

12:00 PM PST

PUBLIC MEETING – FORD ALUMNI CENTER, ROOM 403\*

– Roll call and verification of a quorum

1. **Approval to enter into condemnation proceedings regarding the cell tower on Hayward Field (action)**, *Vice President and General Counsel Kevin Reed*

Adjournment

*\*This is a telephonic meeting of the Board. The physical location is available for members of the public to listen to the proceedings.*

**REQUESTED ACTION**

The University of Oregon (UO) seeks approval from the Board of Trustees (Board) to enter into condemnation proceedings with respect to a ground lease on UO property currently housing a cellular tower owned by SBA Communications. The tower is located in the perimeter of the Hayward Field renovation project and must be relocated. The proposed relocation site would be within one-quarter mile of the current location, meeting SBA's parameters and having no impact on coverage. At the time of this document's publication, negotiations with SBA for a relocation, temporary cellular service coverage and conciliatory modifications to the existing ground lease have been unsuccessful. The UO is at a point in time where further delay would cause significant delay in the overarching project, the completion of which is currently timed for events next spring critical to the local economy.

**BACKGROUND**

In December 2004, the UO signed a ground lease with Sprint Communications to have a cellular tower and equipment building erected adjacent to the west grandstands of Hayward Field. The tower is 120 feet high and 3 feet in diameter. In 2008, the tower and building were sold to SBA Communications. The current lease runs through 2029. SBA leases tower space to three carriers, AT&T, Sprint, and Cricket (now subsidiary to AT&T), all of which rely on the tower to provide cell phone coverage on campus and to service areas that extend beyond the UO's borders.

In August 2015, it became apparent that the renovation of the west grandstands—part of the Hayward Field enhancement project—would require permanent removal of the tower. The UO immediately entered into discussions with SBA regarding relocation of the tower to a new site within the Hayward Field block prior to the start of construction. To facilitate this process, the UO created a team with representatives from Campus Planning, Design and Construction; the Office of the General Counsel; Information Services – Telecommunications; Government and Community Affairs; and Finance and Administration, along with the University of Oregon Foundation's (Foundation) project manager. The Foundation has agreed to pay for expenses related to the relocation of the tower as part of the project.

In November 2015, SBA agreed to a proposed site for the tower's relocation. This site, located south of Hayward Field immediately west of the hammer throw field, meets SBA's stated parameters. Unfortunately, since that time, negotiations to amend the associated ground lease agreement and construction plan have not been completed.

**REMAINING ISSUES*****Ground lease amendment and construction agreement are still not executed.***

An amendment to the existing ground lease is needed to reflect the new location and any modified terms agreed upon as a result of this relocation. Also needed is a construction agreement for the new site. Thus, the university engaged SBA's counsel in mid-October to accomplish both.

Early on, the UO agreed to amend the lease to include the following provisions, which are favorable to SBA: The new tower would be taller and larger (approximately 160 feet tall and 5 feet in diameter), not only to adjust for differences in elevation and clearance at the new site, but also to accommodate an

additional tenant provider; the lease would be extended for 10 additional years; and, SBA would receive a 50% reduction in rent for five years if the current tower is vacated by August 1, 2016.

The current lease proposal also allows the university to remove SBA's property from the tower if not vacated by August 1, 2016, and allows for temporary antennas to be on-site, if needed, through December 2016. This provides enough time to have the new permanent tower constructed and operational by the end of calendar year 2016.

After multiple attempts to reach an agreement with the aforementioned conciliations, the amendment has still not been accepted by SBA.

With regard to the construction agreement, the university has attempted to engage SBA in a contract to govern construction of the new tower, but to no avail. The UO has attempted to negotiate this issue since mid-October; SBA has recently indicated interest in a current proposal in which the university would facilitate construction of the tower through standard processes so long as SBA is a party to the university-contractor agreement. However, no contract has yet been executed.

***Permitting and construction planning not yet off the ground.***

In order to accommodate both the larger project's construction schedule and the City of Eugene's site review and permitting processes—while seeing no loss in cellular coverage due to the tower relocation—there is no time left for continued, drawn-out negotiations. To ensure the new tower is online by the end of the year, demolition of the current tower must be done in coordination with demolition of the west grandstands, which is slated for August 1. August 1 is not as far off as one might think: the City's site review and permitting processes are estimated to take up to six months. In addition, relocation services for temporary coverage, the planning for which is already underway, need to be employed. Any further delay will make December 2016 an impossibility.

SBA has conducted a geotechnical study of the relocation site, the university has procured a survey, and in recent weeks the two parties have exchanged drawings of the site and building dimensions.

**CONDEMNATION TIMELINE AND COSTS**

In the event that it is not possible to successfully negotiate the existing tower's removal (removal needed by August 1, 2016) and permanent relocation (planned for December 31, 2016), the UO has advised SBA that it may make use of its right to condemn the tower and remove it on the basis of eminent domain. The steps to achieve this follow. Items completed or in progress are being done with full knowledge and awareness that board approval is required to enter into condemnation proceedings. The university is simply being diligent in planning for possible contingencies.

- University notifies SBA of its right to pursue condemnation. [Completed]
- University obtains a title report and provides it to an appraiser; an appraisal of the property is conducted. [Completed]
- University notifies SBA and tenants of relocation services to be provided for removal of personal property. In this case, all contents of the equipment building and the tower are considered personal property. NOTE: The relocation services are currently being engaged to identify and secure temporary antenna locations within ¼ mile of the tower for the carriers so that cellular service is not affected. Once appropriate locations are identified, relocating carriers' service will take an estimated four to six months as it includes design and engineering planning, a city

permitting process, construction and testing. [In progress]

- Board of Trustees must authorize the university to exercise its power of eminent domain. [Meeting scheduled for February 18, 2016]
- University serves a formal offer with appraisal. SBA has at least 40 days to accept or reject offer. University to also serve 90-day relocation assistance eligibility notice.
- File condemnation proceedings if offer not accepted.
- Deposit estimated just compensation and serve 10-day immediate possession notice.
- SBA has a 10-day statutory period to file an objection to our condemnation action, including the University's authority to condemn and adherence to statutory procedures. If objected to, then court will hold an emergency hearing.
- Upon receiving possession, University serves 30-day notice to vacate personal property. Once personal property is removed, the University can proceed with project and demolish the west grandstands.
- Condemnation action continues to litigate the value of the takings.
- There is an additional administrative process if SBA disputes relocation amount.
- The Foundation will bear costs associated with the physical relocation of carriers (tenants' personal property) for a finite period of time, not to exceed 12 months, and the cost of compensation paid to SBA for the condemnation, which is based on a valuation of the property, financial impact, etc.

## Board of Trustees of the University of Oregon

### Resolution: Authorizing Acquisition of Property Rights

Whereas, the University of Oregon (“University”) desires to expand certain campus facilities, including Hayward Field, to improve the University’s ability to provide educational and athletic opportunities for its students; to support the University’s ability to host significant state, national, and international events that promote the University and its students; to bring economic opportunities and benefits to the community and the State of Oregon; and to enhance spectating and training (“Project”);

Whereas, the Project is designed to facilitate the University’s goals and mission of carrying out public missions and services as authorized under ORS 352.039;

Whereas, in order to successfully complete the Project, it is necessary that the University take immediate possession of the real property adjacent to Hayward Field that is currently leased by other parties as described in this resolution;

Whereas, the University has attempted to reach an agreement to acquire the real property adjacent to Hayward Field from the leaseholders without exercising the University’s power of eminent domain;

Whereas, ORS 352.107(1)(L) authorizes and empowers the University to acquire, by condemnation or otherwise, private property that is necessary or convenient; and

Whereas, ORS 35.235 requires the Board of Trustees of the University of Oregon (“Board”) to first declare by resolution the necessity to acquire real property and the purpose for which it is required, and to attempt to agree with the owner of the real property regarding compensation for the property, and the damages, if any, for the taking thereof;

NOW, THEREFORE, the Board hereby:

1. RESOLVES that acquiring SBA 2012 TC Assets, LLC’s (“SBA”), its subtenants’, and any other parties’ interests in a lease of real property located at the southwest corner of Hayward Field is necessary and required to complete the Project. The particular interests that are necessary to the Project, and that the University will acquire, are specifically described in the attached Exhibit A (“Property”), which is incorporated herein by reference as if fully set forth herein;
2. FURTHER RESOLVES that the Project is necessary for the public interest, and has been planned, designed, located and will be constructed in a manner that will be the most compatible with the greatest public good and the least injury to private parties;
3. FURTHER RESOLVES that the immediate possession of the Property is necessary;
4. FURTHER RESOLVES that University staff and legal counsel are authorized and directed to continue their attempts to agree with SBA, its subtenants, and any other parties of interest, as necessary, to compensate them for the acquisition of the Property and for damages. The President of the University or his designee is authorized to make a binding offer of

compensation as described above. In addition, University staff and legal counsel are authorized and directed to continue their attempts to agree with SBA, its subtenants, and any other parties of interest with respect to any other benefits such persons may be entitled to under law, including relocation assistance benefits. This authorization includes the University's engagement and payment of fees and costs of a qualified MAI appraiser to meet the requirements of ORS 35.346, and of a qualified relocation specialist to meet the requirements of ORS 35.510;

5. RATIFIES AND APPROVES all actions to date by University staff and legal counsel taken in connection with acquiring the Property for the Project;
6. FURTHER RESOLVES that, in the event no satisfactory agreement can be reached with SBA, its subtenants, and any other parties of interest, University staff, through its legal counsel, are authorized to commence and complete any legal proceedings that may be necessary to obtain immediate possession of the Property, including exercising the University's power of eminent domain. University staff, through its legal counsel, are authorized to make any stipulations, agreements, or admissions in the course of such legal proceedings as may be in the best interests of the University;
7. FURTHER RESOLVES that a fund will be created in the amount estimated to be just compensation for the Property. This amount will be used to obtain possession of the Property and will be deposited with the clerk of the court in which legal proceedings are commenced for the use of the parties in the proceedings;
8. FURTHER RESOLVES that the President of the University, or his designee, is authorized to execute any other documents necessary for the acquisition of the Property.

Trustee	Yes	No
Ballmer		
Bragdon		
Chapa		
Colas		
Curry		
Ford		
Gary		
Gonyea		
Kari		
Lillis		
Paustian		
Ralph		
Wilcox		
Willcox		

Dated: \_\_\_\_\_ of \_\_\_\_\_, 2016.

Initials: \_\_\_\_\_

Board of Trustees  
 Resolution: Authorizing Acquisition of Property Rights  
 February 18, 2016  
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EXHIBIT A TO RESOLUTION  
Parcel 1: Leasehold Acquisition

Property (Legal Description)

A TRACT OF LAND BEING A PORTION OF TRACT F OF THE AMENDED PLAT OF UNIVERSITY ADDITION TO EUGENE, LANE COUNTY, OREGON, AS PLATTED AND RECORDED IN BOOK 2, PAGE 22, LANE COUNTY OREGON PLAT RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LYING N 40°55'36" W, 736.40 FEET FROM A RAIL ROAD SPIKE AT THE CENTERLINE INTERSECTION OF 18TH STREET AND AGATE STREET; THENCE S 89°36'10" W, 22.67 FEET; THENCE N 00°23'50" W, 36.00 FEET; THENCE N 89°36'10" E, 22.67 FEET; THENCE S 00°23'50" E, 36.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 816 SQUARE FEET, MORE OR LESS.