

STAFF REPORT

Planning Department File No. 2019-02-006

**CONDITIONAL USE APPLICATION
FOR
Wireless Telecommunication Facility
And
Sage-Grouse Rule Permit
And
Variance from Setback Requirements**

Planning Commission Meeting Date: March 28, 2019

- 1. OWNER OF RECORD:** **Harry Stoddart**
5475 Iron Mountain Road
Jordan Valley, OR 97910
- 2. APPLICANT:** **Eco-Site, Inc.**
240 Leigh Farm Road
Durham, NC 27707
- 3. PROPOSED ACTION:** CUP approval of an unmanned wireless telecommunication facility consisting of a 500' guyed tower with anchor tenant's tower mounted antenna, radios, and cabling. Ground equipment will be enclosed in a shelter. Applicants request variance approval to setback requirements on the western property line which abuts BLM land. Applicants request a sage-grouse rule permit pursuant to OAR 660-023-0115.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 200, T30, R38E, Sec. 2, Map 30S38E, Malheur County Reference Number 11754. Aka 5475 Iron Mountain Road, Jordan Valley, OR
- 5. PROPERTY LOCATION AND DIRECTIONS:** From Burns Junction, head north on the Steens Highway after approximately 2.5 miles, turn right (east) on Iron Mountain Road. The proposed site is on the right in approximately 3.25 miles.
- 6. ZONING:** Exclusive Range Use (C-A2).
- 7. PARCEL SIZE:** 355.87 acres.
- 8. PARCEL USE:** The parcel has an existing single-family dwelling and is exclusively used as rangeland.
- 9. SURROUNDING USE:** The surrounding area is exclusively used as rangeland.

10. ACCESS: Iron Mountain Road provides access to the proposed site.

11. SANITATION REQUIREMENTS: No sanitation is required.

12. FIRE PROTECTION: The proposed Wireless Telecommunication Facility is not within a fire district.

13. NATURAL HAZARDS: None known.

14. WATER RIGHTS: N/A.

15. ZONING HISTORY: In 2015 a zoning permit for a replacement dwelling was issued.

I. GENERAL CONDITIONAL USE CRITERIA

Malheur County Code (MCC) 6-6-7, OAR 660-033-0130 – GENERAL CRITERIA TO EVALUATE SUITABILITY: In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

A. Comprehensive Plan goals and policies, as applicable.

Proposed finding: The county comprehensive plan and county zoning regulations provide the conditional use process for a wireless telecommunication facility.

B. Specific plan recommendations.

Proposed finding: MCC 6-6-8-8 regulates the conditional use process for a wireless telecommunication facility.

C. Existing development and viewpoints of property owners in the surrounding area.

Proposed finding: Letter notice was sent to adjoining landowners and published in the Argus Observer on March 5, 2019. No comments were received.

D. Availability of services and utilities.

Proposed finding: There is no burden to any of the services and utilities anticipated.

E. The effect of the proposed use on the stability of the community's social and economic characteristics.

Proposed finding: The proposed tower will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics.

- F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

Proposed finding: Applicant has contacted ODFW, specifically to assess the impact of the installation on the greater sage grouse. While the installation is in a designated low density area for sage grouse, the installation qualifies as a large-scale development. Additional communication between applicant and the ODFW will quantify the impact, resulting in a determination of the appropriate level of mitigation. Minimum soil erosion will result from the clearing of the project area.

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

Proposed Finding: There are no anticipated adverse effects to air, water or land resource quality.

2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

Proposed Finding: The site location is 2.65 miles from Steens Highway and does not significantly detract from the character of the area.

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

Proposed finding: Driveway access will be in accordance with the Malheur County Road Department.

4. Visual screening of outdoor waste and storage areas.

Proposed Finding: No waste storage areas will be located onsite.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

Proposed Finding: Eco-Site will only install lighting as required by the FAA pursuant to the FCC Towair Determination.

6. Special criteria listed below, as applicable.

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding

- lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Proposed finding: No agricultural efforts are currently evident in the area. Areas not enclosed by fencing will remain available for whichever use owner chooses.

II. SPECIFIC CONDITIONAL USE CRITERIA:

MCC 6-6-8-8 – Wireless Telecommunication Facilities

A. Siting Prioritization:

1. All wireless telecommunication facilities shall be sited in accordance with the following priorities, in order of preference:
 - a. Collocation by placement of antenna or other transmission and reception devices on an existing tower, building or other structure such as a utility pole or tower, water tank or similar facility.
 - b. Use of alternate technology whereby transmission and reception devices are placed on new or existing structures which are consistent in height with and sited similarly to types normally found in the surrounding are, such as telephone, electrical, or light poles.
 - c. Siting of a new tower in a visually subordinate manner. As used in this subsection “visually subordinate” means the relative visibility of a wireless telecommunication facility where that facility does not noticeably contrast with the surrounding landscape. Visually subordinate facilities may be partially visible, but not visually dominant in relation to their surroundings as viewed from residences, highways and other vantage points.
 - d. Siting of a new tower in a visually dominant location, but employing concealment technology. As used in this subsection a “concealment technology” means technology through which a wireless telecommunication facility is designed to resemble an object present in the natural environment or to resemble a building of a type typically and customarily found in the area.
 - e. Siting of a new tower in a visually dominant manner without employing concealment technology.

Proposed Finding: There are no suitable existing structures found in the search area to accommodate the technological needs. The proposed tower is 2.7 miles from the Steens Highway. The relatively narrow profile of the guyed tower and its distance from the travel corridor will effectively subdue its visual impact. Concealment technologies typically explored for wireless telecommunication facilities are not consistent with or effective for this type of installation.

B. Height, Setback and Access Requirements:

1. Wireless telecommunication facilities shall be limited to the height necessary to

provide the service.

Proposed Finding: Attached technical documentation supports the need for a 500' tower in the area to support the needs.

2. Notwithstanding the setback requirements in the zone in which the facility is to be located, the following setbacks apply. Telecommunication towers shall be:
 - a. Set back from the property line at least the height of the tower plus ten percent (10%). A "tract" (contiguous property under the same ownership) shall be considered a single parcel for the purposes of setbacks.

Proposed Findings: To accommodate the property owner's wish to site the tower at a distance from the residential structures on the property, Eco-Site is requesting a setback variance to the western property line.

- b. Except as provided in subsection B2b(1) of this section, the plot leased by the licensed carrier for the wireless telecommunication facility shall be at least six hundred feet (600') from residences and schools not on the applicant's tract, or as far away from nearby residences and schools as it is sited from the closest dwelling on the applicant's tract.

Proposed Finding: The proposed lease area is 100' x 100'.

1. A facility may be sited closer to a school when the school district makes a request and demonstrates the facility is necessary for educational purposes.

C. Construction Standards:

1. The following construction standards shall apply to all new or replacement telecommunication facilities:
 - a. No lighting of wireless telecommunication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or as a condition of approval by the Malheur County Planning Commission.

Proposed Finding: Eco-Site will install lighting as required by the FAA pursuant to the FCC Tower Determination or other regulatory finding.

- b. Based on the existing conditions and vegetation at the proposed site, the wireless telecommunication facility shall be constructed or surfaced with materials to reduce visibility of the facility by the use of nonreflective materials that minimize glare and blend the structure into the surrounding environment.

Proposed Finding: Eco-Site will execute coloring requirements of the

FAA or Oregon Department of Aviation (see (f) of this Title)

- c. Antenna(s) and associated equipment located on the same structure as the antenna shall be surfaced in a nonreflective material color to match the structure on which it is located.
- d. Warning and safety signs, up to three (3) square feet in area, are allowed. All other signs are prohibited.
- e. Equipment areas must be enclosed by a chainlink fence or equivalent with or without slats for screening.

Proposed Finding: The lease area will be surrounded by a 6ft chain link fence.

- f. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.

III. VARIANCE CRITERIA

MCC 6-8-2: CIRCUMSTANCES FOR GRANTING VARIANCES: A variance may be granted only in the event that the circumstances in subsections A through D below have clearly been met.

- A. Exceptional or extraordinary circumstances apply to the property that do not generally apply to other properties in the same zone or vicinity, resulting from lot size or shape, topography or other circumstances over which the owners of property since enactment of this Title have had no control; or

Proposed Finding: The parcel is exceptional in the vicinity in that it is inhabited. Adjacent parcels are significantly larger tracts of open range land owned by the United States of America and the Bureau of Land Management. The land owner and Malheur County constituent, Mr. Harry Stoddart, has expressed interest in creating the maximum possible distance between his residence and the subject guyed tower. At the proposed location 216'11" from the western property line, the tower can be anchored within the confines of the property and leave approximately 884' between the tower and the inhabited structures.

- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess; and

Proposed Finding: As noted, the subject property is unique in its inhabited nature. The right of maximum quiet enjoyment of Mr. Stoddard's property is at issue and there is not a commensurate negation in enjoyment by 'others' as a result of the granting of the variance.

- C. The variance would not be materially detrimental to the purpose of this Title, or to

property in the same zone or vicinity in which the property is located or otherwise conflict with the objectives on any County plan or policy; and

Proposed Finding: Granting of the variance would not be materially detrimental to adjacent property owners due to the uninhabited nature of those adjacent properties. Specifically, the property to the west of the subject property extends to the Steens Highway a distance of approximately 2.5 miles.

D. The variance requested is the minimum variance that would alleviate the hardship.

Proposed Finding: Alterations to the configuration would be harmful to both the lease and landowner without being helpful to ‘others’.

IV. SAGE-GROUSE RULE PERMIT CRITERIA (OAR 660-023-0115(11))

11. Program to achieve the goal of protecting significant sage-grouse habitat on general habitat.

a) A County may approve a large-scale development on significant sage-grouse habitat in general habitat upon requiring:

A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall including consultation between the development proponent and ODFW that considers and results in recommendations on how to best locate, construct or operate the development action so as to avoid or minimize direct and indirect impacts on significant sage-grouse habitat within the area of general habitat. A county shall attach ODFW recommendation as a condition of approval; and

B) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.

Proposed Finding: The applicant has consulted with ODFW as evident in the email exchange attached to the application. Conditions of approval are based on the recommendations of ODFW.

V. APPLICANT’S PROPOSED FINDINGS OF FACT

The Applicant has submitted additional proposed findings of fact in the conditional use application.

VI. STAFF RECOMMENDATION:

The Malheur County Planning Department finds that the Applicant has met all applicable zoning rules and requirements and respectfully recommends that the Planning Commission:

- A. Approve the Variance Request 2019-02-007.
- B. Approve the Conditional Use Permit 2019-02-006.
- C. Approve the sage-grouse rule permit.

VII. PROPOSED CONDITIONS OF APPROVAL

1. All required road approaches shall be obtained from the Malheur County Road Department.
2. The applicant must submit a letter of authorization from Oregon Department of Fish & Wildlife prior to a zoning permit to be issued. This letter will clearly state that the applicant has complied with all ODFW requirements for the sage-grouse permitting and mitigation.
3. A ten foot (10') buffer must be maintained within the lease area and beyond the fence to decrease the chances of a wildfire.
4. After the county makes a determination of discontinued or nonuse, the property owner shall, within six (6) months, complete removal operations.
5. This approval is valid for two years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

II. EXHIBITS

1. Applicant's conditional use application with exhibits.