

**APPEAL OF APPROVAL OF PERMIT ISSUED BY KITTITAS COUNTY
COMMUNITY DEVELOPMENT SERVICES ON OCTOBER 26 2023.**

ACU-23-0003 – Project File Number

Atlas Tower – Project Name

Applicant – Atlas Tower 1 LLC, Victor Strand (landowner)

Appellant – Frances Ceraolo

This appeal is presented in several sections

1. **A portion of this appeal is due to a lack of due diligence by KCCDS in processing the application ACU-23-0003 Atlas**
2. **A portion of this appeal is a lack of due diligence by KCCDS concerning ACU-23-0003 Atlas to clarify the meaning and intent of the Appeal Section in “Notice of Application”.**
3. **A portion of this appeal is a lack of due diligence by KCCDS concerning ACU-23-0003 Atlas: Site placement and visual aesthetics and distance from residential homes.**
4. **A portion of this appeal is a lack of due diligence by KCCDS concerning ACU-23-0003 Atlas: Rural Issues**
5. **A portion of this appeal is a lack of due diligence by KCCDS concerning ACU-23-0003 Atlas: Utilities.**
6. **A portion of this appeal is a lack of due diligence by KCCDS concerning ACU-23-0003 Atlas: Public Comments.**
7. **A portion of this appeal is titled Summary and consequences of approving ACU-23-0003 Atlas which is part of my appeal.**
8. **A portion of this appeal is the demonstration, by the included National Broadband Maps, that the coverage of the area in question is not lacking.**

RECEIVED
JAN 25 2024

Kittitas County CDS

For your convenience I have included sections of Kittitas County Comprehensive Plan and Vision Statement

KCC 15B.03.040 Procedures. Consideration of and Responses to Public Comments. Planning commission and board of county commissions members should review the testimony submitted in their findings.

Kittitas County Code Title 17 Zoning and RCW 36.70A.030 “rural character”

Also included are portions of other legal issues that have relevance in this matter.

1. Manna Funding LLC v’s Kittitas County Feb.28 2013 – County failed to elaborate on findings
2. One horse Energy Development LLC and Iron Horse Solar LLC v’s Kittitas County. The issue here was regarding “rural character” particularly the matter of “open space predominating over the built environment.” In the present manner the question would be “How is the built environment considered when the proposal is for the equivalent of a 10 story building on a narrow base? Should consideration be given to the fact that it is visible for miles around as opposed to the One Horse Energy proposal that would only be visible locally?
3. A portion of a thesis by D. Condon: Exploring the Regulatory Debates of Solar Powered Production Facilities in Kittitas County. I have included this because it highlights the disproportion of power between rural and urban counties and how this leads to disputes. This thesis also explores the values placed on the “rural character” and also refers to dispute covered in One Horse Energy as in above.

Francis Cerabob Jan. 25, 2024

INRODUCTION

A portion of this appeal is due to a LACK OF DUE DILIGENCE BY KCCDS IN PROCESSING THE APPLICATION, ACU-23-00003 ATLAS TOWER

Failure to demand clarification on vague assumptions by Atlas in its letter dated July 13, 2023, which serves as a Narrative as to how:

“this project will provide the needed mobile network coverage----”

“alleviate current mobile network voice, data, and first responder issues in an area that is severely lacking reliable network coverage and capacity”

“This facility will provide critical wireless coverage to-----”

The 3 statements above are inaccurate since the proposed project is not capable of providing anything. (it is not a utility - See under portion marked “Utilities”) and there is no evidence that network coverage is lacking.

Failure to demand Clarification on “surrounding area” (or by KCCDS surrounding neighborhood) See Proposed Summary, page 1 of “Narrative” This facility will provide critical wireless coverage to the surrounding area. See also under the portion marked “Site Location” of this appeal.

Failure to demand from Atlas evidence that (page 4 Narrative) and Failure to provide by KCCDS, evidence of (Finding of Fact Review Criteria – KCC 17.60A.015

- A. “The proposed use is essential or desirable----”. The project, as proposed, is not capable of providing anything, therefore it has no “Use”. According to the Public comments received regarding this application it is certainly not desirable. 27 comments were received from the public, all of which were in opposition of this project.
- B. “The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county----” Why would KCCDS require a response from Atlas on this matter? What insight or profound knowledge does Atlas have regarding the economic welfare of the county? This is absurd! There is a detrimental effect to the economic welfare of the county on the siting of this project on the proposed location. There are substantial economic detriments in that property values in the surrounding neighborhood will decrease and have a negative effect on the ability of the County to collect property taxes at levels prior to the construction of the tower. A ripple effect always occurs in real estate appraisals, a domino effect rippling outward until the blank wall is reached. This decrease will stay in effect as long as the tower exists. The contract Atlas Tower LLC has made with the landowner is for a 30 year lease. There will be an economic detriment to the public purely from the point of reduced revenues from the property tax base.
There is no functional use of the project, as proposed in any location.
See also under portions marked “Summary” and “Utilities”.
Applicant response to this under Review Criteria is to state how many the site may be visited and that it will provide needed network coverage
This is a non sequitur
Staff response to this question under Review Criteria is a non sequitur in that they state “The proposed communications tower will be adequately serviced by existing facilities and public services. No additional water, sewer, fire, or police service will be required. The expanded coverage will provide more reliable service to the community and first responders. It is also a conclusion.

- C. **Failure by KCCDS to provide** sufficient data for Atlas to make a meaningful response to C, D, E, F, and G. on page 4 and 5 of Narrative, thus making their response a non sequitur. **However, in their response Atlas should still be able to provide evidence of their claims such as:**
 - D. The proposed site is zoned AG-20 where coverage is lacking, and the capacity of existing infrastructures is reaching its limit. As the area develops further, and the existing users demand more data for their existing devices, existing infrastructure will reach capacity limits and be unable to meet coverage needs.
 - E. The proposed site is chosen to maximize visual aesthetics and distance from residential homes.
 - F. This facility will provide critical wireless coverage to the surrounding area.
 - G. The wireless tower will provide a service while still maintain the "rural character".
- Atlas has failed to provide evidence of portions of D above and, also all of E, F and G above.**

Under KCC17.60 A.015 Review Criteria of all project actions. Project review should start from the fundamental land use planning choices made in local comprehensive plans and regulations, include review of consistency and land use impacts.

1 Applicable comprehensive plans and regulations that identify the type of land use for the site, specify density, and identify and provide for funding of public facilities needed to serve the proposed development and site should be the standard for project review. Consistency should be determined in the project review process by considering four factors found in applicable plans or regulations.

- a. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional uses, if the criteria for their approval has been satisfied.
- b. The level of development allowed, such as units per acre or other measures of density.
- c. Infrastructure, such as the adequacy of public facilities and services identified in the comprehensive plan, to serve the proposed project, and
- d. The character of the proposed development such as compliance with specific development standards.

2. In determining consistency, the determinations made pursuant to this title shall be controlling.

6. Consistency between the proposed project and applicable regulations or plan should be determined through a project review process that integrates land use and environmental impact analysis, so that government and public review of the proposed project, involving development regulations under Chapter 36.70A.RCW and environmental process under Chapter 43.21.C RCW run concurrently and not separately.

Failure to demand from Atlas #12 E in Narrative to provide evidence that the proposed use is compatible with existing neighboring land uses. And failure By KCCDS to provide evidence of same. Atlas response is a non-sequitur. In that they state "The surrounding area is largely rural with low density residential zones nearby. The proposed site is chosen to maximize visual aesthetics and distance from residential homes. **What are the existing neighboring land uses? Rural Working lands.** Uses within this designation generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with the rural environment and supporting agriculture and/or forest activities. Areas in this designation often have low population densities with larger parcel sizes compared to Rural Residential areas. Agriculture and forestry activities are generally less in scope than in the Resource lands. Residential homes, crop growing (mainly hay) and cattle raising. Common sense should be the deciding factor here. (compatible definition -capable of existing together in harmony) There are utilities in designated utility right-of-ways or corridors in the neighborhood. However, a hundred foot tower capable of producing nothing situated in the middle of a cow field in very close proximity to residential homes is not compatible with existing neighboring land uses.

The specific site is a 4 acre assessor's parcel 17-18-18010-0001 which has 2 homes and several barns and sheds on the most easterly quarter of this parcel, It is also zoned AG-20 and as also under the designation of Rural Working Lands.

Staff response is to state "The proposed site is consistent with other utility focused uses in Kittitas County. Surrounding uses include undeveloped land and residential properties. CDS finds the use, as conditioned, compatible with existing neighboring land uses and in turn consistent with this criterion. (other utility focused uses?) Could KCCDS give a meaningful explanation of what this means? How can "undeveloped land" be considered a "use" The chosen site is on "developed" land as it has many buildings and 2 houses on it. It is surrounded by "developed land" in the form residential properties. Even Strand's 20 acre parcel is hardly undeveloped land. It is an irrigated hay producing parcel.

The definition of "consistent" is capable of existing together in harmony, Compatible has the same meaning as consistent. Antonyms would be conflicting, incongruous, inconsistent, all of which describe this proposal to a T. **Failure to provide evidence the proposed use is consistent with the intent and character of the zoning district in which it is located by both KCCDS and Atlas**

Atlas responds in both Narrative and Findings of Fact "The purpose of this request is to build an 100' monopole telecommunications tower with in a 50x50 wireless facility. This facility will provide critical wireless coverage to the surrounding area. The proposed site is zoned AG-20.

This is another non-sequitur.

The intent of this zoning classification (AG-20) is to **preserve fertile farmlands** from encroachment by nonagricultural land uses **and protect the rights and traditions** of those engaged in agriculture.

Above statement is provided by KCCDS on Page 1 last paragraph of Findings of Fact

There does not seem to be a description specific to the "Character" of an AG-20 zone.

The proposed project does not fit into the intent of this classification. It does **not preserve fertile farmlands or protect the rights and traditions** of those engaged in agriculture.

The staff response is to state; "CDS staff has confirmed that, per KCC 17.61.040, "Communications Facilities" may be permitted with an Administrative Conditional Use application in Agriculture 20 zone. This project is consistent with the "Communications Facilities" definition which has been identified as a compatible use within the Agricultural 20 zone per KCC 17.15.060.1

Under KCC 17.15.060.1 Rural NON-LAMIRD Use Table : H – Utilities and Public Facilities: Utilities is a permitted use with an ACU. It does not list "Communications Facilities" as a permitted use.

Communications Facilities and Utilities are not the same thing.

The definition of "consistent" is capable of existing together in harmony, Compatible has the same meaning as consistent. Antonyms would be conflicting, incongruous, inconsistent, all of which describe this proposal to a T

Staff response to the above under Finding of Fact is a non-sequitur and is an example of KCCDS "skirting the issue" of "land use" and "character".

Failure by both KCCDS and Atlas to provide evidence that the proposed use is:

- A. **Consistent with the intent, goals, policies, and objectives of KCCP, including Chapter 8, Rural & Resource Lands.**

Atlas response "Yes. The coverage will provide more opportunity for residents working from home, schools and future development and growth."

Atlas response is a non sequitur.

Staff does not provide an answer to this criteria (A) but gives a conclusionary statement below

B. Preserves “rural character” as defined in the Growth Management Act.

Atlas response “The wireless tower will provide a service while still maintaining the “rural character.” If, upon inspection, Kittitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary.”

Atlas response is a non sequitur.

Staff response is to state: CDS staff finds this project, as conditioned, is consistent with the Kittitas County Comprehensive Plan as described in section IV* of this staff report, preserves rural character, requires only rural government services, and does not compromise long term viability of resource lands. The proposed use is consistent with the character and impact of surrounding neighborhood uses.

*U-P3 see under portion marked “Utilities” of this appeal.

* U-P6 see under portion marked “Utilities” and “Comments” of this appeal.

* U-G6 see under portion marked “Utilities” of this appeal.

RR-G11 The county should provide for infrastructure and services necessary to rural development. **This is not relevant to “rural character”**

RRG-25 Provide areas of low intensity land use activities within the agriculture and forest activities. **This is not relevant to “rural character”**

RRP-9 Encourage development activities and development standards which enhance or result in the preservation of rural lands. **This is not relevant to “rral character”**

Staff response is a conclusion. It does not preserve “rural character”. see RCW [36.70A.030](#) DEFINITIONS below.

UNDER “IV “COMPREHENSIVE PLAN”

Staff consistency statement regarding U-G6 The proposed project provides infrastructure for communications facilities in an area in need of expanded coverage.

There is no evidence of a “need of expanded coverage”.

Staff consistency statement regarding U-P3 Decisions made by the Kittitas County regarding utility facilities will be made in a manner consistent with and complementary to regional demands and resources.

There is no evidence of “regional demands”.

U-P6 **Community** input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community.

Staff consistency statement regarding U-P6 The proposed project is consistent with the requirements of KCC 15A which outlines the requirements for public notice. Additionally, the comment period was extended an additional 15 days to allow for further public review.

Here KCCDS staff is equating “Community” with the narrow definitions of 500 ft from the proposed project as stated in 111- ADMINISTRATIVE REVIEW of FINDINGS OF FACT, DECISION, AND CONDITIONS OF APPROVAL.

RCW 36.70A.270

Growth management hearings board—Conduct, procedure, and compensation—Public access to rulings, decisions, and orders.

The growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(2) The principal office of the board shall be located in Thurston County, but it may hold hearings at any other place in the state.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of the board shall constitute a quorum for adopting rules necessary for the conduct of its powers and duties or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may use one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The board shall specify in its rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners used by the board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW [36.70A.300](#) that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the regional panel deciding the particular case and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

RCW 36.70A.010

Legislative findings.

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

RCW 36.70A.011

Findings—Rural lands.

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

Preserves the “rural character” as defined under GMA.

RCW 36.70A.030 DEFINITIONS

(35) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment.

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.

(c) That provide visual landscapes that are traditionally found in rural areas and communities.

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

Common sense dictates that, the proposed project does not preserve a, b, or c above.

Some of the provisions under RCW

RCW 36.70.810

Board of adjustment—Authority.

The board of adjustment, subject to appropriate conditions and safeguards as provided by the zoning ordinance or the ordinance establishing the board of adjustment, if there be such, shall hear and decide:

(1) Applications for conditional uses or other permits when the zoning ordinance sets forth the specific uses to be made subject to conditional use permits and establishes criteria for determining the conditions to be imposed;

(2) Application for variances from the terms of the zoning ordinance: PROVIDED, That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which subject property is situated, and that the following circumstances are found to apply;

(a) because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification;

(b) that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.

(3) Appeals, where it is alleged by the applicant that there is error in any order, requirement, permit, decision, or determination made by an administrative official in the administration or enforcement of this chapter or any ordinance adopted pursuant to it.

RCW36.70-970 No mention of authority to conduct a hearing virtually.

Below are some segments of the Kittitas County Comprehensive Plan, Vision Statement, Kittitas County-wide Planning Policies and RCW Definitions all of which contradict the above staff response.

KITTITAS COUNTY COMPREHENSIVE PLAN AND VISION STATEMENT

. Kittitas County and the cities will value and protect and enhance the quality of life by **protecting the visual and physical environment.**

KITTITAS COUNTY - COUNTY-WIDE PLANNING POLICIES

PREAMBLE TO THE COUNTY-WIDE PLANNING POLICIES

The people of Kittitas County value and want to protect and enhance their quality of life. This quality of life includes the need to: **protect the visual and physical environment.**

GOALS

The State of Washington Growth Management Act requires that the County “**include measures that apply to rural development and protect the rural character** of the area as established by the County.” These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, --- (RCW 36.70A.070).

Rural policies are intended to enhance and protect the County’s rural character, and to encourage appropriate rural land use patterns and service levels. As Kittitas County is a primarily rural area, many of the goals and policies listed in this and other elements are intended to be interpreted through a broad-spectrum rural lens. Rural Lands planning policies include:

RR-P1:

The County shall promote the retention of its overall character by establishing **zoning classifications that preserve rural character** identified to Kittitas County.

The Rural and Resource element is intended to preserve rural character through adopted goals and policies designed to encourage and protect the types of uses that are characteristic to the rural area. The goals and policies are intended to accomplish this in part by reducing conflicting land uses within the County’s rural area while providing a variety of rural densities, protecting agriculture land resources and activities, guarding the County’s water resources and insuring appropriate services and facilities for such environments. A variety of rural densities characteristic to a rural environment are encouraged through the adoption of goals and policies within this Element. This Element also provides for a variety of rural uses which are compatible with the County’s rural character, and decrease the need for road and utility improvements, police and fire protection, schools in rural areas and other services often found in more urban environments. Without limiting these types of urban services, their existence can often contribute to “rural sprawl,” or the scattering of development throughout rural areas which can be inconsistent with an identified rural character. The proper mix of rural uses and densities permits rural growth to be accommodated in a variety of areas where it is compatible with both resource and urban activities. The goals and policies of this Element are also intended to provide for the preservation of viable and vibrant landscapes associated with rural character. At the same time, these policies seek to capitalize on the recreational characteristics while preserving the natural resources in the County.

Below is a portion of a similar case in which the county was found to have failed to make meaningful findings

Manna Fundings LLC v's Kittitas County Feb. 28 2013 County failed to elaborate on findings

¶ 4 After open record proceedings that included public testimony for and against Manna's proposal, the County's Planning Commission adopted findings of fact and a recommendation that the Board deny the rezone. The Board did so by Resolution 2007–53 that was entered on May 15, 2007. The Board found that Manna failed to prove the rezone would contribute to the health, safety, and welfare of the surrounding zone, but did not elaborate on that finding. The Board also determined that Manna's proposal failed to meet several necessary criteria for a rezone under Kittitas County Code (KCC) 17.98.020(7).² The Board's findings reflected concerns that questionable property access and steep slope hindering fire safety impacted the public health, safety, and welfare; that the rezone would not have merit or value for the County or sub-area; that the steep slope made the property unsuitable for reasonable development in general conformance with R–3 zoning standards; and, that the proposed rezone would be materially detrimental to the nearby urban forest zone and possibly to the historic city of Roslyn. The Board gave no other supporting details or reasons for its findings.

¶ 5 On June 5, 2007, Manna filed a LUPA petition requesting the superior court to overturn Resolution 2007–53. The petition also incorporated a complaint for damages under RCW 64.40.020 and 42 U.S.C. § 1983. **After determining that the Board failed to adequately review the record and make meaningful findings of fact from which its conclusions could be drawn, the superior court reversed the Board's decision, vacated Resolution 2007–53, and remanded the matter for new hearings before the Planning Commission and Board. The court specifically instructed the Board to conduct on-the-record discussions to illuminate its decision-making, and to make detailed findings of fact to support its conclusions. The court elaborated:**

Any finding of fact and conclusion of law set forth in the resolution should reflect just what the Board has reviewed in determining its findings. Moreover, the findings should be based upon the evidence presented, not on conclusions that the applicant did not meet rezone criteria. For instance, if the Board were to make an ultimate finding that access was questionable, it should make particular findings based upon the record to demonstrate why the access was questionable. **Similarly, making a bald finding that the petitioners did not meet their burden of proof to demonstrate the rezone positively affected the health, safety, morals and general welfare of the county, without making findings of fact as to why the Board concludes it did not meet the burden does not help the court in its judicial review of the proceedings.**

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

court as provided in RCW [36.70A.295](#), the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

RCW [36.70A.302](#)

Growth management hearings board—Determination of invalidity—Vesting of development permits—Interim controls.

(1) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW [36.70A.300](#);

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order; except as otherwise specifically provided in the board's order to protect the public health and safety;

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

RCW 36.70A.290

Growth management hearings board—Petitions—Evidence.

(1) All requests for review to the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter [90.58](#) or [43.21C](#) RCW must be filed within sixty days after publication as provided in (a) through (c) of this subsection.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW [36.70A.040](#), promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW [90.58.090](#), the department of ecology shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the department of ecology publishes notice that the shoreline master program or amendment thereto has been approved or disapproved.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior

RCW 36.70A.280

Growth management hearings board—Matters subject to review.

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance based on a city or county's actions taken to implement the requirements of RCW 36.70A.680 and 36.70A.681 within an urban growth area;

(b) That the 20-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction;

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous;

(f) That the department's final decision to approve or reject a proposed greenhouse gas emissions reduction sub element or amendments by a local government planning under RCW 36.70A.040 was not in compliance with the joint guidance issued by the department pursuant to RCW 70A.45.120; or

(g) That the department's final decision to approve or reject actions by a city implementing RCW 36.70A.635 is clearly erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within 60 days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the board prescribes. The board shall develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals and the assignment of cases to regional panels. The board shall publish such rules it renders and arrange for the reasonable distribution of the rules. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter [34.05](#) RCW, and specifically including the provisions of RCW [34.05.455](#) governing ex parte communications, shall govern the practice and procedure of the board.

(8) The board must ensure all rulings, decisions, and orders are available to the public through the environmental and land use hearings office's websites as described in RCW [43.21B.005](#). To ensure uniformity and usability of searchable databases and websites, the board shall coordinate with the environmental and land use hearings office, the department of commerce, and other interested stakeholders to develop and maintain a rational system of categorizing its decisions and orders.

(9) A board member or hearing examiner is subject to disqualification under chapter [34.05](#) RCW. The rules of practice of the board shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(10) All members of the board shall meet on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

(11) The board shall annually elect one of its attorney members to be the board chair. The duties and responsibilities of the chair include developing board procedures, making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members, and managing board meetings.

RCW 36.70A.320

Presumption of validity—Burden of proof—Plans and regulations.

(1) Except as provided in subsections (5) and (6) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

(4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW.

(6) The greenhouse gas emissions reduction supplement required by RCW 36.70A.070 shall take effect as provided in RCW 36.70A.096.

RCW 36.70A.321

Growth management hearings board—Legislative intent and finding.

The legislature intends that the board applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community. 1

RCW 36.70A.330

Noncompliance.

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, county, or city. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection (1) of this section with the board. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section.

(3) If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor.

(a) The board may refer a finding of noncompliance to the department. The purpose of the referral is for the department to provide technical assistance to facilitate speedy resolution of the finding of noncompliance and to provide training pursuant to RCW 36.70A.332 as necessary.

(b) Alternatively, the board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide, if no determination of invalidity has been made, whether one now should be made under RCW 36.70A.302.

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section.

A PORTION OF THIS APPEAL IS A LACK OF DUE DILIGENCE BY KCCDS CONCERNING ACU-23-0003 ATLAS TO CLARIFY THE MEANING AND INTENT OF THE APPEAL SECTION IN "NOTICE OF APPLICATION"

Kittitas County Code

Title 15A Project permit Application process

Chapter 15A.01 Administration, purpose and authority

Combining environmental review process, both procedural and substantive with procedure for review of project permits.

15A.04.010 Sepa integration states in part "Kittitas County shall integrate the permit procedure in this title with environmental review under Chapter 43.21C RCW (SEPA) and chapter 15.04 KCC.

In "Notice of Application" there is information that the current appeal fee is \$1670.00 to appeal administrative land use decision. There is no mention in this document that there is a fee to appeal SEPA decisions. This leads to the conclusion that an appeal fee covers both ALU and SEPA decisions. If it had been clearly stated that this was not the case, then my appeal would have been substantially different. My appeal was submitted the day before the deadline for appeal and left me insufficient time to rewrite my appeal.

This "notice of Application" form in all fairness needs to be modified to indicate that there is a separate fee for each component – ACU and SEPA. With this in mind, I request that I may appeal the SEPA decision without having to pay a fee of whatever amount that has not been stated.

FEES REQUIRED TO APPEAL THE APPROVAL OF A DECISION MADE BY KCCD

Under Community Development Services "FEES – Fees for Planning Services 2023 fees"

ACU - \$2870.00

SEPA *- \$600.00

SEPA optional - \$600.00

Appeal - \$1670.00

There is no mention of a SEPA fee of \$1670.00

Additionally, there are serious flaws in the fees section of the entire Atlas Tower application.

Under "Notice of Application" which I received via USPS under "Written comments" mentions appeal fees. (\$1670.00), **before a determination has been made.**

Under "Environmental Review" there is no mention of appeal fees.

Under "Notice of Sepa Action" dated October 26 2023, **after a determination had been made**, there is mention of appeal fees. (\$1670.00).

Under "Mitigated Determination of Nonsignificance" dated October 26 2023, **after a determination had been made**, there is mention of appeal fees. (\$1670.00).

Also, in this Notice of Application it is stated that "All comments will be considered in the decision making process" I contend that if this had been followed the Application would have been denied.

See section Public Comments.

A PORTION OF THIS APPEAL IS A LACK OF DUE DILIGENCE BY KCCDS CONCERNING ACU-23-0003 ATLAS

SITE PLACEMENT AND VISUAL AESTHETICS AND DISTANCE FROM RESIDENTIAL HOMES

In order to make my appeal more valid in one aspect I have to know what the "area" is. Throughout the entire application process there are statements that the chosen site is on a 20-AG zone: the surrounding area is largely rural with low density residential zones nearby: surrounding uses include undeveloped land and residential properties: consistent with the character and impact of surrounding neighborhood uses.

There are 111,226 acres in Kittitas County zoned AG-20, mostly in the lower valley and stretch from west to east. This is not helpful in attempting to define the "area".

"Largely rural with low density residential zones nearby." "surrounding uses include undeveloped land and residential properties."

This also would encompass a vast area of Kittitas County and is not helpful.

That leaves only the proposed location or site to determine what the "area" is and is the only valid piece of information available to me throughout the application process.

With this information available and a site location I am able to make an assumption (not a fact) regarding the area in question.

My attempts to create the "area" are in maps attached to my appeal. In addition, now include [Broadband.map.fcc.gov](https://broadband.map.fcc.gov).

All of these maps indicate adequate coverage.

Under Findings of Fact page 6-8 Section V1 Agency and Public Comments -Public Comments

Is an email from Sandra Layton to Chase Pederson dated Sept. 19 2023 with attachments. The first attachments is a screen shot that is not functional.

After getting some technical support I was able to open other attachments - a page in which the first statement is "I am the legal director for Atlas Tower" It then goes on to include 6 listed statements regarding the subject of Radio Frequencies. It is not signed.

Following this is a map under which the following is stated. title "VICTOR A STRAND//Parcel # - Chosen site location.

"The original site was on the parcel to the west of this parcel (also owned by Victor Strand) Terri Ellis reach out to me very early, (prior to submitting the application) while the location was still being confirmed and agreed that this site would be better to not block her view because there are already trees there which block it in that direction already. This site fits perfectly in the location needed for carriers to provide the best service, and the parcel is large enough to handle the size of the facility while meeting all zone requirements."

THE EXACT OPPOSITE IS THE CASE. I am not sure what trees were being discussed. There is a row of trees on the west side of my property which continues on along the west side of Strand's 4 acre parcel. All of the trees in question are probably under 50 feet in height and would not block the sight of a 100 foot tower no matter where it was placed. If the above by Atlas has any bearing on truth it is to move the proposed tower much closer to my residence rather than further away.

The location of the site on the application is on the 4 acre residential parcel.

In a letter from KCCDS to Applicants dated July 28, 2023, KCCDS makes a determination that the location is too close to the south property line. It also states that communication facilities should be designed to blend with existing surroundings. This should be achieved through the use of compatible colors and materials and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the proposed transmission support structure from adjacent lands.

The first move brings the proposal substantially closer to the Strand residences (in their backyard) and the Ceraolo residence and perhaps the Canterbury residence from the 20 acre site to the 4 acre site.

This proposed location is too close a proximity to the south property line (100') and so the next proposed location is a movement 20' to the north.

The next proposed location (see letter dated Oct 6 2023 from Sandra Layton to Chace Pedersen (ATTACHED) is, for undisclosed reasons, to move 25' to the west of its original location which must mean, by looking at the site plans, the plan submitted Aug. 1.2023. This last site plan moves the proposed location 25' further west from the Strand residence but has minimal impact on the Ceraolo residence.

Attached are the 3 site plans submitted to KCCDS by Atlas. Note that the coordinates in all 3 plans are identical. Of further note is the sequence of "Revisions" namely 0, 3, and 5. Where is revisions #s 1,2, and 4.?

Additionally the original site plan has a zoning description of 91 – UNDEVELOPED LAND

Under Findings of Fact V1 AGENCY AND PUBLIC COMMENTS – PUBLIC COMMENT

Comments were received from 27 members of the public.

Applicant response : Atlas provided a response to comments regarding health concerns, visual aesthetics, structure safety, location, property values, and potential future extension of tower.

Staff Response: Comments were transmitted to the applicants on September 8th, 2023.

In an email from Sandra Layton to Chace Pedersen dated September 19, 2023 is "Please find our responses attached."

"Responses to Public (Neighborhood) Comments.

#6 Concern of Location. Atlas shopping for any owner who will allow this on their property.

- a. The process for site selection comes from the carrier needing to cover a certain area. The carrier will give us a lat/long to work from, which Atlas will first check for zoning correct parcels .5-1 mile from their pinned location. Atlas then sends out leases in the range, and as we receive enquiries from willing landowners, will submit these options to the carrier to review. The carrier ultimately chooses the location that works for them based on their coverage objective. So our process is parcels that meet zoning and tower height we are looking for, and to have a ground lease with a willing landowner. We are happy to get more coverage justification from the carrier if need. **We don't know who the carriers being referred to are.**

What carrier(s)? "tower height"? Is this a suggestion that a 100' tower is needed for this location and that a shorter or taller tower would meet requirements in another area? Or is the height of tower dependent on the amount of (non existent) antennas to be attached to it?

Here is a list of some businesses/residences who received a letter from Atlas regarding installing the proposal on their property.

1. A resident on Blazing Sky Lane
2. A resident on the southwest corner of Manashtash and Cove – 1 mile from proposed location

3. A resident on Manashtash Rd, where it makes a dog-leg before entering the Canyon. – 1.9 miles from proposed location
4. Resident at the western end of Weaver Rd. before the road makes a left turn.- 3.8 miles from proposed location.

Here is a list of some businesses which **did not** receive a letter from the Atlas regarding the proposal.

4491 S. Thorp highway

2891 S. Thorp highway

1221 Thorp highway. s.

DNR – Southeast Section – Administrator Chad Upland.

Why did Atlas not approach DNR regarding placement of tower? DNR has a program for locations of cell phone towers.

We don't know the pinned location. However, we do know that Atlas sent out leases "in the range" at a distance of 3.8 miles from the proposed location. A distance of 3.8 miles far exceeds the dimensions given of .5-1 mile no matter where the pinned location is set.

Atlas is simply contradicting themselves and makes all of their above statements invalid.

While it is not the County's business to find a suitable site, nor mine, there are a couple of sites that may work for Atlas.

A 20 acre lot on Coyote Run Rd. Ellensburg listed at \$99,000

A 27 acre lot on Umptanum Rd. Ellensburg listed at \$115,000

At these prices any enterprising person could made a tidy profit in the long run if Atlas was to lease at the proposed rate in the current application.

Could it be that the Strand location is so much more convenient, by being so close to a well maintained county road, enabling easy access for maintenance as opposed to the much higher elevation and gravel road at the DNR location?

Another question that begs an answer is "Did Atlas cease solicitations after receiving an affirmative response from Strand? Did they consider the Strand location to be the ideal location from their point of view? i.e. only from their point of view.

So how does all of the above comply with Atlas statement under letter of July 13, 2023 "The proposed site is chosen to maximize visual aesthetics and distance from residential homes.?"

Or under "WIRELESS COMMUNICATION FACILITY CHARACTERISTICS. Visual Effect

We strive to design our facilities and locate parcels that create the least amount of community disturbance. The surrounding area is largely rural with low density residential zones nearby. The proposed site is chosen to maximize visual aesthetics and distance from residential homes.

The varying site locations listed above contradicted the above statement.

Reviewing the site plans submitted to KCCDS

If changes are made as to the placement of project does that invalidate the application from being complete?

If the site plans all display the identical coordinates, despite the fact that the proposed tower's location has moved from the original (July 13, 2023) to accommodate required set back as shown on site plan of Aug. 1 2023, and then again on October 6 2023 in response to a private phone conversation between Chase Pedersen Planner 1 KCCDS and Sandra Layton of Atlas Tower LLC as indicated in letter from Atlas to KCCDS dated Oct. 6 2023. Would not these changes of location require a new application?

SEE ATTACHED SITE PLANS which are not accurate.

ATLAS TOWER

October 6, 2023

Chace Pedersen, Planner 1
Kittitas County Community Development Services
411 N. Ruby Street, Ste 2
Ellensburg, WA 98926

Dear Mr. Pedersen,

As discussed on our phone call, we have moved the tower 25' to the west of its original location. As shown in the updated drawings the tower will still be 111' from the west property line. In the unlikely case of the tower falling over, it still would not land on any other property. The design is for a 100' tower which will still allow an additional 11' to the west property line.

We are in the process of updating our survey to reflect this 25' shift to the west. The ZDs will be updated with the 1A information once we receive it. I will send the final updated ZDs to you once I receive them. However, I feel confident that the distance from the property line will still be over 100' from the property line.

Please let me know if you have any other questions.

Regards,

DocuSigned by:

52CFCE384254491...

Sandra Layton
Territory Manager
Atlas Tower 1, LLC
801-310-0844
slayton@atlastowers.com

SITE NAME: BLAZING SKY

PROJECT DESCRIPTION: PROPOSED TELECOMMUNICATIONS FACILITY

TOWER TYPE: 100' MONOPOLE TOWER

SITE ADDRESS: 4140 MANASTASH RD ELLENSBURG, WA 98926 (KITTTAS COUNTY)

AREA OF CONSTRUCTION: 2,500 ± SQ. FT. (LEASE AREA)

JURISDICTION: KITTTAS COUNTY

PARCEL #: 17-18-18010-0010

ZONING: R1 UNDEVELOPED - LAND

PROJECT INFORMATION

LATITUDE: 48° 58' 14.97" N (NAD 83)

LONGITUDE: 120° 37' 33.18" W (NAD 83)

GROUND ELEVATION:

LOCATION MAP

DRIVING DIRECTIONS

FROM GRANT COUNTY REGIONAL AIRPORT: HEAD EAST TOWARD PATTON BLVD. NE. SL. USE ANY LANE TO TURN LEFT ONTO BROADWAY. CONTINUE ON BROADWAY. BROADWAY EXTENDED NE. E BROADWAY AVE. TURN RIGHT AVE. BECOMES PIONEER WAY. CONTINUE ONTO E BROADWAY AVE. TURN RIGHT TOWARD ONTO 140 W TOWARD SEATTLE. MERGE ONTO 140 W. TAKE EXIT 109 W. TURN RIGHT ONTO CANYON RD. TURN LEFT ONTO UMPHANUI RD. TURN RIGHT ONTO MANASTASH RD. DESTINATION WILL BE ON THE LEFT

ATLAS TOWER

USA • INTERNATIONAL

WIBLUE Inc.

KITTTAS CO CDS RECEIVED 07/13/2023

SITE NAME: BLAZING SKY

4140 MANASTASH RD. ELLENSBURG, WA 98926 (KITTTAS COUNTY)

PROJECT DESCRIPTION & NOTES

CONSTRUCTION OF A TELECOMMUNICATION FACILITY, INCLUDING OF ANTENNAS AND SUPPORT STRUCTURES, AND THE INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT AND SERVICE EQUIPMENT FOR FUTURE CARRIERS. NO WATER OR SEWER IS REQUIRED.

1. FACILITY DESIGNED IN ACCORDANCE WITH KITTTAS COUNTY REGULATIONS.

2. TOWER SHALL BE CONSTRUCTED ON A CONCRETE FOUNDATION APPROXIMATELY 12' DIA. X 4' DEEP.

3. TOWER WILL BE CONSTRUCTED WITH A 100' MONOPOLE TOWER DESIGN.

4. TOWER WILL BE CONSTRUCTED WITH A 100' MONOPOLE TOWER DESIGN.

SITE CONSTRUCTION MANAGER:

NAME: VIBLUE INC.

CONTACT: COREY BOWEN

PHONE: (509) 446-8886

SITE APPLICANT:

NAME: ATLAS TOWER HOLDINGS, LLC

ADDRESS: 3002 BLUFF STREET SUITE 300

CITY, STATE, ZIP: CABELIN, WA 98901

PHONE: (509) 446-8886

ORIGINAL SURVEYOR: T.B.D.

NAME:

ADDRESS:

CITY, STATE, ZIP:

CONTACT:

CIVIL ENGINEER: TOWERS ENGINEERING PROFESSIONALS

NAME: TOWERS ENGINEERING PROFESSIONALS

ADDRESS: 300 TAYLOR ROAD

CITY, STATE, ZIP: RALEIGH, NC 27603

CONTACT: GRAHAM M. ANDRES, P.E.

PHONE: (919) 981-4351

ELECTRICAL ENGINEER:

NAME: TOWERS ENGINEERING PROFESSIONALS

ADDRESS: 300 TAYLOR ROAD

CITY, STATE, ZIP: RALEIGH, NC 27603

CONTACT: GRAHAM M. ANDRES, P.E.

PHONE: (919) 981-4351

PROPERTY OWNER: STAN AND VICTORIA A

NAME: STAN AND VICTORIA A

ADDRESS: 4140 MANASTASH RD

CITY, STATE, ZIP: ELLENSBURG, WA 98926

UTILITIES: TSD

POWER COMPANY: TSD

ADDRESS:

CUSTOMER SERVICE: METER # NEAR SITE:

INDEX OF SHEETS

| SHEET | DESCRIPTION | REV |
|-------|-----------------|-----|
| T1 | TITLE SHEET | 0 |
| T2 | GENERAL NOTES | 0 |
| T3 | SITE PLAN | 0 |
| T4 | TOWER ELEVATION | 0 |
| T5 | TOWER ELEVATION | 0 |
| T6 | FENCED DETAILS | 0 |

CONTACT INFORMATION

WIBLUE Inc.

4140 MANASTASH RD. ELLENSBURG, WA 98926 (KITTTAS COUNTY)

PROJECT DESCRIPTION & NOTES

CONSTRUCTION OF A TELECOMMUNICATION FACILITY, INCLUDING OF ANTENNAS AND SUPPORT STRUCTURES, AND THE INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT AND SERVICE EQUIPMENT FOR FUTURE CARRIERS. NO WATER OR SEWER IS REQUIRED.

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PLANS PREPARED BY:

TOWERS ENGINEERING PROFESSIONALS

500 E. 84TH AVE. SUITE C10

THORNTON, CO 80229

OFFICE: (303) 566-9914

www.tejgroup.net

REVISIONS

| REV | DATE | ISSUED FOR: |
|-----|----------|-------------|
| 0 | 05-26-23 | ZONING |

DRAWN BY: RSK | **CHECKED BY:** KES

SEAL:

ZONING REVIEW

SHEET NUMBER: T-1

REVISION: 0

TEP #231662_3996C4

ORIGINAL 7.13.2023

LEGEND

- PARENT PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROPERTY CORNER
- EXIST. UTILITY POLE
- ⊙ TRAFFIC SIGNAL
- ⊞ TRANSFORMER
- R/W RIGHT-OF-WAY
- OH/W OVERHEAD WIRE
- UGW UNDERGROUND WIRE
- UGG UNDERGROUND GAS
- UGF UNDERGROUND FIBER
- UGT UNDERGROUND TELCO
- WP WATER PIPE
- EDGE OF PAVEMENT
- LEASE AREA/EASEMENT CORNER
- ⊙ LIGHT POLE
- ⊞ FIRE HYDRANT
- ① MAN HOLE (FIBER, SANITARY, STORM, TELCO, WATER)
- ⊙ IRRIGATION CONTROL VALVE
- ⊞ WATER METER
- ⊞ WATER VALVE

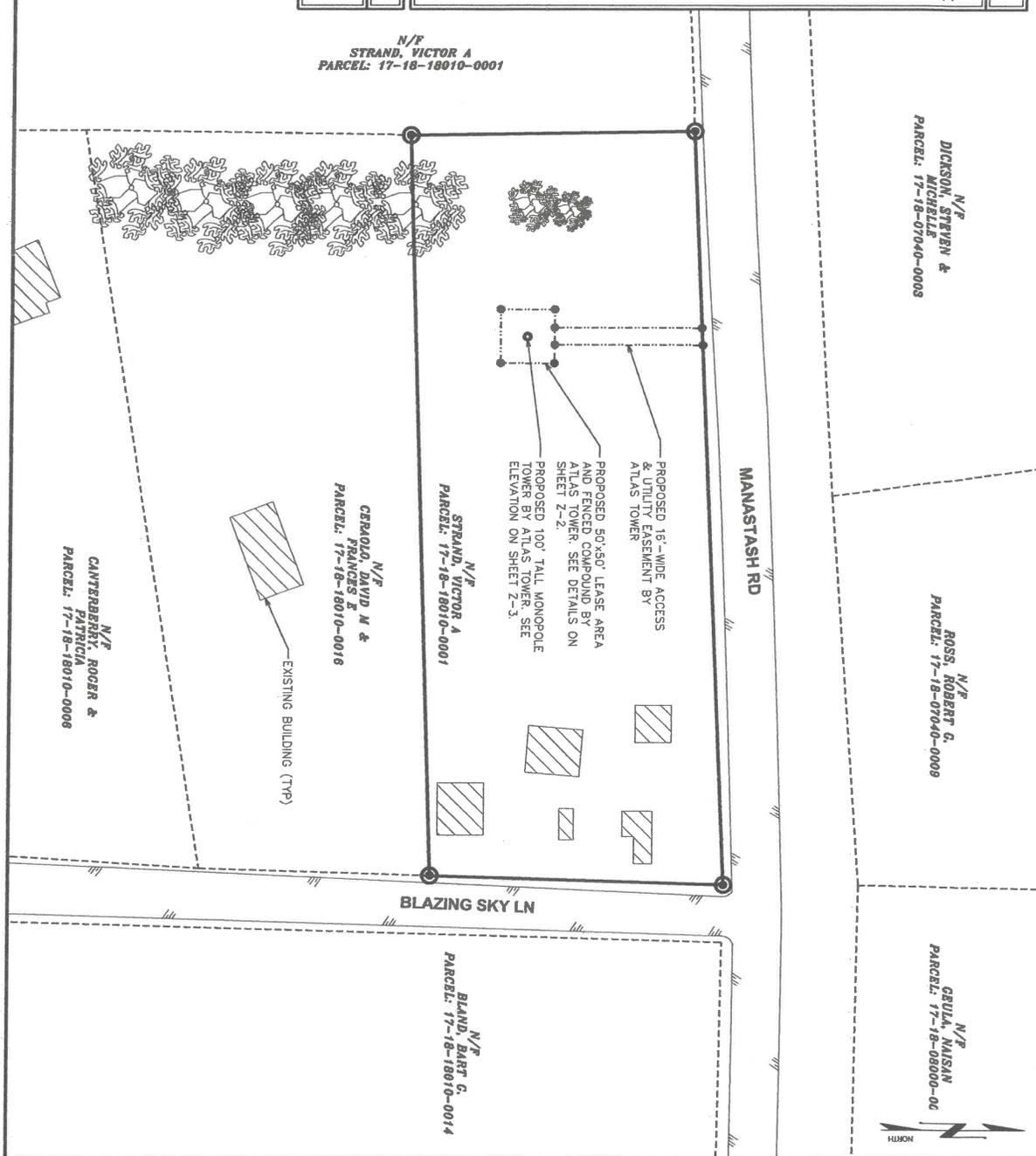
1A COORDINATES

LATITUDE: N 46° 58' 14.97" (NAD '83)
 LONGITUDE: W 120° 37' 33.18" (NAD '83)
 GROUND ELEVATION:

NOTE:
 SITE LAYOUT WAS PREPARED USING AERIAL IMAGERY FROM GOOGLE EARTH. CONTACT US FOR INFORMATION FROM TISHOMINGO COUNTY FOR CORRECTIVE ACTION PLEASE CONTACT TOWER ENGINEERING PROFESSIONALS.

SITE PLAN

SCALE: 1" = 100'



PROJECT INFORMATION:
BLAZING SKY
 4140 MANASTASH RD
 ELLENSBURG, WA 98923
 (KITITAS COUNTY)

PLANS PREPARED FOR:
WBlue Inc.
 Office (889) 609-9596

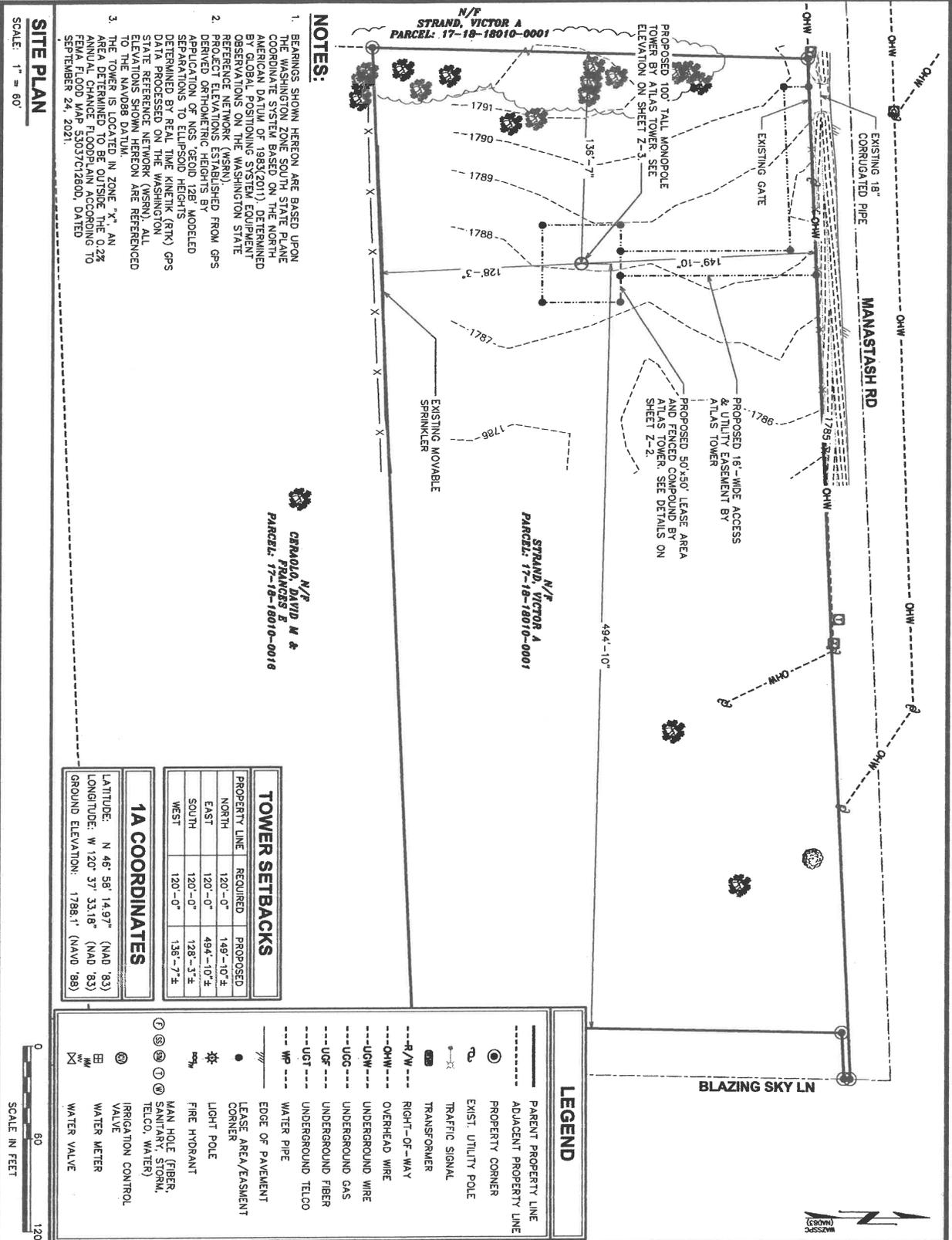
PLANS PREPARED FOR:
ATLAS TOWER
 3002 BLUFF STREET, SUITE 300
 BOULDER, CO 80301
 Office (303) 448-8896

PLANS PREPARED BY:
TOWER ENGINEERING PROFESSIONALS
 500 E 84TH AVE, SUITE 510
 THORNTON, CO 80229
 OFFICE (303) 566-9414
 www.towereng.net

ZONING REVIEW

| | |
|-------------------|----------|
| SEAL: | |
| SHEET NUMBER: | 0 |
| REVISION: | 0 |
| DATE: | 05-26-23 |
| ISSUED FOR: | ZONING |
| DRAWN BY: | RSR |
| CHECKED BY: | KES |
| SITE PLAN | |
| TEP431 622 399664 | |

8.1.2023



- NOTES:**
1. BEARINGS SHOWN HEREON ARE BASED UPON THE WASHINGTON ZONE SOUTH STATE PLANE COORDINATE SYSTEM BASED ON THE NORTH AMERICAN DATUM (NAD 83). ELEVATIONS DETERMINED BY REAL TIME KINETIC (RTK) GPS DATA PROCESSED ON THE WASHINGTON STATE REFERENCE NETWORK (WSRN). ALL ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NAVD83 DATUM.
 2. THE TOWER IS LOCATED IN ZONE "X" AN ANNUAL CHANCE FLOOD AREA ACCORDING TO FEMA FLOOD MAP 53037C1280D, DATED SEPTEMBER 24, 2021.

GERAULO, DAVID M & FRANCES E
 N/P
 PARCEL: 17-18-18010-0018

STRAND, VICTOR A
 N/P
 PARCEL: 17-18-18010-0001

| TOWER SETBACKS | |
|----------------|----------|
| PROPERTY LINE | REQUIRED |
| NORTH | 120'-0" |
| EAST | 120'-0" |
| SOUTH | 120'-0" |
| WEST | 120'-0" |

| 1A COORDINATES | |
|-------------------|----------------------------|
| LATITUDE: | N 46° 58' 14.97" (NAD 83) |
| LONGITUDE: | W 120° 37' 33.18" (NAD 83) |
| GROUND ELEVATION: | 1788.1' (NAVD 88) |

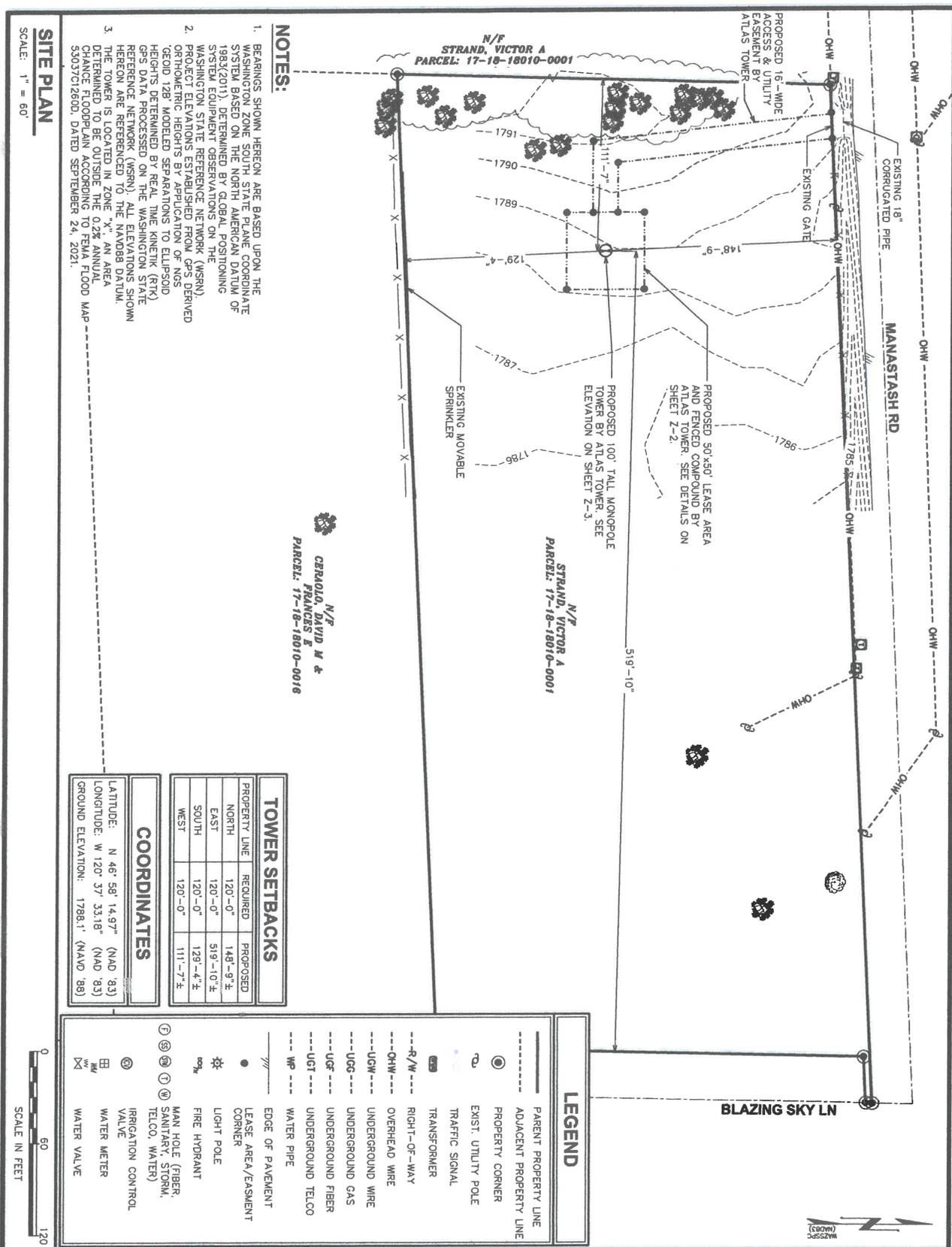
LEGEND

- PARENT PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROPERTY CORNER
- EXIST. UTILITY POLE
- ⊕ TRAFFIC SIGNAL
- ⊞ TRANSFORMER
- R/W--- RIGHT-OF-WAY
- OHW--- OVERHEAD WIRE
- UGW--- UNDERGROUND WIRE
- UGG--- UNDERGROUND GAS
- UGF--- UNDERGROUND FIBER
- UGT--- UNDERGROUND TELCO
- WP--- WATER PIPE
- EOP--- EDGE OF PAVEMENT
- LEASE AREA/EASEMENT CORNER
- ⊙ LIGHT POLE
- ⊕ FIRE HYDRANT
- ⊕ MAN HOLE (FIBER, SANITARY, STORM, TELCO, WATER)
- ⊕ IRRIGATION CONTROL VALVE
- ⊕ WATER METER
- ⊕ WATER VALVE



| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| PROJECT INFORMATION: BLAZING SKY 4140 MANASTASH RD ELENSBURG, WA 98923 (KITITAS COUNTY) | |
| PLANS PREPARED FOR: Office: (888) 609-9596 | |
| PLANS PREPARED FOR: ATLAS TOWER 3002 BLUFF STREET, SUITE 300 BOULDER, CO 80301 Office: (303) 448-8996 | |
| PLANS PREPARED BY: TOWER ENGINEERING PROFESSIONALS 501 E 84TH AVE, SUITE C10 THORNTON, CO 80229 OFFICE: (303) 565-9914 www.towereng.com | |
| SEAL: <div style="border: 2px solid black; padding: 10px; transform: rotate(-15deg); display: inline-block;"> ZONING REVIEW </div> | |
| SHEET NUMBER: Z-1 REVISION: 3 SHEET TITLE: SITE PLAN | |
| DRAWN BY: ASD CHECKED BY: KES ZONING: 06-01-23 ZONING: 07-27-23 ZONING: 07-17-23 ISSUED FOR: | |

10.2.2023



NOTES:

1. BEARINGS SHOWN HEREON ARE BASED UPON THE WASHINGTON ZONE SOUTH STATE PLANE COORDINATE SYSTEM BASED ON THE NORTH AMERICAN DATUM OF 1983 (NAD 83), DETERMINED BY GLOBAL POSITIONING SYSTEM EQUIPMENT OBSERVATIONS ON THE WASHINGTON STATE REFERENCE NETWORK (WSRN). PROPOSED ELEVATIONS ESTABLISHED FROM GPS DERIVED HEIGHTS DETERMINED BY REAL TIME KINEMATIC (RTK) GPS DATA PROCESSED ON THE WASHINGTON STATE REFERENCE NETWORK (WSRN). ALL ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NAVD83 DATUM.
2. THE TOWER IS LOCATED IN ZONE "X", AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN ACCORDING TO FEMA FLOOD MAP 53037C1260D, DATED SEPTEMBER 24, 2021.

SITE PLAN

SCALE: 1" = 60'

N/F
GERMOLLO, DAVID M &
FRANCIS B
PARCEL: 17-18-18010-0018

N/F
STRAND, VICTOR A
PARCEL: 17-18-18010-0001

| TOWER SETBACKS | |
|----------------|--------------------|
| PROPERTY LINE | REQUIRED PROPOSED |
| NORTH | 120'-0" 148'-9" ± |
| EAST | 120'-0" 519'-10" ± |
| SOUTH | 120'-0" 129'-4" ± |
| WEST | 120'-0" 111'-7" ± |

| COORDINATES | |
|-------------------|----------------------------|
| LATITUDE: | N 46° 58' 14.97" (NAD 83) |
| LONGITUDE: | W 120° 37' 33.18" (NAD 83) |
| GROUND ELEVATION: | 1786.1' (NAVD 86) |

LEGEND

- PARENT PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROPERTY CORNER
- EXIST. UTILITY POLE
- ⊕ TRAFFIC SIGNAL
- ⊞ TRANSFORMER
- R/W— RIGHT-OF-WAY
- OHW--- OVERHEAD WIRE
- UCW--- UNDERGROUND WIRE
- UGG--- UNDERGROUND GAS
- UGF--- UNDERGROUND FIBER
- UGT--- UNDERGROUND TELCO
- WP--- WATER PIPE
- EDGE OF PAVEMENT
- LEASE AREA/EASEMENT CORNER
- ⊙ LIGHT POLE
- ⊕ FIRE HYDRANT
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- ⊕ IRRIGATION CONTROL VALVE
- ⊕ WATER METER
- ⊕ WATER VALVE



| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| PROJECT INFORMATION: BLAZING SKY 4140 MANASTASH RD ELLENBURG, WA 98923 (KITITAS COUNTY) | |
| PLANS PREPARED FOR: Office: (888) 609-9596 | |
| PLANS PREPARED FOR: 3002 BLUFF STREET, SUITE 300 BOULDER, CO 80301 Office: (303) 448-8995 | |
| PLANS PREPARED BY: TOMLIN ENGINEERING PROFESSIONALS 500 E. BATHME SUITE C10 THORNTON, CO 80229 OFFICE: (303) 988-9894 www.tomlinpe.com | |
| SEAL: <div style="border: 2px solid black; padding: 10px; display: inline-block; transform: rotate(-15deg);"> ZONING REVIEW </div> | |
| SHEET NUMBER: 2-1 | REVISION: 5 |
| SHEET TITLE: SITE PLAN | |
| DRAWN BY: ASD CHECKED BY: KES | |
| 5 10-06-23 ZONING | 4 08-26-23 ZONING |
| 3 09-01-23 ZONING | ISSUED FOR: |
| TEP#231622_3996c4 | |

ATLAS TOWER

October 6, 2023

Chace Pedersen, Planner 1
Kittitas County Community Development Services
411 N. Ruby Street, Ste 2
Ellensburg, WA 98926

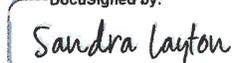
Dear Mr. Pedersen,

As discussed on our phone call, we have moved the tower 25' to the west of its original location. As shown in the updated drawings the tower will still be 111' from the west property line. In the unlikely case of the tower falling over, it still would not land on any other property. The design is for a 100' tower which will still allow an additional 11' to the west property line.

We are in the process of updating our survey to reflect this 25' shift to the west. The ZDs will be updated with the 1A information once we receive it. I will send the final updated ZDs to you once I receive them. However, I feel confident that the distance from the property line will still be over 100' from the property line.

Please let me know if you have any other questions.

Regards,

DocuSigned by:

52CFCE384254491...

Sandra Layton
Territory Manager
Atlas Tower 1, LLC
801-310-0844
slayton@atlastowers.com

A PORTION OF THIS APPEAL IS A LACK OF DUE DILIGENCE BY KCCDS CONCERNING
RURAL ISSUES

Letter dated July 28 2023 from KCCDS to Applicant

Communication facilities shall be designed to blend with existing surroundings.

Narrative Page 1 This facility will provide critical wireless coverage to the surrounding area.

Character of surrounding neighborhood: See below.

Compatibility with existing neighboring land uses: See below.

Largely rural with low density residential zones nearby: Atlas claim that this makes it compatible with above. See page 5 E of Narrative

Consistent with the intent and character of the zoning district: Atlas claim that this makes it so because it is zoned AG-20

Consistent with the intent, goals, policies and objectives of KCCP incl. Chapter 8 rural and resource lands: See below.

Preserves rural character as defined under GMA: See below.

Rural character: See below.

Site Characteristics as provided under Findings of Fact Page 1

North, South, East and west

Privately owned land primarily used for agriculture and/or residential purposes.

Properties to the south and north are residential. Properties on the other side of Blazing Sky Lane (i.e. East) and west are both residential and agricultural

Under Findings of Fact Page 3 #5

The proposed use will ensure compatibility with existing neighboring land uses.

Staff response is "The proposed use is consistent with other utility focused uses in Kittitas County. Surrounding uses include undeveloped land and residential properties. CDS finds the use, as conditioned, compatible with existing neighboring land uses and in turn consistent with this criterion.

This is a conclusionary statement by KCCDS. Undeveloped land is not a "use". It is not a utility and has no "use". KCCDS states "other utility focused use" without giving a clear and understandable meaning to this phrase. Here KCCDS is comparing neighboring land uses with the entire area of Kittitas County.

Neighboring land uses fall into the description of Rural Working Lands

Rural Working lands. Uses within this designation generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with the rural environment and supporting agriculture and/or forest activities. Areas in this designation often have low population densities with larger parcel sizes compared to Rural Residential areas. Agriculture and forestry activities are generally less in scope than in the Resource lands.

What I see, being in the very midst of this surrounding area or neighborhood is residential homes, crop growing (mainly hay) and cattle raising. Common sense should be the deciding factor here. (compatible definition -capable of existing together in harmony) There are utilities in designated utility right-of-ways or corridors in the neighborhood. However, a hundred foot tower capable of producing nothing situated in the middle of a cow field in very close proximity to residential homes is not compatible with existing neighboring land uses. The specific site is a 4 acre assessor's parcel 17-18-18010-0001 which has 2 homes and several barns and sheds on the most easterly quarter of this parcel, It is also zoned AG-20 and under the designation of Rural Working Lands.

The definition of "consistent" is capable of existing together in harmony, Compatible has the same meaning as consistent. Antonyms would be conflicting, incongruous, inconsistent, all of which describe this proposal to a T.

The intent of this zoning classification (AG-20) is to **preserve fertile farmlands** from encroachment by nonagricultural land uses **and protect the rights and traditions** of those engaged in agriculture.

Above statement is provided by KCCDS on Page 1 last paragraph of Findings of Fact

There does not seem to be a description specific to the "Character" of an AG-20 zone.

A. Preserves "rural character" as defined in the Growth Management Act.

Atlas response "The wireless tower will provide a service while still maintaining the "rural character." If, upon inspection, Kittitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary."

Atlas response is a non sequitur.

Staff response is to state: CDS staff finds this project, as conditioned, is consistent with the Kittitas County Comprehensive Plan as described in section IV of this staff report, preserves rural character, requires only rural government services, and does not compromise long term viability of resource lands. The proposed use is consistent with the character and impact of surrounding neighborhood uses.

RR-G11 The county should provide for infrastructure and services necessary to rural development.

This is not relevant to "rural character"

RRG-25 Provide areas of low intensity land use activities within the agriculture and forest activities.

This is not relevant to "rural character"

RRP-9 Encourage development activities and development standards which enhance or result in the preservation of rural lands. This is not relevant to "rural character".

Staff response is a conclusion with no bearing on fact.

Preserves the "rural character" as defined under GMA.

RCW 36.70A.030 DEFINITIONS

(35) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment.

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.

(c) That provide visual landscapes that are traditionally found in rural areas and communities.

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and
(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

Common sense dictates that, the proposed project does not preserve a, b, or c above.

Under Findings of Fact V1 AGENCY AND PUBLIC COMMENTS -public comment

Staff response – Comments were transmitted to the applicants on September 8 2023.

These comments were address to KCCDS and not to the applicants. Very many of these addressed the rural issues and should have been answered by KCCDS who has totally failed to answer or to take into consideration these concerns.

KITTITAS COUNTY COMPREHENSIVE PLAN AND VISION STATEMENT

Kittitas County and the cities will value and protect and enhance the quality of life by **protecting the visual and physical environment.**

KITTITAS COUNTY - COUNTY-WIDE PLANNING POLICIES

PREAMBLE TO THE COUNTY-WIDE PLANNING POLICIES

The people of Kittitas County value and want to protect and enhance their quality of life. This quality of life includes the need to: **protect the visual and physical environment.**

GOALS

The State of Washington Growth Management Act requires that the County “**include measures that apply to rural development and protect the rural character** of the area as established by the County.” These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, --- (RCW 36.70A.070).

Rural policies are intended to enhance and protect the County’s rural character, and to encourage appropriate rural land use patterns and service levels. As Kittitas County is a primarily rural area, many of the goals and policies listed in this and other elements are intended to be interpreted through a broad-spectrum rural lens. Rural Lands planning policies include:

RR-P1:

The County shall promote the retention of its overall character by establishing **zoning classifications that preserve rural character** identified to Kittitas County.

The Rural and Resource element is intended to preserve rural character through adopted goals and policies designed to encourage and protect the types of uses that are characteristic to the rural area. The goals and policies are intended to accomplish this in part by reducing conflicting land uses within the County’s rural area while providing a variety of rural densities, protecting agriculture land resources and activities, guarding the County’s water resources and insuring appropriate services and facilities for such environments. A variety of rural densities characteristic to a rural environment are encouraged through the adoption of goals and policies within this Element. This Element also provides for a variety of rural uses which are compatible with the County’s rural character, and decrease the need for road and utility improvements, police and fire protection, schools in rural areas and other services often found in more urban environments. Without limiting these types of urban services, their existence can often contribute to “rural sprawl,” or the scattering of development throughout rural areas which can be inconsistent with an identified rural character. The proper mix of rural uses and densities permits rural growth to be accommodated in a variety of areas where it is compatible with both resource and urban activities. The goals and policies of this Element are also intended to provide for the preservation of viable and vibrant landscapes associated with rural character. At the same time, these policies seek to capitalize on the recreational characteristics while preserving the natural resources in the County.

RURAL LANDS CHAPTER 8

INTRODUCTION Rural lands are characterized by a lower level of services; mixed residential, agricultural and open space uses; broad visual landscapes and parcels of varying sizes, a variety of housing types and small unincorporated communities. Rural lands often have an established land use pattern that inhibits urban character and are generally, and anticipated to continue to be, served by septic systems and individual wells or small community water systems. The Rural and Resource Lands chapter of the Kittitas County Comprehensive Plan addresses unincorporated portion of the County outside Urban Growth Areas (UGA). The Land Use Element in Chapter 2 and the Rural and Resource Lands chapter together form the basis for future land use patterns within the County. They also form a basis for decision makers to make land use decisions in the unincorporated areas in Kittitas County. This Chapter is in two sections. The first section discusses land use designations for the County's rural lands and is the County's Rural Element. It outlines the goals, policies and objectives related to protecting rural character with a variety of densities as required by the Washington State Growth Management Act. (RCW 36.70A.070(5)) Rural lands are outside UGAs and commercial agricultural, commercial forest, and mineral lands.

GOALS The State of Washington Growth Management Act requires that the County "include measures that apply to rural development and protect the rural character of the area as established by the County." These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, reduce sprawl and protect against conflict with the use of agricultural, forest and mineral resource lands (RCW 36.70A.070).

The definition of "Rural Character" is defined at RCW 36.70A.030(16) and is the basis for the following broad goals in this Element.

RR-G1: Open space and visual and natural landscape should predominate over the built

RR-G2: Opportunities should exist for traditional rural lifestyle and rural based economies.

RR-G3: Spaces and development should be compatible with fish & wildlife habitat

RR-G4: Undeveloped land should not be converted to development of sprawl and low density.

RR-G5: Activities generally should not require extension of urban governmental services.

RR-G6: Land use should be consistent with protection of surface and ground water flows and recharge/discharge areas.

"Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element." (RCW 36.70A.030(17))

"Rural governmental services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas.

The Resource section of this Chapter refers to the commercial agriculture, forest, and mineral resources of long-term significance that are not characterized by urban growth. (RCW 36.70A.170)

POLICIES

Kittitas County planning policies help define rural and resource lands, appropriate land uses and service levels, and unique rural features. They also identify innovative land use techniques which may be used to protect these features.

RR-P1 The county shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.

RR-P2: In order to protect and preserve Resource Lands, non-resource development and activities on adjacent Rural lands shall require preservation of adjacent vegetation, existing landforms (e.g. ravines) or use of other methods that provide functional separation from the resource land use.

RR-P3: The use of cluster platting and conservation platting shall be encouraged in specific rural areas to lessen the impacts upon the environment and traditional agricultural/forestry uses and to provide services most economically.

The use of other innovative land use techniques that protect rural character and resource land uses will be evaluated for future implementation.

RR-P4: A certain level of mixed uses in rural areas and rural service centers is acceptable and may include limited commercial, service, and rural industrial uses.

RURAL LANDS

Introduction

Kittitas County's rural land use designation consists of a balance of differing natural features, landscape types, and land uses. Rural land uses consist of dispersed and clustered residential developments, farms, ranches, wooded lots, and agricultural and recreational/commercial and industrial uses that serve local, national and international populations as customers. Rural landscapes encompass the full range of natural features including wide open agriculture and range land, forested expanses, rolling meadows, ridge lines and valley walls, distant vistas, streams and rivers, shorelines and other critical areas. Rural lands exhibit a vibrant and viable landscape where a diversity of land uses and housing densities are compatible with rural character. "Rural character," as identified through scientific research over the past two decades, indicates that residents of rural communities, homebuilders, and planners see it in various ways depending upon the community and the rural area. This research demonstrates that "rural character" is not identical in all areas and must be determined by communities. Overall, the research shows that "rural character" in Kittitas County, and fall squarely within the broad definition in RCW 36.70A.030. "Rural character" in Kittitas County is predominantly a visual landscape of open spaces, mountains, forests, and farms and the activities which preserve such features. It balances environmental, forest, and farm protection with a variety of rural development and recreational opportunities. Many sizes and shapes of properties can be found in the Rural Lands as well as assorted economic activities and opportunities, small rural residential development, and recreational opportunities throughout the County. The Interstate and State Highway systems which traverse the length and width of the County introduce countless travelers and visitors to the County. The County's highways and byways provide access to opportunities and means to create and preserve agri-tourist activities. They also provide access to extensive outdoor recreation activities identified by State law and by residents of Kittitas County as being "rural." This rich mix of uses and transportation systems allows the variety of lifestyle choice, which makes up the fabric of rural Kittitas County community life. The most common uses in rural lands are agriculture, recreation and logging, which have been basic industries historically and remain important in terms of employment, income and tax base. Kittitas County will strive to encourage and support these activities in areas they occur and are appropriate. Some choose a private, more independent lifestyle, or space for small farm activities. Others choose the more compact arrangement found in clustering, with its accompanying open space and close neighbors designed in ways that enhance and preserve rural character.

One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. This Comprehensive Plan supports and preserves this rural lifestyle by limiting service levels to those historically provided in the County's rural areas. Residents should expect County services, such as road maintenance and emergency responses to be limited and to decrease as the distance from a rural activity center or urban area increases. Planning for Rural and Resource Lands Present rural land uses in Kittitas County are a mixture of diverse development patterns stemming from trends established decades ago. The County has been characterized as having an abundance of rural uses including the strong recreational opportunities throughout the entire area. The existence of mountainous topography, intense forest lands, and large lakes in the Upper Kittitas County area draws large populations to skiing, camping, hunting, and hiking opportunities. Vibrant river and stream waters invite sports fishermen from around the State to the area. Hunting is prevalent in all areas of the County, including the middle portion of the region where sage and tall grasses are abundant for game bird and mammal habitat.

The Lower Valley of Kittitas County has extensive irrigation and rich soils which have been valuable for agriculture and vital to the economy. Many farms have existed over a century and are very characteristic of the County's dominant rural character. Small, unincorporated communities exist throughout the County. These communities provide distinct, yet small scale services which rural residents depend upon. Many of these communities are located within "Limited Area of More Intensive Rural Development" or LAMIRDs as defined with the Washington State Growth Management Act. Combined, this mix of rural densities and uses has created a landscape unique to Kittitas County's rural lifestyle.

The Rural and Resource element is intended to preserve rural character through adopted goals and policies designed to encourage and protect the types of uses that are characteristic to the rural area. The goals and policies are intended to accomplish this in part by reducing conflicting land uses within the County's rural area while providing a variety of rural densities, protecting agriculture land resources and activities, guarding the County's water resources and insuring appropriate services and facilities for such environments. A variety of rural densities characteristic to a rural environment are encouraged through the adoption of goals and policies within this Element. **This Element also provides for a variety of rural uses which are compatible with the County's rural character, and decrease the need for road and utility improvements,** police and fire protection, schools in rural areas and other services often found in more urban environments. Without limiting these types of urban services, their existence can often contribute to "rural sprawl," or the scattering of development throughout rural areas which can be inconsistent with an identified rural character. The proper mix of rural uses and densities permits rural growth to be accommodated in a variety of areas where it is compatible with both resource and urban activities. The goals and policies of this Element are also intended to provide for the preservation of viable and vibrant landscapes associated with rural character. At the same time, these policies seek to capitalize on the recreational characteristics while preserving the natural resources in the County.

Purpose of Rural Lands Following are goals that relate to the general intent of Rural Lands:

RR-G7: The County should consistently work to preserve and maintain the rural character of Kittitas County for the benefit of its residents.

RR-G8: The County should strive to sustain and protect the westerly mountainous, recreational open space, and its easterly non-resource agricultural and rangeland activities.

RR-G9: The County should continue to explore ways to provide rural economic opportunity.

RR-G10: The County should look for opportunities for a variety of rural density and housing choices while maintaining rural character and protecting health and safety.

RR-G11: The County should provide for infrastructure and services necessary to rural development.

The policies outlined below are intended to reduce conflicting land uses within the entire County's rural area while providing a variety of rural densities, protecting open spaces, and insuring that appropriate services and facilities are provided for rural developed environments.

RR-P8: Incentive-based land use strategies will be examined and adopted to encourage land uses which are compatible to the rural environment.

RR-P9: Encourage development activities and establish development standards which enhance or result in the preservation of rural lands.

RR-P10: Allow for a variety of rural densities which maintain and recognize rural character, agricultural activities, rural community and development patterns, open spaces and recreational opportunities.

RR-P11: Only allow comprehensive plan amendments, rezones, bonus densities, and other measures that increase rural densities where adequate supplies of potable water are available that will not adversely affect surface and ground water and agriculture.

RR-P12: Set allowed densities based on the available water resources and reserve adequate resources to support the Kittitas County's economic base, including agriculture.

RR-P13: Development shall be located distances from streams, rivers, lakes, wetlands, critical areas determined necessary and as outlined within existing Shorelines Management Program, the Critical Areas Ordinance and other adopted resource ordinances in order to protect ground and surface waters.

RP-14: Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

RP-15: Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, tourism, outdoor recreation, and other open space activities.

RR-P16: Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.

RR-P17: Limit development in rural areas through density requirements that protect and maintain existing rural character, natural open space, critical areas, and recreation areas. Direct rural development to lands that have adequate public services.

RR-P18: Buffer standards and regulations should continue to be developed that will be used between incompatible rural uses.

RR-P17: Cottage and home occupations which are rural in nature are allowed within all rural land use designations and regulations. Impact upon surrounding environments and upon existing public services shall be considered when such industries are proposed.

RR-P18: Future "General Commercial" zones will not be allowed outside Urban Growth Areas and LAMIRDs.

RR-P19: Kittitas County will provide criteria within its zoning code to determine what uses will be permitted within rural zone classifications in order to preserve rural character.

RR-P20: Residential and commercial buildings outside Type 1 LAMIRDs will be located in areas buffered by vegetation to maintain Kittitas County's historic rural character.

RR-P21: Functional separation and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed.

RR-P22: Provisions will be made for roadside stands, farmers' markets, "U-pick," and customer share cropping operations.

Rural Designations

Rural Lands are divided by function of the uses intended. The purpose of placing certain lands in these land use designations is to accommodate these various functions. The following goals are intended to guide the designation of rural lands:

RR-G12: Permit residential development in rural areas which enhance and protect rural character.

RR-G13: Preserve and protect non-resource forests and agriculture lands which are dominant in Kittitas County.

RR-G14: Provide opportunity for development for recreational purposes which are consistent with rural character and protect public health and safety.

RR-G15: Provide opportunity for limited development of rural community.

Rural Land Use Descriptions

The land use designations are limited in number to reflect the functions within the rural areas of the County.

Four land use designations have been identified within the Rural Land Use Plan.

Rural Residential lands are those which are adjacent or near UGAs or LAMIRDs. They generally have a lower population density than urban areas but higher than most rural areas. A limited level of government services usually exists, and they are often inside Fire Districts and are outside flood areas and most hazard areas. Rural Residential lands are characterized by activities generally associated with small-scale farms, dispersed single-family homes, and some types of recreational uses and open spaces. Lands are typically too far from the urban area to enable cost-effective provision of public services, and the typical uses do not require urban services.

The second rural designation within the Plan is the **Rural Working lands. Uses within this designation generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with the rural environment and supporting agriculture and/or forest activities. Areas in this designation often have low population densities with larger parcel sizes compared to Rural Residential areas. Agriculture and forestry activities are generally less in scope than in the Resource lands.**

They include resort activities and provide limited commercial services to tourists and seasonal residents where rural character is preserved. Rural Recreation lands may be located in flood or other hazard areas where fishing and outdoor activities are prevalent.

The final rural lands designation is Limited Areas of More Intensive Rural Development, or LAMIRDs. These areas are often small, rural communities where rural residents and others can gather, work, shop, entertain, and reside. Commercial and industrial development compatible with rural character may continue to locate and prosper in rural areas under limited conditions. LAMIRDs are typically areas that were developed prior to the enactment of the Growth Management Act.

Zone classifications shown in Table 8-1 outline the zones designed to achieve the goals and policies outlined in the designations. There are relatively few classifications within the Rural Residential and Rural Working lands. Most zoning classifications exist within the LAMIRDs since they allow a broader and more intense mix of uses.

Please refer to other portions of this appeal, particularly, Public Comments, Processing of the Application, Site Placement, Utilities, and Summary

A PORTION OF THIS APPEAL IS A LACK OF DUE DILIGENCE BY KCCDS CONCERNING ACU 23-23-0003 ATLAS REGARDING UTILITIES

From the original Notice of Application to the Findings of Fact, Decision, and Conditions of Approval, on a prescribed, or required, form that is entirely unsuitable for the Proposed Project: We have, beside an unsuitable form, a comparison of apples and oranges and a changing of horses midstream resulting in documents that are nothing more than sheer drivel that barely touch on the issue of "utilities".

July 13, 2023

Kittitas County Planning 411 N Ruby St. #2 Ellensburg, WA 98926 RE:

Zoning Narrative for Telecommunications Facility Site Name: Blazing Sky

This letter shall serve as a narrative for the proposed 100' monopole telecommunications facility and how this project will provide the needed mobile network coverage while reducing the need for additional cellular facilities in the future. This project is being proposed and this justification is being provided in an effort to alleviate current mobile network voice, data, and first responder issues in an area that is severely lacking reliable network coverage and capacity.

No evidence provided to verify this statement. Contradictions to the above see BROADBANDMAP.FCC.GOV latest update Nov, 2023.

PROPOSAL SUMMARY The purpose of this request is to build a 100' monopole telecommunications tower within a 50 x 50 wireless facility. This facility will provide critical wireless coverage to the surrounding area. The proposed site is zoned AG-20 where coverage is lacking, and the capacity of the existing infrastructure is reaching its limit. As the area develops further, and the existing users demand more data for their existing devices, existing infrastructure will reach capacity limits and be unable to meet coverage needs. This tower and facility will be used for structural support of up to four wireless providers. Each provider will install antennas and on-the-ground base-station equipment.

No evidence provided to verify this statement. Contradictions to the above see BROADBANDMAP.FCC.GOV latest update Nov, 2023

This narrative represents required and supplementary information to document the technological, economic, and social necessity and benefits of a new 100' monopole telecommunications tower in Ellensburg City. The information provided highlights the advantages associated with a telecommunications facility at our proposed site. See attached documents to showing our survey and tower drawings.

#12 A conditional use or administrative conditional use permit may be granted when the following criteria are met. Please describe in detail how each criteria from KCC 17.60A.015 is met for this particular project (attach additional sheets as necessary):

THE FOLLOWING COMBINES STATEMENTS AND ANSWERS FROM "NARRATIVE" AND "FINDINGS OF FACT"

Findings of Fact

Page 1 last paragraph KCCDS states: The intent of this zoning classification (A-20) is to preserve fertile farmlands from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture. "The proposed project is classified as a "utility". Communication facilities may be permitted with an ACU permit per KCC17,61.040.

KCCD provides no evidence that the proposed project is a "utility".

1. The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.

Applicant Response Atlas Tower will ensure the structural integrity of towers, ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, Kittitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense. (Just a note: "owner of tower" not "Atlas Tower LLC" This language indicates that it is boilerplate).

Atlas gives assurance on the integrity of tower. Does not explain how the proposed use is essential or desirable, and ignores "character of the surrounding neighborhood."

Staff response to this under Findings of Fact is to state:

Staff agree the proposed use, as conditioned, will not be detrimental, or injurious to the public health, peace, safety, or to the character of the surrounding neighborhood. (note the difference between "surrounding area "and "surrounding neighborhood"). As stated in Chapter 6.1 (Utilities) of the Kittitas County Comprehensive Plan- "Virtually all land uses require one or more of the utilities discussed in this Chapter. Local land use decisions drive the need for new or expanded utility facilities. In other words, utilities follow growth. Expansion of the utility systems is a function of the demand for reliable service that people, their land uses, and activities place on the systems." The project should help alleviate network coverage issues and provide more reliable service to the community and first responders.

KCCDS provides no evidence regarding "character of surrounding neighborhood" and then proceeds with a non sequitur. The local land use decisions drive the need-----In this case the local land use decision was to create an AG-20 zone to inhibit growth. Again we are facing a problem of identification "coverage area service to the community" See under "Summary" for more information.

2. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:

- c. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

Applicant response is to state:

This project will provide the needed mobile network coverage while reducing the need for additional cellular facilities in the future. This project is being proposed and this justification is being provided in an effort to alleviate current mobile network voice, data, and first responder issues in an area that is severely lacking reliable network coverage and capacity.

Atlas response is a non sequitur and gives no evidence or justification for this statement. Contradictions to the above see BROADBANDMAP.FCC.GOV latest update Nov, 2023.

Staff response to this under Findings of Fact is to state:

The proposed communications tower will be adequately serviced by existing facilities and public services. No additional water, sewer, fire, or police service will be required. The expanded coverage will provide more reliable service to the community and first responders.

KCCD response again is a non sequitur. As a matter of fact, there is an economic detriment to the county in that property values near this proposal will fall in value and consequently the tax base will fall. Real estate appraisals are based on comparative values and have a domino effect. 30 years of lesser ability to collect taxes will be significantly detrimental to the economic welfare of the county.

Contradictions to the above see BROADBANDMAP.FCC.GOV latest update Nov, 2023.

3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.

Applicant Response Atlas Tower will ensure the structural integrity of towers, ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time.

Atlas gives a partial response and ignores the vague "other applicable provisions of Kittitas County Code."

Staff response to this under Findings of Fact is to state: The project, as conditioned, complies with Kittitas County Development standards.

KCCDS also ignores the vague "other applicable provisions of Kittitas County Code."

4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

Applicant Response The proposed site is zoned AG-20 where coverage is lacking, and the capacity of the existing infrastructure is reaching its limit. As the area develops further, and the existing users demand more data for their existing devices, existing infrastructure will reach capacity limits and be unable to meet coverage needs. This tower and facility will be used for structural support of up to four wireless providers.

Atlas response is a non sequitur. No evidence or justification is given for this statement. Contradictions to the above see BROADBANDMAP.FCC.GOV latest update Nov, 2023.

Staff response is to state:

As conditioned, both the SEPA and ACU application mitigate possible impacts.

KCCDS statement is conclusion and is not based on facts.

5. The proposed use will ensure compatibility with existing neighboring land uses.

Applicant response is to state:

The surrounding area is largely rural with low density residential zones nearby. The proposed site is chosen to maximize visual aesthetic and distance from residential homes.

Atlas response is a non sequitur. Additionally, the statement regarding the proposed site is false.(see under "Site Placement" of this appeal)

Staff response to this under Findings of Fact is to state:

The proposed use is consistent with other utility focused uses in Kittitas County. Surrounding uses include undeveloped land and residential properties. CDS finds the use, as conditioned, compatible with existing neighboring land uses and in turn consistent with this criterion.

KCCDS response is too vague to be acceptable in the statement "consistent with other utility focused uses in Kittitas County. This is a conclusion not based on facts. Additionally the statement "CDS finds the use, as conditioned, compatible with existing neighboring land uses and in turn consistent with this criterion." Is a conclusion not based on facts. It is my understanding that "undeveloped land is not a "use".

6. The proposed use is consistent with the intent and character of the zoning district in which it is located.

Applicant response is to state: The purpose of this request is to build an 100' monopole telecommunications tower within a 50 x 50 wireless facility. This facility will provide critical wireless coverage to the surrounding area. The proposed site is zoned AG-20.

Atlas response is a non sequitur.

Staff response is to state: CDS staff has confirmed that, per KCC 17.61.040, "Communications Facilities" may be permitted with an Administrative Conditional Use application in Agriculture 20 zone. This project is consistent with the "Communications Facility" definition which has been identified as a compatible use within the Agriculture 20 zone per KCC 17.15.060.1

KCCDS response is also a non sequitur. It is a conclusion not based on fact.

KCCDS is in error making this claim. See all definitions listed below.

7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - i. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8; Rural and Resource Lands;

Applicant response Yes. The coverage will provide more opportunities for residents working from home, schools, and future development and growth.

Atlas response is a non sequitur

- ii. Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(16**))

Applicant response. The wireless tower will provide a service while still maintaining the "rural character." If, upon inspection, Kittitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary.

Atlas response is a non sequitur

- iii. Requires only rural government services; and

The wireless tower will not require any rural government services.

iv. Does not compromise the long term viability of designated resource lands.

The wireless tower will improve the long term viability of the designated resource lands by offering a wireless service for emergencies.

Staff response is to make a statement covering i, ii, iii, and iv

CDS staff finds that this project, as conditioned, is consistent with the Kittitas County Comprehensive Plan as described in section IV of this staff report, preserves rural character, requires only rural government services, and does not compromise long term viability of resource lands. The proposed use is consistent with the character and impact of surrounding neighborhood uses.

KCCDS response is a conclusion that is entirely in contradiction with all evidence to the contrary. It is not consistent with KCCP. does not preserve rural character, nor is the proposed use consistent with the character and impact of surrounding neighborhood uses. See below.

COMPREHENSIVE PLAN ASSOCIATED WITH RURAL LANDS AND UTILITIES; - GOALS AND POLICIES

POLICIES

U-P3– Decisions made by the Kittitas County regarding utility facilities will be made in a manner consistent with and complementary to regional demands and resources

Staff consistency statement: The proposed project provides infrastructure for communication facilities in an area in need of expanded coverage.

There is no data provided as to what that area is, (except for the maps I have provided and my guesstimate of the area in question) and therefore in need, or not in need, of expanded coverage No data has been provided regarding “need for expanded coverage”. Contradictions to the above see BROADBANDMAP.FCC.GOV. (latest update Nov, 2023.

U-P6 – Community input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community.

Staff consistency statement: The proposed project is consistent with the requirements of KCC 15A (KCC 15.03.060) which outlines the requirements for public notice. Additionally, the comment period was extended an additional 15 days to allow for further public review..

Here KCCDS is equating public notice for the proposal of a “utility” which can have far flung influences beyond the immediate vicinity with this application by sending a notice via USPS to 13 addresses which included applicant Victor Strand.

See attached list obtained from “Notices – Affidavit of mailing and publication NOA”. A group of neighboring landowners does not equate to a “Community”

U-P12 Kittitas County reserves the right to review all applications for utilities placed within or through the county for consistency with local policies, laws, custom, and culture.

GOALS

U-G1: Appropriately place utility facilities within public rights-of-way, where feasible

U-G2: The County should coordinate with the cities and towns throughout the county on utility planning.

U-G3: The County should coordinate with all utility providers.

U-G4: Kittitas County should coordinate with other utilities to create a County-wide utilities location map using Geographic Information System (GIS) mapping.

U-G5: Multi-jurisdictional utility facility coordination and cooperation should include efforts to coordinate the procedures of making specific land use decisions to achieve consistency in timing inter-jurisdictional coordination in the planning and provisions of utilities.

U-G6: Decisions made regarding utility facilities should be consistent with and complementary to regional demand and resources and should reinforce an interconnected regional distribution network.

Staff consistency statement: Decisions made regarding utility facilities should be consistent with and complementary to regional demand and resources and should reinforce an interconnected regional distribution network.

This is a conclusion not based on facts. This statement does not alter any facts of the matter. No evidence of regional demands exists and since the proposed project cannot distribute anything it cannot reinforce an interconnected distribution network.

RR-G11 Staff response is to state “The proposed project expands communications coverage---” **Proposed project is not capable of expanding coverage Contradictions to the above see BROADBANDMAP.FCC.GOV latest update Nov, 2023.**

RR-P9 Encourage development activities and established development standards which enhance or result in the preservation of rural lands,

This proposed project does the opposite

U-G10: Kittitas County should reduce the risk of accidents caused by hazardous liquid pipelines, natural gas lines, sewer lines, and other potential hazardous materials, which are conveyed both below and above ground.

PORTION OF THE COMPREHENSIVE PLAN ON PAGE 5 OF THE APPLICATION

The Kittitas County Comprehensive Plan has established specific goals and policies associated with Rural lands and utilities. The following goals and policies guide activities on Rural lands throughout the County. These goals and policies were developed in response to identified needs within the county, and support the County Wide Planning Policies.

Under Introduction of the Kittitas County Comprehensive Plan 1.1.1-1.1.4 is the Public Participation Plan of July 2015

Approximately 75 people served in the following advisory groups: Land use, Housing, Resource Lands, Transportation, Economic Development, Recreation and Natural Environment. Each group consisted of 10-15 members which met throughout 2016 to develop a vision statement as well as goals and objectives for the County in each of their subject areas.. Meetings have been recorded. Working groups had several meetings June 17-April 18. Drafts of the majority of the Comprehensive Plan Elements were presented to the Working Group and were read through and discussed at each working group meeting. Final edits to the current draft were made as a result of these meetings.

1.2 Amendments to county plans, codes and standards include:

7b Opportunity for written comments

7d Provision for written discussion

7f Consideration of and response to public comments

AGENCY AND PUBLIC COMMENTS

Kittitas County CDS – Building Official

Applicant response: We are aware that a building permit is required for our tower. The carriers will be responsible for their own building permit prior to collocating onto our tower and building any additional structures within the compound area.----.

Staff response is: The application has been conditioned to conform with Kittitas County Code Title 14.

This is another non sequitur.

However, the above Applicant Response clearly shows that the intent is to construct a tower and not a utility.

Public Comment

Comments were received from 27 members of the public. All comments are available for public review.

Staff Response is to state “Comments were transmitted to the applicants on September 8 2023.

All 27 comments were in opposition of the proposed project. Additionally, the above statement by staff indicates that there was no review or consideration to the comments as is required. All of these comments are addressed to KCCDS and not to Atlas Tower. The only action KCCDS took with these 27 comments were to forward them to Atlas Tower. See also under portion “Public Comments”

Project Analysis

Under this section I either disagree, find it not possible, or not applicable, due to facts presented in this appeal

1 The property line setback shall be 1.2 times the height of the structure. The lot line setback requirements of this title may be reduced by the Community Development Services director, in order to improve the facilities' reception and/or transmission capabilities or to achieve greater levels of audible or visual screening provided the applicant can provide evidence that it would not be possible for the tower to fall on neighboring properties.

1. Communication facilities shall be designed to blend with existing surroundings; provided, no conflicts exist with existing Federal Communications Commission and the Federal Aviation Administration regulations relating to aircraft safety. This should be achieved through the use of compatible colors and materials, and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the proposed transmission support structure from adjacent lands.
2. 4. The co-location of antennas on both existing and proposed transmission structures is encouraged. Communication antennas shall be permitted outright in all zoning districts provided the following:
3. a. An antenna shall not extend more than six feet horizontally from any structure to which it is attached.
4. b. An antenna shall not extend vertically more than 15 feet above the uppermost portion of the structure to which it is mounted or attached.
5. 5. Modifications to, including the expansion of, existing approved communication facilities shall be outright permitted; provided, there is no increase in the height of the transmission tower.
6. For purposes of this subsection, "transmission tower" means a pole or lattice-work structure specifically designed and intended to support antenna and related communication equipment. (Ord. 2018-001, 2018; Ord. 2007-22, 2007; Ord. 2001-12 (part), 2001; Ord. 2000-06 (part), 2000)
7. TABLE 5.3 LOT SIZE # TOWERS POLE TYPE TOTAL HEIGHT2 SETBACKS3 INSIDE UGA1 (minimum 1 acre) 1 MONOPOLE MAXIMUM 75 FEET 1.2 TIMES HEIGHT 1-3 ACRES OUTSIDE UGA 1 MONOPOLE MAXIMUM 75 FEET 1.2 TIMES HEIGHT 3-5 ACRES OUTSIDE UGA 1 MONOPOLE, GUYED, LATTICE MAXIMUM 100 1.2 TIMES HEIGHT >5 ACRES OUTSIDE UGA 1 MONOPOLE, GUYED, LATTICE MAXIMUM 120 1.2 TIMES HEIGHT

RP-14: Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

RP-15: Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, tourism, outdoor recreation, and other open space activities.

RR-P16: Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.

RR-P17: Limit development in rural areas through density requirements that protect and maintain existing rural character, natural open space, critical areas, and recreation areas. Direct rural development to lands that have adequate public services.

RR-P19: Kittitas County will provide criteria within its zoning code to determine what uses will be permitted within rural zone classifications in order to preserve rural character.

As stated in above email a separate building permit is required to install antennas if not included in plans for the tower. This also verifies my claim that the proposal does not fit the description of a “utility”

See attached email

THE NAKED TOWER OR UTILITY-WHAT’S IN A NAME?

Under Notice of Application: Proposal: Telecommunications tower and associated facilities

Under Letter from Atlas Tower LLC to Kittitas County Planning dated 07.13.202

Paragraph 1. Wireless Telecommunications facility, Proposed 100’ monopole telecommunication facility.

Proposal Summary: 100’ monopole telecommunications tower within a 50 x 50 wireless facility.

Page 2 under “Wireless telecommunications facility characteristics”

Last paragraph - new 100’ monopole telecommunications tower

Page 3 – Communications tower facility

Page 4 A. “towers” are mentioned 7 times

B, “facility” mentioned 2 times

C “towers” mentioned 2 times

D Tower and facility will be used for the structural support of up to four wireless providers

Page 5 F – 100’ monopole telecommunications tower within a 50 x 50 facility. This facility will provide wireless coverage.

Page 6 ii wireless tower mentioned 3 times

iii wireless tower

iv wireless tower

Under Findings of Fact.

Page 1 last paragraph KCCDS states “The proposed project is classified as a “utility”. Communication facilities may be permitted with an ACU permit per KCC17,61.040

Page 2 Applicant response mentions “towers 6 times. Staff response mentions “utilities” at least 2 times

Page 3 Staff response “communications tower”

Page 3 #3 Atlas response “towers” mentioned 2 times.

Page 3 #4 Atlas response “This tower and facility will be used for structural support of up to four wireless providers.”

Page 3 #5 Staff responsive “The proposed use is consistent with other utility focused uses in Kittitas County

Page 4 #6 Atlas response “The purpose of this request is to build an 100’ monopole communications tower within a 50 x 50 wireless facility

Staff response is “CDS staff has confirmed that, per KCC 17.61,040, “Communications Facilities” may be permitted with an ACU application in AG 20 zone. This project is consistent with the “Communications facility” definition which has been identified as a compatible use with the AG 20 zone per KCC.17.15.060.1

Page 4 #7 ii Applicant response “The wireless tower will provide a service while still maintaining the “rural character”.

iii The wireless tower

iv The wireless tower.

‘UTILITY’ is a word used by KCCP to designate a use permitted in AG 20 zones. There are no descriptions of other wordings in this application in connection with the proposal.

To justify approval of the proposal KCCDS must substitute the word “utility” for all the other descriptions of the proposal. Note that Atlas never describes the proposal as a “utility”

However, the function of the proposal does not meet the definition of a “utility”

Definitions of “Utilities can be found under KCC 17.61.010 #1-5 being pertinent to the subject matter.

1. "Utility" or "utilities" means the supply, treatment **and** distribution, as appropriate, of gas, gas meter stations, municipal domestic and irrigation water, sewage, storm water, electricity, telephone, fiber-optic and cable television. Such utilities consist of both the service activity along with the physical facilities necessary for the utilities to be supplied, except for associated facilities and special utilities as defined herein. Electric vehicle infrastructure, as provided for in [Chapter 17.66](#), is not a "utility" or "utilities".
2. "Special utility" or "special utilities" shall mean the following:
 - a. Natural gas, synthetic fuel gas, or liquefied petroleum gas pipelines operating at a pressure which results in a hoop stress of 20 percent or more of the specified minimum yield strength;
 - b. Electrical transmission lines exceeding 115,000 volts;
 - c. Electrical substations;
 - d. Cellular, mobile or fiber-optic telecommunication facilities;
 - e. Geothermal power facilities;
 - f. Minor thermal power plant facilities; 7. Minor alternative energy facilities.
3. "Antenna" or "antennas" means any system of poles, panels, rods, dishes, reflecting discs or similar devices used for the transmission or reception of radio frequency signals.
4. "Associated facility" or "associated facilities" means a land use whose principal purpose involves the distribution, processing, storage, handling, or other related and supporting activities necessary for a special utility, not including administrative activities or offices.
5. "Communication facility" or "communication facilities" means any real property or portion thereof used for the reception, transmission and/or regeneration of electromagnetic and light signals, including but not limited to cellular, fiber-optic, microwave, mobile radio, radio, satellite, and television mediums. The term does not include poles or lattice-work towers supporting aboveground distribution or transmission lines for utility services such as electricity, telephone, or cable television. Communication facilities consist of all buildings, transmission structures, and other appurtenant improvements necessary for the support, shelter and operation of applicable communication equipment.

KCC 17.61.040

8. Communications facilities may be authorized by KCCDS as a ACU in all zoning districts.
 1. -----For purposes of this subsection "transmission tower" means a pole or lattice work structure specifically designed and intended to support antenna and related communication equipment. **A definition that fits squarely with descriptions by Atlas.**

(6) "Utility" means an electrical company, gas company, or water company as those terms are defined in RCW [80.04.010](#), and includes an electrical, gas, or water system operated by a public agency.

RCW 80.040.010 and RCW 90A.61.010 DEFINITIONS

(6) "Utility" means an electrical company, gas company, or water company as those terms are defined in RCW [80.04.010](#), and includes an electrical, gas, or water system operated by a public agency. RCW [80.04.010](#)

(13) "Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

(27) "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

(28) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

Black's Law Dictionary

UTILITY Definition & Legal Meaning

Definition & Citations:

1. Business. Firm owning and operating facilities for production and distribution of water, electricity, gas telecommunications to the public.

Under Kittitas County Comprehensive Plan Chapter 6

INTRODUCTION The Kittitas County Comprehensive Plan utilities element shall, at minimum, consist of the general location, proposed location, and capacity of all existing and proposed utilities, including but limited to, electrical lines, water bank, telecommunication lines and natural gas lines.

The primary regulatory agency for most utilities in Washington State is the Washington Utilities and Transportation Commission (WUTC), a state agency. The WUTC ensures that safe and reliable service is provided to customers at reasonable rates. The Commission regulates the rates and charges, services, facilities, and practices of most of Washington's investor-owned gas, electric and telecommunication utilities. As defined by the WUTC, some utilities are considered a critical service, namely electricity and standard telephone, and must be provided "upon demand." In order to fulfill public service obligations, these utility providers must plan to extend or add to their facilities when needed. On the other hand, natural gas is not considered a necessity, but rather a utility of convenience. All utilities regulated by the WUTC are prohibited from passing the cost of new construction onto the existing rate base.

Federal agencies also play a role in regulating some of these utilities. For example, the Federal Communications Commission (FCC) regulates telecommunications. In addition, the Federal Energy Regulatory Commission (FERC), an independent commission with the U.S. Department of Energy, sets rates and charges for the transportation and sale of natural gas, and for the transportation of oil by pipeline, for the transmission and sale of electricity, and the licensing of hydroelectric power projects. Local government, too, has a role in regulation for certain utilities, such as franchise agreements. However, the effort behind meeting Growth Management Act requirements is not primarily regulatory; rather it is to promote coordination and cooperation between jurisdictions and utility providers. Virtually all land uses require one or more of the utilities discussed in this Chapter. Local land use decisions drive the need for new or expanded utility facilities. In other words, utilities follow growth. Expansion of the utility systems is a function of the demand for reliable service that people, their land uses, and activities place on the systems. Participation Kittitas County recognizes the vast array of utilities provided by various companies and government agencies. Utilities provided include electricity, natural gas, telephone, wireless, cable, and irrigation purveyors. Capital Facilities Plans of utility providers available in Kittitas County is hereby adopted by reference to meet the requirements of identifying proposed facilities.

From: [Jeremy Larson](#)
To: [Chace Pedersen](#)
Subject: RE: ACU-23-00003 Atlas - Notice of Application
Date: Tuesday, August 29, 2023 11:47:37 AM
Attachments: [Design Criteria 818833.pdf](#)

Chace,

Please find KC CDS Building Department revised comments below for the documentation provided in ACU-23-00003. I missed the portion of the narrative that notes the antennas will be for future lease and are not included in this preliminary design.

- A building permit is required for the tower and antennas. If the individual antennas are not included in the building plans at the time of plan submission for the tower, additional building permits will be required for installation of the antennas in the future. 2018 IBC section 105.2 does allow replacement of existing antennas without a building permit, but initial installation will require building permits and the tower must be designed to the most conservative requirements for the four (4) antennas.
- The antenna permit documentation will need to include Washington State approved stamped engineer plans and supporting calculations for the footing, attachment to the footing, and the overall structure.
- The antenna needs to be a minimum of 1.2 times the height away from the property line.
- If the fence is over seven feet in height, a building permit will be required for it as well.
- Permits are required for storage structures over 120 square feet and for any generator or fuel tank that may be placed on the property.
- Electrical permits are required through Washington State Labor & Industries.

A copy of the design criteria for parcel # is attached to this email.

Thanks,
-Jeremy

Jeremy Larson
Building Official

Kittitas County Community Development Services
411 N Ruby Street Suite 2
Ellensburg, WA 98926
jeremy.larson@co.kittitas.wa.us
P: 509.962.7559



From: Chace Pedersen <chace.pedersen@co.kittitas.wa.us>
Sent: Tuesday, August 22, 2023 8:24 AM
To: Jeremy Larson <jeremy.larson@co.kittitas.wa.us>

CANTERBERRY, ROGER & PATRICIA
221 BLAZING SKY LN
ELLENSBURG, WA 98926-9174

STRAND, VICTOR A
4140 MANASTASH ROAD
ELLENSBURG, WA 98926

MANASTASH RIDGE EXCAVATION LLC
PO BOX 636
ELLENSBURG, WA 98926-1918

GEULA, NAISAN
PO BOX 249
ELLENSBURG, WA 98926

BLAND, BART G
3830 MANASTASH RD
ELLENSBURG, WA 98926-7830

BLAND FAMILY FARM PROPERTIES LLC
3830 MANASTASH RD
ELLENSBURG, WA 98926-7830

DICKINSON, STEVEN F & MICHELLE
4391 MANASTASH RD
ELLENSBURG, WA 98926-7827

CERAOLO, DAVID M & FRANCES E
131 BLAZING SKY LANE
ELLENSBURG, WA 98926

ROSS, ROBERT G
4131 MANASTASH RD
ELLENSBURG, WA 98926-7828

WALSH, MICHAEL J ETUX
4621 MANASTASH RD
ELLENSBURG, WA 98926-7825

PIERCE, JUDITH C
PO BOX 184
TROY, ID 83871-0184

ELLIS, JAMES H ETUX
520 BLAZING SKY LN
ELLENSBURG, WA 98926-9176

MFSR E LLC
PO BOX 393
NORTH BEND, WA 98045

ALVAREZ, PORFIRIO & MARIA DE
LOURDES
4500 MANASTASH RD
ELLENSBURG, WA 98926-7826

NOTICES: AFFIDAVIT OF MAILING AND PUBLICATION NDA

A portion of this appeal is a lack of due diligence by KCCDS concerning PUBLIC COMMENTS

Even if a revised Application by Atlas which included valid and verifiable data that justifies their proposal, I would still appeal the decision on the grounds that KKCC ignored all pertinent objections raised by public.

Kittitas County Comprehensive Plan – Introduction # 7f - Consideration and Responsive to written comments.

No consideration or Response has been given to written comments by KCCDS

Below are segments of some comments deserving of consideration and or response.

Segments of the comment made by Candice Comfort

A 100ft tall tower can easily be seen in all directions for miles as the valley floor is flat, with no direct hills to block it. A simple search on Kittitas Compas shows there is in fact a house directly to the south of the proposed tower location, which will not only detract from the visual aesthetics of the area for the owners, but also lower its property value, as will it do for many neighboring homes. Historically, homes near cell phone towers or large power lines have reduced values compared to homes that are not near those things, which leads me to question if the county is following their own comprehensive plan to keep the area rural.

The citizens of Kittitas County have spoken and made clear what their expectation is for our rural areas, and the tower Atlas plans to build does not fit with this expectation whatsoever. It will detract from the view of our natural open spaces, it will detract from our agriculture lands as it takes away the feel of our culture of farming and **introduces a very urban and commercial aspect**, it will detract from our mountain views as it will be built directly in front of Manastash Ridge, and it is the **exact opposite of “development away from urban areas”**.

With evidence from multiple sources to prove what our rural land is and should remain, I can easily say the proposed use by Atlas Tower 1 LLC does not ensure compatibility with existing neighborhood land uses.

It is shocking, wrong, and incorrect for the company to say in the Project Narrative under #12, bullet point G that their cell phone tower is consistent with the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands.

For a company that says they will not impede on the rural character of this location of Kittitas When asked under 3: Water, bullet point a: Surface Water, **#6 if the proposal lies within a 100 year floodplain, they marked “Unknown.”** This is simple information anyone in the public can access through Kittitas Compas, but they have once again failed to do their research on this beautiful area we call home.

When looking at Kittitas County’s 2021 Comprehensive Plan, it is plainly stated in 7: **Capital Facilities and Utilities, 7.1.1 Goals and Objectives, #11- “Utility structures such as telephone exchange buildings, telecommunications towers, transformers stations, sewage treatment plants, and solid waste facilities should adjoin nonresidential uses wherever possible. Mitigation measures to minimize scenic impacts should be required.”** While this is stated for Snoqualmie Pass, there is every reason that it should apply to the rest of the county as well.

The land owner’s property the tower is proposed to be built on is zoned residential, as is the property directly to the north and south of it, and many other lots around it, **leading to a full intrusion of residential use.** Atlas has done nothing to try to minimize scenic impacts, in fact putting the tower squarely in the view of the house in close proximity to the south of it.

I greatly urge the county to follow its own Comprehensive Plan, and reject their application.

Segments of the comment made by Cassandra Baldassano

Reading through all the material I notice that Atlas states in several instances that **“The site is chosen.....”** and **“We strive to locate parcels that create the least amount of community disturbance”** **First of all I question the word “chosen” which indicates that there are choices to be made.** I know that Atlas sought sites that would accommodate their purpose. However, most landowners in this vicinity would turn down their proposal. **So when they find a willing landowner whose site fills their requirements there is no need to locate any further parcels that create the least amount of community disturbance. This is the case here. There is no regard for community disturbance.**

On the health issue: Atlas states in their letter which serves as a narrative **“The proposed site is chosen.....and distance from residential homes”** Why is distance from residential homes a concern?

Segments of the comment made by Jil Zilligen

1. **We note with concern that a NEPA report has neither been completed nor reviewed.** We respectfully request that no approval for this project be granted until after the NEPA report is complete, made available, and thoroughly reviewed.

2. While the SEPA checklist notes that no emissions are expected from the tower itself, there is no mention of the negative impacts from the planned one to four wireless providers' antennas that will be installed on the tower. Most concerning in this regard is the radiation emitted from the collocated antennas.

Segments of comment made by John Schmit

But since no presentation or advance notice of pro/con aspects of what may be of significant and irreversible impact to our homes and lives has taken place, I can only say that my wife and I are opposed to **what appears to us to be a hush-and-rush** change to the character, value, and perhaps livability of our environment. I trust that KCCDS is interested in the best interests of its jurisdiction and that my "hush-and-rush" comment is overstatement, but with the immediate deadline for input and limited information available, my wife and I want KCCDS to be aware that not all parties may be in agreement with this development.

Segments of comments made by Joseph Kingston

And only 10 days to respond. This is absolutely unacceptable on your part. There has been zero communication with us in regards to this project. Therefore, even with a miniscule amount of time we inform you that we oppose any and all plans to move forward on the new cell tower build near our neighborhood. I will go on to say that, learning through a neighbor, who learned through someone's Facebook post, that this project is planned is an **unacceptable job on Kittitas Counties part.** I am **hugely disappointed that our county (you) represent us in this way.** We pay taxes and vote. **Do your job with due diligence and We as a Community will decide Together, How, When and Where, We will move forward. Democracy Depends on Us All. Not people who make deals, shake hands and leave your own people out of the loop, in order to better serve individuals or behind the scenes groups of people's, ideals and benefits. Please, show respect, help to solve problems, and give us, your community, the opportunity to make good decisions together. Our position: We Oppose the build of this Cell Tower.**

Segments of comments made by Julie Sumner

This cell tower was brought to our attention by “word of mouth” in our neighborhood, not by the county. Unsure why our neighborhood was not notified by Kittitas County directly. I have read all of the letters submitted to the county to-date and agree with those who also have commented.

Location: This tower is proposed within agriculture zoning and has dozens of rural homes within one-half mile radius. I also wonder why this particular location is on the valley floor and not on a hillside. I do not wish any impacts to other Kittitas County citizens, but surely there must be a more appropriate areas where there are no people residing. **My simple mind wonders if Atlas is “shopping” for any property owner to allow this on their parcel. Is it more about money?**

Visual Aesthetics: We live, work and play within the beautiful Kittitas County, but to place a 100’ cell phone tower smack dab in the middle of a rural residential location is crazy. I do not see any proposed camouflage. I do see a 6’ tall chain link fence with barbed wire on top containing a 100’ monopole for 1-4 cell phone carriers. Sigh, these are not redeeming qualities!

Segments of comments made by Rebecca Seth

It is concerning that only landowners within 500 feet of the proposed project were notified, considering that the smallest parcel in our area is 3 acres. This leaves a vast majority of the landowners in the Manastash area not notified of this proposal, us included when we are roughly one-quarter of a mile from the proposed project. As I’m sure you know, the Manastash area is an exceptionally beautiful part of our valley & it’s why many of us have chosen to build homes and live in this area. The 100’ tall tower will have a visual impact on all in our area & goes against the 2021 Kittitas County Comprehensive Plan. Part of the plan states “RR-P1: The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.” **If the county allows the construction of this tower, you are doing the opposite of the goals & intent of the Kittitas County Comprehensive Plan.** This does not preserve rural character at all. The construction of the proposed project also opposes the following statements in the Kittitas County Comprehensive Plan: The application from Atlas also states that our community is underserved and that their tower will “alleviate current mobile network voice, data and first responder issues in an area that severely lacks reliable network coverage and capacity.

These claims are made by an out-of-state company that doesn’t have appropriate knowledge of our area to be making such statements. Our area has great coverage for cellphones, internet, satellite TV and we do not have first responder issues in our area. **Once you get into the Manastash Canyon the coverage gets unreliable, but this is appropriate for being in the mountains. The proposed tower on the valley floor isn’t going to provide coverage that is any better in the canyon because the signal will be blocked by mountains and hills, just as it is now.** The narrative that Atlas is using is false. While you are deciding on allowing the proposed project or not, please keep the people of the Kittitas Valley in mind & the fact that it goes against the rural landscape of the Kittitas County Comprehensive Plan. **The financial benefit of one individual is detrimental to Kittitas County** and we urge you to reject the proposed project at 4140 Manastash Road.

Segments of comments made by Kayla Carlson

This same tower was proposed to me as I own property on Blazing Sky Ln, **this is all about money** and not peoples well being. We need to get back to caring about our neighbors even after we are gone, because the landowner proposing this will be gone before this will affect him.

Segments of comments made by Melissa Schumaier

I was very disturbed to find that actual mailing of notifications **are not sent unless you are 500 feet from the proposed project. In the country, this is not attainable, because we all have a minimum of 3-acre parcels.** Allowing construction of a cellular tower in this location is not consistent with the intent, goals or policies in the Kittitas County Comprehensive Plan. In fact, they are the exact opposite **by catering to the financial gain of one individual landowner, at the expense of the rural landscape,** character and safety of the neighborhoods and the families that live there. I know the county has designated this as a utility which then gives it an administrative zoning code, which makes it not mandatory to educate the surrounding properties or those who are visually impacted by this. I wanted to point something out, that utility is a broad scope that is used for many different terms. Utility also touches on landlines, not the luxury of a cellular device. **In the Kittitas County Comprehensive plan, utilities are defined as, "...utilities element shall, at minimum, consist of the general location, proposed location, and capacity of all existing and proposed utilities, including but limited to, electrical lines, water bank, telecommunication lines and natural gas lines."** This line also outlines critical services for telephones as **"landlines"**. **Not cell towers or cellular phones.** All properties are served by landlines in this area. There are services that are already in use in this location. If an area is under served with city sewer, they would then be required to install their own septic system. If there is a sewer hookup in the area, they would be required to use this utility and not allowed to install their own septic system. If there is a service that is already there it should be put to use. This can easily be comparable to cell coverage. There are many cell services in this location where service is attainable. The application by Atlas is false that this is a community that is underserved and to **"alleviate current mobile network voice, data, and first responder issues in an area that severely lacks reliable network coverage and capacity."** **These are claims made by a company from Colorado that knows nothing of the area it is proposing.**

This area of the county is very much served with telecommunications. You can easily make phone calls, have internet connection, have satellite TV, and any other technology devices out there on the market. Using a false narrative to illustrate is a scare and false tactic.

The further you drive up into the Manashtash Canyon, the cell coverage dies off because of the hills and mountains that are surrounding you. There is no signal that will reach through the hills and surrounding mountains. This signal will not improve with this added tower and is another erroneous statement. The Emergency Management Council of Kittitas County has looked at mobile towers in the past to increase the strength of their connections when down in the Vantage area fighting wildland fire but they mentioned that the hills are the constant interruption of their cell signals. Bringing extra equipment for communications during fire season or wildland firefighting isn't beneficial because of said hills and mountains. It clearly will not help any communication efforts. Another erroneous claim is emergency services telecommunications are going to be more available. The hills and mountains are in the way, interrupting any signal. **All emergency calls are transferred to a satellite signal not cell tower.** Again, mountains and hills are in the way of signals to and from cellular phones, not the lack of cell towers. An introduction paragraph to the 2021 Comprehensive plan states that, **"One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. This Comprehensive Plan supports and preserves this rural lifestyle by limiting service levels to those historically provided in the County's rural areas.** Residents should expect County services, such as road maintenance and emergency responses to be limited and to decrease as the distance from a rural activity center or urban area increases." Those that moved into this area have not been underserved by emergency services or cell services but are aware if there is any interruption of any services, it is something that people don't get worked up over. We have come to know even if there is an interruption of any services it is short lived and life in the country can be slower.

When deciding on whether or not to allow such construction of this tower, I urge you to please look at the plan of the county in keeping with the rural landscape. **The financial gain of one individual on his own property**

at the detriment of many other families in the area should never be given preference. It doesn't preserve rural character and does compromise the land for the duration of the next 30 years. Please reject this proposal as it is evident that **this is a nuisance on private land**, disguised as something beneficial to the public. This is not a needed service in the area and will not give any more emergency services than is already provided. With so many areas of this county that are away from people, away from neighborhoods, schools, and children, I urge you to reject this location on this parcel and have them relocate to another area will less impact on our landscape. It is clear, that this doesn't fit into the model set forth by our County Commissioners to preserve the rural landscape for our families and our future.

Segments of comments made by Rod Johnson

*Hello Chace, I just heard from a neighbor that there is a proposed cell tower project in the works for Manastash Road. This is up the street from us and we strongly disagree with this proposal. We never received any notice from anyone regarding this, and I think many of my neighbors would agree. What is the process for writing a letter to protest against this???? I heard today was the last day, I want to make sure my input is heard. I am writing to protest due to the impact on our property valuations and the **disregard of any of the opinions of neighbors. This being shoved down our throat without consultation. Shame on you!***

Segments of comments made by Scott Malcolm

We are saddened to hear that the KCCDS is even considering the proposal for a cell tower to be located in our agricultural/rural neighborhood off of Manastash and Blaze Sky Lane. were **We are even more shocked by the lack of transparency with this issue, as most of the families impacted by this proposal were informed by a Facebook post.** My husband and I can't help but feel the same as John and Debra Schmit (see their email attached below which you received on 8.20.23) that **this is a "hush-and-rush" agreement which will not allow the neighboring community to have a say. We find this to be a travesty and lack of good judgement by your department that doesn't appear to take into consideration the health and wellbeing of the residence within close proximity, not to mention the wildlife that finds this area home.**

Segments of comments made by Thomas Cole

We were initially upset by the fact that we only learned of this project through word-of-mouth and received no official notification. We live within a quarter of a mile of the site and the proposed tower would be clearly visible from any point on either of our properties. **Should there have been no legal requirement for notification, it should have at least been demanded by common courtesy** for residents in such close proximity. We find it unusual that this project has moved forward with such speed through a government agency. The application for this project was only submitted on July 13, 2023 and yet approval already seems imminent. Conversely, I submitted a water budget neutrality application to the Washington Department of Ecology in October of 2021 and it still has not even been assigned to a permit specialist. The lack of notification and the speed of the process give the distinct impression of it being, as one of my neighbors so eloquently put it, **a "hush and rush" project. The justification submitted by Atlas Tower 1, LLC is nothing more than industry boiler plate** and does not factually apply to our area. Residents in this area, or its first responders, do not suffer for lack of reliable network coverage or capacity, and to refer to this **imaginary problem as "severe" is pure sensationalist hyperbole. That being said, I question what investigation was conducted to verify the claims of the applicant.**

The email from Marguaite Marrs that does not appear under comments on the KCCDS website – Atlas but only under "combined comments" Here it is!

Date: Thursday, September 7, 2023 4:09:47 PM CAUTION: This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Dear Chace, My husband Carl and I own our home and live at 2903 Manastash Road in Ellensburg. Our property is a little over 7.25 acres. We are located approximately 1 mile from the proposed cell tower. We didn't learn of this proposal until today through social media and a neighbor. We never received any notification. We are highly against this proposal!!!!

1. It will adversely affect our property values and those of our neighbors. I am a licensed Real Estate Broker in the State of Washington and work in Kittitas Valley. I have seen cell towers and power lines reduce property values by 25% in some cases.

2. The zoning here is AG-20, how is this even permissible under the current zoning? 3.

It will adversely affect our views to the west and the views of many, many of our neighbors.

4. Danger from Radiation, either perceived or real.

5. The cell companies are permitted to go another 20 feet once built without permission from anyone, so we could be looking at a 120 ft. tower.

6. There are many other locations where this could go that would not so adversely affect so many neighbors. Is there going to be a hearing on this???? Please keep us in the loop. Sincerely, Carl and Marguerite Marrs

See below issues regarding "rural Character" "visual effects" "Compatibility" "distance from residential homes" "consistent with the intent and character of the zoning district in which it is located. "consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan" and comments on statements such as the statement "The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood." Or "The proposed use will ensure compatibility with existing neighboring lands uses," Or the acceptance of KKCC of the statement "The proposed site is chosen to maximize visual aesthetic and distance from residential homes." or the KKCC statement "The proposed use is consistent with other utility focused uses in Kittitas County."

Brad Ishler paragraph 3

Beca Smith (Seth) paragraph 2

Dana Ogan Paragraph 2 and 3

Candice Comfort Paragraph 3,5,6,8

Julie Sumner paragraph 2

Ann Fonken paragraph 1

Carl & Marguerite Marrs paragraph 2

Frances Ceraolo (08.16.2023) paragraph 4

Jil Zilligen # 4

Justin & Rebecca Seth paragraph 2 and 4

Justine Magnotti paragraph 1

Anthony & Melissa Schumaier paragraph 1 3 4 5 and 8

Rebecca Watts paragraph 1

Ronni Collins paragraph 1-4

Thomas Cole Paragraph 6

Frances Ceraolo – entire document (08.15.2023).

Failure to provide evidence of response to written comments in the application process

Under Notice of Application “All comments will be considered in the decision making process”

On page 8 Findings of Fact under Public Comment

Comments were received from 27 members of the public. All comments are available for public review.

Applicant response Atlas provided a response to comments regarding health concerns, visual aesthetics, structural safety, location, property values, and potential future extension of the tower. All comments are on file and available for review.

Staff Response Comments were transmitted to the applicants on September 8, 2023.

Comments were forwarded to Atlas Tower who made generalized and not specific responses which included:

#2 Concerns with visual aesthetics “We will have our design updated to reflect the use of a compatible color to camouflage the tower. I have attached color swatches for you to review and choose which color is preferred.

#5 Concerns that landline is a utility and cell phones are a luxury. Cell phone service has become critical for use in many situations such as emergency services. Most households do not use landlines, but rather use cell phones for their phone communication.

#6 Concern of location. Atlas shopping for any owner who will allow this on their property. The process for site selection comes from the carrier needing to cover a certain area.

#7 Concern of the tower affecting property values. I have provided an FAQ sheet with some helpful information regarding cell towers and their impact on home values. (comparisons are made to Boston, Dallas, Phoenix, and Raleigh)

See entire document attached

Under Responses to Agencies

#4 Kittitas Community Development Services – We are aware that a building permit is required for our tower. The carriers will be responsible for their own building permit prior to collocating onto our tower and building any additional structures within the compound area. ----

There is no further mention of Public Comments. They are tossed back and forth like hot potatoes. The comments were addressed to KCCDS and not to Atlas. KCCDS has a responsibility to examine and give a valid response to these comments or questions raised by the public. They have chosen to ignore these comments and thus validate the perception that the inclusion of allowing “Public Comments” in application proceedings is nothing more than a travesty and farce. This type of action leads to a lack of confidence in the entire county government structure which in turn leads to community instability in general.

Article 11 General Guidance

1.28.050 General Guidance

1. Kittitas County shall make a determination of the effects of such actions have on:

a. Community stability in general

b. Preservation of local custom, cultures

4. Reconcile the proposed action with Kittitas County laws, policies and plans, including the comprehensive plan and, after such consideration, take all practical measures to resolve any conflicts.

5. Take all appropriate mitigative measures adopted with concurrence of County to adequately address the adverse impacts on the customs, cultures, or economic stability or protection or use of the environment.

6. Not violate, through regulatory or other means, any private property rights of the citizens of Kittitas County.

7. Consult publicly or privately with all citizens who may be affected by the proposed regulation.

See also under sections marked Summary, Site Placement , Utilities, Processing of Application, and Rural Issues, of this appeal.

From: [Sandra Layton](#)
To: [Chace Pedersen](#)
Cc: lukvpugs@fairpoint.net; [Jamey Ayling](#); [Zach Torrance-Smith](#); [Carri Wullner](#)
Subject: Re: ACU-23-00003 Atlas - Transmittal of Comments
Date: Tuesday, September 19, 2023 9:15:54 AM
Attachments: [Responses to Health Concerns of Towers.pdf](#)
[Housing impacts and health info.pdf](#)
[Response to comments.pdf](#)
[Screen Shot 2022-10-03 at 3.46.24 PM.png](#)

CAUTION: This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Good Morning Chace.

Please find our responses attached. I have also included other attachments for additional information in response to some of the comments.

Feel free to reach out if you need any additional information or have any further questions.

Thank you,

Sandra Layton
Territory Manager, Mtn West
801-310-0844
slayton@atlastowers.com
www.atlastowers.com

3002 Bluff St. Suite 300 Boulder, CO 80301

Screen Shot 2022-10-03 at 3.46.24 PM.png

On Fri, Sep 8, 2023 at 10:40 AM Chace Pedersen <chace.pedersen@co.kittitas.wa.us> wrote:

Good morning,

Please see the attached correspondence regarding your Administrative Conditional Use application (ACU-23-00003 Atlas). A physical copy of the correspondence will be placed in the mail. Please let me know if you have any questions or concerns.

Thanks,

Chace Pedersen

Planner I

Kittitas County Community Development Services

411 N. Ruby Street, Ste 2

Ellensburg, WA 98926

Office: (509) 962-7637

chace.pedersen@co.kittitas.wa.us

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message id: 38eb45916c6dcdbdac24bb8719d004a14

I am the Legal Director for Atlas Tower, and I would like to offer a few comments which may provide some clarity on the topic of Radio Frequency (RF) safety issues as they relate to human health.

1. There is a vast body of scientific evidence that has proven that RF communication devices are safe for humans of all ages. Reliable sources of information on this topic can easily be found at the Federal Communications Commission's (FCC) website. Other sources include the Occupation Health and Safety Administration (OSHA), the American Cancer Society, the World Health Organization (WHO), as well as reputable peer reviewed scientific and medical journals from prominent academic institutions of higher learning.
2. Every aspect of wireless technology, including the design, manufacture, and use of wireless devices is regulated for safety. Current regulations and court rulings regarding RF safety consistently affirm that RF exposure rules currently in place ensure that this technology is safe for both adults and children alike.
3. Congress has granted the authority to establish RF standards for safety only to the FCC. It is well established law that the FCC's rules and regulations for safety are not subject to challenge in state or local jurisdictions. Therefore, any concerns or questions about the regulation of RF, or requests to deny the use of RF approved equipment must be directed to the federal government through the FCC. Therefore, local governmental entities, such as a Planning & Zoning Commission, a Board of County Commissioners, or a School District may not regulate matters related to RF safety or deny an application based on health concerns.
4. Understandably, this topic is complex and raises valid questions from concerned members of the public. Those questions should be directed to the FCC and other federal agencies that are charged by Congress with the responsibility to regulate the use of this technology. State and local governments may not issue statements on this topic, as the federal government has preemption on this subject matter. See Article VI, Paragraph 2 of the US Constitution and FCC Resolution 19-126 (regulation of health effects of cell phone RF Emmissions preempt state lawsuits alleging adverse health effects).
5. Atlas Tower is available to assist with any questions regarding the process that was followed to gain approval for this tower, and all other towers. Rest assured that Atlas Tower complied with all noticing requirements and other requirements, and will at all times continue to comply with all requirements.
6. Wireless technology is proven to be safe and good for the community. Wireless technology allows the community to function more efficiently, and it greatly facilitates first responder reaction times, thus improving emergency response and saving lives. Wireless communication allows families to stay in touch with their children and other family members. Wireless technology enables businesses, organizations and educational institutions to be more efficient and more equitable in their delivery of resources to all types of people, regardless of income or other inequities that may exist in society. The resounding demand for excellent wireless communication in your community is driven by the needs of your students, your parents, and your local community.



VICTOR A STRAND // Parcel #: 17-18-18010-0001 – Chosen site location. The original site was on the parcel to the west of this parcel (Also owned by Victor Strand). Teri Ellis reached out to me very early, (prior to submitting the application) while the location was still being confirmed, and agreed that this site would be better to not block her view because there are already trees there which block it in that direction already. This site fits perfectly in the location needed for carrier to provide the best service, and the parcel is large enough to handle the size of the facility while meeting all zone requirements.

Response to Public (Neighborhood) Comments

1. Health Concerns:
 - a. Please find the attached document with additional information regarding health concerns.
2. Concerns with the visual aesthetics:
 - a. We will have our design updated to reflect the use of a compatible color to camouflage the tower. I have attached color swatches for you to review and choose which color is preferred.

3. Concerns with pole overloading and risk that it will topple over due to winds, earthquakes, accidents, etc.
 - a. Geotechnical test are done to analyze the soil under the foundation. Our engineers design our towers to meet or exceed all building codes and standards.
4. Concern of the tower having a flashing light and shining in windows
 - a. We have already received approval from the FAA and confirmed that no light will be required for this tower.
5. Concern that landline is a utility and cell phones are a luxury
 - a. Cell phone service has become critical for use in many situations such as emergency services. Most households do not use landlines, but rather use cell phones for their phone communication.
6. Concern of location. Atlas shopping for any owner who will allow this on their property
 - a. The process for site selection comes from the carrier needing to cover a certain area.

The carrier will give us a lat/long to work from, which Atlas will first check for zoning correct parcels .5-1 mile from their pinned location. Atlas then sends out leases in the range, and as we receive inquiries from willing landowners, will submit these options to the carrier to review.

The carrier ultimately chooses the location that works for them based on their coverage objective. So our process, is parcels that meet zoning and tower height we are looking for, and to have a ground lease with a willing landowner. We are happy to get more coverage justification from the carrier if need.

7. Concern of the tower affecting property values
 - a. I have provided an FAQ sheet with some helpful information regarding cell towers and their impacts to home values.
8. Concern cell companies are permitted to go another 20' once built without permission (section 6409)
 - a. Section 6409 does not give the right to extend the tower 20' without anyone's permission. Our tower is designed to handle 4 carriers. If the carrier needs to extend the tower 20' to provide better service, they would have to do the following
 - i. Confirm there is not enough space for their antenna on the existing pole
 - ii. Prove to the FCC that an extension is necessary
 - iii. Carriers will have to provide justification for the additional height
 - iv. Review from the local government is required

Responses to Agencies:

1. **Confederated Tribes of the Colville Reservation – Archaeological Report and Phase 1 of NEPA have been complete. Final NEPA report expected 11/3/23. We will coordinate with Confederate Tribes of the Colville Reservation prior to ground breaking.**
2. **Kittitas Valley Fire & Rescue – We will work with them and update what is needed in the Construction documents.**
3. **Kittitas County Public Works – We will comply with these comments. They will be shown in the Construction design.**

4. **Kittitas County Community Development Services – We are aware that a building permit is required for our tower. The carriers will be responsible for their own building permit prior to collocating onto our tower and building any additional structures within the compound area. We will provide the Washington State approved stamped plans along with the tower drawings with calculations for our tower. We will forward the design criteria to the appropriate people.**
5. **Kittitas County Fire Marshal – We will make sure that the access is in compliance in our Construction Design.**

FAQ'S

Information provided by the American Cancer Society.

www.cancer.org

How do cell phone towers expose people to RF waves?

Cell phone base stations can be free-standing towers or mounted on existing structures, such as trees, water tanks, or tall buildings. The antennas need to be high enough to adequately cover a certain area. Base stations are usually from 50 to 200 feet high.

Cell phones communicate with nearby cell towers mainly through RF waves, a form of energy in the electromagnetic spectrum between FM radio waves and microwaves. Like FM radio waves, microwaves, visible light, and heat, they are forms of non-ionizing radiation. This means they do not directly damage the DNA inside cells, which is how stronger (ionizing) types of radiation such as x-rays, gamma rays, and ultraviolet (UV) rays are thought to be able to cause cancer.

On the ground near a cell phone tower

RF waves from a cell phone tower antenna, like those from other telecommunication antennas, are directed toward the horizon (parallel to the ground), with some downward scatter. Base station antennas use higher power levels than other types of land-mobile antennas, but much lower levels than those from radio and television broadcast stations. The amount of energy from RF waves decreases rapidly as the distance from the antenna increases. As a result, the level of exposure to RF waves at ground level is much lower than the level close to the antenna.

At ground level near typical cellular base stations, the amount of energy from RF waves is hundreds to thousands of times less than the limits for safe exposure set by the US Federal Communication Commission (FCC) and other regulatory authorities. It is very unlikely that a person could be exposed to RF levels in excess of these limits just by being near a cell phone tower.

Do cell phone towers cause cancer?

Some people have expressed concern that living, working, or going to school near a cell phone tower might increase the risk of cancer or other health problems. At this time, there isn't a lot of evidence to support this idea. Still, more research is needed to be sure.

What expert agencies say

The American Cancer Society (ACS) does not have any official position or statement on whether or not radiofrequency (RF) radiation from cell phones, cell phone towers, or other sources is a cause of cancer. ACS generally looks to other expert organizations to determine if something causes cancer (that is, if it is a carcinogen), including:

The International Agency for Research on Cancer (IARC), which is part of the World Health Organization (WHO)

The US National Toxicology Program (NTP), which is formed from parts of several different government agencies, including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA)

Other major organizations might also comment on the ability of certain exposures to cause cancer.

FAQ'S

Information provided by the CTIA.

www.wirelesshealthfacts.com

Are cellphones, cell towers, small cells and antennas safe?

Radiofrequency energy from wireless devices and networks, including radiofrequencies used by 5G, have not been shown to cause health problems, according to the international scientific community. To cite one example, the Food and Drug Administration said, "Based on the FDA's ongoing evaluation, the available epidemiological and cancer incidence data continues to support the Agency's determination that there are no quantifiable adverse health effects in humans caused by exposures at or under the current cell phone exposure limits."

Have wireless devices and networks been shown to cause cancer in humans?

No, according to the international scientific consensus, wireless devices and networks have not been shown to cause cancer in humans. In fact, an analysis of government statistics shows that since the introduction of mobile phones in the 1980s, rates of brain cancer have remained unchanged while the exposure to RF energy from wireless networks has gone up. Many studies have explored whether cellphones cause cancer with the American Cancer Society concluding that "RF waves given off by cell phones do not have enough energy to damage DNA directly or to heat body tissues. Because of this, it's not clear how cell phones might be able to cause cancer."

Is 5G safe?

The scientific consensus is that there are no known health risks from all forms of RF energy at the low levels approved for everyday consumer use. The FCC regulates RF emissions, including millimeter waves from 5G devices and equipment, and has adopted the recommendations of expert scientific organizations that have reviewed the science, including dozens of studies focused specifically on millimeter waves, and established safe exposure levels. In December 2019, the FCC reaffirmed—on a unanimous and bipartisan basis—these safety standards. Typical exposure to 5G devices—such as small cells attached to phone poles or the sides of buildings—is far below the permissible levels and comparable to Bluetooth devices and baby monitors (New Orleans City Council Hearing, 2019). The FCC continues to monitor the science to ensure that its regulations are protective of public health.

Do cellphones and wireless equipment have to meet safety standards?

Yes. Safety standards are set by the Federal Communications Commission in order to protect public health. In December 2019, the FCC reaffirmed—on a unanimous and bipartisan basis—these safety standards. The Food and Drug Administration has also said that "the existing safety limits for cell phones remain acceptable for protecting the public health." Wireless devices go through a rigorous approval process to ensure they meet guidelines and they operate well under safety limits. These limits are based on recommendations from the scientific community and expert non-government organizations including the National Council on Radiation Protection and Measurements.

THE TRUTH ABOUT 5G

Radiation measured from a microwave and compared to a 5G tower.

my.broadband.co.za

Common misconceptions with 5G:

Spreads COVID

Causes cancer

High radiation levels

Poses a health risk

Uses more energy

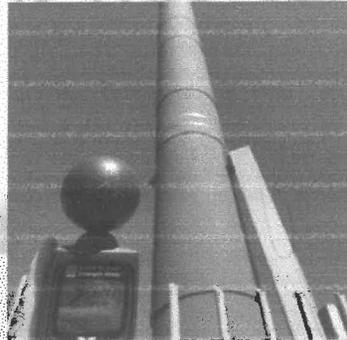
Is not essential

"We expect 5G to become the worldwide dominating mobile communications standard of the next decade."

- Dr. Christoph Grote, Senior Vice President Electronics, BMW Group



**Radiation from a microwave:
4W/square meter**



**Radiation from 5G tower:
.004 W/square meter**

HOW DOES THE PROXIMITY TO A CELL TOWER IMPACT HOME VALUES?

Information provided by the Valbridge Property Advisors.

www.valbridge.com/how-does-the-proximity-to-a-cell-tower-impact-home-values/

Valbridge Property Advisors conducts market studies to determine the impact of wireless communication towers on property values in four metropolitan U.S. cities.

Valbridge Property Advisors recently completed market studies in Boston, Dallas, Phoenix, and Raleigh, to determine the impact of the presence of wireless communications towers on residential property values.

The Process

The studies were conducted in multiple sub-areas of each city, which were then compiled to produce measurable results. Home sale values demonstrated no measurable difference for those homes within a 0.25-mile radius sphere of influence of the cell tower and those homes in a 0.50-1.0 mile radius outside of the cell tower sphere of influence. In many of the sub-areas, home prices increased nominally. No measurable difference is defined as a less than 1% difference; nominal difference is defined as 1-3%.

To prepare the sub-area studies, the center points of each sub-area's primarily single-family residential areas or specific subdivisions were identified by latitude and longitude. Single-family residential sales with both a qualified buyer and a qualified seller from the first quarter 2015 through first quarter 2018 were located and verified to assess the transactions.

THE RESULTS ARE IN

BOSTON: The Boston study revealed 10 of 22 pairings of home sales with higher sale prices within the 0.25-mile sphere of influence, 11 of 22 pairings with lower home prices, and one pairing indicating no difference. The data indicates cell towers do not have a negative impact on property values within a .25-mile radius of cell towers. Overall, the measurable difference is less than 1% in both the increasing and decreasing home price indications.

DALLAS: In Dallas, for homes in the .25 to 1.00-mile radius, there was no measurable difference. Out of 33 paired sales in five sub-areas, 20 pairings indicated higher values for those sales within the 0.25-mile sphere of influence, while 12 pairings indicated lower values and one indicated no difference. Overall, Dallas shows no measurable difference. The data indicates cell towers do not have a negative impact on property values within a .25-mile radius of cell towers.

PHOENIX: There were 37 paired sales in the Phoenix market, and 20 of the pairings indicated increased home prices within the 0.25-mile sphere of influence while seventeen of the 37 pairings indicated decreased home prices. Four of the five sub-areas studied had no measurable difference and one sub-area had a nominal difference.

RALEIGH: In Raleigh, fourteen of 22 pairings indicated higher home prices within the 0.25-mile sphere of influence while eight of 22 indicated slightly decreased home prices. Overall, the average and median prices increased in four of the five sub-areas and one sub-area indicated no measurable difference. The data indicates cell towers do not have a negative impact on property values within a .25-mile radius of cell towers. Overall, the measurable difference is less than 1% in both the increasing and decreasing home price indications.

DIG DEEPER

To request a copy of the study findings, visit Valbridge.com.

From: [Sandra Layton](#)
To: [Chace Pedersen](#)
Cc: lukypugs@fairpoint.net; [Jamey Ayling](#); [Zach Torrance-Smith](#); [Carri Wullner](#)
Subject: Re: ACU-23-00003 Atlas - Transmittal of Comments
Date: Tuesday, September 19, 2023 10:41:42 AM
Attachments: [Tower Color Swatches \(1\).docx](#)
[FS 10233 - National Parks Service Brown.pdf](#)
[Screen Shot 2022-10-03 at 3.46.24 PM.png](#)

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Hi Chace.

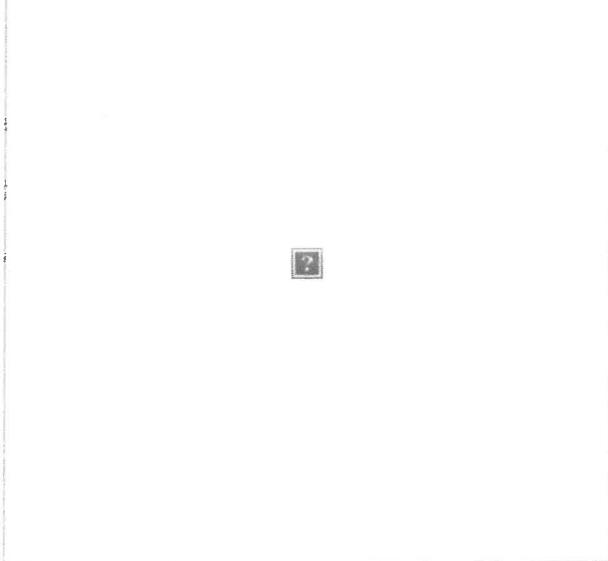
I forgot to add the color swatches to my email. You can use these to determine which color would work best to camouflage the tower. Please include this with my response submission.

Thank you,

Sandra Layton
Territory Manager, Mtn West
801-310-0844
slayton@atlastowers.com
www.atlastowers.com

3002 Bluff St. Suite 300 Boulder, CO 80301

Screen Shot 2022-10-03 at 3.46.24 PM.png



From:
To:
Subject: Opposition to the Atlas Cellular Tower Project
Date: Tuesday, August 22, 2023 9:27:02 PM

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08/22/23

To Whom It May Concern; Kittitas County Community Development,

In the middle of August, I learned that Kittitas County had received an application from Atlas Tower 1 LLC to build a 100ft tall cell phone tower off Manastash Road at Blazing Sky Lane on the rural property of Victor Strand that is zoned as residential. As my family lives very near this location, I have a deep investment in this project for multiple reasons, and am writing to express my opposition to this tower.

While reading Atlas' general description of the site in their SEPA Environmental Checklist, under B: Environmental Elements, 1: Earth- bullet point A, they state it will provide critical wireless coverage to the surrounding area. It was surprising to me that they would say the coverage is critical, as it is not only not critical, but it is indeed not even deemed as essential by the county's own standards laid out in the 2021 Comprehensive Plan under Utilities, Section 6:1- Introduction: "As defined by the WUTC, some utilities are considered a critical service, namely electricity and standard telephone, and must be provided "upon demand." Per definition, standard telephone service is a "landline phone service", not cell phone service. It is not a critical service that has to be provided, but a luxury service that should not be expected if it is not the right area to build a tower.

Whether this is the correct location to build a 100ft tall cell phone tower should never have come into question or consideration. Per Atlas' Project Narrative, they state under Wireless Telecommunications Facility Characteristic on page 2: Visual Effect- "We strive to design our facilities and locate parcels that create the least amount of community disturbance. The surrounding area is largely rural with low density residential zones nearby. The proposed site is chosen to maximize visual aesthetic and distance from residential homes." This can also again be found in the Project Narrative on page 5, bullet point E: #12: "E. The proposed use will ensure compatibility with existing neighboring land uses. The surrounding area is largely rural with low density residential zones nearby. The proposed site is chosen to maximize

visual aesthetic and distance from residential homes.” There is nothing about a 100ft tall galvanized cell phone tower (per Atlas’ site plan) directly off one the main roads and thorough fairs in west Ellensburg that won’t create a community disturbance. This is an area of beautiful ridgelines on Manastash Ridge, much of which is public lands for people to enjoy and recreate on because of its beauty. To say this site was chosen to maximize visual aesthetics is false, and not shocking from a company based out of Colorado who most likely hasn’t even visited the site in person.

Many people who have moved out to this area have chosen it due to it being rural, and wanting to get away from urban areas that are characterized by city features such as 100ft tall galvanized cell phone towers. To build one in an area that is strictly zoned as agricultural and residential is 100% not in keeping with existing neighboring land uses, and shows that Atlas is not committed to their promise of maximizing visual aesthetics and distance from residential homes. A 100ft tall tower can easily be seen in all directions for miles as the valley floor is flat, with no direct hills to block it. A simple search on Kittitas Compas shows there is in fact a house directly to the south of the proposed tower location, which will not only detract from the visual aesthetics of the area for the owners, but also lower its property value, as will it do for many neighboring homes. Historically, homes near cell phone towers or large power lines have reduced values compared to homes that are not near those things, which leads me to question if the county is following their own comprehensive plan to keep the area rural.

In the 2021 Kittitas County Comprehensive Plan, Section 8.4: Rural Lands, bullet point 8.4.1: Introduction, it states, “Kittitas County residents, through an extensive public involvement process in 2012, provided descriptions of “rural” that they wish to preserve. Such descriptions include many of the conclusions presented by scientific research including, “natural open spaces and streams,” “forests,” “recreational opportunities and spaces,” “agriculture lands and activities,” “mountain views,” and “development away from urban areas.” These descriptions capture the essence of “rural character” in Kittitas County, and fall squarely within the broad definition in RCW 36.70A.030. “Rural character” in Kittitas County is predominantly a visual landscape of open spaces, mountains, forests, and farms and the activities which preserve such features.” The citizens of Kittitas County have spoken and made clear what their expectation is for our rural areas, and the tower Atlas plans to build does not fit with this expectation whatsoever. It will detract from the view of our natural open spaces, it will detract from our agriculture lands as it takes away the feel of our culture of farming and introduces a very urban and commercial aspect, it will detract from our mountain views as it will be built directly in front of Manastash Ridge, and it is the exact opposite of “development away from urban areas”.

Under the Growth Management Act of Washington State, the legislature recognizes the importance of rural lands and rural character to Washington’s people. It states in RCW 36.70A.030, Definitions: bullet point (23), “Rural character” refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan.” As I have laid out in the previous paragraph, Kittitas County’s 2021 Comprehensive Plan clearly shows the cell tower Atlas is requesting to construct is in no way in keeping with the pattern of land use. This can also be backed by looking at the zoning of the area on Kittitas Compas

which shows it to be Rural Working Land Use (Agriculture 20 Zoning), and Rural Residential Land Use (Residential 11). With evidence from multiple sources to prove what our rural land is and should remain, I can easily say the proposed use by Atlas Tower 1 LLC does not ensure compatibility with existing neighborhood land uses. They state in the Project Narrative, G, bullet point (ii) that they will maintain the “rural character” of our area, but that cannot be done with what they are proposing to build. It is shocking, wrong, and incorrect for the company to say in the Project Narrative under #12, bullet point G that their cell phone tower is consistent with the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands.

For a company that says they will not impede on the rural character of this location of Kittitas County, it's inexcusable for them to not know there is an irrigation ditch bordering the proposed tower site. If they knew the agricultural background of our county, and knew the area, they would know there was water immediately next to it. However, they marked “No” on their SEPA Environmental Checklist as to whether there was any surface water body on or in the immediate vicinity of the site under 3: Water, bullet point a: Surface Water, #1. There is also a 100 year floodplain on the north side of the road, just opposite the build site. Because of this, the tower is required to be built a certain number of feet away from it, which they have made clear they are unaware of. When asked under 3: Water, bullet point a: Surface Water, #6 if the proposal lies within a 100 year floodplain, they marked “Unknown.” This is simple information anyone in the public can access through Kittitas Compas, but they have once again failed to do their research on this beautiful area we call home.

When looking at Kittitas County's 2021 Comprehensive Plan, it is plainly stated in 7: Capital Facilities and Utilities, 7.1.1 Goals and Objectives, #11- “Utility structures such as telephone exchange buildings, telecommunications towers, transformers stations, sewage treatment plants, and solid waste facilities should adjoin nonresidential uses wherever possible. Mitigation measures to minimize scenic impacts should be required.” While this is stated for Snoqualmie Pass, there is every reason that it should apply to the rest of the county as well. The land owner's property the tower is proposed to be built on is zoned residential, as is the property directly to the north and south of it, and many other lots around it, leading to a full intrusion of residential use. Atlas has done nothing to try to minimize scenic impacts, in fact putting the tower squarely in the view of the house in close proximity to the south of it.

While reading Atlas' site plan on page Z-3, it shows the cell tower to remain a galvanized color unless directed otherwise by Kittitas County. If they were true to their word about maximizing visual aesthetics, they would understand that galvanized is in keeping with an industrial or commercial area, not the rural country. A company that is invested in doing its best for the community would know that ours is one of natural tones- tans or light browns for example. When one looks at Manastash Ridge, it is easy to see a hardened steel color would not blend in, but care to learn this was not taken. They also state in their site plan on page Z-4 that the 50'x50' fence they plan to construct around the tower and electrical facilities at the bottom will be chain link coated in black vinyl. Again, this is in keeping with an industrial or commercial area, not one found in an area blanketed by farmland and family homesteads. Out of any color that could be chosen, black is possibly one of the worst. As anyone who lives out

here knows, black things get covered in dirt and dust that is blown in our famous Ellensburg winds, leaving them sticking out like a sore thumb once they are coated in it. A brown or tan would much better hide the dirt that comes with rural lands and farming, and better yet, wood reinforced with steel poles on the back side where the public can't see them. It is easy to look around our area and view beautiful wooden barns that grace our rural landscape, but not black vinyl coated chain link fencing. If there is any attempt to keep the area rural and visually appealing, Atlas should know this and would have selected wood.

In closing, I leave the county with their own words. "One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. This Comprehensive Plan supports and preserves this rural lifestyle by limiting service levels to those historically provided in the County's rural areas. Residents should expect County services, such as road maintenance and emergency responses to be limited and to decrease as the distance from a rural activity center or urban area increases." This can be located in the Kittitas County 2021 Comprehensive Plan under 8.4 Rural Lands, 8.4.1 Introduction. As Atlas will not preserve the rural lifestyle of our area if allowed to build their 100ft tall galvanized cell phone tower, I greatly urge the county to follow its own Comprehensive Plan, and reject their application.

Thank you for your time and consideration in this matter, and I eagerly await Kittitas County Community Development's decision.

Respectfully,

Candice Comfort

From: [Cassandra Baldassano](#)
To: [Chace Pedersen](#)
Subject: ACU-23-0003 Atlas
Date: Thursday, September 7, 2023 2:36:00 PM

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I oppose this proposal. My elderly parents David and Frances Ceraolo reside at 131 Blazing Sky Lane which is the residence most affected by this proposed cell tower and the eventual placement and emissions of RW from attached antennas. My parents health is fragile.

Reading through all the material I notice that Atlas states in several instances that "The site is chosen....." and "We strive to locate parcels that create the least amount of community disturbance"

First of all I question the word "chosen" which indicates that there are choices to be made. I know that Atlas sought sites that would accommodate their purpose. However most landowners in this vicinity would turn down their proposal. So when they find a willing landowner whose site fills their requirements there is no need to locate any further parcels that create the least amount of community disturbance. This is the case here. There is no regard for community disturbance.

I read my father's comments (David Ceraolo) who lists the most frequent concerns as being health concerns, rural character and property values.

On the health issue: Atlas states in their letter which serves as a narrative "The proposed site is chosen.....and distance from residential homes"

Why is distance from residential homes a concern?

Under the Sepa section # 7 Environmental Health Atlas responds with "see article V1 paragraph 2 of the US constitution and FCC resolution 19-126"

Under Sepa – Supplemental #1 How would the proposal be likely to increase emissions.....to air?" Atlas answer to this question is "will not increase any items above." This is a patently false statement.

It appears that this proposal rises many health concerns hence the following documents:

Comments Kittitas County Public Health
Correspondence Health & FCC Information Atlas Legal Statement
Notice of Application Memo

None of these documents give me reassurance that there are no health concerns regarding this proposal. In fact they do the opposite. Please take into account my mother's (Frances Ceraolo) comment regarding the American Cancer Society finding that a distance of 300 to 400 meters from residences would likely be sufficient distance to negate the effects of emissions. Respectively submitted.

Cassandra Baldassano

From: [frances.ceraolo](#)
To: [Chace Pedersen](#)
Subject: ACU-23-00003-Atlas
Date: Wednesday, August 16, 2023 6:23:36 PM
Attachments: [Aerial View Map.pdf](#)
[Project Narrative.pdf](#)
[SEPA Checklist.pdf](#)
[Site Plan and Civil Plans.pdf](#)
[Correspondence - Deemed Incomplete.pdf](#)

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Dear Mr. Pedersen

Please find my comments relative to the above matter. I have made additional comments in red text on the original documents submitted by Atlas which are attached hereto as separate files and should also be considered. They are:

1. Project Narrative
2. SEPA Checklist
3. Site Plan & Civil Plans
4. Correspondence Deemed Incomplete
5. Aerial View Map

In addition to the comments on said documents I would like to address a couple other concerns that I have.

1. How many antennas' will Atlas be the allowed to place on the Tower and is there a maximum number that the county will allow?
2. Can Atlas add to the height of the proposed Tower if it is approved to accommodate additional antennas' for the cell phone companies? and
3. Has Kittitas County permitted the construction of a cell phone tower within 300-400 meters of a residence.

In this case, Atlas was not in compliance with the County requirements and had to move the proposed location of the Tower. The application was deemed complete when they moved the Tower closer to the Ceraolo residence, not further away.

This house was built and the window placement oriented to take advantage of the view of the Stuart Range. The construction of the proposed cell tower would greatly diminish the view, pleasure and enjoyment not to mention the value of 131 Blazing Sky Lane.

Furthermore no consideration has been given to alternative sites. Victor Strand owns the 20 acre parcel contiguous which includes the 4 acre proposed site. There is adequate space to relocate the proposed tower in the SW or SE corners or even the NW corner of the 20 acre parcel. This would greatly mitigate the problem of distance and sights from nearby residences since the only buildings near the SW and SE corners are barns.

Additionally, there is an existing driveway which would accommodate access to the SW or SE corners and would eliminate the need for an additional driveway on Manashtash Road.

HEALTH CONCERNS: The American Cancer Society has stated that more research is needed to address the concerns relating to RW emissions from cell phone towers. It cites several studies that looked at the cancer rates of children living in close proximity to cell phone towers. Conclusions were reached that a distance of 300 to 400 meters from the radiation source had a negatable effect on any health concerns of seniors and children. Has Kittitas County permitted the construction of a cell phone tower within 300-400 meters of a residence?

Thank you for your time and consideration of my comments on this issue.

Respectfully Submitted,

David & Frances Ceraolo



ACU-23-00003 Atlas Tower

Aerial View Map

The aerial view map is out of date. Taken prior to October 2021



Atlas Tower 1, LLC
3002 Bluff Street, Suite 300
Boulder, CO 80301
(303) 448-8896



July 13, 2023

Kittitas County Planning
411 N Ruby St. #2
Ellensburg, WA 98926

RE: Zoning Narrative for Telecommunications Facility
Site Name: Blazing Sky

To Whom It May Concern:

Atlas Tower 1, LLC is submitting a Zoning Application to the Kittitas County Planning and Zoning Department for review of a new proposed wireless telecommunications facility build on the property of 4140 Manastash Rd, Ellensburg, WA 98926 in Kittitas County, Parcel #: **17-18-18010-0001**. This letter shall serve as a narrative for the proposed 100' monopole telecommunications facility and how this project will provide the needed mobile network coverage while reducing the need for additional cellular facilities in the future. This project is being proposed and this justification is being provided in an effort to alleviate current mobile network voice, data, and first responder issues in an area that is severely lacking reliable network coverage and capacity.

SITE DETAILS

Land Owner:

Victor A Strand
4140 Manastash Rd.
Ellensburg, WA 98926

Site Address:

4140 Manastash Rd.
Ellensburg, WA 98926
Kittitas County
Parcel #: **17-18-18010-0001**

Applicant:

Atlas Tower 1, LLC
3002 Bluff St., Suite 300
Boulder, CO 80301

Coordinates:

Latitude: 46.970923
Longitude: -120.626037
Ground Elevation: 1787 (NAVD '88)*

Zoning:

AG-20

Lease Area:

50 x 50

PROPOSAL SUMMARY

The purpose of this request is to build a 100' monopole telecommunications tower within a 50 x 50 wireless facility. This facility will provide critical wireless coverage to the surrounding area. The proposed site is zoned AG-20 where coverage is lacking, and the capacity of the existing infrastructure is reaching its limit. As the area develops further, and the existing users demand more data for their existing devices, existing infrastructure will reach capacity limits and be unable to meet coverage needs. This tower and facility will be used for structural support of up to four wireless providers. Each provider will install antennas and on-the-ground base-station equipment.

WIRELESS TELECOMMUNICATION FACILITY CHARACTERISTICS

Visual Effect

We strive to design our facilities and locate parcels that create the least amount of community disturbance. The surrounding area is largely rural with low density residential zones nearby. **The proposed site is chosen to maximize visual aesthetic and distance from residential homes.**

This is not an accurate statement. There are other sites available on the landowners property that would minimize the visual aesthetic and distance from the homes.

Frequency Of Maintenance Work On The Proposed Facility

On average, after initial installation, a carrier or its contactors would likely visit the facility about one to four times a year for maintenance, though this number could vary depending on the specific circumstances of the facility.

The Average Number Of Vehicles Visiting The Facility

The average maintenance visit by a carrier or its contractors would likely involve one pickup truck. With an average of one to four visits a year and one truck a visit, there would likely be about one pickup truck visiting the site a month, per carrier, if at full capacity.

The Average Duration Work Visits On The Facility

For typical maintenance visits, a carrier or its contactors would only be at the site a few hours, but this number could increase depending on the work that needed to be completed at the site.

Expected Noise Levels

Telecommunications facilities are essentially silent. This would be true whether there were one or four carriers. A generator could be operated on site in the rare instance that power went out. The generator would create noise, but it **would not be noticeable or audible in the location the telecommunications facility is proposed to be.**

PLEASE SEE THE SEPA CHECKLIST PAGE 7,7B

Building Codes; Safety Standards

Atlas Tower will ensure the structural integrity of towers, ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, Kattitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

FAA/FCC Compliance

The proposed facility shall conform to the requirements of this title, this code, and other laws, including pertinent federal regulations of the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA).

This narrative represents required and supplementary information to document the technological, economic, and social necessity and benefits of a new 100' monopole telecommunications tower in Ellensburg City. The information provided highlights the advantages associated with a telecommunications facility at our proposed site. See attached documents to showing our survey and tower drawings.

Atlas Tower 1, LLC respectfully requests the acceptance of our application for a Zoning for the proposed communications tower facility.

Best Regards,

Sandra Layton
Territory Manager
801-310-0844
www.atlastowers.com
3002 Bluff St. Suite 300 Boulder, CO 80301

**** See attached document for details to item #12 in the permit application**

Please see comments to item #12 below

#12 A conditional use or administrative conditional use permit may be granted when the following criteria are met. Please describe in detail how each criteria from KCC 17.60A.015 is met for this particular project (attach additional sheets as necessary):

A. The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.

As to the character of the surrounding neighborhood, How does a 100' cell tower fit in with the surrounding hay fields, farms and residences?

Atlas Tower will ensure the structural integrity of towers, ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, Kattitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

B. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:

- i. It will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
- ii. The applicant shall provide such facilities; or

On average, after initial installation, a carrier or its contactors would likely visit the facility about one to four times a year for maintenance, though this number could vary depending on the specific circumstances of the facility.

- iii. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

This project will provide the needed mobile network coverage while reducing the need for additional cellular facilities in the future. This project is being proposed and this justification is being provided in an effort to alleviate current mobile network voice, data, and first responder issues in an area that is severely lacking reliable network coverage and capacity.

C. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.

Atlas Tower will ensure the structural integrity of towers, ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time.

D. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.

The proposed site is zoned AG-20 where coverage is lacking, and the capacity of the existing infrastructure is reaching its limit. As the area develops further, and the existing users demand more data for their existing devices, existing infrastructure will reach capacity limits and be unable to meet coverage needs. This tower and facility will be used for structural support of up to four wireless providers.

E. The proposed use will ensure compatibility with existing neighboring land uses.

The surrounding area is largely rural with low density residential zones nearby. The proposed site is chosen to maximize visual aesthetic and distance from residential homes.

See page Two Visual Effects

F. The proposed use is consistent with the intent and character of the zoning district in which it is located.

The purpose of this request is to build an 100' monopole telecommunications tower within a 50 x 50 wireless facility. This facility will provide critical wireless coverage to the surrounding area. The proposed site is zoned AG-20.

G. For conditional uses outside of Urban Growth Areas, the proposed use:

i. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;

What is the objective of Kittitas County Comprehensive Plan? Again see comment to 12A above.

Yes. The coverage will provide more opportunities for residents working from home, schools, and future development and growth.

ii. Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(16**));

Please explain how the 100' pole preserves the rural character

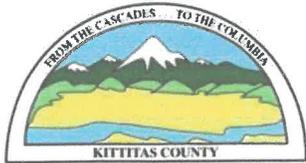
The wireless tower will provide a service while still maintaining the "rural character." If, upon inspection, Kittitas County concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards, unless a longer time is reasonably necessary.

iii. Requires only rural government services; and

The wireless tower will not require any rural government services.

iv. Does not compromise the long term viability of designated resource lands.

The wireless tower will improve the long term viability of the designated resource lands by offering a wireless service for emergencies.



KITTTAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTTAS.WA.US

Office (509) 962-7506

"Building Partnerships – Building Communities"

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. **You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown.** You may also attach or incorporate by reference additional studies reports. **Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.**

The checklist questions apply to **all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land.** Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals: [help](#)

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

APPLICATION FEES:

\$600.00 Kittitas County Community Development Services (KCCDS)**

\$950.00* Kittitas County Department of Public Works**

\$260.00 Kittitas County Public Health

\$1,810.00 Total fees due for this application (One check made payable to KCCDS)

*2 hours of review included in Public Works Fee. Additional review hours will be billed at \$243 per hour.

** Note:KCCDS and PW fees are waived if project is a VSP sponsored fish enhancement project.

FOR STAFF USE ONLY

| | | |
|-------------------------------------------------------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application Received by (CDS Staff Signature): <hr/> | DATE: 7/18/2023 | RECEIPT# <div style="border: 1px solid black; padding: 5px; text-align: center;"> KITTTAS CO CDS RECEIVED 07/18/2023 </div> DATE STAMP IN BOX |
|-------------------------------------------------------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

A. Background [Find help answering background questions](#)

1. Name of proposed project, if applicable: Blazing Sky-Strand

2. Name of applicant: Atlas Tower 1, LLC

3. Address, e-mail and phone number of applicant and contact person:
3002 Bluff St., Ste 300, Boulder, CO 80301. 801-310-0844. slayton@atlastowers.com

4. Date checklist prepared: 7/13/2023

5. Agency requesting checklist: Kittitas County Community Development

6. Proposed timing or schedule (including phasing, if applicable): Construction planned during Q1 2024.
Carrier collocation anticipated 2024

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. Yes. We design our towers to be collocatable and anticipate other carriers will collocate onto our tower in the future.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. We will have a NEPA report prepared. The NEPA report has not been ordered yet. The survey has been ordered, but not complete yet.
No decision should be made until the NEPA report has been received and approved.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. No

10. List any government approvals or permits that will be needed for your proposal, if known.
Zoning Approval and Building Permit

11. Give a brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.

We are proposing a 100' monopole inside of 2500sf of ground space

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

4140 Manastash Road, Ellensburg, WA 98926

B. ENVIRONMENTAL ELEMENTS [\[help\]](#)

1. Earth [Find help answering earth questions](#)

a. General description of the site: build a 100' monopole telecommunications tower within a 50 x 50 wireless facility. This facility will provide critical wireless coverage to the surrounding area.

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)? There is no slope

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

Unknown

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

Unknown

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill. The total area being used is 2500 sf.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. No

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? The access road will road base material.

The compound of the tower will have a fence around it and gravel on the ground

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: N/A

There will be no emissions released from our tower.

2. Air [Find help answering air questions](#)

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

The tower will not give off any emissions

Not accurate. The tower might not give off any emissions but the collorators will when the cell phone companies install their antennas

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

No

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

This project will not impact emissions.

3. **Water** [Find help answering water questions](#)

a. Surface Water: [Find help answering surface water questions](#)

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

No

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. No

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. Materials used will be determined by the GC

GC has not been assigned yet.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. No

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

Unknown

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge. No

b. Ground Water: [Find help answering ground water questions](#)

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

No

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

We don't anticipate any waste material being discharged into the ground.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. The proposal will not change the existing drainage.
- 2) Could waste materials enter ground or surface waters? If so, generally describe. No
- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe. No
- 4) Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any: We do not anticipate an impact to the current drainage

4. **Plants** [Find help answering plants questions](#)

a. Check the types of vegetation found on the site:

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- orchards, vineyards, or other permanent crops.
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

b. What kind and amount of vegetation will be removed or altered? Existing grass in 2500 sf compound will be replaced with gravel

c. List threatened and endangered species known to be on or near the site.

Unknown

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

The compound area of the tower will be weed preventing material and gravel.

e. List all noxious weeds and invasive species known to be on or near the site.

Unknown

5. Animals [Find help answering animal questions](#)

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Unknown

Examples include:

Birds: hawk, heron, eagle, songbirds, other:

Mammals: deer, bear, elk, beaver, other:

Fish: bass, salmon, trout, herring, shellfish, other _____

- b. List any threatened and endangered species known to be on or near the site.

Unknown

- c. Is the site part of a migration route? If so, explain.

Unknown

- d. Proposed measures to preserve or enhance wildlife, if any:

Our tower will have no impact to wildlife.

- e. List any invasive animal species known to be on or near the site.

Unknown

6. Energy and Natural Resources [Find help answering energy and natural resource questions](#)

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. Electric will be used by the carriers who collocate on our tower:

The tower is designed to support up to 4 carriers.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

No.

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

There are no energy impacts

7. Environmental Health [Find help with answering environmental health questions](#)

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur because of this proposal? If so, describe. See Article VI, Paragraph 2 of the US Constitution and FCC Resolution 19-126

- 1) Describe any known or possible contamination at the site from present or past uses.

Unknown

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

Unknown

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

None

- 4) Describe special emergency services that might be required.

None

- 5) Proposed measures to reduce or control environmental health hazards, if any: [\[help\]](#)

There is no control to environmental health hazards necessary

b. Noise [\[help\]](#)

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

None

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Telecommunications facilities are essentially silent. This would be true whether there were one or four carriers. They may be essentially silent but not when power outages occur and generators are started.

- 3) Proposed measures to reduce or control noise impacts, if any:

Telecommunication facilities are essentially silent.

same as (2) above.

8. Land and Shoreline Use [Find help answering land and shoreline use questions](#)

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

The current land use is Resident. It will not affect adjacent properties. This site is a working cattle pasture

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

No

- 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

No

c. Describe any structures on the site. 100' monopole with a 50x50 fenced compound area

There are currently two residential houses and several other structures on this site. There is no 100' monopole with a 50x50 fenced compound area.

d. Will any structures be demolished? If so, what? No

e. What is the current zoning classification of the site? AG-20

f. What is the current comprehensive plan designation of the site?

Build a 100' monopole telecommunications tower within a 50 x 50 wireless facility.

g. If applicable, what is the current shoreline master program designation of the site?

There is no shoreline master program designation

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

No

i. Approximately how many people would reside or work in the completed project? 0

j. Approximately how many people would the completed project displace? 0

k. Proposed measures to avoid or reduce displacement impacts, if any: There will be no displaced people

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: We are working with planning and going to ensure this is compatible with current and projected uses

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any: We are working with planning a zoning

9. **Housing** [Find help answering housing questions](#)

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing. No housing will be provided. **We are proposing a new 150' tower REALLY**
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing. No units will be eliminated
- c. Proposed measures to reduce or control housing impacts, if any: The project won't impact houses

10. **Aesthetics** [Find help answering aesthetics questions](#)

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed? **6' chain link fence. Not accurate. Their will be a 100' pole. Thats 94' higher than the 6' fence**
- b. What views in the immediate vicinity would be altered or obstructed? The proposed site is chosen to maximize visual aesthetic and distance from residential homes. **See Project Narrative Page 2 Visual Effects.**
- c. Proposed measures to reduce or control aesthetic impacts, if any: The surrounding area is largely rural with low density residential zones nearby. **Atlas Towers is taking no measures to reduce the aesthetic impact.**

11. **Light and Glare** [Find help answering light and glare questions](#)

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
The tower will not be lit
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
We don't anticipate any lighting needed
- c. What existing off-site sources of light or glare may affect your proposal?
None
- d. Proposed measures to reduce or control light and glare impacts, if any:
We don't anticipate any lighting needed

12. **Recreation** [Find help answering recreation questions](#)

- a. What designated and informal recreational opportunities are in the immediate vicinity?
Unknown
- b. Would the proposed project displace any existing recreational uses? If so, describe.
Unknown

From: Jil Zilligen
To: Chace Pedersen
Subject: ACU-23-00003 Atlas
Date: Monday, August 21, 2023 10:51:20 PM

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Chace Pedersen
Staff Planner
Kittitas County Community Development Services

Re: ACU-23-00003 Atlas, Notice of Application, Atlas Tower LLC and Victor Strand

Dear Mr. Pedersen:

We are writing to object to the application ACU-23-00003 Atlas for the placement of a telecommunications tower and facilities on parcel number 818833 at 4140 Manastash Road, Ellensburg, WA. We are nearby residents and property owners who learned of this application from neighbors who learned of it from a Facebook friend. We received no notice directly from KCCDS, making it difficult to comment substantively with such short notice. Nonetheless, we write with significant concerns about the negative impacts that will result if this project is approved.

1. We note with concern that a NEPA report has neither been completed nor reviewed. We respectfully request that no approval for this project be granted until after the NEPA report is complete, made available, and thoroughly reviewed.
2. While the SEPA checklist notes that no emissions are expected from the tower itself, there is no mention of the negative impacts from the planned one to four wireless providers' antennas that will be installed on the tower. **Most concerning in this regard is the radiation emitted from the collocated antennas.**
3. While the FCC claims that wireless facilities are safe, the U.S. Department of the Interior states that "the electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today." Other countries now limit public exposure to levels far lower than the standards currently set by the FCC. Studies have shown that even at low levels of radiation, there is evidence of biological damage, brain tumors, cancer, weakened immune function, childhood leukemia, reduced sperm count and ovarian follicles. Further, The American Cancer Society has stated that more research is needed to address the concerns relating to emissions from cell phone towers. Studies that looked at the cancer rates of children living near cell phone towers have concluded that living within proximity is cause for concern.
4. The permit application stipulates that "the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood." Please see #3 above re: health concerns and safety from the collocated antennas. In an agricultural and residential area with dozens of homes nearby, a 100-foot commercial tower with up to four wireless providers' antennas and on-the-ground base-station equipment is dramatically inconsistent with and detrimental to the character of the surrounding neighborhood.

5. Additional non-radiation safety concerns include pole overloading and resulting fire and electrocution hazards should the pole topple due to **high winds**, earthquakes, or vehicle accidents, as well as explosive or toxic chemicals hazards from any potential on-the-ground base-station back-up batteries.

While we agree that our county needs increased communications capacity and reliability, we hope that there are strategies and locations more in keeping with Kittitas County's public health and safety and character goals.

Thank you very much for your careful consideration of these concerns.

Sincerely,

Jil Zilligen and Chris Schedler
361 Midfield Drive

From: John Schmit
To: Chace Pedersen
Subject: ACU-23-00003, proposed cell tower, 4140 Manastash Rd
Date: Sunday, August 20, 2023 11:07:38 PM

CAUTION: This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Sir, my wife happened to learn from a Facebook friend that Kittitas County Community Development Services (KCCDS) issued a letter advising that a telecommunications tower is proposed for an address which is *very* close to our community. The letter describes that on July 13th, KCCDS received application to install a tower, notice was made (public notice?) on August 8th, and that while KCCDS is not required to hold public meetings, input will be accepted, in writing, up to 5:00pm on August 23rd.

Neither we nor our neighbors received even this short notice directly, but first reaction for my wife and myself was shock at the prospect that such structure would be invited or permitted into our agricultural/rural neighborhood, and secondly, that KCCDS did not distribute notice to those of us who will be directly impacted.

Having seen the KCCDS letter for the first time today, I cannot say that I've researched the implications in depth, but I see that other communities have launched large scale complaints and even litigation against similar proposals (Walla Walla article link, below), and there is even suggestion that telecommunication corporations are preparing for anticipated litigation related to future cell tower related health problems (ehtrust.gov link).

There are tower support arguments that federal agencies are responsible for setting regulations for safety and local governments only issue permits, then anti-tower arguments that property values may suffer... and there are other perspectives which I do not know enough about to either support or argue. But since no presentation or advance notice of pro/con aspects of what may be of significant and irreversible impact to our homes and lives has taken place, I can only say that my wife and I are opposed to what appears to us to be a hush-and-rush change to the character, value, and perhaps livability of our environment.

I trust that KCCDS is interested in the best interests of its jurisdiction and that my "hush-and-rush" comment is overstatement, but with the immediate deadline for input and limited information available, my wife and I want KCCDS to be aware that not all parties may be in agreement with this development.

From: Joseph Kingston
To: Chace Pedersen
Subject: Cell tower near Midfield Dr off of Manastash Road in Ellensburg, WA
Date: Wednesday, August 23, 2023 2:23:29 PM

CAUTION: This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Dear, Mr. Petersen,

Our family loves living in this neighborhood. You should know that, as we have an absolutely awesome neighborhood, full of great community members that care and serve our community in many ways. Such as, firemen, teachers, health department workers, nurses and doctors. We have families in Ellensburg and care a great deal about what happens here. I bring this to your attention, as I think you should know how much we all care about our community.

We were not given notice of a public hearing (required) in order to implement a new cell tower project near our neighborhood. And only 10 days to respond. This is absolutely unacceptable on your part. There has been zero communication with us in regards to this project. Therefore, even with a miniscule amount of time we inform you that we oppose any and all plans to move forward on the new cell tower build near our neighborhood.

Address: 901 Midfield Dr. Ellensburg, WA

I will go on to say that, learning through a neighbor, who learned through someone's Facebook post, that this project is planned is an unacceptable job on Kittitas Counties part. I am hugely disappointed that our county (you) represent us in this way. We pay taxes and vote. Do your job with due diligence and We as a Community will decide Together, How, When and Where, We will move forward. Democracy Depends on Us All. Not people who make deals, shake hands and leave your own people out of the loop, in order to better serve individuals or behind the scenes groups of people's, ideals and benefits.

Please, show respect, help to solve problems, and give us, your community, the opportunity to make good decisions together.

Our position: We Oppose the build of this Cell Tower.

Regards,
The Kingston's

From: [julie sumner](#)
To: [Chace Pedersen](#)
Cc: [mike sumner](#); [julie sumner](#)
Subject: ACU-23-00003 Atlas; proposed cell tower, 4140 Manastash Rd
Date: Tuesday, August 22, 2023 1:32:50 PM

CAUTION: This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Dear Sir,

My husband and I are writing to oppose the proposed the 100' cell tower by Atlas Tower LLC and Victor Strand to be located at 4140 Manastash Rd. We are property owners within 0.5 mile of this proposed cell tower. This cell tower was brought to our attention by "word of mouth" in our neighborhood, not by the county. Unsure why our neighborhood was not notified by Kittitas County directly. I have read all of the letters submitted to the county to-date and agree with those who also have commented.

Our objections are Location, Potential Health Concerns and Visual Aesthetics:

Location: This tower is proposed within agriculture zoning and has dozens of rural homes within one-half mile radius. I also wonder why this particular location is on the valley floor and not on a hillside. I do not wish any impacts to other Kittitas County citizens, but surely there must be a more appropriate areas where there are no people residing. My simple mind wonders if Atlas is "shopping" for any property owner to allow this on their parcel. Is it more about money?

Potential Health Concerns: I am not a doctor nor a scientist but I can read there are documented health issues that are potentially related to radio wave emissions. I see the application doesn't say that a monopole is a risk to health and safety, but they are not accepting the risk associated with the actual antennae(s) itself. We are seniors ourselves who are already health challenged and wish not to invite more risks. There are children in our neighborhood who just may be affected by potential health issues. I have lived long enough to understand that we once thought "boxed foods" were a fabulous convenience but now know they have caused a host of health issues in the human body. I sincerely hope that the county will do diligence to recognize the potential risks associated with placing a cell phone tower in this location.

Visual Aesthetics: We live, work and play within the beautiful Kittitas County, but to place a 100' cell phone tower smack dab in the middle of a rural residential location is crazy. I do not see any proposed camouflage. I do see a 6' tall chain link fence with barbed wire on top containing a 100' monopole for 1-4 cell phone carriers. Sigh, these are not redeeming qualities!

Thank you for your serious consideration to ours and others concerns on this application.

Julie and Mike Sumner

From: [Becca Seth](#)
To: [Chace Pedersen](#)
Cc: [Justin](#)
Subject: Opposition to the Atlas Cellular Tower -ACU-23-00003 Atlas
Date: Wednesday, August 23, 2023 9:22:54 AM
Attachments: [Opposition to the Atlas Cellular Tower -ACU-23-00003 Atlas.pdf](#)

CAUTION: This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Good morning Chase,
Attached is a letter regarding the proposed Atlas Cellular Tower at 4140 Manastash Road. Can you please reply to let us know that our letter was received?

Thank you,
Justin & Rebecca Seth

Rebecca and Justin Seth
491 Midfield Drive
Ellensburg, WA 98926

Chace Pedersen, Senior Planner
Community Development Services
411 N Ruby Street. #2
Ellensburg, WA 98926

Re: Opposition to the Atlas Cellular Tower -ACU-23-00003 Atlas

Dear Community Development Services,

We recently learned of the construction of the cellular tower from a friend on Blazing Sky Lane, who was notified with a mailing from Kittitas County Community Development Services. It is concerning that only landowners within 500 feet of the proposed project were notified, considering that the smallest parcel in our area is 3 acres. This leaves a vast majority of the landowners in the Manastash area not notified of this proposal, us included when we are roughly one-quarter of a mile from the proposed project.

As I'm sure you know, the Manastash area is an exceptionally beautiful part of our valley & it's why many of us have chosen to build homes and live in this area. The 100' tall tower will have a visual impact on all in our area & goes against the 2021 Kittitas County Comprehensive Plan. Part of the plan states "RR-P1: The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County." If the county allows the construction of this tower, you are doing the opposite of the goals & intent of the Kittitas County Comprehensive Plan. This does not preserve rural character at all. The construction of the proposed project also opposes the following statements in the Kittitas County Comprehensive Plan:

- RR-G7: The County should consistently work to preserve and maintain the rural character of Kittitas County for the benefit of its residents.
- RR-P16: Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.
- RR-G12: Permit residential development in rural areas which enhance and protect rural character
- U-P6: Community input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community.

Not only are we concerned about the visual impacts of the proposed tower, but we are concerned for the health and well-being of our family, our neighbors, and the animals in our area. Studies show that electromagnetic radiation (EMR) can cause physical and physiological changes in humans due to the thermal effects generated by absorbing microwave radiation. EMR can lead to negative effects of the reproduction process, lead to genetic defects, and also

affect the central nervous system. Constant exposure to EMR can lead to headaches, fatigue, nausea, low sperm count, and cancer. Cell phone towers should not be constructed near homes for the health and safety of residents.

The application from Atlas also states that our community is underserved and that their tower will "alleviate current mobile network voice, data and first responder issues in an area that severely lacks reliable network coverage and capacity." These claims are made by an out-of-state company that doesn't have appropriate knowledge of our area to be making such statements. Our area has great coverage for cell phones, internet, satellite TV and we do not have first responder issues in our area. Once you get into the Manastash Canyon the coverage gets unreliable, but this is appropriate for being in the mountains. The proposed tower on the valley floor isn't going to provide coverage that is any better in the canyon because the signal will be blocked by mountains and hills, just as it is now. The narrative that Atlas is using is false.

While you are deciding on allowing the proposed project or not, please keep both the people of the Kittitas Valley in mind & the fact that it goes against the rural landscape of the Kittitas County Comprehensive Plan. The financial benefit of one individual is detrimental to Kittitas County and we urge you to reject the proposed project at 4140 Manastash Road.

Respectfully,

Rebecca and Justin Seth

From: [CDS User](#)
To: [Jamey Avline](#); [Chaco Pedersen](#); [Zach Torrance-Smith](#)
Cc: [Carlie Peebles](#); [Jen Wiemer CDS](#)
Subject: FW: Comments for File ACU-23-00003 Atlas Tower
Date: Monday, August 21, 2023 8:18:25 AM
Attachments: [6A0C91952AB14DE6BC38941AB42E2531F13148596.png](#)

From: Manastash Ridge Excavation LLC <manastashridge@yahoo.com>
Sent: Sunday, August 20, 2023 9:00 PM
To: CDS User <[cgs@co.kittitas.wa.us](mailto:cds@co.kittitas.wa.us)>
Subject: Comments for File ACU-23-00003 Atlas Tower

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Hi,

I am writing with comments on the proposed cell tower at Blazing Sky Ln and Manastash Rd on the Strande Property. I own 2 parcels of land on Blazing Sky Ln. This proposed tower is very concerning for many different reasons. First is the EMF's going to be transmitted off of this tower. There is a lot of information on both sides arguing that it does or does not affect a person health. I am not willing to take the risk of all of our friends and neighbors or wildlife that live near this. A 100'+ tower will most likely have a flashing light that no one wants in their window. Most people who live up the canyon they are trying to reach live way out for a reason and have the communication that they want already. This same tower was proposed to me as I own property on Blazing sky ln, this is all about money and not peoples well being. We need to get back to caring about our neighbors even after we are gone, because the landowner proposing this will be gone before this will affect him. I have attached some information from a couple sites stating the reported affects of EMF's and the acknowledgement from the WHO that these radiations do affect people. Do you want to be responsible for long term health problems or infertility's in women? I don't. Thank you for your time.

[https://www.wno.int/newsroom/questions-and-answers/itcm/radiation-electromagnetic-
fields/#:~:text=Effects%20on%20general%20health;text=reported%20symptoms%
20include%20headaches%20%20anxiety.and%20exposure%20to%20electromagn
etic%20fields](https://www.wno.int/newsroom/questions-and-answers/itcm/radiation-electromagnetic-
fields/#:~:text=Effects%20on%20general%20health;text=reported%20symptoms%
20include%20headaches%20%20anxiety.and%20exposure%20to%20electromagn
etic%20fields)

<https://www.emf-portal.com/cellphone-radiation.html>

Kayla Carlson
509.899.4456
manastashridge@yahoo.com



Manastash Ridge Excavation LLC

In Memory of

Mike Stangard

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message id: 33cb45915cb6cbdac24bc8712d004a14

From: [Melissa Schumaier](#)
To: [Chace Pedersen](#)
Subject: ACU-23-00003 Atlas cell tower appeal letter
Date: Tuesday, August 22, 2023 8:07:33 PM
Attachments: [Cell Tower.docx](#)

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Attached is our strong opposition to the cell tower proposed on Manastash Road.

If there are any questions please let me know.

Regards,

Melissa Schumaier

Anthony and Melissa Schumaier
155 Greenvale Drive
Ellensburg, WA 98926

Chace Pedersen, Senior Planner
Community Development Services
411 N Ruby Street. #2
Ellensburg, WA 98926

Re: Strong Opposition to the Atlas Cellular Tower -ACU-23-00003 Atlas

Dear Community Development Services,

I learned about the construction of the cellular tower from friends in our neighborhood. We are a close community that looks out for the health and safety of each other. I was very disturbed to find that actual mailing of notifications are not sent unless you are 500 feet from the proposed project. In the country, this is not attainable, because we all have a minimum of 3-acre parcels. (This is a conversation for another time.) I am writing my firm opposition to this proposed cell tower on Manastash Road. This tower is a little over a half of a mile from my property. The beauty of this area is why so many of us moved to this area of the county, to escape the city. This tower will do irreparable harm to the vial appearances of this part of the valley. In our 2021 Kittitas County Comprehensive Plan, the county commissioners touch on the very things in their plan: RR-P1: "The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County." Allowing construction of a cellular tower in this location is not consistent with the intent, goals or policies in the Kittitas County Comprehensive Plan. In fact, they are the exact opposite by catering to the financial gain of one individual landowner, at the expense of the rural landscape, character and safety of the neighborhoods and the families that live there.

I know the county has designated this as a utility which then gives it an administrative zoning code, which makes it not mandatory to educate the surrounding properties or those who are visually impacted by this. I wanted to point something out, that utility is a broad scope that is used for many different terms. Utility also touches on landlines, not the luxury of a cellular device. In the Kittitas County Comprehensive plan, Utilities are defined as, "...utilities element shall, at minimum, consist of the general location, proposed location, and capacity of all existing and proposed utilities, including but limited to, electrical lines, water bank, telecommunication lines and natural gas lines." This line also outlines critical services for telephones as "landlines". Not cell towers or cellular phones. All properties are served by landlines in this area. There are services that are already in use in this location. If an area is under served with city sewer, they would then be required to install their own septic system. If there is a sewer hookup in the area, they would be required to use this utility and not allowed to install their own septic system. If there is a service that is already there it should be put to use. This can easily be comparable to cell coverage. There are many cell services in this location where service is attainable. The application by Atlas is false that this is a community that is underserved and to "alleviate current mobile network voice, data, and first responder issues in an area that severely lacks reliable network coverage and capacity." These are claims made by a company from Colorado that knows nothing of the area it is proposing. This area of the county is very much served with telecommunications. You can easily make phone calls, have internet connection, have satellite TV, and any other technology devices out there on the market. Using a false narrative to illustrate is a scare and false tactic. The further you drive up into

the Manastash Canyon, the cell coverage dies off because of the hills and mountains that are surrounding you. There is no signal that will reach through the hills and surrounding mountains. This signal will not improve with this added tower and is another erroneous statement. The Emergency Management Council of Kittitas County has looked at mobile towers in the past to increase the strength of their connections when down in the Vantage area fighting wildland fire but they mentioned that the hills are the constant interruption of their cell signals. Bringing extra equipment for communications during fire season or wildland firefighting isn't beneficial because of said hills and mountains. It clearly will not help any communication efforts. Another erroneous claim is emergency services telecommunications are going to be more available. The hills and mountains are in the way, interrupting any signal. All emergency calls are transferred to a satellite signal not cell tower. Again, mountains and hills are in the way of signals to and from cellular phones, not the lack of cell towers.

An introduction paragraph to the 2021 Comprehensive plan states that, "One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. This Comprehensive Plan supports and preserves this rural lifestyle by limiting service levels to those historically provided in the County's rural areas. Residents should expect County services, such as road maintenance and emergency responses to be limited and to decrease as the distance from a rural activity center or urban area increases." Those that moved into this area have not been underserved by emergency services or cell services but are aware if there is any interruption of any services, it is something that people don't get worked up over. We have come to know even if there is an interruption of any services it is short lived and life in the country can be slower.

The construction of a cell tower on 4140 Manastash Rd directly works against the statements made in the Kittitas County Comprehensive Plan. A few examples of this are:

RR-G7: The County should consistently work to preserve and maintain the rural character of Kittitas County for the benefit of its residents.

RR-P16: Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.

RR-G12: Permit residential development in rural areas which enhance and protect rural character

U-P6: Community input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community.

As required, the Atlas company filed a SEPA review to give an overall environmental checklist for the parcel they are constructing on. Under section 3 they failed to mention there being any surface water, or the Manastash ditch on the north side of the road, and that under taxsifter it is classified as being a part of the 100 year floodplain. Under section 4 they failed to classify any animals that are found in this area, any migration routes, and state that it will have no impact to wildlife. How can they know if there is any impact to wildlife if they don't know what animals or what kinds of wildlife are on or around the property? Under section 8 Land and Shoreline, the Atlas company stated "it will not affect adjacent properties" when in fact it visually will direct all properties in the surrounding area. A 100 foot tower with a 4 foot lightening pole at the top will affect the surrounding parcels. Under Section 10, under a and

b they fail to mention that the tower interrupts anyone's view of the surrounding hills and mountains. A 100 foot silver structure is not aesthetically appealing nor does it fit into this rural setting.

In the next section the company fails to mention that the proposal will not omit any production, storage, or release any toxic or hazardous substances or production of noise. They stated the proposal will not increase any of the items mentioned. This statement cannot be accurately made because the actual impact of cell towers on human health has not been concluded, and as with new technology the data isn't available because it is still too new to know. There have been documented cases of people being sensitive to the waves emitted but stating it has no human or animal health impacts cannot be supported because it is not known that it is 100% safe. It would be negligent to assume human and animal health is immune to this type of communication.

When deciding on whether or not to allow such construction of this tower, I urge you to please look at the plan of the county in keeping with the rural landscape. The financial gain of one individual on his own property at the detriment of many other families in the area should never be given preference. Under the project narrative number 12, there are two things that this plan works directly against. Those are item A: that the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood. This tower is not essential, is not desirable, and is detrimental to the public health, peace safety and character of the neighborhood. Again, it doesn't fit into the rural landscape as defined in our Comprehensive plan. The proposed site (under F.) is NOT consistent with the intent and character of the zoning district in which it is located. The site is NOT consistent with G: with the goals and objectives set forth in the comprehensive plan. It doesn't preserve rural character and does compromise the land for the duration of the next 30 years.

Please reject this proposal as it is evident that this is a nuisance on private land, disguised as something beneficial to the public. This is not a needed service in the area and will not give any more emergency services than is already provided. With so many areas of this county that are away from people, away from neighborhoods, schools, and children, I urge you to reject this location on this parcel and have them relocate to another area will less impact on our landscape. It is clear, that this doesn't fit into the model set forth by our County Commissioners to preserve the rural landscape for our families and our future.

Regards,

Melissa and Anthony Schumaier

From: Rod Johnson
To: Chace Pedersen
Subject: Cell Phone tower on Manastash Rd.
Date: Thursday, September 7, 2023 4:07:13 PM

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Hello Chace,

I just heard from a neighbor that there is a proposed cell tower project in the works for Manastash Road. This is up the street from us and we strongly disagree with this proposal.

We never received any notice from anyone regarding this, and I think many of my neighbors would agree.

What is the process for writing a letter to protest against this????

I heard today was the last day, I want to make sure my input is heard.

I am writing to protest due to the impact on our property valuations and the disregard of any of the opinions of neighbors. This being shoved down our throat without consultation.

Shame on you!

Rod Johnson

2901 Manastash Rd.
Ellensburg, WA 98926
206-999-9950

From: Thomas And Kathy
To: Chace Pedersen
Subject: Re: ACU-23-00003, Proposed Cell Tower, 4140 Manastash Road
Date: Wednesday, August 23, 2023 1:09:31 PM

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Chace Pedersen

re: ACU-23-00003, proposed cell tower, 4140 Manastash Road, Ellensburg.

This letter is being submitted by Thomas and Kathryn Cole of 360 Midfield Drive in Ellensburg, a private residence situated on 3.4 acres just off Manastash Road. We also own the parcel immediately adjacent, another clear standing 3.4 acres. The purpose of this letter is to declare our opposition to this cell tower project and to provide our points of argument.

We were initially upset by the fact that we only learned of this project through word-of-mouth and received no official notification. We live within a quarter of a mile of the site and the proposed tower would be clearly visible from any point on either of our properties. Should there have been no legal requirement for notification, it should have at least been demanded by common courtesy for residents in such close proximity.

We find it unusual that this project has moved forward with such speed through a government agency. The application for this project was only submitted on July 13, 2023 and yet approval already seems imminent. Conversely, I submitted a water budget neutrality application to the Washington Department of Ecology in October of 2021 and it still has not even been assigned to a permit specialist. The lack of notification and the speed of the process give the distinct impression of it being, as one of my neighbors so eloquently put it, a "hush and rush" project.

The justification submitted by Atlas Tower 1, LLC is nothing more than industry boiler plate and does not factually apply to our area. Residents in this area, or its first responders, do not suffer for lack of reliable network coverage or capacity, and to refer to this imaginary problem as "severe" is pure sensationalist hyperbole. That being said, I question what investigation was conducted to verify the claims of the applicant.

There are certain matters of health and safety to be properly investigated and considered. I am inadequately educated on the subject to make any specific complaint or observation, however I would be interested in the amount and type of research which was conducted during this permit process.

The project clearly violates sections of the Kittitas County Comprehensive Plan where it calls for promoting the retention of its rural character. Some may discount this issue as a matter of aesthetics however you would be hard pressed to find a local resident that would agree that a cell tower is in keeping with the overall character of this area.

Lastly, I am concerned about the possible negative impact an obtrusive cell tower represents to the property values to our neighborhood.

Thomas Cole

From: Marguerite Marrs
To: Chace Pedersen
Subject: Cell Tower
Date: Thursday, September 7, 2023 3:23:10 PM

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Hello Chace,

I just heard from a facebook group and from a neighbor that there is a proposed cell tower project in the works for Manastash Road. This is up the street from us and we strongly disagree with this proposal. We never received any notice from anyone regarding this, and I think many of my neighbors would agree. What is the process for writing a letter to protest against this???

I heard today was the last day, I want to make sure my input is heard.

Thank you!!

Marguerite Marrs
2903 Manastash Road
Ellensburg, WA 98926

From: [Marguerite Marrs](#)
To: [Chace Pedersen](#)
Subject: Proposed Cell Tower on Manastash Road
Date: Thursday, September 7, 2023 4:09:47 PM

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Dear Chace,

My husband Carl and I own our home and live at 2903 Manastash Road in Ellensburg. Our property is a little over 7.25 acres. We are located approximately 1 mile from the proposed cell tower. We didn't learn of this proposal until today through social media and a neighbor. We never received any notification.

We are highly against this proposal!!!!

1. It will adversely affect our property values and those of our neighbors. I am a licensed Real Estate Broker in the State of Washington and work in Kittitas Valley. I have seen cell towers and power lines reduce property values by 25% in some cases.
2. The zoning here is AG-20, how is this even permissible under the current zoning?
3. It will adversely affect our views to the west and the views of many, many of our neighbors.
4. Danger from Radiation, either perceived or real.
5. The cell companies are permitted to go another 20 feet once built without permission from anyone, so we could be looking at a 120 ft. tower.
6. There are many other locations where this could go that would not so adversely affect so many neighbors.

Is there going to be a hearing on this???? Please keep us in the loop.

Sincerely,

Carl and Marguerite Marrs
2903 Manastash Road
Ellensburg, WA 98926
509-899-2634

From: Brad Ishler
To: Chace Pedersen
Cc: Laura Osiadacz
Subject: Telecommunication tower proposal Project file # ACU-23-00003
Date: Tuesday, August 22, 2023 8:53:37 PM

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To Whom It may concern,

We are writing to express our opposition to the proposal by Atlas Tower and Victor Strand (land owner) for a 100ft cell phone tower that is planned for Parcel #818833, 4140 Manastash rd, Ellensburg WA.

As homeowner's that purchased land and live in this rural area, we vehemently oppose this request. This would create a major eye sore for many homeowners who have purposely chosen to live in a rural area.

To paraphrase the 2021 Kittitas County Comprehensive Plan, Section 8.4: Rural Lands:

* 8.4.1: Kittitas County Residents; through an extensive public involvement process in 2012, provided descriptions of "rural" that they wished to preserve. Such descriptions include: "natural open spaces and streams", "mountain views", and "development away from urban areas." A 100ft cell tower is not conducive to this at all. This area is a ridgeline of the beautiful Manastash Ridge- the view that many of our homes were strategically placed to capture. A 100ft cell tower would mar this view. We are so shocked the county would even consider this location and grant an administrative Conditional use permit and allow this.

Historically, as many articles prove, homes near a cell phone tower experience a DECREASE in property values of 5% up to 30% decline.

Please see multiple supporting documentation article's below:

<https://www.emfanalysis.com/property-values-declining-cell-towers/>

Is the county going to be responsible for property devaluation of all surrounding homes? Is the county and/or Atlas Tower and Victor Strand prepared to compensate all surrounding homeowners for this loss?

Also, recent research is showing strong evidence that states exposure to a nearby cell phone tower can cause: altered brain activity, memory loss, fatigue, increased risk of cancer, heart disease and neurological symptoms.

Per Dr Richard Melnick, PhD, US National Toxicology Program, "We can no longer assume that any current or future wireless technology, including 5G, is safe without adequate testing".

To place a 100ft Cell phone tower in a rural/residential area is absolutely inappropriate. I feel if you polled surrounding landowners, you will find that most all will feel the same way.

We have elected you to represent us and to take into account what's

best for our community. Please reconsider approving this proposal.
Please acknowledge receipt of this email.

Kind regards,
Shanna and Brad Ishler

From: [Dana Ogan](#)
To: [Chace Pedersen](#)
Subject: Conditional Land Use Application ACU 23-00003 (Atlas)
Date: Tuesday, August 22, 2023 4:22:30 PM

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Chace Pedersen,

This email is in opposition to Conditional Land Use Application ACU 23-00003 (Atlas). I have read all of the other letters opposing this application and agree with all of their sentiments. While these communication towers are something of the future, they do not belong in our rural neighborhoods and farm land.

While reading the application and project narrative, I see that several of the criteria are clearly not met. Let me pick this apart further...

“A) The proposed use is **essential or desirable** to the public convenience and **not detrimental or injurious** to the public health, peace or safety or to the **character of the surrounding neighborhood.**”

- This proposal is obviously not essential, OR DESIRABLE. It appears that the land owner is approaching this as a financial gain, not in consideration of his community.
- We can argue that there is not enough credible data to prove that tower emissions are not harmful to humans/animals. We could get into this debate, but the bottom line is that we don't know. So why risk it?
- This proposal IS DETRIMENTAL to the character of the surrounding neighborhood. PERIOD. You cannot argue against this.
- This is just the first of the 7 criteria and it's CLEARLY not met.

“B) The proposed use at the proposed location **will not be unreasonably detrimental to the economic** welfare of the county...”

- As homeowners close to the site have complained, this would obstruct their view, in turn reducing the value of their property.

For Items “C-E,” I’m going to trust Kittitas County Community Development Services does their due diligence in making ABSOLUTELY sure that this proposal meets ALL county codes, development standards, environmental impact, and public health standards.

For items “F, G”, plopping a tower in the middle of a beautiful agricultural/rural area is clearly not in the “Character” of the district it is being proposed. In fact, the “Rural Character”, as defined by The Growth Management Act defines is as follows per the Washington State

RCW:

"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan: (a) In which **open space, the natural landscape, and vegetation predominate over the built environment**; (b) That **foster traditional rural lifestyles**, rural-based economies, and opportunities to both live and work in rural areas; (c) That **provide visual landscapes that are traditionally found in rural areas** and communities; (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat; (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development; (f) That generally do not require the extension of urban governmental services; and (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

Items a, b and c in the definition of "rural character" are obviously not met with this proposal and therefore this proposal clearly does not preserve the "Rural Character" of the area it is being proposed in. Items d-g could be argued as well, but I won't get into those, since the first three are clearly not met.

As someone who is pretty naive to land development, it's very easy for me to see that this proposal cannot possibly be supported by our county or residents.

Thank you for your time,
Dana Ogan
710 Barnes Road
Ellensburg, WA

From: [Ann Fonken](#)
To: [Chace Pedersen](#)
Subject: Cell phone tower on Menashtash Road
Date: Tuesday, September 5, 2023 2:50:47 PM

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My friends recently bought a home that had a beautiful view of Mount Stewart. After living there two years, they have learned that the neighbors plan to build a cell phone tower that will corrupt their view and loom over them. I say before you OK this permit you should have some empathy for those who are affected by this decision. You wouldn't want that in your front yard. There are other places that a cell phone tower can be built that won't directly impact residential properties. Thank you. Ann Fonken.

From: Justine MacRae
To: Chace Pedersen
Subject: Cell tower on Manastash
Date: Tuesday, August 22, 2023 11:22:58 PM

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Dear Chase,

It has come to my attention that a cell tower may potentially be placed on Manastash rd. I am writing to express my opposition to this. As a homeowner in West Ellensburg, I am saddened to think that the beautiful farmland this area is known for may be obstructed with a large cell tower. Many people move to this part of the valley because of the beauty of the land and the wonderful views of the valley. Placing a cell tower here would be unsightly and would surely lower property values.

The proposed property is zoned as an agriculture 20. The county website clearly states what the purpose of this land is for:

17.29.010 Purpose and intent.

The agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture. (Ord. 2013-008, 2013; Ord. 83-Z-2 (part), 1983; Res. 83-10, 1983)

Placing a cell tower on this land is absolutely an encroachment of nonagricultural use and does nothing to preserve the fertile farmland. Please decline this proposal.

Thank you,
Justine Magnotti

From: B Watts
To: Chace Pedersen
Subject: ACU-23-0003 Atlas
Date: Thursday, September 7, 2023 1:21:53 PM

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Dear Chase, I object to the placement of this tower. This will despoil beautiful rural Manastash Road. Surely there is a less egregious place to locate such an unsightly monstrosity. I feel this placement is just a matter of convenience, without consideration to the neighborhood and those of us who enjoy this area. Thank you for your attention to this.

Sincerely yours, Rebecca M. Watts

Sent from Mail for Windows

From: Ronni Marie Collins
To: Chace Pedersen; laura.osladacz@co.kittitas.wa.us; mark.good@co.kittitas.wa.us; Jamey Ayling
Cc: Ronni
Subject: Manastash Cell Tower Proposed Site Objection
Date: Wednesday, August 23, 2023 12:45:33 PM
Attachments: 5G Neighborhood flyer rev 8-22.pdf

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August 23, 2023

To Whom It May Concern:
ATTN: Commissioner Laura Osladacz
Mr. Chace Pedersen
Mr. Mark Cook
Ms. Jamey Ayling

I recently became aware of an application from Atlas Tower1, LLC to build a 100 ft. tall cell phone tower off Manastash Road at Blazing Sky Lane. This tower is proposed to be erected on the rural property of Victor Strand – this property is zoned residential and in the heart of the west side of Ellensburg a very desirable living area and very near where my family lives, and where we have community with our neighbors.

This particular location has very rare beauty of the Manastash ridge as well as is home within 1/2 mile of the Wenus Ridge/Wildlife Trail head which is visited by hundreds if not thousands of locals and people from all over to enjoy the beauty. This tower would be a disturbance unmeasurable to this particular rural area. We are deeply invested in our community as well as the potential for this 100 ft cell tower to be smack dab in the middle of our rural community.

For this reason, I am writing to express my opposition to this tower.

Kittitas County Comprehensive Plan clearly states: “One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. This Comprehensive Plan **supports and preserves** this rural lifestyle by limiting services, such as road maintenance and emergency responses to be limited and to decrease as the distance from the rural activity center or urban area **increases**.”

RR-G7: The County should consistently work to preserve and maintain the rural character of Kittitas County for the benefit of its residents.

RR-P16: Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.

RR-G12: Permit residential development in rural areas which enhance and protect rural character.

A 100 ft. galvanized cell phone tower (per Atlas site plan) is a complete disruption within this community. Atlas, a Colorado company, I suggest has never visited the actual site because if they did, they would not be able to truthfully state that the site was chosen to maximize visual aesthetics. This tower is in the heart of our community and would be unsightly from many distances North, South, East and West of its proposed location. It does not follow Kittitas own plan – it does not support or preserve our rural lifestyle. Of note, this west valley is flat farmland and butts up directly to the mountain ranges therefore you would see this 100 ft galvanized tower from every height and angle.

There are many aspects of this proposal as submitted by Atlas Tower 1, LLC that I object to that are in violation of Kittitas' own planning codes.

There are many issues at hand that could be discussed and here are a few of note why this proposal should be reconsidered:

- **Application Errors/Omissions:** Please reference the SEPA application which has critical missing or in error answers such as 1) Is this a critical coverage as outlined by the county's own standards laid out in the 2021 Comprehensive Plan under Utilities, Section 6:1? That section as defined by the WUTC, clearly states telephone service is a "landline phone service", not cell phone service so it cannot be a "critical" service that has to be provided, but a luxury service that should not be expected if it is not the **Right area** to build a tower. This area clearly is not the right area and should have been a red flag from the beginning. This area is a rural area, strictly zoned agricultural and residential.

- **Property values decreased:** Studies have shown that homes near cell towers lower property values.

Cell Phone Towers (nar.realtor)

- **Health and Safety:** What is the health safety to nearby neighborhoods of 5G?

More studies must be done before placing these close to humans, livestock, and wildlife not to mention various bodies of water including Kittitas Irrigation canals which are on this proposed property.

I respectfully appreciate your time, due diligence and consideration to reject this proposal as it clearly does not meet county standards.

Sincerely,

Ronni M. Collins

Sent from my iPho

Summary and consequences of approving ACU 23-0003 Atlas which is part of my appeal

Appalling lack of foresight.

The approval of this project has far reaching consequences.

It has the ability to claim legal status.

It opens the door for other proposals/projects to claim a base for allowing their project to go forward.

This is true for Kittitas County and all other parts of Washington state.

It provides an opportunity for any entity seeking leases to construct towers in the name of a "utility".

It guts all provisions of protections of rural lands.

It eliminates any confidence that the residents of this county have on KCCDS to uphold the will and rights of the people.

It eliminates any confidence that the residents of this county have on KCCDS to uphold all the laws and regulations of the county.

This lack of confidence leads to adverse decision-making process as to whether investing funds in the county is a wise decision.

As an instance, should I decide to purchase some other property in Kittitas County I would feel that there would be no guarantee that a cell phone tower, or whatever else, would pop up next to or on my site. For this reason, I would not invest in Kittitas County. I am not alone in this lack of confidence. All my acquaintances who reside in this county express this same feeling.

See KCC 1.28.050 General guidance (a) listed below

WE are shifting a burden on to our future generations when we should be able to prevent this problem. This is a 30 year contract.

Broadband development is moving forward at an enormous rate and this tower will surely be obsolete within a few years, especially as new funding has been made available for broadband infrastructure to Kittitas County in an amount over \$15 million.

Should Atlas tower abandon this project or go bankrupt then the leaseholder will be responsible for the cost of removal of this tower.

Cessation of use or abandonment may leave landowner responsible for removal:

KCC 17.60A 020 Conditions – may include:

10. Requiring site reclamation upon discontinuance of use and/or expiration or revocation of the project permit.

Nuisance Law: RCW7.48-010, 020,030, RCW7.48 120.130, 150,170,180,190,200

RCW7.48.130 Public nuisance defined. A public nuisance is one that affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. RCW7.48.150 Private nuisance defined. Every nuisance not included in the definition of RCW.48.130 is private.

RCW 7.48.170 Successive owners liable

RCW7.48.180 Abatement does not preclude action for damages.

RCW7.48.190 Nuisance does not become legal by prescription.

RCW7.48.200 Remedies

PERSON

RCW7.48.210 Civil action, who may maintain.: A private may maintain a civil action for a public nuisance if it is specifically injurious to himself or herself but not otherwise.

HUD classifies a cell phone tower as a Hazard and Nuisance

Termination of lease by Atlas results in creation of a Nuisance?

Rights of negatively affected property owners to sue for damages.

17.60A 020 Conditions – may include

10. Requiring site reclamation upon discontinuance of use and/or expiration or revocation of the project permit.

Termination of lease by Atlas results in creation of a Nuisance?

Nuisance Law: RCW7=48-010, 020,030, RCW7.48 120.130, 150,170,180,190,200,210

RCW7-48.010

Insists on reparation for harm justifiably done.

HUD classifies a cell phone tower as a Hazard and Nuisance

Rights of negatively affected property owners to sue for damages.

KCC 18.01.010 (public nuisance). Applicability----violation of which either injures or endangers the comfort, repose, health --

“bundle of rights” 5 different rights including “right of enjoyment.”

References chosen sites on or near Strand property.

Rights of negatively affected property owners to sue for damages

Is county, because of its rules and regulations, under any obligation regarding welfare of its residents? (RR-G7)

Is county obliged, because of its decision, to consider the welfare of those who are impacted by that decision?

THE RIGHTS OF PROPERTY OWNERS The rights listed below have been disregarded by KCCDS

KKC Chapter 1.26 .030 Property owner Bill of Rights

5. e The imposition of an order prohibiting or substantially limiting the use of the property. Rules issued under this subsection shall provide that any administrative appeal of an action shall be heard and decided by the board of county commissioners applying normal policies and procedures adopted by the board of county commissioners for appeals. An owner of private property may receive compensation, if appropriate, subject to provisions of this chapter

#6 A private property owner that, as a consequence of a final qualified county department action, is deprived of fair market value of property as determined by a qualified appraisal expert is entitled to receive compensation in accordance with the standards set forth in this chapter, -----

1,26.050 transfer of property interest. The county shall take title to the property interest for which the county pays a claim under this chapter.

1.28.130 Private property rights: Kittitas County recognizes that the protection of private property rights is essential to the preservation of the customs, cultures, and economic stability of its citizens and protection and use of their environment.

1.28.160 Research and data collection: In furtherance of the purposes of this chapter, it is the intent of the county to develop and maintain a research database of information regarding the customs, cultures, economy, and environment of Kittitas County (Ord. 96-17 (part), 1996) **Does this exist?**

It costs very little for companies like Atlas to explore the possibility of constructing a tower without the attendant antennas in such scenarios and has a better probability of success than in a more densely populated and better funded area. In other words this is a pre-emptive strike to exclude and control and is not deemed primarily on lack of coverage. If they succeed they have the basis for claims to repeat this type of project elsewhere. You will notice that throughout this application the phrase "low density" referring to populations or housing or residential properties. Are we to consider ourselves second class citizens? Atlas seems to think so. Authorities of Kittitas County seem to think so. People who live in these designated AG-20 zones are generally retirees who are property rich and penny poor. The role of Kittitas County should be to put the welfare of its residents before the accommodations of such companies as Atlas Tower LLC. I am not privy to the contract between landowner Strand and Atlas but feel that should Atlas abandon the project that the landowner will be left in a very vulnerable situation.

Does Victor Strand have any special connections with Kittitas County?

Agricultural lease dated Dec. 1 2021 between Kittitas County and Victor Strand

Tract # 4 – 24 acres. Tract # 5 & 6 342 acres

Terms 5 years from Dec. 1 2021 to Nov. 30 2026

Rent Tract #4 \$753.50 due Dec. 1 2021: \$753.50 due June 1 2022 and the same sum thereafter for each year

Rent Tract # 5 & 6 \$5257.50 due Dec. 1 2021: \$5752 due June 1 2022 and the same sum thereafter for each year

Yearly annual rent for both tracts is \$11,662.00 plus tax.

Lease fee funds from proposed project \$16,800 annually

Farm Subsidy \$68,964 .00 1995-2021 from EWG's database

In conclusion in light of the whole process of this application both from Atlas and from KCCDS I ask the Hearing Examiner to ask himself some questions.

WHY. Was I given only 10 days to submit my appeal? This is a tremendously complex issue. It has taken many many hours of research, weeks if not months to invalidate all the false claims made by KCCDS and Atlas Tower LLC

Why did KCCDS rubber stamp this application?

What is in it for them? (Obviously not the welfare of its residents)

Why did Atlas make an Application in such a careless and boiler plate method?

Were they unaware that there is no lack of coverage and simply confusing the areas to the south and west as being without coverage (elk don't use cell phones)

Are they very smart predators seeking out the most vulnerable so as to be able to claim precedence?

Under 128.050 b.

Preservation of local custom, cultures: One impact of the approval of this project would have (now allowing the base to exist for the propagation of other similar projects throughout the county and beyond) is the custom of many residents to take drives all around the county to admire and photograph the magnificent landscapes of distant vistas, old barns with their quilts, Victorian houses all in states of disrepair, streets lined with fall colored maples and oaks, winding rivers and basalt cliffs, and whatever other aspects of this county that they enjoy. Much of this is marred by utility poles and wires, but recognizing the essential use of this utility, the people do not complain. An example of a utility having a very significant negative effect on the ability of people to enjoy the natural landscape is the Bonneville Power lines that cross the upper county. These lines also have a severe negative impact on the values of real estate in close proximity. However, I believe that the Bonneville Power lines were in existence prior to KCC enactments.

Targeting a vulnerable population: Counties in the eastern half of Washington State are considered to be rural counties. Kittitas County is designated as such, and as such, the voices of their people are often disregarded by Olympia. Thus they make suitable targets for exploring the boundaries of their laws and regulations especially as they are generally not well funded.

Reiterating – This beast ACU-23-00003 Atlas should have been declared DOA. Instead KCCDS chose to ignore all public comments and continued processing the application in which they managed to

compare apples and oranges: neighborhood to entire Kittitas County: telecommunication tower to Utility.

KCCDS chose to switch horses in the middle of the stream by declaring the project a utility instead of a telecommunication tower.

KCCDS also proceeds to shoot themselves in the foot by the totally inadequate processing of application.

So here we are still flogging away on this dead horse.

Please see additional documents that have a bearing on the present proposed telecommunications tower.

Service Filters

Data As Of Jun 30, 2023 (latest) (Last Update)

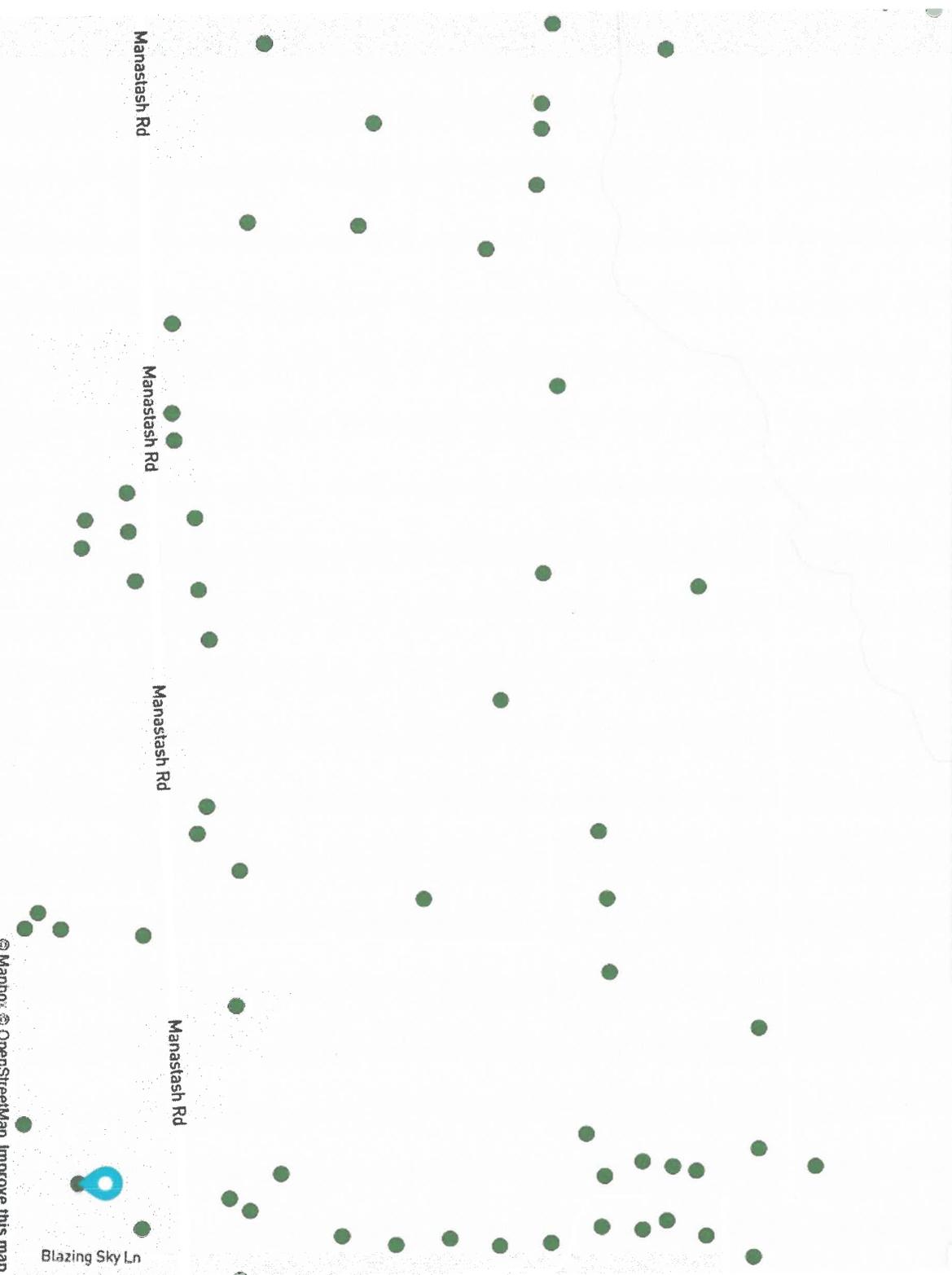
Fixed Broadband |
 Mobile Broadband

Selected Location

131 BLAZING SKY LN
ELLENSBURG, WA 98926
 Status: Served | Residential | Unit Count: 1

Broadband Availability

| Provider | Technology |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> Charter Communications Consolidated Communications, Inc. Hughes Network Systems, LLC Space Exploration Technologies Corp. Telephone & Data Systems, Incl. UScellular Viasat, Inc. | <ul style="list-style-type: none"> Cable Copper GSO Sate NGSO Sa Licensed Wireless GSO Sate |
| <p>Business-only Service</p> <ul style="list-style-type: none"> Viasat, Inc. | <ul style="list-style-type: none"> GSO Sate |



National Broadband Map

Detail | Area Summary | Data Download | About | Broadband Funding Map

Speed: 25/3

Service Filters

Data As Of Jun 30, 2023 (latest) | Last Update

5683 COVE RD ELLENSBURG, WA 98926

Fixed Broadband | Mobile Broadband

Selected Location

**5683 COVE RD
ELLENSBURG, WA 98926**

Status: Served | Residential | Unit Count: 1

Broadband Availability

| Provider | Technology |
|-------------------------------------------|---------------------|
| Charter Communications | Cable |
| Consolidated Communications, Inc. | Copper |
| Hughes Network Systems, LLC | GSO Satel |
| Space Exploration Technologies Corp. | NGSO Sat |
| Telephone & Data Systems, Inc. UScellular | Licensed I Wireless |
| Viasat, Inc. | GSO Satel |

Business-only Service

Viasat, Inc. GSO Satel

National Broadband Map

er Detail | Area Summary | Data Download | About | Broadband Funding Map

ology Speed: 2/25/3

5683 COVE RD ELLENSBURG, WA 98926

Service Filters

Data As Of Jun 30, 2023 (latest) | Last Update

Fixed Broadband | Mobile Broadband

Selected Location

**5683 COVE RD
ELLENSBURG, WA 98926**

Status: Served | Residential | Unit Count: 1

Broadband Availability

Provider | **Technology**

▶ Charter Communications | Cable

▶ Consolidated Communications, Inc. | Copper

▶ Hughes Network Systems, LLC | GSO Satel

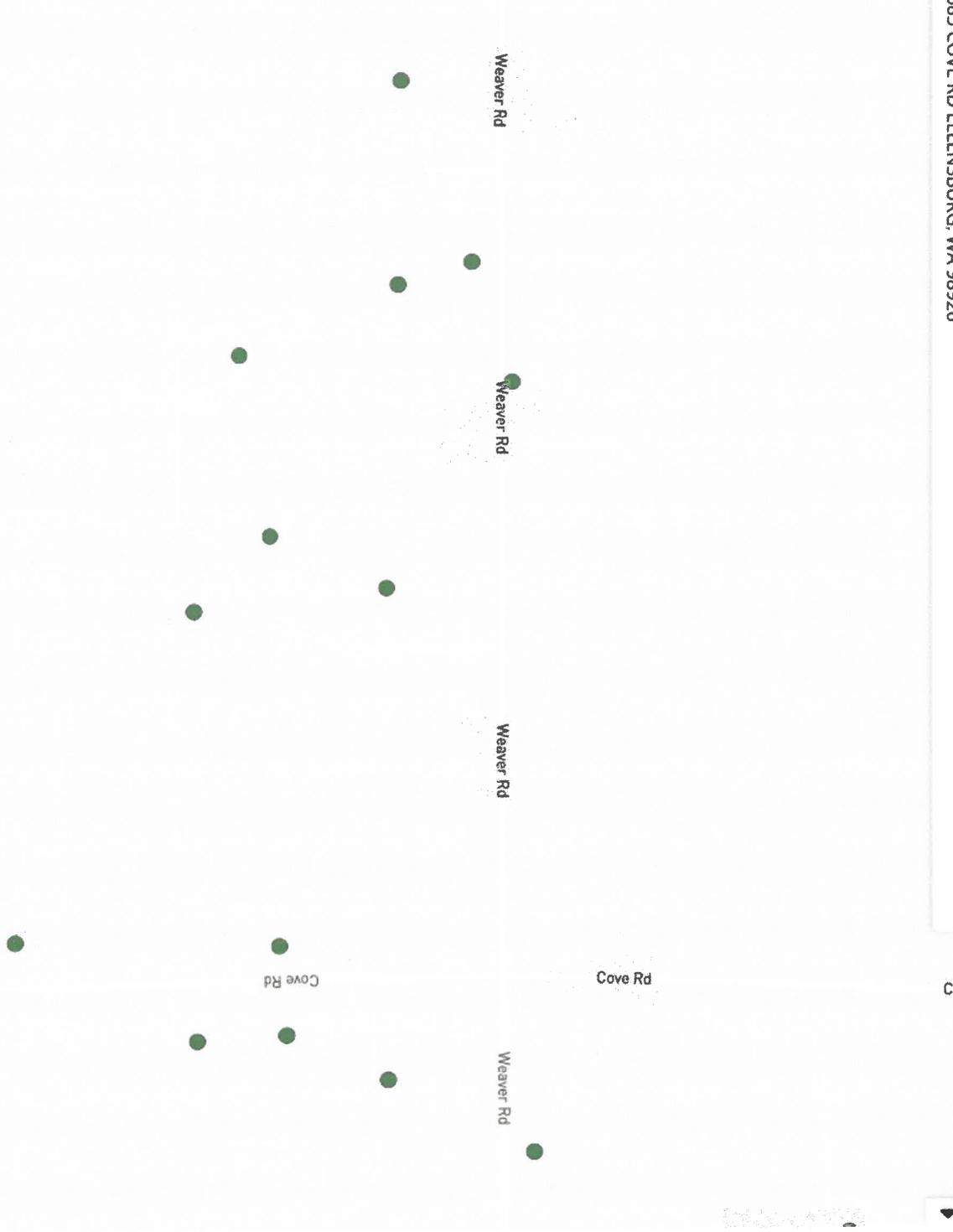
▶ Space Exploration Technologies Corp. | NGSO Sat

▶ Telephone & Data Systems, Incl. UScellular | Licensed I Wireless

▶ Viasat, Inc. | GSO Satel

Business-only Service

▶ Viasat, Inc. | GSO Satel



National Broadband Map

er Detail | Area Summary | Data Download | About | Broadband Funding Map

Speed: ≥ 25/3

5683 COVE RD ELLENSBURG, WA 98926

Service Filters

Data As Of Jun 30, 2023 (latest) | Last Update

Fixed Broadband | Mobile Broadband

Selected Location

5683 COVE RD
ELLENSBURG, WA 98926

Status: Served | Residential | Unit Count: 1

Broadband Availability

Provider | Technology

Charter Communications | Cable

Consolidated Communications, Inc. | Copper

Hughes Network Systems, LLC | GSO Sate

Space Exploration Technologies Corp. | NGSO Sat

Telephone & Data Systems, Incl. UScellular | Licensed Wireless

Viasat, Inc. | GSO Sate

Business-only Service

Viasat, Inc. | GSO Sate

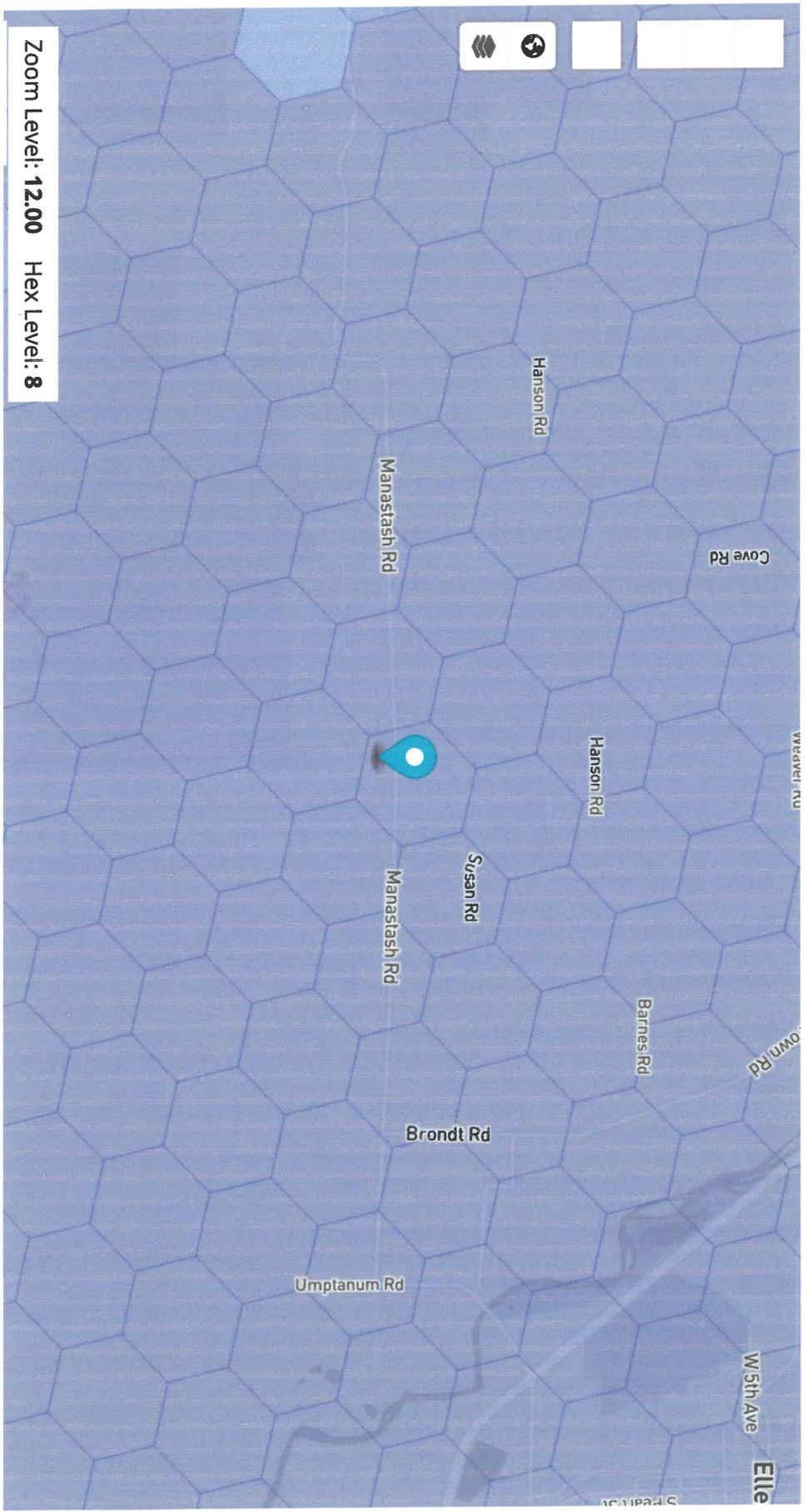


Location Summary *MOBILE COVERAGE*

Environment: Outdoor Stationary Technology: 4G (5/1 Mbps)

Service Filters

Address ▾ 131 BLAZING SKY LN ELLENSBURG, WA 98926



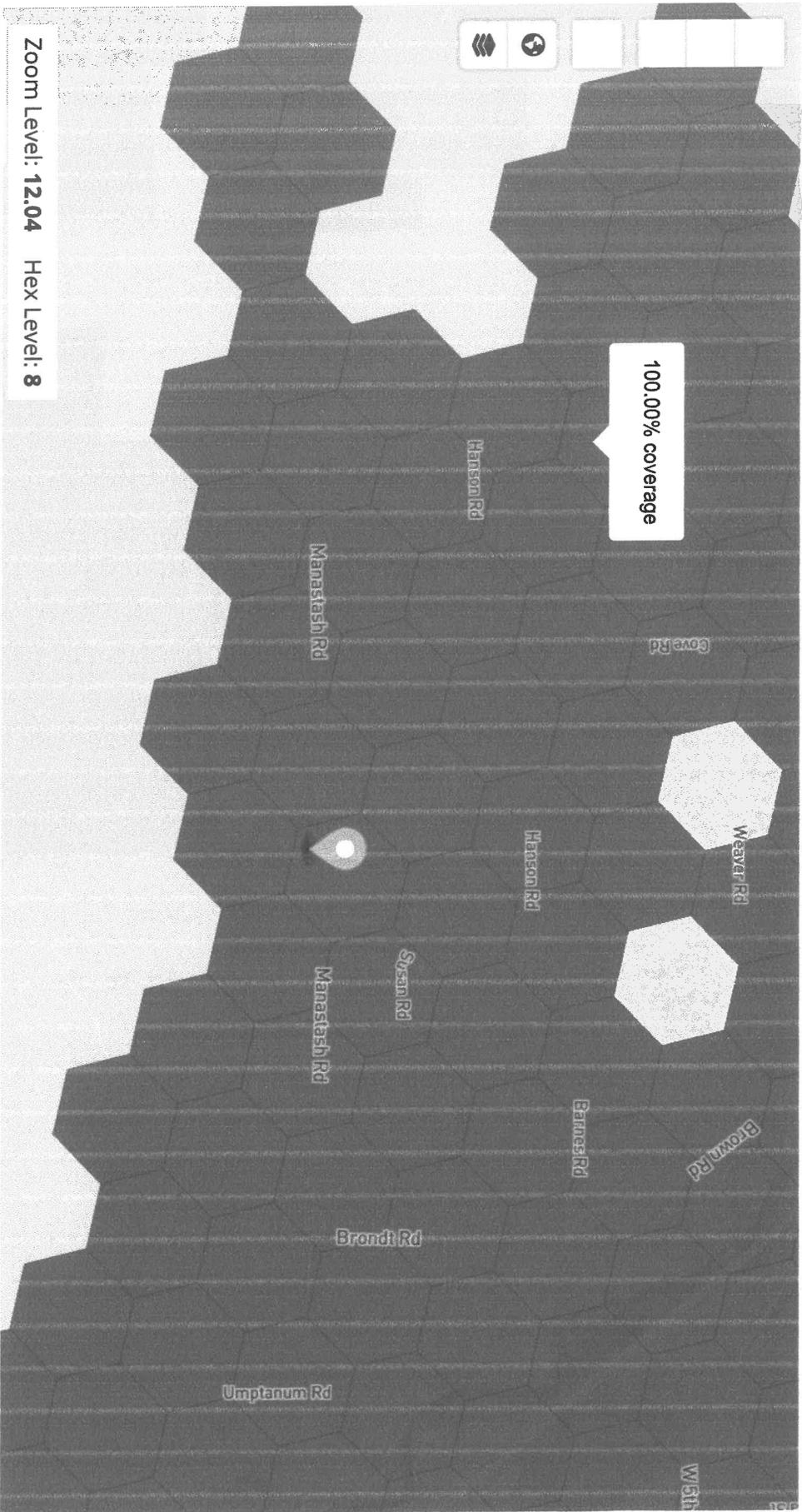


Location Summary

Service: Residential Tech: Any Technology Speed: \geq 25/3

 Service Filters

Address ▾ 131 Blazing Sky Lane, Ellensburg, Washington 98926, United States



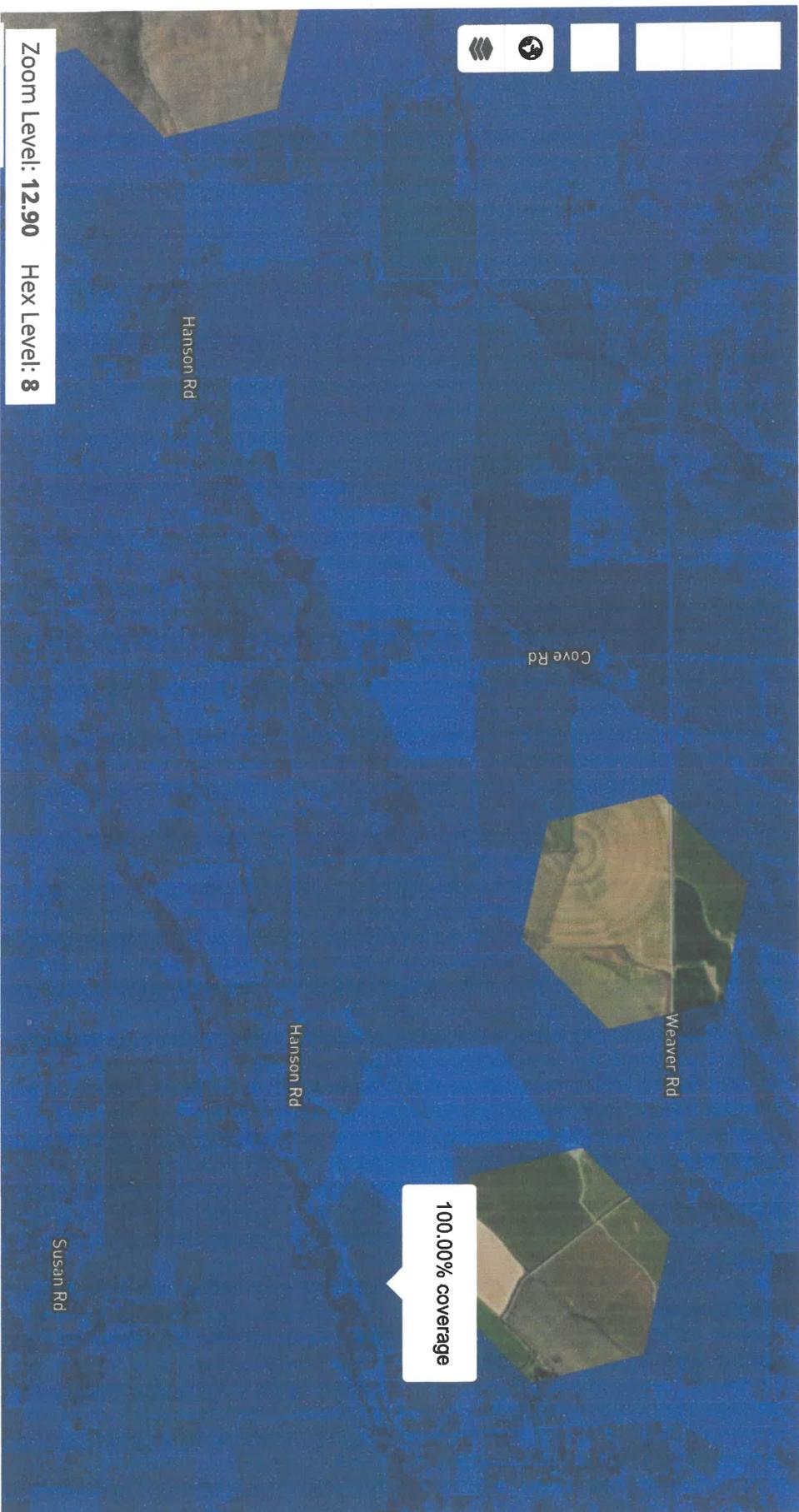


Location Summary

Service: Residential Tech: Any Technology Speed: ≥ 25/3

 Service Filters

Address ▾ 131 BLAZING SKY LN ELLENSBURG, WA 98926



National Broadband Map

Service Detail | Area Summary | Data Download | About | Broadband Funding Map

4G (5/1 Mbps)

11670 MANASTASH RD ELLENSBURG, WA 98926

Service Filters

Data As Of Jun 30, 2023 (latest) (Last Update)

Fixed Broadband | Mobile Broadband

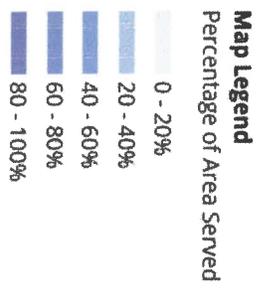
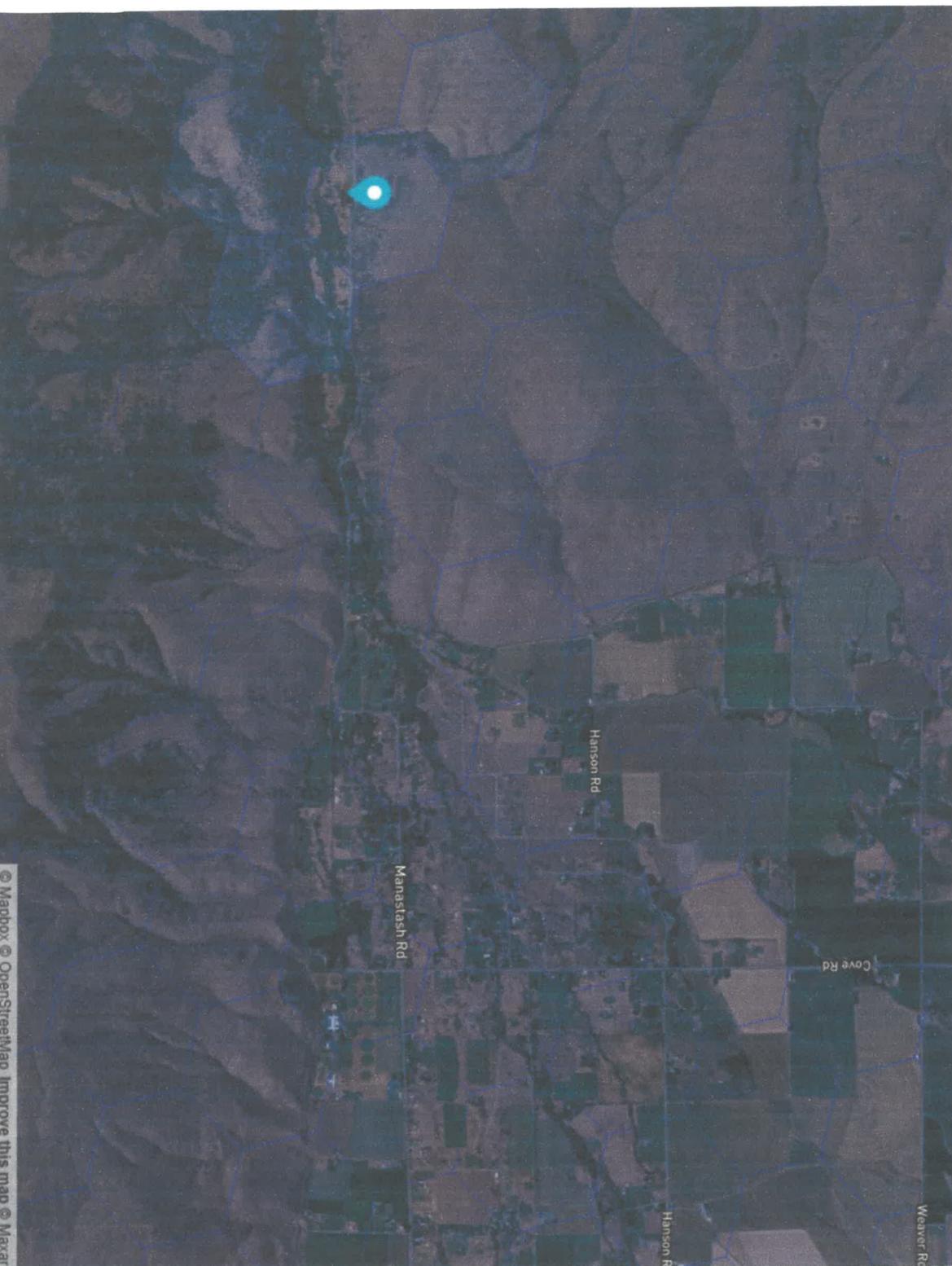
Selected Location

**11670 MANASTASH RD
ELLENSBURG, WA 98926**
Residential | Unit Count: 1

Outdoor Stationary | In Vehicle Mobile

Provider

- ▶ AT&T Inc.
- ▶ Verizon Communications Inc.



National Broadband Map

er Detail | Area Summary | Data Download | About | Broadband Funding Map

Speed: z 25/3

17941 MANASTASH RD ELLENSBURG, WA 98926

Service Filters

Data As Of Jun 30, 2023 (latest) (Last Update)

Fixed Broadband | Mobile Broadband

Selected Location

17941 MANASTASH RD
ELLENSBURG, WA 98926

Status: Served | Residential | Unit Count: 1

Broadband Availability

Provider **Technology**

Consolidated Communications, Inc. Copper

Hughes Network Systems, LLC GSO Satel

Space Exploration Technologies Corp. NGSO Sat

Wasat, Inc. GSO Satel

Business-only Service

Wasat, Inc. GSO Satel

Map Legend

Served Units Percentage



Data As Of Jun 30, 2023 (latest) (Last Updated: 1/9/24)

Fixed Broadband Mobile Broadband

Selected Location

Location Challenge

131 BLAZING SKY LN
ELLENSBURG, WA 98926

Status: Served | Residential | Unit Count: 1

Broadband Availability

Availability Challenge

Provider

Technology

Down (Mbps) Up (Mbps) Chall.

▶ Charter Communications

Cable

1000 35

▶ Consolidated Communications, Inc.

Copper

10 1

▶ Hughes Network Systems, LLC

GSO Satellite

25 3

▶ Space Exploration Technologies Corp.

NGSO Satellite

220 25

▶ Telephone & Data Systems, incl. UScellular

Licensed Fixed Wireless

10 1

▶ Viasat, Inc.

GSO Satellite

50 3

Business-only Service

▶ Viasat, Inc.

GSO Satellite

35 4

Data As Of Jun 30, 2023 (latest) (Last Updated: 1/9/24)

Fixed Broadband Mobile Broadband

Selected Location

Mobile Challenge

131 BLAZING SKY LN
ELLENSBURG, WA 98926
Residential | Unit Count: 1

Outdoor Stationary | In Vehicle Mobile

| Provider | 3G | 4G LTE | 5G-NR |
|----------------------------------------------|----|--------|-------|
| ▶ AT&T Inc. | | ✓ | ✓ 7/1 |
| ▶ T-Mobile USA, Inc. | | ✓ | ✓ 7/1 |
| ▶ Telephone & Data Systems, incl. UScellular | | ✓ | ✓ 7/1 |
| ▶ Verizon Communications Inc. | | ✓ | |

Map Legend

Percentage of Area Served

- 0 - 20%
- 20 - 40%
- 40 - 60%
- 60 - 80%

Manna Fundings LLC v's Kittitas County Feb. 28 2013 County failed to elaborate on findings

¶ 4 After open record proceedings that included public testimony for and against Manna's proposal, the County's Planning Commission adopted findings of fact and a recommendation that the Board deny the rezone. The Board did so by Resolution 2007–53 that was entered on May 15, 2007. The Board found that Manna failed to prove the rezone would contribute to the health, safety, and welfare of the surrounding zone, but did not elaborate on that finding. The Board also determined that Manna's proposal failed to meet several necessary criteria for a rezone under Kittitas County Code (KCC) 17.98.020(7).² The Board's findings reflected concerns that questionable property access and steep slope hindering fire safety impacted the public health, safety, and welfare; that the rezone would not have merit or value for the County or sub-area; that the steep slope made the property unsuitable for reasonable development in general conformance with R–3 zoning standards; and, that the proposed rezone would be materially detrimental to the nearby urban forest zone and possibly to the historic city of Roslyn. The Board gave no other supporting details or reasons for its findings.

¶ 5 On June 5, 2007, Manna filed a LUPA petition requesting the superior court to overturn Resolution 2007–53. The petition also incorporated a complaint for damages under RCW 64.40.020 and 42 U.S.C. § 1983. **After determining that the Board failed to adequately review the record and make meaningful findings of fact from which its conclusions could be drawn, the superior court reversed the Board's decision, vacated Resolution 2007–53, and remanded the matter for new hearings before the Planning Commission and Board. The court specifically instructed the Board to conduct on-the-record discussions to illuminate its decision-making, and to make detailed findings of fact to support its conclusions. The court elaborated:**

Any finding of fact and conclusion of law set forth in the resolution should reflect just what the Board has reviewed in determining its findings. Moreover, the findings should be based upon the evidence presented, not on conclusions that the applicant did not meet rezone criteria. For instance, if the Board were to make an ultimate finding that access was questionable, it should make particular findings based upon the record to demonstrate why the access was questionable. **Similarly, making a bald finding that the petitioners did not meet their burden of proof to demonstrate the rezone positively affected the health, safety, morals and general welfare of the county, without making findings of fact as to why the Board concludes it did not meet the burden does not help the court in its judicial review of the proceedings.**

FILED
JULY 9, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

| | | |
|------------------------------------|---|---------------------|
| ONE ENERGY DEVELOPMENT, LLC, |) | No. 36240-0-III |
| |) | |
| Plaintiff, |) | |
| |) | |
| IRON HORSE SOLAR, LLC, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | |
| |) | UNPUBLISHED OPINION |
| KITTITAS COUNTY, a municipal |) | |
| corporation; and KITTITAS COUNTY |) | |
| BOARD OF COMMISSIONERS; and |) | |
| WILLIAM HANSON, an individual; and |) | |
| “SAVE OUR FARMS! SAY NO TO |) | |
| IRON HORSE!”; and CRAIG CLERF and |) | |
| PATRICIA CLERF, husband and wife, |) | |
| |) | |
| Respondents. |) | |

PENNELL, A.C.J. — Under Kittitas County’s zoning code, a solar farm project can be developed in certain agricultural areas if approved through a conditional use permit (CUP). The code lists several criteria for CUP approval, including, as relevant here, a condition that a project preserve “rural character” as that term is defined in the Growth Management Act (GMA), chapter 36.70A RCW. In the GMA, rural character refers to areas where open space, the natural landscape, and vegetation predominate over the built environment.

No. 36240-0-III

One Energy Dev. LLC v. Kittitas County

One Energy Development, LLC applied to Kittitas County for a CUP in hopes of constructing a large solar farm. A hearing officer initially recommended approval, but the Kittitas County Board of Commissioners (Commissioners) disagreed and voted against the CUP by a tally of 2-1. In making this decision, the Commissioners specified that the solar project was inconsistent with the GMA's definition of rural character because, on the parcels of land at issue in the CUP application, open space, the natural landscape, and vegetation would not predominate over the built environment.

The Commissioners' CUP analysis took too narrow a view of what it means for open space to predominate over the built environment. The GMA's rural character definition refers to patterns of development within the rural element of a county's comprehensive land use plan. It is not limited to a particular parcel or project site. Because the Commissioners' CUP denial was predicated on an erroneous legal determination, this matter must be remanded for further proceedings.

BACKGROUND

One Energy Development, LLC and Iron Horse Solar, LLC¹ sought to construct a solar photovoltaic project (Project) on farmland owned by William Hanson in Kittitas County, Washington. At the time it was proposed, the Project would have been the

¹ One Energy has sold its interests to Iron Horse, leaving Iron Horse the sole real party in interest to this appeal.

No. 36240-0-III

One Energy Dev. LLC v. Kittitas County

largest solar facility in Washington, covering 47.5 acres of a 67.8 acre, 4-parcel property. The Project's proposed site was within Kittitas County's agriculture (A-20) zone. Zone A-20 "is an area wherein farming, ranching and rural life styles are dominant characteristics." KITTITAS COUNTY CODE (KCC) 17.29.010. The intent of the A-20 zoning "classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture." *Id.* At the time of the Project's CUP application, such a solar project was categorized as a major alternative energy facility and allowed in an A-20 zoning area only as a conditional use. Former KCC 17.61.010(9) (2001), .KCC 17.61.020(4)(b).

Kittitas County sets forth the following criteria that must be met for approval of a CUP:

1. The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
2. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that
 - A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - B. The applicant shall provide such facilities; or
 - C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
5. The proposed use will ensure compatibility with existing neighboring land uses.
6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - B. *Preserves “rural character” as defined in the Growth Management Act (RCW 36.70A.030(15));*^[2]
 - C. Requires only rural government services; and
 - D. Does not compromise the long term viability of designated resource lands.

KCC 17.60A.015 (emphasis added).

The GMA provision incorporated into Kittitas County’s CUP standard (KCC 17.60A.015(7)(B) quoted above) defines “rural character” as a pattern of land use and development where, among other things, “open space, the natural landscape, and vegetation predominate over the built environment.” RCW 36.70A.030(16)(a).

Iron Horse’s CUP application went before a Kittitas County hearing examiner for an open record public hearing, pursuant to former KCC 15A.01.040(4)(d) (2014)

² The GMA’s rural character definition is currently codified at RCW 36.70A.030(16).

and KCC 15A.02.060.³ The hearing examiner admitted numerous exhibits into the record, considered evidence, testimony and arguments presented by interested parties regarding the SEPA determination and CUP application. Ultimately, the hearing examiner issued a lengthy written decision, recommending⁴ approval of the CUP. The written decision included 44 recommended conditions of approval.⁵

The Commissioners took up the hearing officer's recommended findings and conclusions through a closed record hearing process, pursuant to former KCC 15A.01.040(3)(a) (2014). The Commissioners' hearings were held over two days: December 20, 2016 and January 10, 2017.

During the December 20 hearing, Commissioner Obie O'Brien and Commissioner Paul Jewell questioned the county's staff representative about environmental details of the Project. Commissioner Laura Osiadacz then moved on to a "bigger topic" that caused her the most concern. Clerk's Papers (CP) at 271. Commissioner Osiadacz questioned

³ The hearing examiner also considered an appeal of a mitigated determination of nonsignificance under the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The SEPA appeal was denied and not pursued further.

⁴ At the time of the hearings in this case, Kittitas County limited the hearing examiner's role to providing recommendations on the issuance of a CUP. Former KCC 15A.01.040(4)(d). Under the relevant code provision, the Commissioners were responsible for considering the hearing examiner's recommendations and making a final decision for the county. Former KCC 15A.01.040(3)(a) (2014).

⁵ The recommended conditions of approval were in addition to the mitigation conditions included in the mitigated determination of nonsignificance.

No. 36240-0-III

One Energy Dev. LLC v. Kittitas County

whether the Project was consistent with preservation of rural character as defined in the GMA. Pointing to the GMA's rural character definition recited above, Commissioner Osiadacz expressed concern that the Project would not result in open space predominating over the built environment since "62.5 percent of the property being use[d] for this project is going to be built on." *Id.* Commissioner Osiadacz voiced concern that the Project's large size would "take away from our agricultural lands and really take away from the character of our community." *Id.* at 279. The matter was then continued to January.

During the January 10, 2017 proceeding, Commissioner Osiadacz and Commissioner O'Brien both focused on the issue of whether the Project was consistent with rural character, as required for a CUP. Both commissioners stated that the rural character requirement was not met, but they differed as to their reasoning. Commissioner Osiadacz continued to express concern over the Project site and the fact that over one-half of the property would be covered by development. Commissioner Osiadacz indicated that if she were to take a broader view of what it meant for open space to predominate over the built environment, her analysis of the CUP application would be different.⁶

⁶ Specifically, Commissioner Osiadacz stated that if she were to consider the entirety of Mr. Hanson's property, 450 acres, instead of the 67.8 acres at issue, the development would be "under that 50 percent mark" and "there would be no way based on code that I could vote against this." CP at 342.

No. 36240-0-III

One Energy Dev. LLC v. Kittitas County

Commissioner O'Brien did take a broader view of what it meant for open space to predominate over the built environment. He explained that the rural character assessment should be made by looking to neighboring properties, not just a project site. Nevertheless, even with this broader view, Commissioner O'Brien explained that the Project was incompatible with the rural character of A-20 zoned land. Given the size of the Project, Commissioner O'Brien commented that the solar farm site would "stick[] out like a missing tooth in a smile." *Id.* at 336.

Commissioner Jewell agreed with Commissioner O'Brien that the rural character assessment goes to "the general landscape within the general area, not special to the individual parcel that's been considered for the project." *Id.* at 343. However, Commissioner Jewell disagreed with the disposition recommended by his fellow commissioners. Commissioner Jewell reasoned that because a major alternative energy facility, such as a solar farm, can be granted a CUP in an A-20 zone, the only question was whether the impact of such a facility on a surrounding rural community can be adequately mitigated. If impacts can be mitigated, rural character is maintained as a matter of law and the CUP must be granted.

After each commissioner clarified their disagreement over the rural character standard, Commissioner O'Brien moved to deny the CUP application. Commissioner Osiadacz seconded the motion. A discussion ensued, during which Commissioner

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O'Brien explained that Iron Horse's Project was "not compatible with [existing farming] uses and with the neighborhood." *Id.* at 353. Commissioner Osiadacz stated she wished to deny the CUP based on her previous comments and what it means for the built environment to predominate over open space. Commissioner Jewell then voiced a dissenting opinion. He expressed concern over whether the Commissioners' decision would not be supportable through written findings. After calling for a formal vote, the CUP was denied, 2-1.

The Commissioners subsequently issued a five-page written decision in resolution form. For ease of reference, a copy of the decision, *id.* at 10-14, is appended to this opinion. The decision contains two sets of numbered paragraphs, the first numbered 1-12 and the second numbered 1-4. The first set of paragraphs are presented as findings of fact and conclusions of law, and consist of uncontroverted procedural facts leading up to the Commissioners' decision. The second set of numbered paragraphs addresses the contested issue of whether the CUP should be granted. Paragraph 1 cites to the GMA's rural character definition (former RCW 36.70A.030(15) (2005)), and states that, if the Project were approved "[o]pen space, the natural landscape, and vegetation **would not predominate** over the built environment on the subject parcels." *Id.* at 14. Paragraphs 2-3 of the second set of numbered paragraphs state, without

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elaboration, that the proposed Project fails to comport with the requirements of KCC 17.60A.015(1), KCC 17.60A.015(5), and KCC 17.60A.015(7)(B).

Iron Horse Solar subsequently sought review in Kittitas County Superior Court under the Land Use Petition Act (LUPA), chapter 36.70C RCW. The superior court issued a memorandum decision denying relief. Iron Horse now appeals to this court.

ANALYSIS

Standard of review

Local land use decisions are reviewed under LUPA. RCW 36.70C.020(2). When assessing the merits of a LUPA appeal, we stand in the same position as the superior court and review the administrative record. *King County Dep't of Dev. & Env'tl. Servs. v. King County*, 177 Wn.2d 636, 643, 305 P.3d 240 (2013). A party appealing a land use decision bears the burden of meeting one of the six statutory standards for relief. RCW 36.70C.130(1). Iron Horse seeks relief under three of the applicable standards: RCW 36.70C.130(1)(b) (“The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.”); RCW 36.70C.130(1)(c) (“The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court.”); and RCW 36.70C.130(1)(d) (“The land use decision is a clearly erroneous application of the law to the facts.”).

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Under the standards cited by *Iron Horse*, questions of law are reviewed de novo and factual determinations are reviewed for substantial evidence. *Cingular Wireless LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). We defer to factual determinations made by the highest administrative body exercising fact-finding authority. *Id.* In this case, the Commissioners were the highest (and only) fact-finding authority. Former KCC 15A.01.040(3)(a). When it comes to review under RCW 36.70C.130(1)(d), a land use decision will be rejected as clearly erroneous if “we are left with a definite and firm conviction that a mistake has been committed.” *Cingular Wireless*, 131 Wn. App. at 768.

The legal question of the rural character definition

Under the circumstances relevant to this case, Kittitas County’s CUP provision requires an assessment of whether a proposed conditional use would be consistent with preservation of “rural character” as defined in the GMA.

The GMA defines “rural character” as:

[T]he patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;

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(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

RCW 36.70A.030(16).

Rules of statutory interpretation guide our analysis of the GMA's rural character definition.⁷ The "fundamental objective" of statutory interpretation "is to ascertain and carry out the [l]egislature's intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The primary resource for this endeavor is the language used by the legislature. But words must not be viewed in isolation. Instead, "meaning is discerned from all that the [l]egislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Id.* at 11.

Viewing RCW 36.70A.030(16) in context, it is apparent that the question of whether open space will predominate over the built environment must be considered in the context of patterns of development within "the rural element" of the county's

⁷ As previously stated, our review of legal issues is de novo. Because the GMA is a state statute, not a local ordinance, local expertise is not relevant to our interpretation. *City of Federal Way v. Town & Country Real Estate*, 161 Wn. App. 17, 37-38, 252 P.3d 382 (2011).

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“comprehensive plan.” This is a broad standard, and for good reason. The GMA was written to address county-wide planning issues, not specific land use determinations. *See Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). The GMA affords counties the flexibility to include a variety of densities within the rural element of their comprehensive plans. RCW 36.70A.070(5)(b). Given this circumstance, the question of whether open space predominates over the built environment cannot be viewed from a myopic perspective, specific to one piece of property or a particular project. Although an individual land use decision can properly take into account larger goals set by the GMA and a county’s comprehensive plan, *see Cingular Wireless*, 131 Wn. App. at 770-72, this individualized context does not alter the meaning of the GMA’s statutory terminology.

It bears emphasis that, under the Kittitas County Code, the GMA’s rural character assessment is only one of several general standards governing CUP approval. In addition to preserving rural character as defined by the GMA, a CUP applicant must also establish that a proposed project is “not detrimental or injurious . . . to the character of the surrounding neighborhood” and “will ensure compatibility with existing neighboring land uses.” KCC 17.60A.015(1), (5). Such considerations are, by definition, highly localized, though not necessarily confined to a particular project site. Local considerations are important to ensuring that a zoning decision is compatible with

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the goals of the GMA and a county's comprehensive plan. But they are not the same thing as the broader⁸ GMA rural character inquiry.

The Commissioners' decision

In the discussions leading up to the CUP decision, the Commissioners debated the appropriate interpretation of the GMA's rural character definition. Commissioner Jewell and Commissioner O'Brien advanced an interpretation of rural character fairly consistent with our analysis. But Commissioner Osiadacz articulated a different, narrower view that is inconsistent with the interpretation set forth above. Because the adverse CUP decision turned solely on the votes of Commissioner O'Brien and Commissioner Osiadacz, the ultimate legality of the Commissioners' decision turns on whether it was premised on the narrow interpretation advanced by Commissioner Osiadacz.

⁸ Not all components of the GMA's rural character definition are necessarily broader than the neighborhood considerations set forth at KCC 17.60A.015(1) and (5). The GMA's "predominate," or density, inquiry is only one of seven components of the rural character definition. RCW 36.70A.030(16)(a). Several of the components can involve highly localized considerations. For example, a small development could be functionally incompatible with a jurisdiction's rural character if it would impair fish and wildlife habitat. RCW 36.70A.030(16)(d). Or a relatively small structure could be visually incompatible with rural character if it marred the appearance of the rural landscape. RCW 36.70A.030(16)(c). When it comes to the functional and visual components of the rural character definition (as opposed to the density component), "rural character is perceived at relatively close quarters (e.g., within the view shed, 'just up the road,' or across the fence line)." *Vashon-Maury v. King County*, No. 95-3-0008, 1995 WL 903209 at *47, 1995 GMHB LEXIS 428 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Final Decision and Order Oct. 23, 1995).

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Our review begins with the Commissioners' written decision. Because the Kittitas County Code requires the Commissioners' decision to include written findings, we scrutinize the findings under the same standard applicable to judicial findings. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35, 873 P.2d 498 (1994). This standard requires that written findings must go beyond the "[s]tatements of the positions of the parties and a summary of the evidence presented." *Id.* at 36. Instead, adequate findings must also illuminate the decision-maker's reasoning process. *Id.* Findings are not necessary as to every controverted fact, *In re Detention of LaBelle*, 107 Wn.2d 196, 218-19, 728 P.2d 138 (1986), but they must be "sufficiently specific to permit meaningful review." *Id.* at 218. In the land use context, findings should also be sufficiently detailed to provide guidance to a proposed developer. *Kenart & Assoc. v. Skagit County*, 37 Wn. App. 295, 303, 680 P.2d 439 (1984).

The only portion of the Commissioners' decision addressing the controverted issue of whether to issue a CUP is the second set of numbered paragraphs. Paragraphs 2-4 of this set of paragraphs are nothing more than legal conclusions, specifying that the Project failed to meet the requirements of KCC 17.60A.015(1), (5), and (7)(B). As such, they cannot be fairly characterized as findings. The only portion of the Commissioners' decision that can be interpreted as a finding of a controverted fact is the first paragraph.

It states:

1. Open space, the natural landscape, and vegetation **would not predominate** over the built environment on the subject parcels if the proposal were approved in this location (**RCW 36.70A.030(15)**).

CP at 14.

This finding reflects Commissioner Osiadacz's view that rural character must be judged according to the parcels of land at issue in a CUP application. As previously stated, this assessment is too narrow. Because the sole finding in support of the Commissioners' legal conclusions reflects a misinterpretation of the governing law, the written decision is not sufficient to withstand appellate scrutiny.

In apparent recognition of the deficiencies with the Commissioners' written decision, the county urges us to supplement the written decision with oral "statements in the record." *Labelle*, 107 Wn.2d at 219. If statements from Commissioner O'Brien and Commissioner Osiadacz indicated that reasons other than the density of the Project site prompted the vote against the CUP, then the county's position might have weight. After all, as documented by the superior court, there are numerous facts in the record that could support denial of the CUP based on KCC 17.60A.015(1), (5), and (7)(B).

The county's suggested approach is ultimately unhelpful because the Commissioners' oral comments underscore the concern raised by the written decision. Commissioner Osiadacz went out of her way to make clear that her vote against the CUP

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turned on the fact that over one-half of the Project site would be covered by development instead of open space. Commissioner Osiadacz also made plain that if she had taken a broader geographic view of what it meant for open space to “predominate” over the built environment, her vote would be different.

Commissioner Osiadacz’s transparency as to the reasons for her CUP decision deserves great credit. Commissioner Osiadacz knew she held a minority perspective of how to view the GMA’s rural character definition. She also knew she held the deciding vote on Iron Horse’s CUP application. By candidly clarifying the fact that her vote on the CUP application turned on her assessment of the rural character definition, Commissioner Osiadacz ensured Iron Horse would receive meaningful consideration on appeal, should her assessment turn out to be incorrect. That is what happened and it is the way our justice system should work. Because Commissioner Osiadacz’s assessment of the rural character definition turned out to be inconsistent with our interpretation, the current CUP decision cannot stand.

Applicable remedy

Appellate remedies for an adverse land use decision include reversal or remand for modification or further proceedings. RCW 36.70C.140. Iron Horse requests we reverse the Commissioners’ decision and remand with instructions to adopt the findings and conclusions proposed by the Kittitas County hearing examiner. This position lacks legal

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support. The hearing examiner never made any legal findings. Pursuant to the terms of the applicable county code, former KCC 15A.01.040(4)(d), the hearing examiner merely made “recommendations” that the Commissioners were free to adopt or reject. *See Marantha Mining v. Pierce County*, 59 Wn. App. 795, 800-01, 801 P.2d 985 (1990). Although we will sometimes reverse an adverse land use decision with instructions to grant specific relief, doing so is an extreme remedy. We will only direct specific relief when it is apparent that remand for further proceedings would be “pointless.” *Id.* at 805.

Here, we have no reason to believe remand would be pointless. The legal error giving rise to this decision was prompted by a good-faith dispute over the meaning of a technical statutory term. There was no misconduct or bad faith. As set forth by the competing analyses provided by the hearing examiner and the superior court, the facts in the record could have supported either approval or denial of the CUP. The appropriate remedy is therefore to remand for further proceedings without instructions as to a particular disposition.

CONCLUSION

This matter is remanded for reconsideration of Iron Horse’s CUP application, pursuant to the rural character definition set forth in this opinion. The Commissioners’ decision on reconsideration shall include written findings of fact that are sufficiently

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detailed to permit meaningful review by Iron Horse and by the judiciary, should there be any further appellate review.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, A.C.J.

I CONCUR:



Siddoway, J.

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APPENDIX

No. 36240-0-III
One Energy Dev. LLC v. Kittitas County

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

**CONDITIONAL USE PERMIT
DENIAL**

IRON HORSE SOLAR FARM CONDITIONAL USE PERMIT (CU-15-00006)

RESOLUTION

NO. 2017- 022

WHEREAS, according to Kittitas County Code Title 15A, relating to Hearings and Title 17.60A Conditional Uses, an open record hearing was held by the Kittitas County Hearing Examiner on October 20, 2016, for the purpose of considering a conditional use permit known as Iron Horse Solar Farm CU-15-00006 and described as follows:

The construction and operation of a 47.5acre photovoltaic solar power generation facility on approximately 68 acres in the Agriculture 20 zone. The subject property is accessed off Caribou Road and located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-01000-0023, 17-19-01000-0028, 17-19-01000-0042, and 17-19-01000-0043. Proponent: OneEnergy Development LLC authorized agent for Bill Hanson, landowner.

WHEREAS, public testimony was heard, in favor of and against the proposal; and,

WHEREAS, due notice of the hearing had been given as required by law, and the necessary inquiry has been made into the public interest to be served by such use; and,

WHEREAS, the Hearing Examiner recommended approval of said proposed conditional use; and,

WHEREAS, a closed record public hearing was held by the Board of County Commissioners on December 20, 2016 and January 10, 2016 to consider the Hearing Examiner's recommendation on this matter; and,

WHEREAS, the Kittitas County Board of Commissioners make the following FINDINGS OF FACT and CONCLUSIONS AT LAW concerning said proposed conditional use:

1. OneEnergy Development LLC authorized agent for Bill Hanson, landowner, submitted a conditional use application for a Major Alternative Energy Facility on approximately 68 acres.

The subject property is zoned Agriculture 20. This "Utility" (KCC 17.61.010{1}) is subcategorized as a major alternative energy facility (KCC 17.61.010{9}), and as such requires approval of a conditional use for the zone 17.61.020(4)(b).

2. This proposal is located approximately 1 mile east of the City of Kittitas at 320 South Caribou Road, in a portion of Section 01, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-01000-0023, 17-19-01000-0028, 17-19-01000-0042, and 17-19-01000-0043. Access as proposed is provided for via an existing permit with Kittitas County.
3. The Kittitas County Comprehensive Plan's Land Use Element designates the subject property as Rural Working and the zoning for this proposal is Agriculture 20.
4. Kittitas County Code provides under Chapter 17.60A.015 provides review criteria for conditional use permits which states that:

The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:

- 1) The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
- 2) The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that
 - a) The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - b) The applicant shall provide such facilities; or
 - c) The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
- 3) The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
- 4) The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
- 5) The proposed use will ensure compatibility with existing neighboring land uses.
- 6) The proposed use is consistent with the intent and character of the zoning district in which it is located.
- 7) For conditional uses outside of Urban Growth Areas, the proposed use:
 - a) Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;

- b) Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15));
 - c) Requires only rural government services; and
 - d) Does not compromise the long term viability of designated resource lands.
5. The Washington State Growth Management Act mandates the county to develop a comprehensive plan, and that within that plan a Rural Element be devised which "include measures that apply to rural development and protect the rural character of the area as established by the County." These measures must be used to control rural development, assure visual compatibility of rural development with surrounding areas, reduce sprawl and protect against conflict with the use of agricultural, forest and mineral resource lands (RCW 36.70A.070). "Rural Character" is defined in the Act thus:

"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
 - (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
 - (c) That provide visual landscapes that are traditionally found in rural areas and communities;
 - (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
 - (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
 - (f) That generally do not require the extension of urban governmental services; and
 - (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.
6. The conditional use permit application was submitted to Community Development Services (CDS) on November 12th, 2015. On December 17th, 2015 the application was deemed incomplete following a mandated pre-application meeting between county staff and representatives of the applicant. Materials required at that time included a transportation concurrency application. On March 3rd, 2016 revised project materials were submitted by the applicant who included the required information as well as an updated narrative and SEPA checklist. The application was deemed complete on May 12th, 2016. The Notice of Application for the conditional use permit was issued on May 23rd, 2016. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments with regard to the proposal

was on June 7th, 2016.

7. Kittitas County acted as the lead agency for the SEPA Environmental Checklist and threshold determination. As per WAC 197-11-355 and KCC 15A.04.010 the county utilized the optional DNS process. Notice was given that the County was expecting to issue a Determination of Non-Significance, and that the notice of application comment period (14 days) may be the only opportunity to provide comment on the environmental impacts of the proposal.
8. The SEPA checklist was reviewed by staff in conjunction with the project narrative. On June 27th, 2016 the application was placed on hold by the applicant and review was temporarily suspended. On July 15th, 2016 the applicant requested that review continue and submitted supplemental documentation with respect to comments received.
9. After a detailed review of the SEPA checklist, the project narrative, supplemental submission, and proposed mitigation measures the SEPA official determined that there would be no significant adverse environmental impacts under the provisions of WAC 197-11-350. A Mitigated Determination of Non-Significance (MDNS) was issued for this project on August 10th, 2016.
10. The appeal period for the SEPA determination ended on August 24th, 2016 at 5:00 p.m. A timely appeal was filed with the BOCC on August 24th, 2016 by "Save Our Farms! Say No to Iron Horse". The appeal was heard before the Kittitas County Hearing Examiner on Thursday October 20th, 2016. The Hearing Examiner issued a decision on November 8th, 2016 which, based on listed findings, held *that* "...the August 10, 2016 SEPA determination by the responsible official in the above referenced matter is affirmed in every respect".
11. The Hearing Examiner open record public hearing for the SEPA appeal and the Conditional Use Permit was held on October 20th, 2016. Representatives of the applicant presented materials and testified at the hearing. Members of the public testified. On November 9th, 2016, the Kittitas County Hearing Examiner returned a recommendation that the Iron Horse Solar Farm Conditional Use Permit (CU-15-00006) be approved with the staff recommended conditions plus an additional two conditions.
12. The Board of County Commissioners conducted a closed record meeting on December 20th, 2016 and continued the meeting to January 10th, 2017 for the purpose of considering the Iron Solar Farm Conditional Permit (CU-15-00006). A motion was made and seconded that the conditional use permit be denied; the motion carried on a vote of 2-1 with the following conclusions:

NOW THEREFORE, BE IT HEREBY RESOLVED that the Kittitas County Board of Commissioners hereby deny the approval of the Iron Horse Solar Farm Conditional Use Permit (CU-15-00006) and adopt the above Findings of Fact, and Conclusions of Law.

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1. Open space, the natural landscape, and vegetation would not predominate over the built environment on the subject parcels if the proposal were approved in this location (RCW 36.70A.030(15)).
2. The proposed use in the proposed location is not essential or desirable to the public convenience and is detrimental or injurious to the public health, peace, or safety, or to the character of the surrounding neighborhood (KCC 17.60A.015(1)).
3. The proposed use in the proposed location would not ensure compatibility with existing neighboring land uses (KCC 17.60A.015(5)).
4. The Proposed use in the proposed location does not preserve the "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15)) (KCC 17.60A.015(7)(B)).

DATED this 7th day of February, 2017 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON
OPPOSED

Paul Jewell, Chairman



Laura Osiodacz, Vice Chairman



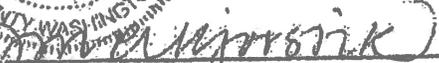
Obie O'Brien, Commissioner

APPROVED AS TO FORM:

Greg Zempel WSBA #19125



CLERK OF THE BOARD


Julie A Kjorsvik

No. 36240-0-III

FEARING, J. (dissenting) — Ample facts support the findings and conclusions of the Kittitas County Board of Commissioners regardless of on what theory a commissioner relied in denying the application of a conditional use permit. Therefore, I would affirm the trial court's denial of Iron Horse Solar's LUPA petition. The trial court penned a thorough and thoughtful decision when denying the petition, and I adopt that decision as my dissent. Attached is a copy of the trial court's decision.

I DISSENT:



Fearing, J.

FILED
NOV 30 2017
VAL BARSCHAW, CLERK
KITITAS COUNTY WASHINGTON

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4 **IN THE SUPERIOR COURT OF WASHINGTON**
5 **KITTITAS COUNTY**

6 ONE ENERGY DEVELOPMENT LLC; and
7 IRON HORSE SOLAR LLC ,

Cause No. 17-2-00075-5

8 Plaintiffs,

9 vs.

MEMORANDUM DECISION

10 KITTITAS COUNTY, a municipal
11 corporation; and KITTITAS COUNTY
12 BOARD OF COMMISSIONERS; and
13 "SAVE OUR FARMS! SAY NO TO IRON
14 HORSE!"; and CRAIG CLERF AND
15 PATRICIA CLERF, husband and wife

16 Defendants.

17 **INTRODUCTION**

18 Oral argument on Petitioner's Land Use Petition Act
19 (LUPA) appeal occurred on September 7, 2017. Timothy McMahon
20 appeared for the plaintiffs. Kenneth Harper appeared for the
21 Defendant Kittitas County and the Kittitas County Board of
22 Commissioners. James Carmody appeared for Defendants Save our
23 Farms and Craig and Patricia Clerf. After hearing all arguments,
24 the Court took the matter under advisement in order to review the
25 record and the pleadings submitted by all parties. The Court has
26 reviewed the voluminous hearing records, state statutes, county
27 code provisions, court cases, and all arguments presented.
28
29

1 be granted a conditional use permit for this particular property
2 by the Kittitas County Board of Commissioners.

3 During the ongoing application process for approval of the
4 facility, One Energy had to also abide by the Kittitas County
5 SEPA process as well. The SEPA review and the project permit
6 review were consolidated into one procedure, pursuant to KCC
7 15A.01.010. The SEPA issues went before a Hearing Examiner, who
8 conducted an open record adjudicative hearing on October 20,
9 2016. Public comment and testimony and submission of evidence
10 were taken at this hearing. The Hearing Examiner's job was both
11 to decide the merits of the administrative appeal of the State
12 Environmental Policy Act threshold determination and issuance of
13 the Mitigated Determination of Nonsignificance (MDNS), and to
14 make a recommendation to the Board of County Commissioners about
15 the issuance of the conditional use permit (CUP).
16
17

18 The Hearing Examiner did do this. It denied the SEPA
19 appeal, affirming the MDNS, and it also recommended that the BOCC
20 approve the CUP application with conditions. The proposal had
21 engendered considerable public interest, particularly among
22 adjacent and other nearby landowners, and they participated as
23 allowed by providing letters, testimony, and various documents
24 for consideration.
25

26 After the decision and recommendation of the Hearing
27

1 Examiner, the Board of County Commissioners held a closed record
2 hearing pursuant to KCC 15A.01.040(3)(a) to make a decision as to
3 the granting of the conditional use permit. The closed record
4 hearing meant that the commissioners were given the full
5 administrative record available to the Hearing Examiner, and were
6 able to discuss their questions and opinions about the various
7 issues presented, to deliberate, and eventually to issue a
8 written decision in the form of Resolution 2017-022, dated
9 February 7, 2017. The Commissioners, by a vote of two to one,
10 denied the Iron Horse project conditional use permit application.
11

12 In Resolution 2017-022, the commissioners listed the
13 following substantive statements:
14

15 "1. Open space, the natural landscape, and vegetation would
16 not predominate over the built environment on the subject parcels
17 if the proposal were approved in this location. (RCW
18 36.70A.030(15)
19

20 2. The proposed use in the proposed location is not
21 essential or desirable to the public convenience and is
22 detrimental or injurious to the public health, peace, or safety,
23 or to the character of the surrounding neighborhood. (KCC
24 17.60A.015(1))
25

26 3. The proposed use in the proposed location would not
27 ensure compatibility with existing neighboring land uses. (KCC
28
29

1 17.60A.015(5).

2 4. The proposed use in the proposed location does not
3 preserve the "rural character" as defined in the Growth
4 Management Act. (RCW 36.70A.030(15)) KCC 17.60A.015(7)(B)).
5

6
7
8 This appeal timely followed on February 23, 2017 with the
9 filing of the Land Use Petition.
10

11
12
13 **2. Standard of Review:** The Land Use Petition Act, LUPA,
14 provides the exclusive means for judicial review of a land use
15 decision (with some exceptions). *Woods v. Kittitas County*, 162
16 Wn. 2d 597 (2007)
17

18 RCW 36.70C.130 sets forth the standards for granting relief
19 in a LUPA appeal. The court may grant relief only if the party
20 seeking relief has carried the burden of establishing that one of
21 the six standards set forth in RCW 36.70C.130(1) has been met.
22 The standards are as follows:
23

- 24 (a) The body or officer that made the land use decision
25 engaged in unlawful procedure or failed to follow a
26 prescribed process, unless the error was harmless;
27 (b) The land use decision is an erroneous interpretation
28 of the law, after allowing for such deference
29 as is due the construction of the law by a local
jurisdiction with expertise;
(c) The land use decision is not supported by evidence that
is substantial when viewed in light of the whole record

before the court;

1 (d)The land use decision is a clearly erroneous
2 application of the law to the facts;

3 (e)The land use decision is outside the authority or
4 jurisdiction of the body or officer making the
5 decision; or

6 (f)The land use decision violates the constitutional
7 rights of the party seeking relief.

8 RCW 36.70C.130(1).

9 One Energy, in its brief, argues that it can establish five
10 out of the six standards, (a) through (e). The court will
11 discuss each in this decision.

12 Deference must be given to the decisions and factual
13 determinations of the local decision making authority. In this
14 case, the BOCC enacted in KCC 15A.01.040 (4)(d) a model in which
15 the Hearing Examiner shall make only recommendations to the BOCC
16 regarding the granting of conditional use permits. Decision
17 making authority over the granting of conditional use permits is
18 retained by the BOCC in the code. This reviewing court, thus,
19 must give substantial deference to the decisions of the BOCC, not
20 to the Hearing Examiner, which makes findings and decisions
21 regarding SEPA, but not the decision regarding conditional use
22 permits. Evidence, and all logical inferences from that
23 evidence, are viewed in the light most favorable to the party
24 that prevailed in front of the BOCC—in this case the defendants.

25 Plaintiff did not cite persuasive authority which would
26 support giving that deference to the Hearing Examiner because of
27
28
29

1 a perceived or real deficiency in the Findings of Fact found by
2 the legal decision maker, and this Court declines to find that
3 the Hearing Examiner was the highest fact finder in this case.
4

5 For the reasons set forth below, this Court finds that the
6 plaintiff has not established any of the standards necessary to
7 overrule the determination of the Board of County Commissioners.
8
9
10
11

12 **3. Analysis:**

13 Analysis of plaintiff's Statement of Issues is organized
14 around specific LUPA standards of review.
15

16 **I. THIS LAND USE DECISION WAS NOT OUTSIDE THE AUTHORITY OR**
17 **THE JURISDICTION OF THE KITTITAS COUNTY BOARD OF COMMISSIONERS**
18 **UNDER RCW 36.70C.130(1)(e).**
19
20

21 One Energy argues as part of standard (1)(e) that the BOCC
22 acted outside of its authority by disregarding the Hearing
23 Examiner's findings. This Court disagrees.
24

25 The Board's role in the conditional use permit process is to
26 determine whether the applicant has met the requirements of the
27 conditional use using KCC 17.60A.015 Review criteria. The
28 Hearing examiner did not have the authority to permit and
29

1 authorize a conditional use.

2 The plaintiffs have not carried a burden of proving that the
3 land use decision was outside the authority or jurisdiction of
4 the body making the decision: in this case, the Kittitas County
5 Board of County Commissioners. As both petitioner and defendant
6 indicate, the SEPA review and the CUP review were consolidated
7 into one hearing, so that the public and the parties and all
8 interested persons could present testimony or submit evidence at
9 one time for consideration of the various land use decisions by
10 the various land use decision makers.
11

12 Nevertheless, as noted earlier, the Kittitas County Board of
13 Commissioners retained decision making authority with regard to
14 the granting or denial of Conditional use permits in KCC
15 15A.01.040 (4) (d). The code provisions regarding this procedure
16 are set out in the relevant parts of KCC 15A.01.040:
17

18 **"3. Board of County Commissioners.** In addition to its
19 legislative responsibilities under KCC Title 15B, the
20 board shall review and act on the following subjects
pursuant to this title:

- 21 a. Recommendations of the Hearing Examiner or Planning
22 Commission. Decision-making process by the board shall
23 consist of a public meeting or meetings wherein the
24 board reviews the written record transmitted from the
25 Hearing Examiner for Quasi judicial matters and the
26 Planning Commission for Legislative matters and issues
a written decision in resolution or ordinance form.
During such meeting(s), appropriate county staff will
present the record to the board, providing information
as necessary to ensure county code compliance. No new
comment or information will be allowed by the board
during the decision-making process.
- 27 b. Appeals of administrative SEPA actions regarding an
28 action without an underlying permit.
29

- 1 c. Open record appeal of administrative SEPA actions
2 when the board of county commissioners hears the
3 appeal of the associated administrative permit
4 decision.
- 5 d. Appeal of administrative determinations such as short
6 plats, variances, and code interpretations.
- 7 e. Shoreline substantial development permits that are
8 included in consolidated permit applications that are
9 subject to Board review and action.
- 10 f. Review and provide initial local County approval,
11 denial, or approval with conditions for shoreline
12 conditional use permits and shoreline variances that
13 are in consolidated permits applications that are
14 subject to Board review and action.

15 **4. Hearing Examiner - Recommendation.** The Hearing
16 Examiner shall review and make recommendations to the
17 board of county commissioners on the following
18 applications and subjects:

- 19 a. All Quasi judicial review processes including:
20 i. applications for preliminary plats
21 ii. Rezone applications.
- 22 b. Other actions requested or remanded by the board of
23 county commissioners.
- 24 c. Development agreements.
- 25 d. Conditional use permits pursuant to the zoning code,
26 KCC Title 17
- 27 e. In the case of an open record appeal of
28 administrative SEPA actions when the Hearing Examiner
29 makes a recommendation to the board of county
commissioners on the underlying permit, the Hearing
Examiner shall decide the SEPA appeal.

Integration of the hearings by statute, for purposes of
taking evidence, does not equate to mandating the rubber stamping
of the Hearing Examiner's recommendation. This court has found
no case law requiring the BOCC to "engage with the findings and
conclusions produced by the Hearing Examiner," or to "refute,

1 challenge, or reply to" the explanations of the Hearing Examiner.

2 Moreover, the decision facing the Hearing Examiner regarding
3 the SEPA appeal involved a different decision with different
4 considerations than the decision facing the Commissioners. As
5 defendants point out, the SEPA review of the MDNS is a threshold
6 determination and does not bind any decision maker on a challenge
7 to the conditional use permit.

8 The Commissioners were the only decision makers who did have
9 authority or jurisdiction to make this land use decision.
10 Standard (1)(e) has not been met.
11

12
13 **II. THE BOARD OF COUNTY COMMISSIONERS DID NOT FAIL TO**
14 **FOLLOW THEIR PRESCRIBED PROCESS IN MAKING THEIR LAND USE**
15 **DETERMINATION UNDER RCW 36.70C.130(1)(a).**
16

17
18 The actual procedure that was followed involved an open
19 public hearing, the submission of testimony and evidence, and the
20 following consideration of all of the record of the open hearing
21 at the commissioner's closed hearing. This procedure tracked the
22 requirements set out in the code provision above. The plaintiff
23 has not identified any procedural errors in the process
24 undertaken in this case up to the point of the issuance of the
25 Resolution 2017-022.
26

27 One Energy argues that the Findings of Fact in the
28 Resolution are substantively insufficient, to the extent that
29

1 there were essentially **no findings** of any substantive fact, which
2 they then argue is a failure to follow KCC 15A.06.020, and thus
3 a violation of Standard (1)(a). They argue that this failure to
4 make findings means that deference must be given to the Hearing
5 Examiner, which was the highest previous entity that made
6 specific findings, so that the Hearing Examiner became the
7 highest level finder of fact.

8
9 The defendant from Save our Farms counters that a finding of
10 facts is indeed set forth in Resolution 1017-022, that the
11 findings, even if conclusory, are sufficient as a matter of law
12 to show the bases upon which the commissioners made their
13 decision. The defendant adds that they were supported by
14 substantial evidence (which will be taken up in another
15 argument).

16
17 The defendant Kittitas County likewise argues that even if
18 findings lack specificity or are conclusory, appellate review may
19 proceed where the record of the oral decision enables the
20 appellate court to review the decision making process. It argues
21 that in this case, the oral record was extensive and clear as to
22 the final factors upon which the commissioners based their
23 decision. They also apparently argue that the actual criteria
24 for conditional use permit review involve subjective general
25 criteria which would not be conducive to empirical facts and thus
26 are admittedly not so detailed as the hearing examiner's facts,
27 though they are at least legally sufficient. While it is true
28
29

1 that the criteria are by nature general and to an extent,
2 subjective, the court believes more specific findings are
3 possible, desirable, and preferable in such a situation.

4 However, although the court notes deficiencies in the
5 findings, this court disagrees with the plaintiff and ultimately
6 agrees with the defendant that the findings made were legally
7 sufficient.
8

9
10 The findings are embodied in Resolution 2017-022. As
11 plaintiff points out, the bulk of the facts are procedural facts
12 and recitations of the laws/code provisions/definitions which the
13 Commissioners had to consider. The last four statements of the
14 resolution, quoted above, which are characterized by the
15 plaintiff as conclusions of law, are in reality both findings and
16 conclusions. They are the only substantive factual statements
17 listed, and constitute the ultimate reasons that the County
18 commissioners gave to explain their denial of the conditional use
19 permit.
20

21
22 This Court finds these are marginally sufficient as findings
23 of fact. They lack detail and any citation to the record itself.
24 However, broad as they are, they are sufficiently specific to
25 permit the Court to review the record and understand the
26 decision. The oral record of the Commissioners' deliberations
27 and decision was extensive, and the voluminous record as a whole
28
29

1 does allow this Court to review the decision for sufficiency of
2 evidence. A common sense reading of "findings" requirements here
3 should prevail. Although the Court was tempted to remand the
4 case to the Board of Commissioners to set out facts with greater
5 specificity, the Court is able to understand the reasoning of the
6 commissioners without so requiring. Thus it would be a pointless
7 gesture to send the matter back for improved findings, and the
8 Court is not inclined to engage in a pointless gesture.
9

10
11 Therefore, plaintiffs have not shown that the Commissioners
12 failed to follow the prescribed process as in Standard (1)(a).
13

14 **III. The Resolution 2017-022 is not an erroneous interpretation**
15 **of law under RCW 36.70C.130 (1)(b).**
16

17
18 The Board found in Finding Number 4, that "the proposed use
19 in the proposed location does not preserve the rural character as
20 defined in the Growth Management Act, RCW 36.70A.030(15) and KCC
21 17.60A.015 (7)(B)." Resolution 2017-022. The definition for
22 rural character referenced in the County Code from the RCW is:
23

24 "(16) "Rural character" refers to the patterns of land use
25 and development established by a county in the rural element
26 of its comprehensive plan:

- 27 (a) In which open space, the natural landscape, and
28 vegetation predominate over the built environment;
29 (b) That foster traditional rural lifestyles, rural-based
economies, and opportunities to both live and work in rural
areas;
(c) That provide visual landscapes that are traditionally
found in rural areas and communities;

1 (d) That are compatible with the use of the land by wildlife
and for fish and wildlife habitat;

2 (e) That reduce the inappropriate conversion of undeveloped
land into sprawling, low-density development;

3 (f) That generally do not require the extension of urban
governmental services; and

4 (g) That are consistent with the protection of natural
5 surface water flows and groundwater and surface water recharge
and discharge areas." RCW 36.70A.030(16).

6
7 This standard must be reviewed after allowing for such
8 deference as is due the construction of a law by a local
9 jurisdiction with expertise. In this case, the Board is the
10 local decision maker and the Board is also the source of the
11 ordinance that sets out the permit criteria, referencing this
12 RCW. The Board is the governing legislative body in a largely
13 rural county, which has considerable experience in discussing and
14 determining rural character. And the Board is singly tasked with
15 deciding the issuance of Conditional Use Permits, and thus must
16 deal with these standards and definitions on a regular basis.
17 Some deference is due to the Kittitas County Commissioners on
18 this issue. But even if deference was not due, the Court finds
19 that the Board did not misinterpret the law.
20
21

22 Plaintiffs contend that the commissioners misapplied the
23 "rural character" provision of the Kittitas County Code
24 provision. They cite to the fact that two solar farms have
25 already been approved, and neither was appealed with respect to
26 conformance with the rural element of the comprehensive plan.
27 The argument appears to be that the very inclusion of solar farms
28
29

1 as a conditional use in the A-20 zone declares that solar
2 facilities are consistent with rural character.

3 However, conditional uses are not the same as permitted
4 uses. Conditional uses are uses that would not be allowed in
5 specific zones unless the proponent applicant of the particular
6 use can demonstrate to the satisfaction of the finder of fact
7 that there is compliance with each of the conditional use permit
8 criteria at that particular site. Solar farms are only allowed
9 in A-20 as a conditional use. Therefore, each individual solar
10 farm must meet every one of the criteria for a conditional use in
11 a site specific review and evaluation before it can be granted a
12 conditional use permit. Preserving rural character is one of the
13 conditions that must be met, and the burden of showing that it
14 does so at this specific site rests with the applicant proponent
15 of the solar farm.

16
17
18 There is nothing inconsistent about a finding that major
19 alternative energy facilities may but also may not preserve rural
20 character as it applies to a specific project in a specific
21 place, even in the same zoning. One component of rural character
22 refers to "patterns of land use and development established by a
23 county in the rural element of its comprehensive plan: (a) in
24 which open space, the natural landscape, and vegetation
25 predominate over the built environment." There could be an almost
26 infinite number of configurations of project and siting that
27 could yield vastly different results from each other.
28
29

1 Additionally, since compliance with the Comprehensive Plan
2 is made part of the local conditions which must be met for a
3 conditional use permit, the applicant is mandated to show
4 compliance with the Comprehensive Plan. *Cingular Wireless, LLC*,
5 131 Wn. App. 756 (2006). This court finds it is not error for
6 the Commissioners to consider rural character as it is discussed
7 in the comprehensive plan during the site specific analysis. The
8 definition in the Growth Management Act at RCW 36.70A.030 is:
9

10 "Rural character" refers to the patterns of land
11 use and development established by a county in the
12 rural element of its comprehensive plan:

13 (a) In which open space, the natural landscape, and
14 vegetation predominate over the built environment;

15 (b) That foster traditional rural lifestyles,
16 rural-based economies, and opportunities to both live
17 and work in rural areas;

18 (c) That provide visual landscapes that are
19 traditionally found in rural areas and communities;

20 (d) That are compatible with the use of the land by
21 wildlife and for fish and wildlife habitat;

22 (e) That reduce the inappropriate conversion of
23 undeveloped land into sprawling, low-density
24 development;

25 (f) That generally do not require the extension of
26 urban governmental services; and

27 (g) That are consistent with the protection of
28 natural surface water flows and groundwater and
29 surface water recharge and discharge areas

1 It is not an erroneous interpretation of law, specifically rural
2 character, to consider whether a massive industrial project of
3 this nature, encompassing 47.5 acres, eight feet high with large
4 mechanized racks to follow the sun, set in the middle of treeless
5 productive farm fields preserves rural character, interferes with
6 visual compatibility of the surrounding area, or contains a built
7
8
9

1 environment which predominates over the natural landscape.

2 Plaintiffs point out that this facility of 47.5 acres is but
3 a small percentage of agricultural land in Kittitas County. The
4 court finds that this is true and would be relevant to an issue
5 of whether overall agriculture production in the valley is
6 threatened by the project. However, in discussing rural
7 character, the relevant criteria for the Commissioners in KCC
8 17.60A.015 were:
9

- 10 1. "The proposed use is essential or desirable to the
11 public convenience and not detrimental or injurious to
12 the public health, peace, or safety or to the
13 character of the surrounding neighborhood. ...
- 14 5. The proposed use will ensure compatibility with
15 existing neighboring land uses.
- 16 6. The proposed use is consistent with the intent and
17 character of the zoning district in which it is located.
- 18 7. For conditional uses outside of Urban Growth Areas,
19 the proposed use:
 - 20 A. Is consistent with the intent, goals, policies, and
21 objectives of the Kittitas County Comprehensive Plan,
22 including the policies of Chapter 8, Rural and
23 Resource Lands;
 - 24 B. Preserves "rural character" as defined in the Growth
25 Management Act (RCW 36.70A.020(15));
 - 26 C. Requires only rural government services; and
 - 27 D. Does not compromise the long term viability of
28 designated resource lands. "

24 The relevant inquiry is the effect on the character of the
25 "surrounding neighborhood" and not necessarily the entire county.
26 The plaintiffs' suggestion that the built environment be compared
27 to all agricultural land in the county is misplaced.
28
29

1 It would be illogical to determine whether the built
2 environment predominates over open space, natural landscape and
3 vegetation by considering and comparing the footprint of a
4 development of any sort to all the agricultural land in a county.
5 Under that analysis, a square mile of skyscrapers in the middle
6 of one hundred square miles of farm fields would not qualify as
7 predominating over the natural landscape. Yet it would clearly
8 not be in keeping with rural character. This is obviously not the
9 intent of the zoning codes, the Growth Management Act provisions,
10 or twenty plus years of other land use decisions. In determining
11 what the "built environment" factor means, this Court has found
12 no case setting out firmly the parameters of this inquiry, either
13 with regard to which land is to be used for comparison to the
14 built environment, or to what percentage should be considered
15 dispositive. We are left with a common sense analysis.

16
17
18 The plaintiff has not shown that the Commissioners engaged
19 in an erroneous interpretation of the law surrounding rural
20 character, under Factor 1) (b).
21
22
23
24

25 **IV. The Resolution is supported by substantial evidence in light**
26 **of the entire record, pursuant to RCW 36.70C.130(1)(c).**
27
28
29

1 Plaintiff claims under the Standard for Granting Relief, RCW
2 36.70C.130(1)(c), that the resolution was not supported by
3 evidence that is substantial when viewed in light of the whole
4 record before the court. This is a sufficiency of evidence
5 claim. Plaintiff has specifically objected in this capacity to
6 **Finding 2**, *The proposed use in the proposed location is not*
7 *essential or desirable to the public convenience, and is*
8 *detrimental or injurious to the public health, peace, or safety,*
9 *or to the character of the surrounding neighborhood, and also to*
10 **Finding 3**, *The proposed use in the proposed location would not*
11 *ensure compatibility with existing neighboring land uses.*
12
13
14

15 The legal standard on any claim of sufficiency of evidence
16 for the commissioners' findings under this provision is for the
17 reviewing court to consider all evidence and reasonable
18 inferences "in the light most favorable to the party who
19 prevailed in the highest forum that exercised fact-finding
20 authority." *Cingular Wireless, LLC v. Thurston County*, 131 Wn.
21 App. 756 (2006)
22

23 Plaintiff contends again in this section that the fact-
24 finder is the Hearing Examiner. In fact, however, as in previous
25 issue discussions, the fact-finder entitled to the inference is
26 the Board of County Commissioners. The Board's role in the
27 conditional use permit process is to determine whether the
28 applicant has met the requirements of the conditional use using
29

1 KCC 17.60A.015 Review criteria. The Hearing examiner did not
2 have that authority to permit and authorize a conditional use.
3 The Board in that instance does not exercise appellate
4 jurisdiction but original jurisdiction.
5

6 Under the substantial evidence standard, there must be a
7 sufficient quantum of evidence in the record to persuade a
8 reasonable person that the declared premise is true. *Phoenix*
9 *Development, Inc. v. City of Woodinville*, 171 Wn. 2d 820 (2011).
10 In addition, the court reserves credibility determinations for
11 the fact finder and does not review them on appeal. *J.L.*
12 *Storedahl & Sons, Inc. v. Cowlitz County*, 125 Wn. App. 1 (2004).
13
14

15 It is worth noting that the following analysis has nothing
16 whatever to do with the views of the Court itself as to the
17 beneficial nature of solar projects in general or this project in
18 particular. All parties need to remember that this Court, as a
19 reviewing appellate court cannot substitute its own judgment for
20 the judgment of the Kittitas County Commissioners. It was for
21 the commissioners to determine whether the review criteria under
22 KCC 17.60A.015 for a conditional use permit were met. It is
23 possible for there to be substantial evidence on BOTH sides of
24 any issue. It is for the finder of fact, in this case the BOCC,
25 to weigh the evidence and decide the matter. The Court will
26 uphold the decision under this prong if it is supported by
27
28
29

1 substantial evidence when viewed in light of the whole record.

2 It is also worth noting that more detailed and comprehensive
3 findings from the commissioners would have assisted all parties
4 and the court greatly in considering this appeal. However,
5 having found that they are sufficiently specific to at least
6 enable the court to consider the nature and amount of evidence
7 that supports them, the court will discuss each one here.

8
9
10 *Regarding Finding 2:* In reviewing the evidence in the
11 record, and taking that evidence in the light most favorable to
12 the defendants, this Court finds there is substantial and
13 sufficient evidence for the commissioners to find the proposed
14 solar facility is not essential or desirable to the public
15 convenience, and that it is detrimental or injurious to the
16 character of the surrounding neighborhood.

17
18 There was no evidence this Court could find in the record
19 that the facility was in fact essential to the public
20 convenience. The plaintiff instead focused on desirability.
21 There was much discussion of the beneficial nature of clean,
22 renewable energy. Both the proponents of the site and most of
23 the opponents of the site agreed in general with the beneficial
24 nature of clean energy in the abstract. However there was no
25 testimony to the need for placement of this project at this
26 location, other than an assertion that the energy would be sold
27 to PSE, which entity provides some, though not all, of the
28
29

1 electricity in the Kittitas Valley. Evidence of the project's
2 desirability was countered by much discussion from opponents
3 about the better suitability of land in other locations in the
4 county for the purpose of a solar farm. Although there was
5 testimony in the record as to potential property tax revenue and
6 a projected amount of clean energy that could be added to the
7 local power grid, the commissioners were not compelled to declare
8 it desirable when weighed against the rest of the testimony in
9 the record.
10

11 The solar project was described by proponents as the largest
12 solar farm in the State of Washington. Opponents to the
13 facility were concerned with the aesthetics of thousands of steel
14 racks of panels, up to eight feet high, which are supported by
15 steel pillars, driven 6 to 8 feet into the ground throughout 47.5
16 acres of prime growing land, as well as accompanied by boxes and
17 instruments of electrical equipment. Local persons were concerned
18 with the sixty acre parcels being surrounded by a huge chain link
19 fence, eight feet high with strands of barbed wire at the top,
20 and there were many comparisons with heavy industry or prisons.
21 The impact on the view from the surrounding neighborhood at this
22 flat mid-valley location is undeniable. The Commissioners were
23 entitled to consider the aesthetics of such a facility. There
24 was testimony from a local realtor about property values
25 diminishing. The commissioners were entitled to believe this
26 testimony over the assertions of the plaintiff that studies from
27
28
29

1 some eastern states show no change in property values around
2 solar farms. Neighbors were concerned with potential issues with
3 weeds in a sensitive timothy hay-growing area, and there was
4 testimony about spraying. Taken in the light most favorable to
5 the county, the Commissioners were entitled to consider this
6 testimony about the difficulties with weed control and to weigh
7 that over the plaintiff's testimony about weeds. There were
8 assertions about glare, about noise, and about the impact to
9 wildlife from neighbors who have seen wildlife on that particular
10 property, which commissioners were entitled to believe despite
11 the SEPA findings.
12

13 There were pages of letters, maps, and photographs
14 discussing the local opposition to the siting of the solar
15 facility. There was testimony from numerous nearby landowners as
16 to the character of the surrounding area, and to the potential
17 impact of this clearly non-agricultural, heavily industrial
18 property use to the people of this particular area. It was
19 undisputed that the character of the surrounding area is
20 farmland. The site itself is prime farmland and has been farmed
21 for years. Plaintiffs suggest without evidence that this is true
22 of all A-20 property, and that the opposition was not site
23 specific; this Court finds that the opposition to the project was
24 completely site specific. The character of every parcel of A-20
25 land is not before the court. Only this set of parcels is before
26 the Court, and this neighborhood. Considering all facts and
27
28
29

1 inferences in the light most favorable to the Commissioners, a
2 fair minded person could make the finding that the proposed use
3 in the proposed location is not desirable to the public
4 convenience, and is detrimental to the character of the
5 surrounding neighborhood. There was substantial evidence in the
6 record as a whole to support the finding.
7

8
9 This holding is consistent with the holding in Cingular
10 Wireless, LLC v. Thurston County, 131 Wn. App. 756 (2006), in
11 which the Court found that the testimony of area residents amply
12 demonstrated that a cell tower would adversely impact views of
13 Mt. Rainier and open vistas of rural farmland. In noting that no
14 other structures pierced the natural skyline in that area, the
15 court held that the record contained sufficient evidence of
16 incompatibility with neighborhood character and adverse aesthetic
17 impacts to support the hearing examiner's decision in that case.
18
19

20 In this court's review, however, there is not substantial
21 evidence sufficient to show that the project is detrimental or
22 injurious to the public health, peace, or safety. The complaints
23 about the facility involved the nature of the area and its effect
24 on nearby farmers. Despite questions about the potential for
25 broken panels to leach harmful chemicals into the soil, there was
26 not sufficient evidence produced that this was a likely event.
27 The court will strike that portion of Finding and Conclusion 2.
28
29

1
2
3 *Regarding Finding 3:* Some opposition to the project
4 declared the site to have incompatibility with existing
5 neighboring land uses. Plaintiffs argued in their submission to
6 the County that the solar farm would have no impact on the
7 ability of neighboring farmers to continue to farm. The
8 testimony and discussion concerning special problems of weed
9 control around timothy hay were most germane to this finding.
10 There were also concerns expressed in the record regarding water
11 control. Although the aesthetic issues relevant to Finding 2 do
12 not impact the ability of neighbors to farm, the evidence, taken
13 in the light most favorable to the Commissioners, is marginally
14 sufficient for the Commissioners to make the finding and
15 conclusion that the proposed use does not ensure compatibility
16 with neighboring land uses.
17
18
19

20 The plaintiff's contention that *J.L. Storedahl & sons, Inc.*
21 *v. Clark County* (143 Wn.app. 920 (2008) and *Lakeside Industries*
22 *v. Thurston County* (119 Wn. App. 886 (2004) require the adoption
23 of the Hearing Examiner's facts is incorrect. In both *Storedahl*
24 and *Lakeside* the Board of Commissioners sat as an appellate body.
25 In *Storedahl*, the Board did not follow legislatively established
26 re-zone criteria for the review of the rezone. In *Lakeside* the
27 Hearing Examiner had the authority to make the actual decision
28
29

1 and the Board heard the appeal.

2 Plaintiff has not shown insufficient evidence under Factor
3 (1) (c).

4
5
6 **V. Resolution 2017-022 is not a clearly erroneous application of**
7 **Kittitas County's conditional use permit criteria from KCC**
8 **17.60A.015, as listed in standard RCW 36.70C.130(1) (d).**

9
10 Plaintiff contends that the discussion which the
11 Commissioners indulged in regarding the general suitability of
12 solar facilities in the A-20 zone showed that they erroneously
13 relied upon the precedential effect of their decision. Plaintiff
14 correctly points out that the comprehensive plan and ensuing
15 development regulations should not be revisited during a project
16 review.
17

18 A finding is clearly erroneous under subsection (d) when,
19 although there is evidence to support it, the reviewing court on
20 the record is left with the definite and firm conviction that a
21 mistake has been committed. *Norway Hill Pres. & Prot. Association*
22 *v. King County Council*, 87 Wn. 2d 267 (1976)
23

24 The commissioners did express reservations about siting such
25 a facility in the A-20 designation. However, it is also clear
26 from the oral record when Commissioner Jewell pointed it out,
27 that they knew they could not make their decision on this case
28 based on a rethinking of conditional uses in A-20 generally. The
29

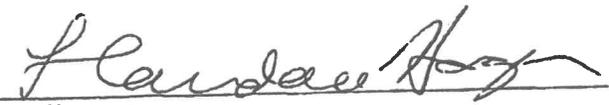
1 Court is satisfied that the commissioners were analyzing this
2 particular project at this particular site rather than changing
3 the conditional use criteria when making the findings that they
4 made. The Court is not left with a definite and firm conviction
5 that plaintiff's alleged mistake was committed.
6

7 This determination is made despite the later moratorium
8 placed on the future siting of solar PV facilities. It appears
9 that the commissioners realized the question of suitability for
10 large scale solar energy facilities to be placed in an A-20 zone
11 is a matter that the commissioners must take up outside any
12 particular project review.
13

14
15
16 **CONCLUSION**
17

18 For the above stated reasons, the Board of County
19 Commissioner's decision to deny One Energy Development and Iron
20 Horse Solar the conditional use permit in Resolution 2017-022 is
21 upheld. The plaintiff has failed to establish that any of the six
22 standards set forth in RCW 36.70C.130(1) have been met.
23

24 Dated this 30th day of November, 2017.
25

26
27 
28 Judge Hooper
29

Exploring the Regulatory Debates of Solar Powered Production Facilities in Kittitas County – CWU by D. Condon 2022.

One clear issue is the complex mismatch between rural land use management, social perspectives, and least-conflict solar development. Landscape governance in Kittitas County is informed by the Washington State Revised Code (RCW 36.70A), Kittitas County Code (KCC Title 17), and the Kittitas County Comprehensive Plan (KCCP Ch. 2 2019). Together, these measures encourage a rural county character dominated by expansive vistas and minimized developmental sprawl (RCW 36.70A; KCCP Ch.8 2019). Rural landscapes are also shaped by social perspectives and various rural ontologies (Woods 2003; Wolsink 2007). For example, agrarian lifestyles remain a prominent county feature codified within the Comprehensive Plan (KCCP 2.2.2; LU-G4). Land intensive SPPFs often compete for space with traditional rural land uses, like agriculture (Huber and McCarthy 2017). Unlike wind, traditional SPPF designs present a dense landscape build-out, maximizing developable space at the expense of concurrent land use synergies like rangeland and energy production (Poggi, Firmino, and Amado 2018). Policy may become the frontlines for extensive, interest-fueled debate when citizens perceive that these landscapes are improperly managed (Görg 2005). In this lies complex social reformations as communities interact with landscape change (Bridge et al. 2013). During the IHSP and CoSP eras, SPPF regulation was unprecedented, leaving many regulations to contended interpretations (Amman 2019). Purpose The purpose of this work is to offer suggestions to improve SPPF regulation in Kittitas County's SPPF regulatory scheme that fostered debate. Second, it analyzes the effectiveness of KCC 17.61C to address these contentions. Finally, this work recommends four collaborative governance-based strategies to improve Kittitas County's current SPPF management. This research asks three primary questions: How did past SPPF management spur debate; are current management practices effective; and what practices might improve SPPF governance in Kittitas County? Research outcomes from this project serve interests at the individual, county, and state levels. This work assists local planning efforts by offering informed SPPF development guidelines within the bounds of Kittitas County land management interests. Further, it creates a conversational platform for collaborative governance between SPPF stakeholders, such as county planners, state certification entities, RE developers, and community members. The collaborative landscape governance strategies suggested in this thesis also benefit Washington State in its effort to bolster RE development while simultaneously reducing local tensions (Gross 2020). This study proposes the following research objectives (RO) to achieve its purpose: RO1) Establish a multi-level legal framework for SPPF siting and management. RO2) Analyze three Kittitas County RE cases studies and their permitting processes. RO3) Test the KCC 17.61C and assess its effectiveness in achieving its goals. RO4) Propose informed, policy-based recommendations to improve local SPPF permitting. Four connected research sub-questions (RQ) are tied to each RO: RQ1) What policies support and regulate SPPF development in Washington?

RQ2) What examples of contentious political debate arose from SPPF governance? RQ3) How does the updated county code—KCC 17.61C—address the SPPF developmental contentions? RQ4) What additional steps may assist Kittitas County to effectively facilitate SPPFs? Methodology This research examines the interface of policy, society, landscapes, and RE development within Kittitas County. Utilizing archival analysis, this study constructs an informative SPPF legal framework for Kittitas County to answer RQ1. Similar work exists for California (Kitchen 2014), yet notably lacking the applied component brought by the case studies of this research. The thesis explores RQ2 through a detailed examination of three case studies. Using the ideas of landscape governance (see Görg 2005) and collaborative governance (see Donahue 2008), it identifies mismatched procedural interpretations found within the cases. Then, this research addresses RQ3 by testing the updated KCC SPPF provision for procedural effectiveness, as per Mousmouti (2012). Finally, using the identified procedural mismatches and examples of successful management elsewhere, this work recommends suggestions for collaborative SPPF governance in line with RQ4. This type of analysis has not yet been conducted for Washington State's SPPFs nor specifically within a rural context, and so presents a nuance within a large gap of research (Naumann and Rudolph 2020).

When explored for Kittitas and King counties in Washington State, Tilt, Kearney and Bradley (2007) find that rural character values are not explicitly defined by visual appearance, but also by local economic stability and slow-paced development. These ideas relate to a familiar sense of place, resource-based economies, and overdevelopment restrictions within localities; all of which may be challenged by an incoming industrial RE development (Tilt, Kearney and Bradley 2007).

The field of energy geography expands these ideas to include energy landscapes, or the manifestations of space necessary for energy production or extraction (Bishop 2015; Nadei and van der Horst 2010). Huber and McCarthy (2017) discuss how both wind and solar landscapes require inputs of sparse natural resources, meaning expansive infrastructures and open space are necessary to harness them. Rural spaces are acknowledged as the frontlines of RE developmental landscapes due to their abundant natural resources, open spaces, and minimal decision-making power (McCarthy 2015; Marsden 2016; Calvert et al. 2021). These areas may fall victim to uneven development, a term that refers to the multifaceted sociopolitical and economic nature of energy development that often produces variable geographic development (Smith 1984; Marsden 2016; Bridge and Gailing 2020; Clausen and Rudolph 2020; Naumann and Rudolph 2020). Uneven development may induce rural marginalization, as these areas are heavily developed to meet outsourced urban energy demand (Naumann and Rudolph 2020). Clausen and Rudolph (2020) apply this idea to geographical RE development patterns in Denmark and Scotland to explore how unaddressed uneven development insinuates rural-urban divides. Additionally, they discuss how urban RE benefit exportation can induce 'dis-embeddedness' between communities and RE, leading the exploited area to perceive marginalization (Clausen and Rudolph 2020). This thesis mobilizes such concepts for Washington State, where a decarbonization agenda has supported outsourced RE development in less-populous rural areas where developmental conditions are favorable. Additionally, it this work explores how past dis-embedded energy and uneven development contributed toward the familiar rural lifestyles in Kittitas County today. Social-based landscape constructions also play a role in SPPF regulation. Woods (2003) asserts a binary land use paradigm classification based on social preferences: Productive-use (productivist) and consumptive-use (consumptionist). For rural areas, these classifications refer to land use preferences that prioritize a cultivation-based or viewshed-based economy, respectively (Woods 2003). Relevant scholarship has greatly expanded upon this dichotomy. Productivist (agriculture) and consumptionist (wildlife) 4 land use paradigms in Kittitas County retain historical land use conflicts, complicating wind facility siting (Abbott 2010). As Abbott (2010) explains, communities will advocate these paradigms to preserve their own interests when governmental advocacy does so insufficiently. Consumptionist theories extend to power disparity in terms of ownership and usership, where power over community landscape aesthetics or appearances is valued higher than landowner autonomy (Walker and Fortmann 2003). Echoing themes of Leo Marx's *Machine in the Garden* (1964), Selman (2010) describes conflicts associated with these paradigms when applied to landscapes, as often their creation has become obsolete to modern life. Consequentially, landscape modernization appears striking by comparison and duly offensive to local identity; this echoes themes of cultural separation between communities and energy productivism which can drive contentions (Pasqualetti 2000; Selman 2010). Recent work by Calvert et al. (2021) furthers this to describe how conflicting consumptive and productive landscape expressions debate rural energy landscape governance strategies. This thesis administers similar ideas. It claims that the visually intrusive and utility-inhibiting nature of the SPPFs on rural and agrarian Kittitas

Exploring the Regulatory Debates of Solar Powered Production Facilities in Kittitas County – CWU by D. Condon 2022. The field of energy geography expands these ideas to include energy landscapes, or the manifestations of space necessary for energy production or extraction (Bishop 2015; Nadei and van der Horst 2010). Huber and McCarthy (2017) discuss how both wind and solar landscapes require inputs of sparse natural resources, meaning expansive infrastructures and open space are necessary to harness them. Rural spaces are acknowledged as the frontlines of RE developmental landscapes due to their abundant natural resources, open spaces, and minimal decision-making power (McCarthy 2015; Marsden 2016; Calvert et al. 2021). These areas may fall victim to uneven development, a term that refers to the multifaceted sociopolitical and economic nature of energy development that often produces variable geographic development (Smith 1984; Marsden 2016; Bridge and Gailing 2020; Clausen and Rudolph 2020; Naumann and Rudolph 2020). Uneven development may induce rural marginalization, as these areas are heavily developed to meet outsourced urban energy demand (Naumann and Rudolph 2020). Social-based landscape constructions also play a role in SPPF regulation. Woods (2003) asserts a binary land use paradigm classification based on social preferences: Productive-use (productivist) and consumptive-use (consumptionist). For rural areas, these classifications refer to land use preferences that prioritize a cultivation-based or viewshed-based economy, respectively (Woods 2003). Relevant scholarship has greatly expanded upon this dichotomy. Productivist (agriculture) and consumptionist (wildlife) land use paradigms in Kittitas County retain historical land use conflicts, complicating wind facility siting (Abbott 2010). As Abbott (2010) explains, communities will advocate these paradigms to preserve their own interests when governmental advocacy does so insufficiently. Consumptionist theories extend to power disparity in terms of ownership and usership, where power over community landscape aesthetics or appearances is valued higher than landowner autonomy (Walker and Fortmann 2003). Echoing themes of Leo. This thesis administers similar ideas. It claims that the visually intrusive and utility-inhibiting nature of the SPPFs on rural and agrarian Kittitas County landscapes challenge local identities. Additionally, it

further the notion that this mismatch is exasperated by various interpretations of the regulatory standards for compliant rural SPPF development. At face-value this debate may be written off as NIMBYism; however, it is worth considering how a large-scale project such as IHSP could have induced feelings of community marginalization. Project opponents, such as Charlton (7 June 2016, email comment), ask, “We need electricity, no doubt about it but how many stresses both aesthetically and environmentally does one valley need to carry?”. Developers used both IHSP and CoSP’s minimal visual intrusiveness to assert the projects’ limited impacts, particularly for KCC 17.60A.015 (5) (Steele 2015; SWCA Environmental Consultants 2017). Geographically scaled impacts play a role here, as these projects foster local aesthetic and character changes to familiarity. Critically, the nature of new development itself can impact community character, despite low visibility (Tilt, Kearney, and Bradley Some stakeholders felt the Kittitas Valley had already faced significant energy resource exploitation when compared to the westward side of the state (Chance, May 2017, typed public comment). Community members questioned the fairness of feeling consistently singled-out for development, particularly when the energy itself was to be used far from its production source (Chance, May 2017, typed public comment; Dunning, 12 December 2017, typed public comment). Kittitas County is orographically separated from urban western Washington, suggesting faraway consumers are increasingly dis-embedded from the energy production forces and faced with minimal blatant externalities. Similar forces may have contributed toward the Kittitas County rural identity through imported BPA hydropower. KCC 17.60A.015 (7) connects this rural ontology with what is protected by the state under RCW 36.70A.030 (23). Namely, IHSP and CoSP faced debate on the visual qualities of rurality, such as open space retention and a natural/built landscape balance (KCCP 1.3; RCW 36.70A.030 (23) (a)). Although transmission lines crisscross the county, rural landscapes in Kittitas County remain heavily free from energy sprawl fragmentation. Highly visible and intrusive SPPFs compete for space with these lands. Such industrial development visualizes the local implications of energy demand that had long been limited to the marginal county outskirts and beyond. Rural values, like those protected by CUPs, reflect the implications of a community dis-embedded from highly visible energy development. IHSP and CoSP were fought vigorously for their aesthetic impact incompliant with the KCCP goals (Adams, 6 June 2016, email comment; KCCP LU-G4, 8.4.1, 1.3, 8.4.3 RP-15 2019). As described by one community member in reference to IHSP, “A Kittitas County comprised of solar farms will [. . .] cease to bring the many tourists attracted by the natural beauty of the valley and surrounding hills,” (Lower, 6 June 2016, email comment). The scale of ‘open space’ retention certainly provides an unclear yet necessary threshold for a highly visible technology like SPPFs. This reflects a clear mismatch between Kittitas County rural character and SPPFs. For CoSP, the county asserted that industrial solar projects were inconsistent with rural character and therefore could not comply with CUP criteria, despite being consistent with the relevant zoning codes (EFSEC 2018b). The IHSP litigation showcased this phenomenon well. During deliberation, one County Commissioner took RCW 36.70A.023 as the parcel-specific percentage of developed land versus undeveloped, whereas another understood it as a juxtaposition between the project itself and neighboring agriculture sites (Pennell 2019). These further differed from the Hearing Examiner interpretation, which referred to how the low visual intrusiveness of the solar panels in comparison to commonly recognized agricultural objects, like Timothy hay or a grain silo (OneEnergy 2016; Pennell 2019). In an Appeals Opinion, Judge Pennell asserted that the broadness within RCW 36.70A.023 was necessary to address county-wide planning, instead of specific land uses (Pennell 2019). Yet, Washington State Superior Court Judge Hooper argued that without site-scale interpretation, fully built-out parcels would continue to upset the balance if open space retained the landscape majority across the entire county (OneEnergy LLC v. Kittitas County et al. 2017). Although the case concluded that SPPFs could be built to uphold rural character, this standard remains unclear for such visually intrusive industrial projects. Clearly, the issue is not with the definition itself, but rather the various interpretations of it regarding SPPFs. As put by one commenter on CoSP, “one man’s ‘rural character’ is another man’s subdivision” (Dicken, 2017, typed public comment).

Definitions re Atlas Tower

1. 15B.03.040 **Procedures.** Consideration of and Response to Public Comments. Planning commission and board of county commissioners members should review the testimony submitted in their findings.

2. Kittitas County Code

Title 17 | ZONING*

RCW 36.70A.030 "Rural character"

(c) Measures governing rural development.

The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Existing Goals, Policies and Objectives within the County Comprehensive Plan are often not directive in guidance of future land uses necessary to protect the nature of rural areas. Directive language needs to replace words of aspiration. [n many GPOs within Chapter 2 and Chapter 8, directive language ("shall") is not included which would provide greater protection of rural character.
- (iv) 37. Much of the text and many of the GPOs within the Comprehensive Plan are absent of criteria. Criteria will clarify why certain areas are designated differently and will form the basis for future land use patterns and decisions.
- (v) 38. Kittitas County, after receiving public comment through questionnaire and the public open houses on March 27 in Cle Elum, and March 28, 2012 in Ellensburg, obtained a majority of responses to protect large open spaces and support only development that is rural in character and does not negatively impact agricultural activities.
- (vi) 39. Most attending these Open Houses were not in favor of higher density zones and indicated that such zones reduce the quality of "rural character."
- (vii) 40. Staff presented potential PUD and PBCP GPOs and regulations in a May 2012 Preliminary Analysis in order to obtain additional public comment on the land use techniques.
- (viii) 41. Open House meetings conducted on April 17 and 18, and on June 12 and June 13, 2012 provided the public the opportunity to comment on proposed maps of re-designation and rezoning, where most favored plan designations and potential zone classifications which enhance protection of open spaces, tourist activity, and agriculture in designated rural areas.
- (ix) 42. At three joint study sessions held on June 24, August 21, and October 9, 2012 before the Planning Commission and the Board of County Commissioners to consider options addressing GMA compliance issues, the costs and benefits of proposed policies and regulation amendments designed to protect "rural character." No public testimony was taken at these meetings. Revisions to Comprehensive Plan and Kittitas County Code Compliance Issues Ordinance No. 2013-00 I February 11, 2013
- (x) 43. At these public joint study sessions, decision makers were provided matrices outlining proposed regulation changes, how proposed changes would benefit the County, achieve compliance to the GMA, and protect rural character.

- (xi) 44. At the Planning Commission hearing on October 23, 2012, and at the Board of County Commissioners hearing conducted on November 26, 2012, public was permitted to comment upon proposed designations and zone classifications.
- (xii) 45. Comments indicating support, request for changes, and requests for no change were considered at both hearings and in deliberation of proposed amendments to the County's Comprehensive Plan and implementing regulations.
- (xiii) 46. Numerous comments were made at the public hearings indicating that use of Planned Unit Development and Performance Based Cluster Plats were not appropriate as provided within the existing regulations, and suggested that they be removed in order to protect the rural character within Kittitas County
- (xiv) . 47. Existing Land Use Plan maps and Official Zoning maps of rural lands include categories that no longer exist or are not rural in nature. Rural designations and rural zones should exist within rural areas to insure development compatible with rural character.
- (xv) 48. A number of permitted uses and land use processes exist within the cUITent ordinance that are inappropriate and do not adequately protect rural character. Many of the uses and procedures are ambiguous and need review to preserve rural character. Many of the uses could also result in development outside of designated Urban Growth Areas or LAMIRDs which could in the future require services from urban capital facilities, which is not compliant with the Growth Management Act.
- (xvi) 49. Much of the current zoning code in Kittitas County pennit uses that are inappropriate in rural areas and cannot be interpreted effectively to determine whether or not that use is compatible with rural environment.
- (xvii) 50. Updating the existing definitions within the Title 17 of the Kittitas County Code and development of a land use matrix which outlines and condenses uses permitted outright and uses permitted under approval of conditional use lessens ambiguity when determining uses compatibility with rural character.
- (xviii) 5 I. Creation of a land use matrix which I) transfers existing uses that have been found compliant with the Growth Management Act (GMA) per decisions by the Eastern Washington Growth Management Hearings Board (EWGMHB), 2) alters uses which are not compliant to GMA in a particular rural zone, provides more direction to Code administrators and the public as to the intent of the use.
- (xix) 52. Some Planned Unit Developments (PUDs) have developed within many rural designated areas and have damaged the rural character in those areas.
- (xx) 53. Urban uses have been permitted within the PUDs which are not characteristic to a seasonal residence or farming activity which is very much a part of the rural character of Kittitas County. Revisions to Comprehensive Plan and Kittitas County Code Compliance Issues Ordinance No. 2013-00 I February 11, 2013

(xxi)

15A.02.040 Consistency.

"Consistency" means, including but not limited to, compliance, conformity and consistency, and refers to performance in accordance with Kittitas County comprehensive plan and development regulations. (Ord. 2000-07; Ord. 98-10, 1998) Dictionary meanings 1. agreement or harmony of parts or features to one another or to the whole. 2 harmony of conduct or practice with profession

15A.02.060 Open record hearing.

"Open record hearing" means a hearing by a single hearing body or officer, authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information under procedures prescribed by the local government by ordinance or resolution. (Ord. 2000-07; Ord. 98-10, 1998)

15A.03.110 Posting site.

1. These provisions shall apply to all development applications, except for development applications processed administratively.
2. The applicant shall post the subject property with signs as required by Community Development Services.
3. Signs shall be posted on each road frontage on the subject property and shall be clearly visible and accessible.
4. Signs shall be posted and on-site prior to issuance of a Notice of Application.
5. The sign shall be a minimum 2 feet by 3 feet and laminated and posted in a sturdy manner to remain on-site until after the expiration of the notice of decision appeal period. It shall be the responsibility of the applicant to properly dispose of the sign.
6. At the time of development application, Community Development Services will identify the number of signs needed and the general location of each sign on the subject property.
7. It shall be the responsibility of the applicant to place the structure in which the sign will be posted on-site. At such time the structure and sign is in place, the applicant shall return the signed affidavit of posting form to Community Development Services.

([Ord. 2014-015](#), 2014; Ord. 2007-22, 2007)

17.08.410 Nonconforming use.

For more information on "nonconforming use" see "Use". ([Ord. 2013-001](#), 2013; Ord. 2007-22, 2007; Res. 83-10, 1983)

17.08.550 Use.

"Use" means the purpose for which land or building is arranged, designed or intended.

1. "Permitted use" means a use allowed outright within a zone classification.
2. "Permitted Administrative use" means a use which may be permitted within a zone classification following review under the provisions of KCC Chapter [17.60B](#).
3. "Administrative Conditional use" means a use which may be permitted in a zone classification following review under the provisions of KCC Chapter [17.60A](#).
4. "Conditional use" means a use which may be permitted in a zone classification following review and hearing under the provisions of KCC Chapter [17.60A](#).
5. "Nonconforming use" means a use or structure, that was legally established according to the applicable zoning and/or building regulations of the time, but which does not meet current zoning and/or building regulations.
6. "Prohibited use" means those uses not specifically enumerated as allowed uses under the provisions of KCC Chapter [17.15](#). ([Ord. 2018-001](#), 2018; [Ord. 2013-012](#), 2013; [Ord. 2013-001](#), 2013; Res. 83-10, 1983)