



Formal Director's Interpretation

Subject of Interpretation

RCW 57.18.040 and KCC 16.04.050.H exempt certain types of real property "divisions" from regulation of subdivisions under RCW Chapter 57.18 and under local code. For a division of land conducted pursuant to RCW 57.18.040(8), i.e. "for the purpose of leasing land for facilities providing personal wireless services while used for that purpose" ("the division"), is the resulting parcel on which the wireless communication facility is located (the "WCF Parcel") exempt from minimum lot size requirements established by Kitsap County Code?

Zoning Ordinance Section Number

Kitsap County Code (KCC)

Section 16.04.050 Applicability and exemptions.

Section 17.530.060 Regulations for tower-based wireless communication facilities.

Section 16.62.020 Applicability and burden of proof.

Cause for Interpretation

RCW 57.18.040(8) and KCC 16.04.050.H each exempt real property from the subdivision requirements of Title 16, KCC, when the owner acts to divide the property to create a parcel to be used for a WCF. The Department of Community Development (DCD) has not previously pronounced an opinion on whether this exemption spares resulting parcels from regulation under KCC Chapter 17.420 (Dimensions and Design), which includes Title 17's minimum lot size requirements.

Wireless Communications Facilities are regulated under KCC Chapter 17.530. KCC 17.530.060.A.6 authorizes construction of a tower-based WCF, either as a sole use or as a combined use with non-residential uses allowed in the zone.

KCC Section 16.04.050 Applicability and exemptions.

The provisions of KCC Chapters 16.40 (Subdivisions); 16.48 (Short Subdivisions); and 16.52 (Large Lot Subdivisions), shall apply to all divisions and redivisions of land for the purposes of sale, lease or other transfer of ownership except:

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H. A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. For the purposes of this subsection "personal wireless services" means any federally licensed personal wireless service; and "facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.



KCC Section 17.530.060 Regulations for tower-based wireless communication facilities.

A. Development Regulations. Except as provided in subsection (B) of this section, "Development Regulations in the Public Right-of-Way (ROW)," and in addition to Section ~~17.530.040~~, "General development standards," the following applies to all tower-based wireless communication facilities (facilities) for which an ACUP or CUP is required.

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6. Use of Property and Setbacks.

- a. Sole Use. A tower-based facility may be allowed as the only use on a parcel if:
 - i. The parcel is at least six thousand square feet; and
 - ii. The distance between the base of the tower-based facility and the nearest property line is at least one hundred ten percent of the proposed height of the tower-based facility.
- b. Combined Use. A tower-based facility may be allowed with an existing use, or on a vacant parcel in combination with another use, subject to the following minimum conditions:
 - i. The nonfacility use on the property is any allowed use in the zone, except residential, and need not be affiliated with the facility.
 - ii. The lot:
 - (a) Complies with the dimensional requirements of the zone; and
 - (b) Is sufficiently sized to accommodate the tower-based facility and any equipment buildings, security fences, buffers and setbacks.
 - iii. The minimum distance between the base of a tower-based facility and the nearest property line is at least one hundred ten percent of the proposed tower-based facility height or the minimum setback of the underlying zone, whichever is greater.

KCC Section 16.62.020 Applicability and burden of proof.

- A. This chapter applies to all requests for legal lot determinations and to applications for any permit, including but not limited to building permits, subdivisions, hearing examiner conditional use permits, administrative conditional use permits, rezones and Comprehensive Plan change applications.
- B. A lot is presumed to be a legal lot of record, but may be investigated by the department upon submittal of a building or other development permit.
- C. The burden of proving that a lot is legal rests with the applicant.

Interpretation

Yes, for a division of land conducted pursuant to RCW 57.18.040(8), the resulting parcel on which the wireless communication facility is located is exempt from minimum lot size requirements established by Kitsap County Code; provided that the owner provides a binding assurance (i.e. by a recorded covenant, enforceable by owners of abutting parcels and by Kitsap County) that the WCF Parcel shall be aggregated with one or



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more of the other parcels that were created by the division, upon (a) denial of land use approval required by Chapter 17.530, Kitsap County Code (Wireless Communication Facilities), (b) revocation of such land use approval, or (c) abandonment of use of the WCF; and provided further that all other requirements of Title 17, KCC, shall apply to the WCF Parcel.

Director Authority

Pursuant to KCC 16.16.62.030.A, the DCD Director has the authority to make legal lot determinations for any lot or parcel, including those exempted from the requirements of KCC Title 16 Land Division and Development.

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Author of the Interpretation, Darren Gurnee,
Current Planning Supervisor, DCD

10/13/2025

Date

A handwritten signature in black ink, appearing to be "Rafe Wysham", written over a horizontal line.

Rafe Wysham, Director, DCD

10/15/2025

Date

Notice, Appeal and Record of Interpretation

In accordance with KCC 21.04.040(C)(3) and (4), this decision is subject to notice to the public and is appealable, and the decision shall be retained by DCD and considered at the next reasonable opportunity for changes to Kitsap County Code. The decision shall be maintained on the DCD website at DCD Code Interpretations and Determinations.