

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. 24-023**

APPLICATION: Application of the William and Charlotte Grosjacques living trust, for an administrative review to place a communications facility as a utility facility for public use on a 16.70-acre parcel of land in the EFU (Exclusive Farm Use) zone located at 8692 Humpert LN NE, Mt. Angle (T6S; R1W, Section 15A; Tax Lot 100).

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 **November 6th, 2026** (two years) unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

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 contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicant shall obtain any and all permits, including any subsurface sewage disposal, as required by the Marion County Building Inspection Division.
2. 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.
3. The development shall significantly conform to the site plan submitted. Minor changes are allowed after review and approval by the Planning Director.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect 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 restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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 5:00 p.m. on **November 6th, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 7th, 2024**, 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 Exclusive Farm Use (EFU). Utility facilities necessary for public service are a use permitted subject to standards in the EFU zone.
2. The subject property is located on the eastern side of Humpert Ln NE in the 8600 block. The property is developed with a dwelling built in 1995 and associated accessory and farm buildings. The property has a canal/ditch running through it and was the subject of multiple land use cases: AR94-093 and CU95-077 and is therefore considered legal for land use purposes.
3. Surrounding uses are farm uses in all directions. All adjacent parcels are zone EFU and are in active farm production, with the exception of the Mt. Angel Abbey which sits atop the hill to the east.
4. The applicants are proposing to place a telemetry communications tower as a utility necessary for public service. This 20 foot tall pole will be used by NW Natural to communicate with its existing gas systems.
5. The subject property is comprised of approximately 100% high value soils.
6. Marion County Land Development Engineering & Permits (LDEP) commented regarding requirements for the proposal:

ENGINEERING REQUIREMENTS

- A. An Access Permit is required to install a new driveway approach, and is already in applied status under record #555-24-001056-PW.
- B. Transportation System Development Charges (TSDCs) will be assessed at the time of application for building permits. The proposed use best approximates the county's Agricultural category for "Cell Tower" that is assigned a flat amount of roughly \$20 for 2024.
- C. Utility service extensions such as electric power and gas originating from within the public right-of-way to the property require permits from MCPW Engineering.

Marion County Building Department commented:

"No Building Inspection concerns. Permit(s) would be required to be obtained prior to the construction or installation of electrical systems. A permit would also be required for a communication tower if within the urban growth boundary, according to Marion County Code 15.05.250(A). The proposed 7 foot fence would not require a permit according to this same Marion County Code."

All other commenting agencies stated no objection to the proposal.

7. Communications towers are a "Utility Facility Necessary for Public Use" as found in MCC 17.136.040. the approval criteria are found below:
 - I. *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 zone 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 660-033-0130(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 exclusive farm use 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 nonresource lands;*
4. *Availability of existing right-of-way;*
5. *Public health and safety; and*
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 and the siting of utility facilities that are not substantially similar.*
 - 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.*

The applicants state that they found a need for land around Mt. Angel for this communications pole through their research. The site needed to be in range of strong cellular signals and have access to electrical power. This site currently contains a cellular tower already and the applicants have an agreement with PGE to provide power to the site. The monitoring system also need to be located next to existing NW Natural gas lines, which are present on the eastern side of Humpert Ln NE. Additionally, the site needs vehicle access from a roadway, and Humpert Ln NE provides this access. An easement will also be provided to the site for NW Natural employees. There are no associated public health or safety concerns with this proposal, as the site will not require employees to operate it and does not produce odors, fumes, gases, or any other outputs that would be detrimental to public health or safety. Rather, this site monitors the gas system to further protect public safety. The lease agreement contains a provision to return the site to its prior conditions upon removal. All of the above criterion are met.

The tower is 20 feet tall and will be fenced, there are no special setbacks that need to be applied to this request or any other development standards.

c. The applicant shall address the requirements of MCC 17.136.060(A)(1).

MCC 17.136.060(A) (1) reads:

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.*

There will be no cost to the property owner nor will there be for any adjacent property owner. The construction of this tower will disturb the least amount of land possible and is not expected to affect any adjacent farm operations. The criterion is met.

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.

No sewer system is proposed. The criterion does not apply.

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.

The facility is a natural gas pipeline. The criterion does apply. We shall stop addressing the criteria at this point.

8. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 22, 2024

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

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.