

June 9, 1998

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

850 Union Bank of California Building  
900 Fourth Avenue  
Seattle, Washington 98164  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL**

**SUBJECT:** King County Department of Development and Environmental Services File No. **L97UU004**  
Proposed Ordinance No. 98-295

**ENTERCOM / COUGAR MOUNTAIN TOWER MODIFICATION**  
Special Use Permit Modification

**Location:** Cougar Mountain at 6602 – 173<sup>rd</sup> Avenue SE on the east side of the existing antenna farm

**Applicant:** ESM, Inc., on behalf of Entercom, Inc.  
720 South 348<sup>th</sup> Street, Federal Way, WA 98003

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions (modified)
Examiner:	Approve, subject to conditions (modified)

**EXAMINER PROCEEDINGS:**

Hearing Opened:	June 2, 1998
Hearing Closed:	June 2, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES ADDRESSED:**

- |               |                      |
|---------------|----------------------|
| • Antenna     | • Radio Tower        |
| • Landscaping | • Towers             |
| • Height      | • Access (vehicular) |

**FINDINGS, CONCLUSIONS & RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS.**

**1. General Information.**

Applicant:	ESM, Inc., on behalf of Entercom, Inc. 720 South 348 <sup>th</sup> Street, Federal Way, WA 98003
Location:	Cougar Mountain at 6602 – 173 <sup>rd</sup> Avenue SE on the east side of the existing antenna farm
STR:	25-24-05
Zoning:	R-1
Drainage Basin:	Cedar River
Community Plan:	Newcastle

**2. Proposal.** ESM, Inc., acting on behalf of Entercom, Inc. (interchangeably referred to hereinafter as the “Applicant”), proposes to replace an existing 200-foot-tall broadcast tower (appurtenant antennas) with a 300-foot-tall tower. It is noteworthy and relevant to this “modification” special use permit application, to note that this site previously has been approved twice by King County for a 300-foot tower. Thus, the King County Department of Development and Environmental Services (hereinafter, the “Department”) regards this application and action as a modification of the previous approvals, not as a modification of the actual tower. In these findings and conclusions, and in the recommendation which follows, the Examiner concurs.

The proposal is described in detail in the Department’s June 2, 1998 report (exhibit no. 1) as well as in Exhibit Nos. 18 and 22. The proposed tower will be a 300-foot free-standing lattice tower with antennas for broadcasting and one consolidated equipment building at the tower base. Four transmission equipment and storage buildings and the existing standing lattice tower will be removed. The Applicant proposes to continue existing access to the site. Parking for two staff maintenance vehicles will continue to exist within the subject property. The Applicant proposes to move its fencing outward to the property perimeter. The Department does not object. The transmitter building pad is proposed to be 72 feet by 24 feet, consisting of concrete block, painted forest green, with a shed roof. Applicant intends to use the tower mostly for auxiliary and emergency transmissions, suggesting low power levels and intermittent usage.

**3. SEPA.** On April 14, 1998 the Department issued a threshold determination of nonsignificance for the proposed development. See attachment 5 of the Department’s report (exhibit no. 1). That is, the Department caused to be published and posted it’s determination, based upon a review of the environmental check-list and other pertinent environmental documents, that the proposed development would not cause a probable significant adverse impact upon the environment and that, therefore, the Department would not require an environmental impact statement. No person, agency or tribe appealed that determination.

4. **Department Recommendation.** The Department's recommendation is contained on pages 16 and 17 of its preliminary report to the Examiner (exhibit no. 1), comprising 10 suggested conditions of special use permit issuance. The Department agrees to the Applicant's request with respect to recommended condition no. 7, which would postpone securing any final access agreement until "**issuance** of a building permit", instead of the earlier deadline of "submittal of a building permit." The Department also agrees with the Examiner's suggestions that criteria designed to assure thriving landscaping longevity should be added to recommended condition no. 3; and that the landscaping should be bonded for the first two years.

5. **Applicant's Response.** The Applicant agrees to the recommended conditions of special permit issuance as described in finding no. 4, above. In doing so, the Applicant notes that the existing landscaping was established by a previous owner, based upon private agreement with a neighboring property owner rather than pursuant to County regulation.

The Applicant also expresses concern regarding the Department's intention to require an access easement. The site has operated as a broadcast facility for the past twenty-five years with an access "license" from the abutting property owner U. S. West. The Applicant also believes that, pursuant to discussions with neighboring property owner Ratelco, Inc., that access is available through that abutting property as well.

6. **Department Report Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated June 2, 1998 are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the Examiner's report which are submitted to the King County Council.

7. **Conclusions Adopted as Findings.** Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

#### CONCLUSIONS:

1. The proposed special use does not conflict with County Comprehensive Plan policy. See, particularly, Departmental discussion on pages 12 and 13 of the Department's preliminary report to the Examiner (exhibit no. 1).

2. Subject to the conditions of special use permit approval indicated below, this special use permit will not be unreasonably incompatible with the types of uses permitted in surrounding areas, and will not contradict applicable code. See, particularly, the Department's discussion of applicable County regulations on pages 4 through 10 of exhibit no. 1.

3. The conclusions stated on pages 13 through 16 of the Department's report to the Examiner (exhibit no. 1) are adopted and incorporated here.

4. Any portion of the above findings on pages 1 through 7 of this Examiner's report, above, which may be construed as a conclusion, is hereby adopted as such.

RECOMMENDATION:

GRANT special use permit approval to Entercom, Inc., Department of Development and Environmental Services file no. L97UU004, as described in exhibit nos. 2 and 18 of this hearing record, subject to the following conditions:

1. Development shall be generally in accordance with file exhibit no. 23 for site plan locations, file exhibit no. 24 for communication structure elevations, and D-6 regarding location, configuration and color of the proposed equipment building. The existing transmission structures and equipment buildings are to be removed as part of this modification plan shall be removed within 30 days of new construction completion.
2. The proposed painting and lighting of the tower shall conform to FAA standards as referenced under the provisions of KCC 21A.26.070.
3. Vegetation on the subject property shall be retained and enhanced to provide landscape screening and buffering consistent with the King County “type 1 landscape screen” established by KCC 21A.16.040.A. Existing fencing may be moved to the perimeter of the property as proposed by the Applicant. A landscape plan, prepared by a landscape architect, conforming to this condition (no. 3) shall be submitted with the building permit application. Further, **as a condition of building permit issuance**, the Applicant shall post a two year bond written to assure thriving survival (and as necessary, replacement) of all approved plantings, existing or new. The landscape plan shall meet, at a minimum, the following criteria (in addition to those criteria established by KCC 21A.16.)
  - A. Plantings shall be appropriate to the 1400 foot property elevation.
  - B. Plantings shall be harsh-winter resistant.
  - C. Plantings shall be drought resistant.
  - D. Plantings shall be professionally recognized as being generally pest resistant.

Please note: these criteria do not contain the word “ornamental”.

**In addition**, the Applicant shall include in its bonded landscape plan a **watering plan**. The watering plan need not require the permanent installation of watering facilities. Rather, it must provide assurance of proper care of the plantings during the first two critical years.

4. The Applicant shall comply with Title 12, the Noise Chapter of the King County Code for operation of associated broadcast and communication facilities on the property.
5. The Applicant shall submit a NIER report to the King County Health Department within 60 days of the new tower being operational. The report shall include measurements of NIER levels according to the measurement procedures of KCC 21A.26.
6. Portable toilet facilities or a permanent restroom facility shall be provided. Authorization for either such facility shall be obtained as may be needed by the King County Health Department.

7. The Applicant must secure access to the subject property prior to building permit issuance. The proposed access location or another location from the west or north property lines are all acceptable. However, any access route must be approved by the King County Fire Marshall/Fire Engineering.
8. The Applicant shall restore the access road to its current condition following completion of construction.
9. The Applicant shall obtain all necessary building permits, comply with all building, fire, codes for construction of the tower and associated facilities on the subject property.
10. This land use approval action for conditional use permit shall become null and void if not exercised by obtaining building permits within four years from the transmittal date of this order.

RECOMMENDED this 9<sup>th</sup> day of June, 1998.

---

R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 9th day of June, 1998, to the parties and interested persons on the attached list

NOTICE OF RIGHT TO APPEAL  
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before June 23, 1998**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before June 30, 1998**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless within twenty (20) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

**MINUTES OF THE JUNE 2, 1998, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L97UU004 - ENTERCOM/COUGAR MOUNTAIN TOWER MODIFICATION:**

R. S. Titus was the Hearing Examiner in this matter. Robert Scholes, Clay Freinwald, Curt Horner/KC Health Department, and Karen Scharer/DDES participated in the hearing.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 Department of Development and Environmental Services staff report prepared for the June 2, 1998 public hearing on file no. L97UU004
- Exhibit No. 2 Cougar Mountain Tower modification application
- Exhibit No. 3 Revision notice of hearing, to 500 foot radius, dated May 19, 1998
- Exhibit No. 4 Affidavit of posting for revision notice
- Exhibit No. 5 Affidavit of Publishing for Notice of hearing in The Issaquah Press, published April 24, 1998
- Exhibit No. 6 NIER/Interference report, dated May 1, 1997
- Exhibit No. 7 Letter, dated March 19, 1998, from Robert Scholes, clarifying project
- Exhibit No. 8 License to enter property
- Exhibit No. 9 Comments from Steve Phelps/Fire Engineering Review
- Exhibit No. 10 4 photos submitted by Applicant with existing towers identified
- Exhibit No. 11 Title report
- Exhibit No. 12 Copy of aerial photo from exhibit files of Ratelco (DDES file no. L96AC008) public hearing
- Exhibit No. 13 FFA approval
- Exhibit No. 14 Letter, dated April 1, 1998, from ESM, Inc., providing additional information
- Exhibit No. 15 Letter, dated April 7, 1998, from ESM, Inc., providing additional information
- Exhibit No. 16 Revised elevation map, dated received April 24, 1998
- Exhibit No. 17 Letter, dated April 24, 1998, from ESM, Inc., providing additional information
- Exhibit No. 18 Revised site plan, dated received April 8, 1998
- Exhibit No. 19 Original site plan and drawings
- Exhibit No. 20 Landscape agreement with Sparks
- Exhibit No. 21 24 photos taken in May 1998 by Department staff
- Exhibit No. 22 Environmental checklist prepared October 1, 1997
- Exhibit No. 23 Assessor map, NE-25-24-05
- Exhibit No. 24 Letter, dated February 5, 1998, from City of Bellevue
- Exhibit No. 25 Letter, dated February 20, 1998, from KC Health Department