

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND FINAL DECISION**

Applicant(s): Roche Harbor Resort  
P.O. Box 4001  
Roche Harbor, WA 98250

Agent: Todd Walton for T-Mobile  
19807 North Creek Parkway North  
Bothell, WA 98011

File No.: PSJ000-10-0007 and 09CU010

Parcel Nos: 462353122

Location: Roche Harbor Store  
195 Reuben Memorial Drive  
Roche, Harbor, WA  
San Juan Island

S.J.C. COMMUNITY

SEP 21 2010

DEVELOPMENT & PLANNING

Summary of Proposal: Application for roof-mounted personal wireless  
communication antenna on the Roche Harbor Store

Land Use Designation: Resort Master Plan

Public Hearing: Held September 2, 2010

Application Policies and Regulations: SJCC 18.50, Shoreline Master Program  
SJCC 18.90.060, Master Plan Report

Decision: The proposal is approved, subject to conditions.

1                                   **BEFORE THE HEARING EXAMINER FOR THE COUNTY**  
2                                   **OF SAN JUAN**

3                                   Phil Olbrechts, Hearing Examiner

4                                   RE: T-Mobile

5                                   Substantial Shoreline  
6                                   Development Permit and  
7                                   Conditional Use Permit  
                                  (PSJ000-10-0007 and  
                                  09CU010)

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL DECISION.**

8                                   **INTRODUCTION**

9                                   The applicant has applied for approval of a Shoreline Substantial Development  
10                                  Permit and Shoreline Conditional Use Permit to construct a roof-mounted personal  
11                                  wireless communication antenna on the Roche Harbor Store. The Examiner approves  
12                                  the permit subject to conditions.

13                                  **TESTIMONY**

14                                  Initially only the staff were present at the hearing. The Examiner disclosed that he  
15                                  read in a local paper that a tourist had died due to inadequate cell phone coverage in  
16                                  San Juan County. The Examiner also asked where the 50 db level recommended by  
17                                  staff had come from in the staff report, and staff was uncertain since the author of the  
18                                  staff report was not present. The Examiner also confirmed that the application had  
19                                  vested to Ordinance No. 15-2010, which regulates wireless facilities. The Examiner  
20                                  then closed the hearing. A few minutes later the applicants appeared. No one had left  
21                                  the meeting room since the Examiner closed the hearing, so he reopened it to take the  
22                                  applicant's testimony. No one objected to this procedure. The applicant concurred in  
23                                  the staff recommendation and, in answer to the Examiner's questions, stated that the  
24                                  50 db level came from County regulations.

25                                  **EXHIBITS**

*See Attachments list on page 3 of the staff report dated July 30, 2010.*

**FINDINGS OF FACT**

**Procedural:**

1.            Applicant. The applicant is T-Mobile, through their agent Todd Walton.
2.            Hearing. The Hearing Examiner conducted a hearing on the subject  
application on September 2, 2010.

1 **Substantive:**

2 3. Site and Proposal Description. The antenna and small equipment cabinet  
3 would be located on the roof of the Roche Harbor store, at the head of the wharf,  
landward of the marina, within the Roche Harbor resort core.

4 4. Characteristics of the Area. The resort is developed with a large marina,  
5 lodging and amenities including dining, activities, retail stores and personal services,  
as well as residences, recreational activities, roads and parking.

6 5. Adverse Impacts of Proposed Use. The Examiner finds that the proposed  
7 project will have no significant adverse impacts. The visible portion of the antenna is  
8 only 5 feet 5 inches high and less than one foot of the equipment cabinet will be  
9 visible. Also, the noise produced at the site will be limited to 50 dB. Additionally,  
the project was exempt from SEPA review according to WAC 197-11-800(1)(a)(I).

10 **CONCLUSIONS OF LAW**

11 **Procedural:**

12 1. Authority of Hearing Examiner. Shoreline Substantial Development  
13 permit and Conditional Use Permit applications are reviewed and processed by  
14 Development Services Department staff, and The Hearing Examiner, after conducting  
an open-record public hearing, renders a decision on the shoreline permit.  
15 SJCC18.80.110(E) and SJCC18.80.020.

16 **Substantive:**

17 2. Shoreline Designation. The subject property is designated as Resort.

18 3. Comprehensive Plan and Zoning Designations. The subject property is  
19 designated as Resort Master Plan, and the existing land use is Resort.

20 4. Compliance with Notice Requirements. City staff advertised the  
21 application in accordance with RCW 90.58.140, WAC 173-27-110, and the San Juan  
22 County County Code Sections 18.80 and 18.50. Notice of the Public Hearing for the  
project was properly published, posted on-site, and noticed to parties of record and  
23 adjacent property owners, on July 6 and 7, 2010. No letters or comments were  
received during the comment period.

24 5. Permit Review Criteria. The proposal is within 200 feet of the shoreline  
25 of Roche Harbor, a shoreline of statewide significance. The costs of the development  
presumably exceed those of the exemption levels set in WAC 173-27-040(2)(a) so the  
project must acquire a shoreline substantial development permit. SJCC 18.80.110(H)  
establishes the criteria for approval of shoreline substantial development permits.  
The criteria include the policies of the Shoreline Management Act (Chapter 90.58

1 RCW), the policies and use regulations of the San Juan County Shoreline Master  
2 Program, and the requirements of the San Juan Municipal Code and Comprehensive  
3 Plan.

4 Section 7(D) of Ordinance No. 15-2010 SJCC also requires a shoreline conditional  
5 use permit for personal wireless facilities. SJCC 16.80.060(D) governs the criteria  
6 for conditional use permit approval.

7 The applicable policies and regulations are quoted in italics below and applied  
8 through conclusions of law.

9 **RCW 90.58.020 Use Preferences**

10 *This policy (Shoreline Management Act policy) is designed to insure the development*  
11 *of these shorelines (of the state) in a manner which, while allowing for limited*  
12 *reduction of rights of the public in the navigable waters, will promote and enhance*  
13 *the public interest. This policy contemplates protecting against adverse effects to the*  
14 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
15 *their aquatic life, while protecting generally public rights of navigation and corollary*  
16 *rights incidental thereto.*

17 6. The project will in no way interfere with the quality of the shoreline or  
18 access to it.

19 **RCW 90.58.020(1)**

20 *Recognize and protect the statewide interest over local interest;*

21 7. The project has been found to have no adverse impacts and as such  
22 statewide interest in the preservation of the shoreline and surrounding habitats is  
23 protected, in addition to the local interest of economic benefit.

24 **RCW 90.58.020(2)**

25 *Preserve the natural character of the shoreline;*

8. The proposed antenna and associated equipment cabinet will be placed  
atop an existing nonresidential structure and, as such, the natural character of the  
shoreline shall not be altered as a result of this project.

**RCW 90.58.020(3)**

*Result in long term over short term benefit;*

9. As mentioned previously, there will be no impact to the shoreline as a  
result of this project, and there will be long term economic benefit as well as cellular  
benefits to the community.

1 **RCW 90.58.020(4)**

2 *Protect the resources and ecology of the shoreline;*

3 10. There are no environmental impacts to the shoreline associated with this  
4 project.

5 **RCW 90.58.020(5)**

6 *Increase public access to publicly owned areas of the shorelines;*

7 11. The project does not pertain to a publicly owned area of the shoreline.

8 **RCW 90.58.020(6)**

9 *Increase recreational opportunities for the public in the shoreline;*

10 12. This project will have no impact on recreational opportunities for the  
11 public in the shoreline.

12 **San Juan County Code Regulations**

13 **SJCC 18.50.350(1):** *In shoreline areas, utility transmission lines, pipelines, and  
14 cables must be placed underground unless demonstrated to be infeasible. Further,  
15 such lines must utilize existing rights-of-way whenever possible. Proposals for new  
16 corridors in shoreline areas involving water crossings must fully substantiate the  
17 infeasibility of existing routes.*

18 13. The application is for a roof-mounted cellular antenna that will be placed  
19 atop an existing nonresidential structure.

20 **SJCC 18.50.350(2):** *Utility development must, through coordination with  
21 government agencies, provide for compatible multiple use of sites and rights-of-way.  
22 Such uses include shoreline access points, trails, and other forms of recreation and  
23 transportation systems, providing such uses will not unduly interfere with utility  
24 operations or endanger public health and safety.*

25 14. The application is for a roof-mounted cellular antenna, placed atop an  
existing nonresidential structure. As such, there will be no interference with any  
other type of operation, and there is no corollary form of recreational use associated.

**SJCC 18.50.350(3):** *Sites disturbed for utility installation must be stabilized during  
and following construction to avoid adverse impacts from erosion.*

15. The site is on a nonresidential roof and, as such, no site will be disturbed.

**SJCC 18.50.350(4):** *Immediately following the completion of utilities installation or  
maintenance projects on shorelines, disturbed areas must be restored to project  
configurations, replanted with local vegetation, and the vegetation maintained until it  
is firmly established.*

1 16. Due to the location on top of a nonresidential structure, there will be no  
2 disturbance of sensitive areas.

3 **SJCC 18.50.350(5):** *Utility lines, pipes, stations, plants, and other apparatus shall*  
4 *not be installed in shoreline areas unless there is no feasible alternative.*

5 17. The application is for the installation of an antenna.

6 **SJCC 18.50.350(6):** *Utility lines shall be installed underground. Desalination intake*  
7 *and discharge lines shall be located underground wherever feasible, except for that*  
8 *portion located underneath or along any docks, piers, walkways, stairs, or other*  
9 *shoreline improvements located on the site.*

10 18. There are no utility lines being proposed.

11 **SJCC 18.50.350(7):** *Underwater cables which must cross shorelines shall be*  
12 *installed underground from the water line to the tree line, unless otherwise*  
13 *authorized by the County. The County shall authorize variances from this regulation*  
14 *only for good cause.*

15 19. No underwater cables have been proposed.

16 **SJCC 18.50.350(8):** *Where installation of utility lines, pipes, or other apparatus in*  
17 *shoreline areas is approved, clearing shall be confined to that which is absolutely*  
18 *necessary to permit the installation and to prevent interference by vegetation once the*  
19 *system is in operation.*

20 20. There is no clearing associated with this application.

21 **SJCC 18.50.350(9):** *Where utility lines, pipes, or other apparatus must cross*  
22 *shoreline areas, they shall do so by the route which will cause the least damage to the*  
23 *shoreline, both physically and visually.*

24 21. The application is for the installation of an antenna, as such no crossing  
25 will take place.

**SJCC 18.50.350(10):** *Drainage and surface runoff from utility installation areas*  
*shall be controlled so that pollutants will not be carried into water bodies.*

22. There is no associated runoff with this application.

**SJCC 18.50.350(11):** *Applications for outfalls and underwater pipelines that*  
*transport substances harmful or potentially harmful to aquatic life or water quality*  
*shall not be approved unless the applicant has demonstrated that no significant*  
*adverse impacts will result. Desalination and reverse osmosis brine discharge is not*

1 considered to be potentially harmful to aquatic life or water quality provided all  
2 required state and federal requirements are met.

3 23. There is no proposal for outfalls or underwater pipelines associated with  
4 this proposal.

5 **Ordinance 15-2010, Section 8 Personal Wireless Facility Standards:**

6 **Section 8(A)(4):** *Roof-mounted or side-mounted personal wireless facilities are*  
7 *prohibited on residential buildings and on public primary and secondary schools but*  
8 *may be permitted on other legal non-residential buildings. Roof-mounted or side-*  
9 *mounted personal wireless facilities may be permitted on mixed-use buildings where*  
10 *all other requirements of this chapter are met.*

11 24. The proposal is for a wireless facility atop a nonresidential, non mixed-  
12 use, existing structure.

13 **Section 8(A)(5):** *No residential building (or residence in a mixed-use building) on*  
14 *the subject property shall be closer to the personal wireless facility than a distance*  
15 *equal to the total height of the personal wireless facility measured from ground level.*

16 25. There are no residential buildings on the subject property.

17 **Section 8(A)(6):** *Except in urban growth areas and activity centers, no existing*  
18 *residential building (or residence in a mixed-use building) on adjacent or nearby*  
19 *property shall be closer than 500 feet from the personal wireless facility site*  
20 *boundary.*

21 26. The proposed location is within the Resort Master Plan activity center, and  
22 the nearest residence is approximately 400 feet uphill to the east.

23 **Section 8(A)(7):** *The site boundaries of a personal wireless facility shall be at least*  
24 *500 feet from the boundaries of the parcel where it is located except co-location at*  
25 *the existing Mount Constitution Sites location or in the case of location on or within*  
26 *existing nonresidential or mixed-use structures in activity centers or urban growth*  
27 *areas. No modifications to the parcel may be allowed if any parcel boundary*  
28 *subsequently would be closer to the facility than 500 feet.*

29 27. The proposed location is within the Resort Master Plan activity center.

30 **Section 8(A)(9):** *Roof-mounted personal wireless facilities shall not project more*  
31 *than 10 additional feet above the height of a legal, nonresidential or mixed-use*  
32 *building, measured at any point along the roof.*

33 28. The proposed antenna will not project more than 10 feet above the roof of  
34 the building.

1 **Section 8(A)(11):** *All applicable requirements of the International Building Code*  
2 *and SJCC Title 15 shall be met.*

3 29. This shall be a condition of approval.

4 **Section 8(B)(1):** *The facility shall blend with and not disturb the visual character of*  
5 *its setting.*

6 30. Due to the false front on top of the roof, and the view perspective from the  
7 ground, the cabinet will not likely be visible at all, and the antenna will not be very  
noticeable based on its dimensions and location.

8 **Section 8(B)(2):** *The shape of the facility equipment is unobtrusive in relation to its*  
9 *surroundings.*

10 31. As mentioned above, the facility will be minimally visible, and as it will  
11 be atop a nonresidential building in the Resort area, any visual impact will be  
minimal.

12 **Section 8(B)(3):** *The facility shall be in colors and textures that minimize visibility,*  
13 *including against trees and sky.*

14 32. The associated closet will be constructed to blend with the existing  
15 facility.

16 **Section 8(B)(4):** *The silhouette of the personal wireless facility shall be reduced to*  
17 *the minimum visual impact.*

18 33. The visual impact of the facility will be minimal, due to both design and  
19 location.

20 **Section 8(B)(5)(a):** *The following types of equipment shall not be acceptable:*

21 iii. Roof-mounted antennas projecting more than 10 feet above the height of a  
22 legal nonresidential or mixed-use building.

23 34. The antenna shall not project more than 10 feet off of the roof.

24 **Section 8(B)(5)(c):** *Equipment cabinets for roof-mounted or side-mounted facilities*  
25 *shall be designed to visually blend with, or made to appear a part of, the structures*  
*housing the facilities.*

35. The associated equipment cabinet has been designed to visually blend with  
the existing structure.

1 **Section 8(B)(5)(e):** *Roof-mounted antennas shall be at least 10 feet from property*  
lines.

2 36. The antenna shall be greater than 10 feet from the nearest property line.

3 **Section 8(C) Radio Frequency Performance Standards:**

4 1. *All equipment proposed for a personal wireless facility shall be FCC-authorized*  
per ET Docket No. 93-62 (hereafter "FCC guidelines").

5 2. *All ground-mounted equipment shall operate in conformance with the FCC*  
guidelines, as follows:

6 a. *Inside the security barrier the equipment shall meet the FCC guidelines for*  
occupational/controlled conditions.

7 b. *Outside and touching the security barrier, the equipment shall meet the FCC*  
guidelines for general population/uncontrolled conditions.

8 3. *All side-mounted or roof-mounted equipment shall operate in conformance with the*  
FCC guidelines, as follows:

9 *At the roof-mount or at the side mount, the equipment shall meet the FCC*  
guidelines for occupational/controlled conditions.

10 *At grade at any point of any building closest to the antenna, the equipment*  
shall meet the FCC guidelines for general population/uncontrolled conditions.

11 4. *Conformance with the FCC guidelines shall be demonstrated with baseline testing*  
conducted in accordance with the requirements in Figure 2. All subsequent RF  
radiation monitoring shall also be conducted in accordance with these requirements.

12 5. *Unless and until the FCC establishes a method for demonstration of compliance*  
with FCC guidelines for RF exposure, the applicant shall submit results of baseline  
testing to demonstrate compliance with the FCC guidelines using procedures set forth  
in Figure 2. Subsection (C)(4) of this section and Section 8(A) shall be null and void  
if the Congress or the FCC issues a final rule inconsistent with this procedure, and  
with the intent to preempt or supersede this rule, in which case the applicant shall  
submit the information demonstrating compliance as specified by the FCC.

13 37. These standards shall be a condition of approval.

14 **Section 8(D)(2):** *Roof-mounted or side-mounted equipment for personal wireless*  
facilities shall not generate noise in excess of and Ldn of 50 dB at grade at the base  
of the building closest to the antenna. This shall not apply to on-site power  
generators operating during a power outage as an emergency measure.

15 38. As stated at the public hearing, the noise levels emitted shall not exceed  
the 50 dB limit. Additionally, this shall be a condition of approval.

16 **Conditional Use Permits – Criteria for Approval**

17 **SJCC 18.80.100(D)(1):** *The proposed use will not be contrary to the intent or*  
purposes and regulations of this code or the Comprehensive Plan;

1 39. This proposal is conditioned to be consistent with the SJCC and the  
2 Comprehensive Plan, as detailed above. This criterion is the basis of applying the  
County's wireless communications ordinance, Ordinance No. 15-2010.

3 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and*  
4 *appearance with the goals and policies for the land use designation in which the*  
*proposed use is located;*

5 40. The proposed use does not alter the general use of the structure, and the  
6 character of the site will be maintained. As such, the proposal site is already  
consistent with this criterion.

7 **SJCC 18.80.100(D)(3):** *The proposed use will not cause significant adverse impacts*  
8 *on the human or natural environments that cannot be mitigated by conditions of*  
9 *approval;*

10 41. The addition of the antenna and associated equipment cabinet will be  
11 minimally visible and will have no impact on the surrounding environment. As such,  
the use will not cause significant adverse impacts on neighbors or surrounding  
12 environment.

13 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*  
14 *(the total of the conditional uses over time or space) will not produce significant*  
*adverse effects to the environment that cannot be mitigated by conditions of approval;*

15 42. The property will continue to appear and function in a manner similar to  
16 the existing business use, and further similar requests will not produce significant  
adverse impacts.

17 **SJCC 18.80.100(D)(5):** *The proposal will be served by adequate facilities including*  
18 *access, fire protection, water, stormwater control, and sewage disposal facilities;*

19 43. The structure is in existence currently and has been shown to meet these  
20 requirements. The addition of the antenna and equipment cabinet will not interfere  
with these services..

21 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*  
22 *and fences, and screening vegetation associated with the proposed use shall not*  
23 *unreasonably interfere with allowable development or use of neighboring properties;*

24 44. The addition of the antenna and associated equipment cabinet will have  
25 only be minimally visible and will not alter or interfere with neighboring properties.  
Additionally, no comments were received from neighbors or the public on this  
application.

1 **SJCC 18.80.100(D)(7):** *The pedestrian and vehicular traffic associated with the*  
2 *conditional use will not be hazardous to existing and anticipated traffic in the*  
3 *neighborhood;*

4 45. The application will not have any associated traffic impacts.

5 **SJCC 18.80.100(D)(8):** *The proposal complies with the performance standards set*  
6 *forth in Chapter 18.40 SJCC;*

7 46. As conditioned, and discussed above, the proposal will be in compliance  
8 with SJCC 18.40.270.

9 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*  
10 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*  
11 *36.70.547); and*

12 47. There is no airport or airfield adjacent to this property.

13 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*  
14 *Chapter 18.60 SJCC.*

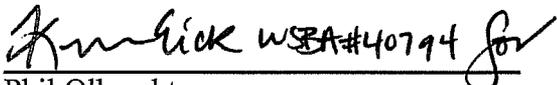
15 48. As an existing developed site, the proposal is consistent with SJCC 18.60.

#### 16 DECISION

17 The proposed project is consistent with all the criteria for a shoreline substantial  
18 development permit and conditional use permit. The proposal is approved subject to  
19 the following conditions:

- 20 1. The facility must be in compliance with the FCC radio frequency standards  
21 for roof-mounted antenna and equipment; including all required monitoring  
22 submittals as required by regulation.
- 23 2. The facility shall not generate noise in excess of 50 dB at grade at the base of  
24 the building.
- 25 3. All applicable requirements of the International Building Code and SJCC Title  
15 shall be met.

Dated this 17<sup>th</sup> day of September 2010.

  
Phil Olbrechts  
County of San Juan Hearing Examiner