additional antenna and equipment; and
 - b. The facility with collocated antenna and equipment continues to comply with the non-ionizing electromagnetic radiation emission standards as specified by the FCC.
 - c. The modified facility and support structure meets the most recent EIA/TIA 222 safety standards.

D. Colocation Performance Standards. Colocated cellular/PCS facilities must satisfy the following standards:

1. Comply with the non-ionizing electromagnetic radiation emission standards as specified by the FCC.
2. The centerline of the antennae is not to exceed the height of the host tower.
3. Otherwise qualify as a minor modification as proposed or performed.
4. Conform to the General Development Standards of Section 99.060, as applicable.

- E. New wireless/PCS facility permit application requirements. In addition to the requirements of Article 42 and the information required by Section 99.050.A above, the applicant shall provide the following for quasi-judicial permit review:
1. Coverage maps.
 - a. A map showing the applicant's current coverage area from the nearest existing antennae/support structure in all directions used by the applicant, clearly indicating the area of the purported significant gap in existing coverage.
 - b. Detailed RF propagation map showing the area to be serviced by the proposed facility structure.
 - c. Detailed RF propagation maps from the closest existing or permitted cellular/PCS support structures in all directions, indicating which support structure are currently used by the applicant company.
 2. A narrative describing how the proposal complies with the Development Standards of Article 99.050 and 99.070.
 3. A colocation access study pertaining to the subject site, including:
 - a. Available sites map.
 - b. Report from a qualified licensed engineer (structural) demonstrating: the ability of the support structure to meet the standards of the Oregon Building and Specialty Codes.
 - c. Plans demonstrating the proposed support structure can accommodate collocation of two additional sector arrays on the structure.
 - d. Assessment of the anticipated capacity of the support structure, including number and types of antennae to be accommodated.
 4. A report from a qualified licensed engineer (radio frequency) demonstrating:
 - a. That the proposed facility, including all antennae at the site combined will be in compliance with non-ionizing electromagnetic radiation emission standards and other regulations regarding wireless communication facilities as regulated by the FCC.
 - b. That the proposed facility is in compliance with the development standards of this Article.
 - c. An analysis of the use of all appropriate technology for filling a gap in service area, demonstrating the proposed site is the least intrusive option when considering alternatives, addressing the siting priorities of Section 99.050.B.
 5. Deposit to cover the cost of Independent RF Engineer Review, if required.

6. A signed statement from the property owner and the service provider acknowledging liability for removal of the facility and support structure. The County may review the performance agreement and require modification of the agreement or, if no agreement exists, require a new performance agreement to achieve adequate security.
 7. A signed statement from the applicant that the facility meets the most recent EIA/TIA 222 safety standards.
 8. Visual Impact Study. A simulation of the potential visual impacts of the proposed facility, describing methods for mitigation of the resulting impacts. Photographs or drawings shall be submitted demonstrating the visual presence of the proposed facility at property lines and from visually accessible public rights-of-way.
 9. A site plan map meeting the requirements of Section 42.060 RLDC, and accompanying materials, including:
 - a. Proposed facility layout and grading plan, including the location of support structures, buildings or equipment shelters, setback from the base of support structure, exterior lighting and signage.
 - b. Location of utility lines.
 - c. Elevation plan, including proposed height of all structures, including proposed antennae sector arrays.
 - d. Detail of proposed exterior finish of support structure.
 - e. Details of backup power system and fuel storage.
 - f. Assessor parcel map indicating all residences (if present) within 1,200 feet of the proposed wireless / PCS facility.
 10. Detailed statement by the RF engineer confirming the maximum power output for each antenna, and all combined, and output frequencies of the transmitter.
- F. Permit issuance. Prior to the issuance of a development permit, the applicant shall provide the following:
1. A copy of the applicant's license issued by the FCC.
 2. A copy of the findings from the FAA's Aeronautical Study Determination regarding the proposed support structure.
 3. In the case of a proposed leased site, the applicant shall demonstrate that the lease agreement does not preclude the site owner from entering into leases of the proposed facility with other providers.

4. Recorded covenant signed by property owner and applicant whereby they agree to remove any abandoned cellular / PCS facility in conformance with the requirements of Section 99.140.

99.060 General Development Standards

Development standards. The following minimum development standards shall apply to all cellular / PCS communication facilities in addition to any development standards that apply in the underlying zoning district in which a cellular / PCS facility is located and/or additional requirements in any conditions of approval attached to a development approval. In the event of a conflict between the standards of this section and other applicable development standards of the RLDC, the provisions of Article 99 shall govern.

- A. Anti-climbing devices. All wireless communications support structures shall be designed to prevent climbing by unauthorized persons.
- B. Attachment to trees prohibited. It is prohibited to attach any wireless communications facility or portion thereof to any tree.
- C. Signs. All facilities shall be identified (and limited to) one non-illuminated sign not exceeding four square feet. The sign shall only list the wireless service provider's name and emergency telephone number and shall be posted in a place clearly visible to emergency response personnel. Any other signage required by the FCC or federal Occupational Health and Safety Administration (OSHA) rules may be posted on the site.
- D. Historical registry/district. Wireless communications facilities locating on any site or existing building that is on a historic register or in a historic district shall be subject to the applicable design standards prescribed by the local, state or federal agency with jurisdiction over such register or district.
- E. Lighting. Wireless communications facilities shall not be illuminated except where required by the FAA, the Oregon Department of Aviation, or County Airport Authority.
- F. Exterior Finish. Wireless communications facilities and antennae shall be painted or finished in a non-reflective surface that blends with the dominant background, except where otherwise required by the Federal Aviation Administration or Oregon Department of Aviation. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish, in accordance with visual blending or camouflage as required in each approved permit.
- G. Setback Limitation The location of support structures shall meet the following minimum setback standards:

1. The minimum setback from all adjacent property lines in different ownership for a proposed cellular / PCS support structure shall be fifty (50) feet plus total permanent design height. In no instance shall a cellular / PCS support structure be sited closer to any property line than this distance.
2. In all zones other than Commercial and Industrial, the minimum setback from an existing, proposed or planned residential dwelling unit, public or private school, licensed day care facility, public or private park shall be twelve hundred (1,200) feet. For the purpose of this requirement, a proposed or planned residential dwelling is a development deemed to satisfy the definition of 'substantial development' for residential structures as defined in Article 11.

There may be an exception to the minimum setback administered in this section in the following cases:

- a. If an applicant can demonstrate an identified gap in service area cannot be served with the setback in place, as verified by an independent RF engineer; and,
 - b. The legal owner(s) of a private property listed herein within 1,200 feet of a proposed cellular/PCS facility has waived any amount of this setback from their residential use in a notarized, written form; or,
 - c. If good faith efforts have been made to obtain waivers from listed property owners to allow siting, but have been unsuccessful, then the required setback from the above listed uses may be reduced by the minimum amount necessary to serve the gap in service.
3. The minimum setback from the nearest state / county inventoried historic place or structure, or known archaeological site is twelve hundred (1,200) feet. Alternative setbacks may be approved by the Planning Director where it can be demonstrated that the location of the proposed facility will take advantage of an existing natural feature to conceal the facility or minimize its visual impacts.
 4. The minimum setback of a facility and/or support structure within a Commercial or Industrial zone from other structures and/or properties within that zone shall be the standard set forth in the applicable zoning district. The proximity of a facility / support structure located within a Commercial or industrial zone to a use in another zone shall also apply the adjacent base zone's required setback from that use.
 5. Setbacks for free-standing wireless communications support structures shall be measured from the ground-level base of the structure.

- H. Height standards. The maximum height of a support structure shall be 200'. A support structure shall be no more than the minimum height necessary to achieve the intended / demonstrated purpose of the facility and allow collocation of antennae.
- I. Wildfire safety. A wildfire safety plan and driveway access plan is required for all facilities per the requirements of Article 76, as applied to new structures within a forest zone.
- J. Parking and Access. Each facility shall include one parking space. Whenever possible, vehicular access to the facility shall be incorporated into the existing driveway of a site.
- K. Insurance. Liability insurance in an amount not less than \$1,000,000 shall be maintained by the owner and operator of the facility until such facility is dismantled and removed from the site.
- L. Performance bond. A performance bond shall be required of all applicants for new wireless communication facilities, in accordance with Article 15 of the RLDC.
- M. Building and utility permits. Building and utility permits are required for all wireless communications facilities in compliance with adopted Oregon Building Codes and the requirements of individual utility providers.
- N. Replacement of existing structures. Wireless communications facilities lawfully placed that pre-existed this ordinance may be replaced, after a standards-only review through a ministerial process, if the dimensions of the facility or support structure do not increase in height or visibility or intrude (or cause further intrusion) into a setback area.
- O. Colocation access study. Access to all new wireless communication facilities shall be provided for purposes of collocation by other carriers. The applicant shall demonstrate collocation is available by submitting an assessment which includes:
 - 1. The anticipated capacity of the support structure, including the number and types of antennae which can be accommodated; at a minimum, the structure must be designed to accommodate at least two additional wireless sector antennae arrays.
 - 2. A projection of the wireless communication facilities within the coverage area of the facility proposed by the carrier that can be reasonably anticipated to be sited during the next five years.
 - 3. A summary of findings that support the need for the facility at the location proposed.

- P. Compliance with state and federal regulations. New wireless / PCS facilities, as well as the maximum capacity of all antennas on the premises combined, must specifically meet the non-ionizing electromagnetic radiation emission standards specified by the FCC.
- Q. Hazardous materials and safety. Upon initial placement in the facility, the location, type and amount of any and all materials that area considered hazardous by federal and state regulation shall be reported by the facility owner to appropriate local and federal authorities. State-of-the-art safeguards relevant to all hazardous materials will be in force at all times. For all components of the facility, all relevant up-to-date industry safety recommendations, including the full IEEE safety program and the most recent revision of the EIA/TIA222 standards shall be implemented at all times.
- R. Placement of utility lines. Other than those required to supply electrical service to antennae, utility and service lines for the facility shall be placed underground.
- S. Noise level. Wireless cellular/PCS facility equipment shall not produce an increase in ambient noise level at the property line.

99.070 Development Standards by Zoning District

- A. In Exclusive Farm and Farm Resource Districts The following standards and criteria apply to new facilities proposed to be located in Farm Zones, as stipulated in ORS 215.275 and 215.283, and OAR 660-033-130:
1. A utility facility established under ORS 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.
 2. To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
 - a. Technical and engineering feasibility;
 - b. The proposed facility is location-dependent. A utility facility is location-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
 - c. Lack of available urban and non-resource lands;
 - d. Availability of existing rights of way;

e. Public health and safety; and

f. Other requirements of state or federal agencies.

3. Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.
4. The owner of a utility facility approved under ORS 215.283(1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
5. The County will impose clear and objective conditions on an application for utility facility siting under ORS 215.283(1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

B. Forest Resource Districts

1. The proposed use will not force a significant change or increase in the cost of, accepted farming or forest practices on forest lands.
2. The proposed use will not significantly increase fire hazards or fire suppression costs or increase risks to fire suppression personnel.

C. Other Zoning Districts Wireless communications facilities in Special Districts, including Airport Hazard Overlay, Flood Hazard Overlay, Limited Development Zone and Scenic Waterway Overlay are regulated according to the underlying district standards, and further regulated as follows:

1. Wireless Communication support structures are prohibited in the Flood Hazard Overlay zone. Colocation or antennae mounts on existing structures are allowed per the general development standards of Section 99.060.

2. Wireless Communication support structures are prohibited in the Scenic Waterway Overlay zone.

99.080 – Requirement for Independent Consultation

The assessment of wireless communication facilities may require highly specialized engineering expertise. An independent consultant may be necessary to appropriately interpret the requirements of the Telecommunications Act of 1996 as subsequently amended and applied by federal courts, and review applications under the pertinent criteria and requirements of this Article. Therefore, the County initiates the following requirements for independent consultation:

- A. Upon the completion of pre-application review or at any time thereafter but prior to final decision, the Director or Hearing body may require the application materials to be reviewed by an independent consultant who possesses professional qualifications in any one or more of the following fields: telecommunication/radio frequency engineering, structural engineering, the assessment of electromagnetic fields, or other related fields of expertise.
- B. The Planning Director shall notify the applicant in writing of the County's decision to obtain independent consultation, and may require a deposit to cover the anticipated cost of this review. The applicant shall provide written consent by the landowner for the consultant to enter the subject property for purposes of investigation and assessment. The consent and payment of the deposit shall be a requirement for a completed application. The deposit shall be used for actual costs incurred in obtaining independent consultation and any unused portion of the deposit shall be returned. The County shall provide a copy of the consultant's report to the applicant as soon as it is received.

99.090 Wireless Facility Site Plan Approval Criteria

- A. Criteria. In addition to the General Development standards of Article 99.060 and the underlying Zoning District Standards of Section 99.070, new wireless cellular / PCS facilities that are not exempt per Section 99.020, or considered minor modifications per Section 99.030, are subject to the following criteria, to be satisfied before issuance of a development permit:
 1. Requirements for Colocation. A new facility with support structure shall not be authorized unless the applicant first demonstrates existing support structures cannot accommodate the gap in service and capacity requirements by colocation. Evidence to substantiate this must meet or address all of the following requirements:

- a. The application must be prepared by an expert in the field of telecommunication facilities.
- b. The applicant must demonstrate that collocation sites are too far from the area needing coverage or capacity to accommodate the necessary equipment at an adequate elevation necessary to fill a gap in service.
- c. The proposed equipment would exceed the structural or spatial capacity of existing facilities/support structures, and the existing facilities/support structures cannot be reinforced, modified, or replaced to accommodate collocation.
- d. The proposed equipment would significantly impact the usefulness of other equipment at the existing facility and the impact cannot be mitigated or prevented.
- e. The proposed equipment alone or together with the existing equipment would create radio frequency interference and/or radio frequency radiation that violate FCC standards.
- f. The fees or costs required to share an existing tower or structure, or to adapt an existing tower or structure for collocation are unreasonable.

2. Justification of Need and Location. The applicant must justify the need for the proposed facility or support structure at the proposed location, by demonstrating with substantial evidence:

- a. That the proposed facility and support structure is necessary to fill a gap in service; and, available alternative technologies which could be employed to provide adequate coverage from existing support structures on other sites have been studied per 2.c. below and are not technologically feasible.
- b. That the disruption results from a lack of coverage and not a lack of capacity to achieve adequate service. If the proposed cellular/PCS facility is to improve capacity, the applicant must provide substantive information on the usage by neighboring cell sites in all directions used by the applicant company and other information used to demonstrate capacity deficiencies.
- c. That a comprehensive study of coverage submitted to the County identifies and evaluates less intrusive alternatives, such as: sites with alternative support structures or design systems, or upgrading existing facilities.

- d. That based upon the study required in 2.c above, less intrusive alternatives are not available and/or technologically feasible.
3. Siting Criteria. If the criteria of 99.090.A.1 and 2 above are satisfied, the County shall consider and compare the location, size, design and operating characteristics of a proposed new wireless cellular / PCS facility with other available sites identified by the applicant to determine which site is least intrusive. In determining the preferred site, the County shall consider the following criteria:
- a. Whether the proposed site location creates significant adverse impacts (as defined in Article 11, RLDC) to surrounding properties, including but not limited to: noise, excessive drainage or erosion, light, glare, or property values within 1,200 feet of the subject property, as documented from an independent Oregon licensed appraiser.
 - b. Whether the proposed site location creates significant adverse impacts to the following resources, on or near the property: wildlife habitat, riparian areas or bird nesting sites, state and federally-inventoried wetlands, or federally-listed endangered animal or plant species, as determined by Oregon Departments of: State Lands; and, Fish and Wildlife.
 - c. Whether visual impacts have been mitigated to the greatest extent possible by using camouflage or screening, including but not limited to: fencing, landscaping, strategic placement adjacent to existing buildings or vegetation, other screening of accessory equipment structures, incorporating facilities into the architectural features of existing buildings or structures. Mitigation may also include design compatibility with key elements in the surrounding area, such as use of material similar to that of adjacent buildings or structures; visually blending support structures with architectural features such as flag poles, bell towers or cornices; or using existing vegetation to camouflage support structures.
 - d. Whether the proposed location minimizes visibility of the facility to residentially-zoned land, and the obstruction of scenic views from residentially-zoned land.
 - e. That the site complies with the siting priorities listed in Section 99.050.B.

99.100 Permit Limitations/Expiration

- A. Expiration of permits. Any permit for a wireless communication facility shall expire if the facility is abandoned and/or removed per Section 99.140.

- B. Period of review. Any permit for a wireless communications facility issued pursuant to this Article shall be reviewed after 10 years from effective date of the permit approval. Such review shall be initiated by the applicant within 30 days of the 10-year period, and completed by the County within the timelines established for ministerial review of land use permits. The facility shall be reviewed for compliance with the ordinance in effect at the time of review, and in particular, to determine if opportunities for replacement with "stealth" technology or micro-cell antennae are technologically feasible. If stealth or micro-cell antennae are feasible for the site, then these antennae shall be utilized as a replacement, and the existing support structure removed.

99.110 Nonconforming Uses and Structures

Nonconforming Uses / Structures. Wireless Cellular/PCS communication uses and structures in existence as of the effective date of this Article which are nonconforming as to the use or development standards of this Article shall be subject to the provisions of Article 13, Nonconforming Uses and Structures, except that new antennae may be permitted to colocate on existing support structures already hosting cellular / PCS antennae, subject to ministerial review under the general development standards of Section 99.060.

99.120 Temporary Uses

Temporary wireless /PCS facilities. Permitted as a temporary use with review by the Planning Director in order to assure continuity in service during repair or maintenance of existing wireless communications facilities or for testing purposes prior to completion of construction of new facilities. Temporary wireless communications facilities shall operate for not more than 60 days commencing when transmission from such facility begins except when needed for emergency services, as determined by the Josephine County Emergency Services Manager. The temporary facility shall be removed within 30 days after it is no longer needed for telecommunications purposes. Such temporary permits shall be subject to the performance bond requirements of Article 15.

99.130 Federal Requirements.

- A. Compliance with federal regulations and penalties. All wireless communications support structures must meet or exceed current standards and requirements of the Telecommunications Act, regulations of the Federal Aviation Administration, the FCC and any other agency of the federal government with the authority to regulate wireless communications support structures and antennae.
- B. Required environmental assessment. Carriers and owners of wireless communications support structures, antennae and electronic equipment shall provide the County with documentation of any Environmental Assessment (EA) required to be submitted to the

FCC or FAA regarding locations within the County simultaneous with any filing with the federal agencies pursuant to 47 CFR Part I, and Sections 1.1307 and 1.1308(a) of the Telecommunications Act.

99.140 Removal of Antennas and Support Structures.

Any antenna or wireless communications support structure that is determined by the Director to be abandoned as defined in Section 99.030 shall be removed by the owner of the property on which the support structure or antenna is situated, or by the owner or lessee of the support structure or antenna, within 90 days of receipt of notice to remove from the County. If the antenna and/or support structure is not removed within 90 days, the County may remove the antenna or support structure at the owner and lessee's expense.

99.150 Subsequent Review of Ordinance

Communication technologies are subject to rapid change. Future innovations may render specific portions of this ordinance obsolete, or require amendment to existing standards. Subsequent review and revision of this ordinance shall occur at least every five years hereafter or more frequently at the request of the Planning Commission or Board of County Commissioners.



Josephine County, Oregon

Planning Office

700 NW Dimmick Street, Suite C/Grants Pass OR 97526
(541) 474-5421 / Fax: (541) 474-5422
E-mail: planning@co.josephine.or.us

July 19, 2012

Plan Amendment Specialist/DLCD
635 Capitol Street NE Suite 150
Salem OR 97301-2540

DLCD/Josh LeBombard
(via e-mail)

LUBA/PUC Building
550 Capitol Street NE Suite 235
Salem OR 97301-2552

Lower Applegate CAC/Olaf Ahlstrom
5713 Fish Hatchery Road
Grants Pass OR 97527

Williams CAC/Stephen Williams
PO Box 472
Williams OR 9754

Re: *Josephine County Ordinance No. 2012-002 ~ Wireless Communications*

Josephine County Ordinance No. 2012-002 amends the Josephine County Rural Land Development Code:

By adding a new Article 99, to provide standards and procedures for review and development of Wireless Communications Facilities and Towers

The Ordinance was signed and adopted by the Josephine County Board of Commissioners at their Weekly Business Session on July 18, 2012. The Ordinance becomes effective 90 days after that date, October 17, 2012. You may obtain a copy of the Ordinance on the county planning website: www.co.josephine.or.us. Select planning under departments, select Ordinances on the left sidebar, and cursor down to 2012. Should you have questions, please contact our office.

Sincerely,

Anne Ingalls
Planning Specialist
Josephine County Planning Office
700 NW Dimmick, Suite c
Grants Pass OR 97526, 541/474-5423
aingalls@co.josephine.or.us

Enc: *As referenced in letter*



Josephine County, Oregon

PLANNING OFFICE

700 NW Dimmick, Suite C / Grants Pass, OR 97526

(541) 474-5421 / Fax (541) 474-5422

E-mail: planning@co.josephine.or.us

DEPT OF

JUL 23 2012

LAND CONSERVATION
AND DEVELOPMENT

July 19, 2012

Plan Amendment Specialist/DLCD
635 Capitol Street NE Suite 150
Salem OR 97301-2540

DLCD/Josh LeBombard

Re: Article 99 ~ Wireless Communications

Enclosed are the following for the above referenced matter:

1. Copy of the *DLCD Notice of Adoption* dated 07/18/12;
2. Copy of Ordinance 2012-002; and
3. Copy of *Findings of Fact* signed and dated 06/06/2012.

Should you have questions, please contact our office.

Sincerely,

Anne Ingalls
Planning Specialist
Josephine County Planning Office
700 NW Dimmick, Suite C
Grants Pass OR 97526
541/474-5423
aingalls@co.josephine.or.us

Encs.: *As referenced in letter*

Josephine County Planning
100 NW Dimmick Street
Suite C
Santitas Pass, OR 97526



DEPT OF
JUL 23 2012
LAND CONSERVATION
AND DEVELOPMENT

DLCD/Text Amendments
635 Capitol Street NE, Ste. 150
Salem OR 97301-2450

