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

**Conditional Use Permit No. 18-02544
ECO-SITE Multi-Tenant Wireless Communications Facility**

January 14, 2019

1. FINDINGS OF FACT

1.1 Proposal. A 180-foot wireless communications facility is proposed¹ on a 3.83 acre property, within a 50'x 50' leased area for associated ground equipment. ECO-Site is the tower company; T-Mobile is a tenant.

Applicant. Eco-Site, LLC, 240 Leigh Farm Road, Suite 415, Durham, NC 277707.

Property Owner and Site Location. Spirit of Life Lutheran Church, 3091 SE Mullenix Road, Port Orchard. Parcel No. 192302-2-032-2004.

1.2 Administrative Record. At the hearing, the Examiner admitted Exhibits 1-58, which included the Department of Community Development's ("DCD") Staff Report and power point. The record was kept open through December 28, 2018, and six technical articles were submitted, accompanied by an e-mail requesting admission. The Examiner admitted the documents, marked as Exhibits 59-65.

1.3 State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"). DCD issued a Mitigated Determination of Nonsignificance, or MDNS, which was not appealed.² Four conditions were imposed:

- 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 tower shall be painted hunter green, a site-obscuring fence and planting provided around the perimeter. Existing and planted trees and vegetation shall remain.
- A noise barrier shall be constructed along the northern perimeter per the Acoustical Report by SSA acoustics, dated August 29, 2017.
- 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.

¹ The lightening rod will add five feet.

² Exhibit 44.

1.4 Hearing. An open record public hearing was held on December 20, 2018. DCD, through Mr. Smith, summarized the proposal. The Applicant, through legal counsel, Mr. Busch, provided additional detail. Several citizens testified. That testimony is summarized below.

1.5 Citizen Pre-Hearing and Hearing Comment.

1.5.1 Neighborhood Meeting and Pre-Hearing Comment. The Applicant held a neighborhood informational meeting on September 18, 2018 as the code recommends.³ Echo Site's Director of Sales, T-Mobile's Radio Frequency Engineer, Project Manager and Construction Manager were present. Interested parties raised concerns primarily focused on health and environmental effects, visual impacts, noise, property values, and the review process.⁴ DCD received written comments from several citizens.⁵ Most comments opposed the project, but one supported it based on the need to improve service, and the School District requested additional information on safety impacts. Comments received included those from:

- Art and Linda Chavez;⁶
- Randi and Nicolas Gunyan;⁷
- Abigail Welch;⁸
- Robert and Susan Weidman;⁹
- Shawn and Phil Leopold;¹⁰ and,
- Darryl Johnson, South Kitsap School District.¹¹

1.5.2 Hearing Comment.¹²

Ms. Welch, employee of a Port Gamble S'Klallam Tribe, but appearing on her own behalf, spoke. She resides on Journey Lane. The site is surrounded by single family homes and an elementary school, with area zoning including Rural Residential and Rural Protection. Rural Protection protects environmental features while Rural Residential protects low density residential development and agricultural activities consistent with rural character. A 180 foot communication tower does not preserve rural character, and will cause more than a moderate impact upon existing view scapes. Ms. Welch moved here from Eastern Washington, and was in awe of the area's beauty. She still remembers the first day she turned down Journey Lane, not thinking she could afford a home in the community, given its natural beauty and the well maintained homes. The project will take away home value and reduce marketability, affecting all homes along this road. She cited to a 2014 survey supporting her concerns, and to other studies regarding home value reductions of 20%. Besides concerns over home values, she

³ KCC 21.04.130; Exhibit 36 (notice).

⁴ Exhibit 53 (Staff Report), pg. 8.

⁵ See Exhibit 53 (Staff Report), pg. 7.

⁶ Exhibit 27.

⁷ Exhibits 28 and 31.

⁸ Exhibit 33.

⁹ Exhibit 32.

¹⁰ Exhibit 34.

¹¹ Exhibit 29 (Comment); Exhibit 37 (Applicant's Responsive Comment).

¹² Hearing comment is only summarized. Audio/video files are posted on the County website.

expressed concerns about health impacts. She understands that because of the Telecommunications Act, the County does not consider health impacts. However, her right to choose whether she will be subjected to EMF radiation without her consent is being taken. Various studies have shown negative effects on humans from EMF radiation. Within 700 feet, there is an elementary school, homes, and a child care facility. We have only a glimpse of short term exposure and little to no understanding of long term impacts. She is not a mother, but as a concerned community member, expressed particular concern about impacts to children who are most vulnerable and should not be subjected to this type of radiation.

Ms. Chavez is a property owner directly abutting the site to the northwest. She is very concerned about property value reductions and the fact that she will be able to see the tower from practically every room in her home except the ones on the very front. The green belt trees referred to earlier in the hearing are on her property, on the south side; where the sun comes in. She had been considering cutting them to allow more sun in; she won't do that now with the project. Once this comes in, the first thing people will see will be the tower; no one will be interested in buying into the area. The community has beautiful homes; beautiful properties; no power poles and no power lines. They are all underground. This is an affront to the community. It will degrade her property and she is very worried about EMF impacts. She understands those impacts can't be considered. But it is still a concern and she is appalled the project is being considered; particularly as there is a full time day care just beneath the tower at the Church, and the elementary school is close by. The project will be detrimental to those children and to her neighbors.

Mr. Hayward is the Church minister and expressed a desire to comment on the day care aspect. He stated that the Church is going off the science on this. He stated that the day care children are the Church's highest priority, and it hurts a little bit to have that questioned. He emphasized there has been a lot of research in this area. He reiterated this isn't something that might happen or could happen; we are going off of what we know.

Mr. Chavez raised EMF concerns. At the community meeting, not all of the community's questions were answered. He stated that people wanted to know if anyone would monitor the impacts at nearby homes. He noted that Jesse Jones on Channel 5 addressed this issue where people were getting headaches and getting sick. He would like his home and those adjacent monitored, and wondered if monitoring could be made a requirement. The Examiner indicated this was not presently a proposed condition, but would ask the Applicant to address the question. Mr. Chavez stated that with the house just up the street, if standing right in the front driveway, that test balloon was readily seen; and, there's a property up higher - the resident there would be looking straight at the tower. He emphasized that the community is all upset about this; it would be nice to have this somewhere else. He noted there are about 11 towers within a five mile radius. Why do we need so many, he questioned.

1.6 Applicant Response to Comment. The Applicant, through Mr. Busch, addressed questions raised in public comment. The Examiner confirmed setbacks, as set forth in the Staff Report are:

- North: 65 feet
- East: 391 feet
- West: 215 feet
- South: 232 feet¹³

Mr. Busch confirmed that sounded about right. The second item Mr. Busch addressed was noise and humming. He stated that wireless communications facilities should have no regular noise unless you are standing adjacent to them. As electronic devices, they may have a fan designed into them, just as a personal computer would, and if you are standing adjacent, you can hear that just as with a personal computer. But, it is not audible if you are 100/200 feet away. There are other potential noise generating devices. There is an HVAC unit, probably with redundancy built in, should one fail. This will make ordinary commercial type HVAC sounds. HVAC units are mounted on the exterior with cooling inside, so they vent outside. Antennas have no noise associated with them. As for monitoring, he stated that if neighbors notice humming/noise or radio interference, or if there are concerns FCC standards are not being complied with, which would be rare, but if that happens, a phone number is required to be posted at the site for the tenant and subtenants. A person may also file complaint with the FCC; the FCC telephone number for complaints is online.

Mr. Busch then addressed radio frequency emissions. He explained that each antenna has a propagation profile. Omni antenna broadcast in 360 degrees, or all directions. But, the project antennas will point in a particular direction. There is a radio frequency engineer's report; he suggested introducing his copy to ensure it is in the record. The Examiner admitted the report as Exhibit 57.¹⁴ Mr. Busch then discussed the Exhibit, addressing a visual depiction of how the antennas transmit energy to communicate with cell phones.¹⁵ The antennas propagate horizontally, with some propagation up and some down. A colored image in the exhibits shows the energy level coming from the antenna, and illustrates that it dissipates rapidly in the downward direction. He explained that if site drawings of four carriers are reviewed, with the top carrier at 175 feet and the bottom at 145, that's still 145 feet above ground at base. As one travels geographically to the north, the terrain goes uphill. But, given the distance from the antenna, there is no EMF concern for human health and safety.

Mr. Busch referenced OIT (Office of Information and Technology) Bulletin 65, which is designed to help local jurisdictions determine if a facility is safe, and was admitted as Exhibit 58. There are two safety standards. One is the general population standard; the second is the occupational standard for people who work in the industry and are taking safety precautions. B-65 says basically if the facility is 10 meters (37 feet) or more above ground level, there is no risk to anyone on the ground.¹⁶ With that height, no further analysis is necessary.

1.7 Follow Up Question. The Examiner asked if there was anything additional from the public. Ms. Welch stated that one question not addressed was monitoring. The Staff Report states there will be monitoring. She also requested an explanation on how monitoring would

¹³ Exhibit 53 (Staff Report), Site Plan at pg. 20.

¹⁴ Also at Exhibit 37. Exhibit 35 contains a partial copy.

¹⁵ The visual depiction is at pg. 10 of the report at Exhibits 37 and 57.

¹⁶ Referencing Exhibit 58 (OIT Bulletin 65), which was issued in 1997.

work. Does the company measure at ground level and get zero readings or climb the tower and read? Also, regarding company history, are the reading always zero, or are they outside of the expected range?

Mr. Busch stated that federal regulations do not require routine monitoring, and so there would not be monitoring. Transmission levels are set in the equipment, but no one has a job to monitor all of the sites out there. The FCC has come up with a level it believes is safe and the project is designed to less than 10% of that level.¹⁷ Even with four carriers (a cumulative analysis question), the project doesn't approach those levels. Within an ordinary operating environment it is unnecessary to monitor and don't. Now if there is interference or if equipment is not operating properly, then citizens should reach out. The Examiner requested clarification, as stated below.

Examiner Says on pg. 14 of Staff Report, T-Mobile tests facilities to ensure facilities remain below thresholds established by the FCC guidelines. T-Mobile documents test results and has them available to show the FCC upon request. I assume that statement's correct.

Applicant That statement is correct.

Examiner So that's technically a form of monitoring. I mean the term monitor is not used - but technically ... if they are testing and have the results available.... it sounds like they do have some due diligence to make sure the Applicant remains in compliance, if this language is correct.

Applicant That is correct. I distinguish between monitoring - meaning someone testing the levels as they are received at ground level with some type of a receiving device as opposed to the monitoring which is going into the equipment to make sure that it is set at the appropriate levels and operating at the appropriate levels. So it's all science from there. If it's at .5 - I'm making that number up. If it's supposed to be at .5 in the machine and it's at .5 in the machine the rest is just science It's fine. But if it's supposed to be .5 in the machine and all of a sudden it's at 10. That is a problem. We need to fix that. And, that is monitored. Those settings, the equipment performance, is constantly 24-7 monitored centrally by every carrier; every site. If there is an alarm that is triggered because it's no longer in compliance with the expectations, that's when they come out and look at it.

1.8 DCD Clarifications in Response to Citizen Questions. DCD, through Mr. Smith, clarified questions raised in public comment. On sound mitigation, there is sound barrier equipment in the shelter and an acoustical analysis was completed on the project. Also, one of neighbors was concerned about wind sheer. The monopole is designed to handle up to 130 m.p.h. winds, so is strong.

¹⁷ This is largely due to the fact that the lowest device would not be less than about 145 feet away from the ground.

1.9 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, the Fire Marshal will review the request through the building permit review process. Also, the Kitsap Public Health District has reviewed the proposal, which will comply with Health requirements.

1.10 Notice. Hearing notice was provided through posting, publishing, and mailing, and application notice was provided through mailing and publishing.¹⁸ No concerns on notice were raised.

1.11 Utility and Public Services.

- **Water:** Well
- **Power:** Puget Sound Energy
- **Sewer:** Onsite Septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District No. 402

1.12 Access. Phillips Road SE (a major rural collector) provides the Church with primary access. Secondary access is from Journey Lane SE, a private local access road. The existing driveway serving the site's rear will provide access. The tower is an unmanned facility with T-Mobile maintenance staff visiting several times a month.

1.13 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential, allowing one unit per five acres. The wireless communication tower is classified as an accessory commercial use or structure.¹⁹ As the tower exceeds 35 feet, the Ch. 17.530 KCC wireless communication review process applies.²⁰ Property to the east is Rural Protection (1 unit per ten acres); and, Rural Residential zoning is on three sides, with the nearby elementary school having a Public Facility designation.

1.14 Site. The site is a rectangular shaped 3.83 acre property, hosting a 10,322 square foot church approved in 1995 by conditional use permit, and various outbuildings. The permit requires the Church to retain the natural buffer around the perimeter as a functional screen. Eco-Site replanted vegetation removed by the Church; and, planted two rows of Douglas fir trees, ten feet on center, which will grow to provide a functional screen for the facility's base.²¹ The soil is deep, and somewhat excessively drained. Except for a portion of the site's northwest corner there are tall stands of Douglas fir trees around the perimeter providing a functional screen from SE Mullenix Road and Philipps Road SE. The site is in an area with single family homes, most of which are surrounded by trees. Mullenix Elementary is to the southwest and has retained trees around its perimeter.

¹⁸ Exhibits 26 (Notice of Application), 45 (Notice of Public Hearing), 46 (Certification of Public Notice); *see also* Exhibits 12 and 13 on the visual impact study and Exhibits 36 and 37 on the community meeting.

¹⁹ KCC Table 17.410.040A.

²⁰ KCC 17.530.040(A).

²¹ Exhibit 42; Testimony, Mr. Smith.

1.15 Noise. The Applicant has committed to noise barrier installation to ensure local noise code requirements are met. The Applicant prepared an acoustical analysis to address project compliance. It found:

The equipment support cabinets are expected to run 24 hours a day. The generator will run once a week during daytime hours for maintenance and testing purposes only.

Under Kitsap County Code Chapter 10.28.040, noise from equipment on a Class A EDNA property is limited as follows:

Class A EDNA Receiver. Noise is limited to 55 dBA during daytime hours. During nighttime, defined as the hours been 10:00 p.m. and 7:00 a.m., the maximum permissible sound level is decreased by 10 decibels. Since the support cabinets are expected to operate 24 hours a day, they must meet the 45 dBA nighttime limit.

Additionally, Kitsap County Code 10.28.040 allows that during any one-hour period, the maximum permissible noise level may be exceeded by 5 dBA for a 15 minute period. Therefore, the generator must not exceed 60 dBA when running during daytime hours for maintenance testing. The generator is exempt during emergency operation. ...

Noise levels will need to be reduced by 10 dB for the generator to meet the code limit at the north receiving property. To provide the noise reduction, a noise barrier will need to be installed between the equipment and the receiving properties as follows....²²

The report then details specifications for installing the noise barrier and concludes that with this mitigation code requirements can be met.²³

1.16 Stormwater and Critical Areas. Overall, the site is relatively flat, but has steep slopes along the north and south/southeast property lines with existing tree stands above and on the slopes. The project must follow the site development and construction recommendations of the Geotechnical Report (Delta Oaks Group, 11/2/18).²⁴

1.17 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 FCC Compliance Report found that:

²² Exhibit 14, pgs. 1-3.

²³ Exhibit 14, pg. 4.

²⁴ Exhibit 41 (Delta Oaks Group, 11/2/18).

Upon evaluation of the cumulative RF emission levels from all operators at this site, Sitesafe has determined that:

T-Mobile will be compliant with the FCC rules and regulations, as described in OET Bulletin 65 **upon implementation of the proposed remediation.**²⁵

The remediation identified above includes recommendations and conditions outlined in the Report, at § 3.2. T-Mobile tests facilities to ensure facilities remain below thresholds established by the FCC Guidelines. T-Mobile documents test results and has them available to show to the FCC upon request.²⁶ The Applicant addressed questions from the School District as follows.

I've attached the health related slides that were shown at the community meeting held on 9/18/18. I have also attached the RF Compliance Report. Page 11 of the report has a visual of the radio frequency's exposure, in terms of percentage of FCC's limit, over distance. The risk of over exposure only occurs if you are closer than 30' directly in front of the antennas at 176' elevation. As long as you are further away than that you will be exposed to less than 100%, and that fades quickly, turning to less than 5% for anyone on the ground no matter where you are. So to answer your question, the site does not pose any kind of health threat to children or adults. In reality, the general safety for individuals in the area can only improve. On the bottom part of the second slide in the fact sheets you'll see that 70% of 911 calls are made from wireless phones and 60% of children live in a wireless only home. Improving coverage in the area will result in improved E911 response times and location abilities.²⁷

Mr. Busch explained his client's position, which is that if a carrier meets the standard for safety/emission levels then the site selected cannot be challenged based on health impacts. He emphasized that the project will comply with FCC regulations, and a certificate from a radio-frequency engineer stating the site as designed will comply with FCC regulations has been submitted, so in his view, under the Telecommunications Act of 1996 the project cannot be denied based on health impacts. He noted that as for property values, to the extent claimed to be effected by health impact, such impacts are inappropriate to consider, if FCC requirements met.

1.18 Economic Impacts and EMF Analysis Submitted Following the Hearing.

Technical analysis on property values, aesthetics, and health impacts was submitted after the hearing. Several documented EMF concerns, identified a need for further study, and recommended a precautionary approach with cell tower siting, given scientific uncertainty on EMF issues.²⁸ Another article, while concluding there were no clearly established health effects, noted that perceptions alone can play a factor in home prices.²⁹ Another study measured EMF

²⁵ Exhibits 37 and 57, pg. 6, emphasis in text.

²⁶ Exhibit 53 (Staff Report), pg. 14.

²⁷ Exhibit 37 (October 19, 2018 e-mail from Applicant to School District).

²⁸ See e.g., Exhibits 63 and 65.

²⁹ Exhibit 61, pg. 272.

intensities from a single cellphone mast,³⁰ although the tower tested appeared to be omnidirectional, instead of broadcasting in a linear path, as this project does. Another study³¹ determined that for properties within .72 kilometers of a tower, property value declines averaged 2.46%, and up to 9.78%.³² The impact was more severe for properties within visible range.³³ The study was based on 23,309 residential property sales in Mobile County, Alabama between 1999 and 2015, and 149 wireless towers in the County.³⁴ Mobile County is an urbanized area, so impacts may differ from an area with minimum five acre lot sizes, coupled with a high density of Douglas firs obstructing views. While the study does not quantify economic impacts for this site, it does confirm economic impacts are a legitimate concern. The studies also support a finding that a key concern is aesthetic impacts.

Based on the concerns raised at the hearing, the Examiner added several conditions to address aesthetic impacts, including through KCC landscaping requirements; and, to ensure the project is built and constructed consistent with the technical analysis the Applicant submitted. These conditions are detailed in § 1.21 below.

1.19 Project Need, Alternative Locations, and Co-Location.

1.19.1 Need for Project within Residential Zone (Rural Residential). Radio coverage is marginal to the north, west, and east of the site, and absent to the south. Transitions to good coverage occur to the north, proximate to another T-Mobile site. However, the signal from that site, as it moves south, attenuates due to elevation change and trees, eventually eliminating coverage. The project would cause high quality coverage to the south and improve surrounding marginal coverage. The tower would improve service to customers for personal and emergency calls south of Long Lake. T-Mobile has a coverage gap which the project would fill,³⁵ as demonstrated with the radio frequency propagation maps.

There were questions from the public on why so many facilities are needed. The Applicant provided detail on current coverage in the area and also explained the technology. When someone initiates a call, or checks e-mail from their cell device, the communication is transmitted to the nearest communications tower. The communication then travels down the tower and through fiber optic cable³⁶ to the communications network and then onto the internet (voice over IP as opposed to older copper wires). Every cell site has back haul to transmit data from the tower to the network. The towers can transmit cell data only over relatively short distances, so more of them are required to avoid coverage gaps.

1.19.2. Operational Needs and Alternative Sites. The Applicant evaluated operational needs and weighed alternative sites, and determined there are no existing collocation structures within one-mile of the proposed location that would meet required objectives. The other sites evaluated were: (1)The green belt area on parcel 5431-000-0-048-0002; (2)

³⁰ Exhibit 62.

³¹ Exhibit 60.

³² Exhibit 60, cover page, from abstract.

³³ Exhibit 60, pg. 674.

³⁴ Exhibit 60, pg. 658.

³⁵ Exhibit 8, SE06085A Port Orchard LTE Coverage Maps.

³⁶ Alternative method is a microwave dish, but that has not been proposed here.

Windstone Farm Equestrian Center, 8988 Ramiller Lane SE; and (3) the Church of Jesus Christ of LDS.³⁷ The Applicant evaluated operational needs, weighed alternative sites and determined this site is optimal, based on tower height and compatibility with the rural residential character.

The tower can be seen, but it has considerable screening on the lower portions. The Applicant testified that those living to the north/northwest of the site, while not completely obscured, have filtering, and there are screening trees on all four sides. This is not a wide open space, but screening is provided a good 2/3 up the tower. The monopole's dark green color helps it blend with the setting as it is closer to the surrounding trees in color. Also, this color absorbs light, so does not reflect it back. According to the Applicant, of the sites considered, this was the best one when it came to community impacts and ability to mitigate those impacts.³⁸

1.19.3 Sharing of Support Structure and Co-location of Facilities. The Applicant must send a notice to all the existing carriers on co-location and the facility has been designed for multiple carriers to collocate on the tower consistent with KCC requirements.³⁹

1.20 Aesthetic Impacts.

1.20.1 SEPA. Visual impact mitigation is addressed through SEPA. There are no territorial views or views of the Olympic Mountains or Mount Rainer due to the quantity of tall trees in the vicinity. DCD issued an MDNS with mitigation to reduce impacts.⁴⁰ The measures are outlined in above, and the Applicant must comply with them.

1.20.2 Balloon Test. The Applicant mailed public notice to surrounding property owners, performed, and documented the balloon test, which occurred on June 29, 2018. Photo simulation and before and after photos were prepared to depict expected impacts.

1.20.3 Vegetation/Landscaping. Equipment shelters, cabinets and other on-the-ground ancillary equipment are subject to landscape screening requirements. Fencing must be a non-obtrusive material such as dark coated vinyl chain link to blend in with surroundings. Ground level views of the support structure must be mitigated by retaining existing trees with enough height to functionally screen a substantial portion of the structure height, with additional screening/buffering required depending on site specific conditions.⁴¹ Even if trees off site are cut, the trees planted on the property will help screen the tower base. The Applicant planted a screening buffer along the north property line near the facility, which was conditioned with the Conditional Use Permit for the Spirit of Life Lutheran Church. As the trees mature, the screening buffer will help screen the base of the facility and screen the church property. Echo-Site/T-Mobile and the church are in the process entering into a long-term vegetation protection agreement to protect the existing native and planted vegetation around the perimeter. The Applicant's preliminary landscape plan details landscaping to mitigate visual impacts. A

³⁷ Exhibit 20.

³⁸ Testimony, Applicant, Mr. Busch.

³⁹ Exhibit 5; Exhibit 53 (Staff Report), pg. 14.

⁴⁰ Exhibit 44.

⁴¹ KCC 17.530.050(B)(2).

comprehensive landscape plan will be required showing existing and proposed landscaping required to provide a functional screen of a substantial portion of the structure.

The existing vegetation around the perimeter and on abutting properties, help screen and mitigate visual impacts from the monopole to the viewscape along Phillips Road and Mullenix Road. The monopole tower is moderately visible along the north property line, to the west near Journey Lane, and the intersection of Mullenix Road and Phillips Road. Depending on location, the monopole is visible, as it extends above the tree line. The site is particularly close to the north property line, at 65 feet. This proximity requires additional landscaping, including substantial tree heights, to substantially screen the tower structure. The Applicant does not hold easement rights to the trees located off site to the north, so if cut, this becomes a particularly significant concern.

1.20.4 Color. The applicant will be painting 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.⁴² Eco-Site is proposing a green "Hunter Green". All proposed and future tower components are required to be painted to match as the antennas are upgraded. The Federal Aviation Administration will require no support structure lighting.⁴³

1.21 Conditions. DCD proposed 22 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 substantive revision.⁴⁴ Consistent with the findings above, the Examiner added five conditions to address neighbor concerns and ensure project construction and operation consistent with the KCC and with Applicant representations:

- (1) require project decommissioning consistent with KCC requirements;
- (2) require compliance with the Applicant's FCC Compliance Report (Exhibit 57);
- (3) require compliance with the Applicant's acoustical report conditions (Exhibit 14);
- (4) ensure monitoring⁴⁵ occurs consistent with Applicant representations; and,

(5) given the limited 65 foot setback on the north property line, pay particular attention to ensuring northern perimeter landscaping is of sufficient density, quality, and height to provide functional screening consistent with KCC requirements.

⁴² KCC 17.530.050(C)(2).

⁴³ Exhibit 24.

⁴⁴ Two minor procedural corrections were made. The MDNS date was corrected from 11/23 to 11/27/18 in Condition 2; the CUP reference number was updated in Condition 11.

⁴⁵ For purposes of this condition "monitoring" means the quality controls described in the Staff Report which carriers complete to ensure their equipment functions consistent with FCC requirements. *See* Finding 1.7.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this project.⁴⁶ A new wireless support structure that exceeds 35 feet requires Hearing Examiner CUP review.⁴⁷ The Hearing Examiner may approve, approve with conditions, or deny a CUP.⁴⁸

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).⁴⁹

The Applicant demonstrated facility need, and completed a co-location/alternative analysis completed as addressed in Finding 1.19. 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 provisions.

Within a one-mile radius, and as mitigated through SEPA and this CUP, 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."⁵⁰ A visual impact analysis was prepared, which included a balloon test meeting code requirements.

⁴⁶ KCC Sections 17.410.010(C) and 21.04.100 (*see* permit type #18); KCC 17.530.040 and KCC 17.550.020; *see also* Ch. 2.10 KCC.

⁴⁷ KCC 17.530.040.

⁴⁸ KCC 17.550.030.

⁴⁹ KCC 17.530.060.

⁵⁰ KCC 17.530.050(A)(1).

The balloon test was performed following compliance with code notification requirements, and impacts documented through photo-simulation.⁵¹

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."⁵² A landscaping plan is required which meets code requirements. Northern perimeter buffering is important given the limited 65 foot setback on that side, so an additional condition was added to ensure particular attention is paid to development of a functional screen on the north and ensure the Applicant does not simply rely on trees located off its property to provide screening.

The support structure will "be painted in a nonreflective, earth tone color that best allows ... [it] to blend into the surroundings."⁵³ Flashing red, solid red, and white strobe lights will not be used.⁵⁴ Any security lighting will be down shielded consistent with KCC requirements,⁵⁵ and outdoor lighting "directed away from adjoining properties and so that no more than one foot-candle of illumination leaves the property boundaries."⁵⁶

The Applicant evaluated three other locations; however, there are no existing collocation structures within one mile of the site meeting project objectives.⁵⁷ Code discontinuation of use requirements, which provide for notice to DCD and prompt facility removal, will be met, as required by Condition 23.⁵⁸ The Applicant has committed to adhering to all laws, including federal EMF requirements, and local, state, and federal guidelines addressing same.⁵⁹

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
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.⁶⁰

⁵¹ KCC 17.530.050(A).

⁵² KCC 17.530.050(B)(2).

⁵³ KCC 17.530.050(C)(2).

⁵⁴ KCC 17.530.050(C)(3).

⁵⁵ KCC 17.530.050(C)(3).

⁵⁶ KCC 17.530.050(C)(4).

⁵⁷ KCC 17.530.050(E); Exhibit 53 (Staff Report), pg. 11.

⁵⁸ KCC 17.530.050(F).

⁵⁹ KCC 17.530.050(D).

⁶⁰ KCC 17.550.030(A).

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. In addition, CUP conditions are designed to ensure environmental, health, and aesthetic concerns are addressed.

With mitigation, and assuming compliance with legal requirements, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. There are legitimate concerns over EMF impacts, aesthetics and noise. With the SEPA conditions and code requirements, and the CUP mitigation, these impacts are moderated to avoid material detriment. The 65 foot northern setback is less than ideal, but the site overall is relatively large and landscaping is used to further moderate aesthetic impacts. As long as landscaping is sufficiently planted and maintained, as set forth in the CUP conditions and KCC, material detriment can be avoided. As for the fuel storage, regulatory requirements and mitigation ensure the fuel is stored consistent with health, fire, and stormwater requirements. The project must operate consistent with noise requirements, and the use must operate consistent with the Applicant's noise control study. Impacts with the potential for material detriment have been identified and addressed with mitigation and code requirements.

As mitigated, including with the larger setbacks on all but the northern side, the project is compatible with the "character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity." To help ameliorate for the limited northern setback, additional landscaping and consulting with those adjacent property owners is a required condition. As mitigated, the project addresses the CUP siting requirements.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for the proposed wireless communications facility, provided these 27 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 (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, 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 November 27, 2018.

3. The structure shall be unlighted, including any daytime strobes or nighttime illumination, including flashing or solid beacons. Should the Federal Aviation Administration (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; and the final color to be reviewed and approved by DCD prior to building permit approval. All tower components are required to be painted to match as upgraded.

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. Submit a comprehensive Landscape Plan with the development permit to construct the wireless communication facility showing all natural and planted vegetation around the perimeter identified as the screening buffer.

7. Existing native vegetation shall be retained on the site except for areas to be cleared for the construction of the new tower and associated infrastructure, as depicted on the proposed site plan (Exhibit 5).

8. Landscaping shall be installed and maintained in conformance with the requirements of Kitsap County Code (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.

9. The recipient of any conditional use permit 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.

10. This Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.

11. The decision set forth herein is based upon representations made and exhibits contained in the project application 18-02544. 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.

12. 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.

13. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

Development Engineering

14. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require compliance with stormwater Minimum Requirements #1-5; on-site stormwater management will be reviewed through required building permit(s).

15. On-site Stormwater management, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Conditional Use Permit application was deemed complete, July 11, 2018.

16. If the project proposal is modified from that shown on the submitted site plan dated May 22, 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 to be approved by DCD prior to building permit approval.

18. To provide a functional screen, the applicant and landlord shall preserve all existing trees around the perimeter as identified on the site plan.

19. This project shall follow the site development and construction recommendations of the Geotechnical Report (Delta Oaks Group, 11/2/18). A geotechnical engineer will be required to observe construction practices to confirm that the site conditions do not differ from those conditions anticipated in design. If any variation, the geotechnical engineer shall be contacted immediately to provide revisions and/or additional site exploration as necessary.

Traffic and Roads

20. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter

11.22 of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.

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 building permit. The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

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

Examiner Imposed Conditions

23. **Decommissioning.** Per KCC 17.050.030(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.

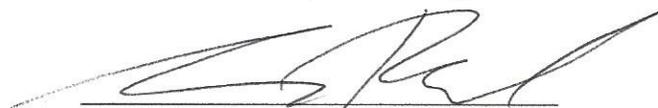
24. **FCC Compliance Report.** The Applicant's FCC Compliance Report (Exhibit 57) safety recommendations and conditions shall be complied with.

25. **Acoustical Report.** The mitigation outlined in the Applicant's acoustical report (Exhibit 14) shall be complied with.

26. **Monitoring.** The Applicant shall monitor the facility as described at the hearing and in the Staff Report. A phone number shall be posted at the site so members of the public may reach the tower operator to ensure any acoustical or radio interference issues are promptly resolved.

27. **Landscaping.** Particular attention shall be given to landscaping on the site's northern perimeter, which shall be of sufficient height, quality, and density to provide a functional screen of a substantial portion of the tower when viewed from adjacent properties. Before County approval of same, the Applicant shall provide property owners adjacent to the property on the north a copy of the final landscaping plan and provide them an opportunity to comment on same. This final landscaping plan shall meet all other requirements.

THIS DECISION is entered this 14th day of January, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond