

Before the Planning Commission

Planning Department File No. 2024-07-009

**CONDITIONAL USE APPLICATION
FOR
Wireless Telecommunication Facility**

Planning Commission Meeting Date: September 26, 2024

- 1. OWNER OF RECORD:** Christopher & Anne Ray
6144 Molthan Ranch Rd
Ironsides, OR 97908
- 2. APPLICANT:** Matthew Schutjer
1125 E Browning Ave
Salt Lake City, UT 84105
- 3. PROPOSED ACTION:** CUP approval proposing a 199' wireless telecommunications tower enclosed in a 8 foot height 50x50 fenced lease area.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 4500, T14, R39E, Map 14S39E, Malheur County Reference Number 14668.
- 5. PROPERTY LOCATION AND DIRECTIONS:** From Vale, Oregon head north on the Highway 20/26 after approximately 46 miles, turn left(west) on private access road. The proposed site is on the left.
- 6. ZONING:** Exclusive Range Use (C-A2).
- 7. PARCEL SIZE:** 969.30 acres.
- 8. PARCEL USE:** The parcel is exclusively used as farm ground and rangeland.
- 9. SURROUNDING USE:** The surrounding area is exclusively used as farm ground and rangeland.
- 10. ACCESS:** Access is a private access drive originating off of John Day Hwy.
- 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:** 391.7 acres

15. **ZONING HISTORY:** Prior to 2000 there was a LUCS approved. And in 2021 there was an additional LUCS approved.

I. 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.

Finding: The county comprehensive plan and county zoning regulations provide the conditional use process for a wireless telecommunication facility. Additionally, the proposed Facility satisfies several of the applicable goals and policies of the Malheur County Comprehensive Plan including, but not limited to, Goal 3 “Agricultural Lands”, Goal 5 “Open Space, Scenic and Historic Areas, and Natural Resource” and Goal 11 “Public Facilities and Services”.

- The proposed Facility forwards the intent of Goal 3 - Agricultural Lands: “To preserve and maintain the agricultural land in the county for agricultural purposes”. The proposed Facility will encompass 250 sq. ft. on a 969.30 acre parcel of vacant land. The Facility will not impact the remainder of the parcel to be used for agricultural purposes.

- The proposed Facility forwards the intent of Goal 11 - Public Facilities and Services: “To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development”. The proposed new Facility will provide sufficient continuous and uninterrupted wireless service within the Targeted Service Area, resulting in fewer dropped calls, improved call quality, and improved access to additional wireless services the public now demands (this includes emergency 911 calls).

B. Specific plan recommendations.

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.

Finding: Letter notice was sent to adjoining landowners and published in the Argus Observer on September 4, 2024. No comments were received. A public hearing will

be held on September 26, 2024.

D. Availability of services and utilities.

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

ROADS: During construction, the burden on John Day Hwy will be limited to material transport and light truck traffic. A technician may visit the site one time per month for maintenance/ inspections.

POLICE & FIRE: There is no anticipated increase in protection requirements. The fenced lease area will be covered in gravel.

SEWER & WATER: A WIRELESS TELECOMMUNICATION FACILITY does not require sewer or water, therefore, no burden is anticipated.

ELECTRICAL & TELEPHONE: As necessary, improvements to the electrical service may be required for operational needs and will be the responsibility of the applicant and its future co-locators.

SOLID WASTE: A WIRELESS TELECOMMUNICATION FACILITY does not produce solid waste, therefore, no burden is anticipated.

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

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.

The proposed WIRELESS TELECOMMUNICATION FACILITY will provide a social benefit to the community by providing T-Mobile coverage to an area that does not currently have any. The WIRELESS TELECOMMUNICATION FACILITY will accommodate future co-location opportunities, which will support the economy by providing a choice of wireless carriers in the area.

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.

Finding: The proposed site doesn't fall within the Low-Density Sage Grouse Habitat. This criteria is met.

G. General Criteria

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

Finding: The proposed WIRELESS TELECOMMUNICATION FACILITY will be located more than 110% the height of the tower from all property lines.

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

Finding: No landscape improvements at this time.

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

Finding: Access to the lease area will be via an existing private access drive. The access drive will not be accessible to vehicular pedestrians.

4. Visual screening of outdoor waste and storage areas.

Finding: This criterion is not applicable. The proposed WIRELESS TELECOMMUNICATION FACILITY will not produce outdoor waste or contain storage areas. The tower and ground equipment will be located within a 50ft x 50ft fenced compound.

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

Finding: There is no lighting on the proposed tower. No lighting will provide glare onto adjacent properties.

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.

Finding: No agricultural efforts are currently evident within 0.25 miles of the proposed WIRELESS TELECOMMUNICATION FACILITY. The proposed WIRELESS TELECOMMUNICATION FACILITY will not significantly increase the cost of, or force a significant change to, accepted farm or forest practices on surrounding lands, as the WIRELESS TELECOMMUNICATION FACILITY will stand 199 ft on a 969.30 acre parcel.

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.

Finding: Property owner currently has approval for a cell tower across the highway, construction has not been started and the anchor tenant at this time is for internet only. There are no other available towers or utility poles available for collocation.

B. Height, Setback and Access Requirements:

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

Finding: Applicant's technical analysis supports a tower of 199' would target 90.33 percent of the identified area of influence. There is currently no current coverage.

2. Notwithstanding the setback requirements in the zone in which the facility is to be located, the following setbacks apply. Telecommunication towers shall be:
000000000Set 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.

Findings: The setback to the proposed WIRELESS TELECOMMUNICATION FACILITY is at least 600 feet from all property lines, the towers height is 199'. The proposed WIRELESS TELECOMMUNICATION FACILITY meets this criterion.

- a. Except as provided in subsection B(2)(b)(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.

Finding: There are no residences or schools within 600 ft of the proposed Facility.

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.

Finding: There is no lighting on the proposed tower. No lighting will provide glare onto adjacent properties.

- 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.

Finding: Pursuant to the ODA, marking is required for the proposed Wireless Telecommunications Facility. The proposed Facility will be painted per FAA / ODA specifications utilizing nonreflective paint.

- 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.

Finding: The antennas and associated equipment located on the structure will be painted per FAA/ ODA specifications utilizing nonreflective paint.

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

Finding: Rage Development is not proposing any signage.

- e. Equipment areas must be enclosed by a chainlink fence or equivalent with or without slats for screening.

Finding: Rage Development is proposing to install a 8ft chain-link fence around the 50 ft x 50 ft Lease Area.

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

Proposed finding: Pursuant to the ODA, marking is required for the proposed WIRELESS TELECOMMUNICATION FACILITY. The proposed Facility will be painted per FAA / ODA specifications utilizing nonreflective paint.

V. APPLICANT'S PROPOSED FINDINGS OF FACT

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

VII. CONDITIONS OF APPROVAL

1. All required road access permits must be obtained from the Oregon Department of Transportation. If necessary, all easements must be obtained along with a road maintenance agreement between all parties.
2. A ten (10) foot buffer must be maintained within the lease area and beyond the fence to decrease the chances of a wildfire.
3. After the county makes a determination of discontinued or nonuse, the property owner shall, within six (6) months, complete removal operations.
4. 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.

IX. EXHIBITS

1. Applicant's conditional use application with attachments.

CONCLUSION

Based upon the foregoing finding of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a wireless telecommunication facility in an exclusive farm use zone.

ORDER

This application for a wireless telecommunication facility in an exclusive farm use zone is approved.

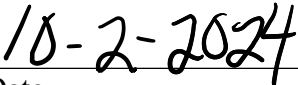
APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department not later than 5:00 pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate

opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission. Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.



Planning Commission Chair
Kathy Clanch



Date