

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost)	
of Broadband Deployment by Improving)	
Policies Regarding Public Rights of Way and)	
Wireless Facilities Siting)	

REPLY COMMENTS OF MERCER ISLAND, WASHINGTON

The City of Mercer Island, Washington (“City”) hereby responds to the Comments of NextG Networks, Inc. (“NextG”) in the captioned proceeding.¹ NextG claims that the City (1) has poor wireless coverage; (2) “only allows wireless antennas on the utility pole lines along Island Crest Way;” and (3) does not allow wireless attachments on “utility poles throughout the island.” *Id.* NextG is mistaken on all counts.

NextG admits it has never applied to place wireless facilities in the City. This is confirmed by the attached Declaration from Tim Stewart, the City’s Director of Development Services.² Thus, NextG’s claims are speculative, at best. We take up each in turn.

Wireless coverage. NextG alleges without support that wireless coverage in the City is poor. Mr. Stewart’s declaration is to the contrary, referencing propagation maps (Declaration, ¶ 9) and a history of affirmative action on each of more than 60 siting applications (¶ 7). If poor service exists, it cannot be traced to City refusals.³

¹ Comments, July 18, 2011, 21.

² Declaration, ¶11.

³ Of four applications to amend in the 15 years of the Ordinance’s existence, one was approved, two withdrawn and one is pending. Declaration, ¶ 6.

Choice of locations. Even a cursory examination of the code section cited by NextG indicates that Island Crest Way is not an exclusive location for wireless communications facilities (“WCFs”).⁴ It is true, however, that the Way is topographically favored to serve wireless providers and their customers. Other permitted uses in the code include Town Center, a Public Institution Zone (“I-90 Corridor”) and defined areas within Residential Districts. (Declaration, ¶ 8 and Exhibits D and E)

Utility pole attachment. NextG’s claim that pole attachments are not permitted outside Island Crest Way is mystifying. As indicated by the Declaration at ¶ 8 and Exhibit D, WCFs attached to utility poles are allowed in multiple locations in the City. Any area that allows for a WCF also permits the antennas to be placed on a utility pole, with the exception of the Town Center (where antennas are allowed on top of buildings which are typically higher than utility poles) and Island Crest Park (which allows for placement on the ball field light stands).

Conclusion. With the adoption of the Telecommunications Act of 1996, the City recognized (Exhibit A) its obligation and its jurisdiction to provide for “quality communications services” while minimizing “potential aesthetic impacts” of increasing numbers of applications to place wireless communications facilities. The ordinance adopted then has stood the test of time. Proposals to amend it have been few. No application has been denied. The speculative claims of NextG, a non-applicant, are contrary to the Declaration of Tim Stewart and its appended Exhibits. The claims should be dismissed or denied.

⁴ <http://www.codepublishing.com/wa/mercerisland/>

Respectfully submitted,

CITY OF MERCER ISLAND, WA

A handwritten signature in cursive script, appearing to read "Katie Knight", is written over a horizontal line.

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September 30, 2011

**Before the
Federal Communications Commission
Washington, DC 20556**

In the Matter of

Acceleration of Broadband Deployment:
Expanding the Reach and Reducing the Cost of
Broadband Deployment by Improving Policies
Regarding Public Rights of Way and Wireless
Facilities Siting

WC Docket No. 11-59

DECLARATION OF TIM STEWART

I, Tim Stewart, declare as follows:

1. I am the Director of Development Services for the City of Mercer Island. I am competent to testify and have personal knowledge of the facts stated herein based upon my review of the records, as well as my own personal experience. If called as a witness I could testify thereto.

2. The City of Mercer Island, Washington ("City") adopted an interim ordinance on or about July 15, 1996, which regulated wireless communication facilities ("WCFs"). The ordinance was preceded by research and discussion by the Mercer Island City Council.

3. A mailing list of interested parties was established. On or about December 2, 1996, the City Council repealed the interim WCF regulations and adopted permanent WCF regulations. A true and correct copy of Ordinance 96C-20, adopted 12/2/1996, is attached as Exhibit A.

4. Subsequent to the adoption of the December 2, 1996 ordinance, the WCF regulations have been amended by the City on at least five additional occasions. Each amendment included at least two public hearings, with at least one hearing at the Planning Commission level and at least one hearing before the City Council. Attached as Exhibit B is a true and correct copy of the History Summary of Wireless Communication Facility Ordinances.

5. Over time, the regulations have provided additional specificity regarding the location and design of WCFs. However, the currently allowed locations are fairly consistent with the locations allowed by the City code adopted in 1996 under Ordinance number 96C-20. See Exhibit A.

6. The City allows for anyone to submit a proposed zoning code text amendment, subject to an application fee, pursuant to Mercer Island City Code (MICC) 19.15.010(E). The City found only four applications to amend the wireless ordinance by someone other than the City itself. The first was submitted on May 15, 1996 to allow WCFs within the P zone (permit #960564), which was approved as ordinance 96C-009, with minor revisions. The second proposed code text amendment was in 1999, seeking to allow for the continuation of non-conforming WCFs (permit #ZTR9907-012/99-0012) which was canceled. The third was to allow WCFs on a specific Washington State Department of Transportation-owned location on West Mercer Way at 24th Avenue SE in Mercer Island (permit #99-006), which was canceled. The fourth proposed text amendment was submitted on July 12, 2011, to remove the requirements that WCF antennas be "microcell" antennas (permit #ZTR11-04), and is currently pending review by the City Council.

7. Between December 2, 1996 and July 1, 2011, the City has received at least 62 zoning permit applications related to the construction, repair, and design of wireless communication facilities. Attached as Exhibit C is a true and correct copy of the list of zoning permits applied for between 12/2/1996 and 7/1/11. None of the applications has been denied. The City currently owns at least three parcels where WCFs are located (South Mercer Fire Station, Rotary Park, and Island Crest Park). The other sites are within the public rights of ways and privately owned parcels.

8. The current Mercer Island zoning code provides encouragement and incentives, via additional height, for carriers to co-locate. MICC 19.06.040(B)(1)(e), 19.06.040(C)(1), and 19.06.040(F). There are at least six sites within the City that use co-location. The locations are on private property, City property, and utility poles owned by Puget Sound Energy and located within City right of way.

9. The service coverage information submitted with WCF applications, frequently referred to as “propagation maps”, indicate that there are very few, if any, areas with “no service”. The City has a set of these maps for four major carriers, and is prepared to submit them if the FCC wishes to see them.

10. An application for a variance may be filed with the City of Mercer Island if strict application of the city’s regulations would preclude an antenna from receiving or transmitting a usable signal, or if the property owner believes that an alternative exists which is less burdensome to adjacent property owners, subject to certain criteria per MICC 19.06.040(H).

11. The City’s permit tracking system was implemented in the 1990s. The City has no record in its permit tracking system of NextG being a contact, owner or applicant on any application whatsoever.

12. Attached as Exhibit D is a true and correct copy of where WCF’s are currently allowed by MICC.

13. Attached as Exhibit E is a true and correct copy of telecommunications portions of the Utility section of the City’s Comprehensive plan which recognizes the use and importance of WCFs.

14. Attached as Exhibit F is a true and correct copy of two pages from the City’s Parks and Recreation Plan 2007—2012), adopted on or about February 5, 2007, which recognizes WCFs in the City parks.

I declare under the penalty of perjury that the foregoing is true and correct and that I have signed this Declaration in the City of Mercer Island, Washington on 9-19, 2011.



Tim Stewart, Director of Development Services
City of Mercer Island, Washington

EXHIBIT A

CITY OF MERCER ISLAND

ORDINANCE NO. 96C-020

ORIGINAL

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING MUNICIPAL CODE TITLE 19 BY ADDING A NEW SECTION,
19.04.0607, WIRELESS COMMUNICATIONS ORDINANCE, AND REPEALING
ORDINANCE NO. 96C-009.**

WHEREAS, the Federal Communication Commission has licensed additional wireless communications providers in this region and there has been an increase in the demand for wireless services together with an increase in requests for wireless facility sites; and

WHEREAS, the Federal Telecommunications Act of 1996 gives local jurisdictions the zoning authority to regulate wireless facilities; and

WHEREAS, the Comprehensive Plan seeks the provision of quality communication services and also seeks to minimize potential aesthetic impacts to the community; and

WHEREAS, the City's current codes and regulations were adopted prior to the development of wireless communication facilities thus there was a need for new provisions to address these facilities; and

WHEREAS, the City Council established a Wireless Communications Task Force with representatives from the Council, Planning Commission and staff to research and draft an ordinance to regulate wireless communications facilities; **NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DOES
ORDAIN AS FOLLOWS:**

Section 1. The Mercer Island City Code, Title 19, Chapter 19.04, Zoning Ordinance, is hereby amended by repealing Ordinance No. 96C-009, an Interim Code Amendment allowing wireless facilities; and adding a new sub-section to 19.04.060, General Provisions, as follows:

Section 19.04.0607 WIRELESS COMMUNICATIONS ORDINANCE

Section 1. Definitions

- A. Wireless Communications Facility (WCF)**
-is any unstaffed facility for the transmission and /or reception of radio frequency signals usually consisting of antennas, an equipment cabinet, transmission cables, and a support structure to achieve the necessary elevation.

- B. Wireless Communication Antenna Array (Antenna Array)**
-is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).
- C. Attached Wireless Communication Facility (Attached WCF)**
-is an antenna array that is attached to an existing building or structure, which structures shall include but not be limited to utility poles, with any accompanying attachment structure, transmission cables, and an equipment cabinet which may be located either inside or outside of the attachment building or structure.
- D. Wireless Communication Support Structure (Support Structure)**
-is a structure designed and constructed specifically to support an Antenna Array, and may include a monopole tower, lattice tower, guy-wire support tower or other similar structures. Any structure which is used to attach an Attached WCF to an existing building or structure (hereinafter, Attachment Structure), shall be excluded from the definition of and regulations applicable to Support Structures.
- E. Microcell**
- is an attached WCF which consists of antennas equal to or less than 4 feet in height and with an area of not more than 580 square inches in the aggregate (e.g. 1 foot diameter parabola or a 2' by 1.5' panel) as viewed from any one point, or a tubular antenna that is 4" in diameter and no more than 6 feet long.

Section 2. Town Center, Commercial/Office and Planned Business Zone Districts

- A. Permitted Use and Process**
Attached WCFs are permitted in the Town Center, Commercial/Office and Planned Business Zones. WCFs with Support Structures are permitted in the Commercial/Office and Planned Business Zone Districts, and are not permitted in the Town Center District.
 - 1. Town Center District**
The height of Attached WCFs shall not exceed the height of the structure it is attached to by more than fifteen feet (15'). No Wireless Support Structures are allowed in the Town Center District
 - 2. Commercial/Office District**
The height of Attached WCFs shall not exceed the height of the structure it is attached to by more than ten feet (10'). Structures shall not be located within front yard setbacks. Structures in the side and rear yards must be set back at a distance equal to the height of the pole. New WCFs may be located on a monopole and shall not exceed sixty feet (60") in height.

3. Planned Business Zone

The height of Attached WCFs shall not exceed the height of the structure it is attached to by more than ten feet (10'). Structures shall not be located within the setbacks. New WCFs may be located on a monopole and shall not exceed sixty feet (60') in height.

4. Approval Process/Design Review

The approval process for WCFs in the Town Center, Commercial/Office and Planned Business Zone Districts shall be as follows:

a. Minor Exterior Modifications

An attached WCF shall be processed as a Minor Exterior Modification with administrative review. The Planning Director shall have discretion to send applications to the Design Commission for issues deemed significant. (Mercer Island Zoning Code, Chapter 19.04.140 Administration, (V).

b. Major New Construction

A WCF which requires a Support Structure shall be considered Major New Construction with review by the Design Commission. (Mercer Island Zoning Code, Chapter 19.04.140 Administration, (V).

Section 3. Public Institution Zone (I-90 Corridor)

A. Permitted Use

Wireless communication facilities, including antenna support structures and equipment cabinets, are permitted. Facilities must meet *all* of the following criteria:

- (1) antennas shall not project more than 2 feet in height over the nearest I-90 retaining wall, unless they are located on an existing structure, and must be screened as much as possible from public views;
- (2) equipment cabinet dimensions shall not exceed 480 cubic feet, should be placed underground if feasible; and shall be completely screened from pedestrian and park activities with landscaping;
- (3) facilities shall be within fifteen (15) feet of the pedestrian side of the I-90 retaining wall, unless they are located on an existing structure. Facilities may be located between the retaining walls in the traffic corridor.
- (4) facilities shall be at least 300 feet from any single family residence, unless located between and below the top of the retaining walls in the traffic corridor.
- (5) applicants shall demonstrate that they have attempted to collocate on existing structures such as other wireless support structures, rooftops, light poles, utility poles, walls, etc.; and

- (6) facilities are to be considered a regulated improvement and subject to Design Commission Review as outlined in the Mercer Island Zoning Code, Section 19.04.120. The Design Commission shall address the relationship of the facility to the proposed site and assure compatibility with adjacent public areas and usage. When there are more than six (6) antennas at one site, the Design Commission may deem that site full and deny additional antennas.

No wireless communication facilities are allowed along the Mercer Island Artway, defined as the south side of I-90 between 76th Avenue SE and 80th Avenue SE.

Section 4. Island Crest Way Corridor

A. Permitted Use

WCFs are permitted within the right of way boundary along Island Crest Way from SE 40th St. to SE 68th St. WCFs must meet the definition of microcells and be attached directly to and inline with existing utility poles, with minimal overhang. The WCF must not project over the height of the pole, but a pole with a height of up to 110 feet may replace an existing pole.

B. Equipment Cabinets

Equipment cabinets shall be placed in the right of way, at the greatest possible distance from the street edge, and, if physically feasible, underground. Placement is subject to approval by the City Engineer.

C. Application Process

WCFs in the Island Crest right of way must be reviewed by the Design Commission and approved by the City Engineer. Proponents must provide an agreement with the utility pole owner granting access to the pole.

Section 5. Residential Districts

WCFs are prohibited in single family and multifamily residential zones. The following public properties are exempted from this restriction:

1. South Mercer Island Fire Station, 8473 SE 68th St.
2. Puget Power Substation, 8477 SE 68th St.
3. Mercer Island Water Reservoir, 4300 88th Ave SE

WCFs are permitted on these public properties. They may be attached, or have a monopole structure not to exceed 60 feet (60') in height. The setback from adjacent residential property shall be equal to the height of the pole. The approval process and design review are stated under Section 2, A4.

Section 6. Performance Standards for Design Commission Review

A. Attached WCFs

Attached WCFs which are visible to the traveling public and/or neighboring residences shall be designed to blend in with the existing structure and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use compatible or neutral colors. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened.

B. WCF's with Support Structures

WCFs with support structures shall be designed to blend into the existing site and be placed in a location which is as unobtrusive as possible consistent with the proper functioning of the WCF, and use compatible or neutral colors. If the aesthetic impacts cannot be mitigated by placement and color solutions, the WCF can be required to be screened with landscaping and/or fencing.

C. Equipment Cabinets

Equipment cabinets that are visible to the traveling public and/or neighboring residences shall be designed to blend in with existing surroundings, be placed underground if feasible, or placed in a location as unobtrusive as possible consistent with proper functioning of the WCF, and use compatible or neutral colors. Screening may be required using landscaping or fencing.

Section 7. Shared Facilities and Collocation

The City encourages the proponents of WCFs to construct and site facilities with a view toward sharing sites and structures with other utilities, collocating with other existing WCFs, and to accommodating the future collocation of other future WCFs where feasible.

Section 8. Electromagnetic Radiofrequency Emissions

The City recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of radiofrequency (RF) emissions and WCFs which meet FCC standards shall not be conditioned or denied on the basis of RF impacts. In order to provide information to its citizens, the City shall maintain file copies of ongoing FCC information concerning WCFs and radiofrequency standards. Applicants for WCFs shall be required to provide the City information on the projected power density of the facility and compliance with the FCC requirements.

Section 9. Height Variance

If strict application of these provisions would preclude an antenna from receiving or transmitting a usable signal, or, if the property owner believes that an alternative exists which is less burdensome to adjacent property owners, an application for a

variance may be filed under the provisions of Mercer Island Zoning Code, Section 19.04.1404. The Code Official may grant a height variance upon finding that the criteria in Section 19.04.1404 (B) are met, and that either of the following criteria are met:

- (a) Compliance with the above provisions would prevent the antenna from receiving or transmitting a usable signal; and the alternative proposed constitutes the minimum necessary to permit acquisition or transmission of a usable signal; or
- (b) the alternative proposed has less impact on adjacent property owners than strict application of the above provisions.

Section 10. Removal of WCFs

If a WCF becomes obsolete or unused, it must be removed within 6 months of cessation of operation at the site.

Section 11. Administration and Appeals

Applications to construct WCFs shall follow the permit review procedures in the Mercer Island Zoning Code, Chapter 19.04.140 Administration, (V).

Appeals shall be filed with the City Clerk within 14 days of a decision, and follow the appeal process outlined in Chapter 19.04.140 (V), J - Appeals.

Section 2. The Zoning Code is amended by this change and such change is intended to add a use which shall supersede all sections of the Zoning Code that are or may be inconsistent with this use.

Section 3. If any section, paragraph, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that they would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof respective of the fact that any one or more sections, paragraphs, clauses or phrases are held to be unconstitutional or invalid.

Section 4. This ordinance and the amendment to the Zoning Code of the City of Mercer Island adopted hereby shall take force and be in effect five (5) days after passage, approval and publication.

PASSED BY THE CITY COUNCIL AT ITS REGULAR MEETING ON THE 2ND DAY OF DECEMBER, 1996.

Judy Clibborn
Judy Clibborn, Mayor

ATTEST:

Christine L. Eggers
Christine L. Eggers, City Clerk

APPROVED AS TO FORM:

David E. Kahn
David E. Kahn, City Attorney

DATE OF PUBLICATION Dec. 11, 1996.

EXHIBIT B

History Summary of Wireless Communication Facility Ordinances for Mercer Island, Washington

Date	Forum	Summary of Discussion (Grouped by Topic)
05/20/1996	City Council	City Council discussed WCF ordinance development and current regulation of the facilities via Agenda Bill 3056.
06/17/1996 (Study Session)	City Council	Two citizens commented. Mayor Clibborn suggested they attend the next planning commission meeting regarding PZones. The Mayor also indicated that she was at the AWC Conference and attended a workshop regarding cellular siting. Steven Katz indicated that he could provide the City with a mailing list of citizens interested in being contacted regarding cellular antennas.
6/5/1996, 6/19/1996, 7/3/96 P.C.	Planning Commission	Public hearings. Development of "2-2-2 Commission" 2400 76 th Ave SE. OneComm & City of M.I. are applicants (permit 96-0564) 7/3/96 P.C. recommended approval 7-0. Discussion at 6/19/1996 meeting of interim controls.
07/15/1996	City Council	Discussion and adoption of ordinance 96C-009, to amend MICC 19.04.0510, Public Institution Zone, by adding an interim use that would allow the siting of wireless facilities. Minutes do not reflect a public hearing.
12/02/1996	City Council	"Though not a public hearing Mayor Clibborn allowed public comments". Repealing ordinance 96C-009, and adopting new WCF regulations under a new section, 19.04.0607 by ordinance 96C-20.
11/03/1999	Planning Commission	"There was no one present from the public that wished to speak on the Unified Land Development Code and the proposed changes." Ordinance 99-13C.
11/15/1999	City Council	AB 3439 Public Hearing : Ordinance 99-13C, repealing Title 19, and adopting Interim Unified Land Development Code, including WCFs under 19.06.040
10/01/2001	City Council	Mayor Merkle talked about the 130-ft mono-pole cell tower soon to be erected behind South End Fire Station. Citizens initiated request to put American Flag on the pole and the company is willing to do it. Council decided to take no action.
05/15/2002	Planning Commission	Public Hearing on ordinance 02C-04, amending TC design guidelines, including adopted WCF screening standards in the Town Center per MICC 19.11.040.E.2
06/03/2002	City Council	AB 3670 Public Hearing : on ordinance 02C-04
11/06/2002	Planning Commission	Public Hearing on ordinance 02C-10 amending MICC 19.06.040 restricting cell tower locations along Island Crest way from SE 53 rd PI to SE 63rd, limiting the height, adding restrictions within Island Crest Park, adding requirement for collocation, and definition of stealth design, and other regulations.
12/02/2002	City Council	AB 3724 Public Hearing : Ordinance 02C-10
12/01/2003	City Council	Rita Moore, 4509 Ferncroft Road, asked the Council to consider amending the ordinance regulating the height of cell towers relative to the height of the surrounding trees.
02/18/2004	Planning Commission	Public Hearing on ordinance 04C-21, amendment to MICC 19.06.040 relating to WCF in residential district, including reducing number of WCF in Clise Park (ZTR04-002)
03/15/2004	City Council	AB 3847 Public Hearing and 1 st Reading: Ordinance 04C-21
03/29/2004	City Council	AB 3856 Public Hearing and 2 nd Reading: Ordinance 04C-21

11/07/2007	Planning Commission	Public Hearing on ordinance 08C-01, which added the "Business Zone" in 19.06.040 as an allowed location for Wireless Communication Facilities, to be consistent with existing language in MICC 19.04.050.B.16 (ZTR07-001)
12/03/2007	City Council	AB 4244 Public Hearing and 1 st Reading: Ordinance 08C-01
01/07/2008	City Council	AB 4252 (2 nd Reading): Ordinance 08C-01
01/22/2008	City Council	AB 4256 (3 rd Reading) on ordinance 08C-01

07/06/2011	Planning Commission	Public Hearing on City Council initiated ordinance (at the request of the City's Design Commission) to allow administrative (staff) review of new WCF's, rather than require review at a public hearing with the Design Commission
<i>Anticipated</i> 09/06/2011	City Council	Anticipated Public Hearing date regarding ordinance to allow administrative (staff) review of new WCF's, rather than the Design Commission
<i>Anticipated</i> 10/17/2011	City Council	Anticipated date of 2 nd reading of ordinance to allow administrative (staff) review of new WCF's, rather than the Design Commission

09/07/2011	Planning Commission	Public Hearing on citizen initiated code text amendment application (ZTR11-004) that would remove the limit on size restriction of WCF antennas from MICC 19.06.040(C)(1).
<i>Anticipated</i> 10/03/2011	City Council	Anticipated Public Hearing date regarding code text amendment application (ZTR11-004) that would remove the limit on size restriction of WCF antennas from MICC 19.06.040(C)(1).
<i>Anticipated</i> 10/17/2011	City Council	Anticipated date regarding code text amendment application (ZTR11-004) that would remove the limit on size restriction of WCF antennas from MICC 19.06.040(C)(1).

EXHIBIT C

EXHIBIT D

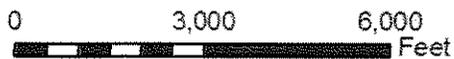
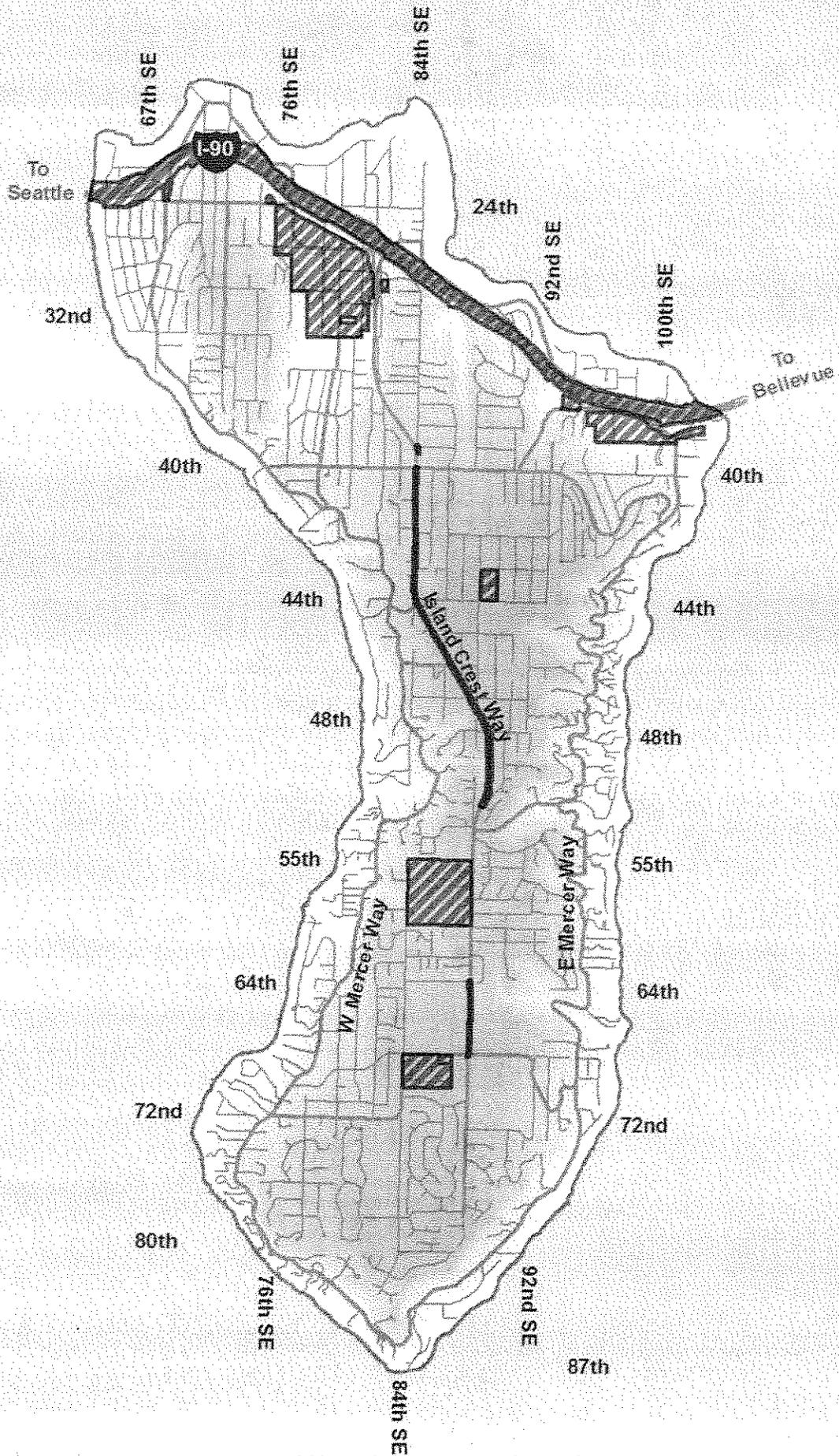
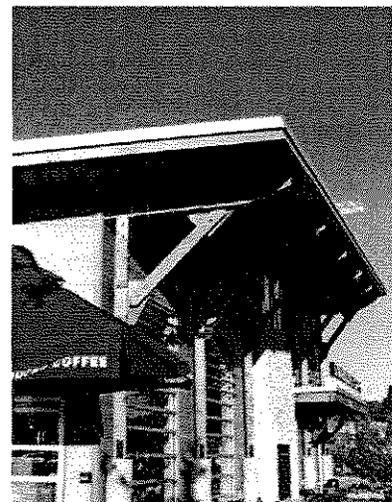
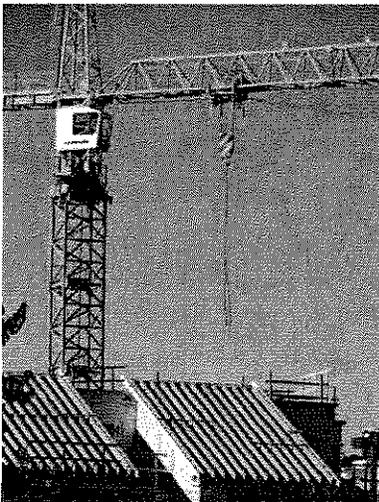


EXHIBIT E

CITY OF

MERCER ISLAND

Washington



Comprehensive Plan

VIII. TELECOMMUNICATIONS

Telecommunication utilities on Mercer Island encompass conventional wireline telephone, wireless communications (Cellular telephone, Personal Communication Services [PCS], and Specialized Mobile Radio [SMR]), and cable television. The telecommunications industry underwent dramatic change, in part as a result of the passage of the Telecommunications Act of 1996.

On February 8, 1996, the President signed the Telecommunications Act of 1996 into law. Its overall intent is to develop competition in the telecommunications marketplace by allowing local telephone exchange carriers to provide long distance telephone service, as well as, cable television, audio services, video programming services, interactive telecommunications and Internet access. Similarly, long distance providers, cable operators and utilities are now permitted to offer local exchange telephone service. The legislation represents the first major rewrite of the Telecommunications Act of 1934.

The 1996 Act states that "No State or local statute or regulation or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate telecommunications service." It further provides that the Federal Communications Commission (FCC) shall preempt the enforcement of any such statute, regulation or legal requirement. However, the bill protects the authority of local governments to "manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis for use of public rights of way on a

nondiscriminatory basis, if compensation required is publicly disclosed." Thus, the City can still exercise control over the use of public rights of ways and generate revenues from the grant of access to such rights of way to telecommunications providers.

Qwest Communications provides local exchange telephone service for all of Mercer Island. In early 1999, (then) U S WEST was serving an increasing number of access lines (telephone numbers) in the Mercer Island exchange area. This growth is more fully discussed below in the "Future Needs" section. The Qwest and its predecessor have served communities in Washington for more than 100 years. Qwest is regulated by the Washington Utilities and Transportation Commission and the Federal Communications Commission.

Mercer Island has seen its wireless communications service providers grow from two in 1995, to seven in 1999. As of the 2004 there are 34 wireless communications facilities installed on the island. These installations are regulated by the FCC. However, the City may still conduct design review and enforce zoning provisions for locating facilities. In recognition of the continued demand for suitable sites, a Wireless Telecommunications Ordinance was passed by the City Council in 1996 and revised in 2002.

Cellular communication involves transmitting and receiving radio signals on frequencies reserved for cellular use. Signals to and from cellular phones are routed along a series of low-powered transmitting antennas located at "cell sites." Cellular communications are part of a

broader category of services defined as Commercial Mobile Radio Service ("CMRS"). These include any mobile service that is (i) provided for profit; and (ii) makes interconnected service (i.e., enable customers to send and/or receive messages over the public switched telephone network) available to the public or to a substantial portion of the public. If this test is not met and the provider is not a "functional equivalent" of a commercial mobile radio provider, it is considered a private mobile radio service (PMRS) provider. This is the broadest term for wireless carriers, including cellular, PCS, SMR. Personal Communications System (PCS) is a loosely defined future ubiquitous telecommunications service that will allow "anytime, anywhere" voice and data communication with personal communications devices. Specialized Mobile Radio (SMR) is a private, business service using mobile radio telephones and base stations communicating via the public phone network.

Viacom Cablevision provided cable services for all of Mercer Island under a franchise agreement renewed in 1995. Viacom's franchise was granted for ten years. Later in 1995, TCI Cablevision of Washington was granted a transfer of ownership for the former Viacom cable system properties. All terms and conditions of Mercer Island's franchise were continued under the new TCI ownership. In December of 1998, TCI was acquired by AT&T for which a transfer of ownership was granted. The franchise continued to operate under the name of TCI of Washington until the third quarter of 1999. At that time the company name was changed to AT&T. Cable operations were then sold to Comcast in 2003 and a subsequent transfer of ownership was granted.

In 1999, AT&T was serving approximately 6,318 customers on Mercer Island through 65.9 distribution miles of overhead lines and 26.2 distribution miles of underground lines. In 2004, Comcast served 6,700 cable customers and 3,530 high-speed internet customers.

The data services offered by Comcast originate at a primary transmitter site in Bellevue. Comcast's receiving apparatus on Mercer Island is contained in facilities located at 4320 – 88th Avenue SE.

The cable industry was deregulated by Congress in 1984, launching an almost 10-year period without local rate regulation. In November 1993, the City received certification from the FCC, pursuant to the 1992 Cable Act, to regulate basic cable service rates.

Future Needs

As a telecommunications utility, Qwest is required to provide services on demand. The industry has experienced a tremendous explosion in the demand for telecommunications services. Qwest customers, especially customers on Mercer Island, are routinely asking for multiple lines into their homes for fax machines, computers, separate business lines and separate lines for children. The result of the huge growth in telecommunications services is that Qwest's telephone network is overloaded in some neighborhoods. The network was built over the last 100 years, and during most of that time, the company planned for 1.5 lines into each home. Today customers are demanding two, three, four and even more lines into their homes. On Mercer Island, U S WEST installed a large quantity of new lines during the mid-1990's. To reduce the number of delayed service orders, the company has been investing in its central office and outside cable facilities

on Mercer Island to meet the escalating demands for service.

Comcast has sufficient capacity to provide cable communications services to any new development on Mercer Island. During its franchise, Viacom replaced the coaxial cable in its trunk-line system on Mercer Island with fiber-optic cable. This 1993 undertaking was a major step toward meeting customer demand for an expanded number of channels and improved reliability.

The FCC has mandated Enhanced-911 (E-911), which seeks to improve the effectiveness and reliability of wireless 911 service by requiring Automatic Location Identification (ALI). ALI will allow emergency dispatchers to know the precise location of cell phone users to within 50-100 meters. Wireless carriers on Mercer Island will need to retrofit their wireless communication facilities to comply with this new federal requirement. In addition to the equipment that is required to support a network-based E-911 system, other hardware will need to be installed to transmit data from the sensor at the location site to the E-911 server. Full compliance is expected by December 31, 2005.

Telecommunications Policies

8.1 The City shall encourage the consolidation and shared use of utility and communication facilities where feasible. Examples of shared facilities include towers, poles, antennae, substation sites, cables, trenches and easements.

8.2 The City shall encourage the undergrounding of all existing and new communication lines where feasible and not a health or safety threat.

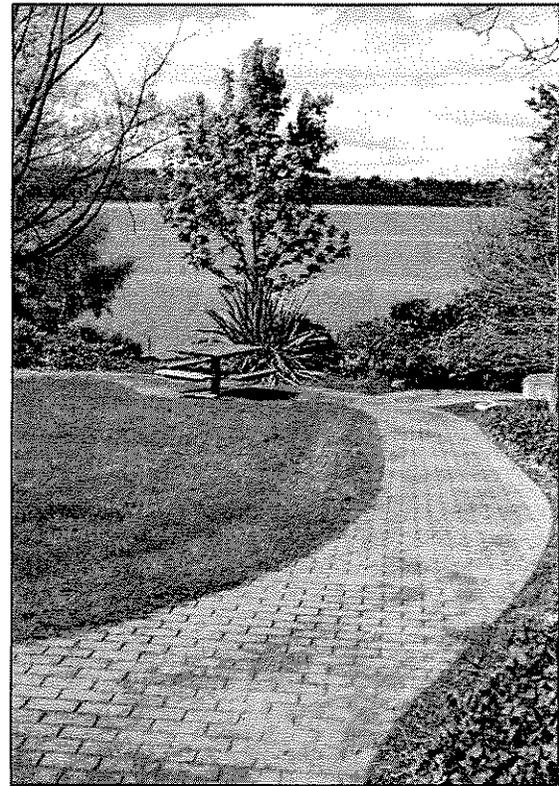
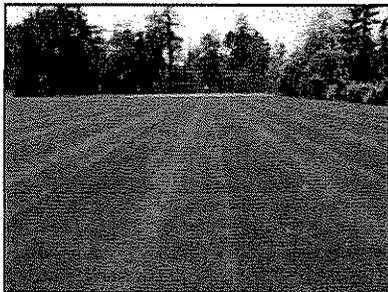
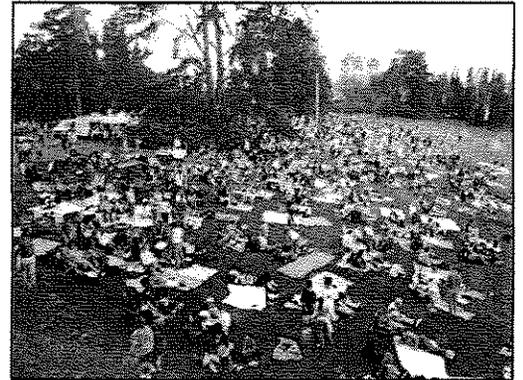
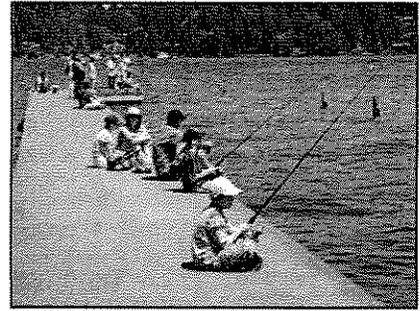
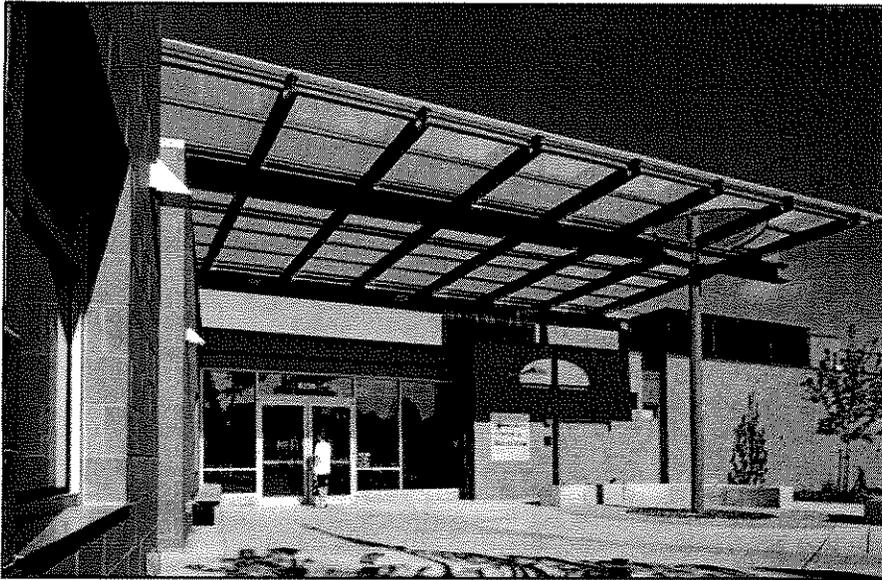
8.3 The City shall periodically review and revise development regulations for telecom facilities to ensure that a balance exists between the public benefit derived from the facilities and their compatibility with the surrounding environment.

8.4 The City shall work with the cable communications provider to select and implement pilot projects appropriate for Mercer Island that explore the newest advances in cable technology, including interactive cable and public access.

8.5 The City continues to participate in a consortium of Eastside jurisdictions to collectively analyze rate adjustments proposed by the cable communications provider.

8.6 The City may allow limited well designed Wireless Communication Facilities (WCF) in Clise Park and Island Crest Park, consistent with the requirements and restrictions in the development code and design review.

EXHIBIT F



**City of
Mercer Island**



**Parks and Recreation Plan
2007 – 2012**

*Adopted
February 5, 2007*

December 2002, Mary Wayte Pool Transfer

In order to alleviate budget problems, King County offered to hand over the ownership of many of its pools and parks that were located within city boundaries. King County offered to hand over the ownership of both Mary Wayte Pool and Luther Burbank Park to the City of Mercer Island. After many months of negotiation and meetings, the City of Mercer Island decided that the acceptance of the pool would be a financial burden to the City and declined the offer. However, Luther Burbank Park was accepted with certain provisions. After the decision to not accept the pool, the City Council met with many citizens asking for another plan. King County planned to close the pool at the end of 2002 if no other solution was found. On December 12, 2002, City Council authorized the allocation of \$100,000 toward the support of the Northwest Center to operate the pool for the year 2003 and \$100,000 per year on a year-to-year basis up to 5 years after that. The Northwest Center is a non-profit organization that supports special needs populations and was willing to take on the pool as an income source. The Northwest Center also took on three other pools in cities throughout King County.

December 2002, Wireless Communication Facilities (WCF's) in Parks

In December of 2002, the section of the Mercer Island City Code that regulates wireless communications facilities (19.06.040) was modified in an effort to provide more placement options for these facilities. In residential zones, the placement of WCFs was restricted to Island Crest Way between SE 40th Street and SE 68th Street, the South Mercer Island Fire Station, Puget Power Substation, and the Mercer Island Water Reservoir. Residents along Island Crest Way felt that they were being unfairly targeted by the City when permitting these facilities. Therefore, City Council decided to limit the placement of WCFs to Island Crest Way between SE 40th Street and SE 53rd Place and SE 63rd Street to SE 68th Street, and allow these facilities to be placed in Island Crest Park and adjacent to Clise Park under certain conditions.

December 2002, Historical Designation of Luther Burbank Park Administration Building

The City Council adopted Ordinance No. 02-16 providing a process for the designation of historical buildings by adoption of City Council resolution ("Historical Designation Ordinance"). The Historical Designation Ordinance requires that the City Council review a staff recommendation regarding the mandatory criteria to determine whether or not a nominated building should receive a historical designation.

Under the terms of that certain Land Transfer Intergovernmental Agreement entered into between King County and the City providing for the transfer of the Luther Burbank Park to the City, the City has agreed to adopt a historical designation of a certain building located on the Park and currently being used by the King County Parks Department administrative staff. On December 2, 2002, the City Council approved Resolution 1310 granting historical designation to the Luther Burbank Park Administration Building.

January 1, 2003, Luther Burbank Park Transfer

During the summer of 2001, representatives from the King County Executive's Office contacted the City concerning the status of Luther Burbank Park. Facing a \$52 million deficit for 2002 with growing deficits in 2003 and beyond, King County approached several cities containing regional parks to gauge local interest in long term ownership and operation of the facilities. Mercer Island, Kirkland, Tukwila and Bellevue were the first cities contacted. Following 8 months of negotiations, the City and the County negotiated an Intergovernmental Land Transfer Agreement providing for the transfer of the Luther Burbank Park to the City of Mercer Island effective January 1, 2003.

January 1, 2003, New Park Fee Increases

Based on the results of the Cost of Service and Fee Study conducted by Financial Consultant Solutions Group, Inc. (FCSG), to determine the cost of all Parks and Recreation programs and

geographic information system (GIS) analysis.¹ Added value extended to properties as much as 1500 to 2600 feet from the greenways, with adjacent properties receiving the greatest added value. The more valuable greenways were accessible (by trail) and had mature trees, while the least valuable were inaccessible and covered in dense scrub vegetation. This observation provides evidence to assertions that forest vegetation in open space property has a positive influence on its public value.

Open Space Areas

Open Space Areas	Type	Total Acres	Open Space Acres
Clarke Beach Park	Park/OS	9.05	7.66
Clise Park	Open Space	1.72	1.72
Ellis Pond	Open Space	4.04	4.04
Engstrom Open Space	Open Space	8.50	8.50
Gallagher Hill	Open Space	11.34	11.34
Groveland Park	Park/OS	3.07	2.60
Hollerbach OS	Open Space	5.18	5.18
Homestead Park	Park/OS	11.09	3.68
Island Crest Park	Park/OS	38.91	31.20
Luther Burbank	Park/OS	54.52	27.23
Mercerdale Hillside Park	Open Space	18.59	18.59
Mercerdale Park	Park/OS	12.17	6.51
N. Mercerdale Hillside	Open Space	6.20	6.20
Parkwood Ridge OS	Open Space	3.80	3.80
Pioneer Park	Open Space	118.85	118.85
Salem Woods	Open Space	0.35	0.35
SE 47th St OS	Open Space	1.53	1.53
SE 53rd Pl OS	Open Space	26.16	26.16
SE 80th St Open Space	Open Space	3.92	3.92
Secret Park	Park/OS	0.86	0.86
South Mercer Playfield	School/Park/OS	17.31	1.38
Wildwood Park	Park/OS	3.02	1.92
Upper Luther Burbank	Open Space	18.07	18.07
TOTAL ACREAGE		378.25	311.29

Several of the open space areas are highlighted below as well as a complete table of areas on the following page:

Clise Park (SE 40th Street & Island Crest Way)

Clise Park is a 1.72 acre open space area heavily forested and located at the intersection of two of Mercer Island's busier streets. In City ownership since 1977, Clise Park contains a short wooded trail, and is a very visible reminder of the natural character of Mercer Island. The park was donated to the City, and is used as open space and trail access at the major roadway intersection of Island Crest Way and SE 40th St. In 2004, a wireless communication facility (WCF) was installed in adjacent right of way to the park. In 2005, the Ivy Brigade adopted the park and removed invasive plants from the entire park and planted native shrubs and trees in their place.

¹ Nicholls, Sarah. 2004. Measuring the Impact of Parks on Property Values. *Parks and Recreation*. 39:3, pp. 24-32.