



**LAW OFFICES OF
JAMES M. DRISCOLL**

RECEIVED
JAN 10 2011

January 5, 2012

**Olympia Planning Department
Olympia City Hall
P.O. Box 1967
Olympia, WA 98507-1967**

Attn. Todd Stamm, Planning Manager, Contract Administrator

Re: Hearing Examiner proposal for Olympia

Dear Mr. Stamm,

Enclosed please my proposal for City of Olympia Pro Tem Hearing Examiner services, a resume and a writing sample. The proposal is structured pursuant to the information requested in the City's RFQ. Thank you for the opportunity to submit this information.

Sincerely,



James M. Driscoll

James M. Driscoll

PROPOSAL REQUIREMENTS

I. General Information

A. Experience

1. I am a 1969 graduate with a BA in Political Science from the University of Washington, and, a 1972 graduate with a JD from the University of Montana Law School.
2. Most of my legal career has focused on land issues. I practiced in Montana for seven years, including four years as an attorney for the Montana Highway Department, and three years as deputy and City Attorney of Helena Montana, which is the capital city of the State.
3. Since 1979 I have resided in Washington. I am a member of the Washington Bar Association. The majority of my legal career in Washington has been as a contract Hearing Examiner for many jurisdictions.
4. The jurisdictions and approximate dates of service in which I have served include: *Everett 1980-present; *Redmond-1980-1996; *Edmonds 1980-1993; Monroe-1995-2005; Lake Stevens-1995-2004; Snohomish-1995-2005; Clallam County- 1995-2003; Thurston County-1995-2010-*2006-2010; Lacey-1997-2005; Woodinville-1995-2005; Mukilteo- 1994-2005; Auburn- 2001-2005; Lacey-1995-2005; Ocean Shores-2001-2005; Des Moines-2001-2005; Bremerton-2000-2005; Kenmore-1998-2005; Maple Valley-1998-2005; Burien 2002-2005; Kennewick 2011-present. (Those jurisdictions marked with a * are ones in which I served as the solo Examiner. The others jurisdiction were jointly served while with a firm or other individuals.)

B. Capabilities

1. As a Hearing Examiner for over thirty years, I have heard and decided several thousand cases. These cases have involved all types of residential, commercial, industrial and recreational development, and, have required interpretation of local ordinances and state and federal statutes and a working knowledge of Washington appellate case law. To issue these decisions (recommendations) have had to have a strong understanding and application of the Washington subdivision code (RCW 58.17); the Washington State Environment Policy Act (SEPA-RCW 42.21C); the Washington State Shoreline Management Act (RCW 90.58); the Washington Regulatory Reform Act for the conduct of land use hearings (RCW 36.70B) and many other state laws.
2. In acting as Hearing Examiner in all of the above listed jurisdictions I have acquired an understanding of applicable local ordinances. I have often been called upon to interpret an ordinance and how it conforms or conflicts with a state regulatory statute.

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3. I am well versed on the requirements of the Washington Administrative Code (WAC) and its relevance to land use, especially in SEPA appeals and Shoreline cases.
4. I have reviewed the jurisdictional authority of the Olympia Hearing Examiner (Olympia Municipal Code 18.82.120). I have conducted hearings and issued decisions for all of the types of cases listed, with the exception of subsection o (removal of density bonuses); subsection s (concept design review); and subsection z (county homeless encampments). I am aware of each of these types of cases and have complete confidence that I could successfully handle them if presented the chance.
5. The level of services needed for the position of Hearing Examiner of Olympia requires knowledge of land use laws of Washington, Thurston County and Olympia. My thirty year experiences as a Hearing Examiner has resulted in a strong working knowledge of state law and local law (including the ordinances of Thurston County). I have experience in interpreting Olympia land use ordinances while I served as Thurston County Hearing Examiner. I am confident of my ability to interpret the land use laws of Tumwater which are similar to land use and procedural ordinances of other cities in Washington.

II. Case Management and Conduct of Public Hearings

The State of Washington has statutes that allow local governments to use Hearing Examiners for land use and other duties. The powers and authority of the Hearing Examiner are limited by local ordinance. The role of the Hearing Examiner is to properly prepare for local administrative hearings; conduct an administrative hearing that is consistent with local procedure and state requirements in order to create an administrative record that supports a decision or recommendation; and to draft a decision that is based on the facts in the administrative record and is consistent with local ordinances and state statutes and appellate decisions. The following are part of the process that I use for case management when serving as Hearing Examiner.

- A. Pre-Hearing Activity: When a hearing is scheduled I review the local and state law that I assume will control the case. I require copies of all exhibits and the staff report to be submitted to me at least 7 days prior to the hearing. The first document I read and review is the staff report. I pay particular attention to the proposed conditions in order to ascertain the issues of the case and the proposed mitigation of those issues. I then review the specific reports and try to grasp the arguments being presented by the Applicant's experts. In reviewing the staff report I also pay close attention to the public comments, which provide a good idea of the issues that will be disputed at the hearing. In reviewing the public concerns I try and determine how the Applicant has

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addressed these issues. Depending on the type of case (usually appeals) I conduct pre-hearing conferences to narrow the issues and set schedules.

B. Hearing:

- 1) On the day of the hearing I consult with the clerical contact at the City to set the order of the agenda (if there are multiple hearings scheduled). I also double check to make sure I have received all documents and to make sure no amended documents have been submitted.
- 2) At the outset of the hearing I introduce myself, read the agenda, give a brief instructional statement about the manner and order of the presentations; describe the role of the Hearing Examiner and how he/she is limited to the record developed at the hearing; describe what form the decision will be issued and how it will be supported by Findings of Fact based on the developed record; and state no decision will be made on the day of hearing. If there is a large or an ambitious crowd I remind them of the need for civility and how shouting or demonstrating serves no purpose and will not be tolerated.
- 3) The hearing starts with the presentation by the City. The City sets the foundation as to what is being requested, the characteristics of the land, a summary of the City's review and process of the application and a recommendation of the City. The City's presentation is followed by the Applicant who has the burden of proof. The Applicant must use this time to negate any of the City's fact or recommendation. It is at this time that the Applicant must present all technical testimony and evidence that is critical for its case. Both the Applicant and the City representatives are subject to examination by the Examiner and a party from each side.
- 4) After the Applicant has presented its case the hearing is opened for public testimony. Usually there are no time limits but if there is a large group it is urged that spokespeople present the general testimony. Unless the witness displays or professes to unique expertise there is no cross-examination of public witnesses, but the Hearing Examiner retains discretion over this issue.
- 5) When the public witnesses have finished the Staff and the Applicant are allowed an opportunity to respond to the public comments
- 6) The Hearing Examiner then takes the matter under advisement and sets the approximate date for the issuance of the decision.

C. Post Hearing:

- 1) After the hearing the official record remains with the City. I take copies of all exhibits and, if necessary, a copy of the audio of the hearing. Upon completion of the decision I email a copy to the clerk who is responsible for distributing it to parties of record and whoever else receives these

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decisions. I also send a copy to the clerk via the US mail. I always comply with time limits, but occasionally if more time is needed, I consult with the Applicant and the City before setting an extended time deadline.

- 2) If any Motions for Reconsideration or Clarification are filed they are responded to in a set period of time.

III. Readiness, availability, and familiarity with the area

- A. Readiness: I am ready immediately. My Hearing Examiner activity has purposely been reduced over the past five years and I have the time and interest to serve in the Pro Tem position.
- B. Availability: While I prefer day hearings, I am available on evenings as well. The only day of the week I am unavailable is Thursday. I would also prefer some time other than Wednesday evenings, but I could be available at that time.
- C. Familiarity with area: I am familiar with all of Thurston County, including Olympia. I served as the Thurston County Hearing Examiner for over 15 years.

IV. References

Mike Kain-Permit Director of Resource Development Services
Thurston County
2000 Lakeridge Drive SW,
Olympia, WA 98502-6045.
360-786-5490

Paul Roberts-City Council for City of Everett and former Planning Director of Everett.
2930 Wetmore Ave. Ste. 9-A
Everett, WA 98201
425-257-8703

Jeff Myers-Attorney
P.O. Box 11880
Olympia, WA. 98508-1189

Rick Walk-Planning Director of City of Lacey
420 College St. SE
Lacey, WA. 98053
360-438-2638

Sharon Langus-Administrative Assistant City of Everett
2930 Wetmore Ave. 8th Floor
Everett, WA. 98201
360-257-8772

RESUME

JAMES M. DRISCOLL

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Seattle, WA. 98117-4848
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Jim@driscollhearings.com

Education

University of Washington, BA-1969
University of Montana, JD-1972
Mediation Training University of Washington Law School-2010

Affiliations

Member of Washington Bar since 1980
Member of Washington Association of Hearing Examiners

Early Professional Experience

- Montana Highway Department (4yrs)-staff attorney with emphasis on eminent domain and construction claims.
- City of Helena (3 yrs)-City Attorney office. City Attorney for 2 years. Activity included representing City Council, trial work (including zoning cases), appeals, labor negotiations, representing the City before utility boards, drafting of ordinances and advising zoning boards.
- Hearing Examiner for Montana Department of Natural Resources water right reservations for future use (1977)

Land Use Experience in Washington

Land Use Hearing Examiner

- Hearing Examiner or Hearing Examiner pro tem in nearly 30 cities and counties in Washington. A sample list of the jurisdictions is set forth in the Proposal Requirements section of this application.
- The first hearing examiner for a number of communities including Redmond, Everett, Edmonds and Kennewick. Developed rules of procedure and established an effective and efficient method of providing hearing examiner services by contract.
- A principal in the law firm of Driscoll and Hunter. The firm's focus was on land use hearing examiner services. During the 1990's and early 2000's the firm provided Hearing Examiner services for over 20 cities and counties.

- Since 2006, I have been a solo practitioner and have provided hearing examiner services to Everett, Mount Vernon, Kennewick and Thurston County until March 2010.

Types of cases heard in role of Hearing Examiner

- Heard and decided many types of land use cases, including plats, variances, conditional permits, shoreline permits, SEPA appeals, right-of-way vacations, proposed zoning changes, administrative appeals of planning department decisions and other types of land use matters.
- Heard and decided over 5000 cases. Complicated cases have included plats with hundreds of lots, requests to allow shell fish farms in Puget Sound, review of box warehouse stores and review of major city public utility sites. While some cases have been as simple as a 5 inch variance request or uncontested right-of-way vacations of unused roads, all cases are considered as meaningful and important to the applicant, neighborhood and the community.

Professional Affiliations and Professional Presentations

- Member of the Washington Bar Association
- Member of the Hearing Examiners Association of Washington (past president, 1992-2006)
- Presented workshops including: four American Planning Association annual conferences; National Association of Towns and Township; National Association of Counties; Washington State Planning Association conferences; WCIA; Washington State Hearing Examiner Association.

References:

See list in the Proposal Requirements section of this application

**FINDINGS AND DECISION
OF THE HEARING EXAMINER OF THE
CITY OF EVERETT**

IN THE MATTER OF THE APPLICATION
OF SNOHOMISH COUNTY FOR
APPROVAL OF A SPECIAL PROPERTY
USE PERMIT

SPU #10-007

SUMMARY OF DECISION: A Special Property Use Permit for the relocation of an Emergency Operations Center for Snohomish County is granted. The facility would be at 720 - 80th Street SW, Everett, Washington. The approval is granted subject to conditions as set forth herein.

INTRODUCTION

Snohomish County (Applicant), a municipal corporation of the State of Washington, requested approval of a Special Property Use Permit (SPU) for the relocation of an Emergency Operations Center (EOC) for the County. The project, which would occur at 720 - 80th Street SW, Everett, Washington (subject property), includes construction of a 150-foot steel lattice-type communications tower, along with supporting equipment, cabling and other tenant improvements.

A hearing was held before the Hearing Examiner of the City of Everett on March 17, 2011. At the hearing the following presented testimony and evidence:

Dave Tyler, City of Everett Planning Department

Doug Diel, CDW Architects
10202 - 5th Avenue N.E.
Seattle, WA 98125

Brian Schroeder, CDW Architects
10202 - 5th Avenue N.E.
Seattle, WA 98125

At the hearing the following exhibits were submitted and were admitted as part of the official record of these proceedings:

1. Staff Report
2. Vicinity Map

Writing sample
James Driscoll

3. Site Plan
4. Applicant's Narrative Statement
5. Aerial photo
6. Elevation Drawing
7. Planned Action Determination dated 01-19-11

All of the exhibits are available for inspection at the Hearing Examiner's Office located at 2930 Wetmore Avenue, 8th floor, Everett, Washington.

Based upon a review of the above record, the following Findings of Fact and Conclusions hereby constitute the basis of the decision of the Everett Hearing Examiner.

FINDINGS OF FACT

1. EOC facilities provide emergency communication services during man-made or natural disasters. The Applicant requested approval of an SPU for relocation of the EOC for Snohomish County. The project, which would occur at 720 - 80th Street SW, Everett, Washington, would include construction of a 150-foot steel lattice-type communications tower, supporting equipment, cabling and other tenant improvements. The Applicant's existing EOC, currently located at Paine Field Airport, would be relocated to an existing 15,000 square foot building on-site. *(exhibit 1, staff report; testimony of Mr. Tyler)*
2. The subject property is zoned by the City of Everett (City) as M-M, Business Park and has a Comprehensive General Plan designation within the City of 5.3, Light Industry. *(exhibit 1, staff report, page 1; testimony of Mr. Tyler)*
3. Currently, the Applicant's EOC is located at Paine Field Airport. Most of the operations are conducted in a 1950's one-story wood-framed building that is approximately 8,000 square feet. The Applicant submitted that the existing building is not seismically retrofitted and is susceptible to extreme damage during earthquake or severe windstorms. It is also too small to accommodate medium to large scale disaster operations. It has asbestos siding that could impede the upgrading of that facility. *(exhibit 4, narrative, page 3)*
4. The Applicant has upgraded the EOC's technology with an Urban Area Security Initiative grant. While the technology has been recently upgraded, the current facility lacks the capacity to sustain long-term operational functions. The Applicant has determined that the current facility either needs significant upgrades or must be relocated. Faced with this option, the Applicant determined that the proposed facility would provide the maximum security and flexibility to satisfy the needs that are generated from disasters. The proposed facility would also accommodate future growth of the EOC. *(exhibit 4, narrative, page 3)*

Special Property Use Permit - General Evaluation Criteria Findings

5. The subject property fronts 80th Street SW, which is of adequate size to serve the proposed EOC. All construction activity would access off 80th Street SW. *(exhibit 1, staff report, page 2; exhibit 4, narrative, page 1; testimony of Mr. Tyler)*
6. The City determined that there would be some additional traffic generated at the proposed facility from on-site employment and minor traffic associated with site construction and periodic maintenance. However, notwithstanding the additional traffic, there would be no impacts to public safety. Access to the site would continue to be off 80th Street SW, an improved arterial street that has curbs, gutters and sidewalks. *(exhibit 1, staff report, page 2)*
7. Currently, the subject property contains 43 parking spaces, which the City determined would be adequate to serve the anticipated needs for the proposed use. On-site vehicle and pedestrian circulation would be adequate. This site abuts State Route 526 to the south. *(exhibit 1, staff report, page 2)*
8. The proposed communications tower would be at the rear of the parcel that is currently zoned for business park use. It would be surrounded by other industrial warehouses and office uses that have proven in the City of Everett to be compatible with the use of the communication tower and operations center. The proposed lattice tower would be approximately 200 feet to the closest residential use. *(exhibit 1, staff report, page 3)*
9. The proposed tower is a 150-foot tall lattice structure that would be capable of supporting several communication antennas. Lighting requirements of the facility may be required by the Federal Aviation Administration (FAA). The associated electrical equipment would be screened from the adjoining right-of-way and private properties by landscaping and structures. *(exhibit 1, staff report, page 3)*
10. No signage is proposed for the facility. *(exhibit 1, staff report, page 3)*
11. The proposed tower would be approximately 150 feet tall, and the upper portion would be unable to be screened because of its height. The equipment shelter would be screened from adjacent properties by the vegetation on-site, as well as the buildings that currently exist on-site. The City determined that there is some existing landscaping around the perimeter of the site, including evergreen trees on the south property line adjacent to State Route 526. These trees would provide some screening of the proposed facility from the freeway and the residences to the south. *(exhibit 1, staff report, page 3; testimony of Mr. Tyler)*
12. Currently, there is no internal landscaping proposed around the parking area on-site. The City submitted there is a requirement that when remodeling of any

existing facility exceeds 35 percent of the assessed value of the existing improvements, the site shall be brought into compliance with current landscape standards. Everett Municipal Code (EMC) 19.35.030.B. The City indicated that this requirement may be waived if it creates nonconformity with other zoning standards, including the amount of parking required. It will be determined at the time of construction whether such landscaping is required. (*exhibit 1, staff report, page 3; testimony of Mr. Tyler*)

13. During construction there would be nuisance irritants, including noise, smoke, dust, odor and glare. These would be caused by construction and would cease at its completion. However, if the tower is required by FAA regulations to be equipped with safety lighting, some lighting may be emitted. If such a requirement is mandated, the lighting would be designed to minimize impacts to surrounding properties. (*exhibit 1, staff report, page 4; testimony of Mr. Tyler*)
14. As previously noted, the subject property is designated as 5.3, Light Industry in the City's Comprehensive General Plan map. Included in the Comprehensive Plan is a requirement that co-location be encouraged for facilities such as is the instant proposal. The City submitted that while co-location of additional communication facilities on the proposed lattice tower is desirable, the proposed use of the tower is for emergency services. (*exhibit 1, staff report, page 4; exhibit 4, narrative; testimony of Mr. Tyler*)
15. The communication tower, as proposed, would not be in conflict with other provisions of the City's Comprehensive General Plan. (*exhibit 1, staff report, page 4*)
16. The proposal would be subject to all Federal Communications Commission licenses and requirements. All safety standards for radio frequency electromagnetic fields must be followed. (*exhibit 1, staff report, page 4*)
17. There are various transit routes that provide service to the site, including routes operated by Everett Transit which serves the Boeing plant and PUD operations center. (*exhibit 1, staff report, page 4*)
18. In addition to the General Evaluation criteria (EMC 19.41.150.C), the proposal must also satisfy the Specific Evaluation criteria of the City of Everett, EMC 19.41.150.D.1.b, (Above Ground Utility and Communication Facilities). (*exhibit 1, staff report, page 5; testimony of Mr. Tyler*)

Special Property Use Permit - Specific Evaluation Criteria Findings

19. While the proposed 150-foot tall communication tower with antennas cannot be fully screened, it would not create visual impacts to surrounding properties. The City submitted that the color of the tower and lighting requirements would be subject to the requirements of the FAA. (*exhibit 1, staff report, page 5*)

20. The proposed facility and tower would provide emergency service communication antennas. (*exhibit 1, staff report, page 5*)
21. State Route 526 is not designated as a Gateway Corridor. The site is not within 200 feet of any areas subject to the City of Everett Shoreline Master Program. (*exhibit 1, staff report, page 5*)
22. The Applicant considered alternative sites. However, these sites were restrictive because of budget limitations, space needs, access control requirements and elevation of the site. The facility must be relatively close to Paine Field aircraft operations to allow aircraft video downlink. (*exhibit 1, staff report, page 5; testimony of Mr. Tyler; exhibit 4, narrative; testimony of Mr. Diel*)
23. The proposed tower, which is within 200 feet of residentially zoned property, requires a Review Process III before the Land Use Hearing Examiner of the City of Everett. (*exhibit 1, staff report, page 5*)
24. Underground utilities are not applicable because the proposed communication tower in order to be effective must be above ground. The tower would be approximately 200 feet from any residentially zoned property. (*exhibit 1, staff report, testimony of Mr. Tyler*)
25. The proposed tower height is the minimum necessary to provide a facility that effectively meets strategic needs and provides the "line-of-site" access to the County for the purpose of which this project is developed for emergency service use. (*exhibit 1, staff report, page 5*)
26. The proposed tower would not fall on any residences because of the distance from the tower to the closest residences. (*exhibit 1, staff report, page 5*)
27. Removal of the above ground utility would be required if the use is discontinued for 120 days. (*exhibit 1, staff report, page 6*)
28. The proposal does not preclude co-location of other communications facilities or equipment. The proposed facility is intended to accommodate emergency communication equipment. (*exhibit 1, staff report, page 6*)
29. The City had the option of requiring a third party review of the proposal. The City decided not to exercise this option. (*exhibit 1, staff report, page 6*)

CONCLUSIONS OF LAW

Jurisdiction

Jurisdiction: *The Hearing Examiner of the City of Everett has jurisdictional authority to hold a hearing and to issue the decision. That authority is set forth in EMC 15.16.100. Based on the above Findings of Fact, the Hearing Examiner enters the following Conclusions:*

Criteria and Standards for Review

SPU Criteria - General Evaluation - EMC 19.41.150.C

- (1) The need of the neighborhood, district, or City for a proposed Special Property Use.
- (2) The adequacy of streets, utilities, and public services required to serve a proposed use.
- (3) The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety; and ability of the proponent to mitigate such potential impacts.
- (4) The provision of adequate off-street parking, on-site circulation, and site access.
- (5) Compatibility of proposed structures and improvements with surrounding properties, including the size, height, location, setback and arrangement of all proposed buildings and facilities, especially as they relate to light and shadow impacts on more sensitive land uses and less intensive zones.
- (6) The number, size, and location of signs, especially as they relate to more sensitive land uses.
- (7) The landscaping, buffering, and screening of buildings, parking, loading and storage areas, especially as they relate to more sensitive land uses.
- (8) The generation of nuisance irritants such as noise, smoke, dust, odor, glare, visual blight, or other undesirable impacts.
- (9) Consistency with the goals and policies of the Everett General Plan for the area and land use designation which the property is located.
- (10) Compliance with the provisions of this ordinance and other City, State, and Federal regulations.
- (11) Accessibility to public transit and traffic reduction measures proposed by the Applicant to reduce dependence of the proposed use on the automobile.

Specific Evaluation and Review Criteria - EMC 19.41.150.D.1(b) - Above Ground Utility and Communication Facilities

- (1) All utility and Communications facilities shall be designed, landscaped, or otherwise screened to ensure compatibility with surrounding properties.

- (2) Antennas associated with above ground utility of communication facilities shall be located on existing or replacement towers or structures to the maximum extent technically feasible to discourage the proliferation of tower structures.
- (3) Tower structures for above ground utility and/or communications facilities shall not be located in or within 300 feet of residentially zones areas.
- (4) When tower structures for above-ground utility and/or communications facilities are proposed to be located within 300 feet of residentially zoned areas, in or within 200 feet of gateway corridors as designated by the Everett Comprehensive Plan, or in or within 200 feet or areas under the jurisdiction of the Shoreline Master Program, zones which otherwise require Review Process II shall use Review Process III.
- (5) All utility and communication facilities shall be installed underground or within structures to the greatest extent practical in order to maximize safety and minimize visual and noise impacts upon surrounding properties.
- (6) Above ground and communications facilities shall be designed so as to be lowest height possible to adequately serve the needs of the public for the proposed utility of communication service.
- (7) Towers associated with above ground utility and communications facilities and all ancillary structures shall comply with the setback of the zone in which the property is located.
- (8) The above ground utility or communication facility shall be removed from the site should the use for such purposes be discontinued for 120 days or more.
- (9) Maintenance or replacement of existing utility or communications facilities, and the installation of new utility poles, light poles or standards, switch cabinets, pad mount transformers or other similar utility of communications facilities of a minor nature and small scale are exempt from this section.
- (10) To the extent provided by law, the City may require utility or communications service provider to allow up to two additional service providers to be located on shared facilities to discourage the proliferation of tower structures, consistent with technological feasibility.
- (11) Utility or communication facilities which require towers for which safety lights are required by the FAA shall not be permitted unless the applicant demonstrates that such a facility in the proposed location and at such a height is necessary to adequately serve the needs of the public for the proposed utility or communications service.
- (12) The Planning Director may require review by an expert third party.

CONCLUSIONS BASED ON FINDINGS

1. EOC facilities provide emergency communication services during man-made or natural disasters. The Applicant requested approval of an SPU for relocation of the EOC for Snohomish County. The project, which would occur at 720 - 80th

Street SW, Everett, Washington, would include construction of a 150-foot steel lattice-type communications tower, supporting equipment, cabling and other tenant improvements. The Applicant's existing EOC, currently located at Paine Field Airport, would be relocated to an existing 15,000 square foot building on-site. (*finding 1*)

2. The subject property is zoned M-M, Business Park with a Comprehensive General Plan designation of 5.3, Light Industry. The proposal is an allowed use with a SPU within the City of Everett. (*findings 1 & 2*)
3. The SPU General Evaluation criteria, as set forth *EMC 19.41.150.C*, must be satisfied by the Applicant. These criteria, which are listed in the Conclusions above, have been satisfied by the proposed project. The manner in which each criterion is satisfied is set forth in the Findings above. (*findings 5 - 18*)
4. In addition to the General Evaluation criteria for a SPU permit, the Applicant must also satisfy Specific Evaluation criteria for above ground utilities and communication facilities, as set forth in *EMC 19.41.150.D.1(b)*. These criteria, which are listed in the Conclusions above, have been satisfied by the proposed project. The manner in which each criterion is satisfied is set forth in the Findings above. (*findings 19 - 29*)

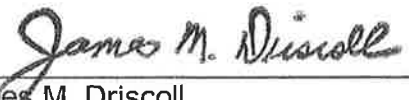
DECISION

Based upon the preceding Findings of Fact and Conclusions and testimony and evidence submitted at the public hearing, it is hereby ordered that a Special Property Use Permit is granted for the relocation of an Emergency Operations Center for Snohomish County. The Special Property Use Permit is granted for the development of a 150-foot steel lattice-type communications tower, along with supporting equipment, cabling and other tenant improvements for property at 720 - 80th Street SW, Everett, Washington. The permit is granted subject to the following conditions:

1. At the time of construction permit application the Applicant must provide additional information, including details of existing landscaping and project valuation, to determine how landscaping, screening and parking requirements shall apply.
2. Any safety lighting required by FAA regulations must be designed to minimize impacts on nearby residential properties.
3. This project must obtain a City of Everett building permit prior to commencing construction.

4. Building setbacks must be a minimum of 20 feet front yard, 10 feet side yard and 20 feet rear yard. The height of the proposed antenna shall be the lowest height possible necessary to meet the needs of the public.
5. The Washington State Clean Air Act requires the use of all known, available, and reasonable means to control air pollution, including dust. Dust generated during construction activities shall be controlled by wetting those dust sources such as areas of exposed soils, washing truck wheels before they leave the site, and installing and maintaining gravel construction entrances. Construction vehicle track-out is also a major dust source. Any evidence of track-out can trigger violations and fines from the Department of Ecology or the Puget Sound Air Pollution Control Agency.

Done and dated this 21st day of March, 2011.



James M. Driscoll
Hearing Examiner