



King County

Permitting Division
Department of Local Services

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October 26, 2022

TO: Ken Lyons, Wireless Policy Group LLC
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Debbie Griffin, Smartlink
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Provided via email only

CC: Ty Peterson, Product Line Manager-Commercial
Sherie Sabour, Project-Program Manager III
Robin Proebsting, Legislative/Policy Analyst

FM: Jim Chan, Division Director of Permitting

RE: CINT22-0002 Determination of Land Use Intensity applied for a Cell Tower per King County
Code 21A.24.325.A.2.a.
Project CDUP21-0004, Parcel 2126079044

A request was received for a Director's determination of King County Code (K.C.C.) 21A.24.325.A.2 to reduce the required wetland buffer width applicable to the development proposed under Project CDUP21-0004. K.C.C. 21A.24.325 establishes wetland buffer width requirements that are based in part on the intensity of the impact of adjacent land uses. K.C.C. 21A.24.325.A.2 allows the director to make a determination that a lesser level of impact (and therefore a smaller wetland buffer) is appropriate on a case-by-case basis if supporting information is provided by the applicant about the proposed land use. The land use proposed in Project CDUP21-0004 is a cell tower to be located on a property zoned RA5, a rural zone. A cell tower is considered a commercial use and is allowed on a property zoned RA. However, commercial uses (which are by definition nonresidential) are considered high impact according to K.C.C. 21A.24.325.A.2.a:

KCC 21A.24.325.A.2.a.

a. High impact includes:

(3) nonresidential use on a site zoned for residential use;

Historically, King County Permitting Division has applied the high impact wetland buffer width to commercial projects including cells towers. The property contains a Category II wetland and a Category III wetland which require a high impact land use buffer of 150 feet for both wetlands.

The applicant has submitted a letter (dated March 30, 2022) outlining why the director should determine that the cell tower will have a lesser level of impact pursuant to K.C.C. 21A.24.325.A.2. The request is to

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apply the low intensity buffers of 75 feet and if not allowed the moderate impact buffer of 110 feet, as the applicant contends the project meets the following criteria for moderate and low impact land uses.

KCC 21A.24.325.A.2.b

b. Moderate impact includes:

- (4) utility corridors or right-of-way shared by several utilities, including maintenance roads;

KCC 21A.24.325.A.2.c

c. Low impact includes:

- (4) utility corridors without a maintenance road and little or no vegetation maintenance.

The applicant states that a lesser level of impact is appropriate for the following reasons:

- 1) The project meets the definition of a utility corridor which is a criterion for reducing the buffer to a moderate or low impact.
- 2) The actual physical characteristics and ecological impact of this proposed cell tower are very low intensity with no measurable impact to the function of the onsite wetland.
- 3) The low or moderate intensity use buffers are more appropriate here given the characteristics and impacts of the named uses in those categories and the passive nature of the use that is proposed.

Discussion:

I asked two of our Senior Ecologist to weigh in with their opinion on this matter. Their feedback are as follows:

The project does not meet the definition for a utility corridor which is a required criterion to meet to apply in either the moderate or low buffer impact.

21A.06.1348 Utility corridor. Utility corridor: a narrow strip of land containing underground or above-ground utilities and the area necessary to maintain those utilities. A "utility corridor" is contained within and is a portion of any utility right-of-way or dedicated easement. (Ord. 15051 § 108, 2004).

King County adopted the Wetland Rating System and buffers per the Washington State Wetland Rating System for Western Washington, Washington State Department of Ecology publication number 14-06-029, published October 2014.

KCC 21A.24.318 Wetlands - identification of and delineation of boundaries - categories.

B. Wetlands shall be rated into category I, category II, category III and category IV based on the adopted Washington State Wetland Rating System for Western Washington, Washington state Department of Ecology publication number 14-06-029, published October 2014.

As part of the 2019 update to the Shoreline Master Program (SMP), the Department of Ecology required King County to update its critical areas regulations in KCC 21A.24 to require use of the 2014 rating system and the updated wetlands guidance. The SMP update ensured that King County is utilizing Best Available Science (BAS).

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BAS has been synthesized in the following documents which were reviewed and used by King County Ecologists when providing input to the required code updates:

- Wetlands in Washington State Volume 1 – a Synthesis of the Science (Ecology publication #05-06-006; March 2005)
- Wetlands in Washington State Volume 2 – Protecting and Managing Wetlands (Ecology publication #05-06-008; March 2005)
- Update on Wetland Buffers – The State of the Science (Ecology publication #13-06-011 October 2013)
- Modification for Habitat Score Ranges, Modified from Appendix 8-C: Guidance on Buffers and Ratios for Western Washington (Attachment 1; July 2018).

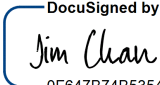
Also included in their review were standards that changed in order to implement the new Wetland Rating System and to reflect the Department of Ecology's guidance including revising categories of intensity of impact for adjacent land uses (high, moderate and low impacts) used to determine buffer widths and potential buffer reductions. Utility corridors were assessed by Ecology and added to the moderate or low impact buffer in the update to the Wetland Buffer Rating. King County adopted this addition. Cell towers and other commercial uses, their impacts, physical characteristics and ecological impacts were not addressed in any of the documents above. The code has remained the same for commercial projects on rural parcels.

The applicant also discussed the passive nature of the use onsite being more closely aligned with the moderate or low buffer impact. Moderate impact includes residential uses, non-commercial farming and moderate intensity recreation. Passive recreation is listed in the low impact land uses in K.C.C. 21A.24.325.A.2.c as unpaved trails, nature viewing areas, fishing and camping areas, and other similar uses that do not require permanent structures on a site regardless of zoning. The project is proposing a structure and therefore the comparisons equating the impacts of a cell tower with those of farming or recreation are not appropriate. The information provided by the applicant is general in nature, does not include references to BAS, and is insufficient to document how the proposed cell tower will cause a moderate or low level of impact.

Conclusion:

Based on the above feedback and analysis, I have determined the buffer width will not be reduced to moderate or low impact buffers as the site meets the criteria for a high impact buffer stated in 21A.24.325.A.2.a.(3). Furthermore, the applicant has not provided sufficient science-backed justification to document how the proposed cell tower will result in a moderate or low level of impact pursuant to 21A.24.325.A.2, contrary to that Best Available Science that the regulations are based upon. If such information can be provided, I will provide further consideration on this matter.

Sincerely,

DocuSigned by:

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Jim Chan
Director of Permitting
King County