

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: AT&T
19801 SW 72nd Ave. #200
Tualatin, OR 97062

Agent: Jennifer Taylor Realcom Assocs.
14432 SE Eastgate Way #260
Bellevue, WA 98007

Request/File No: Special Use Permit Modification, PL10-0027

Location: North of the O'Hara Road and the abandoned Puget Sound and Baker River Railway ROW, west of Alder Creek; within a portion of NE1/4 NW1/4 Sec. 18, T35N, R7E, W.M. (Parcel #P43012)

Land Use Designation: Rural Reserve

Summary of Proposal: To renew and revise a Special Use Permit (PL05-0676) for the construction of an unmanned wireless telecommunication facility on an approximately 88-foot wooden Puget Sound Energy (PSE) pole with three flush mounted antennas. The location of the equipment cabinets has been changed.

SEPA Compliance: Because there has been no major change in the project, the original environmental review was not repeated. A Determination of Non-Significance (DNS) was issued initially.

Public Hearing: May 26, 2010. No public testimony. Planning and Development Services (PDS) recommended approval.

Decision: Approval, subject to conditions.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within 10 days of this decision (SCC 14.06.180). The decision may be appealed to the Board of County Commissioners by filing an Appeal with PDS within 14 days of the date of the decision or decision on reconsideration, if applicable (SCC 14.06.120(9)).

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. AT&T seeks modification of a Special Use Permit issued to New Cingular Wireless in May of 2006 (PL05-0676). Due to the subsequent merger of AT&T and Cingular, as well as site concerns regarding the mining operation at the site, construction was not commenced before the two-year term of the permit expired.

2. AT&T seeks revival of the prior approval of a wireless telecommunication facility on a Puget Sound Energy (PSE) utility pole, with a minor change relating to the location of the ground equipment.

3. The original approval allowed antennas on a replacement PSE utility pole. The replacement pole has been installed by PSE and it is 88 feet, 2 inches high. The current request is to utilize this pole for the installation of three flush-mounted antennas. Ground equipment will be located at the base of the pole in a new lease area.

4. The site is a remote spot located north of the O'Hara Road and the abandoned Puget Sound and Baker River Railway ROW, west of Alder Creek; within a portion of the NE1/4 NW1/4 Sec. 18, T35N, R7E, W.M. The parcel is on the north side of State Route 20, east of the town of Hamilton.

5. The property is approximately 31 acres in size and basically rectangular in shape, with the southern property line following the abandoned railroad grade. The land slopes downward to the south. The property is surrounded by a mixture of mature deciduous and coniferous trees with little development in the vicinity. The installation will be largely obscured from surrounding roads and the highway.

6. A PSE transmission line bisects the property. South of the transmission easement is a gravel pit/quarry operation with steep slopes. A geotechnical report and soil study was conducted and, as now planned, the site was determined suitable for developing the proposed facility.

7. The revised location of the equipment lease area resolves concerns about the steep slope to the south. The area will now be located approximately 35 feet east of the tower (utility pole) location. Six equipment cabinets will be located on a 12' x 20' concrete slab within a fenced lease area of 15' x 25'. The fence will be a six-foot high chain link enclosure with barbed wire at the top. This area is surrounded by trees and vegetation.

8. The tower is located approximately 600 feet from the west property line, 700 feet from the east property line, 500 feet from the north property line and 440 feet from the south property line. The lease area will be approximately 646 feet from the west property line, 649 feet from the east property line, 500 feet from the north property line and 407 feet from the south property line.

9. Except for a monthly maintenance check, the site will be unmanned. Access to the property is through a gated access road along the south property line. No parking stall will be required as a truck can park in the existing drive underneath the PSE transmission line. The access to be used does not cross the Cascade Trail.

10. As a general rule, PSE allows only one carrier on any one of its poles, so the equipment compound has not been designed to accommodate potential additional carriers.

11. The proposed facility will not have lights and there will be no signals or signs on the pole except as may be required by the FCC. The flush mounting will tend to make the antennas appear to be part of structure. They will be painted to match the PSE pole. Existing vegetation will be preserved. The existing topography will be disturbed as little as possible. The antennas will not exceed the height of the present pole. The installation will have little visual impact.

12. The applicant has submitted a letter stating that the facility will comply with all applicable Federal, State and local laws and regulations. An acoustical study was performed demonstrating compliance with applicable noise requirements.

13. The adjacent property to the north is designated Secondary Forest-NRL. The adjacent property to the west, south and east are designated Rural Reserve. There is Agriculture-NRL land to the southwest.

14. The initial application was reviewed in accordance with the State Environmental Policy Act (SEPA) and a Determination of Non-Significance (DNS) was issued. Since there was no major change in the instant proposal, no further environmental review was found necessary.

15. Critical Areas Ordinance compliance was approved with the initial permit. The critical areas conditions included in the original approval shall be carried forward.

16. A letter of completeness for this application was issued on March 31, 2010. Notice of the application was published, mailed and posted as required by law. No correspondence was received on the proposal.

17. The public hearing was properly noticed. There was no public testimony at the hearing.

18. The Staff Report analyzes the proposal for conformity with the wireless facility design and siting criteria of the Code, as well as with the general criteria for Special Use Permit approval. The Staff determined that, as conditioned, the project will be consistent with the applicable approval criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though full set forth.

19. The modified project makes only modest changes in the original proposal which was approved as meeting the relevant criteria. The new location of the equipment pad represents an improvement over the original plan.

20. The proposed telecommunication facility will fill a gap in coverage. In particular it will provide needed 911 service in the area.

21. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.050(1)(b)(ii).

2. The requirements of SEPA have been met.

3. Wireless telecommunication facilities are permitted in the Rural Reserve zone by Hearing Examiner Special Use Permit. SCC 14.16.320(4)(y).

4. As conditioned, the proposal meets the requirements for personal wireless facilities. SCC 14.16.720.

5. There are no specific Code criteria for the modification of Special Use Permits. Therefore, permit modifications are analyzed under the criteria for new special uses. The proposal meets the requirements for approval of a Special Use Permit. SCC 14.16.900(1)(b)(v).

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The applicant shall build and operate the facility as described in the application materials, except as the same may be modified by these conditions.

2. The conditions imposed in the initial permit (PL05-0676) shall continue to apply, except as the same may be modified by these conditions.

3. The applicant shall obtain all other necessary local, State and Federal permits prior to the start of construction and shall abide by the conditions of same.

4. The applicant shall comply with all requirements of the Skagit County Code, including but not limited to, the provision of SCC 14.16.720(13-16).

5. A such time as the tower is not in use or has been abandoned, the applicant shall comply with the Non-Use/Abandonment regulations in place at the time.

6. The equipment cabinets shall be located a minimum of 30 feet from the slopes.

7. No gravel mining that will disturb the slope around the area of the equipment cabinets may occur.

8. Any area inside the lease area that is within 30 feet of the slope shall be placed in a Protected Critical Area (PCA).

9. The applicant shall comply with SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

10. Per SCC 14.16.900(2)(d), this permit shall be void if the use permitted has not been established or a complete building permit filed with Planning and Development Services within two (2) years of permit approval.

11. Prior to final approval of the building permit all additional review fees shall be paid.

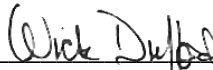
12. Temporary erosion/sedimentation control must be used during construction pursuant to Chapter 14.32 SCC, Drainage Ordinance.

13. A copy of this permit decision shall be filed with the building permit.

DECISION

The requested Special Use Permit Modification (PL10-0027), modifying Special Use Permit PL05-0676 is approved, subject to the conditions set forth above.

DONE this 16th day of June, 2010.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on June 16, 2010

See page 1, Notice of Decision, for Reconsideration and Appeal information.