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TO: Crook County Planning Commission

FROM: John Eisler, Community Development Director

DATE: January 7, 2026

SUBJECT: Supplemental Memo: Alexander Ranch, Record 217-25-000293-PLNG

The Crook County Planning Commission (the "Commission") is convening for a continued December 17, 2025 hearing regarding Record No. 217-25-000293-PLNG, an application for a utility facility necessary for public service under CCC 18.16.015 and ORS 215.283(1) and 215.275. The site plan application requests approval to construct and operate a new one hundred and fifty foot (150') monopole with an overall height of one hundred and fifty-eight feet (158') to accommodate a new telecommunication facility. The proposed telecommunication facility consists of nine (9) panel antennas, auxiliary equipment, three (3) equipment cabinets that house ratio equipment and/or batteries, and a 30kw diesel backup generator. The subject property is located on SW Williams Rd, north of Hwy 126 and is identified as map tax lot number 1514140000100.

The purpose of this supplemental memo is to inform the Commission of new evidence submitted into the record subsequent to the December 10, 2025 Staff Report (the "Staff Report"), and equip the Commission with the analytical framework to consider whether the Applicant has met its burden on the applicable criteria. The Staff Report covered Exhibits 1-52. As of the evening of January 6, 2026, Exhibits 53-188 have also been entered into the record. This memo will also aim to address the most relevant and substantive comments in the newly entered exhibits. Comments that are not addressed in this memo will be addressed in the final staff report/draft decision.

I. Procedural Background

The application was accepted on August 28, 2025. Public notice was posted on the Crook County public notices page and the Crook County Planning Commission calendar on November 13, 2025, posted in the Central Oregonian newspaper on November 18, 2025, and mailed to neighbors within 750' of the property boundaries on November 26, 2025. The initial evidentiary hearing was held on December 17, 2025, and continued, with the record remaining open, to a time and date certain of January 14, 2026. The

Applicant supplied a letter waiving both state and federal timelines and tolling the relevant timelines to a date of February 27, 2026.

II. Substantive Background

While there are additional local criteria and numerous additional arguments by the opposition, consideration of the application boils down to the statutory requirements of ORS 215.275. As LUBA stated in the *Seeberger* case:

In *T-Mobile USA* we concluded that state law precludes the county from applying the [county's] site design standards to deny the proposed utility facility. While we did not explicitly go on to state that state law would also preclude the county from applying the site design standards to approve the application, under the reasoning that precedes the above-quoted conclusion it is clear that the gist of our holding is that the county cannot apply the site design standards at all to the proposed utility facility. We agree with intervenor that the issue of whether the county can apply the site design standards to the proposed facility was resolved in *T-Mobile USA*.

Seeberger v. Yamhill County, 56 Or LUBA 656, 658 (2008) (internal quotations and citations omitted). Application of the criteria of ORS 215.275 against the technical evidence in the record is a significant undertaking on its own. This memo will focus there.

The Staff Report set the stage as follows:

Crook County's code incorporates the language from ORS 215.275, which is a codification of *McCaw Communications, Inc. v. Marion County*, 96 Or. App. 552, 773 P.2d 779 (1989). In *McCaw*, the court articulated that the term "necessary" in a "utility facility necessary for public service" on EFU ground means "necessary to situate the facility in the agricultural zone in order for the service to be provided." *Id.* at 556. In codifying *McCaw* through ORS 215.275, the legislature enumerated six factors that local governments may consider in whether the facility is necessary.

Thus, an applicant must demonstrate that it has considered reasonable alternatives, but due to one or more of the factors in ORS 215.275(2), it is necessary to site the facility on EFU land. "When deciding whether it is necessary to site a public utility facility on EFU land, local governments must analyze any alternatives based on *ORS 215.275*. They may not import additional policy considerations into their analysis." *Sprint PCS v. Washington County*, 186 Or. App. 470, 476 (2003).

In *Sprint PCS*, the neighbors argued that “reasonable alternatives” requires an applicant to consider other options such as collocation, more antennae on an existing tower, or alternate technologies and that merely “because the applicant may have a desire to construct a commercial tower on EFU land to maximize profit by selling space on that tower, the County is not obligated under [ORS 215.275] to defer to that desire under state land laws.” *Id.* at 477-78. The court in *Sprint PCS* interpreted ORS 215.275 to conclude that it is only the factors set out in ORS 215.275(2) that may be “considered in deciding when those reasonable alternatives may be rejected.” *Id.* at 479.

The neighbors in *Sprint PCS* also argued that local governments and the courts should not defer to a utility’s business plan to establish the need, which would have the effect of “elevating the utility’s business goals over the statutory goal of protecting farmland.” *Id.* at 480. While LUBA in that case determined that local governments should defer to a utility’s defined objectives, the Court of Appeals clarified such a methodology gives too much deference to the utility’s defined objectives and instead, “[w]hen a utility’s defined objective is inconsistent with placing a facility on an otherwise reasonable non-EFU site, local governments should ask whether that objective advances the statutory goal of providing the utility service.” *Id.* at 481.

The particular issue in *Sprint PCS* was that the utility wanted to build a new tower on EFU ground and lease out space on that new tower to other providers instead of collocating on an existing tower. The utility argued that planning for more capacity than what is currently needed is simply efficient in the context of towers with a thirty-year lifespan. The neighbors argued that maximizing profit by leasing out space does not further the statutory goal of providing service. The court clarified that “if a county were persuaded that the additional capacity was a reasonable part of the utility’s plan to provide the service, the county could find that building a new tower rather than collocating on an existing one would advance the statutory goal of providing utility services. The county then could conclude that collocation was not a reasonable alternative. That question, however, presents a factual issue for local governments, subject to review by LUBA.” *Id.* at 482.

The focus of the Planning Commission should thus be on the statutory goal of “providing utility service” and that “reasonable alternatives” have been considered, and whether or not all of the reasonable alternatives

can be precluded from consideration due to one of the enumerated factors in ORS 215.275(2).

The Staff Report continued by advising that, as the evidence and testimony accumulated, the Commission should hone-in on the three main questions:

1. Do the Applicant's defined objectives support the statutory goal of "providing utility service"?
2. Have reasonable alternatives been considered?
3. Have all of those alternatives been effectively ruled out by one of the enumerated factors in ORS 215.275(2)?

Three sets of new exhibits address these criteria in detail. Broadly, the new exhibits include the following arguments.

1. Objectors' Exhibits 178-79

In Exhibits 178 and 179, Objectors Annette Kolodzie and Karen Jones, supported by experts Steve Mahon and Michael Scheinfein, counter that the Applicant has failed to meet the burden of proof required for siting a utility facility on EFU land for a multitude of reasons, including the lack of a legitimate public necessity, data insufficiencies, and viable reasonable alternatives.

2. Applicant's Exhibits 180-83

In Exhibits 180 through 183, the Applicant provides additional technical data and expert testimony from Steven Kennedy, a Radio Frequency Engineer, including a Drive Test Report to bolster the claim that the facility is necessary for public service and that no feasible non-EFU alternatives exist.

3. Objectors' Exhibits 178-79

In Exhibits 187 and 188, Objectors Kolodzie and Jones, through further expert testimony from Michael Scheinfein, provide additional challenges to the Applicant's claim of necessity and the feasibility of alternatives.

III. Recommendation for Current Hearing

The Commission's job here is not easy. This application and the applicable criteria raise highly technical questions, with competing expert evidence. The Commission must base its decision on substantial evidence in the record. Substantial evidence is that which a reasonable person would rely on to support a conclusion. *Dodd v Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). The Commission's decision must "(1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards." *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

How is the Commission supposed to parse through the voluminous record of technical exhibits presented? Is each Commission member expected to know more about low bands, offloading, and throughput than those testifying with decades of specific education and experience? No. But it is incumbent on the Commission as the fact finder to assess the *credibility* of the evidence presented and give it appropriate weight in coming to a decision. *Royal Blue Organics v. City of Springfield*, 310 Ore. App. 518, 526 (2021). Where – as it was before the initial evidentiary hearing – only one side presents expert testimony, some level of scientific knowledge or professional expertise is required to effectively rebut such testimony. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015); *Oberdorfer v Harney County*, 64 Or LUBA 47 (2011). This is true even in the absence of the scientific studies upon which the expert’s opinion is based. *Getz v. Deschutes County*, 58 Or LUBA 559, 569 (2009).

Where there is competing and conflicting expert testimony, the rules change. While the burden remains with an applicant to establish that the relevant criteria have been met, the Commission now must simply weigh all the evidence in the record and come to a decision as a “reasonable person” could decide. *Fairmount Neighborhood Assoc. v. City of Eugene*, 80 Or LUBA 551 (2019). A reviewing authority, such as LUBA, will not second guess the Commission. *Id.* So it is the Commission’s job to weigh the credibility of the evidence and choose which expert(s) to believe. *Teen Challenge v Lane County*, 67 Or LUBA 300 (2013). What is important is that – in the final decision – the Commission articulates *how and why* it came to the decision that it did, based on the experience and findings of the various and competing experts. *Gould v Deschutes County*, 78 Or LUBA 118 (2018).

Both the Applicant and Objectors have provided expert testimony. Applicant’s experts are Tom Fergusson, RF Engineer and Steven Kennedy, a Radio Frequency Engineer with over 35 years of experience in Wireless Network Engineering. Objectors’ experts are Steven Mahon, a radio frequency semiconductor consultant, with both a Bachelor’s and Master’s of Science in Electrical Engineering and 40 years’ experience in radio frequency electronics and retired Professor Michael R. Scheinfein, Ph.D. in Applied and Engineering Physics in 1985.

Now, with that extensive background, staff directs the Commission’s attention back to the Staff Report’s original summary:

1. Do the Applicant’s defined objectives support the statutory goal of “providing utility service”?
2. Have reasonable alternatives been considered?
3. Have all of those alternatives been effectively ruled out by one of the enumerated factors in ORS 215.275(2)?

1. Do the Applicant's defined objectives support the statutory goal of "providing utility service"?

The application stated that the proposed telecommunications facility is a utility facility necessary for public service because it will provide infrastructure that is essential to the public, including critical communication services such as emergency response, law enforcement, fire protection, and medical services. The Applicant's defined objectives are an increase in capacity along Highway 126 between Redmond and Prineville and to expand coverage to the Powell Butte community. Staff interprets this criterion as a threshold matter, meaning if the Applicant cannot establish that its defined objectives support the statutory goal of providing utility service, the rest of the criteria are irrelevant, and the application should be denied. If instead that Applicant meets its burden of proof on this criterion, the analysis continues.

A. Search Ring

As a preliminary matter, one of the Objectors' arguments is that the search ring provided by the Applicant is inconsistent and therefore cannot be relied upon. As described in the *Sprint PCS* case, the search ring "is the first phase in siting a wireless communication facility. To create a search ring, a 'ring' is drawn on a map over an area that the service provider has determined to be sufficient to provide the desired coverage to customers. The area within the 'ring' is then analyzed to determine whether suitable sites are available for a proposed facility based on additional criteria such as elevation." *Sprint PCS v. Washington County*, 186 Or. App. 470, 476 (2003).

LUBA has addressed the issue of an imprecise search ring and ruled that the search ring does not need to be precise if there is a map "sufficient to identify the general area where the new cell tower needs to be located." *Getz v. Deschutes County*, 58 Or LUBA 559, 565 (2009). Here, however, the Objectors argue the search ring is inconsistently described throughout the application, thus it is up to the Commission as the finder of fact to determine if the search ring or rings provided are sufficient to identify the general area where increased coverage and capacity are needed.

B. Coverage

The Applicant defines coverage as "providing service where service does not exist, calls drop, or 'no service,'" and describes areas "where sites are farther apart," "where terrain or buildings block signals," and "where indoor service is low or nonexistent." The Applicant expands on the coverage objectives as needing to provide coverage "in the rural area North of Highway 126" and "along SW Williams Road and feeder roads."

In Exhibit 178, Objectors and their experts point out that Tom Fergusson, the Verizon engineer, stated on page 81 of the application that "Overall, the signal strength is good to excellent. If Verizon did not have any exhausted sectors, this design would work just fine but will struggle as sites have diminished capacity." Objectors provide additional

arguments against the need for increased coverage, including that much of the area to the north of the proposed site is uninhabited.

C. Capacity

The Applicant describes capacity as “providing bandwidth or processing capacity to service the customers in the area,” and describes areas “where large numbers of users are in a specific geographic areas [sic],” “where users are demanding higher data rates for services,” and “with a large amount of indoor users.” The Applicant describes the capacity objectives as providing “additional bandwidth for customers in the area surrounding the proposed site,” providing “better throughput for indoor users in the area,” and offloading “sites to the West and South that are over capacity.”

Objectors’ Mahon report notes that the application has very little data concerning capacity, and what is available focuses solely on the low band capacity with nothing for the higher bands.

In Exhibit 183, the Applicant’s expert Steven Kennedy, submitted a Drive Test Report from July 2025 using industry-standard scanners to validate propagation models against real-world signal strength. While signal strength appears adequate in spots, Kennedy says the actual data throughput is erratic and demonstrates that existing sites are over capacity.

2. Have reasonable alternatives been considered?

As described earlier in this memo, the Applicant has considered co-locating at three existing towers – American, Wiley, and Powell Butte South – as well as new towers at four locations in the surrounding area. New towers under this analysis must be sited on non-EFU zoned land.

Objectors argue for various reasons that the Applicant did not present reasonable alternatives. One such argument is that two of the alternate sites are on EFU ground. According to the County’s GIS system, Alternate Site 2 is in fact on PBR20 ground, though it is quite close to the EFU-3 zone. However, the coordinates for Alternate Site 3 *do* land in the EFU zone, which may rule it out as a potentially reasonable alternative, though it is close to the R5-zoned Twin Lakes area.

Objectors also present nine new alternative non-EFU sites. The statute, ORS 215.275, requires that where “another party identifies an alternative site with reasonable specificity to suggest that it is a feasible alternative, **that site must also be considered.**” *Getz v. Deschutes County*, 58 Or LUBA 559, 565-66 (2009) (emphasis added and internal citations omitted).

3. Have all of those alternatives been effectively ruled out by one of the enumerated factors in ORS 215.275(2)?

The Objectors inclusion of technical adjustments to existing towers and additional alternative sites raises the inclusion of ORS 215.275(3), which reads in relevant part, “Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service.” This subsection provides context regarding the extent to which an alternative is “reasonable.” The Commission can lean on the guidance from the *Sprint PCS* case as it weighs the evidence and arguments:

ORS 215.275(3) demonstrates, however, that the obligation to consider reasonable alternative sites may include an obligation to consider different designs to adapt a utility's chosen methodology to non-EFU land. That subsection identifies when the "costs associated with any of the factors listed in subsection (2)" of *ORS 215.275* may be considered. . . . Subsection (3) thus implies that the obligation to consider reasonable alternatives may include consideration of facilities on non-EFU land that are "not substantially similar" to the facilities sited on EFU land.

Sprint PCS v. Washington County, 186 Or. App. 470, 476 (2003). It is therefore appropriate in the consideration and elimination of reasonable alternatives to include suggested alternatives from the Objectors’ experts that differ in cost or design. If these suggested alternatives would also satisfy the Applicant’s legitimate defined objectives to provide utility service in a reasonable manner and cannot be eliminated through one of the factors in ORS 215.275(2), the Applicant has failed to meet their burden. As described earlier in this memo, the Applicant ruled out each of the co-location options and the new non-EFU towers as not meeting the defined objectives for one reason or another relating to technical feasibility – this would fall under the enumerated factor of ORS 215.275(2)(a), technical and engineering feasibility.

A. Sprint/American Tower

A 196’ lattice tower 4.28 miles southeast of the project site on parcel # 1515210000400. The Applicant states this site will not achieve the coverage or capacity objectives, as it provides reduced coverage compared to the subject property and “does not provide the offload to the neighbors to the East and South.”

Objectors reference their Mahon report which concludes that this tower is a reasonable alternative to the proposed site. The Mahon report notes that, while “indoor coverage” at this location would be inferior, “in-vehicle coverage” would be slightly better, the tower is at a greater height (better coverage), and a cheaper cost. Mahon goes on that the justification to exclude this tower by the Applicant is a subjective statement not supported by the accompanying data. Objectors also point out that Verizon previously

sought and received approval at this location, undercutting the assertion that this location is not feasible.

B. Wiley Tower

The Applicant notes that this tower is already equipped with Verizon antennas and adding more, “will not provide the power per link or the throughput per link needed to resolve the issue.”

C. Powell Butte South Tower

The Applicant notes that this tower already has Verizon antennas and adding more “will not provide the power per link or the throughput per link needed to resolve the issue.”

D. Alternate Site #2 (PBR20)

The Applicant states that this location provides reduced coverage compared to the subject property and is situated “too close to the neighbor sites to the South and will not provide the service needed to the North.”

E. Alternate Site #3 (R5-NW)

The Applicant rules this site out as a reasonable alternative because this site is too far north, does not provide offload to the neighbor sites to the south, and provides less coverage than the subject property.

Objectors’ Mahon report notes that this site would have 16% less “indoor” coverage but 2% greater “in-vehicle” coverage. Objectors point out that this site is actually on EFU ground, but is nearby the Twin Lakes area, which would be an appropriate reasonable alternative.

F. Alternate Site #4 (R5-SE)

The Applicant deems this location unsuitable because it is too near existing facilities and will not provide the needed service to the north, has reduced coverage, and does not fulfill the project’s technical requirements.

G. Alternate Site #5 (RSC)

The Applicant eliminates this site because, like other southern alternative sites, this location does not provide the needed service to the north and has inferior coverage.

H. Objectors’ Alternate A (R10)

Objectors’ Alternate A is representative taxlot 161500000050, coordinates 44.216391°N, 120.964527°W, elevation 4183'. Objectors note that Site A is at a greater elevation and on the north side of the Powell Buttes and thus provides greater coverage than the proposed site. The capacity issues in the area could be relieved, assert the Objectors, by then optimizing the Wiley Tower to offload the strained capacity

of the Powell Butte Tower. Finally, Objectors assert that this alternative would enable a tower at a lesser height that blends better into its environment.

I. Objectors' Alternate B (R10)

Objectors' Alternate B is representative taxlot 1515320000701, coordinates 44.222597°N, 120.964237°W, elevation 3682'. Like Objectors' Alternate Site A, this option is at a greater elevation and on the north side of the Powell Buttes and thus provides greater coverage than the proposed site. The capacity issues in the area could be relieved, assert the Objectors, by then optimizing the Wiley Tower to offload the strained capacity of the Powell Butte Tower. Finally, Objectors assert that this alternative would enable a tower at a lesser height that blends better into its environment.

J. Objectors' Alternate C (R10)

Objectors' Alternate C is representative taxlot 1614030000506, coordinates 44.218265°N, 121.040179°W, elevation 3242'.

K. Objectors' Alternate D (PBR20)

Objectors' Alternate D is Alternate D (PBR20): representative taxlot 1614020000500, coordinates 44.207958°N, 121.020621°W, elevation 3434'.

L. Objectors' Alternate E (R10)

Objectors' Alternate E is representative taxlot 1614110001100, coordinates 44.198621°N, 121.018139°W, elevation 3,575'.

M. Objectors' Alternate F (PBR20)

Objectors' Alternate F is representative taxlot 1614110001001, coordinates 44.196696°N, 121.013110°W, elevation 3742'.

N. Objectors' Alternate G (R5)

Objectors' Alternate G is representative taxlot 1514100001400, coordinates 44.286734°N, 121.044943°W, elevation 2983'.

O. Objectors' Alternate H (R5)

Objectors' Alternate H is representative taxlot 1614150000412, coordinates 44.185198°N, 121.026978°W, elevation 3936'. Objectors note that this site is nearby (0.4 miles), at a higher elevation, with a lower tower height, hidden in the hillside and able to provide offload to the Powell Butte South Tower.

P. Objectors' Alternate I (R10)

Objectors' Alternative I is representative taxlot 1614210000600, coordinates 44.179256°N, 121.052647°W, elevation 3328'.

As stated initially, there are many remaining arguments raised by opponents to the application. Many such arguments related to technical errors, data flaws, and incorrect methodologies by the Applicant's experts relating the criteria above. Likewise, there was further evidence supplied by the Applicant that did not make inclusion in this memo. As the record is already well over 600 pages, the focus of this memo was to arm the Commission with the proper legal framework to analyze the main arguments and evidence presented by the parties at the January 14th continued hearing.

Please let me know if you have any questions.