



City of Seattle

Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3010920
Applicant Name: Steven Topp for Clear wire
Address of Proposal: 4999 P Beacon Avenue South

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a minor communication utility (Clear wire), consisting of three panel antennas mounted and one Microwave dish antenna mounted on a Seattle City Light transmission tower. The project includes locating supporting equipment at grade within the foot print of the transmission tower. (WA-SEA0363-D/ SCL Beacon Avenue)

The following approvals are required:

Administrative Conditional Use - To allow a minor communication utility on an existing public facility in a single-family zone.

Administrative Conditional Use - To allow a minor communication utility to exceed the height limit in a single-family zone.

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code

SEPA DETERMINATION: EXEMPT DNS MDNS EIS

DNS with conditions

DNS involving non-exempt grading or demolition involving another agency with jurisdiction.

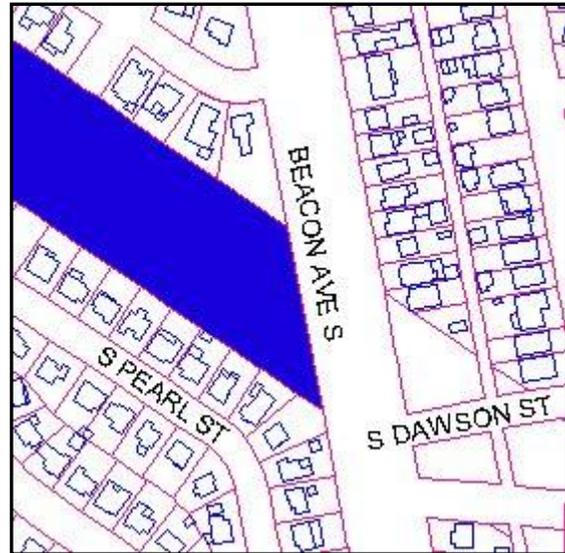
**Early Notice DNS published January 7, 2010

BACKGROUND DATA

Site Location and Description

The subject site is located on west side of Beacon Avenue South, between South Ferdinand Street to the north and South Dawson Street to the south, within a City of Seattle transmission line right-of-way, in the Beacon Hill neighborhood. Within this swath of land cutting through Beacon Hill, the development site comprises an area of approximately two acres bounded by

Columbia Drive South to the west and Beacon Avenue South to the east in a Single Family 5,000 (SF 5000) zone. The subject utility transmission tower stands approximately 135.6 feet above grade, and is one of two towers located at the development site. The site slopes down and away from its south east property boundary line, creating a subtle slope wherein the transmission tower is located. The subject site is otherwise free of structures, with no vegetation other than cropped grass lawn creating an open space park feel. Beacon Avenue South to the east is a fully improved right-of-way, while Columbia Drive South is partially improved with paved roadway surface and soft shoulders.



The subject site is located within a densely populated SF 5000 zone that supports modestly sized one and two story homes. The nearest single family use to the south is approximately 62 feet away as measured from property line to center base of the transmission tower. To the east across the Beacon Avenue South right-of-way, the nearest single family use is approximately 196 feet away from the tower's center. Situated to the southeast and northwest is the transmission line right-of-way that supports utility lines and towers. Other zones in the vicinity outside the expansive SF 5000 zone where the subject site is located, are Single Family 7200 (SF7200) to the west, and to the north Neighborhood Commercial Two (2) with a height limit of 40 feet (NC2-40).

Proposal Description

The applicant proposes to install a total of three (3) panel antennas mounted at a height of 60 feet above grade and one (1) microwave dish antenna mounted at a height of 63 feet on an existing 136.6 foot tall Seattle City Light transmission tower. The proposal consists of three (3) sectors, containing one (1) antenna per sector for a total of three (3) antennas and one (1) microwave dish antenna. The project also includes installation of accessory equipment cabinet to be located at ground level, within the tower frame at grade on an 81 square foot concrete pad. The meter and main disconnect utility rack is proposed to be located on the concrete pad with the equipment cabinet, all enclosed within a six foot tall cedar fence. Surrounding the fence a five foot deep landscaped area is proposed to visually soften the presence of the equipment at grade.

Public Comment

Date of Notice of Application: January 7, 2010
Date End of Comment Period: January 20, 2010
Letters 3

All three comment letters received by DPD during the comment period opposed the establishment of a minor communication utility. The one addressed the potential interference of public use of the utility right-of-way (i.e., pea-patch, trail). Other concerns raised entailed the unsightly addition of antennas to a residential neighborhood, lowering of property values, and interference of television reception.

ANALYSIS AND CRITERIA - ADMINISTRATIVE CONDITIONAL USE

Section 23.57.010.C of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Single-Family Zone with the approval of an administrative conditional use permit when the establishment or expansion of a minor communication utility, except on lots zoned Single Family or Residential Small Lot and containing a single family use residence or no use subject to the requirements of this section enumerated below:

1. The proposal shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.

The proposal site is located within a Seattle City Light transmission line right-of-way in a Single Family 5000 zone, and will be sited on an existing utility transmission tower. The antennas will be flush mounted to an existing electrical transmission tower and painted to match the existing color of the tower to minimize visual impacts on surrounding uses. The design would render the antennas nearly non-distinctive from a distance. The accessory equipment cabinet and associated devices will be hidden behind a six (6) foot tall solid wood fence. A five foot deep landscaped area adjacent to the fence will provide additional screening to minimize the visual impact of the equipment cabinets.

The applicant has identified and applied a common sense hierarchical preference matrix to siting their facilities (refer to Director Rule's 8-2004) within the City of Seattle. Industrial zones being the most preferred, single family zone with an established residential use the least preferred. Though the subject site is located within a Single Family 5000 (SF 5000) zone on a minor arterial street, the host city utility development site occupies the least intrusive facility in an area that includes SF 5000, SF 7200 and NC2-40, with height limits ranging from 30 to 40 feet. The primary coverage target area is found between South Columbia Way to the north and South Orcas to the south within the single family zones. To meet the primary coverage objectives only sites within residential zones could be found making this City Light transmission right-of-way the least intrusive location within the underlying residential zone. Providing service to an area at the crest of Beacon Hill with its presence of mature trees and sloping topography leaves few options. The applicant seeks to expand its operational capability on an existing transmission tower in the surrounding expansive residential SF 5000 zone. With the addition of the proposed antennas the applicant has demonstrated build-out of service coverage area in a least intrusive location. The proposed minor communication utility would be the "least intrusive facility" at the "least intrusive location" consistent with "effectively providing service."

In addition, a Third Party Review was requested and on May 18, 2010, Thomas S. Gorton, PE, under the supervision of David Pinion, PE, Hatfield and Dawson Consulting Electrical Engineers concluded that the proposed minor communication utility would be the "least intrusive facility" at the "least intrusive location" consistent with "effectively providing service."

The noise level is estimated to be below the ambient level of residential uses within the Single Family 5000 zone according to the project acoustics' report. Traffic impact is not anticipated other than occasional visits by technicians to calibrate equipment. The proposal would be

compatible with uses allowed in the zone, and since no housing or structure will be removed, the proposal will not result in displacement of residential dwelling units.

As proposed, the minor communications utility will not constitute a commercial intrusion that will be substantially detrimental to the residential character of the surrounding neighborhood. The submitted documents and plans note that the proposed devices will be painted to match the tower in a non-glare color. Given these existing conditions and additional camouflaging screening techniques of the antennas designed to blend with the skeletal tower frame, and the location of the associated equipment cabinet behind a landscaped area and 6 foot tall fence, the proposed minor communications utility would be minimally obtrusive and not detrimental to the residential streetscape character along Beacon Avenue South and Columbia Drive South.

2. *The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

The applicant has designed the size, shape and materials of the proposed utility to minimize negative visual impacts on adjacent or nearby residential areas to the greatest extent possible in the form of a flush mounted (antenna) bracket attached to the structural leg of the transmission tower. It is designed to be visually compatible to the skeletal frame of the existing tower in order to visually screen and camouflage the antenna location. The proposed antennas would be painted to match the tower to subtly create a visual coherence in form and shape to blend in with the tower. The related equipment cabinet and other accessory devices would be placed within a solid wood fence, with landscaping surrounding the fence's perimeter. All design features will be a condition of approval for this permit.

3. *Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*

- a. *the antenna is at least one hundred feet (100') from a MIO boundary; and*
- b. *the antenna is substantially screened from the surrounding neighborhood's view.*

The proposed site is not located within a Major Institution Overlay; therefore, this provision is not applicable.

4. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The applicant has stated that the engineers working for Clear wire on this project have determined a need for additional coverage in this area. The engineers have noted the need for the utility to be at the proposed height if sited at this location. The selected location maximizes capacity and coverage/penetration for this area within the city limits. The applicant supported this claim with analysis of coverage area challenges that included availability of structures that could support the proposed coverage needed to satisfy the applicant's wireless system. The applicant also notes that, though the height proposed is greater than allowed by the SF 5000 zone, it is substantially less than that of the existing 135.6 foot tall utility lattice tower.

The proposed antennas will be side mounted to an existing utility transmission tower approximately 60 feet (panels) and 63 feet (microwave dish) above grade on a transmission tower that extends 135.6 feet above existing grade. The proposed minor communication facility will extend approximately 33 feet above the base height limit for the single family zone.

However, due to the fact that the existing structure is already over the height limit by approximately 106 feet, additional increase in bulk, view blockage and shadow impacts are not anticipated to be a substantive visual impact with the attachment and extension of the proposed antennas.

Due to the operational characteristics of the proposed facility, a clear line of site from the antennas in the system throughout the intended coverage area is necessary to ensure quality of the transmission of the digital system. The strict application of the height limit would preclude the applicant from providing wireless services for the intended coverage area, which extends north towards South Columbia Way, east to 28th Avenue South, south to South Raymond Street and west towards 18th Avenue South. The site was chosen because its elevation and location are uniquely suited to serve this residential area. No properties were identified with sufficient elevation height to provide the coverage needed to meet the service objectives within the preferred nonresidential zone locations. The additional height above the zone development standard is the minimum required to attach the antennas to the transmission tower and obtain sufficient coverage.

One alternative would be to locate the minor communication utility on the second transmission tower at the development site. This would functionally have similar impacts as the chosen structure. Alternatively, the applicant could secure a willing private property owner to place the accessory equipment cabinet on their property and with the approval of Seattle City Light attach the panel antennas to a utility pole. This alternative would likely have greater visual and use impacts and may lack suitable locations to place the communication utility in a residential single family zone. To locate a communication utility outside this transmission line right-of-way would likely be more visually intrusive in the single family zone. According to the applicant, the literal interpretation and strict application of the Land Use Code would be that Clear wire could not meet its federal mandate of its FCC license to provide high speed wireless internet access throughout the Seattle metropolitan area. This proposal site, at this elevation is a vital link in the planned network for the Seattle Metropolitan area. Given these alternatives, the height limit extension is a minimal impact. Thus, this criterion is satisfied.

5. If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.

The proposed minor communication utility is not proposed for a new freestanding transmission tower. Therefore, this provision does not apply.

6. If the proposed minor communication utility is for a personal wireless facility and it would be the third separate utility on the same lot, the applicant shall demonstrate that it meets the criteria contained in subsection 23.57.009 A. except for minor communication utilities located on freestanding water tower or similar facility.

The proposed minor communication utility will not be the third utility service on the same lot and this facility is similar to a freestanding water tower. Therefore, this provision does not apply.

DECISION - ADMINISTRATIVE CONDITIONAL USE PERMIT

This application to install a minor communication utility in a Single family zone, which exceeds the height limit of the underlying zone, is **CONDITIONALLY APPROVED**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist prepared by Steven Topp, applicant on December 12, 2009, and supplemental information in the project file submitted by the applicant. The information in the checklist, supplemental information, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, "*Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,*" subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D), mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Construction and Noise Impacts

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts. The initial installation of the antennas and the equipment may include loud equipment and activities. This construction activity may have an adverse impact on nearby residences. Due to the close proximity of nearby residences, the Department finds that the limitations of the Noise Ordinance are inadequate to appropriately mitigate the adverse noise impacts associated with the proposal. The SEPA Construction Impacts policies, (SMC 25.05.675.B) allow the Director to limit the hours of construction to mitigate adverse noise and other construction-related impacts. Therefore, the proposal is conditioned to limit construction activity to non-holiday weekday hours between 7:00 a.m. and 6:00 p.m.

Long-term Impacts

Long-term or use-related impacts are also anticipated, as a result of approval of this proposal including: increased traffic in the area and increased demand for parking due to maintenance of the facility; and increased demand for public services and utilities. These impacts are minor in scope and do not warrant additional conditioning pursuant to SEPA policies.

Environmental Health

The Federal Communications Commission (FCC) has pre-empted state and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio

frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a “Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility” and an accompanying “Affidavit of Qualification and Certification” for this proposed facility giving the calculations of radiofrequency power density at roof and ground levels expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The City of Seattle, in conjunction with Seattle King County Department of Public Health, has determined that Personal Communication Systems (PCS) operate at frequencies far below the Maximum Permissible Exposure standards established by the Federal Communications Commission (FCC) and therefore, does not warrant any conditioning to mitigate for adverse impacts.

The City is not aware of interference complaints from the operation of other installations from persons operating electronic equipment, including sensitive medical devices (e.g. - pacemakers). The Land Use Code (SMC 23.57.012C2) requires that warning signs be posted at every point of access to the antennas noting the presence of electromagnetic radiation. In the event that any interference was to result from this proposal in nearby homes and businesses or in clinical medical applications, the FCC has authority to require the facility to cease operation until the issue is resolved.

The information discussed above, review of literature regarding these facilities, and the experience of the Departments of Planning and Development and Public Health with the review of similar projects form the basis for this analysis and decision. The Department concludes that no mitigation for electromagnetic radiation emission impacts pursuant to SEPA policies is warranted.

The associated equipment will generate some noise; the average ambient noise level was measured at 60 dBA, the predicted noise level at the receiver property line is 31 dBA which complies with nighttime noise limits for residential properties. Due to the location of the equipment no adverse noise impacts during operation are expected and the Noise Ordinance will adequately regulate any noise impacts associated with the proposal.

The long term visual impact of the change is expected to be very minor as discussed in the ACU section above. Provided that the proposal is constructed according to approved plans, no further mitigation pursuant to SEPA is warranted.

Summary

In conclusion, several effects on the environment would result from the proposed development. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2c.
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2c.

CONDITIONS - ADMINISTRATIVE CONDITIONAL USE

The owner(s) and/or responsible party(s) shall:

Prior to MUP Issuance

1. Document within plan set integrated plant schedule for landscaping buffer outside perimeter fence within the tower's base. Include a landscape management plan to document care and maintenance of plantings, including soil preparation, use of compost, plant replacement, irrigation, weed and pest control, control of noxious or invasive species, and care (please refer to Director's Rule 6-2009). The maintenance plan shall ensure at least 80% survival of plants after five years. Subject to the approval by the project planner.

Prior to Building Final Approval

2. Compliance with the approved design features and elements, including exterior materials, colors, and landscaping, shall be verified by the DPD Planner assigned to this project. Inspection appointments with the Planner must be made at least three (3) working days in advance of the inspection.

CONDITION - SEPA

The owner(s) and/or responsible party(s) shall:

During Construction

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the each street right-of-way and the alley. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

3. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, deliveries, assembly and framing) shall be limited to non-holiday weekdays from 7am to 6pm. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition.

4. Construction activities outside the above-stated restrictions may be authorized by the Land Use Planner when necessitated by unforeseen construction, safety, or street-use related situations. Requests for extended construction hours or weekend days must be submitted to the Land Use Planner at least three (3) days in advance of the requested dates in order to allow DPD to evaluate the request.

Signature: _____ (signature on file) Date: May 27, 2010
Bradley Wilburn, Land Use Planner
Department of Planning and Development
Land Use Services

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