



Puget Sound Energy  
Point No Point Treaty Council  
Puyallup Tribe  
WA Dept of Fish & Wildlife  
Transportation/Aviation  
WA State Dept of Ecology-SEPA  
Kitsap County Cencom

Interested Parties:

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**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Conditional Use Permit No. 18-00716  
Puget Sound Emergency Radio Network  
Wireless Communications Facility**

**November 1, 2018**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The Puget Sound Emergency Radio Network proposes a wireless telecommunication facility to improve emergency radio coverage on Vashon Island's west side. The 194-foot lattice tower with 4 antennas and two microwave dishes will be within a 50 x 50 foot fenced area. This area includes an equipment shelter, which will also house a backup generator and day tank. An above ground 1,000-gallon diesel tank will be on a concrete pad outside the shelter, within the fenced area.

**Applicant.** Rick Cardoza, LDC Inc., 20210 142nd Ave. NE, Woodinville, WA 98072.

**Property Owner and Site Location.** Amy and Joe Neal, 8994 SE View Park Road, Port Orchard, WA 98366, Assessor's Account No. 152302-4-001-2001.

**1.2 Administrative Record.** At the hearing, the Examiner admitted Exhibits 1-47. The record was kept open through October 19, and the Applicant and public submitted additional comment (Exhibits 48-53). These exhibits are admitted.

**1.3 SEPA.** DCD issued a Mitigated Determination of Non-Significance.<sup>1</sup> Except for the property to the north, no comments were received.<sup>2</sup> No appeals were filed. The Determination imposed these conditions:

- The proposal has been reviewed and will be conditioned for Stormwater Control per Kitsap County Code Title 12, Critical Areas per Kitsap County Code Title 19, and Wireless Communication Facilities per Kitsap County Code Title 17.
- To minimize visual impacts for the surrounding community, the existing tower and new components shall be painted non-reflective earth-tone; final colors to be reviewed and approved by DCD prior to building permit approval. A light gray color is preferred. Existing tower components are required to be painted to match as upgraded.

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<sup>1</sup> Exhibit 27.

<sup>2</sup> See Finding 1.5.1, addressing this comment.

- Flashing red, solid red or white strobe lighting shall not be allowed on the support structure to prevent visual impacts consistent with the above policy.
- To provide a functional screen, the applicant shall plant two offset rows of Western Red Cedars along the northwest corner and preserve all other existing trees around the perimeter. This is identified on the site plan, dated 8/31/2018 as native growth protection zone. The NGPZ is required, in perpetuity, with the tower, and will be conditioned in a recorded Notice to Title.

**1.4 Hearing.** The open record public hearing was held on October 10, 2018. The Kitsap County Department of Community Development ("DCD"), through Mr. Smith, summarized the proposal. This included describing the visual analysis the Applicant prepared. The Applicant, through Mr. Cardoza, explained the visual analysis and project. Several citizens testified. As two citizens identified delays in receiving hearing notice, the Examiner kept the record open through October 19 to allow for further public review and input. Citizen testimony is summarized below.

#### **1.5 Citizen Pre-Hearing and Hearing Comment.**

**1.5.1 Pre-Hearing Comment.** The County received public comment from a neighbor owning property immediately to the north. Based on this neighbor's input, and to improve compatibility, the tower and ground equipment was moved 50 feet east.<sup>3</sup>

**1.5.2 Hearing Comment.** Citizens raised several questions and concerns, with comment focused on the number of radio towers in the area; generator noise; and, diesel fuel spill risks to surface and ground water.

Mr. Ferguson, a project neighbor, testified on a recent situation involving a proposed 330 foot monopole on SE View Park Road (at 8925 rather than this site)<sup>4</sup> which DCD imposed a stop work order on after unpermitted clearing work occurred. He was grateful for today's public hearing as with the other incident there was no process and no permitting, and he had to obtain a restraining order.<sup>5</sup> Regarding this project, Mr. Ferguson raised concerns over noise, diesel fumes, and water pollution from diesel fuel, including to the aquifer which he estimated at being 126 feet below ground. Mr. Ferguson identified at least six private wells in the immediate vicinity, and was concerned with Colvos Passage (less than 1,700 feet away), Driftwood Cove, and Wilson Creek, a salmon bearing stream. The project area is relatively flat, but there is no engineered drainage on the site for the current business, and there are steep slopes on parts of the property, with the topography sloping down to these water bodies. Mr. Ferguson also addressed cumulative impact concerns. With this project, there will be three radio towers within 1,000 feet of each other and another diesel fuel generator, which will add to the sawmill noise. He strongly prefers modifying the existing antennas, given the tower saturation in this rural residential area.

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<sup>3</sup> The neighbor preferred this over granting a permanent easement, as the neighboring site may be logged in future. Hearing Testimony, DCD.

<sup>4</sup> Exhibit 47.

<sup>5</sup> This testimony was later disputed by Ms. Neal, in comment submitted during the extended comment period. Exhibit 48. She states that the restraining order was denied.

Ms. Dunn, a neighbor, originally was not concerned about the project, but after hearing Mr. Ferguson's comments, wished to provide input. She knows the property owners, and knows they care about environmental concerns. She had seen the posted sign, but found the hearing notice when she checked her mailbox the night before, which was post-marked October 3. Ms. Dunn said she had no idea about the prior unpermitted work Mr. Ferguson had described. She has heard generators in the area, and is concerned as power does go out quite a bit. She has lived here for about 15 years, and also has a generator, given the power outages. She is concerned about wells, if there is a diesel fuel accident. Ms. Ferguson understands the need for emergency radio coverage, but wanted to know why the facility is not being located in the area it is needed, on Vashon. When she first received project notification, she looked online to learn more about electro-magnetic frequency concerns, but the analysis was highly technical, so it was difficult to evaluate the actual impacts. Ms. Dunn later had a procedural question on how the hearing recording could be accessed, if others wished to view the proceedings, which was provided.

Ms. Oza also just received the mailed notice. She thanked Mr. Ferguson for the information he provided. She wondered if the tower height could go up in future without community comment, which would increase visual impacts greater than balloon impacts would show. She was concerned about property values going down, citing studies regarding a 20% reduction in values, coupled with a dampening impact on prospective purchasers. She expressed concern about the generator, which is loud, and area power outages are frequent. She also wondered if a spill would affect a nearby community well, along with other wells in the area; if the project was a fire hazard and what response times would be; and if there is a slow leak, who would notice? She also asked how long the record would be kept open. The Examiner responded that the extension date would be decided toward the end of the hearing.

**1.6 Applicant Response to Comment.** Mr. Cardoza addressed questions which had been raised. He stated that he could not speak to earlier unpermitted activity Mr. Ferguson had described, as he had not been involved with that.

On diesel fuel storage and the generator, the Fire Marshal reviews these as part of the building permit review, and having a fire permit is a condition of approval (Condition 22). The diesel tank is double lined; has alarms/sensors to detect overflow; and there is a secondary catch basin at the top of the filler. The fuel line is also reviewed by the Fire Marshal. The pad below the fuel tank is paved, but the line runs underground to address freeze/thaw concerns. Both the tank and generator are structurally engineered for seismic issues, and the tank is anchored to the concrete slab to avoid overturn. The generator is inside the shelter, which mitigates noise, and the project meets County noise requirements. The Applicant submitted further details on tank design and safety features during the extended comment period.<sup>6</sup>

On why the project cannot be on Vashon Island, this is due to "line of sight" concerns. The radio frequencies must be able to "see" the areas they reach. If on Vashon, it would be too close for effective coverage. There would be geographic obstructions and "nooks/crannies" around the Island which could not be reached.

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<sup>6</sup> Exhibit 52.

The facility is needed due to lack of alternative capacity on other towers. While the existing towers may look like they have capacity, they may not from an engineering standpoint. Building code requirements are now more stringent, which has made adding weight considerably more expensive due to engineering design for the tower and foundation. The other factor is that a tower owner may have leased space to a co-locator or the original carriers. So, even if not being used, the space may be reserved. The Applicant does not foresee a need for it or another carrier to later increase tower height, which could invoke FAA requirements to light the tower.

As for drainage, this is addressed through the Site Development Activity Permit, which is now under review. This review process (under Title 12) addresses sheet flow and dispersion, and is reviewed to protect receiving water bodies. In this review, geotechnical and engineering analysis is provided. As for well protection, the Health Department has reviewed and approved the project.

**1.7 DCD Clarifications in Response to Citizen Questions.** DCD, through Mr. Smith, clarified questions which arose during comment. He stated that Mr. Ferguson was correct in that there was another site analyzed with a balloon test, but there were subcontractors who had jumped the gun, performing clearing, grading, and damaging a roadway. Mr. Ferguson learned of the activity before DCD, and once DCD was alerted, it initiated a stop work order and had erosion control fencing installed. Mr. Smith knew that Mr. Ferguson sought judicial relief, but the County was not part of that.

As for Mr. Ferguson's question on balloon test notification, the code requires balloon test notice to properties within 400 feet, whereas mailed hearing notice is to properties within 800 feet. The mailed notice used to be 400 feet, but the code was amended to double the requirement. He believed Mr. Ferguson was just outside the 400, but within 800, which would explain why he received hearing notice but not balloon test notice.

Mr. Smith confirmed the Health District had reviewed and approved tank location, the Fire Marshal had reviewed the project, and an engineered drainage report was prepared (Exhibit 7). As for a possible post-permitting height increase, anything greater than 10% is a major amendment requiring the Applicant to proceed through the CUP process again, which would require a new balloon test and another public hearing. Also, at a certain height (likely 200 feet), the FAA would require lighting, and this would likely trigger a DCD recommendation of denial under the KCC.<sup>7</sup>

As for noise, DCD could discuss documenting County ordinance compliance through a noise report with the Applicant. However, DCD does not expect neighbors north of SE View Park Road to be affected.

**1.8 Agency Comment.** The proposal was circulated within the County, and comment was received regarding regulatory compliance. If the Applicant proposes a generator with flammable fuel during construction, the Fire Marshal will review the request through the building permit review process. As an unmanned facility, sewer and water will not be required.

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<sup>7</sup> See KCC 17.530.050(C).

**1.9 Notice.** Hearing notice was provided through posting, publishing, and mailing, and application notice was provided through mailing and publishing.<sup>8</sup>

**1.10 Utility and Public Services.**

- **Water:** Well
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District No. 400

**1.11 Access.** An easement/driveway connected to SE View Park provides access.<sup>9</sup>

**1.12 Zoning/Plan Designations.** The Comprehensive Plan and zoning designations are Rural Residential. As the tower exceeds 35 feet, the Ch. 17.530 KCC wireless communication review process applies.<sup>10</sup>

**1.13 Site.** The 6.01 acre site is generally flat, but with moderate slopes in the southwest corner, and steep slopes in the southeast designated as a High Hazard area. Except for a portion along the north property line, much of the perimeter is vegetated with large cedars and deciduous trees. The property includes a residence, and half a dozen out buildings. The sawmill and log and lumber lay-down yard have operated for over 30 years as a small-scale home business.

**1.14 Project Layout.** The cell tower would be in the northeast corner, above the sawmill area. The tower is an unmanned facility with maintenance staff visiting several times a month. The tower and the associated ground equipment will occupy 2,500 square feet formerly used for stacking lumber or logs to be cut.

The tower will be set back 87 feet in the front (north), and 439 feet in the back (south), with 214 and 86 foot setbacks on the west and east sides, respectively.<sup>11</sup> Single family residences are to the north and east, with undeveloped properties adjoining on the other sides.

To mitigate visual impacts, new wireless communication facilities require landscaping around the ground equipment enclosure and taller vegetation around the tower base. The Applicant submitted a preliminary landscape plan to address these requirements.

**1.15 Stormwater and Critical Areas.** Site runoff travels overland to the southeast as sheet flow passes across private property before discharging into an unnamed stream. Surface flows eventually discharge into Puget Sound. The civil engineer concluded that due to the

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<sup>8</sup> Exhibits 19 (Notice of Application), 34 (Notice of Public Hearing), 35 (Certification of Public Notice), and 36 (Staff Report), p. 7.

<sup>9</sup> Owned by Ms. Bowley, Parcel No. 152302-4-039-2007.

<sup>10</sup> KCC 17.530.040(A).

<sup>11</sup> Exhibit 26 (Revised Site Plans); Exhibit 36 (Staff Report), Att. A.

forested-heavy vegetated ground cover adjacent to the project area, a significant portion of onsite runoff is dispersed along the downstream flow path before discharging into the unnamed stream. Development Engineering has reviewed the stormwater proposal and the request falls below the threshold for requiring civil plan review for storm drainage.

The property contains steep slopes along the south property line with existing tree stands above and on the slopes. The proposed tower site is more than 400 feet north of the south property line and not affected by the steep slopes. The Applicant completed soil borings at the tower site to review geologic conditions, to be submitted with the building permit review.

**1.16 Electromagnetic Frequency Considerations.** During the hearing, questions were raised on EMF impacts. The Applicant submitted material addressing these concerns, and has committed to complying with federal EMF standards, and Kitsap County, State, and Federal guidelines applicable to EMF FCC standards. The Applicant's Compliance Report found that "there are no modeled exposures on any accessible rooftop or ground-level walking/working surface related to proposed equipment in the area that exceed the FCC's occupational and general population exposure limits at this site."<sup>12</sup>

#### **1.17 Project Need, Alternative Locations, and Co-Location.**

**1.17.1 Need for Project within Residential Zone (Rural Residential).** The requested tower location and height are needed to achieve radio frequency line of sight engineering to cover Vashon Island's west side and provide back coverage to other parts of King County. Due to Vashon's topography, while western slope placement would provide some coverage, areas not "seen" would not be reached, meaning cell data cannot be picked up from shadowed locations. Service is also needed for microwave connectivity so calls received at the local View Park tower can be sent to Capitol Hill and Top Hat/West Seattle dish sites to provide call connection (backhaul) to the network center.

**1.17.2. Operational Needs and Alternative Sites.** The Applicant evaluated operational needs and weighed three alternative sites. These were American Tower Company's 420-foot KPLU radio tower,<sup>13</sup> Crown Castle's 155-foot T-Mobile monopole tower,<sup>14</sup> and property abutting the two towers<sup>15</sup> north of View Park Road. The Applicant is already located on the 420-foot tower, but coverage objectives and the new equipment's weight necessitate another tower. The T-Mobile tower is too low to meet coverage objectives. The private property was too small and lacked vegetative screening.

**1.17.3 Sharing of Support Structure and Co-location of Facilities.** The Applicant must send a notice to all the existing carriers (*e.g.* Clearwire, Sprint Wireless) on co-location. Consistent with KCC requirements, the tower allows multiple carriers to co-locate on it

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<sup>12</sup> Exhibit 43 (Radio Frequency Compliance Report), pp. 6-7.

<sup>13</sup> 152302-4-004-2008.

<sup>14</sup> 152302-4-026-2002.

<sup>15</sup> 152302-4-027-2001.

and within the ground equipment compound. Only Kitsap County Central Emergency Communication and AT&T responded to the tower notice.<sup>16</sup>

### **1.18 Aesthetic Impacts.**

**1.18.1 SEPA.** To reduce the 194-foot lattice tower's visual impacts, the Kitsap County Responsible SEPA Official issued an MDNS with four mitigation measures. This includes: (1) KCC review; (2) paint color requirements; (3) a prohibition on flashing red, solid red or white strobe lighting; and (4) planting two offset rows of Western Red Cedars along the northwest corner and preserving existing perimeter trees as identified on the site plan. With these conditions, DCD determined there will not be more than moderate visual impact on territorial or significant viewscales.

**1.18.2 Balloon Test.** The Applicant completed a balloon test as part of its visual analysis. It sent notice to surrounding property owners and prepared photo simulation to analyze potential visual appearance from abutting property. The analysis compares before and after tower construction.

**1.18.3 Vegetation/Landscaping.** The existing vegetation around the site perimeter, and on abutting properties, help screen and mitigate the tower's visual impacts along SE View Park Road. The tower is moderately visible in one location north of the site and west of the site near SE View Park Road and Banner Road. The facility extends approximately 30 feet or more above the tree line when viewed from the west. The tower follows the vertical pattern with the tree line. When or if all the trees are cut, the trees planted on the property will help screen the tower base. As the view analysis illustrates, and as addressed during SEPA review, there should not be more than a moderate visible impact to the territorial view.

**1.18.4 Color.** The Applicant will paint the support structure and antennas a non-reflective, earth tone color which will blend with the surrounding coniferous trees or the sky as agreed upon with the County. The Applicant is proposing a green "Isle of Pine."<sup>17</sup> Existing tower components are required to be painted to match as upgraded. If certain parts cannot be painted due to performance issues, a light gray hardware should be used. The Applicant documented that the FAA will require no support structure lighting.<sup>18</sup>

**1.19 Conditions.** DCD proposed 23 conditions. No concerns were raised or revisions proposed. To ensure code compliance and mitigate the project consistent with these findings, these conditions should be imposed without revision. The Examiner added two conditions, to: (1) require project decommissioning consistent with KCC requirements; and (2) consistent with hearing comment from the public and from DCD, provide for a noise study, if needed to address code compliance concerns.

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<sup>16</sup> Exhibit 10.

<sup>17</sup> Exhibit 28.

<sup>18</sup> Exhibits 11 and 44.

## 2. CONCLUSIONS OF LAW

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has CUP review authority for this project.<sup>19</sup> A new wireless support structure that exceeds 35 feet requires a CUP.<sup>20</sup> The Hearing Examiner may approve, approve with conditions, or deny a CUP. The Hearing Examiner may also continue the hearing to allow for additional information to make the proper decision.<sup>21</sup> Consistent with this provision, to allow for further public review and input due to the limited hearing preparation time, the record was kept open for an additional nine days.

**2.2 Wireless Communication Facility Permitting Criteria.** These criteria specific to wireless communication facilities must be met for a CUP to issue:

A. The need for the proposed wireless communication support structure shall be demonstrated if it is to be located in a residential zone or within three hundred feet of an existing residential zone.

B. An evaluation of the operational needs of the provider, alternative site, alternative existing facilities upon which the proposed antenna array might be located, and co-location opportunities on existing support structures within one mile of the proposed site shall be provided by the applicant. Evidence shall demonstrate that no practical alternative is reasonably available to the applicant.

C. The proposed support structure satisfies all of the provisions and requirements of Section 17.530.050; and

D. The proposed support structure location has been reviewed in a manner consistent with Section 17.530.030(B).<sup>22</sup>

These requirements are met. The Applicant demonstrated facility need, and completed a co-location/alternative analysis as addressed in Findings 1.17. As addressed below, KCC 17.530.050 siting requirements are met, and the project has been reviewed consistent with the Comprehensive Plan.

**2.3 KCC 17.530.050 Siting Criteria.** The Applicant meets KCC siting requirements, which include measures to address visual impacts, landscaping, lighting, EMF concerns, co-location requirements, and use termination.

Within a one-mile radius, the support structure does not have "more than a moderate visual impact upon a significant viewscape such as mountain views, views of water bodies, and/or open expansive views such as valleys."<sup>23</sup> A visual impact analysis was prepared, which included a balloon test meeting code requirements. The balloon test was performed following

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<sup>19</sup> KCC 17.410.010(C), 21.04.100 (see permit type #18), 17.550.020, and 17.530.040.

<sup>20</sup> KCC 17.530.040.

<sup>21</sup> KCC 17.550.020.

<sup>22</sup> KCC 17.530.060.

<sup>23</sup> KCC 17.530.050(A)(1).

compliance with code notification requirements, and impacts documented through photo-simulation.<sup>24</sup>

Landscaping requirements are met. The equipment shelter includes a screening buffer, and trees are used along the north property line to provide vegetative buffering which screens "a substantial portion of the structure height."<sup>25</sup> A landscaping plan is required which meets code requirements.

The support structure will "be painted in a nonreflective, earth tone color that best allows ... [it] to blend into the surroundings."<sup>26</sup> Flashing red, solid red, and white strobe lights will not be used.<sup>27</sup> Any security lighting will be down shielded consistent with KCC requirements,<sup>28</sup> and outdoor lighting "directed away from adjoining properties and so that no more than one foot-candle of illumination leaves the property boundaries."<sup>29</sup>

Kitsap County prohibits new wireless communication structures within one mile of existing structures, unless it is demonstrated that an existing support structure site is not available for co-location or does not meet applicant operational requirements.<sup>30</sup> The Applicant demonstrated that a new support structure was necessary given strained capacity at the other facilities, and their inability to meet Applicant operational requirements. And, project notice, to maximize co-location opportunities, was provided to other wireless providers consistent with KCC requirements.<sup>31</sup>

Code discontinuation of use requirements, which provide for notice to DCD and prompt facility removal, will be met, as required by Condition 24.<sup>32</sup>

The Applicant has committed to adhering to all laws, including federal EMF requirements, and local, state, and federal guidelines addressing same.<sup>33</sup>

**2.4 Conditional Use Permit Requirements.** A CUP must comply with:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and

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<sup>24</sup> KCC 17.530.050(A).

<sup>25</sup> KCC 17.530.050(B)(2).

<sup>26</sup> KCC 17.530.050(C)(2).

<sup>27</sup> KCC 17.530.050(C)(3). There are exceptions, but no arguments were made that any applied.

<sup>28</sup> KCC 17.530.050(C)(3).

<sup>29</sup> KCC 17.530.050(C)(4).

<sup>30</sup> KCC 17.530.050(E)(2).

<sup>31</sup> KCC 17.530.050(E)(3)(a); KCC 17.530.070.

<sup>32</sup> KCC 17.530.050(F).

<sup>33</sup> KCC 17.530.050(D).

4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>34</sup>

These criteria are met. The project is consistent with the Comprehensive Plan, which provides for essential communication facilities sited consistent with compatibility and environmental concerns. The Staff Report details consistency with specific policies, and the Examiner concurs with this analysis. The Plan is implemented through the zoning code, which provides for this use through conditional use permitting. The proposal is conditioned to ensure compliance with Title 17 and other applicable code requirements. No relevant code provision was identified which would not be complied with.

The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. There are legitimate concerns over aesthetics and noise, along with concerns over impacts associated with maintaining a diesel operated generator. However, with the SEPA conditions and code requirements, and the project being moved to minimize view impacts, these impacts are moderated to avoid material detriment. The site itself is large enough, and nearby uses sufficiently dispersed, to further moderate these impacts. As for the fuel storage, regulatory requirements and mitigation ensure the fuel is stored consistent with fire code requirements, and the tank has built in protection measures. The site will be developed consistent with stormwater management requirements. The generator, a use common in this area, must operate consistent with noise requirements, and will be sheltered, which provides further mitigation. Impacts with the potential for material detriment have been identified and addressed with tailored mitigation and/or code requirements.

### **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for the proposed ADU, provided these 25 conditions are adhered to.

### **Planning/Zoning**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The uses of the subject property are limited to the uses proposed by the Applicant and any other uses will be subject to further review pursuant to requirements of the Kitsap County Code (KCC). Unless in conflict with the conditions stated and/or any regulations, all terms and specifications shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for extensive or other utilization of the property. The Applicant shall comply with mitigation measures outlined in the MDNS, dated September 20, 2018.

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<sup>34</sup> KCC 17.550.030(A).

3. The structure shall be unlighted, including any daytime strobes or nighttime illumination, including flashing or solid beacons. Should the FAA require such lighting for aircraft safety, the facility shall be redesigned to meet FAA regulations without the need for lighting of the structure.

4. To minimize visual impacts for the surrounding community, the existing tower and new components shall be painted non-reflective earth-tone; with the final color to be reviewed and approved by DCD prior to building permit approval. Existing tower components are required to be painted to match as upgraded. The paint color shall be reviewed and approved prior to Building Permit issuance.

5. The Applicant shall meet all requirements of the Federal Communications Commission (FCC) and the Telecommunications Act of 1996 regarding Electromagnetic Field/Radio-Frequency Standards.

6. Landscaping shall be installed and maintained in conformance with the requirements of KCC 17.500. Landscaping shall be installed and inspected prior to requesting a final inspection or guaranteed by means of an assignment of funds or bonded in the amount of 150 percent of the cost of installation.

7. The recipient of any CUP shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of an agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the Applicant's expense.

8. This CUP approval shall automatically become void if no development permit application is accepted as complete by DCD within four years of the Notice of Decision date or the resolution of any appeals.

9. The decision set forth herein is based upon representations made and exhibits contained in the project application 18-00716. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

10. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.

11. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

### **Development Engineering**

12. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

### **Stormwater**

13. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require a Site Development Activity Permit (SDAP), demonstrating that the development adheres to Minimum Requirements 1 – 5, from Development Services and Engineering. The information provided in the Preliminary Drainage Plans and Report indicates the level of drainage review required is Abbreviated Drainage Review.

14. On-site Stormwater management, and erosion and sedimentation control, shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, March 14, 2018. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

15. Per Volume II, Chapter 5.3.1 of the Kitsap County Stormwater Design Manual, a minimum 100-foot flowpath shall be depicted on the SDAP and shall be maintained for the Full Dispersion flowpath.

16. If the project proposal is modified from that shown on the submitted site plan dated March 14, 2018, Development Services and Engineering will require additional review and potentially new conditions.

### **Environmental**

17. To minimize visual impacts for the surrounding community, the existing tower and new components shall be painted non-reflective earth-tone; final colors are to be approved by DCD prior to building permit approval.

18. To provide a functional screen, the Applicant shall plant two offset rows of Western Red Cedars along the northwest corner and preserve all other existing trees around the perimeter as identified on the site plan.

### **Traffic and Roads**

19. The Applicant shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

20. All rights of access for adjoining properties currently in existence shall be preserved. Any amendment to the existing easement rights of adjoining property owners shall be properly executed and recorded prior to SDAP acceptance. Any amendment to the existing easement rights of adjoining property owners shall be properly executed and recorded prior to issuance of the SDAP Acceptance letter.

21. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

#### **Fire Safety**

22. The proposed site plan indicates the installation of a 1000-gallon fuel tank. A Fire Code Operation permit will be required as a separate permit for the storage or use of Class II liquids in excess of 60 gallons outside a building.

#### **Kitsap Public Health District**

23. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

#### **Additional Conditions**

24. Per KCC 17.530.060(F), if the facility is no longer needed and its use is discontinued this shall be reported immediately by the service provider to the director. Discontinued facilities shall be completely removed by the service provider or the property owner within six months from the time of discontinuance. An extension to this period may be granted by the director.

25. If generator noise becomes a code compliance concern, DCD may require a noise study documenting compliance with County noise ordinance requirements. This provision does not in any way preclude DCD from utilizing any and all other code enforcement remedies.

THIS DECISION is entered this 1st day of November, 2018.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond