



**NOTICE OF DECISION FOR PRUNE HILL WIRELESS COMMUNICATIONS FACILITY  
(FILE #CUP15-01)**

**Decision Issued:** August 5, 2016

**Staff Contact:** Sarah Fox, Senior Planner  
**Phone:** (360) 817-1568  
**Email:** communitydevelopment@cityofcamas.us

**Applicant:** Parallel Infrastructure, LLC

**Owner:** Jean M. Nagel

**Location:** 2829 NW 18<sup>th</sup> Ave. Camas, WA      **Zoning:** R-12

**Parcel:** 124979-000

**THIS IS TO SERVE AS NOTICE** that a decision of **APPROVAL** has been rendered for the Prune Hill Wireless Communications Facility (City file #CUP15-01) to construct and operate a 175-foot monopole telecommunication tower and accessory equipment. The Hearings Examiner Final Order with conditions of approval is attached to this notice.

**18.55.235 - Reconsideration by the hearings examiner**

Any party of record believing that a decision of the hearings examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing, may make a written request to the examiner, filed with the city clerk, to be accompanied by an appeal fee, for reconsideration by the examiner.

A. Time Frame. The request for reconsideration shall be filed within fourteen calendar days of the date the decision was rendered.

B. Content. The request for reconsideration shall contain the following:

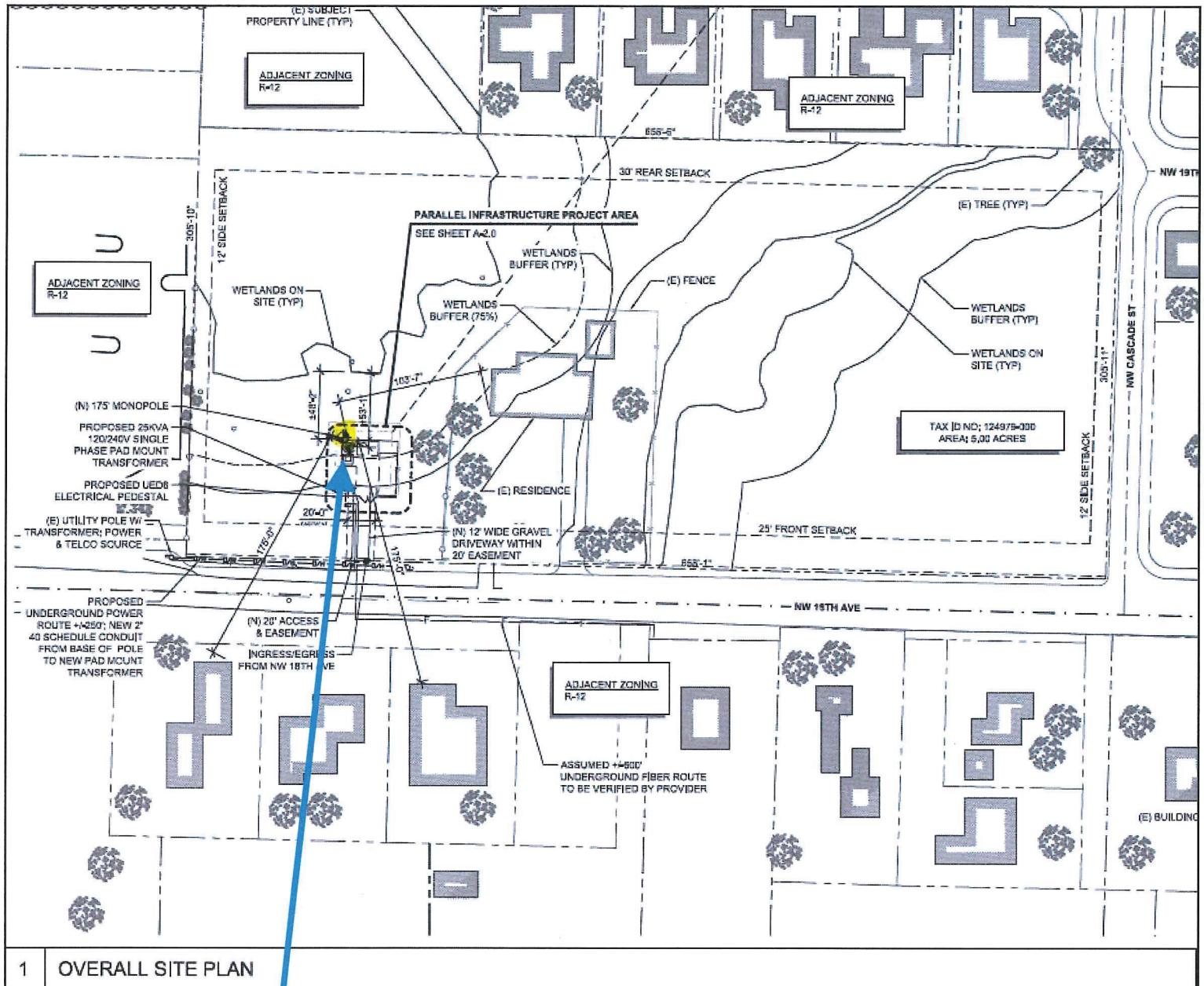
1. The case number designated by the city and the name of the applicant;
2. The name and signature of each petitioner;
3. The specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal must explain why such evidence should be considered.

C. The hearings examiner may, after review of the materials submitted in conjunction with the reconsideration request, and review of the open record hearing transcript, take further action as he or she deems proper; including, but not limited to, denying the request, modifying the decision, or affirming the decision.

D. The hearings examiner shall issue a decision on a request for reconsideration within forty-five (45) days of the filing of the request for reconsideration. When a request for reconsideration has been timely filed, **any appeal to Clark County Superior Court under the Land Use Petition Act shall be filed within twenty-one (21) days after a hearings examiner issues its decision on the request for reconsideration.**

## Prune Hill Wireless Facility (City file #CUP15-01)

[Note: This is a portion of the proposed site plan drawing and is not to scale.]



Location of monopole.

**BEFORE THE LAND USE HEARINGS EXAMINER  
FOR THE CITY OF CAMAS, WASHINGTON**

Regarding an application by PI Telecom )  
Infrastructure, LLC for CUP approval to )  
construct and operate a 175-foot monopole )  
telecommunication tower and accessory )  
equipment at 2829 NW 18<sup>th</sup> Avenue in the )  
City of Camas, Washington )

**FINAL ORDER**

**CUP15-01(Prune Hill Wireless  
Communications Facility)**

**A. SUMMARY**

1. The applicant, PI Telecom Infrastructure, LLC, requests approval of a Conditional Use Permit ("CUP") to construct and operate a 175-foot monopole telecommunication tower and accessory equipment within a 1,600 square foot lease area located in the southwest corner of the five-acre property located at 2829 NW 18<sup>th</sup> Avenue; also known as tax assessor's parcel No. 124979-000. The site and the surrounding parcels are zoned R-12 (Single-Family Residential, 12,000 square foot average lot size). The site is currently developed with a single-family residence, located northeast of the lease area. There is a Category III wetland in the northwest corner of the site and a Category IV wetland in the eastern half of the site.

2. On May 17, 2016 the City issued a Determination of Nonsignificance ("DNS") for the proposed development pursuant to the State Environmental Policy Act ("SEPA"). The SEPA comment period expired and the SEPA determination was not appealed and is now final.

3. Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended that the examiner approve the application subject to conditions. See the Staff Report and Recommendation to the Hearings Examiner (the "Staff Report"), as amended at the hearing and during the open record period. The applicant accepted those findings and conditions, as amended, with certain exceptions. Fifteen persons testified orally with questions and concerns about the application. Other persons testified in writing. Contested issues in the case include the following:

- a. Whether the City provided adequate public notice of the hearing;
- b. Whether the applicant is requesting a zone change;
- c. Whether wireless facilities are allowed in residential areas;
- d. Whether the proposed facility is a major or minor communications facility or a wireless communications facility;
- e. Whether the proposed tower is subject to the height limits of the R-12 zone;
- f. Whether the proposed facility will be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity, including;



i. Whether assertions that the facility will promote the public welfare are relevant to this criterion;

ii. Whether the tower and to what extent the facility will impact the value of surrounding properties;

iii. Whether the tower will impact views from surrounding residential properties;

iv. Whether the tower will impact identified viewpoints, parks, scenic routes, or view corridors in the vicinity of the site;

v. Whether the facility poses an unusual fire hazard;

vi. Whether the City can consider alleged human health impacts of RF energy from the proposed antennae;

vii. Whether noise from the facility will have a significant adverse impact on surrounding residents;

g. Whether the facility is “[c]ompatible with the surrounding land uses in terms of traffic and pedestrian circulation, density, building and site design.” CMC 18.43.050.C;

h. Whether the applicant should be required to utilize ‘stealth’ designs to disguise the tower as a fir tree and minimize the visual impact of the facility;

i. Whether the tower poses a risk from falling ice;

j. Whether the tower will impact surrounding homes if it falls;

k. Whether the tower will pose a hazard to air navigation;

l. Whether the facility is consistent with the goals and policies expressed in the comprehensive plan. CMC 18.43.050.E;

m. Whether and to what extent the applicant is required to consider alternative locations for the facility;

n. Whether the facility poses a hazard to birds and other wildlife;

o. Whether construction and operation of the proposed facility will cause prohibited impacts to the wetlands and buffers on the site;

p. Whether the site can be retained as a park;



q. Whether the City can deny the application to, “protect the neighborhood and existing residents;” and

r. Whether approval of this application will establish a precedent for future wireless facilities in the area.

4. Based on the findings provided or incorporated herein, the examiner approves the application subject to the conditions at the conclusion of this final order.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at a public hearing about this application on June 2, 2016. All exhibits and records of testimony are filed at the City of Camas. At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City senior planner Sarah Fox summarized the Staff Report. The applicant proposed to construct a 175-foot monopole supporting wireless communications antennae and associated ground mounted equipment within a 40-foot by 40-foot lease area in the southwest corner of the site. The property is developed with a single-family residence located roughly 60 feet northeast of the lease area. The property owner waived the tower setback requirement for this existing residence. The tower is setback more than 175 feet from all other buildings in the area.

a. The applicant did submit a structural report for the proposed tower, Exhibit K. The statement to the contrary on p. 4 of the Staff Report is incorrect. However, the conditions of approval requiring compliance with City standards are still warranted.

b. The City issued a DNS for this project on May 17, 2016. The City received comments regarding the SEPA notice, but the SEPA determination was not appealed and is now final.

c. This tower is also subject to applicable state and federal regulations. The City has no jurisdiction to apply those regulations. Therefore, they are not approval criteria for the application. However, the applicant will be required to comply with all applicable regulations and obtain any necessary state or federal permits and approvals for the facility.

d. There is an existing wireless communication facility south of the site, across NW 18<sup>th</sup> Avenue. That site includes two water towers, a 180-foot tall CRESA wireless tower, and associated equipment buildings. Eight other wireless service providers have antennae on that property; on the water towers and the CRESA tower.

e. There are two wetlands on the site, in the northwest corner of the site and in the eastern portion of the site, east of the residence. However, the proposed facility will have no impact on those wetlands. The facility will impact the wetland buffer for the wetland in the northwest corner of the site. The applicant will be required to mitigate those impacts consistent

with Code requirements. The applicant will be required to install permanent fencing around the buffer perimeter prior to completion of the project. In addition, the applicant should be required to install temporary fencing along the wetland buffer boundary during construction. She requested the examiner add a condition of approval to that effect.

f. Conditions of approval 1 and 2 require the applicant to dedicate right-of-way along the site's frontage on NW 18<sup>th</sup> Avenue and NW Cascade Street. The development is not limited to the 40- by 40-foot lease area. The development also includes the access road and the large wetland mitigation area, which includes nearly half of the land area on the site. The site is located in a residential zone, where residential development is an outright permitted use. Right-of-way dedication and frontage improvements would be required on this site.

g. The proposed facility will not have a significant impact on birds. The application materials included a Biological Assessment ("BA") associated with a prior NEPA decision regarding potential impacts to migratory birds. Staff sent SEPA notice to relevant agencies, and no agency raised any concerns with potential impacts to migratory birds. Staff relied on the BA and the lack of other agency comments to support its determination that the facility will not have a significant impact on birds. The U.S. Fish and Wildlife Service (USFWS") determined that monopole towers do not have a greater impact on birds than any other above ground structures. Domestic cats, window strikes, and vehicle collisions have far greater impacts on birds than monopoles. Exhibit R.

h. The conditions of approval require the applicant modify the proposed equipment shelters to provide more "residential" style structures, with gabled roofs and siding and enclose the lease area with vinyl coated chain link fencing. In the alternative, the applicant should be required to fully enclose the lease area with solid wood fencing to completely screen the equipment shelters from view, similar to the structures and fencing shown on page 10 of Exhibit 4. She requested the examiner modify the conditions of approval to that effect.

i. The Code allows colocation, replacement, and upgrading of existing wireless facilities through the City's Type I review process. Such upgrades/changes cannot increase the height of the existing facility by more than 20 feet or increase the size of antennae by more than 25-percent. Modifications that exceed these standards are subject to additional CUP review. Therefore, the conditions of approval should clearly specify the number, height, and size of antennae approved on this site.

j. Staff did not recommend that the applicant utilize "stealth" technology to disguise the tower as a fir tree. There are no other large trees in the area. There is a mix of evergreen and deciduous trees near the residence. Otherwise the site is mostly grass.

k. Chapter 18.07 of the Camas Municipal Code ("CMC") lists the uses that are allowed in residential zones. Wireless towers are permitted outright in industrial zones. In the residential zones, wireless towers are only allowed as conditional uses, as are, churches, schools and several other uses.

l. The Code does not require a minimum separation between wireless towers.

m. The City is not involved in the financial aspects of the facility. The applicant will lease a portion of the site from the property owner. The City is not involved in the private lease agreement.

n. Equipment and activities on the site are subject to the City's noise standards. No generators are proposed with this application.

3. Attorney Meridee Pabst and planner Jeff Colantino testified on behalf of the applicant.

a. Ms. Pabst submitted two new exhibits: an updated plan set dated June 2, 2016 (Exhibit 1) and a structural analysis of the existing CRESA tower (Exhibit 2). The updated plans show the tower located further from the wetland, 46 feet instead of 41, which locates the tower slightly closer to the offsite residences but maintains required tower setbacks.

i. She accepted the findings and conditions in the Staff Report, as modified, with certain exceptions.

(A) She objected to proposed conditions of approval 1 and 2 requiring right-of-way dedication on NW 18<sup>th</sup> Avenue and Cascade Street and road improvements on a section of NW 18<sup>th</sup> Avenue. The proposed use will have a minimal impact on the transportation system. Once construction is completed the facility will generate an average of one vehicle trip per carrier per month for maintenance of the facility. Therefore, there is no nexus or proportionality between the right-of-way and road improvement conditions and the traffic impacts of the facility.

(B) She requested the examiner hold the record open to allow the applicant to address staff's safety concern regarding the proposed driveway.

(C) She argued that proposed condition 5, regulating future modifications of the facility, exceeds the City's authority. The FCC regulates modifications of wireless communication facilities based on height and horizontal extension. The City's 20-foot height limit is consistent with FCC rules. However, the FCC does not allow review of individual antennae size. Therefore, she requested the examiner modify condition of approval 5 to acknowledge that federal law may preempt the City's standard,

(D) The Code allows applicants to reduce wetland buffer widths to 60 feet through buffer averaging. In this case the applicant proposes a 43-foot buffer abutting the site. The applicant intends to mitigate that buffer impact by enhancing the existing wetland and buffer. She requested the examiner hold the record open to allow the applicant's consultant to submit a preliminary wetland buffer mitigation plan.

(E) She argued that using "stealth" design to disguise the monopole tower as a fir tree is likely to have greater visual impacts on the area than the proposed monopole tower. In addition, the mono-fir structure requires additional engineering to support the weight of the faux branches. The applicant would prefer to paint the tower gray or white to blend in with the sky, rather than the earth tone suggested by staff.



ii. The applicant reviewed the potential impact of the tower on migratory birds. The applicant included a biological assessment with the NEPA review documents, Exhibit D. Pages 4 and 5 of the biological assessment follows the USFWS guidelines, evaluated the potential risks, and concluded that the tower will have no impact on migratory birds if the tower is not lighted. The tower already includes many of the mitigating features noted in the USFWS guidelines.

iii. The telecommunications act of 1996 precludes decision makers from considering potential health effects from Radio Frequency ("RF") emissions from wireless communication facilities. Federal caselaw has concluded that local decision makers cannot consider reduced property values based on fears of such effects. *AT&T v. City of Carlsbad*, 308 F. Supp. 2<sup>nd</sup> 1148, 2005 9<sup>th</sup> Circuit case, *Metro PCS Inc. v. City and County of San Francisco*, and *Verizon v. Unified Govt. of Wyandott Co. Kansas.*, 2013 Westlaw 27261.

iv. The City of Camas has not adopted the significant gap/least intrusive means test noted by Mr. Watson. The City only requires applicants to review opportunities for colocation on existing towers in the surrounding area. The applicant conducted that review in this case and determined that there are no opportunities for colocation of the proposed antennae on existing towers within a one-mile radius of the site. The 80-foot water tower on the parcel to the south is not high enough to provide the needed coverage, given the tall trees to the south and west of the water tower. T-Mobile already has antennae on the CRESA tower. However, the tower is not structurally capable of supporting the upgraded antennae proposed on the site and it is not feasible to upgrade the existing CRESA tower itself. (Exhibit 2). The applicant also discussed the potential for locating an additional tower on the water tower/CRESA site, but the City was unwilling to lease space on that parcel for a private tower.

v. In order to deny this application the examiner must find that the proposed tower will be materially detrimental to the public welfare or injurious to the property or improvements in the area. The area is already characterized by some utility uses; the water tower and CRESA wireless tower to the south. The proposal promotes the public welfare by providing substantially better coverage and making new types of wireless services available. The facility has been designed to minimize intrusions into the wetland and buffer on the site. Wireless facilities generate almost no traffic and have little impact on other public services.

vi. The conditions of approval require the applicant design the tower to withstand winds up to 140 mph.

vii. The Code does not require minimum spacing between wireless communication towers.

viii. No generators are proposed with this application. The equipment on the site will comply with state noise regulations, which prohibit noise in excess of specified decibel levels measured at the boundaries of the site.

ix. She requested the examiner hold the record open for three weeks to allow all parties an opportunity to submit additional evidence.

b. Mr. Colantino testified that the tower will be subject to further review through the City's building permit process. The tower will comply with City standards for wind and ice loading and the applicant will submit required engineering with the building permit application.

4. Jon Spikkeland argued that the proposed facility is out of character with the existing residential uses in the area and are not compatible with those uses. Wireless towers are not intended to be located in residential zones.

5. Realtor Francine O'Shaughnessy testified that the proposed tower will block the existing view of Mt. Hood from her residence. The tower will impact the value of surrounding properties and make it difficult to sell properties in the area. The tower is not compatible with the neighborhood. The tower will impact views in the area, which will reduce the value of surrounding properties. She argued that the City code prohibits construction of buildings that obstruct views. She testified that she did not receive notice of the proposed facility.

6. John Correa questioned how wireless facilities are allowed in residential zones.

7. Ben Taylor argued that the proposed facility will be detrimental to the public welfare and injurious to properties in the area. The public should be allowed to raise issues regarding property values and health concerns. The tower is likely to have an impact on migratory birds, based on Mr. Watson's written testimony. The site should be retained as open space to benefit the neighborhood.

8. Brandt Charters questioned whether separation is required between wireless towers; whether there is a limit to the number of towers allowed in an area. He questioned why cannot the applicant replace or retrofit the existing CRESA tower to accommodate additional antennae.

9. Katherine Atkins-Castillo testified that the tower will be directly behind her home. She submitted a PowerPoint presentation regarding health effects of wireless communication facilities, Exhibit P. There is a perceived risk of health impacts from wireless facilities, which will impact property values in the area. The facility will be materially detrimental to the public welfare and improvements in the vicinity due its visual impact. Prior studies determined that the value of properties near newly constructed wireless towers decline by 21-percent.

10. Elizabeth Wesman questioned the process for review of the facility. She objected to the exclusion of property value impacts based on buyers' perceptions of adverse health effects of wireless facilities. She noted that the FCC regulations prohibit consideration of health effects, but they do not prohibit consideration of property value impacts.

11. James Christensen testified that the tower will impact his existing view. Conditions regulating the design and screening of the equipment cabinets do nothing to limit the visual impact of the 175-foot tower. The applicant should replace the existing CRESA tower rather than constructing a new tower on this site. He questioned who will benefit from the tower.

12. Greg Kaphammer questioned the process for appeal of the examiner's decision. The applicant should be required to utilize stealth design to disguise the tower as a fir tree. He

testified that many property owners within 300 feet of the site did not receive notice of the application.

13. Marilyn Beverly argued that the tower will impact property values due to its impacts on existing views. Many residents purchased properties in the area because of the views and paid a premium for those views.

14. Marc Dailey testified that the tower will impact his view and the value of his property.

15. Glenn Watson argued that the application should be denied based on aesthetics, property values, wetland impacts, impacts to migratory birds, and safety. There is adequate wireless coverage in the area and therefore no need for the tower. The City should have made more effort to locate this facility on the CRESA tower site. The applicant did not consider the feasibility of locating the Freewire antennae on the CRESA tower. He testified that he submitted a SEPA comment, but he did not appeal the City's SEPA determination. The USFWS does not support locating wireless towers in or near wetlands due to impacts on birds and encourages colocation. The tower will be visible and affect views from the majority of homes in the area. He questioned whether the applicant or city will be liable for property value impacts of the facility. Noise from equipment on the site may also impact surrounding properties. The applicant designed the facility to accommodate multiple wireless service providers, which will contribute to potential noise impacts.

16. George Castillo requested the examiner hold the record open. He argued that the tower's aesthetic impacts will be materially detrimental to public welfare due to its impacts on property values.

17. Robert Offe testified in opposition to the proposal.

18. Linda Kelley testified that her view was impacted by development on an adjacent property elsewhere in the region, which impacted the value of her property.

19. City planning manager Robert Maul testified that neither the municipal nor the building codes impose development limitations to protect views from private properties. CMC 16.33 provides some protection of public views. Wireless communications facilities are regulated by CMC 18.35.110.

20. City engineer James Carouthers noted that the applicant will be required to pave the first 20 feet of the driveway to the lease site, from the edge of the pavement on NW 18<sup>th</sup> Avenue to ensure that gravel and other debris is not kicked onto the roadway.

21. At the conclusion of the public hearing, the examiner ordered the record held open for three weeks, until June 23, 2016, for new evidence from all parties; for an additional two weeks, until July 7, 2016, for a response to that new evidence from all parties; and for a final week, until July 14, 2016, for a closing argument by the applicant.



### **C. DISCUSSION**

1. City staff recommended approval of the application, based on the affirmative findings and subject to conditions of approval in the Staff Report, as amended at the hearing and during the open record period. The applicant accepted those findings and conditions, as amended, with certain exceptions.

2. The examiner finds that the City provided adequate public notice of the application. The City mailed notice of the hearing to the owners of properties within 300 feet of the site as required by CMC 18.55.190.A(1) on May 16, 2016. Mailings were based on the ownership records of the Clark County assessor's office. The City also published notice of the hearing in the in the Camas/Washougal Post Record newspaper on May 17, 2016 as required by CMC 18.55.190.A(2). *See Exhibit 5.* The applicant posted a sign on the site as required by CMC 18.55.110.H. The Code does not require that the City mail hearing notices to the owners or properties located more than 300 feet from the site nor does the Code require that mailed notice be received by the owners.

a. The examiner finds the public was provided with an adequate opportunity to review this application and to comment on it either orally at the hearing or in writing. The neighborhood was well represented at the hearing and in the written record. Residents of the neighborhood testified clearly and succinctly regarding issues of concern to them. The examiner held the record open for an additional five weeks in order to provide the public with further opportunities to review and comment on the application.

3. The applicant is not requesting approval of a zone change. The site and surrounding properties are, and will remain, zoned R-12.

4. Although several witnesses argued that cell towers "do not belong in residential neighborhoods," wireless communication facilities are permitted as conditional uses in all residential zones in the City of Camas, including the R-12 zoning district that applies to this site. *See CMC 18.35.060, Table 18.35-1 and 18.07.040 - Table 2.*

a. CMC 18.07.040 Table 2 lists the uses permitted, conditionally permitted, or prohibited in the R (Residential) zones.

i. Uses designated "P" in the table are outright permitted uses and include, among other things, single-family detached dwellings, residential care facilities, home daycares, parks, and trails.

ii. Uses designated "C" are conditional uses and include, among other things, churches, schools, daycare and assisted living facilities, sports fields. All conditional uses are subject to compliance with the additional review criteria in CMC 18.43 and certain uses, including wireless facilities, are subject to additional standards specific to those uses.

iii. Uses designated "X" are prohibited in the R zones.

iv. Wireless communication facilities are designated “C.” Therefore, they are allowed in the R zones, subject to compliance with the review procedures and approval criteria in CMC 18.43 and, pursuant to footnote 1 of the table, the design review requirements of CMC 18.19. Wireless communication facilities are also subject to the additional criteria in CMC 18.35.110.

5. The proposed facility is a wireless communications facility, not a major communications facility.

a. CMC 18.35.030 provides the following relevant definitions:

"Major telecommunication facility" means a utility use in which the means for transfer of information is provided. These facilities, because of their size, typically have impacts beyond their immediate site. Major telecommunication facilities shall include, but not be limited to, FM and AM radio transmission towers, UHF and VHF television transmission towers, and earth stations. Major telecommunication facilities do not include communication equipment accessory to residential uses, nor the studios of broadcasting companies such as radio or television stations.

"Minor telecommunication facility" means a telecommunication facility in which the transfer of information is provided but which generally does not have significant impacts beyond the immediate location of the facility. These facilities are smaller in size than a major telecommunication facility.

"Wireless communication facilities" means the site, structures, equipment, and appurtenances used to transmit, receive, distribute, provide, or offer wireless telecommunications services. This includes, but is not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronics, and switching equipment.

b. The proposed facility will not transmit FM or AM radio signals, UHF or VHF television signals, is not an “earth station, nor is it similar to any of these listed uses. Therefore, it is not a “major communications facility” as defined by CMC 18.35.030. The facility is consistent with the definition of “minor telecommunication facility.” However, the facility will provide wireless telecommunications services and is subject to the federal telecommunications act. Therefore, it is a “wireless communication facilities” as defined by CMC 18.35.030.

6. CMC 18.09.110 and 18.35.080.B provide that telecommunication facilities are exempt from the height limits of the site zoning. The height of telecommunication facilities are addressed in CMC Chapter 18.35 Telecommunication Ordinance. The proposed tower will be setback more than 175 feet from all surrounding offsite residential structures as required by CMC 18.35.080.C. The owner of the site agreed to waive the setback requirement for the existing residence on the site as allowed by this section.

7. In order to approve the CUP the examiner must find that the proposed use complies with the following criteria from CMC 18.43.050:

- A. The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated;
- B. The proposed use shall meet or exceed the development standards that are required in the zoning district in which it will occupy;
- C. The proposed use shall be compatible with the surrounding land uses in terms of traffic and pedestrian circulation, density, building and site design;
- D. Appropriate measures have been taken to minimize the possible adverse impacts that the proposed use may have on the area in which it is located;
- E. The proposed use is consistent with the goals and policies expressed in the comprehensive plan;
- F. Any special conditions and criteria established for the proposed use have been satisfied. In granting a conditional use permit the hearings examiner may stipulate additional requirements to carry out the intent of the Camas Municipal Code and comprehensive plan.

The examiner finds that the proposed wireless communication facility can comply with these criteria based on the following findings.

8. The Code does not require that the applicant demonstrate that the proposed use will not cause any impacts on surrounding properties. The Code only prohibits impacts that are “[m]aterially detrimental to the public welfare or injurious to the property or improvements in the vicinity...” and that possible adverse impacts be “minimized.” CMC 18.43.050.A. (Emphasis added).

a. The applicant’s assertions that the facility will promote the public welfare by providing enhanced wireless communication services to the surrounding area are irrelevant. The Code does not allow the examiner to balance the benefits and impacts of the facility.

b. The Code does not define the phrase, “materially detrimental.” Therefore, the examiner must rely on the dictionary definitions of this term.<sup>1</sup> The Random House Dictionary (2016) provides the following relevant definitions:

i. “Materially” is defined as, “to an important degree; considerably: to an important degree; considerable;

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CMC 18.03.020.A provides, “Terms in this title that are not defined in this chapter hold their common and accepted meaning.” The examiner finds that the common and accepted meaning of undefined terms can be best determined by reference to a standard English dictionary.



ii. “Detrimental” as “causing detriment, as loss or injury; damaging; harmful;” and

iii. “Detriment” as “loss, damage, disadvantage, or injury.”

c. Therefore the examiner finds that CMC 18.43.050.A requires a finding that the proposed wireless communication facility will not cause considerable loss, damage or injury to the public welfare and it will not be injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated;

9. The site is zoned for urban residential development. Wireless communication facilities are allowed as a conditional use in residential zones. Prior to adopting the Code, the City Council considered the potential impacts of wireless facilities and concluded that they can be compatible with residential uses. Therefore, the examiner cannot find that the mere existence of a wireless communication facility in a residential zone is *per se* materially detrimental to the public welfare or injurious to property or improvements.

a. The examiner finds that the tower will not be materially detrimental to the surrounding area simply because it is within sight of dwellings.

i. The examiner acknowledges the tower will be visually incongruous because of its relatively great height compared to most other structures in the vicinity. However, the record does not include substantial evidence that the height or appearance of the tower will have such a significant adverse visual impact that it will be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity. That is, although the tower’s height will make it visible from vantage points in the surrounding area, that is all it does. It is visible. It does not affect the potential use of surrounding property. Although some people may not want to see the tower, views of the tower do not have a significant impact on use of surrounding properties.

ii. As noted above, the City Council authorized wireless communications facilities in all residential zones. Because the Council knew that homes are a permitted use in those zones, they must have anticipated towers would be situated in sight of those homes without the tower sites being materially detrimental to the public welfare or injurious to the property or improvements.

iii. The tower and antennas have a relatively narrow cross section, minimizing their visual impact by design. The tower and antennas will appear as relatively narrow cylindrical objects against a background of sky for most viewers. See Exhibit B. Although visible, the tower and antennas are passive objects in a large viewing shed. The applicant will paint the facility to further blend with the sky against which it will be seen. In addition, there are existing tall utility facilities in the area. The water towers south of the site, across NW 18<sup>th</sup> Avenue, are roughly 80 feet high. The existing CRESA tower is 180 feet high, taller than the proposed tower. See Exhibits B and 2. The applicant will screen the base of the tower and equipment cabinets with proposed landscaping and fencing.

iv. The applicant cannot reduce the height of the tower and still provide the desired coverage.

v. The tower will not have a significant impact on views of Mt. Hood from adjacent properties. As shown in Exhibit 91, the existing church and evergreen trees west of the site block views of Mt. Hood from homes directly west of the site. As shown in the photos included in Exhibit 109, the tower will have no impact on Mt. Hood views from properties to the northwest and southwest of the site.

(A) Contrary to Ms. O'Shaughnessy's testimony, the Code does not prohibit construction of buildings or other structures that may impact existing views from adjacent private properties. Any development on this currently underdeveloped site will impact views. Residential structures up to 35 feet in height and located within five feet of the property line are expressly allowed in the R-12 zone. CMC 18.09.40 Table 2.

vi. The applicant cannot install lights on the tower, because the FAA will not require them. A condition of approval ensures the applicant will not install lights unless required by the FAA.

vii. CMC 16.33.010.B(1) is inapplicable. This section provides:

It is the city's policy to protect public views of significant natural and human-made features: Mount Hood and major bodies of water including the Columbia River, Lacamas Lake and the Washougal River. These include public places consisting of viewpoints, parks, scenic routes, and view corridors identified in the comprehensive plan and the comprehensive park and recreation plan.

There are no identified viewpoints, parks, scenic routes, or view corridors in the vicinity of the site where views of Mount Hood and major bodies of water including the Columbia River, Lacamas Lake and the Washougal River would be impacted by the proposed tower. Prune Hill is not an identified scenic landmark that requires protection.

viii. CMC 18.35.110.A(1) authorizes, but does not require, the City to, "Require the use of concealment technology, including, but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or vegetation, and 'stealth' designs to minimize adverse aesthetic and visual impacts" of wireless communication facilities.

(A) The applicant could be required to design the tower to mimic a tree in the area in order to reduce its visual impact. However, there no tall trees on or near the site with which such a "mono-fir" tower could blend. A single, freestanding, 175-foot tall mock tree on this otherwise largely treeless site would likely stand out significantly. In addition, a mock fir tree would have to be taller than the proposed 75-foot monopole in order to provide sufficient "branch" width to screen the proposed antennae located at the top of the 175-foot tower. Such a stealth design would also increase the width and visual impact of the facility. The proposed facility will blend with the existing CRESA tower and water towers located roughly 600 feet south of the site.

(B) The applicant will enclose the entire lease area with fencing and dense vegetation as required by CMC 18.35120.A, which will screen the equipment and the base of the tower. Because of the importance of the landscaping to the continued compliance with the conditional use permit standards, the examiner finds that the applicant should be required to maintain the landscaping and fencing surrounding the site and to replace any diseased or deceased plants and maintain the fence in good condition for as long as the site remains in use for the tower. A condition of approval is warranted to that effect.

ix. Like any other structure in the City, the proposed facility could catch on fire. Burning structures pose a hazard to surrounding structures and properties. However, there is no substantial evidence that wireless facilities pose an unusually high risk of fire. The facility will be setback a significant distance from all other structures in the area. The City Fire Department is available to deal with any fires that may occur. Although the Fire Department's existing equipment may be inadequate to reach the top of the tower, fire personnel can use the climbing pegs/ladder on the outside of the tower if needed to access the upper portions of the tower.

b. Opponents expressed concerns with potential health hazards of the facility.

i. The examiner recognizes that the proposed antennas emit Radio Frequency ("RF") energy that could potentially have an impact on public health. However, there is no evidence that it does have such an impact, and the Federal Communications Act of 1996 expressly prohibits the City from considering such impacts when evaluating an application of this kind. *See* 47 U.S.C. §332(c)(7)(B)(iv).

ii. The courts have interpreted 47 U.S.C. § 332(c)(7)(B)(iv) to prohibit local governments from considering potential impacts to property values that are based on concerns about such potential health effects. *AT&T v. City of Carlsbad*, 308 F. Supp. 2<sup>nd</sup> 1148, 1162 (2003) (concern over property value depreciation based on fear over RF emissions does not constitute a legitimate basis for an application denial under the Telecommunications Act). Therefore, the City cannot consider potential property value impacts that are based on potential health concerns. The cases cited by Mr. Watson and others were based on local criteria that imposed additional approval criteria on the placement of wireless communication facilities. The local criteria at issue in those cases do not apply to this application. Therefore, the holdings in those cases are not relevant here.

iii. There is no substantial evidence in the record that the proposed tower will have a materially detrimental impact on the value of surrounding properties simply because it is within sight of or proximity to residential dwellings.

(A) Opponents referred to articles and studies which they claim support a finding that construction of the proposed tower will reduce the value of surrounding properties by 21-percent or more (Atkins-Castillo testimony, Exhibits L, 68, and 94. However, the opponents did not provide copies of or citations to the referenced articles and studies.<sup>2</sup>

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<sup>2</sup> Exhibit 10 included a link to an online article. However the link is no longer active.



Therefore, the examiner cannot determine whether the asserted property value impacts are based on fears of potential RF emissions, or the mere existence/visual impacts of the tower. Ms. O'Shaughnessy offered expert testimony as a Realtor, asserting that the tower will reduce the value of surrounding properties by 15- to 25-percent or more and make it difficult to sell properties in the area. However, she did not indicate whether the impacts she asserted were due to perceived health effects or the mere presence of the tower in a residential area.

(B) The applicant submitted published studies showing that when perceived health effects are excluded, the mere visibility of cell towers and proximity to residences has only a minor impact on property values. Exhibit 109.

(C) The examiner is persuaded by the studies submitted by the applicant that, although the tower will have some negative impact on the value of surrounding properties, the impacts are not substantial and will not be materially detrimental to the public welfare or properties and improvements in the area.

iv. CMC 8.52, which regulates electrical transmission and distribution facilities, is inapplicable to this application for a wireless communication facility. CMC 8.52.010.D acknowledges that overhead electric transmission lines may negatively impact real property values. However, this section expressly states that such impacts are "due to both undesirable aesthetic effects and to public concerns over health-related risk associated with electrical transmission lines." As discussed above, federal law prohibits the City from denying or conditioning this application based on potential health effects, including potential property value impacts related to such concerns. The studies provided by the applicant demonstrate that wireless communication towers do not have a substantial impact on property values when health concerns are excluded.

c. Noise from the facility could cause significant adverse environmental impacts if it is excessive. The examiner finds that noise is excessive if it exceeds state standards. WAC 173-60-040 limits noise to a maximum 57 dBA between 7:00 a.m. and 10:00 p.m. and 47 dBA between 10:00 p.m. and 7:00 a.m. Noise levels are measured at the property lines. The examiner finds that it is feasible to design, install and operate the equipment on the site in compliance with these standards. If necessary, the applicant can enclose the equipment to further reduce noise impacts and ensure compliance with state law. The applicant did not propose to locate a generator on the site.

10. The examiner finds that the proposed use is "[c]ompatible with the surrounding land uses in terms of traffic and pedestrian circulation, density, building and site design." CMC 18.43.050.C. The Code does not define the term "compatible." Therefore, the examiner relies on the dictionary definition. The Random House Dictionary (2016) defines "compatible" as: "capable of existing or living together in harmony; able to exist together with something else..." Based on this definition, the examiner finds that the proposed wireless facility and tower will be compatible with surrounding land uses:

a. The proposed unmanned facility will not generate pedestrian traffic. Once construction is completed, vehicular traffic will be limited to monthly maintenance trips,

averaging one trip per carrier per month. The existing roads and proposed access drive are more than adequate to accommodate the minimal amount of traffic generated by the facility.

b. The proposed facility is a wireless communication facility. It will not alter development density in the area.

c. The building and site design are compatible with surrounding land uses.

i. The surrounding area is not exclusively residential. The area also includes a church to the east of the site and several large utility structures to the south: two above ground water reservoirs and the CRESA communications tower. The building and site design of the proposed facility is consistent with these existing structures.

ii. The facility will be compatible with surrounding residential structures; that is existing residential uses and the proposed wireless facility are capable of existing together. There is no evidence that the existing utilities south of the site have limited or prevented any residential uses in the area. As discussed above, although the proposed tower will be visible from surrounding properties, the tower and antennae are designed with a relatively narrow cross section to minimize their visual impact. The tower is setback 115 feet or more from abutting properties<sup>3</sup> and 175 feet or more from surrounding structures.

i. The Code accomplishes the goal of encouraging the location of wireless communication support structures in nonresidential areas (CMC 18.35.010.D) by providing a streamlined review procedure for facilities in industrial zones. Wireless communication facilities are permitted uses in the LI, LI/BP, and HI zones. CMC Table 18.35-1.

ii. CMC 18.35.110.A(1) authorizes, but does not compel, the review authority to require the use of “stealth” designs. As discussed above, the examiner finds that a 175-foot tall mono-pine “stealth tower” on this site would have greater visual impacts on the surrounding area than the proposed monopole structure. Therefore, the applicant is not required to disguise the tower as a tree.

iii. CMC 18.35.110.A(2) authorizes the review authority to, “Require compatibility with key design elements in the surrounding area; for example, in single-family residential zones, use of peaked roof lines, painted surfaces, and wooden fences.” It is not feasible to include peaked roof lines or wooden fences on the tower. However, as Staff proposed, the applicant can include these elements in the ground mounted equipment and enclosure fencing to make those portions of the facility more compatible with surrounding residential uses. The examiner finds that the applicant should be required to utilize peaked roof lines, painted surfaces, and wooden fences. A wood fence similar to the design shown on page 10 of Exhibit 4 is more compatible with surrounding residential development than the proposed vinyl fence. Staff argued that peaked roof lines are not warranted if the site is fully enclosed with a six-foot high sight obscuring wood fence. However, the topography of the site drops to the north. NW 18<sup>th</sup> Avenue,

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<sup>3</sup> The examiner approximated the setback distance between the base of the tower and the nearest property boundary, based on reduced size copies of the applicant’s scaled drawings. The actual distance is likely greater than the examiner’s conservative estimate.

which abuts the south boundary of the site, is roughly four feet higher than the northern portion of the lease area. See Sheet SVC-3 of Exhibit 1. Therefore, ground mounted equipment located within the lease area may be visible over the top of the fence when viewed from the street abutting the site. The equipment may also be visible from upper stories of surrounding homes. Therefore, the applicant should be required to include equipment cabinets and wood fence similar to the designs shown on page 10 of Exhibit 4. Condition of approval 3 should be modified to that effect.

iv. The examiner finds that the proposed tower will minimize the cumulative impacts of additional wireless communication facilities in the area (CMC 18.35.110.A(3)) by providing colocation opportunities for at least two additional service providers. Future service providers can place antennae on this tower, rather than building additional support towers in the area.

v. Mr. Spikkeland argued that the compatibility requirement is intended to restrict wireless communication facilities in residential zones to properties abutting industrial zoned lands. Exhibit 107. However there is no evidence to support such an interpretation. If that were the City Council's intent, it could have clearly said so. In addition, given the extensive swaths of residential zoning in the City of Camas (See figure 2 of Exhibit 107) such a requirement could have the effect of prohibiting wireless providers from installing facilities needed to fill a significant gap in coverage, in violation of federal law.

11. Appropriate measures have been taken to minimize the possible adverse impacts that the facility may have on the area in which it is located. CMC 18.43.050.D.

a. The City will review the design and construction of the tower through the building permit review process to ensure compliance with wind and ice loading requirements and other structural standards that ensure the stability of the tower. The tower will be setback 115 feet or more from all abutting properties, and 175 feet or more from all offsite buildings in the area, which will ensure safety in the unlikely event the tower falls. The setbacks will also limit the potential for ice from the tower falling on adjacent properties. It was alleged that high winds may carry ice "200 or more feet from the tower[]" based on experience with towers elsewhere. Exhibit 95. However there is no evidence in the record regarding the height of the towers where such impacts are alleged to have occurred. There is no evidence of such impacts occurring on the existing 180-foot tall CRESA tower, which, based on aerial photos, appears to be located closer to surrounding structures than the proposed tower.

b. The applicant proposed to utilize a monopole tower in order to minimize the visual impacts of the tower. The applicant will plant vegetation to screen the base of the tower and the associated equipment and utilize peak roofed and painted equipment cabinets to better blend with surrounding residential structures. The applicant will fence the facility to limit unauthorized access and further screen the facility.

c. The FAA reviewed the proposed tower and concluded that it does not pose a hazard to air navigation in the area. Exhibit G.

12. The examiner finds that the proposed use is consistent with the goals and policies expressed in the comprehensive plan. CMC 18.43.050.E.

a. The proposal is consistent with the city's comprehensive plan, Land Use Primary Goal 3, which requires the City to balance the development of services with growth.

b. Land Use Policy LU-4 requires compatibility of use and design of the surrounding and built environment. The examiner finds that the proposed facility, as conditioned, is compatible with the surrounding and built environment based on the findings above.

c. Several sections of the comprehensive plan discuss the need to "maintain stability and improve the vitality of residential neighborhoods," "balance consideration for community values, the neighborhoods, the natural environment, and the economic environment," and "separate incompatible land uses..." Strategy LU-1 and LU-2. However, the comprehensive plan expressly states that those goals should be achieved through zoning and development regulations. As discussed above, the City Council considered the potential impacts of wireless communication facilities in and near residential areas and determined that such facilities should be allowed, subject to the setback, screening and other requirements of the Code.

d. Exhibit 90 argues that the proposed facility is inconsistent with the City's "Parks, Recreation and Open Space Comprehensive Plan Update, which includes the following Goals:

Goal 3: Develop a city-wide continuous network of natural open space to protect environmentally sensitive land and scenic views, create a sense of openness, and provide trail corridors."

Goal 3C: Work cooperatively with property owners and developers to preserve natural open space, especially those that provide visual or physical linkages to the proposed Open Space Network identified in this plan."

GOAL 4: Provide a convenient, safe, and pleasant pedestrian and bicyclist trail network that links parks, schools, and community destinations throughout the City."

i. The examiner finds that the proposed development is consistent with these goals. The site is not identified as a potential park, trail or open space in the City's adopted plans, which are included in Exhibit 109. There is no evidence that the site provides any visual or physical linkages to the proposed Open Space Network identified in the City's plans. As discussed below, the wetlands on the site will remain as undeveloped open space and the applicant will mitigate for the buffer impacts caused by the facility. The facility will have no impact on the pedestrian and bicycle trail network.

ii. Mr. Watson argued that the facility will violate Goal 3 by conflicting with public views from the open space network and trail concept plan. However, as discussed above, although the proposed tower may be visible from locations throughout the City, it will not



have a significant impact on views. The monopole tower and antennas will appear as relatively narrow cylindrical objects against a background of sky for most viewers. Although visible, the tower and antennas are passive objects in a large viewing shed. In addition, the existing CRESA tower and water towers south of the site already impact views of this area.

e. There is no evidence in the record that the facility conflicts with any of the other goals and policies expressed in the comprehensive plan.

13. The examiner adopted conditions of approval, which will ensure compliance with the applicable approval criteria and limit the adverse impacts of the facility. The City will ensure compliance with those conditions of approval through the permitting and enforcement processes. Therefore, the application will comply with CMC 18.43.050.F.

14. The proposed facility complies with the additional requirements of the telecommunication ordinance, CMC 18.35.

a. CMC 18.35.010.D, cited by neighboring residents, is not an applicable approval criteria. It is merely a purpose statement. The general goals of a purpose statement are implemented through compliance with the specific requirements of the approval criteria. See *Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 98, 83 P.3d 433, review denied, 152 Wn.2d 1015 (2004) (Specific zoning laws control over general purpose statements). The City, “Encourage[s] the location of wireless communication support structures in nonresidential areas” by requiring faster and cheaper review for wireless facilities proposed in industrial areas. Wireless facilities are an outright permitted use in industrial areas, whereas such facilities are subject to Type III conditional use review when proposed in residential areas.

b. The applicant proposed to construct a monopole tower with antennae and support equipment. Such a facility is allowed as a conditional use in the R zones. CMC 18.35.060, Table 18.35-1.

c. The exemptions of CMC 18.35.070 are inapplicable.

d. The facility complies with the height limitations of CMC 18.35.080.

i. CMC 18.35.080.A provides that the height of a wireless communications facility includes the support structure and any antennas proposed at the time of application. In this case the proposed tower and antennae will be 175 feet tall with an eight-foot lightning rod attached to the top of the tower. Sheet A-3.0 of Exhibit 1. Lightning rods up to ten feet in length are exempt from the height standard. CMC 18.35.080.A.

(A) Exhibit 101 asserts that the tower is proposed to be located on a 40-foot support base, which increases the height of the tower to 195 feet. That is an incorrect interpretation of the applicant’s plans. The tower will be a maximum 175 feet in height, measured from the ground surface. Sheet A3.0 attached to Exhibit 109. The tower foundation will extend 40 feet underground. Plan Sheet E02 attached to Exhibit 109. The tower will be bolted on to the foundation. Plan Sheet E02. The tower will be bolted on to the foundation. Plan

Sheet E02 attached to Exhibit 109. The foundation will not increase the “height” of the tower as defined by CMC 18.35.080.A nor does it increase the potential fall radius of the tower.

ii. Wireless communication towers are exempt from the height limits of the underlying zone. CMC 18.35.080.B.

iii. CMC 18.35.080.C requires that the base of the support structure be setback a distance equal to or greater than the nearest point of any on or off-site residential building in existence on the date of application, unless the building owner consents in writing to a reduced setback. The proposed 175-foot tower will be setback at least 175 feet from the nearest offsite residential structure. Plan Sheet A-1.0 of Exhibit 109. The property owner waived compliance with the setback requirements for on-site structures. Exhibit J.

(A) CMC 18.35.100.A allows the placement of additional antennae extending the height of the facility by up to 20 feet through a Type I (building permit) process. Such an extension would cause the facility to cease compliance with the setback requirements of CMC 18.35.080.C. The applicant agreed to record a covenant prohibiting additional antennae or other structures that would extend the height of the facility beyond the proposed 175-foot height. Exhibit 119. A condition of approval is warranted to that effect.

iv. The applicant did not request a variance from the height standards of CMC 18.35.100.C. Therefore, the variance criterion of CMC 18.35.100.D, which requires applicants to demonstrate the need to provide wireless coverage in a specific identifiable area, is inapplicable.

e. The proposed tower will be equipped with appropriate anti-climbing devices as required by CMC 18.35.090.A. The applicant will enclose the facility with a six-foot wood fence. There are no climbing pegs or other structures on the bottom of the tower that would facilitate climbing.

f. CMC 18.35.090.B requires the applicant install a sign in a place visible to the general public listing the wireless service provider's name and emergency telephone number. A condition of approval is warranted to that effect.

g. The facility is not located on historic site or building. Therefore, CMC 18.35.090.C is inapplicable.

h. CMC 18.35.090.D requires that, “Wireless communication support structures not regulated by the FAA shall have a finished surface that minimizes the visibility of the structure.” The applicant proposed to provide a blue or gray finish on the tower to blend with the sky. Staff recommended the tower be painted earth tone colors---not metallic or reflective. The examiner finds that a gray or blue color would be most appropriate in this case, since most viewers will see the tower against a background of sky. Whatever finish is used, it must be non-reflective to minimize the visibility of the structure. Condition of approval 4 should be modified to that effect. The City can review the tower color during the site design process. The applicant should be required to maintain the tower, equipment cabinets and fencing and repaint, repair or

replace them as needed to ensure that they remain compatible with the surrounding neighborhood. A condition of approval is warranted to that effect.

i. The FAA did not require lighting on the proposed 175-foot tower. Exhibit G. Therefore, lighting is prohibited. CMC 18.35.090.E. A condition of approval is warranted to that effect.

j. The applicant is not proposing to add antennae to an existing structure or tower. Therefore, CMC 18.35.100 is inapplicable.

k. The application was subject to CUP review as required by CMC 18.35.110.

l. The applicant submitted a colocation feasibility evaluation as prescribed by CMC 18.35.140.

i. The Code requires certification that the notice was mailed to other service providers. It does not require certification that the notice was received.

ii. Opponents argued that the colocation feasibility evaluation was inadequate because the applicant did not mail the required notice to “[a]ll other wireless providers.” CMC 18.35.140.A(1). The applicant mailed notice to AT&T, Sprint, and Verizon. Exhibit O. Exhibit 90 notes the existence of 25 towers registered to ten different companies within a four-mile radius of the site. The applicant did not mail notice to all of these companies. However, the Code provides that CMC 18.35.140.A is expressly an application requirement, not an approval criterion. In addition, the Code expressly authorizes the director to waive requirements deemed inapplicable. The City accepted the application as complete without these additional notices. The examiner has no authority to review that decision at this point in the process. In addition, all of the towers identified in Exhibit 90 are one mile or more away from the site,<sup>4</sup> too far outside the applicant’s search ring to provide the coverage this facility is intended to provide. As the applicant noted, although the CMC does not specify a radius for colocation requirements, other jurisdictions limit the required colocation search radius to ¼ or ½ mile. p. 9 of Exhibit 121. The CMC appears to leave the decision regarding the search radius up to the applicant’s discretion. The notice required by CMC 18.35.140.A(2) includes a blank to be filled in by the applicant regarding the distance of existing facilities from the site.

iii. The CRESA tower is the only existing tower within the applicant’s identified search ring. However, that tower is not physically capable of supporting the proposed antennae and the tower cannot be upgraded or modified to support the applicant’s antennae. Exhibit 2.

iv. The Code does not require applicants seek colocation opportunities on other existing structures such as the water towers south of the site. The applicant did review the feasibility of locating its antennae on the existing water towers. However, the water towers are too short to provide the desired coverage. Tall trees on the properties to the south block the “line of sight” signal from this location. Exhibits C and H. The applicant considered locating the

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<sup>4</sup> The nearest tower is 0.98 miles from the site. p. 7 of Exhibit 90.

proposed tower on the publicly owned water tower/CRESA site. But, based on the applicant's un rebutted testimony, the owner was unwilling to allow the proposed construction because the lease area needed for the applicant's tower and equipment would consume needed access and maneuvering areas on that parcel.

m. The Code does not require a minimum separation distance between wireless communication facilities or towers.

n. The facility can comply with the landscaping and screening standards of CMC 18.35.120. CMC 18.35.120.A requires that the tower and all ground mounted equipment be enclosed by a fence or wall and a five-foot wide landscape buffer planted with six-foot high evergreen shrubs. The exhibits provided to the examiner did not include a landscape plan. However, the examiner finds that there is sufficient area on the site to comply with this requirement. A condition of approval is warranted to require landscaping consistent with CMC 18.35.120.A. As discussed above, the fence surrounding this facility should be a solid wood fence to enhance the facilities compatibility with surrounding residential uses.

i. CMC 18.35.120.B provides, "Landscaping shall be installed in compliance with CMC Chapter 18.13 Landscaping." A condition of approval is warranted to that effect.

ii. CMC 18.35.120.C applies to add-on antennas to existing structures. The applicant is proposing a new wireless facility. Therefore, CMC 18.35.120.C is inapplicable.

o. CMC 18.35.130 requires that wireless communications support structures meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate wireless communications support structures and antennas, and if such regulations are changed in the future, to bring such facilities into compliance with the revised standards and regulations within the compliance schedule of the regulatory agency. A condition of approval is warranted to that effect.

15. The applicant is not required to consider alternative locations for the proposed facility, with the exception of the colocation analysis required by CMC 18.35.140.A(1) and (2). Several witnesses argued that the applicant should locate the facility elsewhere in order to reduce its impacts on the surrounding residential area. However, the examiner has no authority to require such relocation. As noted in Exhibits L and 90, federal law allows the City to adopt additional standards regulating the location of wireless communication facilities, including requiring applicant's to show a significant gap in existing coverage and that the proposed facility is the least intrusive means to fill that gap. Federal law also allows local governments to only allow wireless facilities in residential areas as a last resort, when no alternative locations are available to provide the needed coverage. However, the City of Camas has not adopted such regulations. The CMC does not authorize the examiner to consider the need for the facility or the minimum needed level of coverage or whether alternative sites may be subjectively "better." The applicant largely determines what service is necessary, based on proprietary information, market factors, characteristics of RF propagation and system design and engineering, among other things. Wireless communication facilities are an allowed use in the R zones. Whether alternative sites for this facility would be subjectively "better" is irrelevant, because such concerns do not



relate to the applicable approval criteria. If the application complies with the applicable approval criteria it must be approved.

a. The fact that much of the intended coverage area is in Oregon is irrelevant. Nothing in the Code requires that wireless facilities limit service to areas within the City or state. Such a requirement would likely violate federal law.

b. Assertions that the applicant considered, but did not disclose, additional locations for the proposed tower facility are also irrelevant. The applicant is only required to review existing towers that may provide opportunities for colocation pursuant to CMC 18.35.140.A(1) and (2). The applicant was not required to review alternative locations for the proposed tower.

16. The City's Responsible SEPA Official considered the facilities impacts on migratory birds in its SEPA review and determined that the facility does not pose a risk of significant adverse impact to birds. The SEPA Official based that determination on a review of the applicant's NEPA review (Exhibit D) and Biological Assessment (Attachment C of Exhibit D). The Biological Assessment was followed the guidelines in the USFWS document, Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers. The City also requested comments from relevant agencies, but no agency raised concerns with the facilities potential impact on birds. The City's SEPA determination was not appealed and is now final. Therefore, the examiner has no authority to further consider the facilities potential impacts on birds.

a. The tower does pose some risk to migratory birds. The tower is a stationary object, similar to a tree or building. It has no moving parts that could strike birds. The tower will not be lighted, which reduces its impact. However, its relatively great height does pose somewhat of a risk for birds flying through the area. As Staff noted at the hearing, while wireless communications towers pose some risk to birds, domestic cats, buildings, and vehicle collisions pose a far greater threat to birds. Exhibits R and S. The site is located within the Pacific Flyway, which covers the entire County and much of the state. However, there is no evidence that existing wireless communications towers in the region are having a significant adverse impact on migratory or non-migratory birds. The site is located adjacent to wetlands and the USFWS recommends that towers not be sited in or near wetlands and other known bird concentration areas. However, as discussed in Exhibit F, the wetlands on the site are relatively low value and provide limited habitat for birds or other species.

b. The federal Migratory Bird Treaty Act (the "MBTA") is not an applicable approval criterion. The examiner cannot rely on a treaty to deny or condition approval of the application, because a treaty is not part of the local development regulations.

c. The Critical Areas report noted that the wetland and buffer are mowed periodically, which limits the habitat value of these areas. Opponents disputed that statement, noting that the site was covered in tall grass on June 7 and 23, 2016. p. 14 of Exhibit 90. However photos included in the October 2015 Critical Areas Report (Appendix C of Exhibit F) and the aerial photos of the site show that the site has been mowed in the past. The lack of woody vegetation within the wetland and buffer areas on the site also supports the conclusion that the

site is mowed frequently. The portion of Wetland 1 extending offsite to the north supports a variety of shrub/scrub vegetation. Appendix C of Exhibit F. If the wetlands on the site were not mowed, similar vegetation would likely occur on the site. The fact that the site was not mowed this year prior to June 23, 2016 does not alter the conclusions of the Critical Areas Report.

17. Construction of the proposed facility will not impact wetlands on the site.

a. The site contains two wetland areas: a 0.26-acre Category IV wetland in the western portion of the site (Wetland 1), and a 0.72-acre Category III wetland in the northwest corner of the site (Wetland 2). Both wetlands extend offsite to some extent. Exhibit F.

b. CMC Table 16.53.040-1 requires a 50-foot buffer around the perimeter of Wetland 1 (Category IV) and an 80-foot buffer around the perimeter of Wetland 2 (Category III), based on the wetlands' habitat ratings and the intensity of the proposed use. CMC 18.53.05.C allows applicants to reduce the wetland buffer width up to 25-percent, provided the modification results in an overall buffer function that is equal or better than the function of the unmodified buffer. Therefore, the applicant could reduce the required buffer widths to 37.5 feet for Wetland 1 and 60 feet for Wetland 2 through buffer averaging.

c. The facility will impact a small portion of the required wetland buffer for Wetland 2.<sup>5</sup> The northern portion of the fenced lease area will extend to within 48 feet of the outer edge of Wetland 2; 12 feet into the required 60-foot modified buffer. The facility will impact 930 square feet of the buffer around Wetland 2. The Code allows such impacts provided the applicant demonstrates compliance with the wetland permit approval criteria in CMC 16.53.050.D. The examiner finds, based on the applicant's June 2016 Wetland Mitigation Plan (attached to Exhibit 109), that it is feasible to comply with the wetland approval standards for a wetland permit (CMC 16.53.040.D) and obtain a final wetland permit:

i. The applicant considered alternatives that would avoid impacts to the wetland, CMC 16.53.050.D(1)(a). The applicant reviewed alternative sites for the facility and colocation opportunities, in order to avoid impacts to the wetlands on this site. However those alternatives were determined to be unfeasible;

ii. The applicant minimized impacts to the wetland buffer, CMC 16.53.050.D(1)(b). Reducing the size of the lease area from its standard 50- by 50-foot to 40 by 40 feet, shifting the facility as far away from the wetland as possible while maintaining compliance with the tower setback requirements of CMC 18.35.080.C, and obtaining a setback waiver from the owner of the site to allow the tower to be closer to the on-site residence, and further from the wetland; and

iii. The applicant will compensate for the unavoidable impacts to the wetland buffer by providing on-site mitigation, CMC 16.53.050.D(1)(c). The applicant will enhance the existing wetland and buffer consistent with Code requirements; planting additional native woody vegetation within the wetland and buffer, which will increase the habitat value of the buffer. In addition, the applicant will permanently demarcate the modified buffer boundary on

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<sup>5</sup> Construction of the facility will have no impact on Wetland 1 or the associated 50-foot buffer.

the site with a log fence and signage, and protect the buffer through a recorded conservation covenant. The applicant will continue to monitor and manage the mitigation measures to ensure that the plantings are properly established.

d. The applicant should be required to obtain approval of a final wetland permit pursuant to CMC 16.53.050.D(I) prior to undertaking construction activities on the site. This is required by condition of approval 6.

e. CMC 16.51.210.C authorizes the director to require permanent fencing to identify the wetland buffer boundary and “reasonably minimize or prevent future impacts” to the wetland and buffer. The applicant proposed to place logs to demarcate the buffer boundary. The examiner finds that determination of the required marking should be left to the discretion of the director through the final wetland review process. The applicant is also required to install temporary fencing to identify and protect the wetland boundary during construction. CMC 16.51.210.A. A condition of approval is warranted to that effect.

18. Neighboring residents argued that the proposed development will eliminate habitat for birds and other wildlife. That is true to the extent that the facility will consume a portion of what is currently an undeveloped field, but it is not an impact that the law prohibits. On the contrary, it is an inevitable consequence of concentrating new development in the urban area. The site is zoned single-family residential and should be expected to develop. As discussed above, the facility will have no direct impact on the existing wetlands on the site and the applicant will mitigate for the impacts to the wetland buffer. The remainder of the on- and off-site wetlands and buffers and open space tracts in the vicinity will remain undisturbed and continue to provide wildlife habitat in the area. In addition, none of the animals observed on this site is listed as endangered or threatened. They commonly are observed in the urban area.

19. Neighbors argued that the site should be a park. However this site is not designated as a park in the comprehensive plan. The examiner cannot delay action or deny approval of the application because the site could be acquired for a park. The Code does not require a park or open space under the circumstances of this application. The wetlands and modified buffer areas on the site will be retained as protected open space.

20. The City will review the design of the facility, including engineering analyses and designs, through the building permit and site plan review process to ensure that the facility is properly constructed in compliance with all applicable regulations. This is required by conditions 9 and 10. The City’s Code Enforcement section can ensure ongoing compliance with the conditions or approval.

21. The examiner acknowledges the residents of the neighborhood oppose the tower and assert that the City should deny the application to protect surrounding residents. However popular support or opposition, per se, is not relevant to any applicable approval criterion. Basing a decision on popular opinion denies due process of law and is arbitrary. The best way to protect all of the public is to enforce the laws consistently and fairly. To give special consideration to a limited class of people violates the due process rights of all. The applicant and the property owners are entitled to equal protection of the law. The examiner is obligated to apply the plain meaning of the law.

22. Approval of this application will not create a precedent for future applicants. The Prune Hill area may provide a desirable location for wireless communication facilities, due to its elevation. There may be other properties that are large enough to accommodate the tower setback requirements. Wireless service providers are entitled to request approval of additional facilities on those properties if they can reach an agreement with the owners of the properties. Future applications will be subject to the applicable zoning and approval criteria in effect when an application is submitted. Such applications must be approved if the applicants demonstrate that the proposed facilities also meet the applicable approval criteria. However, approval of this application does not make it any more or less likely that such applications will be submitted or approved. To the contrary, approval of this application, with at least two colocation opportunities, reduces the potential for additional towers in this area; future providers will be required to collocate on this facility or demonstrate that the facility cannot provide the desired coverage before additional towers can be approved in the area. Each property and provider is unique and must be reviewed on its own merits. In any case, the potential precedential effect of this development is not relevant to the applicable approval criteria.

23. Proposed conditions of approval 1 and 2 in the Staff Report require the applicant dedicate right-of-way and construct frontage improvements along the site's 18<sup>th</sup> Avenue and Cascade Street frontages. However the City subsequently conceded that, due to the minor amount of traffic generated by this use, the cost of these conditions is not roughly proportional to the impact of the development. Therefore, the City requested the examiner delete conditions 1 and 2. Exhibit 111. The examiner agrees with the City's revised conclusion. Once construction is completed and the facility is fully occupied, the proposed facility will generate an average of three vehicle trips per month (one trips per carrier per month x three carriers). The City has the burden of proof to demonstrate that the cost of the required dedication and improvements are roughly proportional to the impacts of the proposed development. Given the small amount of traffic generated by this facility, the examiner cannot find that these conditions are roughly proportional. Therefore, conditions 1 and 2 should be deleted. The City can require right-of-way dedication and frontage improvements when the property redevelops in the future consistent with the R-12 zoning.

24. As Ms. Pabst noted at the hearing, modifications of wireless communication facilities are regulated by the FCC, which regulates modifications based on height and horizontal extension. The FCC does not allow review of individual antennae size. Proposed condition of approval 5 in the Staff Report should be modified to acknowledge that federal law may preempt the City's standard.

25. As Mr. Carothers noted at the hearing, the applicant is required to pave the first 20 feet of the proposed gravel access driveway to prevent gravel and other debris from being carried onto the roadway. A condition of approval is warranted to that effect.

#### **D. CONCLUSION**

Based on the above findings and discussion provided or incorporated herein, the examiner concludes that CUP15-01 (Prune Hill Monopole) should be approved, because it does



or can comply with the applicable standards of the Camas Municipal Code, the Revised Code of the State of Washington.

### **E. DECISION**

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves CUP15-01 (Prune Hill Wireless Communications Facility), subject to the following conditions of approval:

The following conditions are in addition to any conditions required from other permits or approvals issued to this project. Unless otherwise waived or modified in this decision, the development must comply with the minimum requirements of the Camas Municipal Code.

1. Site improvements shall include the following residential features:
  - a. Equipment cabinets shall be painted earth tone colors with gabled roofs, similar to the structures shown on pp. 10 of Exhibit 4; and
  - b. The site shall be enclosed by a residential style solid wood fence similar to the fence shown on pp. 10 of Exhibit 4.
2. Monopole, antennas, and other equipment mounted on the monopole shall be painted gray or blue to blend with the sky---not metallic or reflective.
3. This permit authorizes the installation of a total of 15 panel antennas and 10 microwave antennas on a 175-foot monopole. The total combined surface area of all antennas approved with this decision is approximately 200 square feet (Note: measured by width and height of the outward face of the antenna, not depth). If replacement antennas increase the total combined surface area by more than 25-percent over the antennae approved in this application, then the size would exceed the minor modification permit threshold, and approval of a conditional use permit will be required, except to the extent superseded by federal law,
4. Prior to issuance of building permits, applicant shall execute a covenant to the City or provide other documentation acceptable to the City to ensure that any future modifications to the tower will not extend the tower structure above 175 feet, in order to maintain the existing tower-height setbacks from off-site residences.
5. A Final Wetland Mitigation Plan consistent with CMC§16.53.050(E)(3) shall be submitted prior to final engineering approval. The final plan will include (at a minimum) detailed construction plans, maintenance, monitoring, and contingency plans. Temporary markers, permanent signs, and fencing shall be installed at the perimeter of the buffer area, such as depicted in the Preliminary Wetland Mitigation Plan as required by CMC 16.51.210.
6. Required fencing, landscaping, and mitigation plantings shall be included on engineering plan set for approval.
7. Applicant shall pave the first 20 feet of the new driveway, measured from the northerly edge of the pavement on NW 18th Avenue. The paving will be shown on the construction plans prior to final engineering approval.

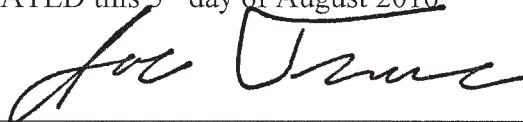
8. Applicant shall limit future access to NW 18th Avenue in one of the following two ways, at its option: ☐
- a) The driveway access point on NW 18th Avenue for the existing house and the cell tower facility shall be shared and shall be no wider than necessary to serve said facility; OR
  - b) Prior to the issuance of a building permit, the owner of the five-acre parcel shall execute and record a covenant to the City to ensure that when any future redevelopment of the remainder of the parcel creates an internal road, such redevelopment shall provide access to the cell tower facility via such road and the cell tower facility's direct access onto NW 18th Avenue shall terminate. The form of the covenant shall be acceptable to the City Attorney, and it shall include the following language or its equivalent:

*Owner agrees on behalf of itself, and its successors and assigns, that any future redevelopment of the remainder of the five-acre property that includes an internal road shall provide legal and physical access to such road for the cell tower facility approved in CUP15- 01, in the form of a new driveway improved to City standards. At such time that the Owner provides an alternative access and driveway to the cell tower facility, the cell tower facility's direct access onto NW 18th Avenue will terminate.*

- 9. Towers shall be designed and constructed in accordance with section 3108 of the IBC and the provisions of TIA-222. Towers shall be designed for seismic loads; exceptions related to seismic design listed in Section 2.7.3 of TIA-222 shall not apply. In Section 2.6.6.2 of TIA 222, the horizontal extent of Topographic Category 2, escarpments, shall be 16 times the height of the escarpment.
- 10. The structural drawings and calculations shall be prepared and stamped by a Professional Engineer licensed by the State of Washington. Category IV, 140 mph wind speed.
- 11. A Washington State licensed engineer will provide reports to the Building Division as follows:
  - a. Prior to pier or foundation installation, a letter that confirms that subsurface conditions are suitable for placement of structural fill, rebar, or concrete for the structure.
  - b. A final letter of geotechnical compliance, wherein the engineer of record has observed pier installation, foundation subgrades prior to concrete being poured.
- 12. Prior to issuance of building permit, the applicant shall record a conservation covenant over westerly Wetland 2 and buffer area. A copy of the recorded covenant shall be provided to the city.
- 13. Prior to receiving final approval from the Building Division, wetland mitigation plantings shall be installed consistent with the approved final wetland permit.
- 14. The applicant shall provide financial assurances for mitigation in accordance with CMC§16.51.180(D) and CMC§16.53.050(J) prior to earth disturbing activities.
- 15. Landscaping and fencing consistent with CMC 18.35.120 and CMC 18.13 shall be installed prior to receiving final approval from the Building Division.

16. The approved landscaping shall be maintained in a manner as to ensure plant survival for three years after installation. A watering system (permanent or temporary) shall be required during dry months. If plantings fail to survive, they must be replaced promptly.
17. The applicant shall continuously maintain the tower, equipment shelters, fencing, and landscaping on the site, including repainting of the tower and equipment, as necessary to ensure continued compatibility with the surrounding residential area.
18. The applicant shall install a sign not exceeding four square feet in a place visible to the general public listing the wireless service provider's name and emergency telephone number as required by CMC 18.35.090.B.
19. Lighting shall be prohibited on the tower unless expressly required by the FAA.
20. Uses, equipment, and activities on the site shall comply with the noise standards of WAC 173-60.
21. The wireless communications support structures shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the wireless communication support structure, antennas, and electronic equipment governed by this chapter shall bring such wireless communication support structure, antennas, and electronic equipment into compliance with such revised standards and regulations within the compliance schedule of the regulatory agency. Failure to the wireless communications support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna, or electronic equipment at the owner's expense. The owners of such wireless communications support structures, antennas, and electronic equipment shall provide the city with copies of all environmental assessments (EA's) required to be submitted to the FCC or FAA regarding locations within the city simultaneously with any filing with the federal agencies pursuant to 47 CFR Part I.
22. This approval shall expire in two years of the date of the final decision per CMC§18.55.260.

DATED this 5<sup>th</sup> day of August 2016.

A handwritten signature in black ink, appearing to read "Joe Turner", is written over a horizontal line.

Joe Turner, AICP  
City of Camas Land Use Hearings Examiner