



CITY OF PORT ORFORD Staff Report

TO: Greg Thelen
Port Orford Planning Commission Chair

FROM: Crystal Shoji, AICP; Port Orford Planner
Shoji Planning, LLC

DATE: August 29, 2023
HEARING DATE: September 5, 2023

SUBJECT PROPERTY: CURRY COUNTY ASSESSOR'S MAP DESCRIPTION:
T33S, R15W, Sec. 05CA, Tax Lots in the Tract include but are not limited to 100 300, 400, 401. Tax Lots 400 and 401 are the T-Mobile Lease Area. The Lease Lot of Subject Property marked by an "X" is the area with the proposed new generator, concrete pad, fenced compound and equipment. See Assessor's map Exhibit A.

A Site Plan provided by T-Mobile shows various configurations in the Lease Area. See Exhibit B, pages 4 and 14.

SUBJECT: File Number: _____
Submitted: July 18, 2023

Conditional Use Permit Request for Generator Installment at Existing Cell tower at 698 Boot Hill Road

Packet for T-Mobile Application: Table of Contents, Proposal for Generator Addition at the Cell Tower on Boot Hill, City of Port Orford Land Use Decision Application Form with Signed Property Owner's Consent - Narrative Description of Project, Consent for Authorized Agent and more. See Exhibit B – 19 pages.

APPLICANTS/OWNER: **Property Owners:**
Ronald S. and Ann F. Baracker, Trustees
268 Robert Trent Jones Boulevard
Eagle Point, OR 97524

Deed Numbers: 2014-02810, 2014-02809, 2017-01926 including Communications Site Lease Agreement

(Ground), 2006 with Exhibits have been submitted by the Applicants and are maintained in City files.

Tower Owner:

Crown Castle, USA, Inc.
2000 Corporate Dr.
Cannonsburg, PA 15317

AGENT:

Mary Dunn, Network Connex, formerly Synergy
655 N. Central Ave, Ste. 1520
Glendale, CA 91302

ZONING:

Residential zone (1-R)
Natural hazards overlay zone (NH)

Subject Property is located at 698 Boot Hill Road (Tichenor Cemetery Road), which is at the northern terminus of Boot Hill Road. The proposed development site is located adjacent to and east of Tichenor Pioneer Cemetery, also known as Tichenor Family Cemetery.

PROPOSAL:

T-Mobile is proposing to install a diesel generator with a 240-gallon underbelly tank on a proposed 4-foot by 9-foot pad within the boundaries of a new 10-foot by 14-foot fenced compound. The proposal is described in detail on pages 3 and 4 of Exhibit B and other documents submitted by the applicants. This is for emergency backup power to a T-Mobile site that serves Port Orford. There will also be relocation of equipment.

The site footprint will be expanded to accommodate the backup power generator with expansion of approximately 14 feet, not to exceed 30 feet in any direction (described by Applicants).

The application states that there will be no excavation outside the current site or more than 30 feet in any direction. Pages 5 and 6 of Exhibit B provide information as to what is permitted by federal law without discretionary review by the local jurisdiction (City of Port Orford).

CRITERIA AND FINDINGS

Within this Staff Report, words that are quoted directly from the Code or Oregon Law are included in *italics*. Words that are paraphrased or provided as opinions or explanations are provided in regular font.

Port Orford Municipal Code, Title 17, Zoning
Chapter 17.04 GENERAL PROVISIONS
Section 17.04.020 Purposes

. . . to facilitate adequate provisions for community utilities such as water, sewerage and transportation; and in general, to promote public health, safety, convenience and general welfare.

Finding: The proposed cell phone tower Generator Installation Project with concrete pad and fenced compound is an extension of the current facility, which can be authorized through the conditional use process in accordance with Chapter 17.32.

Section 17.04.030 Definitions.

“Accessory Structure or use” means a structure or use incidental and subordinate to the main use of the property, and which is located on the same lot with the main use.

Finding: The cell tower Generator Installation Project is for an accessory structure or use, consistent with this definition.

“Building” means a structure built for the support, or shelter or enclosure of persons, animals, chattels or property of any kind.

Finding: The structure with the enclosed fence is defined within this staff report; it fits within the above definition.

“Building footprint” means the outline of a building, as measured around its foundation.

“Conditional use” means the relaxation of strict terms of this ordinance to permit uses in districts where such uses require additional controls or safeguards not required for outright permitted uses.

“Development Activity” means any use or proposed use of land that requires disturbance of the vegetation or spoil or which requires action of the Planning Division or Building Division to allow the construction or modification of structures or other improvements or to allow the division of land.

“Geologic hazard areas.” Include those areas that may be subject to rapidly moving landslides as identified and further defined in Chapter 17.16.080 Natural Hazard Overlay Zone (NH), Applicability.

“Geologist” means a certified engineering geologist licensed by the State of Oregon as provided by ORS 672.505 to 672.705.

“Structural alteration” means any change to the supporting members of a structure including foundation, bearing walls, or partitions, columns, beams or girders, or any structural change in the roof.

“Structure” means that which is built or constructed. An edifice or building or piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having location on the ground.

Finding: Structure is defined and applied to the proposed use within this staff report.

“Use” means the purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained.

Finding: The purpose of Title 17, Zoning of the City of Port Orford Municipal Code is to encourage appropriate use/development of land within the City of Port Orford, in a manner that does not have adverse effects on the community and its residents. The definitions provided are pertinent.

Chapter 17.12 USE ZONES

Section 17.12.010 Residential zone (1-R)

A. Purpose of Classification. The 1-R zone is designed to be applied to residential areas where dwellings are appropriate.

C. Conditional Uses Permitted. In a 1-R zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:

6. Commercial communications² [sic] transmitter or receiver antenna

Finding: Subject Property is identified with a Residential 1-R zoning designation. Subject Property has an existing residence and a permitted wireless communications tower structure, which has been permitted subject to a conditional use permit with updates to the conditional use permit over the years to accommodate new equipment and ground disturbance. The proposal for this conditional use permit is requested in order to address desired expansion to accommodate a new generator and other necessary upgrades that require new infrastructure.

D. Provision of Sewer and Water.

1. Sewer service shall be provided by the City of Port Orford, with hookups installed to City standards.
3. Water lines to connect sites for new development to existing mains shall be installed to City standards. . . .

Finding: The tract, which includes over 900 acre includes Tax Lot 100 (25 acres), with an existing dwelling and an accessory structure on the Tax Lot 300, which is .51 acres. The T-Mobile lease area for the tower and accessory uses on Tax Lost 400 and 401. No sewer or water service has been proposed in conjunction with the proposed Generator Installation. The applicants have been made aware of the Water Curtailment program so that they can plan for any water that may be needed during construction for fire suppression or other.

E. Lot Size. Except as provided in Sections 17.20.030 and 17.20.040 in a 2-R zone [Sic]:

1. Lot sizes suitable for building shall be dependent on the availability of public water. If the lot is not served by public water system, the lot area shall conform to the state requirements for onsite water supply.

Finding: No public water and sewage are proposed for expansion project. Subject Property has already been determined suitable for the uses that exist, including the existing cell tower use, which is now proposed for an accessory expansion including installing a new generator and other equipment within the lease lot area.

F. Setback Requirements. Except as provided in Sections 17.20.010 and 17.20.020 in 1-R zone yards shall be as follows:

1. The front yard shall be a minimum of ten feet.
2. The side yard shall be a minimum of five feet.
3. The rear yard shall be a minimum of five feet.

Finding: According to the survey map and site plan provided by the applicant, the proposed additions and modifications to the existing wireless communication facility are within the 1-R zone setbacks identified above.

G. Height of Buildings. Except as provided in Section 17.20.050, in a 1-R zone no building shall exceed thirty (30) feet and two stories in height.

Finding: Section 17.20.050 General exception to building height limitations states the following:

The following type of structure or structural parts are not subject to the build height limitations of this title: boat hoist or crane in the Port Facility, chimney or smokestack that does not exceed 5 feet over the building height limitation of the zone, fire and hose towers, public tsunami evacuation structure, transmission tower or communications facility towers authorized by state or federal law, municipal and community water system towers approved by the City and the Oregon Health Authority, and other similar projections.

The cell tower is a communications facility tower that is already approved by the City and now subject to federal laws and federal exemptions. The proposed generator installment is an accessory use, and it is not proposed to exceed the height limitations of the zone.

Chapter 17.16.080 Natural Hazard Overlay Zone (NH).

- A. *Purpose of Classification.* The purpose of the NH overlay zone is to protect people, lands and development in areas that have been identified as being subject to geologic hazards and to apply review standards to all proposed development activity within the areas subject to geologic hazards.

Findings: Subject Property is identified as an area subject to geologic hazards. Therefore, 17.16.080 Natural Hazards Overlay Zone (N-H) criteria is applicable to this application.

- B. *Applicability.* For the purposes of these provisions, areas subject to identified geologic hazards are known as “geologic hazard areas” addressed in the Natural Resources Inventory Section of the City of Port Orford Comprehensive Plan, and the City of Port Orford Comprehensive Plan Goals and Policies under Statewide Planning Goal 7: Areas Subject to Natural Disasters and Hazards. Mapping for such geologic hazard areas include the following:
1. *Port Orford Geologic Areas Map, 3-A as incorporated into the Port Orford Comprehensive Plan Inventory. Map 3-A was compiled for informational purposes by Oregon Department of Land Conservation and Development GIS 1/14/14.*
 2. *Landslide Inventory Maps of Coastal Curry County Oregon 2014, developed by the Oregon Department of Geology and Mineral Industries (DOGAMI) as incorporated into the Port Orford Comprehensive Plan Inventory including: Blacklock Point to Port Orford 2014, Maps 3-B and Port Orford to Lookout Rock 2014, Map 3-C.*
- C. *Geologic hazard areas may also be identified by site specific characteristics such as, but not limited to, earth flow and slump topography with moderately sloping terrain and irregularities of slope, drainage or soil distribution; areas of recent earth movement exhibited by tension cracks, bowed trees or other indicators, steep slope mass movement areas subject to localized debris slides, debris flows, rock falls or rock slides, and other areas that may be identified by a geologist conducting the technical assessment and any statement and/or report required by this chapter of the City of Port Orford Municipal Code.*
1. *Geologic Hazard Areas specifically include those areas, which, because of their relation to or location with respect to Geologic Hazard Areas, are in jeopardy of rapidly moving landslides. Areas identified with more than 15% slope shall be subject to the Natural Hazards Overlay requirements.*
 2. *Those areas identified as geologic hazard areas shall be subject to the following requirements at such time as a development activity application is submitted to the City.*
 3. *Geologist Hazard Assessment. “Geologist” means engineering geologist licensed by the State of Oregon as defined in Section 17.04.030 of this ordinance.*
 - a. *The applicant shall present a geologic hazard assessment prepared by a geologist at the applicant’s expense that identifies site-specific geologic hazards, associated levels of risk and the suitability of the site for the development activity in view of such hazards. The geologic hazard assessment shall include an analysis of the risk of geologic hazards on the*

subject property, on contiguous and adjacent property and on upslope and down slope properties that may be at risk from, or pose a risk to, the development activity. The geologic hazard assessment shall also assess erosion and any increase in storm water runoff and any diversion or alteration of natural storm water runoff patterns resulting from the development activity. The geologic hazard assessment shall include one of the following:

- i. A certification that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property or to adjacent properties resulting from the proposed development activity.*
 - ii. A statement that there is an elevated risk posed to the subject property or to adjacent properties by geologic hazards that requires mitigation measures in order for the development activity to be undertaken safely and within the purposes of this section.*
- b. If the assessment provides a certification pursuant to subsection (3)(a)(i), the development activity may proceed without further requirements of this section.*
- c. If the assessment provides a statement pursuant to subsection (3)(b), the applicant must comply with the further requirements of this section prior to any disturbance of the soils or construction.*
- d. Applications, subject to Section (3)(c) above, where the assessment results in a statement pursuant to Section (3)(b)(ii) shall provide a Geologic hazard mitigation report by a geologist prepared at the applicant's expense containing the following information prior to the Planning Director's determination that the application is complete. Drawings at scales that allow for clear depiction of the following:*
- i) An index map showing the location of the development activity within the City of Port Orford.*
 - ii) A topographic site plan that shall include;*
 - (A) All adjacent, contiguous and related property identified in the geologic hazard assessment as being at risk from or posing risk to the development activity;*
 - (B) The degree of slope on the subject and adjacent properties;*
 - (C) All features on the subject and adjacent properties that may cause or contribute to mass movement. Such features shall include any landslide, bluff failure or shoreline erosion that could migrate upslope into the subject or adjacent properties;*
 - (D) The location of all identified geomorphic features and microtopographic features related to the identified geologic hazards, and*
 - (E) All features or conditions, which gave, raise to the statement pursuant to the assessment, Section (1)(b) not otherwise required to be included.*
 - iii) A map that depicts features and conditions associated with any building site or construction site associated with the development activity.*
 - iv) A technical analysis and narrative describing the following:*
 - (A). The geologic features or conditions of the property as well as those features or conditions which gave rise to the statement pursuant to the assessment, Section (3)(b)(ii);*
 - (B). All features related to earth movement or geologic instability on, above*

and below the site;

- (1) The results of all geologic and/or engineering tests performed on soils, material, and rock type subsurface data from drill holes, or other data obtained from the site investigation with data points clearly identified on a map;*
- (2) Whether the proposed development activity can be safely sited on the subject property or at the site in view of the geological hazards and risks that have been identified in the geologic hazard assessment;*
- (3) All features related to earth movement or geologic instability on, adjacent to, upslope or down slope from the subject property;*
- (4) A clear statement of all requirements or conditions that the geologist has determined are necessary to mitigate the geologic hazards,*
- (5) A qualitative assessment of the likelihood that the proposed development activity will cause damage or contribute to damage to adjacent properties resulting from geologic hazards disclosed in the geologic hazard assessment or during the course of the preparation of the geologic hazard mitigation report.*
- (6) A schedule of inspections to be completed by the engineering geologist to assure compliance with recommendations.*

e. In the event the geologic hazard mitigation report fails to include the required information, fails to analyze or take into account documented hazards associated with the subject property or the proposed development activity, fails to consider new information made available to the Director or has other identified significant deficiencies, the Director shall deem the application incomplete, and notify the applicant in writing to identify the deficiencies. Thereafter the applicant shall:

- i. Provide a revised geologic hazard mitigation report or, in the applicant's discretion, request the Director to submit the geologic hazard mitigation report for peer professional review at the applicant's expense.*
- ii. In the event of peer review, the Director shall provide the applicant with a list of three qualified professionals from which the applicant shall choose one to conduct the peer review.*

f. When all of the requirements of the geologic hazard mitigation report have been provided, the geologic hazard report shall be deemed complete for purposes of consideration of the application for development activity.

g. If the geologic hazard mitigation report discloses that the entire subject property is subject to geologic hazards that cannot be mitigated or that the subject property does not contain sufficient area that can be mitigated to allow the development activity as proposed, or that the development activity presents a significant risk of damage to or destabilizing adjacent property that cannot be mitigated in the course of the development activity itself, the development activity shall not be allowed, and the application shall be denied.

h. Prior to approval of the development activity, the applicant shall provide a mitigation plan prepared by a geologist specific to the development activity and based on the approved geologic hazard mitigation report.

- i. The mitigation plan must adequately address all issues identified in the geologic hazard mitigation report and protect the subject property and surrounding lands.*
- ii. In the event that the development activity is a division of land, the mitigation plan shall specify mitigation measures or improvements that must be implemented on each parcel to assure the protection of the subject property and of other properties from the hazards identified in the geologic hazard mitigation report.*

- iii. *The mitigation plan shall specify that all measures or improvements must be installed or constructed under the direction of a supervising geologist.*
- iv. *The applicant shall, prior to the issuance of any development permits, record on the title to the subject property a notification that includes a description of the measures or improvements and that also specifies the obligation of subsequent land owners to refrain from interfering with such measures or improvements and to maintain them.*
- v. *A schedule of inspections shall be completed by the geologist to assure compliance with recommendations, and reports shall be provided to the City prior to final plat approvals or issuance of permits for other development activity.*
- i. *A Conditional Use Permit shall be required for development activity in all geologic hazard areas except where a certification has been provided under Chapter 17.16.080(A)(1)(a). The Planning Commission shall consider reports submitted by qualified professionals, including the proposed mitigation plan and any response from affected parties in making their decision. The Director or the Planning Commission may request the input of the city engineer to be provided at the applicant's expense.*
- j. *Appeals of a Conditional Use Permit which challenge an assessment, report or plan prepared or approved under subsection (B)(3)(a), (d), (e) or (g), shall be accompanied by an analysis of the challenged document. Such analysis must identify and analyze the purported deficiencies with sufficient clarity to allow the Director to assess the concerns. In the event that the Director does not have adequate technical ability to make such an assessment, the Director may submit the matter for recommendation by a geologist in which case the appellant and the applicant shall equally share the cost of such peer review. Peer review shall be based on the entire record of the proposed development activity.*
- k. *If a possible new geological hazard that has not been mapped is brought to the attention of city officials, the City may then require that a geologist be hired by the City to investigate the subject site and report on the nature of the hazard and its possible impact to the proposed use and surrounding properties. The cost of this geological hazard investigation is to be paid by the applicant.*
- l. *The development activity, if approved, must be constructed as approved and must implement the measures and improvements in the approved mitigation plan. The plans submitted for development permits shall bear a statement from the geologist that the mitigation measures contained in the approved mitigation plan have been included in the plans submitted for the permit. If required by the mitigation plan, installation or construction of such measures and improvements shall be undertaken under the supervision of a geologist.*
- m. *In the case of a building permit, upon the completion of construction and prior to issuance of a certificate of occupancy, the supervising geologist or engineer shall certify that the measures and improvements in the approved mitigation plan have been properly installed. No as-built changes to the requirements of a mitigation plan will be accepted in the absence of certification of the changes by the geologist who prepared the mitigation plan. (Ord. 2009-01 § 080, 2008) (Ord. 2015-08 § 080, 2015)*

Finding: The applicant has submitted a Geologic Hazard Assessment prepared by Black Mountain Consulting, LLC. See Exhibit C, 16 pages.

Black Mountain Consulting LLC
 22566 SW Washington Street
 Ste, 206 Sherwood, OR 97140

The Staff Geologist signature is Robert Nystrom, R.G, with Geotechnical Engineer Jeanne M. Niemer, P.E., G.E. stamped as Principal Geotechnical Engineer, Registered Professional Oregon Engineer, #15648 to expire 12-31-2024. The Geologist stamp complies with the requirements of the Port Orford Natural Hazard Overlay Zone Assessment as described above.

No certification has been provided that states that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazards to the subject property or to adjacent properties resulting from the proposed development activity. There is no statement that there is elevated risk, but the Geologist provides mitigation measures to assure safety and stability within the hazardous environment that exists within the tract that surrounds the T-Mobile lease area, but not adjacent to the lease area. The following bullet points are organized to summarize some of items that are addressed. The information is on pages 5 and 6 Exhibit C.

- A. Information from the Oregon Water Resources Department indicates that well logs in the vicinity of the site indicate that water levels may vary from near the surface to tens of feet below the surface. Subsurface materials are described as likely to include surficial sands underlain at shallow depths by sandstone.
- B. The Assessment describes the property and adjacent properties and addresses seismic hazards within the vicinity.
- C. The Assessment describes liquefaction and how it would apply.
- D. The Assessment describes Fault Hazard north-northwest trending strike-slip fault associated with the Battle Rock fault zone that is mapped approximately 100 meters east of the site.
- E. The Assessment describes Steep Slope and Landslide Hazard areas that are considered to be any ground that rises at an inclination of 40% or more (a vertical rise of 10 feet or more for every 25 feet of horizontal distance:
Steep slopes are associated with historic landslides, historic excavation activity and on-going soil erosion. We did not observe evidence of landslide scarps within the development area or in the vicinity of the planned construction area. We also did not observe evidence of rapid soil movement at the site or in the general area of the site. Site slopes within the immediate vicinity of the compound are about 15 percent.
- F. The flooding and erosion hazard section states that the NRCS soil survey of Curry County suggests that the potential erosion hazard for soil underlying the site is severe if the surface is left bare.
- G. The section titled, “Grading” states that the project will not require grading at the site. Previous language in the report states that the compound area has been graded level.

The City of Port Orford does not have a geologist on staff or on contract to review the documents for full clarity and further analysis of geologic concepts and recommendations. The City will rely on the Geological Assessment and the mitigation proposals of the Registered Oregon Geologist, Jeanne M. Niemer, P.E., G.E. of Black Mountain Consulting LLC, who signed off on the Assessment. The Assessment provides Conclusions, Recommendations and Mitigation Measures, which will serve as the basis of conditions to assure safety and stability for the proposed use in the (NH) Overlay zone.

Recommendations and Mitigation Measures

The Assessment, Exhibit C, includes Recommendations and Mitigation Measures on page 7 of their report., which are best understood and utilized when read in full as quoted below from the report:

“Slope Setbacks:

Structures and equipment should maintain a minimum distance of 20 feet from the face of slopes that exceed 40 percent.”

“Erosion Control

We recommend that drainage and erosion control measures be provided during construction and that no water be discharged over the slopes to the east and south of the development area.”

“Ground cover on slopes should be protected during construction and excavated materials should not be sidecast on slopes. Best Management Practices for erosion control should be utilized during construction, including covering stockpiles and preventing water from discharging on slopes. Disturbed areas should be reseeded as soon as possible after construction.”

“Grading

No grading is anticipated for the current planned work at the site.”

***Port Orford Municipal Code, Title 17, Zoning
Chapter 17.15 Historic Preservation***

17.15.20 Purpose

The City of Port Orford establishes a Historic Preservation Ordinance to identify, recognize and preserve significant properties related to the community’s history; encourage the rehabilitation and ongoing viability of historic buildings and structures; strengthen public support for historic preservation efforts within the community; foster civic pride; and encourage cultural heritage tourism. The process is a voluntary process for property owners who wish the historic value of their property to be preserved.

17.15.050 *The Historic Preservation Commission*

The Historic Preservation Commission is a subcommittee of the Planning Commission and composed of at least 3 persons. The Planning Commission serves the purpose of conducting land use procedures when needed. The Historic Preservation will now be referred to as the Commission.

Finding: The code provides a number of provisions as to how the Historic Preservation Commission recognizes and preserves significant properties related to the community's history. There are definitions for the following: 1) Historic Resource; 2) Historic Resources of Statewide Significance; 3) Historic Resource Survey; 4) Historic Significance; Landmark; 5) Landmark Register; 6) National Register of Historic Places; 7) Non-Contributing; and more. There is no clear listing of all that apply. There are, however two important aspects to be considered:

The Port Orford Comprehensive Plan Goals and Policies, which are the most general and visionary basic applicable policies for land use activity within the City of Port Orford's acknowledged land use program recognizes Tichenor Cemetery in the Oregon State Registry at the State Historic Preservation Office (SHIPO). This designation is found on their web site.

The Port Orford Comprehensive Plan Goals and Policies that address Statewide Planning Goal #5 make reference to Tichenor Cemetery are as follows:

Port Orford Comprehensive Plan Goals and Policies

City Goals

- 1) Maintain an inventory of natural, scenic and historic resources pursuant to Statewide Goal 5.*
- 3) Protect archaeological sites within the City.*

City Policies

- 2) Maintain Tichenor Cemetery as an historic cemetery listed on the Oregon State registry at the State Historic Preservation Office, and support listings of other historic cemeteries and public access to all historic cemeteries.*
- 12) Coordinate with Oregon State Parks, the State Historic Preservation Office (SHPO), the Tribes, local organizations and state and federal agencies that oversee specific scenic and historic areas, and have jurisdiction for natural resource programs.*

In response to the location of Tichenor Cemetery adjacent to the Cell Tower site, a Section 106 Notification of the Historic Preservation Act (NHPA) was initiated by the applicants through IMPACT 7G contracting with Lower Columbia Research & Archaeology to identify and evaluate historic properties for direct and indirect visual effects. The IMPACT 7G review was conducted in September of 2022. The Oregon State Historic Preservation Office, OPRD found, based upon review of available information, a

finding of, “No Historic Properties within the APE for the undertaking to add a diesel generator.” APE refers to the specific project under review. See Exhibit D.

The report includes Tribal notifications and responses. Figure 3 shows the proximity of the cemetery. Findings and Recommendations are included along with Figure 6 on page 11 of the report (most pages are not numbered, but there is a numbering system in the lower right hand corner that identifies this page). The recommendation in the Section 106 response from the is that when construction begins, all ground disturbing activity shall be monitored by an archaeologist, where an inadvertent discovery plan should be drafted in the unlikely case that buried human remains are encountered. Port Orford’s code language regarding Archaeological provisions is outlined below.

Port Orford Municipal Code, Title 17, Zoning
Chapter 17.16 SUPPLEMENTARY PROVISIONS
17.16.060 Archaeological provisions.

Upon encountering archaeological artifacts on any property in Port Orford, the following sequence of events shall occur:

- A. All disturbances of the site shall immediately cease.*
- B. The developer shall notify the planning director of the discovery and the planning director shall notify the appropriate agencies, including the State Archaeologist.*
- C. The State Archaeologist, or other appropriate agency charged with the preservation of antiquities shall have ten working days to conduct a preliminary review of the site to include determination of significance of the [sic]*
- D. If, during this ten-day period, the site is determined not to be archaeologically significant, resumption of development may occur.*
- E. If the site is determined to be archaeologically significant by the above process or is presently identified in the comprehensive plan inventory, further disturbance on the site shall cease for an additional thirty (30) days to allow acquisition by the appropriate agency or negotiations for development of the site. If such activities are not initiated by the appropriate agency within this time period, resumption of development may occur.*

Findings: The recommendations of the Section 106 Notification for monitoring by an archaeologist will be incorporated in the recommended Conditions of Approval for this application, and the archaeological provisions Chapter 17.16 will be enacted if there are archaeological artifacts discovered at the time of ground disturbance.

Chapter 17.32
Conditional Uses

17.32.010 Authorization to grant or deny conditional use.

Uses designated in this title as conditional uses may be permitted, enlarged or altered in accordance with the requirements of Sections 17.20.020 through 17.20.060. In permitting conditional use, the Council may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood or the City as a whole. These conditions may include, but are not

limited to, increasing the lot size or setbacks, controlling the location or number of vehicular access points, increasing the street width, limiting the height of buildings to protect the light and air of adjacent properties, increasing the amount of off-street parking or loading, or other provisions necessary to minimize any conflict between the proposed conditional use and the use of adjacent properties. Change in use or contraction of site area, or alteration of structure or uses classified as conditional, existing prior to the effective date of this ordinance codified in this title shall conform to all regulations pertaining to conditional uses.

17.32.020 Application for a conditional use.

A request for a conditional use, modification of an existing use or a reinstatement of a discontinued nonconforming use may be initiated by the property owner or his authorized agent by filing an application with the planning commission or its designated agent. The application shall include plans of the proposed use, or modification to an existing use, or reinstatement of a discontinued nonconforming use. The application shall be accompanied by a fee as established by the city council.

17.32.030. Public hearing on a conditional use.

Findings: Section 17.32.030 requires a public hearing with notice provided to property owners within 200 feet of the exterior not less than 10 days prior to the day of the hearing. The notice provided by the City in compliance with this section is included within this document as Exhibit E.

17.32.050 Additional standards governing conditional uses.

In addition to the standards of the zone in which the conditional use is located and the other standards in this title, conditional uses must meet the following standards:

- A. Conditional Uses, Generally.*
 - 1. Setbacks. In a residential zone, yards shall be at least two-thirds the height of the principal structure. In any zone additional yard requirements may be imposed.*

Finding: This application proposes modifications that extend and enlarge an existing cell phone tower. The principal structures on Subject Property include a single-family dwelling with accessory structures, and the existing cell tower with accessory structures that are proposed to be expanded. An accessory use to the cell tower includes a structure that houses some of the existing cell phone tower equipment.

The cell tower and the proposed extension are on a separate tax lot, which is the leased area. The cell tower is not subject to height limitations as per federal law, and Port Orford height restrictions. The setbacks required based upon the height of the cell tower do not apply. Height limitations and exemptions are addressed in this Staff Report.

- 2. Limitation on Access to property and on Openings to Buildings. The city may limit or prohibit vehicle access from a conditional use to a residential street, and it may limit or prohibit building openings within fifty (50) feet of residential*

property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.

Finding: Subject Property is served by an existing access at the northern terminus of Boot Hill Road. The access serves the existing single-family home, accessory structure/storage building, and cell phone tower. In the past, when there were alterations, new roads were organized for temporary use during construction. The Planning Commission may wish to clarify whether there will be any temporary roads constructed for construction. Conditions of approval will address site conditions and recommendations of the Geological Assessment prepared to comply with the (NH) Overlay. The fifty (50) foot minimum building opening requirement is not applicable.

3. *The city may require assurances to guarantee development in accordance with the standards established and conditions imposed in granting a conditional use.*

Finding: After hearing the applicant's presentation and public comment, it is appropriate that the Planning Commission consider whether additional assurances are necessary to guarantee development in accordance with the standards in granting a conditional use. Requirements specific to the cell tower use are included within the code as follows:

D. Communications Transmitter, Receiver, Antenna or Tower, Utility Station, Substation, or Wind Generator.

1. *In any residential zone, all equipment storage on the site shall be within an enclosed building.*

Finding: Subject Property is located in the Residential 1-R zone. According to the site plan provided by the applicant, some aspects of the existing or proposed development are located outside of what we would normally recognize as "building," but the City's definitions of "building" and "structure" working together provide clarity.

Section 17.04.030 Definitions.

"Building" means a structure built for the support, or shelter or enclosure of persons, animals, chattels or property of any kind.

"Structure" means that which is built or constructed. An edifice or building or piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having location on the ground.

While "building" is defined within the code as a "structure" built for the support, or shelter or enclosure of persons, animals, chattels, or property of any kind, *structure is an edifice or piece of work composed of parts joined together in some definite manner that requires location on the ground. . . .*

The proposal is to install a generator and ground-based T-Mobile support equipment on a 4- by 9-foot concrete pad within a proposed 10- X 14-foot fenced compound. A listing of equipment is provided on page 4 of Exhibit B.

Utilizing the code definitions, the additions will comprise a “structure” in that they are a *piece of work composed of parts joined together that requires location on the ground*. The structure fits within the definition of building because it is *built for the support* . . . or *shelter or enclosure of property*. The definitions and interpretations comprise a response to the requirement that *“In any residential zone, all equipment storage on the site shall be within an enclosed building.”*

2. *The use shall be fenced and provided with landscaping.*

Findings: The site plan provided by the applicant indicates that the cell phone tower site is enclosed with wooden fencing. It is unclear if landscaping is proposed as part of this application. It is appropriate for the Planning Commission to consider SHIPO comments and any comments from the City’s Historic Preservation Commission, and determine any specific landscaping that is needed. While staff have no understanding that the City’s Historic Preservation Commission is active at this time, previous members of the Commission may be associated with the Historical Preservation Society (HPS). HPS was provided notice of this Public Hearing at the time that properties within 200 feet were notified.

3. *The minimum lot size for a public utility facility may be waived on finding by the planning commission that the waiver will not result in noise or other detrimental effect to adjacent property.*

Finding: The 1-R zone requires a minimum lot size of 5,000 square feet. Subject Property (the entire site) is comprised of four tax lots which equal approximately 909,533 square feet (20.88 acres). A Planning Commission waiver for lot size is not applicable.

4. *As far as possible, transmission towers, poles, overhead wires, pumping stations, and similar gear shall be located, designed and installed as to minimize their conflict with scenic values.*

Finding: Scenic values are always important to residents, and residents have previously expressed concerns with the location of the tower where some have indicated that it conflicts with scenic values. The City’s Comprehensive Plan Goals and Policies document provides reference to scenic values in the section entitled *STATEWIDE PLANNING GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACE* as follows:

City Goals:

2. *Resolve conflicts between incompatible development activities and identified natural, scenic and historic resources.*
3. *Work to acquire viewshed resources property if and when funding is available.*

City Policies:

4. *Port Orford will encourage maintaining access to scenic viewpoints within the city.*

The City's goals and policies provide guidance as to values, but they do not provide specificity. Code language to carry out the adopted goals and policies has not been adopted. The City has no zoning code regulations that have the purpose of protecting scenic values. In addition, there are a number of court cases and procedural rulings that lend complexity. Without clear criteria as to what values are to be preserved, and the criteria for such preservation of scenic values, the City's ability to stop a cell tower expansion based upon scenic values would be costly and futile.

17.32.060 Time On a Permit for Conditional Use.

Authorization of a conditional use shall be void after one year or year or such lesser time as the authorization may specify unless substantial construction has taken place. However, the planning commission may extend authorization for an additional period not to exceed one year, upon written application to the planning commission.

Finding: Staff recommend the Planning Commission condition the applicant provide a signed acknowledgement of *17.32.060 Time On a Permit for Conditional Use*. Any request for an extension of time would need to be approved prior to the time that the permit expires,

Chapter 17.17 Erosion Prevention and Sediment Control

17.17.010 Purpose.

The purpose of this provision consistent with Goal 5 of the Port Orford Comprehensive Plan, is 1) to preserve or enhance the health, safety, welfare and quality of life of the inhabitants of Port Orford by providing clean water, and by minimizing risk to inhabitants and property through the control of erosion and management of storm water and 2) to maintain or improve water quality within Port Orford consistent with the requirements of the State of Oregon and the United States government.

17.17.020 Area of Applicability.

This chapter is applicable to all lands within the City of Port Orford at the date of an application for approval of development activity; provided, however that lands within areas that are subject to an approved comprehensive storm management plan which has been adopted by Port Orford are excluded from the provisions regulating the management of storm water drainage.

17.17.030 Review by Director.

A. The Director shall review all applications for development activity for conformance with the standards and criteria of this chapter.

B. The Director may retain decision-making authority over matters subject to review or may refer such matters to the Planning Commission.

C. The Director or the Planning Commission, as the case may be may approve, approve with conditions, require changes to or deny the application based upon the criteria or standards listed in this chapter. The decisions in such matters may be appealed consistent with the provisions of Chapter 17.08 (administration) of the Port Orford Municipal Code.

Findings: Chapter 17.17 continues with a number of provisions that are applicable including *Section 17.17.40 Erosion Prevention and Sediment Control* and *Section 17.50* regarding the number of square feet of soil that will be disturbed and Sections 17.17.060 - 17.17.080 specifying the requirement for an Erosion and Sediment Control Plan.

It is appropriate to utilize the Black Mountain Consulting LLC Geologic Hazard Assessment to address erosion prevention and sediment control, which they have addressed within their Assessment due to the natural and built conditions on the site. As previously addressed on page 11 of this Staff Report, there are issues to be addressed as follows:

- Structures and equipment should maintain a minimum distance of 20 feet from the face of slopes that exceed 40 percent.
- Drainage and erosion control measures are to be provided during construction with no water be discharged over the slopes to the east and south of the development area.”
- Ground cover on slopes should be protected during construction and excavated materials should not be sidecast on slopes.
- Best Management Practices for erosion control should be utilized during construction, including covering stockpiles and preventing water from discharging on slopes.
- Disturbed areas should be reseeded as soon as possible after construction.”
- While grading in not anticipated, any grading that is required should take hazardous conditions into consideration.

The requirements and concerns of Black Mountain Consulting LLC combined with the City’s Erosion prevention and sediment management are applicable when ground disturbance commences at the site. The City will condition the approval of the application with a requirement that the Applicant include the Oregon Licensed Geologist from Black Mountain Consulting LLC as a participant in preparing and overseeing the Erosion and Sediment Control Plan that is required by the City of Port Orford’s code; this should be accomplished through communications on-site and through an organized meeting and follow-up with the Port Orford City Administrator/Planning Director to confirm compliance with the Erosion and Sediment Control requirements of the City of Port Orford on-site, with records maintained at the City of Port Orford.

Applicability of Storm and Surface Water Management as addressed in Chapter 17.18 Storm and Surface Water Management Standards of the Port Orford Municipal Code

should also be addressed by Black Mountain Consulting as part of the Erosion and Sediment Control Plan.

Chapter 17.18 Storm and Surface Water Management Standards

17.18.010 Purpose

Detention of stormwater collected from impervious surfaces on a given property, or within public rights-of-way, is essential to the management of stormwater in Port Orford. This ordinance includes standards for conveyance of surface water to streams, creeks, and channels. It also addresses pollution reduction and flow control for stormwater generated from new and redevelopment. For the purpose of this ordinance, “new” and “redevelopment” refers to any man-made change to improved or unimproved real estate including, but not limited to the placement of buildings or other structures, dredging, filling, grading or paving. The ordinance provides standards for addressing infiltration treatment and detention of stormwater separately as well as an option for a combined approach to mitigating the water quality impacts of developments that fall below a certain size threshold.

Findings: It is appropriate that the Planning Commission require the applicant to address the requirements with analysis and findings relative to Chapter 17.18, and address any storm and surface water management standards that are applicable. Storm and surface water management should be included as part of the Erosion and Sediment Control Plan organized by Black Mountain Consulting LLC working and communicating with City Administrator/Planning Director John Huttel and the site development work that is taking place as a result of any approval of this application.

Considerations

1. The Planning Commission is encouraged to consider all the requirements, findings, and recommendations provided within this staff report, and all public testimony presented in writing or orally at the hearing.
2. It is appropriate that the Planning Commission consider whether additional assurances or conditions are necessary to guarantee development in accordance with the regulations that are set forth within this Staff Report and the City’s Municipal Code. The Planning Commission may add additional findings, adjust findings, or delete findings to include or respond to information from other sources and/or public testimony. *Note: Findings are a combination of the requirements in the code, and a response that Planning Commissioners believe addresses those requirements in a factual way.*
3. The expectation is that the Planning Commission will make their decision based upon compliance with the criteria set forth in the City’s Municipal Code. When the Planning Commission determines that the applicant has shown compliance, the application may be approved. Conditions can be added as part of compliance. A list of recommended conditions are included below.

The findings and conditions provided within this staff report are appropriate to justify approval of proposed conditional use permit request application (Application CUP 1901), with the recommended conditions of approval provided below.

Staff Recommended Conditions of Approval

1. The Geological Assessment, Exhibit C, includes Recommendations and Mitigation Measures on page 7 of their Assessment. The following recommendations are suggested as conditions of approval.
 - A. Structures and equipment should maintain a minimum distance of 20 feet from the face of slopes that exceed 40 percent.
 - B. Drainage and erosion control measures be provided during construction and that no water be discharged over the slopes to the east and south of the development area.
 - C. Ground cover on slopes should be protected during construction and excavated materials should not be “sidecast” on slopes. Best Management Practices for erosion control should be utilized during construction, including covering stockpiles and preventing water from discharging on slopes.
 - D. Disturbed areas should be reseeded as soon as possible after construction and monitored to minimize potential erosion hazard for underlying soils as identified by the NRCS Soil Survey of Curry County. Any grading, stockpiling or other development work that takes place shall be organized to control site plan erosion and sediment per POMC Chapter 17.17, and stormwater runoff and surface water runoff per POMC Chapter 17.18.
2. Site Plan and oversight shall be accomplished by involving Black Mountain Geologists at the time of site work. Black Mountain Geologists will schedule to provide a development and Site Management Plan to the City of Port Orford, working with the Port Orford City Administrator/Planning Director and City Public Works Director.
3. Any tree removal at the site should be overseen and approved on the Management Plan by Black Mountain Geologists at the time of site work.
4. The recommendations of the Section 106 Notification for monitoring by the applicants’ archaeologist, Lower Columbia Research and Archaeology are incorporated as Conditions of Approval for this application. Archaeological provisions Chapter 17.16. will be observed by the City if there are archaeological artifacts discovered at the time of ground disturbance.
5. The archaeologist is to schedule with the applicants and the City of Port Orford City Administrator/Planning Director and Public Works Director to be on site and provide

a report to the City of any findings and concerns from their observations at the site during development activity.

6. The applicant shall comply with Section 17.16.060 for any archaeological discoveries that are made when development activity is taking place on Subject Property.
7. It is appropriate for the Planning Commission to consider SHIPO comments and any comments from the City's Historic Preservation Commission or local preservation organizations to assist in determining any specific landscaping that is needed.
8. Staff recommends that the applicant provide a signed acknowledgement of *17.32.060 Time On a Permit for Conditional Use*, with a statement that any extensions proposed by the applicant must be provided to the City 45 days prior to the one year anniversary of the Planning Commission decision to approve the Conditional Use Permit. This timeline allows for Planning Commission review that is required when there is a request for an extension of approval.