



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

January 7, 2005

Mr. Steven A. Cohn
Mountain Union Telecomm, LLC
1006 West Ninth Avenue
Suite 10
King of Prussia, PA 19406

RE: PLUS review – PLUS 2004-12-05 Mountain Union Telecomm #1294

Dear Mr. Cohn,

Thank you for meeting with State agency planners on December 22, 2004 to discuss the proposed plans for a telecommunications tower to be constructed on the north side of SR42 (Fast Landing Road) east of SR1 and adjacent to the Leipsic River in Kent County.

According to the information received, you are seeking to construct the tower within a 75' X 75' compound northeast of the Town of Cheswold.

Please note that changes to the plan, other than those suggested in this letter, may result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented in the PLUS review. The developers will need to comply with any Federal, County and local regulations regarding this property. As Kent County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact David Edgell 739-3090

This project represents a proposal to construct a telecommunications tower located East of Route 1, outside the growth zone in Kent County. This project is located in Investment Level 4 according to the 2004 State Strategies for Policies and Spending. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these

areas. New development activities and suburban development are not supported in Investment Level 4.

It is the State's policy to discourage new growth East of State Route 1. Starting with the historic Coastal Zone Act, State actions have encouraged natural resource and agricultural preservation rather than growth and development in this area of Kent County. Tens of millions of dollars have been spent by the State and Federal governments and by private conservation organizations to protect and preserve the natural environment and sustain a vibrant agricultural area that occupies some of the best farmland in the State. State investments East of Route 1 will be made for these purposes. No investment in infrastructure which supports growth is expected.

The State recognizes that this is a very small project which may be pursued under existing County regulations. The State Strategies for Policies and Spending do make allowances for projects relating to essential services, public utilities, and community infrastructure to be located in Investment Level 4. In addition, leasing land for uses such as this tower may provide farmers with additional income generating economic uses in areas where suburban development is discouraged by State policies. It is hoped that the farmer will use this income in support of the continued agricultural use of this property. For these reasons our office has no objections to this application, and note that the tower must comply with all County ordinances and requirements.

State Historic Preservation Office (SHPO) – Contact Anne McCleave 739-5685

Formal review and comments will be submitted through the Section 106 process. There are archaeological sites on this property near the monopole's proposed location. An archaeological survey will be requested.

Department of Transportation – Contact Bill Brockenbrough 760-2109

Mountain Union Telecom, LLC seeks to erect a 150-foot monopole antenna tower and supporting facilities on a 5,625 square foot (75-foot by 75-foot) portion of a larger parcel (Tax Parcel LC-00-038.00-01-01.00-000) on the north side of Delaware Route 42 east of Delaware Route 1. The land is zoned AC (Agricultural Conservation) and conditional use approval would be needed for the tower to be built.

The developer's engineer should contact our Central District Public Works Engineer, Mr. Robert Greybill, regarding our requirements for access. Mr. Greybill may be reached at (302) 760-2316.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-3091

Soils

According to the Kent County soil survey, the following soils were found in the immediate vicinity of the proposed construction and categorized on the basis of drainage class:

Well drained – Sassafras

Moderately well drained – Mattapex, Woodstown & Keyport
Poorly drained (**hydric**) – Elkton
Very poorly drained (**hydric**) – Johnston (floodplain), Pocomoke & Tidal Marsh

According to the Kent County soil survey, Sassafras is a well-drained upland soil that has few limitations for development. Mattapex, Woodstown, and Keyport are moderately well-drained soils of low-lying uplands that have moderate limitations for development. Elkton is a poorly-drained wetland associated (**hydric**) soil that has severe limitations for development. Johnston, Pocomoke, and Tidal Marsh are very poorly-drained wetland associated (**hydric**) soils that have the highest degree of severity for development.

Wetlands

Statewide Wetland Mapping Project (SWMP) maps indicate the presence of estuarine and palustrine tidal and palustrine forested wetlands on this site.

Site plans show that there will not be direct impacts to these wetlands through construction activities; however, secondary impacts of construction could be detrimental to the health of these wetlands and their associated streams. Activities which may impact this wetland are regulated by the Army Corps of Engineers through Section 404 of the Clean Water Act; impacts to tidal wetlands are also regulated by the DNREC Division of Water Resources, Wetlands and Subaqueous Lands Section. In addition, individual 404 permits and certain Nationwide Permits from the Army Corps of Engineers also require 401 Water Quality Certification from the Wetlands and Subaqueous Lands Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

Site plans indicate that a road crossing will run through the stream on site. Impacts to streams and associated riparian wetlands, including road crossings, are regulated by the Subaqueous Land Section from DNREC Division of Water Resources and the Army Corps of Engineers.

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-4691 to schedule a meeting.

It is also recommended that the Farm Services Agency of the USDA be contacted to assess whether the farmed wetlands on subject parcel meet the recognized criteria for classification as “prior converted wetlands.” Prior converted wetlands are farmed wetlands that have drained or altered before December 23, 1985, and no longer meet the wetland criteria established under the 404 program. Such wetlands are considered exempt from regulatory protection provided that there is no proof of a continuous “fallow period” of five years or greater in that parcel’s cropping history. Parcels converted after said date regardless of cropping history are considered jurisdictional by

the Army Corps of Engineers (ACOE). The contact person for assessing a parcel's cropping history is Sally Griffin at the USDA – she can be reached at 678-4182.

It should also be noted that this parcel contains sensitive headwater riparian wetlands associated with the Alston Branch of Leipsic River subwatershed. Headwater riparian wetlands and their associated streams are important for the protection of water quality and the maintenance/integrity of the ecological functions throughout the length of the stream, including the floodplain system downstream. Since headwater streams are a major avenue for nutrient-laden stormwater and sediment runoff, their protection deserves the highest priority. **In recognition of this concern, the Department strongly recommends that the applicant preserve, in its entirety, the existing natural forested buffer adjacent to said Alston Branch headwater tributary.**

TMDLs

Although Total Maximum Daily Loads (TMDLs) as a “pollution runoff mitigation strategy” to reduce nutrient loading have not yet been developed for most of the tributaries or subwatersheds of the Delaware Bay watershed to date, work is continuing on their development. TMDLs for the Leipsic River subwatershed, of which this parcel is part, are scheduled for completion in December 2006.

Therefore, until the specified TMDL reductions and pollution control strategies are adopted, it shall be incumbent upon the developer to employ best available technologies (BATs) and/or best management practices (BMPs) as “methodological mitigative strategies” to reduce degradative impacts associated with development.

Water Supply

The information provided indicates that there will be no water used at this site. Our records indicate that the project is not located in an area where public water service is available. If the need for a well should arise, the Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-3665.

Sediment and Erosion Control/Stormwater Management

Requirements:

- 1) Land disturbing activities in excess of 5,000 square feet are regulated under the Delaware Sediment and Stormwater Regulations. A detailed sediment and stormwater management plan must be reviewed and approved by the Kent Conservation District prior to any land disturbing activity (i.e. clearing, grubbing, filling, grading, etc.) taking place. The review fee and a completed Application for a Detailed Plan are due at the time of plan submittal to the Kent Conservation District. Construction inspection fees based on developed area and stormwater facility maintenance inspection fees based on the number of stormwater facilities are due prior to the start of construction. Please refer to the fee schedule for those amounts.

Based on the size of the project compared to the size of the property, it is likely that this project will be eligible for a wavier of stormwater management. However this project would still be required to meet erosion and sediment control requirements.

- 2) The following notes must appear on the record plan:
 - The Kent Conservation District reserves the right to enter private property for purposes of periodic site inspection.
 - The Kent Conservation District reserves the right to add, modify, or delete any erosion or sediment control measure, as it deems necessary.
 - A clear statement of defined maintenance responsibility for stormwater management facilities must be provided on the Record Plan.
- 3) All drainage ways and storm drains should be contained within drainage easements and clearly shown on the plan to be recorded by Kent County.

Comments:

- 1) The proposed access lane should not be constructed so as to block drainage.
- 2) A letter of no objection to recordation will be provided once the detailed Sediment and Stormwater Management plan has been approved.

Drainage

The drainage Section is not aware of any existing drainage problems associated with the proposed project. The Drainage Section requests that all precautions be taken to ensure the project does not hinder any off site drainage upstream of the project from the placement of the proposed compound or the gravel access driveway.

Floodplains

A small portion of the site is within the 100-year floodplain. Development should be limited to areas outside of the floodplain as required by Kent County's floodplain regulations.

Forests

Site plans show a gravel driveway located in the southern portion of the parcel; 2002 Aerial photographs indicate a forested area in this location. This road should be removed and placed in a more appropriate location, possibly outside of the forested area.

Bird Mortality/Migratory Birds

For this project, there are issues with the mortality of birds at tall, lighted structures. Tall structures and guy wires that are invisible in the dark may be struck by large numbers of birds, but just as deadly are lighted structures that effectively attract birds. Birds attracted to lights may become disoriented and reluctant to leave the lighted area, flying around until exhausted (Measure, M. FLAP: Fatal Light Awareness Program. <http://www.flap.org/new/nestegg2.htm>, October 2003). Alternatively, birds attracted to lights mounted on a structure may simply strike the structure itself. The type of lighting used to illuminate a structure seems to affect the hazard posed to migratory birds. The effect of light-flash duration may be particularly critical, perhaps more important than color. Steady and pulsating lights with short “off” phases seem to be more attractive to birds, and thus more dangerous, than pulsing lights with long “off” phases (Manville, A. M. II. 2000. The ABCs of avoiding bird collisions at communication towers: the next steps. Proceedings of the Avian Interactions Workshop, December 2, 1999, Charleston, SC. Electric Power Research Institute. <http://migratorybirds.fws.gov/issues/towers/abcs.html> October 2003).

Consideration for impacts to migratory birds should be incorporated into the engineering of this project. We strongly recommend that this site be further evaluated according to the U.S. Fish and Wildlife Service (USFWS) guidelines for siting communication towers. We provided the applicant with a copy of these guidelines, but more information can be obtained at: <http://migratorybirds.fws.gov/issues/towers/towers.htm>.

Revegetation/Landscaping

We request that no invasive species be used in the revegetation of disturbed or landscaped areas. A list of species considered invasive in Delaware can be found on the DNHP web site, www.dnrec.state.de.us/fw/invasive.htm. We further encourage, where possible/feasible, the use of native plants for habitat restoration projects on-site and our Botanist, Bill McAvoy can be contacted at (302) 653-2880 to assist you in developing a plant list.

State Resource Areas

The location of the cell tower is on land currently identified as part of a proposed State Resource Area. State Resource Areas are comprised of lands that contain a variety of natural, cultural and open space resources significant to the state. Consideration should be given to protecting these resources during design and construction of this project. For more information, please contact Ron Vickers, Land Preservation Office, 739-3423.

State Fire Marshal's Office – Contact John Rossiter 323-5365

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide: completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

Fire Protection Water Requirements

- 1) Since the structures of the complex are proposed to be served by individual on-site wells (No Central Water System), set back and separation requirements will apply.

Fire Protection Features

- 1) For commercial buildings greater than 5000 SqFt, a fire alarm signaling system which is monitored off-site is required
- 2) For commercial buildings greater than 10,000 SqFt Class B (2-hour rated) fire barriers are required to subdivide buildings into areas of 10,000 SqFt. or less
- 3) Buildings greater than 10,000 sq.ft., 3-stories or more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements

Accessibility

- 1) All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Fastlanding Road must be constructed so fire department apparatus may negotiate it.
- 2) Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- 3) Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- 4) If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

Gas Piping and System Information

- 1) Provide type of fuel proposed, and show locations of bulk containers on plan.

Required Notes

- 1) Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- 2) Proposed Use
- 3) Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- 4) Square footage of each structure (Total of all Floors)

- 5) National Fire Protection Association (NFPA) Construction Type
- 6) Maximum Height of Buildings (including number of stories)
- 7) Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact Mark Davis 739-4811

The Department of Agriculture does not oppose location of the proposed cell tower on this site. However, we strongly encourage the placement of this tower to be performed in manner that minimizes any negative impacts to the on-going agricultural operations, as well as the future agricultural value of this site. We realize that Kent County has very specific cell tower placement ordinances, but we request this case be used as an opportunity to examine both the effectiveness and consequences of that ordinance. See the following from the Kent County Code:

205-360  Tower, broadcasting and telecommunications.

A. Broadcasting and/or telecommunication towers shall comply with the following conditions in regards to location, siting, and height: [Amended 1-15-2002 by Ord. No. 02-01]

(1) Location.

(a) The location is the subject parcel where a tower is located or proposed to be located. Broadcasting and telecommunications towers conforming to all applicable provision of the code shall be allowed only in the following locations:

[1] Church sites, when camouflaged as a steeple or bell tower, not as flagpoles.

[2] Park sites, when compatible with a nature park.

[3] Government, school, utility, or institutional sites.

[4] Parcels of such a size that the proposed tower will be 1,000 feet from all property lines and 1,500 feet from any dwelling located on an adjoining parcel.

[5] Alternative sites which are used primarily for purposes other than to support antennas such as water towers, buildings, billboards, electric or light poles, and other utility structures.

(b) The above parameters serve to indicate which sites (parcels) may be used for the location of a broadcasting and telecommunications tower within Kent County. These locations take the place of specific zoning districts and as such cannot be varied by the Kent County Board of Adjustment.

(2) Siting. The siting is the method of placing the tower on a specific area within the subject parcel. Broadcasting and telecommunications towers shall be sited in the following manner:

(a) Towers meeting the location requirements of Subsection A(1)(a)[1], [2], [3], or [5] shall follow the setbacks mandated in § 205-360H.

(b) Towers meeting the location requirement of Subsection A(1)(a)[4] shall

follow these setback requirements:

*[1]Two hundred feet from any property line or the height of the tower,
whichever is greater; and*

*[2]Five hundred feet from the nearest dwelling not on the parcel on which
the tower is to be placed.*

In particular the “1,000 feet from all property line” requirement (under the parcel selection criteria) would site most cell towers, if placed in an active farm field, well into the field and hence unduly hinder agricultural operations. The actual listed cell tower setback of 200 feet from property lines stated later in the code, in most cases, is overwritten by the “parcel selection requirement.” DDA’s strategy for cell tower placement strives to have minimal negative impacts to the general public, but also to minimize impacts to the viable and productive agricultural operations. Kent County’s current strategy unfairly and unduly negatively impacts the agricultural community.

The Delaware Forest Service encourages the use of native vegetation to screen the site from SR-1 and other homes and highways near the proposed construction.

Public Service Commission - Contact Andrea Maucher 739-4247

No comment.

Delaware State Housing Authority – Contact Jimmy Atkins 739-4263

No comment.

Delaware Emergency Management Agency – Contact Don Knox 659-3362

No comment.

Department of Education – Contact Nick Vacirca 739-4658

No comment.

This concludes our comments. Upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to these comments noting whether or not specific recommendations were incorporated into the project design and the reasons therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,


Constance C. Holland, AICP
Director

CC: Kent County
Town of Cheswold