

**Attention Property Owner:** A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
ADMINISTRATIVE REVIEW CASE NO. 14-015**

**APPLICATION:** Application of Viesko Redi-Mix for an administrative review to collocate additional antennas and related equipment on an existing monopole and to locate the radio equipment in a new lease area on a 3 acre property in an EFU (Exclusive Farm Use) zone located at 16538 Arney Road NE, Woodburn (T5S; R2W; Section 1D; tax lot 2300).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

**EXPIRATION DATE:** This decision is valid only when exercised by **June 23, 2016.**

**WARNING:** A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should check with the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. If the tower structure is removed, all equipment associated with the tower shall be removed and the property restored to its previous condition.

**OTHER PERMITS, FEES AND RESTRICTIONS:** This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

3. The applicants should contact the Woodburn Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications. A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 4:00 p.m. on **JUNE 23, 2014.** If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **JUNE 24, 2014** unless appealed.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (EXCLUSIVE FARM USE). The intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located on the east side of Arney Road approximately ¾ of a mile south of Crosby Road. The property is developed with a cement batch plant. The property was subject of a previous land use case, Administrative Review 04-48 (AR04-48), that resulted in approval of the existing communications tower and Administrative Review 11-026 (AR11-026), that approved changes to the original tower and ground equipment storage area.
3. Properties to the south and east are inside the Woodburn city limits and properties north and west are zoned EFU and include small to large parcels in commercial agricultural use.
4. The applicant is proposing to collocate additional antennas and related equipment on an existing monopole and to locate the radio equipment in a new lease area.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property contains high-value farm soils. The property is not specially assessed by the Marion County Assessor's Office.
6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Building Inspection commented that a building permits will be needed for new construction or to add antennas.

7. The criteria for approving a utility facility necessary for public service are found in Chapter 17.136.040(I) of the Marion County Code (MCC) and includes:

*Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is "necessary" if it must be situated in the EFU zoning in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-33-130(16):*

- (1) *Technical and engineering feasibility;*
- (2) *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for Special Agriculture in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*
- (3) *Lack of available urban and non-resource lands;*
- (4) *Availability of existing right-of-way;*
- (5) *Public health and safety; and*

In this case, the applicant proposes to attach or co-locate antennas on an existing cellular tower and construct additional equipment cabinets in a new fenced area. Under Marion County policy for antennas attached to approved facilities, dated March 22, 2001, a land use review is not required if the tower has been approved, does not increase in height, and additional equipment is located within the existing enclosed area. The applicant's additional antennas would not increase the height of the tower, but the proposed equipment cabinets are intended to be placed on a new 10' x 20' fenced concrete pad area. Subsequently, an administrative review is necessary.

The existing tower was approved under AR04-48 and the findings in that case established that the tower met all criteria. Those findings for the existing tower can be applied to this co-location. To receive approval for the tower, the applicant supplied coverage maps and engineering data demonstrating why the facility must be located at the site proposed. Alternative site locations were explored on adjacent properties within the City of Woodburn that are designated either residential or commercial, and neither zone allows cellular towers. Land in other directions surrounding the identified site is zoned EFU.

As determined in the previous cases, the new antennas would fill a gap in coverage in an established cellular network. As part of a network, and due to technical requirements, towers need to be located in specific areas in order to hand-off calls from one facility to another and provide service. Engineers determined that a site was needed at the location and identified a search area where a tower could be located and provide service. The same data and conclusions apply to the applicant's proposed cabinets and fenced equipment area that are necessary for the cellular operation.

(6) *Other requirements of state and federal agencies.*

- (A) *Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities that are not substantially similar.*

It is not necessary for the applicant to consider land costs or alternative locations because of previous approval for the existing location.

- (B) *The owner of a utility facility approved under this section shall be responsible for restoring, to its former condition as nearly as possible, any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.*

According to AR11-026, the lease agreement signed with the property owner contains provisions for removal of the equipment and restoration of the property if the structures were removed.

- (C) *The applicant shall address the requirements of 136.060(A):*

- (1) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

The applicant proposes to construct an additional ground equipment compound adjacent to the existing communications equipment area and the remainder of the property continues use as a cement batch plant. The new antennas will be located below existing antennas and will not increase the height of the tower. Therefore, no additional land that is being farmed would be taken out of production to accommodate the use. The proposal will create no adverse impacts on surrounding farmed lands and, due to its low power usage, should not be the source of interference with any electronic equipment being used in the area.

- (2) *Adequate fire protection and other rural services are, or will be, available when the use is established.*

All necessary services are currently available at the site.

- (3) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*

The property is not located within a unique or specially classed watershed area, or identified floodplain. The property is not within the Sensitive Groundwater Overlay zone, and the proposed use will not affect the groundwater. There will be no septic systems associated with the facility and there will be no air or water pollutants generated by the facility. The property is not located within a geologic hazard area.

- (4) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The equipment will generate minimal noise levels. In addition, it is buffered from neighboring properties by Interstate-5, vegetation, and distance. There should be no adverse noise impacts on any nearby land uses.

- (5) *The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.*

The Marion County Comprehensive Plan identifies no potential water impoundments or significant mineral and aggregate sites in the area.

- (D) *In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an Exclusive Farm Use Zone shall be subject to the provisions of OAR 660-011-0060.*

This criterion is not applicable to this case.

- (E) *The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.*

This criterion is not applicable to this case.

8. Based on the above findings, the applicant's request meets the criteria for a utility facility necessary for public service in an EFU zone and is **APPROVED**, subject to conditions.

Warren Jackson  
Director-Planning Division

Date: June 6, 2014

If you have any questions regarding this decision contact Lisa Milliman at (503) 588-5038