



COUNTY COMMISSIONERS

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District One

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District Two

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District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	No. 2017105887
	)	
<b>Verizon Wireless</b>	)	<b>Mullen Road WCF</b>
	)	
For a Special Use Permit	)	FINDINGS, CONCLUSIONS, AND DECISION
_____	)	

**SUMMARY OF DECISION**

The request for a special use permit to construct and operate a freestanding wireless communication facility at 7140 Mullen Road SE is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Verizon Wireless (Applicant) requested a special use permit to construct and operate a freestanding wireless communication facility (WCF), consisting of a 120-foot tall monopole tower with six panel antennas and auxiliary equipment, equipment cabinets, and a back-up generator at 7140 Mullen Road SE in Thurston County, Washington.

**Hearing Date:**

The Thurston County Hearing Examiner conducted an open record public hearing on the request on May 22, 2018.

**Testimony:**

At the open record public hearing, the following individuals presented testimony under oath:

Tony Kantas, Associate Planner, Resource Stewardship Department  
Dawn Peebles, Thurston County Environmental Health  
Arthur Saint, Thurston County Public Works  
Sarah Telschow, Odelia Pacific Corporation, Applicant Representative  
Rick Yale

**Exhibits:**

At the open record public hearing, the following exhibits were admitted into the record:

- Exhibit 1 Community Planning and Economic Development Staff Report, including the following attachments:
- A. Notice of public hearing
  - B. Master application, received October 24, 2017
  - C. Special use permit application, received October 24, 2017
  - D. Vicinity zoning map, 2015 aerial
  - E. Applicant's narrative project description, 37 pages
  - F. Site/structure plan set, 22 pages
  - G. Notice of application, mailed January 30, 2018
  - H. SEPA determination of non-significance (DNS), 2 pages, issued May 4, 2018
  - I. Thurston County Public Works recommendation, dated April 5, 2018
  - J. Thurston County Health Department recommendation, dated March 26, 2018
  - K. Washington State Department of Ecology comment letter, dated February 20, 2018
  - L. Nisqually Indian Tribe comment letter, dated November 14, 2017
  - M. Dismantle letters, dated April 26, 2016
  - N. NEPA compliance acknowledgement
  - O. Evaluation of compliance with FCC Guidelines for Human Exposure to Radiofrequency Radiation, dated May 2, 2016
  - P. Third-party review, by Adcomm Engineering, dated February 21, 2018
  - Q. Acoustical report, dated October 4, 2017
  - R. RF documentation, dated August 10, 2017
  - S. MHz bands license
  - T. FAA compliance letter
  - U. Federal Airways & Airspace summary report
  - V. Availability of tower for co-location, 4 pages
  - W. Balloon test and photo simulations
  - X. Sight distance investigation, dated February 20, 2015
  - Y. Balloon test letter sent to property owners within vicinity
  - Z. Geotechnical report, received October 24, 2017
  - AA. Structural calculations, received October 24, 2017

- BB. Structural seismic calculations, submitted October 24, 2017
- CC. Wetland and stream determination, dated May 6, 2016
- DD. Habitat assessment, dated May 6, 2016
- EE. Waterfowl/Migratory Bird Survey
- FF. Engineered abbreviated drainage report, dated February 20, 2016
- GG. Market study, dated January 29, 2015
- Exhibit 2 Four photos, taken by Tony Kantas, Senior Planner, on May 21, 2018
- Exhibit 3 Color sample
- Exhibit 4 Balloon test notice, one-mile radius map, and one-mile radius address list
- Exhibit 5 Letter from Ehresmann Engineering, LLC, regarding fire potential, dated May 2, 2016
- Exhibit 6 Neighborhood survey
- Exhibit 7 Photosimulations
- Exhibit 8 Communications Towers web page from US Fish and Wildlife Service Migratory Bird Program, submitted by Rick Yale, print dated May 22, 2018

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

### **FINDINGS**

1. The Applicant requested a special use permit to construct and operate a freestanding WCF consisting of a 120-foot tall monopole tower with six panel antennas and auxiliary equipment, equipment cabinets, and a back-up generator at 7140 Mullen Road SE in Thurston County, Washington.<sup>1</sup> *Exhibits 1, 1.B, 1.C, 1.E, and 1.F.*
2. The subject property is 2.52 acres in area. The proposed WCF would be located in a 40-foot by 40-foot fenced area in the central, forested portion of the parcel. *Exhibits 1 and 1.F.* The subject property is slightly sloped, and the proposed cell tower site contains mature conifer trees. Surrounding land uses consist of residences on parcels of approximately 0.25 acres in area. *Exhibits 1, 1.D, and 1.E.*
3. The subject property is situated within the Lacey Urban Growth Area (UGA) and is zoned Low Density Residential (LD 0-4). One of the purposes of the LD 0-4 zone is to

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<sup>1</sup> The legal description of the subject property is a portion of Section 34, Township 18 N, Range 1 W; also known as Tax Parcel No. 11834140600. *Exhibit 1.*

enhance the residential quality of the Lacey UGA by providing a high standard of development for single-family residential areas. *Thurston County Code (TCC) 21.12.010*. Freestanding WCFs are allowed in the LD 0-4 zone with approval of a special use permit and compliance with the standards of Chapter 20.33 of the Thurston County Code. *Exhibits 1 and 1.D; TCC 21.66.020*.

4. The purpose of the proposed WCF is to provide and enhance coverage and capacity in the area generally bounded by Long Lake County Road SE to the north, Yelm Highway to the south, Archer Drive SE to the east, and Thornbury Drive SE to the west. Based on radiofrequency (RF) propagation mapping, the signal strength in this area is unreliable, or is reliable outdoors only. With an appropriately designed WCF at the proposed location, signal strength in much of the area would improve to the point of being reliable indoors. *Exhibits 1.E. and 1.R.*
5. The County's wireless communications facilities provisions require co-location onto existing support structures unless the approval authority determines that the antenna cannot be accommodated on a structure within one mile of the proposed site or in one-half of the WCF's RF coverage area, whichever is greater. *TCC 20.33.070*. In this case there are no co-location opportunities within one mile of the proposed site or within one-half of the RF coverage area. The nearest existing freestanding WCFs are at least 1.7 miles from the proposed site. Replacing an existing utility pole within a right-of-way would not provide sufficient height to allow the signals to clear the surrounding tall trees, because *TCC 20.33.080(6)(c)* limits WCF height within rights-of-way to 100 feet, or to 80 feet depending on the height of adjacent poles. The engineer who provided third-party review of the Applicant's submittals on behalf of the County concurred that co-location on an existing structure cannot serve the target service area. *Exhibits 1.E, 1.P, and 1.R.*
6. Consistent with *TCC 20.33.080(2)(a)*, which prohibits freestanding WCFs in residential districts unless a proponent demonstrates that a site is not available or technically feasible in a nonresidential district, the Applicant submitted an analysis of non-residential sites within the search ring. Most properties within the search ring are residentially zoned. With respect to the non-residential properties in the search ring, none were feasible due to factors including the presence of wetlands or wetland buffers, small lot area, lack of screening opportunities, and lack of interest by the property owner. *Exhibit 1.E.*
7. When a WCF must be located in a residential district, various provisions in *TCC 20.33.080* and *20.33.090* indicate that preference should be given to forested parcels. The subject parcel is forested with mostly Douglas fir and maple trees, with tree heights in the vicinity of the proposed tower ranging from 94.5 to 109 feet. The Applicant proposes to maintain a 50-foot wide tree retention buffer around the fenced lease area, with an additional buffer of new coniferous trees 20 feet wide around the perimeter of the 50-foot retention buffer. *Exhibits 1.E. and 1.F.*
8. The Applicant conducted a balloon test and provided photosimulations to evaluate the potential visual impact of the tower. The Applicant mailed notice of the balloon test to property owners within 2,600 feet of the subject property. The results of the test

indicated that the tower would be visible from six of the 40 viewpoints evaluated, including those located to the south on Lakemont Drive SE and Mullen Road SE, and those located immediately to the west/northwest on Glen Terra Drive SE and 46th Lane SE. The photosimulations from these locations depict that, in most instances, the tower would blend in with or be substantially screened by surrounding vegetation. At a minimum, the lower portion of the tower would be screened by trees. Views of recognized landmarks, as identified in TCC 20.33.080, would not be impacted. *Exhibits 1.W, 1.Y, 6, and 7.*

9. The proposed tower would be painted dark green to blend with the forested surroundings. *Exhibit 3.*
10. The maximum allowable height for WCFs within an urban growth area is 150 feet. At 120 feet, the proposed tower would comply with this standard. The 120-foot height is necessary for the signal to clear surrounding vegetation and to enable future co-location as required by TCC Chapter 20.33. *Exhibits 1, 1.F, 1.P, and 1.R.*
11. In accordance with the requirement of TCC 22.33.050, the Applicant submitted affidavits from itself and from the underlying property owner indicating consent to co-location under reasonable terms and agreement to remove the WCF in the event of abandonment or code violation. The Applicant sent notice of the co-location opportunity to three carriers. *Exhibits 1.M and 1.V.*
12. The minimum setback standard applicable to WCF antenna support structures not located within a right-of-way is 110% of the structure height including antennas, which in this case comes out to 132 feet. The proposed tower would be set back approximately 150 feet from the nearest property line as measured from the centerline of the tower, or approximately 145 feet as measured from the antennas. *Exhibits 1 and 1.F.*
13. Within urban growth areas, freestanding WCFs must be separated from each other by a distance of at least 1,400 feet. There are no WCFs within 1,400 feet of the proposed WCF. As noted previously, the nearest existing freestanding WCF is more than 1.5 miles away. *Exhibit 1.E.*
14. There are two wetlands within 1,000 feet of the proposed tower: a freshwater forested/shrub wetland approximately 650 feet to the west, and Pattison Lake approximately 750 feet to the south. For proposed tower locations within 1,000 feet of wetlands, staging areas, or rookeries supporting listed species of birds, or within 1,000 feet of a public wildlife refuge, TCC 20.33.080 requires applicants to demonstrate that the proposed tower location would not have a significant impact on the listed bird species. The Applicant commissioned a professionally prepared Waterfowl/Migratory Bird Survey to evaluate the potential for the proposed WCF to impact protected species of birds. According to the survey, there are 15 species of birds with potential to occur within 1,000 feet of the tower that appear on the Washington Department of Fish and Wildlife's Priority Species list, the County's species of local importance list, and/or the Endangered Species Act's threatened or endangered species list. Eight avian surveys

were conducted by biologists during morning and evening hours in the months of March and May 2017, during which data including composition/abundance, migration/travel routes, and use of project area were recorded. Three of the 15 listed species were observed during site bird surveys, including common loon, marbled murrelet, and bald eagle. The preparer of the bird survey reported that the majority of observed flight paths occurred between Pattison Lake south of the site and Long Lake or Hick's Lake to the north. Other significant flight paths observed consisted of the routes between Pattison Lake and wetlands located to the west and east of the proposed tower. None of these observed flight paths utilized the air space above the proposed tower. While birds traveled over the proposed tower location occasionally, these occurrences were low compared to the previously identified flight paths. No nests of any bird species were observed within the lease area. The project site does not support rookeries and is not a staging area for any listed species. The conclusion of the Waterfowl/Migratory Bird Survey was that due to the observed flight paths and the lack of lighting and/or guy wires on the proposed tower, construction of the project would pose a low risk for bird strikes and would not have a significant impact on birds. *Exhibit 1.EE.*

15. The proposed WCF would be an unstaffed facility. Preventative maintenance would occur approximately monthly and after storm or other events, with one to two employees on-site for approximately four hours. *Exhibit 1.E.*
16. Proposed security features include a six-foot high chain link fence with privacy slats topped with three strands of barbed wire and tower climbing pegs that start 20 feet above ground level. *Exhibits 1.E. and 1.F; Sarah Telschow Testimony.*
17. The proposed antennas would be "close-mounted" to the tower (T-arm antenna mount) instead of "flush-mounted." This design option was selected because a flush-mounted design would require a minimum 135-foot tall tower, which would have the potential to visually impact a greater area. *Exhibits 1.F and 1.R.*
18. The radiofrequency emissions (RF) from the WCF, as measured six feet above ground level at a horizontal distance of 60 feet, assuming all antennae are operating, would be less than one percent of the public exposure limit established by the Federal Communications Commission. *Exhibit 1.O.* The engineer providing third-party review of the Applicant's RF submittal on behalf of the County concurred with this analysis. *Exhibit 1.P.*
19. Noise generated from the equipment on-site would comply with County noise standards for Class A receivers (residential), which is 55 dBA during daytime hours and 45 dBA during nighttime hours, with an increase of five dBA allowed for up to 15 minutes within a one-hour period. The continuously operating equipment would have a sound pressure of 40 dBA as measured at the nearest residential receiving properties, which are located approximately 145 feet east and west of the proposed tower location. The emergency generator, proposed to be operated for approximately 15 minutes once per week during daytime hours for maintenance testing and to operate continuously during power outages, would have a maximum sound pressure of 49 dBA at the nearest residential receiving

properties, which are located approximately 140 east and 160 feet west of the proposed generator location. *Exhibit 1.Q; Sarah Telschow Testimony*. The engineer providing third-party review of the Applicant's acoustical report for the County concurred with this analysis. *Exhibit 1.P*.

20. The proposed WCF, at the proposed height and location, does not require Federal Aviation Administration review. No lighting or signals are proposed. *Exhibits 1.T and 1.U*.
21. Access to the proposed WCF would be from Mullen Road via a new private driveway. A hammerhead turnaround and parking space would be provided outside the enclosed lease area. *Exhibits 1 and 1.F*.
22. The Thurston County Public Works Department reviewed the project for compliance with Thurston County Road Standards and the Drainage Design & Erosion Control Manual and determined that the preliminary requirements outlined in these documents have been satisfied. Public Works recommended approval of the project, subject to conditions. *Exhibit 1.I; Arthur Saint Testimony*.
23. The Thurston County Environmental Health Division reviewed the proposal and recommended approval, subject to conditions requiring the following: that the facility be unmanned and not have plumbing for domestic use; that operations comply with County noise standards, meet all storage and secondary containment requirements for the diesel generator, and store/handle potentially hazardous materials in a way that prevents release into the environment; and that the Applicant decommission or abandon any well or septic tank discovered during development. These conditions were incorporated into the County's recommended conditions of special use permit approval. *Exhibits 1 and 1.J; Dawn Peebles Testimony*.
24. The Washington Department of Ecology reviewed the proposal and submitted comments identifying the procedures to follow if contamination is suspected or if wells are identified on-site. Department of Ecology did not submit any project-specific comments that would affect approval of the project as proposed. *Exhibit 1.K*.
25. The Nisqually Indian Tribe did not have comments on the application but requested that it be informed of inadvertent discoveries of archaeological resources or human burials. *Exhibit 1.L*.
26. Thurston County Community Planning and Economic Development Department reviewed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). The County's SEPA Responsible Official issued a determination of non-significance (DNS) on May 4, 2018. No appeals were filed. *Exhibits 1 and 1.H; Tony Kantas Testimony*.
27. Notice of the application was mailed to property owners within 1,400 feet of the subject property on January 30, 2018. No public comment was received on the notice. *Exhibits*

*I and I.G.* Notice of the open record hearing was mailed to property owners within 1,400 feet of the subject property on May 8, 2018 and published in *The Olympian* and posted on-site on May 11, 2018. *Exhibits I and I.A.*

28. Although the notice of application correctly described the project as including a 120-foot monopole with six panel antennas, the DNS (which was not appealed) and the notice of public hearing described the project as including a 150-foot tall monopole with eight panel antennas. Addressing this discrepancy at hearing, Planning Staff testified that the incorrect information had resulted from a cut and paste error. Despite the error, Staff submitted that the hearing notice was adequate because it described a WCF project in the correct location that would have potentially greater impacts than the project actually proposed. No written public comments were submitted in response to either the notice of application or the notice of public hearing. *Exhibits I, I.A, I.G, and I.H; Tony Kantas Testimony.*
29. Public comment at the hearing expressed concern that the project would have an adverse impact on migratory birds, referencing guidance provided by the US Fish and Wildlife Service (included at Exhibit 8), and that the Applicant's Waterfowl/Migratory Bird Survey, which has an August report date, did not coincide with spring and fall migration time periods. *Rick Yale Testimony; Exhibit 8.*
30. The August 4, 2017 Waterfowl/Migratory Bird Survey indicates that eight surveys were conducted over seven days in winter and spring of 2017: March 8, March 20, March 21, March 22, May 8, May 9, and May 10. *Exhibit I.EE.* The report was forwarded to the Washington Department of Fish and Wildlife, which did not comment. *Tony Kantas Testimony.* The tower does not contain the features noted by the US Fish and Wildlife Service as posing an increased risk to birds, such as steady burning lights, guy wires, or height in excess of 350 feet. *Exhibits I.EE and 8; Sarah Telschow Testimony.*

## **CONCLUSIONS**

### **Jurisdiction:**

The Hearing Examiner has jurisdiction to decide this special use permit application under Sections 2.06.010 and 21.81.040 of the Thurston County Code.

### **Criteria for Review:**

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 21.87.035 are satisfied:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Lacey Joint Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
2. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback, and bulk requirements shall be no less than that specified for

the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.

3. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
  1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
  2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

**Additional Applicable Code Sections:**

TCC 20.33.080 - Location and design standards for freestanding WCFs and remote freestanding WCFs/antenna support structures:

1. Evaluation of Alternative Sites. Prior to submission of an application for a WCF/antenna support structure, the applicant is encouraged to meet with residents of the search area for the proposed WCF/antenna support structure for the purpose of evaluating alternative sites and exploring the possibility that other technically feasible sites may be available that would be more acceptable to the community.
2. Siting.
  - a. Freestanding WCFs and other antenna support structures regulated by this chapter shall not be permitted in residential districts unless the applicant demonstrates that: a site is not available or technically feasible in a nonresidential district; and the restriction on siting antenna support structures in residential districts would have the effect of prohibiting the provision of personal wireless communication service. Residential districts include, but are not limited to, the following: ... Low-Density Residential District (0—4) ....
    - i. The approval authority may waive the requirement in subsection (2)(a) of this section, consistent with subsection (2)(a)(ii) of this section, if the applicant demonstrates that the proposed site would result in fewer or less detrimental aesthetic and environmental impacts than any other feasible alternative site... ..
    - iii. If a WCF/antenna support structure is necessary in a residential district, preference among available sites shall be given to forested parcels....
  - b. WCFs and other antenna support structures shall be located, designed and screened, to the extent feasible, to blend with the immediate surroundings so as to reduce visual impacts.

- i. Proposed WCFs/antenna support structures shall be located where their visual impact is least detrimental to views of recognized landmarks, such as, but not limited to, Puget Sound, Nisqually Valley, Mount Rainer, the Black Hills, and the Olympic Mountains. If the approval authority determines that the proposed location for the facility would have a significant detrimental impact on a view of a recognized landmark, she/he shall deny the proposal unless the applicant demonstrates that a less impacting site is not available.
- ii. In order to demonstrate that a less impacting site is not available, applicants for WCF/antenna support structures impacting the views listed in subsection (2)(b)(i) of this section shall identify all viable alternative sites available for accommodating the WCF/antenna support structure. The applicant shall perform balloon tests for the proposed and alternative sites, in a manner consistent with Section 20.33.050(3), and submit them for approval authority review.
- iii. WCFs/antenna support structures shall be sited off ridgelines unless they are designed to blend in with the surrounding environment in such a manner that they would not have a significant visual impact, as determined by the approval authority, or the applicant demonstrates that no alternative location is available.
- iv. In determining whether or not a WCF/antenna support structure will have a significant adverse visual impact on a view/location listed in subsections (2)(b)(i) and (2)(b)(iii) of this section, the approval authority shall at least consider the following:
  - (a) The degree to which the antenna support structure is screened by topographic features from the views listed in subsection (2)(b)(i) of this section;
  - (b) Whether trees and vegetation can be preserved in a manner that would substantially limit the visibility of the proposed WCF/antenna support structure from the views listed in subsection (2)(b)(i) of this section;
  - (c) Whether background features in the line of sight to the proposed WCF/antenna support structure would obscure it or make it more conspicuous;
  - (d) Whether the proposed design would reduce the silhouette of the portion of the WCF/antenna support structure extending above surrounding trees, landforms, or structures; and
  - (e) Whether the facility has a camouflage design.

...
- vi. Unless effectively camouflaged, as determined by the approval authority, WCFs/antenna support structures shall be located on a site to take maximum advantage of the screening afforded by any existing trees, topography, and structures in order to minimize their visibility from the surrounding area, consistent with other applicable regulations. Priority shall be given (in

descending order) to minimizing visibility from existing dwellings, public rights-of-way, and public parks and open spaces.

- vii. In residential and commercial districts, flush mounted antennas shall be used unless the applicant demonstrates that another mount is necessary....
  - d. WCFs and other antenna support structures shall be located, designed, and screened to maintain property values and neighborhood character.
  - e. WCFs and other antenna support structures shall be sited consistent with the provisions of the Thurston County Agricultural Uses and Lands Critical Areas Ordinance (Chapter 17.15 TCC), the Thurston County Critical Areas Ordinance (Title 24), and as follows:
    - i. To minimize the potential for birds to collide with towers, WCFs/antenna support structures shall not be located within one thousand feet of wetlands, staging areas, or rookeries supporting birds listed as priority species by the Washington Department of Fish and Wildlife, listed as endangered or threatened species under the federal Endangered Species Act (64 FR 14307), listed in Title 24 TCC or Chapter 17.15 TCC as species of local importance, and as amended, or within one thousand feet of publicly owned wildlife refuges, unless the applicant demonstrates that the proposed location will not have a significant impact on such birds. Where possible, WCFs/antenna support structures shall not be located where they would interfere with migratory flyways documented by state or federal agencies....
3. Setbacks.
- a. WCFs/antenna support structures, except those in rights-of-way, shall be set back from property lines a minimum of one hundred ten percent of the antenna support structure's height, including antennas.  
...
  - c. The setbacks required by this subsection (3) shall be measured from the base of the antenna support structure to the property line of the parcel on which it is located. Where guy wire supports are used, setbacks shall be measured from the base of the guy wire anchored to the ground, rather than the base of the tower.
  - d. The approval authority may allow the setbacks required pursuant to subsections (3)(a) or (b) of this section to extend into neighboring property if it would result in a substantially better design and it accommodates any screening required pursuant to subsection (7)(d) of this section, provided that the owner of the neighboring property agrees in writing.
4. Separation. WCFs/antenna support structures shall be separated from one another as follows:
- a. Within urban growth areas, freestanding WCFs/antenna support structures shall be a minimum of one thousand four hundred feet from another freestanding WCF/antenna support structure.  
...

5. Co-location. All freestanding and remote freestanding WCFs/antenna support structures shall be designed and constructed to fully accommodate at least two additional WCF providers, including an area for each co-locator's equipment near the base of the tower, each comparable in size to the area required by the applicant, unless the applicant demonstrates why such design is not feasible for technical or physical reasons (for example, because it would ruin the disguise of a camouflaged antenna support structure)....
6. Maximum Height.
  - a. Maximum height within urban growth areas: one hundred fifty feet including antennas.  
...
  - d. WCFs/antenna support structures shall be of a height that does not require installation of a flashing light or signal in compliance with FAA regulations unless:
    - i. The lights/signals are screened from view of motorists, pedestrians, and occupants of adjacent structures, consistent with FAA requirements; or
    - ii. The applicant demonstrates that the alternative locations for the WCF/antenna support structure would also require a light/signal and would be no less visible from the surrounding area than the proposed structure. WCFs/antenna support structures requiring flashing lights/signals shall be allowed in residential districts only when the applicant demonstrates that there is no alternative for providing necessary service. (Also, see Section 20.33.090(5)).  
...
  - f. WCFs/antenna support structures shall not exceed the minimum height necessary to provide adequate service for the communications facilities proposed, plus the height necessary to accommodate co-locations required pursuant to this chapter. The county may require that a third party reviewer verify the justification for the requested height.
  - g. The approval authority shall limit the height of antenna support structures and associated antennas adjacent to public and private airports consistent with FAA height hazard requirements and adopted airport master plans.
7. Screening/Camouflaging.
  - a. Color. WCFs/antenna support structures and antennas, with the exception of camouflaged and wooded antenna support structures, shall have a nonglare finish in a gray, blue, green or other color(s) appropriate to the background against which it would be primarily viewed (e.g. green to the tree line and gray above) as determined by the approval authority, unless a different color or finish is required by the FCC or FAA.  
  
Cables on WCFs/antenna support structures that would be visible from public rights-of-way and residential property must be contained inside the antenna support structure or in conduit colored to blend in with the antenna support structure, as determined by the approval authority. The approval authority may waive this requirement if matching conduit is not available. The approval

authority also may waive this requirement for proposed WCFs/antenna support structures in rights-of-way if the proposed conduit would match conduit on poles along the same street within five hundred feet of the proposed pole location. Antennas shall be painted so as to appear to blend in with the antenna support structure unless it is not technically possible to do so.

...

- d. Screening. WCFs/antenna support structures shall be located among or beside trees wherever possible.
  - i. If the site proposed to accommodate an antenna support structure is treed within fifty feet of the proposed antenna support structure's location such that substantial year-round screening of the structure and related facilities is provided, as determined by the approval authority, the applicant shall cause an easement signed by the property owner, or other instrument approved by the Thurston County prosecuting attorney's office, establishing a tree retention buffer to be recorded with the county auditor prior to the issuance of building permits. This buffer shall remain in effect for as long as the WCF/antenna support structure is in place. A copy of the recorded easement/instrument shall be provided to the department. The buffer shall be a minimum of fifty feet wide and shall extend around the perimeter of the facilities, excluding the access point.

The approval authority may require the buffer area to be enhanced to provide sufficient screening of ground level facilities. The buffer shall be maintained so long as the antenna support structure is located on the site. Any tree within the buffer that dies or is removed due to disease or wind throw shall be replaced during the next planting season with a minimum of two conifer trees a minimum of six feet in height at the time of planting, unless the approval authority determines that the spacing would be too close when the trees mature.

...

#### 8. Public Safety.

- a. For freestanding WCFs/antenna support structures, a minimum six-foot high chain link fence with privacy slats shall be installed around the perimeter of the site for public safety and screening purposes. The fence and privacy slats shall be a nonreflective, deep green or other color that blends in with the surrounding environment, as determined by the approval authority. (A fence over six feet in height will require a building permit). Access to the tower shall be through a locked gate. The approval authority may authorize alternate methods of providing for public safety if a level of public safety and screening similar to that provided by the previously described fence is clearly demonstrated. These requirements shall not apply to camouflage WCFs and antenna support structures in rights-of-way and their associated equipment cabinets unless potentially dangerous equipment would be accessible by the public.

...

- c. All freestanding and remote freestanding WCFs/antenna support structures, with the exception of replacement utility poles, shall be fitted with anti-climbing devices.
  - d. The county shall require remedial action by the responsible party if it determines that structural failure, ice accumulation, or other conditions pose a risk to public safety.
  - e. A device shall be installed on all WCFs and antenna support structures that automatically stops transmission from the antennas in the event the antenna support structure falls or shifts significantly out of alignment, unless the applicant demonstrates that it is not technically feasible to do so. This does not apply to remote freestanding WCFs/antenna support structures.
  - f. Foundations for replacement utility poles subject to this chapter shall require a commercial building permit.
9. Parking/Access. At least one parking space, plus adequate turnaround area, shall be provided. The access road, parking, and turnaround areas shall have a paved, gravel, or other all-weather surface. The access road must be a minimum of ten feet wide. These requirements shall not apply to WCFs/antenna support structures in rights-of-way and their associated equipment structures. Approval of WCFs/antenna support structures in rights-of-way shall be contingent upon demonstration by the applicant that parking space is available for maintenance vehicles that will not obstruct vehicle travel lanes, bike lanes, or sidewalks.
10. Signals, Lights and Signs. No signals, lights or signs shall be permitted on a WCF/antenna support structure unless required by the FCC or FAA (also see subsection (6)(d) of this section). If lighting is required, the county shall review the available lighting alternatives consistent with FAA requirements and approve a design that it determines would cause the least impact on surrounding views. However, in documented migratory bird flyways, preference shall be given to white strobe lights operating at the longest interval allowed per FAA requirements.
- WCFs/antenna support structures shall have a sign posted on the access gate with the WCF provider name and an emergency contact phone number on it. When the site is not fenced, the sign required above shall be placed in a location authorized by the approval authority. Any site security lighting shall be shielded to contain light and glare on site.
11. Outdoor Storage. Outdoor storage of motor vehicles or materials associated with the WCF/antenna support structure is prohibited outside of the fenced area installed pursuant to subsection (8) of this section.

### **Conclusions Based on Findings:**

- 1. Notice of the public hearing was adequate. *Finding 28.*
- 2. With conditions of approval, the proposed WCF would comply with applicable laws and plans, including Thurston County noise, drainage, road, and public health standards, FCC

exposure limits, and FAA lighting requirements for towers. *Findings 18, 19, 22, 23, 24, and 26.*

3. With conditions of approval, the proposed WCF would comply with the purposes of the LD 0-4 zone and with the use-specific standards of TCC 20.33. The requirements of TCC 20.33 are consistent with the high standard of development desired in the zone. Consistent with these requirements, the WCF would be located, designed, and screened to blend with the immediate surroundings to the extent feasible. It would meet the height, setback, and separation distance requirements. The Applicant provided sufficient justification for the 120-foot height proposed. A 50-foot tree retention buffer would be maintained around the lease area, and the Applicant has proposed 20 additional feet of newly planted trees inside the buffer. Pursuant to TCC 20.33.090(7)(d)(ii), the addition of 20 feet of landscaped screening is only required if the approval authority finds the existing screening is inadequate.<sup>2</sup> In the instant case, information provided in the record states that the site is forested but omits any analysis of whether additional landscaping is in fact required to screen the proposed facility from view of adjacent residentially developed lots. While it may be true that the existing trees would adequately screen the proposed WCF, the record presented would not support such a conclusion. Because adjacent parcels to the east, north, and west are developed with residences and are as close as 145 feet from the facility, the additional 20 feet of landscaped screening proposed by the Applicant would best assure that the screening intent of the WCF provisions is met. Public safety requirements would be met. The record as a whole demonstrates that the WCF would not have a significant adverse impact on listed species of birds. *Findings 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.*
3. The proposed use is appropriate in the location for which it is proposed. The Applicant demonstrated that there is a need for additional cellular coverage in the vicinity of the subject property and that the siting criteria of TCC 20.33 have been satisfied. There are no feasible co-location opportunities or non-residential parcels on which to construct the tower while meeting the identified coverage needs of the target service area. A forested location was selected. With conditions of approval, the use would not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. The unmanned facility would not pose an undue burden on public services. *Findings 4, 5, 6, 7, 8, 9, 14, 15, 16, 18, 19, 20, 21, 22, 23, and 29.*

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<sup>2</sup> TCC 20.33.090(7)(d)(ii): If the site does not contain sufficient trees to provide effective screening, as determined by the approval authority, a minimum twenty-foot wide buffer around the perimeter of the WCF/antenna support structure location, excluding the access point, shall be planted with site-obscuring conifer trees....

## DECISION

Based on the preceding findings and conclusions, the request for a special use permit to construct and operate a freestanding wireless communication facility at 7140 Mullen Road SE is **GRANTED** subject to the following conditions:

### **Planning related conditions:**

1. The tower shall be no higher than 120 feet above grade.
2. There shall be no rotary converters, generating machinery, or other equipment that would cause substantial (above regulated standards at the property lines) odors, smoke, noise, electrical interference, or similar disturbances.
3. A minimum six-foot high fence shall be maintained around the perimeter of the site. The fence shall be solid cedar or chain link with slats.
4. The tower shall be designed or fitted with appropriate anti-climbing devices to prevent unauthorized climbing of the tower.
5. A minimum 50-foot wide tree retention buffer shall be established around the perimeter of the facility, excluding the access point. The Applicant shall establish an easement signed by the property owner, establishing the 50-foot wide tree retention buffer to be recorded with the County Auditor prior to the issuance of any building permits. This buffer shall remain in effect for as long as the WCF/antenna support structure is located on the site. The additional 20-foot wide landscaped planting area inside the 50-foot buffer shall be provided as proposed in the plans at Exhibit 1.F to ensure adequate screening of the facility from adjacent parcels.
6. Ground mounted equipment shall not exceed ten feet in height.
7. A sign shall be posted on the access gate with the WCF provider name and an emergency contact phone number.
8. The WCF shall remain in compliance with the Thurston County Wireless Communication Facilities and Antenna Support Structure Chapter (TCC 20.33).
9. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified by contacting the Environmental Report Tracking System Coordinator at the Southwest Regional Office at 360-407-6300.
10. The Applicant shall notify the Community Planning and Economic Development Department of any changes in ownership and any significant changes in technology or operation affecting the facility, within 60 days of the change. The current owner of the tower must provide all documents containing conditions of approval to each new owner or lessee.

11. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that initially approved by the Hearing Examiner will require approval of a new or amended special use permit. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

**Health related conditions:**

12. The facility is to be unmanned and shall not have any plumbing for domestic use.
13. The proposed project must comply with the noise standards of Thurston County Ordinance, Title 10, Chapter 10.36 and Chapter 173-60 of the Washington Administrative Code (WAC).
14. The proposed diesel generator shall meet all storage and secondary containment requirements of Article VI of the Thurston County Sanitary Code.
15. Any potentially hazardous materials shall be stored and handled in such a way that any spilled or released materials are contained inside a secondary container and are not allowed to release to the ground, surface water, or ground water.
16. Any unidentified well or septic tank discovered during site development must be properly decommissioned or abandoned. Wells must be decommissioned by a licensed well driller per Washington State Department of Ecology regulations. Septic tanks must be abandoned by a certified on-site sewage system pumper per Article IV of the Thurston County Sanitary Code.

**Public Works related conditions:**

17. The proposed roadway shall conform to the Road Standards in concept and design.
18. A construction permit shall be acquired from the Thurston County Public Works - Development Review Section prior to any construction.
19. All access points with sight distance issues or abutting arterial or collector roadways shall be installed prior to final approval.
20. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices, and applicable WSDOT Standards and Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works - Development Review Section Staff to obtain the most current Thurston County guidelines.
21. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division, and any liability incurred by the County due to non-conformance by the Applicant shall be transferred to the Applicant.

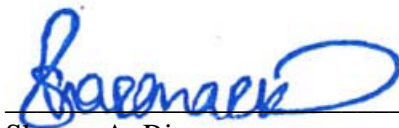
22. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
23. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner, and/or the property owners association.
24. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
25. The proposed water and sewer system shall be designed in accordance with the standards and specifications of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
26. Proposed utility work within the Thurston County right-of-way shall conform to the Road Standards and Chapter 13.56 of the Thurston County Code. These standards do not address specific design requirements but rather only items such as restoration of the County right-of-way and traffic control.
  - a. Placement of utilities within the County right-of-way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20 feet of asphalt concrete pavement.
27. No work shall take place until a construction permit has been issued by Thurston County Public Works - Development Review Section.
28. Development within the City of Lacey urban growth boundary, requiring review by both Thurston County and the corresponding city jurisdiction, shall be designed to the more stringent standards of the two jurisdictions.
29. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code, and the Drainage Design & Erosion Control Manual.
30. When all construction/improvements have been completed, contact the Thurston County Public Works - Development Review Section at 360-786-5214 for a final inspection.
31. This approval does not relieve the Applicant from compliance with all other local, state, and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on

when a permit is required and the application can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

32. Once the planning department has issued the official approval, a construction permit application shall be submitted along with a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works - Development Review Section for review and acceptance.
33. Prior to construction, the Applicant shall:
  - a. Pay outstanding construction review and inspection fees;\*
  - b. Receive an erosion and sediment control permit;
  - c. Have the erosion and sediment control inspected and accepted;
  - d. Receive a construction permit; and
  - e. Schedule a pre-construction conference with County staff.

\* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/fees-home.html>, or by contacting Ruthie Padilla with the Thurston County Public Works - Development Review Section by phone at 360-867-2050 or by email at [padillr@co.thurston.wa.us](mailto:padillr@co.thurston.wa.us).
34. Prior to receiving final approval from this department, the following items shall be required:
  - a. Completion of all roads and drainage facilities.
  - b. Final inspection and completion of all punch list items.
  - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - d. Receive and accept Engineer's Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).
  - e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
  - f. Payment of any required permitting fees.

**DECIDED** June 6, 2018.



Sharon A. Rice  
Thurston County Hearing Examiner



**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

<b>NOTE:</b> THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).
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If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. \_\_\_\_\_  
Appeal Sequence No.: \_\_\_\_\_

☐ Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

### STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_  
\_\_\_\_\_  
Phone \_\_\_\_\_

Please do not write below - for Staff Use Only:

Fee of ☐ \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.