

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

RECEIVED

IN THE MATTER OF

CUPA 2019-002
AT&T (WEYTHMAN)

OCT 21 2019

CHELAN COUNTY
COMMUNITY DEVELOPMENT

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND CONDITIONS
OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on October 16, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. An application for a Conditional Use Permit Amendment was submitted for improvements to an existing telecommunication facility. The existing facility consists of a 50ft. wood monopole supporting AT&T equipment. The proposed modification includes the removal of the 50ft. wood monopole and replacing it with a 60ft. steel monopole. This replacement will accommodate relocated equipment and has been designed to support future telecommunication collocation. The existing propane tank and concrete slab within the fenced compound will be replaced with a diesel generator on a new 5ft. x 11ft. concrete slab. No expansion to the existing fenced area is proposed.
2. The property owner is James Weythman, PO Box C, Monitor, WA 98836.
3. The applicant is Crown Castle for AT&T, Attn: Amanda Nations, 1505 Westlake Ave., N., Suite 800, Seattle, WA 98109.
4. The subject site is located at 4580 Red Apple Road, Cashmere, WA 98815. The existing telecommunication facility is located on private property owned by James Weythman. AT&T leases a portion of the subject property for their facility as identified in the recorded agreement dated September 15, 2003, AFN: 2155014.
5. The parcel number for the subject property is 23-19-11-400-050.
6. The subject site is not within an Urban Growth Area.
7. The Comprehensive Plan designation and Zoning designation for the subject site is Rural Residential/Resource 20 (RR20).
8. The subject property contains a 128 square foot concrete equipment area with an equipment shelter, propane tank, and a 50' fall wood pole telephone communication tower with antennas.
9. The property to the north is vacant and is zoned Rural/Residential Resource 20 (RR20).
10. The property to the south is vacant and is zoned Rural/Residential Resource 20 (RR20).
11. The property to the east is vacant and is zoned Rural/Residential Resource 5 (RR5).
12. The property to the west is vacant and is Residential and zoned Rural/Residential Resource 5 (RR5).

13. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species data, the subject site does contain Mule deer habitat area. Therefore, the provisions of Chelan County Code Chapter 11.78 do apply.
14. Pursuant to the Department of Natural Resources, the subject site does contain an N type stream. However, there is no evidence of this stream based on Chelan County imagery map and the USGS Topo map. Therefore, the provisions of Chelan County Code Chapter 11.78 Fish and Wildlife Habitat Conservation Areas Overlay District, as related to streams, do not apply.
15. The subject site is located outside the shoreline jurisdiction.
16. Pursuant to the National Wetlands Inventory data, the subject site does not contain wetlands. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
17. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped July 1, 2019. However, the proposed development does not require a vulnerability report, pursuant to Chelan County Code Section 11.82 Aquifer Recharge Areas Overlay District.
18. Pursuant to Federal Emergency Management Agency, FIRM map panel 5300150625C, the subject site does not contain flood plain. Therefore, the provisions of Chelan County Code Chapter 11.84 Frequently Flooded Areas Overlay District and 3.20 Flood Hazard Development does not apply.
19. Pursuant to Chelan County geologically hazardous GIS data, the subject does contain hazardous conditions. Therefore, the provisions Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply.
20. A copy of the geological site assessment performed by GPD Group dated July 11, 2012 was submitted with application. However, the report has since expired per the timelines established in CCC 11.86; therefore, an updated geological site assessment will be required with building permit application.
21. Pursuant to RCW 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.
22. Applicant plans to begin construction upon receipt of building permit.
23. Access is from a private easement off Red Apple Road, a 45' County right-of-way.
24. Chelan County PUD provides electrical services to the subject site.
25. Water is not applicable.
26. Sanitation is not applicable.
27. The subject property is located within Fire District #6.
28. No noise is expected with this use. The applicant is required to be consistent with Chelan County Code Chapter 7.35, Noise Controls.
29. Visual impacts to the surrounding properties are not expected to be greater than the existing structure.
30. The Notice of Application and environmental review was referred to jurisdictional agencies, departments and adjacent property owners, within 300' excluding 60' public right-of-way, on August 8, 2019. Comments were due on August 22, 2019. The following agencies provided comments:

- 30.1 Chelan County Building Official responded on August 9, 2019
- 30.2 Chelan County Public Works responded on August 21, 2019
- 30.3 Confederated Tribes of the Colville Reservation responded on August 12, 2019
- 30.4 Department of Ecology responded on August 29, 2019
- 31. The following agencies were notified but did not respond:
 - 31.1 Chelan County Fire Marshal
 - 31.2 Washington Department of Fish & Wildlife
 - 31.3 WA Department of Archaeology & Historic Preservation
 - 31.4 Yakama Nation
 - 31.5 Chelan County Natural Resources
- 32. No public comments were received.
- 33. The application was submitted on July 1, 2019.
- 34. A Determination of Completeness was issued on August 2, 2019.
- 35. The Notice of Application was issued on August 8, 2019.
- 36. The Notice of Public Hearing was provided on October 4, 2019.
- 37. The applicant submitted an Environmental Checklist on July 31, 2019. Pursuant to WAC 197-11-355 the optional DNS process and RCW 43.21C of the State Environmental Policy Act (SEPA), environmental review and a threshold determination was completed, and the Determination of Non-significance (DNS) was issued on August 27, 2019. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c). The comment period for the optional DNS was complete in conjunction with the Notice of Application. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
- 38. Staff reviewed the proposed development for consistency with the Rural Residential/Resource 20 (RR20) designation. The Comprehensive Plan does address communication facilities as a type of utility use. The proposed improvements to the telecommunication tower are consistent with the Chelan County Comprehensive Plan.
- 39. The project is consistent with Chelan County Code (CCC) 11.18.020(1) in the following respects:
 - 39.1 The existing lot is a conforming lot meeting the lot size and width requirements of the Rural Residential/Resource 20 (RR20) zoning district. Pursuant to Chelan County Code Section 11.88.120, telecommunication towers are exempt from building height limitations.
- 40. The project is consistent with CCC Code 11.18.020(5) in the following respects:
 - 40.1 The proposed development will replace the existing pole in the same location. The existing equipment shelter will not be altered. The existing pole and equipment shelter were permitted under building permit #030300 and met the setback requirements.
 - 40.2 The proposed structure location would meet the setback requirements.
- 41. The project is consistent with CCC 11.91.060 (1)(B) in the following respects:
 - 41.1 The proposed steel monopole has been designed to accommodate future co-locations.

The applicant will be required to allow for co-location on the proposed tower unless it can be demonstrated that it is not feasible based on one or more of the factors listed above.

- 41.2 Staff recommended as a condition of approval that future permit expansion and co-location on the same pole/tower could be permitted without amendment to the conditional use permit.
- 42. The project is consistent with CCC 11.91.060 (2)(C) in the following respects:
 - 42.1 The applicant is proposing to paint the proposed tower and all proposed and future antenna and other attachments a neutral color to be as visually unobtrusive as possible.
 - 42.2 Staff recommended as a condition of approval that all proposed lighting meets requirements of the FAA and CCC 11.88 and 11.91.
- 43. The project is consistent with CCC 11.91.060 (3) in the following respects:
 - 43.1 The applicant is proposing a 60 ft. steel monopole. It appears based on the scaled site plan, date stamped July 1, 2019, showing the property boundaries that the tower will be located over 400 ft. from all property lines.
 - 43.2 Based on the site plan of record, the proposed tower would meet the required setbacks.
- 44. The project is consistent with CCC 11.91.060 (4)(C) in the following respects:
 - 44.1 The ground-level equipment and buildings already exist permitted under building permit #030300 on the site and is enclosed in a fenced area.
 - 44.2 The tower and compound is located on a hill top surrounded by native grasses and shrubs. The applicant states that no modifications to the existing landscaping is proposed as the existing landscaping preserves the character, aesthetic qualities, and economic value of the property.
 - 44.3 The applicant is proposing to paint all proposed and future additions a neutral color to not be visual obtrusive.
 - 44.4 The existing and proposed structures would meet the requirements of this section and are effectively screened from public view based on the site's location, existing native vegetation, and the proposed paint finish to be a neutral color. Staff recommended as a condition of approval that the landscaping requirement be waived for the proposed project.
- 45. The project is consistent with CCC 11.91.060 (5) in the following respects:
 - 45.1 There is existing fencing enclosing the proposed pole and existing equipment shelter, as approved with building permit # 030300. No modification to the fencing is proposed.
 - 45.2 The existing and proposed facility meets the fencing requirements.
- 46. The project is consistent with CCC 11.91.060 (6) in the following respects:
 - 46.1 The proposed modifications are to an unmanned wireless communication facility. Parking for emergency or routine maintenance is available outside the fenced compound gate as indicated on the site plan of record.
 - 46.2 It appears the parking requirement would be satisfied.
- 47. The project is consistent with CCC 11.91.060 (7) in the following respects:
 - 47.1 Chelan County requires the applicant to obtain all local, state and federal permits.
 - 47.2 Staff recommended as a condition of approval that the applicant demonstrate that local, state, and federal regulations and requirements have been satisfied.

48. The project is consistent with CCC 11.91.060 (8) in the following respects:
- 48.1 No advertising signs are to be located on the support structure, antennas, or security fencing. Based on the application materials, an existing sign for identification purposes is located on the security fencing; said sign is proposed to stay.
 - 48.2 Staff recommended that no advertising or displays are permitted on any portion of development, except the identification signage indicating the name of the wireless service provider and a telephone number for emergency contact on the site as required.
49. The project is consistent with CCC 11.91.060 (9) in the following respects:
- 49.1 The telecommunications tower is currently being operated. Changes in the status of the facility are required to be disclosed.
 - 49.2 Staff recommended a condition that the applicant/owner removes the facility from the site within six months of the date the facility ceases to operate.
50. The project is consistent with CCC 11.91.060 (10) in the following respects:
- 51.1 The Chelan County Fire Marshal was noticed of the proposed modification on August 8, 2019; no comments were received regarding the proposed modification.
 - 51.2 All applicable building and fire safety requirements would be reviewed at time of building permit application, therefore, this criteria would be satisfied.
51. The project is consistent with CCC 11.93.180 (1) in the following respects:
- 51.1 The site plan of record, date stamped July 1, 2019, show the existing equipment shelter which is an enclosed building.
 - 51.2 This code requirement would be met with the existing structure.
52. The project is consistent with CCC 11.93.180 (2) in the following respects:
- 52.1 The Rural/Residential Resource 20 (RR20) zoning district is a low density residential district. Outside storage has not been identified as a part of this application.
 - 52.2 Staff recommended a condition of approval limiting all outside storage.
53. The project is consistent with CCC 11.93.180 (3) in the following respects:
- 53.1 The site plan of record, date stamped July 1, 2019, shows the existing chain link fence with barb wire surrounding the development area.
 - 53.2 The existing fencing would satisfy this requirement.
54. The project is consistent with CCC 11.93.180 (4) in the following respects:
- 54.1 The applicant states that no modifications to the existing landscaping is proposed as the existing landscaping preserves the character, aesthetic qualities, and economic value of the property.
 - 54.2 Per CCC 15.50.055, when the inclusion of significant existing vegetation located on the site would result in as good as or better satisfaction of the purposes of this section, landscaping requirements may be waived.
 - 54.3 Staff recommended as a condition of approval that the landscaping requirement be waived for the proposed project.

55. The project is consistent with CCC 11.93.180 (5) in the following respects:
 - 55.1 The applicant is using an existing conforming lot, as determined above.
 - 55.2 This provision does not apply to this application.
56. The project is consistent with CCC 11.93.180 (6) in the following respects:
 - 56.1 It does not appear that the proposed development will cause any noise or odors, or any hazards to public health and safety or vehicular access.
 - 56.2 The Hearing Examiner did not recommend additional conditions.
57. The project is consistent with CCC 11.93.040 (1) in the following respects:
 - 57.1 The criteria of the Chelan County Code Chapter Section 11.91 have been reviewed.
 - 57.2 The Hearing Examiner concluded that the proposed development, as conditioned, would meet the code requirements.
58. The project is consistent with CCC 11.93.040 (2) in the following respects:
 - 58.1 The criteria of the RR20 zoning standards have been reviewed.
 - 58.2 The Hearing Examiner finds that the proposed development would be consistent with the zoning standards. Changes may occur prior to construction. Therefore, final determination would be made at the time of building permit.
59. The project is consistent with CCC 11.93.040 (3) in the following respects:
 - 59.1 The proposed improvements to the existing telecommunication tower are located on an 80 acre parcel with no residences within the immediate area.
 - 59.2 The existing use and proposed modification are compatible with the adjacent uses.
60. The project is consistent with CCC 11.93.040 (4) in the following respects:
 - 61.1 The footprint of the existing telecommunications tower would not be expanded.
 - 61.2 Based on existing use, there appears to be no detrimental impacts to the natural environment.
61. The project is consistent with CCC 11.93.040 (5)(A) in the following respects:
 - 61.1 Chelan County provided a Notice of Application to facility providers. The proposed modifications would not require water, sewage, or school services.
 - 61.2 All required items appear to be met.
62. The project is consistent with CCC 11.93.040 (5)(B) in the following respects:
 - 62.1 The subject property is accessed from a private access easement from Red Apple Road, a County Road. The Chelan County Comprehensive Plan has not identified a level of service for Red Apple Road. The proposed use will not increase road impacts from the existing conditions.
 - 62.2 There is no adopted level of service requirements for Red Apple Road.

63. The project is consistent with CCC 11.93.040 (6) in the following respects:
- 63.1 The staff report reviewed potential impacts to public health, safety and welfare.
 - 63.2 The proposed development, as conditioned, will not negatively impact the public health, safety, and welfare.
64. The project is consistent with CCC 11.93.040 (7) in the following respects:
- 64.1 Each of the required service reviews has been completed by staff report.
 - 64.2 All required services/facilities have been met or will be met with the recommended conditions of approval.
65. The project is consistent with CCC 11.93.040 (8) in the following respects:
- 65.1 **Noise:** It appears the proposed development will not generate noise.
 - 65.2 **Light:** Pursuant to Chelan County Code Section 11.91.060(2)(C), when lighting is required and permitted by the FAA or other federal or state authority, it shall be oriented so as not to project onto surrounding property. Strobe lighting on wireless communication facilities is not permitted. Any existing lighting or proposed lighting on the storage building or for the parking area is permitted at a low-intensity light pursuant to Chelan County Code Section 11.88.080.
 - 65.3 **Heat, Steam, Odors, Smoke, & Dust:** The application materials did not include information related to heat, steam, odors, smoke or dust. Chelan County Code Title 15 requires that driveways and parking areas be an approved dustless surfacing.

Based on comments received August 29, 2019 from the Dept. of Ecology, a preconstruction air quality permit is required for the proposed diesel generator.
 - 65.4 **Erosion:** A geologic site assessment will be required at the time of building permit application pursuant to Chelan County Code Chapter 11.86. All construction activities are required to be completed in a manner which minimizes erosion.
 - 65.5 **Water Quality:** The applicant does not propose the use of water or septic system for this application.
 - 65.5 **Glare:** The applicant is proposing to paint the proposed development a neutral color to be as visually unobtrusive as possible.
 - 65.6 **Wastes:** The proposed use does not require solid waste disposal.
 - 65.7 **Vibration:** No vibration impact is expected to occur based on the proposed land use.
 - 65.8 **Electrical disturbance:** No electrical disturbance is expected to occur based on the proposed land use.
 - 65.9 **Physical Hazards:** The proposal does not appear to have any physical hazards.
 - 65.10 The proposed development as conditioned will not create impacts to adjacent properties related to noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards.
66. The project is consistent with CCC 11.93.040 (9) in the following respects:
- 66.1 The proposed development is a use addressed within the Comprehensive Plan and implementing regulations, addressed above.

- 66.2 The proposed development is consistent with the Comprehensive Plan with the implementing regulations.
67. The project is consistent with CCC 11.93.040 (10) in the following respects:
- 67.1 Staff provided recommended conditions of approval. The Hearing Examiner may modify, add or remove conditions as necessary to ensure that all criteria are adequately addressed.
- 67.2 The proposed recommended conditions of approval provided by staff are intended to be measurable and can be monitored and enforced.
68. This project is for a re-submittal of a previously approved Conditional Use Permit which requested the same modifications as the present CUP application. The proposed modifications were not completed within the 3 year time frame from the approval date, therefore requiring a reapplication for the same project.
69. Pursuant to Chelan County Code Section 11.93.070, in any case where a conditional use permit is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of the Chelan County Code.
70. Pursuant to Chelan County Code Section 11.93.090, upon final action of the Hearing Examiner to deny an application for a conditional use permit, the department shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
71. Staff reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended **APPROVAL** subject to the recommended conditions of approval.
72. A open record public hearing after due legal notice was held on October 16th, 2019.
73. At this hearing, the entire planning staff record was admitted into the record of the hearing.
74. Appearing for the applicant was Amanda Nations. Ms. Nations testified that she was an agent authorized to appear and speak on behalf of the applicant and property owner. Ms. Nations indicated that the applicant agreed with all the representations set forth within the staff report and had no objections to any of the proposed conditions of approval.
75. No member of the public testified at this hearing.
76. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
77. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS

1. The Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.
3. The site of the subject proposal is in the proximity of the Rural Residential/Resource 20 land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.

4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. The authorization of the shoreline permits will not be materially detrimental to the purposes of the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, the Chelan County, or not be otherwise detrimental to the public interest.
7. The project is not located on a public beach, nor does it block or reduce public use or enjoyment of the area.
8. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements.
9. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUPA 2019-002 is **APPROVED**.

CONDITIONS OF APPROVAL

All conditions imposed herein shall be binding on the applicant which term shall include the owner or owners of the property, heirs, assigns, and successors.

1. Pursuant to Chelan County Code Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
 - 1.1 All Conditions of Approval from the approved CUP 2003-001 decision approved April 21, 2003 shall be in full force and effect unless modified by this decision.
2. Pursuant to RCW 27.53.020, if the applicants or their agents discover previously unknown historic or archeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
3. Pursuant to Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
4. Pursuant to Chelan County Code Section 11.86.020, an updated geologic site assessment shall be required at the time of building permit application.

5. Pursuant to Chelan County Code Section 11.88.190, no construction activity shall be permitted within 100 ft. of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
5. Pursuant to Chelan County Code Chapter 11.90, the applicant shall ensure that all parking areas are developed according to the standards of Chelan County Code 11.90.
6. Pursuant to Chelan County Code Section 11.91.060, the applicant shall ensure that all exterior lighting will meet the standards of the FAA and Chelan County Code Section 11.88.080.
7. Pursuant to Chelan County Code Section 11.93.180, no outside storage shall be allowed on the premises.
8. Pursuant to Chelan County Code Section 11.91.060, the proposed tower shall allow for co-location if feasible. If such co-location does not require additional tower, the applicant may add transponders without amendment to this conditional use permit.
9. Pursuant to Chelan County Code Section 11.91.060, the applicant shall demonstrate that local, state, and federal regulations and requirements have been met.
 - 9.1 A preconstruction air quality permit from the Dept. of Ecology shall be required for the proposed diesel generator.
10. Pursuant to Chelan County Code 15.50.055, no landscaping shall be required.
11. Pursuant to Chelan County Code 11.91.060, the applicant/owner shall remove the facility from the site within six months of the date the facility ceases to operate.
12. Pursuant to Chelan County Code Section 11.93.100, a change in use, expansion or contraction of site area, or alteration of structures or uses which are classified as conditional and exist prior to the effective date of Resolution 2000-129, codified in this title, shall conform to all regulations pertaining to conditional uses, except as permitted herein.
13. Pursuant to Chelan County Code Section 11.93.110, this conditional use permit shall become void after three (3) years after approval or such other time period as established by the Hearing Examiner if the use is not completely developed. Said extension shall not exceed a total of six years and said phases and timelines shall be clearly spelled out in the application.
14. Pursuant to Chelan County Code Section 11.93.120, this action of the Hearing Examiner is final unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Approved this 21st day of October, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.