

1                           BEFORE THE LAND USE BOARD OF APPEALS  
2                           OF THE STATE OF OREGON

3  
4 TOM BENDER,                           )  
5    )  
6                    Petitioner,                            )  
7    )  
8                    vs.                                        )  
9    )                    LUBA No. 95-078  
10 TILLAMOOK COUNTY,                            )  
11    )                    FINAL OPINION  
12                    Respondent,                            )                    AND ORDER  
13    )  
14                    and                                        )                    (MEMORANDUM OPINION)  
15    )                    ORS 197.835(16)  
16 AT & T WIRELESS SERVICES,                            )  
17    )  
18                    Intervenor-Respondent.                            )

19  
20  
21            Tom Bender, Nehalem, filed the petition for review and  
22 argued on his own behalf.

23  
24            No appearance by respondent.

25  
26            Pamela J. Beery, Portland, filed the response brief and  
27 argued on behalf of intervenor-respondent. With her on the  
28 brief was O'Donnell Ramis Crew Corrigan & Bachrach.

29  
30            HANNA, Referee; GUSTAFSON, Referee, participated in the  
31 decision.

32  
33                    AFFIRMED                                        12/05/96

34  
35            You are entitled to judicial review of this Order.  
36 Judicial review is governed by the provisions of ORS  
37 197.850.

1 Opinion by Hanna.

2 **MOTION TO INTERVENE**

3 AT&T Wireless Services moves to intervene in this  
4 proceeding on the side of respondent. There is no objection  
5 to the motion, and it is allowed.

6 **DISCUSSION**

7 Petitioner appeals the county commission's approval of  
8 a conditional use permit to install cellular telephone  
9 communications equipment on Neahkahnie Mountain which is  
10 located in Oswald West State Park. The equipment will  
11 consist of an electronic equipment shelter and antennas  
12 mounted on the shelter and on an already existing tower.

13 Petitioner makes seven assignments of error.  
14 Petitioner alleges that the decision violates a Department  
15 of State Parks and Recreation master plan prohibition on  
16 specified uses; the decision violates the county  
17 comprehensive plan and Ordinance prohibitions on specified  
18 uses; three mandatory criteria in Tillamook County Land Use  
19 Ordinance 6.040 were not supported in the record; the county  
20 did not comply with ORS 197.763(4)(a); and the appeal fee  
21 structure and the fee assessed by the county violate ORS  
22 215.422(1)(c).

23 We find that none of petitioner's assignments of error  
24 merits remand or reversal, and all are, therefore, denied  
25 ORS 197.835(16)