

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2010-0002  
Application for )  
 )  
*Verizon Wireless* ) FINDINGS OF FACT,  
*“Bel Upper Baker Dam”* ) CONCLUSIONS OF LAW,  
 ) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct a new 150-foot high cellular monopole tower with 12 panel antennas, a microwave dish, and a 312 square foot equipment shelter.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

**I.**

Applicant: Verizon Wireless

Owner: Puget Sound Energy  
PO Box 90868  
Bellevue, WA 98009

Site Location/Address: 550 Baker Lake Dam Road  
Concrete, WA 98237

Abbreviated Legal Description: Located within Government Lots 2, 3, 4, 5, 10 and 11, and the East ½ of the NW ¼ of Sec31, T37N, R9E, W.M.

Assessor’s Parcel Number: 370931 336470

Zoning: Rural Forestry (RF)

Comprehensive Plan: Rural Forestry

Subarea: N/A

Total Acreage: 360 acres

Roads: Private

Water: N/A

Sewage Disposal: N/A

Fire Protection: Forest Service

Law Enforcement: Whatcom County Sheriff's Office

Topography: The proposed facility is at a base elevation of 1,066 feet and exhibits a fairly significant downward slope to the northwest. The gravel access road follows this slope and declines by 30 feet in elevation from a point of 180 feet south-southeast of the site's point of entry. On the southeast section of the proposed development, the site starts to increase in elevation. The applicant has indicated that the site reaches 1,080 feet in elevation at a point approximately 90 feet away (southeast) of the proposed development.

Vegetation: The site contains a significant amount of native vegetation that includes predominantly large coniferous trees surrounding the site and smaller deciduous trees closer to the development. Specifically, this vegetation includes cedars, Douglas firs, alders, maples, and hemlocks.

Adjacent Land Uses: North: Federal – National Forest  
East: Federal – National Forest  
South: Federal – National Forest  
West: Federal – National Forest

Easements: Two Rights-of-Way Easements, AF#: 992034 & 1032524

Lease Agreement: Verizon Wireless and Puget Sound Energy (PSE) – See document of record.

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington Chapter 36.70

Whatcom County Comprehensive Plan

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 15, Building Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,  
Whatcom County Environmental Policy Administration Chapter 16.08  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code, Title 24, Health Regulations

Legal Notices:           Posted – July 20, 2011  
                                  Mailed – June 21, 2011  
                                  Published – February 16, 2010 and July 14, 2011

Hearing Date:           July 27, 2011

Parties of Record:

Bill North  
The North Group, Inc.  
PO Box 2449  
Snohomish, WA 98291

Puget Sound Energy  
Attn: Tim Gasser  
PO Box 90868  
Bellevue, WA 98009

Nick Smith  
Planning and Development Services

Exhibits:

- 1       Land Use Application with attachments in following order:
  - Cover memorandum dated January 27, 2010
  - PDS Form Memo to Tech Committee, January 3, 2011 and Feb 16, 2010
  - Notice of Additional Requirement, January 5, 2011
  - PDS Form Letter (Revision) to Neighbors, May 3, 2011
  - PDS Form Letter to Neighbors, April 27, 2010
  - Hearing Examiner Checklist, June 6, 2011
  - DEED, May 17, 1944
  - Supplemental Application, January 27, 2011
  - Letter of Completeness, February 11, 2010
  - Agent Authorization, January 14, 2010
  - Fee Responsibility, January 15, 2010

- Customer Receipt, January 28, 2010
  - Preliminary Traffic & Concurrency Information
  - PDS Application Address Form
  - Preliminary Stormwater Proposal
- 2 Staff Report, July 27, 2011, prepared by Nick Smith, Planner
- 3 Agency Comments
- 4 Revised DNS, May 20, 2011 with attachments in following order:
- Revised Distribution List
  - Bellingham Herald Tear Sheet, May 3, 2011
  - DNS, May 27, 2010
  - Distribution List
  - Legal Notice, May 27, 2010
  - Tear Sheet, May 27, 2010
  - Revised SEPA Checklist
- 5 Vicinity Maps
- 6 Site Permit between Puget Sound Energy and Verizon Wireless
- 7 Application for Wireless Communications Facility BEL Upper Baker Dam, prepared by The North Group, Inc. January 27, 2010
- 8 Non-Ionizing Electromagnetic Exposure Analysis & Engineering Certification, prepared by KDC Architects / Engineers, January 2010
- 9 Revised construction drawings, December 22, 2010 transmittal, prepared by KDC
- 10 Set of Large Revised Drawings, stamp-received by PDS December 27, 2011
- 11 Certificate of Mailing: Notice of Application, February 16, 2010
- 12 Legal Notice of Revised Application, May 3, 2011
- 13 Legal Notice of Application, February 16, 2010
- 14 Legal Notice of Public Hearing, July 14, 2011
- 15 Certificate of Mailing, Notice of Public Hearing, June 21, 2011
- 16 Certificate of Posting, Notice of Public Hearing, July 20, 2011

## **II.**

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit No. 2, dated, July 22, 2011, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter.

## **III.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

### **CONCLUSIONS OF LAW**

#### **I.**

The proposed construction of a 150-foot high cellular monopole tower with 12 panel antennas, a microwave dish, and a 312 square foot equipment shelter can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

#### **II.**

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

### **DECISION**

*A Zoning Conditional Use Permit is hereby granted to Verizon Wireless for the proposed construction of a 150-foot high cellular monopole tower with 12-panel antennas, a microwave dish, and a 312-square foot equipment shelter to be located on Assessor's Parcel No.370931 336470, 550 Baker Lake Dam Road, Concrete, Washington, subject to the following conditions:*

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Pursuant to WCC 20.13.061(1), the Applicant shall equip all wireless communications support structures and required fencing with appropriate anti-climbing devices.
3. Pursuant to WCC 20.13.061(2), the Applicant is prohibited from attaching any wireless communication facility or portion thereof to any tree.

4. Pursuant to WCC 20.13.061(3), the Applicant shall identify the wireless communications support structure with a non-illuminated sign not exceeding four square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public. No advertising signs shall be located on support structures or antennas, however arrays may be camouflaged as otherwise permitted signs.
5. Pursuant to WCC 20.13.061(4), the Applicant shall not illuminate the wireless communication facility except where required by the FAA.
6. Pursuant to WCC 20.13.061 (5), the Applicant shall paint or finish the wireless communication facility in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The Applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.
7. Pursuant to WCC 20.13.061 (6), the Applicant shall comply with State Noise Level Standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the Applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.
8. Pursuant to WCC 20.13.062 (1), the Applicant shall design or place all attached antennas (excluding collocated antennas on existing WCF structures) to blend with the predominant background or architectural features as seen from abutting residential uses, roadways or other public rights-of-way.
9. Pursuant to WCC 20.13.062 (3), the Applicant shall place all accessory equipment structures underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, the Applicant shall screen them from view.
10. Pursuant to WCC 20.80.200 and WCC 20.13.062 (6), the Applicant shall set back all structures, unless specifically stated in WCC 20.13.062 (c) or (d), 20-feet from the interior access road and 20-feet from the side and rear property lines. Pursuant to WCC 20.13.062 (c), nonattached wireless communications support structures located in other than residential related districts setback from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater. Pursuant to WCC 20.13.062 (d), regardless of the district, nonattached wireless communications structures shall be setback from dwellings not on the same legal lot, a distance equal to the height of the wireless communications support structure or the setback of the underlying use district whichever is greater.

11. Pursuant to WCC 20.13.062 (8)(e); the Applicant shall preserve the existing vegetation to the maximum extent practicable.
12. Pursuant to WCC 20.13.080, the height of new support structures shall be subject to requirements of 20.13.062(9) (b); provided that, the height does not exceed 150 feet.
13. Pursuant to WCC 20.13.062 (10), the Applicant shall provide the wireless communication support structure with at least one adjacent parking space or more if needed to accommodate staff. For all unstaffed wireless communications facilities, the Applicant shall provide parking access for maintenance personnel.
14. Pursuant to WCC 20.13.062 (11), the operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than \$1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.
15. Pursuant to WCC 20.13.140, the Applicant must conform to all of the standards set forth by the Federal Aviation Administration (FAA), the Federal Communication Commission (FCC) and/or any other agency of the Federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the wireless communication support structure, antennas and electronic equipment governed by this chapter shall bring such wireless communication support structure, antennas and electronic equipment into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment at the owner's expense.
16. Pursuant to WCC 20.13.150, no less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County Planning and Development Services Director, by certified U.S. mail, of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the County. In any case, if the County finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the County. If the antenna and/or wireless communication support structure is not removed within said time period, the County may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communications providers on a single wireless communication support structure, this

provision shall not become effective until all providers cease using the wireless communication support structure.

17. Pursuant to WCC 20.42.450, no structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 35 percent whichever is greater.
18. Pursuant to WCC 20.36.656, approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.
19. The Applicant shall comply with page 7 of the January 2010 Engineer analysis of electromagnetic exposure (EMF), which reads as follows: “The Verizon transmitter should be turned off whenever maintenance and repair personal are required to work in the immediate vicinity of the Verizon antennae. This will ensure full compliance with current FCC rules regarding human exposure to radio frequency electromagnetic fields.”
20. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
21. Pursuant to WCC, Title 14.04.030, the owners of the property upon which this Conditional Use Permit Approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor’s Office.

The subject property is within or near designated Forestry lands on which a variety of commercial activities may occur. The legally permissible amounts of noise, dust, smoke, traffic and fumes which may be generated by activities on forest land may exceed those levels conducive to a tranquil residential environment. While the application by spraying or other means of forest chemicals may be legally permitted on forest lands, the persons making such applications and the owners of properties where such applications are being made, may be liable for loss and damages which are caused by the migration of forest chemicals from the site of the approved application. Whatcom County has determined that the use of real property for forestry operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from legally permitted forest practices, if such operations are consistent with commonly accepted best management practices and otherwise comply with local, state and federal laws.



23. The Applicant shall complete construction, or, if no construction is contemplated as a part of this permit, the Applicant shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.
24. The Applicant shall comply with all the conditions set forth by Planning and Development Services Plans Examiner, memoranda, dated March 3, 2010, and January 4, 2011, unless modified by the Plans Examiner or appealed to the appropriate agency. The conditions are as follows:
  1. A commercial building permit shall be obtained for this proposal. Please see the specific submittal requirements within the above named memoranda.
  2. A geotechnical soils investigation and recommendation prepared by a qualified WA State Geotechnical Engineer is required prior to the submittal of a building permit. The engineer shall specify all required tests, special inspections and structural observations.
  3. A complete structural analysis by a WA State Professional Engineer (PE) is required at the time of the building permit application submittal.

#### NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

#### NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available

from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 2<sup>nd</sup> day of August 2011.

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Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-676-6907, TTY 800-833-6384  
360-738-2525 Fax



**J.E. "Sam" Ryan**  
Director

## WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

July 27, 2011

The application of <b>Verizon Wireless</b> for a Zoning Conditional Use Permit		CUP2010-00002 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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### **I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The applicant is requesting a zoning conditional use permit to construct a new 150-foot high cellular monopole tower with 12 panel antennas, a microwave dish, and a 312 square foot equipment shelter.

Recommendation: The Technical Review Committee recommends approval of the application for a zoning conditional use permit, subject to the requested conditions, as attached.

### **II. PRELIMINARY INFORMATION**

#### **A. BACKGROUND INFORMATION**

Applicant: Verizon Wireless  
15900 SE Eastgate Way  
Bellevue, WA 98008

Owner: Puget Sound Energy  
PO Box 90868  
Bellevue, WA 98009

Agent: The North Group, Inc.  
Bill North  
PO Box 2449  
Snohomish, WA 98291

Site Location/Address: 550 Baker Lake Dam Road Concrete, WA  
98237

Abbreviated Legal Description: Located within Government Lots 2, 3, 4, 5, 10 and 11, and the east half of the Northwest ¼ of Section 31, Township 37N, Range 9E, W.M...

Assessor's Parcel Number: 370931 336470  
Zoning: Rural Forestry (RF)  
Comprehensive Plan: Rural Forestry  
Subarea: N/A  
Total Acreage: 360 acres  
Roads: Private  
Water N/A  
Sewage Disposal: N/A  
Fire Protection: Forest Service  
Law Enforcement: Whatcom County Sheriff's Office  
Topography: The proposed facility is at a base elevation of 1,066 feet and exhibits a fairly significant downward slope to the northwest. The gravel access road follows this slope and declines by 30 feet in elevation from a point of 180 feet south-southeast of the site's point of entry. On the southeast section of the proposed development, the site starts to increase in elevation. The applicant has indicated that the site reaches 1,080 feet in elevation at a point approximately 90 feet away (southeast) of the proposed development.  
Vegetation: The site contains a significant amount of native vegetation that includes predominantly large coniferous trees surrounding the site and smaller deciduous trees closer to the development. Specifically, this vegetation includes cedars, douglas firs, alders, maples and hemlocks.  
Adjacent Land Uses: North: Federal – National Forest  
East: Federal – National Forest  
South: Federal – National Forest  
West: Federal – National Forest  
Easements: Two Rights of Way Easements, AF#: 992034 & 1032524

Lease Agreement: Entered between Verizon Wireless and Puget Sound Energy (PSE) – See document of record.

**B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:**

1. Revised Code of Washington Chapter 36.70
2. Whatcom County Comprehensive Plan.
3. Whatcom County Code, Title 14, Use of Natural Resources
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code, Title 24, Health Regulations

**III. APPLICATION PROPOSAL**

The applicant, Bill North on behalf of Verizon Wireless, has applied for a zoning conditional use permit, pursuant to WCC 20.13, to construct a new wireless communication facility at 550 Baker Lake Dam Road.

The proposed development includes a new 150 foot tall monopole tower with 12 panel antennas, a microwave dish, and one 312 square foot equipment shelter. The facility, exclusive of the gravel driveway, will be within a 900 square foot area that is surrounded by a seven (7) foot high security fence. The subject parcel is currently owned by Puget Sound Energy. However, Verizon Wireless has entered into a lease agreement with Puget Sound Energy that will allow for the construction and maintenance of the facility, the necessary utility connections and access to the site.

**IV. SITE DESCRIPTION**

The subject property is a 360 acre parcel situated off of the Baker Lake Dam Road, and is near/within Puget Sound Energy's Baker River Hydroelectric Project. The site is accessed by a private gravel road off of the south-southeast side of Baker Lake Dam Road. The site address is 550 Baker Lake Dam Road, Concrete WA 98237, and is located within government lots 2, 3, 4, 5, 10 & 11 of the northwest ¼ of Section 31, Township 37N, Range 9 East, W.M., Whatcom County, WA.

The zoning of the site is Rural Forestry (RF) and is currently developed with a hydroelectric dam, fish hatchery, campground and other numerous accessory

buildings to the hydroelectric facility. The proposed development will occur within 30 feet (northeast) of Puget Sound Energy's existing 880 square foot communication compound. This compound includes a 75 foot high communications tower, an equipment shelter and an accessory security fence.

The parcel is surrounded to the south by Skagit County, the west and east by the Mount Baker-Snoqualmie National Forest and the north by C & G Timber Inc. The actual development site is located directly north-northeast of the hydroelectric dam and is accessed by a 10 foot wide gravel road which is approximately .9 miles off of the Baker Lake Dam Road.

The site location is currently at an elevation of 1,066 feet and is surrounded by dense forest. This vegetation primarily includes coniferous trees such as douglas firs and western hemlocks. The site (roughly a 9,000 square foot area) is relatively flat; however, the surrounding area does exhibit a gradual-to-steep slope on both sides of the proposed development. To the southeast (approximately 90 feet away of the development) the site reaches an elevation of 1,080 feet and to the northwest (approximately 80 feet away of the proposed development) the site drops to an elevation of 1,058 feet.

## **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: Two Notices of Application were published for this project. The first Notice of Application was published on February 16, 2010. The fifteen (15) day comment period ended on March 3, 2010. Pursuant to WCC 20.84.235(2), Notices were mailed on February 16, 2010 to property owners whose boundaries lie within 1,000 feet of the subject property.

On August 23, 2010, staff received notification from the applicant that a Microwave antenna was needed as a "telco connection" could not be obtained at the proposed site. On January 5, 2011 (after several email discussions) staff sent out a notice of additional requirements to the applicant (see document of record) stating that the proposed change (microwave dish) would need to be resent out for public notice.

On May 3, 2011, staff sent out the second Notice of Application which included the newly proposed microwave dish. The fifteen (15) day comment period for this Notice of Application ended on May 18, 2011. Pursuant to WCC 20.84.235(2), Notices were mailed on May 3, 2011 to property owners whose boundaries lie within 1,000 feet of the subject property.

Public Comment: No public comments were submitted for either Notices of Application.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from the SEPA threshold review. The Whatcom County SEPA Official has reviewed the completed SEPA checklists submitted by the applicant, and has made a determination that with proper mitigation and by compliance with applicable codes and requested conditions, no significant adverse impacts to the environment would likely to occur as a result of approving the proposed zoning conditional use. A Determination of Non-significance (DNS) was first issued on May 27, 2010. The comment period for this DNS ended on June 10, 2010. No comments were received. The appeal period for this DNS ended on July 21, 2010. No appeals to this determination were filed.

After the applicant submitted a revised application to include a microwave dish, staff sent out a second anticipated Determination of Non-significance through the Optional DNS process (WAC 197-11-355). The anticipated DNS was sent out jointly for public comment with the notice of application on May 3, 2011. The comment period for the Optional DNS ended on May 18, 2011. Staff received no public comments. A formal Determination of Non-significance was issued on May 20, 2011. The appeal period for this DNS ended on May 31, 2011. No appeals to this determination were filed.

Public Comment: No public comments were submitted for either determination.

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Whatcom County Comprehensive Plan**

Zoning regulations of a specific use district are meant to implement the goals and policies of the Whatcom County Comprehensive Plan. Conditional uses are those uses that may be approved within a zoning district if it is determined that the specific use requested is consistent with the general and specific objectives of the Whatcom County Comprehensive Plan. This proposed use has been reviewed for consistency with the following goals and policies of the Whatcom County Comprehensive Plan, and as such those applicable Comprehensive Plan goals and policies, and their relationship to this application are discussed further in detail below:

#### **Applicable Goals & Policies:**

#### **CHAPTER 8 – Resource Lands**

#### **Goal 8F: Maintain and enhance Whatcom County's forest land base.**

**Policy 8F-7:** Discourage inappropriate conversion of productive forest land to incompatible non-forest uses. It is the intent of this policy not to allow conversion of forest land if the proposed use is incompatible with the maintenance of long-term forest management. Incompatible uses include those which:

- create fire or safety hazards to adjacent forest land;
- permanently remove a significant portion of a parcel from productive forest use;
- create significant financial hardships for adjacent forest landowners; or
- can lead to land use conflicts with adjacent forest landowners.

## **CHAPTER 5 – Utilities**

**Goal 5A: Specify a clear process for determining appropriate locations for future needed utility facilities including electric power facilities greater than 55 kV.**

**Policy 5A-1:** Use the existing conditional use, major project permit, and environmental review processes to evaluate and determine the suitability of proposed suitable locations for any new utility facilities above the distribution level during the planning period.

**Goal 5B: Support development and use of new utility and information technologies.**

**Policy 5B-2:** Support development and use of new technologies.

**Policy 5B-3:** Recognize the economic opportunities and benefits communication services access provides to the community.

**Goal 5C: Facilitate accessibility of utilities.**

**Policy 5C-1:** Support user access to natural gas, electric, and communications utilities.

**Findings:** The Whatcom County Comprehensive Plan defines a Wireless Communication Facility as a Utility. Utilities are those lines and facilities used to distribute, collect, transmit, or control electric power, natural gas, petroleum products, information (telecommunications), water, and sewage. It is the intent of the Whatcom County Comprehensive Plan to encourage the development of new utilities and information technologies (Goal 5B), as well as to provide users access to communication utilities (Goal 5C).



The Whatcom County Comprehensive Plan does, however, discourage the use of resource lands for non-resource related uses (Policy 8F-7). Nevertheless, to help minimize the impact of the proposed 900 square foot development, the applicant has proposed a site where existing infrastructure already exists (road and utility lines). As such, the intended use of the land will only slightly interfere with any future or long term forestry practices. Based on this assessment, the Technical Review Committee has determined that the impact to the surrounding 360 acres of resource land will be negligible.

## **B. Official Whatcom County Zoning Ordinance (Title 20, WCC)**

The subject application consists of a request for approval of a conditional use that is specifically provided for in the applicable code criteria subject to approval and conditions issued by the Whatcom County Hearing Examiner. A definition and description of the specific use that is the subject of application, as provided in the Official Whatcom County Zoning Ordinance are listed below:

### **WCC 20.13.020 – Definitions & terms**

(16) “Wireless communications facilities” (WCF) means the site, wireless communications **support structures**, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

(18) “Wireless communications **support structure**” means a structure designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below. Any device (attachment device) which is used to attach an attached WCF to an existing structure (attachment structure) is excluded from this definition.

(b) “**Monopole tower**” means a wireless communications support structure consisting of a single pole to support antennas and connecting appurtenances.

WCC 20.13.050 (2) (d) – **Resource Districts** (non-residential related districts) shall include Agriculture (AG), Commercial Forestry (CF), **Rural Forestry (RF)** and Recreation Open Space (ROS)

### **WCC 20.13.080 – Additional Standards for nonresidential related districts**

The following requirements and restrictions shall apply to the location of wireless communications facilities in the county’s nonresidential districts. For the purposes of this section, nonresidential related districts shall include

commercial districts, industrial districts and **resource districts** each as described in WCC 20.13.050.

(1) Support Structures.

(a) New support structures shall require a conditional use permit pursuant to WCC 20.84.200; provided, that new support structures collocated or clustered on an existing approved and conforming site may be permitted through a wireless communications facility (WCF) permit. Collocation or clustering on a nonconforming site may be approved as an expansion of a nonconforming use by conditional use as provided in WCC 20.83.020. The height of new support structures shall be subject to requirements of 20.13.062(9) (b); provided, that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided for in WCC 20.13.110.

**WCC 20.13.050 - Siting priorities and prohibited locations**

(1) In reviewing applications for new wireless communication facilities the approving authority shall evaluate the proposal in relationship to the following siting priorities and prohibited locations. Unless the facility will be located at the highest priority location, the applicant shall demonstrate that:

(a) None of the higher priority locations are available or;

(b) If one is available it is not a feasible location for the proposed facility; or

(c) If feasible, the location is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

(3) Siting Priorities. Listed in descending order with the highest priority first.

(a) Collocated attached antennas on nonresidential buildings and structures including existing wireless communications towers in nonresidential related districts.

(b) Collocated attached antennas on nonresidential buildings and structures including existing wireless communications towers in residential related districts on property not used exclusively for residential purposes.

(c) Attached antennas on nonresidential buildings and structures in nonresidential related districts.

**(d) New support structures at remote, low visual impact locations in resource and industrial districts.**

(e) Attached antennas on nonresidential buildings and structures in residential related zones on property not used exclusively for residential purposes.

(f) New support structures at low visual impact locations in commercial districts.

(g) Locations other than those listed above.

(4) Prohibited Locations.

(a) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program.

**WCC 20.13.130 - General criteria for issuance of permits.**

(1) Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:

(a) The antenna must be located at the site to satisfy its function in the applicant's local grid system. The county may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.

(b) The height requested is the minimum height necessary to fulfill the site's function within the grid system.

(2) In addition to standard criteria, the authority granting the permit shall find that, unless the facility will be located at the highest priority location as set forth in WCC 20.13.050, the applicant has demonstrated that none of the higher priority locations are available or if one is available it is not a feasible location for the proposed facility; or if feasible is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

**Findings:** The proposed wireless communication facility is within the Rural Forestry (RF) zone. WCC 20.13.050 lists based on the highest priority, the siting requirements for new wireless communication facilities. This proposed facility is located near an existing monopole communications tower, and as such WCC 20.13.050 (2)(a) lists the collocation of attached antennas onto existing wireless communication towers in nonresidential related districts, as the most preferred site priority. Unfortunately, the applicant has indicated that the existing tower, which stands at 75 feet tall, is not tall enough to accommodate the desired coverage and connection to the existing grid system. As such, the applicant has proposed a tower, pursuant to WCC

20.13.130 (1)(b) that is twice the height (150 feet) but is within close proximity of the existing (PSE) tower. This close proximity to the existing tower will help minimize the impacts the new tower and associated structures will have on the surrounding land uses.

The proposed tower will meet subsection (3)(d) of the preferred site priorities which states “new support structures at remote, low visual impact locations in resource and industrial districts.” Staff believes that the proposed tower is at a remote and low visual impact area because the surrounding land uses include national forest lands to the west and timber harvest lands to the north (C & G Timber Inc., a private property owner). The property is also surrounded by dense coniferous vegetation and is accessible by only a private road (Baker Lake Dam Road). These characteristics will all significantly limit the public’s exposure/visibility of the facility. Nevertheless to help mitigate any possible visual impacts, the tower and antennas will be painted in a dark color that is consistent with the surrounding vegetation.

Pursuant to WCC 20.13.130 (1)(a), the applicant has submitted an engineering propagation analysis and map that “shows coverage with and without the proposed site modification.” This analysis satisfies the applicant’s desire/function of expanding on the utility’s “local grid system.”

**Chapter - 20.84 Conditional uses.  
20.84.220 (1) through (8) Criteria:**

**(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County’s Comprehensive Plan and zoning regulations.**

Discussion: A proposed 150 foot monopole tower with 12 panel antennas, a microwave dish, and one 312 square foot equipment shelter is consistent with Chapter 5 – Utilities section of the Whatcom County Comprehensive Plan. Specifically, the wireless communication facility will provide additional communication benefits including coverage to users of Whatcom County which is consistent with Policy 5B-3 & 5C-1. The facility is, however, on a parcel designated under the Comprehensive Plan as resource lands (Rural Forestry). Normally this would present a conflict between the goals and policies of Chapter 5-Utilities and Chapter 8-Resource Lands of the County Comprehensive Plan. However, the facility will be constructed next to an existing communication tower, and as such, will use much of the existing infrastructure (i.e. roads) and area that would not have otherwise been used for forestry related practices.

The proposed facility, as conditioned, will also be consistent with Chapter 20.13 of the official Whatcom County Zoning Ordinance. Whatcom County Code 20.130.080 (1)(a) states that “new support structures shall require a

conditional use permit.” As such, the applicant has proposed a new wireless communication support structure within a non-residential district that meets the forth site priority location of WCC 20.13.050 (3)(d). Staff has reviewed and incorporated all applicable standards that are outlined in Chapter 20.13 (WCC 20.13.060, .061, .130, .140 & .150 into this report as recommended conditions.

The Technical Review Committee has determined that as conditioned the proposed wireless communication facility (WCF) is consistent with the Goals and Policies of the Comprehensive Plan and Whatcom County Zoning regulations.

**(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.**

Discussion: The applicant has proposed a 900 square foot lease area for the development of the wireless communication facility. Currently, the site is surrounded by dense coniferous vegetation (predominantly Douglas Firs) and the PSE monopole communications tower to northeast. The applicant has indicated that the surrounding native vegetation will be maintained and that the structure will be painted to blend in with the surrounding environment. This will ensure that the structures appearance does no significantly distract from the surrounding landscape.

The proposed wireless facility will, except slightly for the increased height, not change the essential character of the area because of the existing PSE tower. According to the applicant, the structure will operate at noise levels that do not exceed state noise level requirements (173-60 WAC).

**(3) Will not be hazardous or disturbing to existing or future neighboring uses.**

Discussion: The technical review committee has determined that the proposed use, as conditioned, will not be hazardous or disturbing to existing and/or future uses. The applicant has submitted, pursuant to WCC 20.13.120 (7) (c), a licensed Washington State Engineer report that states that the communications tower “will comply with current FCC and local rules regarding public exposure to radiofrequency electromagnetic (EMF) fields.” Staff has also reviewed and recommended conditions (Condition 7), pursuant to WCC 20.13.061 (6), that the facility complies with state noise level standards under Chapter 173-60 WAC.

**(4) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or**

**agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.**

Discussion: The site will be serviced adequately by necessary public facilities. Private access is available off of the Baker Lake Dam Rd. The Whatcom County Sheriff's Department will provide police protection and according to the Whatcom County Fire Marshall, the Forest Service will provide fire protection. The Whatcom County Public Works Department, Division of Engineering has reviewed the preliminary stormwater and traffic applications, and as such does not have any comments for the proposal. The Whatcom County Health Department has also reviewed the proposal and does not have any comments.

**(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.**

Discussion: The proposed use will not require additional requirements at public cost for public facilities and services beyond what is typically provided at a rural level of service.

**(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.**

Discussion: As conditioned, the proposed use will not be detrimental to persons, property, or the general welfare.

EMF Emissions:

The facility has been reviewed by a licensed Washington State Engineer for exposure to radiofrequency electromagnetic (EMF) fields, and as such, the engineer has determined that the facility will not be harmful to the general public. Staff has recommended that a condition be placed on the permit (Condition 20) which states that "the Verizon transmitter be turned off whenever maintenance and repair personnel are required to work in the immediate vicinity of the Verizon antennae." This condition is per the recommendation of the engineer of record and further FCC regulations regarding potential exposure to operators who are working on the tower.

Glare:

Visual glare may occur with this facility. However to mitigate this impact, the applicant has stated that "the monopole and antennas will be painted dark green to blend in with the natural surrounding site."

Interference:

The facility will only be transmitting on licensed bands that meet FCC requirements. As such the proposed facility will not interfere with any adjacent or nearby transmission or reception communication signals.

Traffic:

The Whatcom County Engineering Department has determined that the proposal will not cause any significant traffic constraints to the general public. This facility is proposed to be unmanned, but will have limited periodic maintenance inspections. These maintenance inspections are anticipated to only occur once every 2-3 months.

Noise:

The equipment shelter HVAC and internal emergency generator will comply with state noise level standards under Chapter 173-60 WAC. Staff has recommended that this be a condition of approval, pursuant to WCC 20.13.061 (6).

**(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.**

Discussion: The Whatcom County Public Works Department, Division of Engineering staff has reviewed the proposed use for traffic impacts and has found that no traffic impacts will occur with this proposal. The access to the site is off of a private road (Baker Lake Dam Rd), and vehicular traffic is only anticipated to occur once every 2 – 3 months.

**(8) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.**

Discussion: The proposed use will not result in the destruction, loss or damage of natural, scenic or historic features of major importance.

As such, the Technical Review Committee finds that the application for a conditional use permit to authorize a fire station out of an existing single-family residence as meeting the criteria for approving a zoning conditional use pursuant to WCC 20.84.220 (1) through (8).

## **Technical Review Committee Comments**

### **A. Critical Areas (Title 16)**

Staff with the Whatcom County Planning – Critical Areas Department submitted a memo dated February 18, 2010 with the following comment for this proposal:

1. "After reviewing the submitted materials, Critical Areas staff

determined that there will be no wetland or habitat area impacts as a result of this proposal.”

The Technical Review Committee has determined that the proposal meets the requirements of Chapter 16.16, Whatcom County Code.

### **B. Fire Marshal’s Office**

The Whatcom County Deputy Fire Marshal submitted a memo dated February 17, 2010 with the following comment for this proposal:

1. “The Fire Marshal’s Office has no comments or conditions for the cell tower at Baker Lake Dam.”

The Technical Review Committee has determined that the development will meet the requirements of all applicable Fire Codes.

### **C. Health Code (Title 24)**

The Whatcom County Health Department submitted a memo dated August 2, 2010 listing the following comment for this proposal:

1. The Whatcom County Health Department has “no comments” for this proposal. “Water and Sewer is not required for this project.”

The Technical Review Committee has determined that as proposed the development will meet the requirements of Title 24, Whatcom County Code.

### **D. Building Code (Title 15)**

The Whatcom County Chief Plans Examiner submitted two memos. The first memo was dated March 3, 2010 and states the following comments for this proposal:

1. A commercial building permit is required for this proposal. It will be reviewed under the 2009 International Building Code (IBC) and comply with all other applicable codes and ordinances adopted by Whatcom County.
2. A pre-application screening is required prior to building permit submittal. Contact the Building Services division to schedule and for submittal requirements.
3. A geotechnical soils investigation and recommendations by a qualified WA State Geotechnical Engineer is required. The engineer shall specify all required tests, special inspections and structural observations.



4. A complete structural analysis by a WA State Professional Engineer is required for the cell tower and all proposed equipment. The towers must be designed to meet ANSI/TIA/EIA 222-F (per the 2006 IBC, Section 3108 and Chapter 16). The basic wind speed in Whatcom County is 85 mph. The tower must also be designed for a minimum of ½" radial ice. Submit two complete sets of calculations, specifications and details, which have been stamped and signed by the WA State P.E.
5. Provide engineered designs for all other structures on the site including: site built equipment shelters, foundations for pre-fabricated equipment shelters, ice bridges, equipment racks, foundations and anchorage for generators and propane tanks. The engineer shall specify anchorage for pre-fabricated equipment shelters and other equipment (LPG tank, generator, etc.).
6. Mechanical equipment and plumbing system installations shall comply with the current adopted edition of the International Mechanical Code (IMC), International Fuel Gas Code IFGC), and the Uniform Plumbing Code (UPC).
7. Prior to issuance of the building permit, a bond or assignment of savings is required to insure that special inspections are performed, the completeness report from the design professional of record is submitted and final occupancy is obtained. The minimum amount shall be \$1500.00 dollars or 5% of the total project installation cost, whichever is greater.
8. Refer to the attached Communication Towers & Unmanned Equipment Buildings supplemental handout for additional information and requirements.

On January 4, 2011 the Whatcom County Chief Plans Examiner submitted a **revised** memo to include the microwave dish. Those comments include:

1. A commercial building permit is required for this proposal. It will be reviewed under the 2009 International Building Code (IBC) and comply with all other applicable codes and ordinances adopted by Whatcom County.
2. A pre-application screening is required prior to building permit submittal. Contact the Building Services division to schedule and for submittal requirements.
3. A geotechnical soils investigation and recommendations by a qualified WA State Geotechnical Engineer is required. The engineer

shall specify all required tests, special inspections and structural observations.

4. A complete structural analysis by a WA State Professional Engineer (PE) is required for the cell tower and all proposed equipment. A WA State Structural Engineer (SE) is required for towers greater than 100' high. The towers must be designed to meet TIA 222-G (per the 2009 IBC, Section 3108 and Chapter 16). The basic wind speed in Whatcom County is 85 mph. The tower must also be designed for a minimum of ½" radial ice. Submit two complete sets of calculations, specifications and details, which have been stamped and signed by the WA State engineer.

The Technical Review Committee has determined that as conditioned, the development will meet the requirements of Title 15, Whatcom County Code.

### **E. Public Works –Engineering**

The Whatcom County Public Works, Engineering Division submitted a memo dated March 3, 2010 with the following comment:

"The site will be accessed by the existing right of entry via a private easement. **Baker Lake Dam Rd** is a privately maintained road. Engineering Services has no requirements for the proposed project."

The Technical Review Committee has determined that as conditioned, the proposal meets the requirements of Whatcom County Development Standards.

## **VIII. RECOMMENDATION**

Based on the findings of fact listed above, the Technical Review Committee has concluded that subject to the following proposed conditions, the proposed use would comply with all applicable Whatcom County regulations.

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division – Current Planning**

1. Use and location: The use and location on the site shall not be modified or changed in any way without further approval by the Whatcom County Hearing Examiner.
2. Design and Development Standard - Anti-Climbing Devices: Pursuant to WCC 20.13.061(1), all wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.
3. Design and Development Standard - Attachment to Trees Prohibited: Pursuant to WCC 20.13.061(2), it is prohibited to attach any wireless communication facility or portion thereof to any tree.

4. Design and Development Standard - Signage: Pursuant to WCC 20.13.061(3), the wireless communications support structure be identified with a nonilluminated sign not exceeding four square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public. No advertising signs shall be located on support structures or antennas, however arrays may be camouflaged as otherwise permitted signs.
5. Design and Development Standard - Lighting: Pursuant to WCC 20.13.061(4), the wireless communication facility shall not be illuminated except where required by the FAA.
6. Design and Development Standard - Painting: Pursuant to WCC 20.13.061 (5), the wireless communication facility shall be painted or finished in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.
7. Design and Development Standard - Noise: Pursuant to WCC 20.13.061 (6), the facilities shall comply with state noise level standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.
8. General Design Standard - Attached Antennas : Pursuant to WCC 20.13.062 (1), all attached antennas (excluding collocated antennas on existing WCF structures) shall be designed or placed to blend with the, predominant background or architectural features as seen from abutting residential uses, roadways or other public rights of way.
9. General Design Standard – Accessory Equipment Structures: Pursuant to WCC 20.13.062 (3), all accessory equipment structures shall be placed underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, they shall be screened from view.
10. General Design Standard - Building Setbacks: Pursuant to WCC 20.80.200 and WCC 20.13.062 (6); setback requirements. All structures, unless specifically stated in WCC 20.13.062 (c) or (d), shall be setback 20-feet from the interior access road and 20-feet from the

side and rear property lines. Pursuant to WCC 20.13.062 (c), nonattached wireless communications support structures located in other than residential related districts shall be setback from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater. Pursuant to WCC 20.13.062 (d), regardless of the district, nonattached wireless communications structures shall be setback from dwellings not on the same legal lot, a distance equal to the height of the wireless communications support structure or the setback of the underlying use district whichever is greater.

11. General Design Standard – Landscape Screening: Pursuant to WCC 20.13.062 (8)(e); the existing vegetation shall be preserved to the maximum extent practicable.
12. General Design Standard - Height Limitations: Pursuant to WCC 20.13.080, the height of new support structures shall be subject to requirements of 20.13.062(9) (b); provided, that the height does not exceed 150 feet.
13. General Design Standard - Parking: Pursuant to WCC 20.13.062 (10), the wireless communication support structure shall provide at least one adjacent parking space or more if needed to accommodate staff. All unstaffed wireless communications facilities shall have access to parking for maintenance personnel.
14. General Design Standard – Performance Bond: Pursuant to WCC 20.13.062 (11), the operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than \$1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.
15. Federal Requirements: Pursuant to WCC 20.13.140, the proposed development must conform to all of the standards set forth by the Federal Aviation Administration (FAA), the Federal Communication Commission (FCC) and/or any other agency of the federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the wireless communication support structure, antennas and electronic equipment governed by this chapter shall bring such wireless communication support structure, antennas and electronic equipment into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring

wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment at the owner's expense.

16. Removal of Antennas and Support Structures: Pursuant to WCC 20.13.150, no less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure.
17. Lot Coverage: Pursuant to WCC 20.42.450, no structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 35 percent whichever is greater.
18. Drainage: Pursuant to WCC 20.36.656, approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.
19. Construction Noise Levels: All equipment shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6.
20. EMF Exposure Levels: Per page 7 of the January 2010 submitted Engineer analysis of electromagnetic exposure (EMF), "the Verizon transmitter should be turned off whenever maintenance and repair personal are required to work in the immediate vicinity of the Verizon antennae. This will ensure full compliance with current FCC rules regarding human exposure to radio frequency electromagnetic fields."
21. Archaeological Discovery: Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed

during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

22. Right to Forestry: Pursuant to WCC, Title 14.04.030, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.

The subject property is within or near designated Forestry lands on which a variety of commercial activities may occur. The legally permissible amounts of noise, dust, smoke, traffic and fumes which may be generated by activities on forest land may exceed those levels conducive to a tranquil residential environment. While the application by spraying or other means of forest chemicals may be legally permitted on forest lands, the persons making such applications and the owners of properties where such applications are being made, may be liable for loss and damages which are caused by the migration of forest chemicals from the site of the approved application. Whatcom County has determined that the use of real property for forestry operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from legally permitted forest practices, if such operations are consistent with commonly accepted best management practices and otherwise comply with local, state and federal laws.

## **B. Building Services Department**

The applicant shall comply with all the conditions set forth by the Plans Examiner's memorandums dated March 3, 2010 and January 4, 2011, unless modified by that Department or appealed to the appropriate agency. Specifically those conditions include:

1. A commercial building permit shall be obtained for this proposal. Please see the specific submittal requirements within the above named memorandums.
2. A geotechnical soils investigation and recommendation prepared by a qualified WA State Geotechnical Engineer is required prior to the submittal of a building permit. The engineer shall specify all required tests, special inspections and structural observations.

3. A complete structural analysis by a WA State Professional Engineer (PE) is required at the time of the building application submittal.

Report prepared for the Technical Review Committee by:

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