

ATTACHMENT D – STAFF REPORT

File Number: 921-PLASAR-14-12-0022-01

Applicant: Blake Lawrence- Windwave Communications, LLC, PO Box 1390, Boardman, OR, 97818

Owner: Oregon Department of Transportation
Wasco County

Request: Extension of Time request for one 5.9 mile segment, and one 0.8 mile segment of buried fiber optic cable in conduit, located within the Columbia River Gorge Scenic Area, as part of a 13 mile long project within Wasco County, which is part of a larger 65 mile regional fiber optic network extending from Arlington to The Dalles, Oregon.

Decision: **Approved,** with Conditions

Decision Date: October 17, 2019

Appeal Deadline: November 1, 2019

Location: The area of development within the NSA is located within the rights-of-way of Celilo Wasco Highway/Highway 206, Old Moody Road, and Fifteenmile Road. The first segment is 5.9 miles long, begins on the Deschutes River Bridge on Celilo Wasco Highway/Highway 206 and continues on Old Moody Road (to the right-of-way adjacent to tax lots 2N 14E 0 300 and 1400). The second segment is 0.8 miles long, begins on Fifteenmile Road (in the right-of-way adjacent to tax lot 1N 14E 0 2400) and continues on Fifteenmile Road to City of The Dalles (entering The Dalles in the right-of-way adjacent to tax lots 2N 14E 31D 1400 and 2N 14E 31D 600)

Zoning District: One segment of the project is located within Wasco County Exclusive Farm Use Zone (A-1 (160)). Two additional segments of the linear facility will occur within the General Management Area (GMA) of the Columbia River Gorge National Scenic Area (NSA) on lands zoned Large-Scale Agriculture (A-1 (160) and A-1 (40)); Open Space (OS); Public Recreation (PR); and Rural Residential (R-R (5)).

Past Actions: The past actions pertaining to this specific request include:
PLASAR-14-12-0022 (Original request)
PLAPRE-14-06-0004 (Pre-application conference)

Procedure Type: Administrative

Prepared By: Lisa Johnson, Associate Planner

I. APPLICABLE STANDARDS

Wasco County National Scenic Area Land Use & Development Ordinance (NSALUDO)

Chapter 2 – Development Approval Procedures

Section 2.240, Expiration of Approvals

Section 2.250, Extension of Validity of Land Use Approvals

II. BACKGROUND

- A. Legal Parcel:** The development is proposed to be within the rights-of-way of Celilo Wasco Highway/Highway 206, Moody Road, and Fifteenmile Road. These locations are existing public road rights-of-ways owned and maintained by public entities (ODOT and Wasco County) for public use.
- B. Site Description:** Site Description: The project area is located in north Wasco County, between the City of The Dalles and the Deschutes River. From east to west, the 5.9-mile segment (the eastern segment) will begin at the Deschutes River Bridge; continue west on Celilo Wasco Highway/Highway 206, south on Old Moody Road, then west on Old Moody Road to the NSA exterior boundary. The 0.8-mile segment (the western segment) will begin at the NSA exterior boundary on Fifteenmile Road and continues west to the NSA Urban Area Boundary of the City of The Dalles.
- C. Public Comment:** Notice of Administrative Action was mailed March 19, 2015 to all land owners within 500 feet of the subject parcel; the U.S. Forest Service Columbia River Gorge National Scenic Area Office; Columbia River Gorge Commission; Oregon Department of Fish and Wildlife; Oregon Department of Forestry; National Scenic Area Treaty Tribe governments; and other interested parties registered with Wasco County. Written comments were received from the following:

Margaret L. Dryden, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area: Ms. Dryden submitted a letter summarizing her review of the archaeological reconnaissance survey report submitted by Alexander Gall and Michael Smith from Archaeological Services, LLC. Ms. Dryden's letter states: *"The archaeological report meets the management Plan guidelines and Wasco County Ordinance."*

Keith Baird, Confederated Tribes of the Nez Perce: Mr. Baird cited asked about the procedures used for the archeological investigation. These comments were addressed through e-mail, by staff.

Holly Shea, Confederated Tribes of the Warm Springs Reservation of Oregon: Ms. Shea provided two comment letters. The first expressed some concern. After a tour of the site on April 24, 2015, Ms. Shea provided a second letter that states *"I no longer have concerns with this specific project moving forward."*

Rod French, Oregon Department of Fish and Wildlife: Mr. French stated that *"The ODFW does not have specific concerns with the application, as it appears there will be little affect to aquatic resources."*

Ross Curtis, Oregon State Historic Preservation Office: Mr. Curtis submitted a letter stating “We have reviewed the report by Archaeological Services, LLC (SHPO Report #27261) and agree that the project activities, as describe in the report, will likely have no adverse effect on... known archeological sites.” Mr. Curtis noted that if tie pits are needed, the excavation should be monitored by a qualified archaeologist, and an Inadvertent Discovery Plan should be put in place. He also noted that if archaeological resources are found during construction, work should cease until a professional archaeologist can evaluate the discovery.

Jason Allen, M.A., Oregon Parks and Recreation Department: Mr. Allen submitted a letter stating “We have reviewed the materials on the project referenced... and we concur with the determination that the Deschutes River Bridge on US-30 is not eligible for listing in the National Register of Historic Places.”

III. FINDINGS:

Wasco County National Scenic Area Land Use & Development Ordinance (NSALUDO)

Chapter 2 – Development Approval Procedures

Section 2.240, Expiration of Approvals

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- C. *Land Use Approvals with Structures: Any land use approval issued pursuant to this Ordinance for a use or development that includes a structure shall expire as follows:*
1. *When construction has not commenced within two years of the date the land use approval was granted, or*
 2. *When the structure has not been completed within two years of the date of commencement of construction.*

The expiration date for the validity of a land use approval is from the date of the expiration of the appeal period and not the date the decision was issued.

FINDING: The request was originally approved on June 18, 2015, and the appeal period ended on July 3, 2015. According to NSA-LUDO Section 2.240 the applicant had two years from the date the land use approval was granted (July 4, 2015) to begin construction. Once construction has begun, the applicant had two years to complete the project. The applicant has submitted materials stating that the start of construction started in July of 2017. This date is considered to be the start of construction because no work was commenced before this time due to competing global communications contractors building in the same area. Work by Windwave was halted, until the area was accessible. According to NSA-LUDO Section 2.240, the applicant had until July 3, 2019 to complete the construction. Based on this date, the approval would have expired at 4:00 p.m. on July 3, 2019 if the owner had not submitted an application for an extension of time. The validity of the land use approval is addressed below. Staff finds that the request complies with Criterion C.

D. Commencement of Construction: As used in C(1) above, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

FINDING: The request is for an extension of time for a fiber optic cable network along Old Moody Road and Fifteenmile Road in the Columbia River Gorge National Scenic Area. The development is to be located underground in the right-of-ways of both roads. The applicant submitted a written narrative that work conducted by Windwave, including excavation of trenches, was halted within the original application because of competing global communications contractors. Staff finds that the current request complies with Criterion D.

Section 2.250, Extension of Validity of Land Use Approvals

A request for extension of the time frames in 2.240(B), C(1) or C(2) above, shall be submitted in writing before the applicable expiration date. The expiration date for the validity of a land use approval is from the date of the expiration of the appeal period and not the date the decision was issued.

FINDING: The request is for an extension of time. As discussed in Section 2.240.C. above, the two year approval period would expire at the end of the day on July 3, 2019. On November 28, 2018, the applicant wrote an email with the intent to apply for an extension before the original expiration. On June 20, 2019, staff received full payment by the applicant and a written request for a one year extension of time in order to continue construction. Staff finds that the request complies with this criterion.

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B. The Director may also grant one 12-month extension if they determine that events beyond the control of the applicant prevented completion of the structure (applicable to 2.240C(2) above) within the original two-year time frame.

FINDING: The Extension of Time Request is being approved through this review for the reasons discussed below in Criterion C. A **condition** of approval is included in the Notice of Decision stating that the extension of time will be valid for one additional year, and will expire on July 3, 2020 at 4:00 p.m. The owner should be aware that all of the original conditions of approval continue to apply to this approval. A **condition** of approval is included in the Notice of Decision requiring compliance with all of the conditions of approval in the Notice of Decision dated June 18, 2015. With proposed **conditions** of approval in the Notice of Decision, staff finds that the request complies with Criterion A.

C. A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.

FINDING: According to the written narrative submitted by the applicant, the development was halted due to competing global communications contractors building in the same area. It was believed at the time that cooperation with said contractor would be possible, so both parties could operate, and

complete their respective projects. This proved not to be the case and work by Windwave was halted until such time as the area was accessible to resume construction. Staff finds that the events were beyond the control of the applicant, and that the request complies with Criterion C.

D. Approval or denial of a request for extension shall be considered an administrative decision.

FINDING: This decision is following the process for an administrative decision issued by the Wasco County Planning Department. A pre-notice (Notice of Administrative Action) was sent to all affected owners and agencies on March 19, 2015, and a 15-day comment period was provided. Comments received are listed in Section II.C. Notice of the decision is being sent to all previous parties of record, current parties of record, and affected property owners and agencies. Staff finds that the request complies with Criterion D.