

**THE FOLLOWING MEMOS HAVE BEEN  
SCANNED WITHOUT EXHIBITS FOR  
THE HEARING TO BE CONDUCTED BY  
THE SHORELINES HEARING BOARD  
ON  
THURSDAY  
JANUARY 3, 2013 AT 7 P.M.**

**NOTE THE ADDRESS:  
BENTON COUNTY PLANNING  
DEPARTMENT – PLANNING ANNEX  
1002 DUDLEY AVENUE – PROSSER  
IF YOU WISH TO OBTAIN A COMPLETE  
PACKET INCLUDING THE EXHIBITS  
PLEASE CONTACT THE  
BENTON COUNTY PLANNING  
DEPARTMENT - 736-3086/TRI-CITIES  
OR  
786-5612/PROSSER  
OR EMAIL AT  
PLANNING.DEPARTMENT@CO.BENTON.WA.US**

**EXHIBIT LIST FOR SCUP 12-03  
LS NETWORKS**

**SHORELINES HEARING BOARD STAFF MEMO EXHIBITS**

| <b>SHB INCLUDES</b> | <b>EXHIBIT #</b> | <b>DOCUMENT NAME</b>   | <b>DATE</b>               |
|---------------------|------------------|--|---------------------------|
|                     | SHB 1.1          | Staff Memo   | December 6, 2012          |
|                     | SHB 1.2          | Notice of Open Record Hearing  | December 6, 2012          |
|                     | SHB 1.3          | Notice of Application  | September 29, 2012        |
|                     | SHB 1.4          | Aerial of the site   |                           |
|                     | SHB 1.5          | Sue Schuetze – Public Works Comments   | October 2, 2012           |
|                     | SHB 1.6          | SEPA Yakima County - Unsigned  | Rec'd October 5, 2012     |
|                     | SHB 1.7          | Notice of Completeness/Notice of Application/Notice of Environmental Review – Yakima County – Signed August 15, 2012 | October 5, 2012           |
|                     | SHB 1.8          | Determination of Non-Significance from Yakima County   | December 4, 2012          |
|                     | SHB 1.9          | Notice of Completeness/Notice of Application/Notice of Environmental Review Preliminary SEPA Determination           | Published October 8, 2012 |
|                     | SHB 1.10         | Department of Ecology comments   | October 9, 2012           |

**SHORELINES HEARING BOARD – APPLICATION EXHIBITS**

| <b>SHBR 1 INCLUDES</b> | <b>EXHIBIT #</b> | <b>DOCUMENT NAME</b>  | <b>DATE</b>          |
|------------------------|------------------|---|----------------------|
|                        | SHBR 1.1         | Shorelines Application  | Rec'd Sept. 18, 2012 |
|                        | SHBR 1.2         | Prosser Vicinity Map Sheet 7.0                                  | August 13, 2012      |
|                        | SHBR 1.3         | Bridge Conduit Plan Sheet 10.2                                  | September 4, 2012    |
|                        | SHBR 1.4         | Bridge Conduit Plan Sheet 10.2                                  | August 31, 2012      |
|                        | SHBR 1.5         | Conduit Plan Sheet 10.1   | September 4, 2012    |
|                        | SHBR 1.6         | Bridge Conduit Plan Sheet 10.2                                  | September 4, 2012    |
|                        | SHBR 1.7         | Bridge Conduit Plan Sheet 10.3                                  | September 4, 2012    |
|                        | SHBR 1.8         | Conduit Plan Sheet 10.4   | September 4, 2012    |
|                        | SHBR 1.9         | Letter of Transmittal   | September 26, 2012   |
|                        | SHBR 1.10        | Conduit Plan Sheet 10.1   | September 4, 2012    |
|                        | SHBR 1.11        | Bridge Conduit Plan Sheet 10.2                                  | September 4, 2012    |
|                        | SHBR 1.12        | Bridge Conduit Plan Sheet 10.3                                  | September 4, 2012    |
|                        | SHBR 1.13        | Conduit Plan – Grant Ave and W Old Inland Empire Hwy Sheet 10.4 | September 4, 2012    |

**SHORELINES HEARING BOARD JANUARY 3, 2013**

| <b>SHBH 1 INCLUDES</b> | <b>EXHIBIT #</b> | <b>DOCUMENT NAME</b> | <b>DATE</b> |
|------------------------|------------------|----------------------|-------------|
|                        |                  |                      |             |

EXHIBIT SHEET – E-1 – Exhibit listing

SHB- Shorelines Hearing Board Exhibits

SHBR – Shorelines Hearings Board Record Exhibits

BH - Documents submitted during the hearing

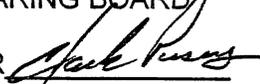
# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

MEMO DATE: DECEMBER 6, 2012

HEARING DATE: JANUARY 3, 2013

BOARD: BENTON COUNTY SHORELINES HEARING BOARD

FROM: CLARK A. POSEY, SENIOR PLANNER   
BENTON COUNTY PLANNING DEPARTMENT

RE: SHORELINES CONDITIONAL USE PERMIT SCUP 12-03

APPLICANT: LS NETWORKS  
C/O LEIF HANSEN  
921 SW WASHINGTON ST STE 370  
PORTLAND, OREGON 97205.

**SPECIFIC REQUEST:** The application was submitted to the Benton County Planning Department on September 18, 2012 and deemed complete for processing on September 20, 2012. LS Networks proposes to install new fiber optic cable on the existing Grant Street Bridge. The proposed fiber optic cable will be suspended above the Yakima River. Location: The Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 2, Township 8 North, Range 24 East, W.M. aka Grant Street crossing of the Yakima River.

## BACKGROUND:

Site Location: The site is located along the Yakima River, in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter in Section 2, Township 8 North, Range 24 East W.M.

Land Use: The site surrounding the bridge is currently bare ground. Ownership is the US Government & City of Prosser.

Zoning: The site and surrounding areas are zoned Urban Growth Area Residential (UGAR).

Comprehensive Plan: The Benton County Comprehensive Plan designated the site and surrounding areas as Urban Growth Area (UGA) for the City of Prosser.

Shoreline Master Plan: The Benton County Shorelines Plan designates this portion of the shoreline of the Yakima River as Urban Environment.

State Environmental Policy Act: SCUP 12-03 has been reviewed under the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance was issued by Yakima County under the following listing: WET 12-034, WET 12-033 & SEP 12-024 on December 4, 2012. Accordingly, an Environmental Impact Statement is not required.

## ANALYSIS:

History: Shoreline Conditional Use Application SCUP 10-03 was submitted to the Benton County Planning Department on September 18, 2012 and was determined a complete application for processing on September 20, 2012. The application was sent to the Benton Franklin Health District, Corps of Engineers, Washington State Department of Ecology – Shoreline Division Yakima and Olympia, Washington State Department of Natural Resources; Washington State Department of Fish and Wildlife, Yakama Indian Nation; Natural Resources Conversation Service, Natural Resource Conservation Service, Fire District 3, Department of Transportation, FEMA, City of Prosser, Archeological/Historical Preservation, Washington State Department of Health, Bureau of Land Management and Bureau of Reclamation on September 27, 2012.

#### Applicable Development Regulations

1. Section 7.00 of Phase II of the Benton County Shoreline Master Program provides the following purpose and definition for the Rural Environment:

Purpose The purpose of assigning an area to an Urban Environment is to ensure optimum utilization of shorelines occurring within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses.

Definition The Urban Environment is an area of high intensity land-use including residential, commercial, recreational and industrial development. It is particularly suitable to those areas presently subject to extremely intensive use and pressure as well as areas planned to accommodate urban expansion. Shorelines planned for future urban expansion should present few bio-physical limitations for urban activities and not have a high priority for designation as an alternative environment.

2. The Benton County Master Program Regulations provide the following information for conditional use permits:

"Conditional uses are those uses which may be permitted to locate in shoreline areas, but are usually seen as uses which either do not need, or depending on the environment, considered not to be suitable for siting in shoreline locations. It is understood, however that there may be special circumstances or special types or styles of conditional uses that would make shoreline siting of special cases acceptable to the goals, policies, and intentions of the Master Program.

3. The applicant must supply whatever evidence, information, or agreements to assure the local hearings board that the following conditions will be met:

a. That there is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area.

b. That the design of the proposed use will make it compatible with the environment it will be placed in.

c. That water, air, noise and other classes of pollution will not be more severe than pollution that would result from the uses, which are permitted, in the particular environment.

d. That none of the goals, policy statements or specific aims of the particular environment would be violated, abrogated, or ignored.

Should the local hearings board find insufficient evidence, explanation, or guarantees that the above conditions will be met, they may deny the request or indicate to the applicant what changes he could make that would cause the local hearings board to reconsider."

e. Washington Administrative Code states the following for review criteria for conditional use permits:

"The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

f. Section 9.00 (Miscellaneous Use Regulations) of the Benton County Master Program Regulations provides the following. This section applies to all environments and to all activity regulations; other applicable ordinances must also be followed and may be more restrictive.

1. Parking areas shall be located upland of the uses they serve.
2. Public access rights of way and improvements shall be required in large developments if the shorelines or waters are of an appropriate nature and can withstand the access. Access will be restricted if the development could pose a hazard by its very nature.
3. All development shall prepare the land to prevent wind and water erosion.
4. Protection from siltation and erosion shall be provided for all earth changing acts.
5. No debris shall be allowed to enter the water. Accidentally injected debris shall be immediately removed.
6. No equipment or machinery of any kind shall enter any body of water or wetland except, when authorized under the terms of a substantial development permit. This prohibition shall not apply to floating equipment.
7. Vegetation along the water's edge shall be returned or left in the original condition unless permit stipulations allow or require otherwise.
8. Any permit in, on or near an area designated or considered an archaeological or historical site shall apply for a conditional use permit. This applies to all uses in all environments.
9. Shoreline structures and roads and railroads shall be constructed so as not to constitute a hazard to river navigation.

In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

g. Sections 15.20.060 and 15.20.070 of the Benton County Code (Title 15 is Protection of Critical Areas and Resources) provides the following regulations related to rivers:

**BCC 15.20.060 DEVELOPMENT-GENERAL REQUIREMENTS**, In addition to other provisions of this title, the applicant shall provide that the flood carrying capacity of the river or creek is maintained and has not impacted the flood zone from its original intent.

**BCC 15.20.070 PROHIBITED ACTS**. The introduction of any vegetation or wildlife, which is not indigenous to the Pacific Northwest into any river or creek or its nearshore riparian area, is prohibited unless authorized by a State of Washington or a federal license or permit.

**FINDINGS OF FACT:**

Planning Staff has reviewed the application and information received in the SCUP 12-03 application. Based on the application and information received the planning staff makes the following findings.

1. The applicant LS Networks is requesting a Shoreline Conditional Use Permit to attach a fiber optic cable to the existing bridge that crosses the Yakima River. There is no physical address for this property or bridge structure. The fiber optic cable will be attached to the concrete bridge that crosses the Yakima River Northeast of the City of Prosser, WA 99350. Also known as the Grant Street Crossing.
2. The site is located along the Yakima River, in the Northeast Quarter of Northeast Quarter of the Northeast Quarter of Section 2, Township 8 North, Range 24 East W.M.
3. The applicant is proposing to use the existing concrete bridge structure over the Yakima River to attach a fiber optic cable. Point of crossing is in the Urban Designation of the Yakima River Shorelines.
4. The application for SCUP 12-03 was submitted to Benton County on September 18, 2012. It was declared complete for the purpose of processing and routing for comments on September 20, 2012.
5. The application was sent for comment on September 25, 2012 to the Benton Clean Air Authority, Benton-Franklin District Health Department, Benton County Fire Marshall, Benton County Building Department, Benton County Department of Public Works, Corps of Engineers, Washington State Department of Ecology – Shoreline Division Yakima and Olympia, Washington State Department of Natural Resources; Washington State Department of Fish and Wildlife, Yakama Indian Nation; Natural Resources Conservation Service, Natural Resource Conservation Service, Fire District 3, Department of Transportation, FEMA, City of Benton City, Archeological/Historical Preservation, Washington State Department of Health, Bureau of Land Management and Bureau of Reclamation.

6. The Notice of Application for SCUP 12-03 was published on, October 8, 2012 by Yakima County, with a thirty (30) day comment period. This notice was published and mailed to property owners of record within 300 feet of the outer boundaries of the parcel, described in the application as required by BCC 17.10.100. The Benton County Planning Department published a Notice of Application for SCUP 12-03 on October 4, 2012 with a (2) twenty day comment period. This notice was published and mailed to property owners of record within 300 feet of the outer boundaries of the parcel, described in the application as required by BCC 17.10.100.

7. The notice for the Benton County Shoreline Hearing Board's Open Record Hearing for application SCUP 12-03 was published on December 11, 2012 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for January 3, 2013.

8. An Environmental Determination of Non-Significance for Benton County SCUP 12-03 was issued by Yakima County (File Numbers: WET 12-034, WET 12-033 & SEP 12-024) on December 4, 2012.

9. The property is zoned UGAR North of the bridge and partly inside the city limits of the City of Prosser South of the bridge.

10. The 1998 Benton County Comprehensive Plan designates the site as Urban Growth Area for the City of Prosser.

11. The Benton County Shoreline Master Program designated the site as Urban Environment.

12. The proposed use for SCUP 12-03 is allowable by conditional use permit as stated in Benton County Shoreline Master Program Phase II, Section 8.09 Shoreline Utilities, page, 17.

13. To comply with the Benton County Code and Shoreline Master Program the site must be returned to its natural state.

14. The Benton County Shoreline Master Program provides the following policies statements for Shoreline Structures Use Regulations:

Shoreline Master Program Phase II

(I) General Regulations.

A. Earth changes shall not interfere with free passage of river and floodwater except where such is specifically intended and authorized.

B. All applications for a conditional use permit shall be reviewed to determine if the proposed activities are consistent with the goals and policies of the Benton County Shoreline Management Master Plan.

C. Shoreline structures shall be constructed so as not to constitute a hazard to river flow or navigation.

15. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that there is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area. The bridge structure in question is already built in its entirety and will not cause any diversion of the Yakima River during any high water event.

16. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that the design of the proposed use will make it compatible with the environment that it will be placed in. An onsite visit with the Planning Manager and Senior Planner verified that attaching the fiber optic cable to the bridge structure would not create any hazard to the site or surrounding areas downstream from the existing structure.

17. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that water, air, noise and other classes of pollution will not be more severe than pollution that would result from the uses, which are permitted, in the particular environment. No other construction or excavation will be performed.

18. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that none of the goals, policy statements or specific aims of the particular environment would be violated, abrogated, or ignored, and that no other applicable regulations will be violated. Based on the above findings it appears all goals of the Benton County Shoreline Master Program are complied with. If this permit is approved the Planning Department suggests the following conditions be listed as requirements for the approval of SCUP 12-03 and placed upon the final permit. The applicant shall continue to meet these requirements while SCUP 12-03 is in effect. In addition the applicant must comply will all applicable local, state and federal regulations.

**BENTON COUNTY SHORELINES SUBSTANTIAL DEVELOPMENT AND SHORELINES CONDITIONAL USE PERMIT:** A DNS (Determination of Non-Significance) was issued on December 4, 2012 relative to the facts submitted to the Planning Department on December 5, 2012 from Yakima County Planning (File Nos. WET 12-034, WET 12-033 and SEP 12-024) for the application of a Benton County Shoreline Conditional Use Permit SCUP 12-03 under the requirements of the Benton County Shorelines Management Plan, Phase II 8.04 (B)-(C) and 8.16 (B) & (D).

**Utilities 8.09 Uses requiring a Conditional Use Permit:**

All transmission lines, unless physically impossible, for power, gas, sewage communications, oil, water, etc. shall be underground. Public utilities such as substations, telephone exchanges, and power generating plants shall require a Shoreline Conditional Use Permit.

**Utilities 8.09 Use Regulations Urban Environment:**

(A) All transportation lines for power, gas, sewage, communications, oil, water, etc. shall be underground, whenever feasible.

(B) After location of utilities, the area shall be returned to its natural state as much as possible.

(C) Utilities shall be designated and installed in such a way as to minimize damage to the scenic view or aesthetic qualities of the shoreline

No additional construction or grading will be allowed within the designated shoreline of the

Yakima River without prior approval of State and Local Authorities, governing the rules and regulations of shorelines of the State of Washington

**APPLICABLE DEVELOPMENT REGULATIONS:**

The Benton County Code Section 11.13.060 (Urban Growth Area Residential Zone District) states that: "Any use not authorized or approved pursuant to BCC 11.13.030, or BCC11.13.040, or BCC 11.13. 050 are prohibited by laws of Benton County or within the Urban Growth Area Residential District.

**DISPOSITION OF THE APPLICANT'S REQUEST: (CONDITIONS ATTACHED TO THE DNS)**

If the Benton County Shoreline Hearings Board is able, after receiving all public testimony, makes the required findings and approves the proposed conditional use application, the Benton County Planning Department recommends that the following conditions be added to the approval:

1. During construction precautions must be taken to prevent siltation, erosion or other debris from entering into the surface waterway. Should any debris accidentally be interjected into the surface water it should be immediately removed contained and removed from the area of the river shoreline. Spoilage and construction debris should be stockpiled and the original materials should be used to replace or backfill the project area. Spoilage not used should be disposed of upland of the project and outside of the shoreline area.
2. The original contour of the landscape should be restored upon completion of construction. In the wetland and riparian areas only native soils should be used to backfill and level the disturbed area.
3. All areas that are cleared or backfilled or otherwise disturbed shall be replanted with native vegetation that is representative of the site (natural reference site) immediately following any earthwork or grading of the site.
4. Copies of all permits pertaining to approval and/or construction (building and/or grading) of the project shall be submitted to the Benton County Planning Office and shall be considered as a condition of this Shorelines Permit.
5. Construction is not authorized for any other structure within the shoreline setback without prior approval from the Benton County Shorelines Hearing Board and the Washington State Department of Ecology; see RCW 90.58.140(5) and WAC 173-14-090.
6. The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date of receipt as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of receipt as defined in subsection (6) of this section except as follows:
7. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with the conditions of a permit. If the department is of the opinion that noncompliance exists, the

department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescinding of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

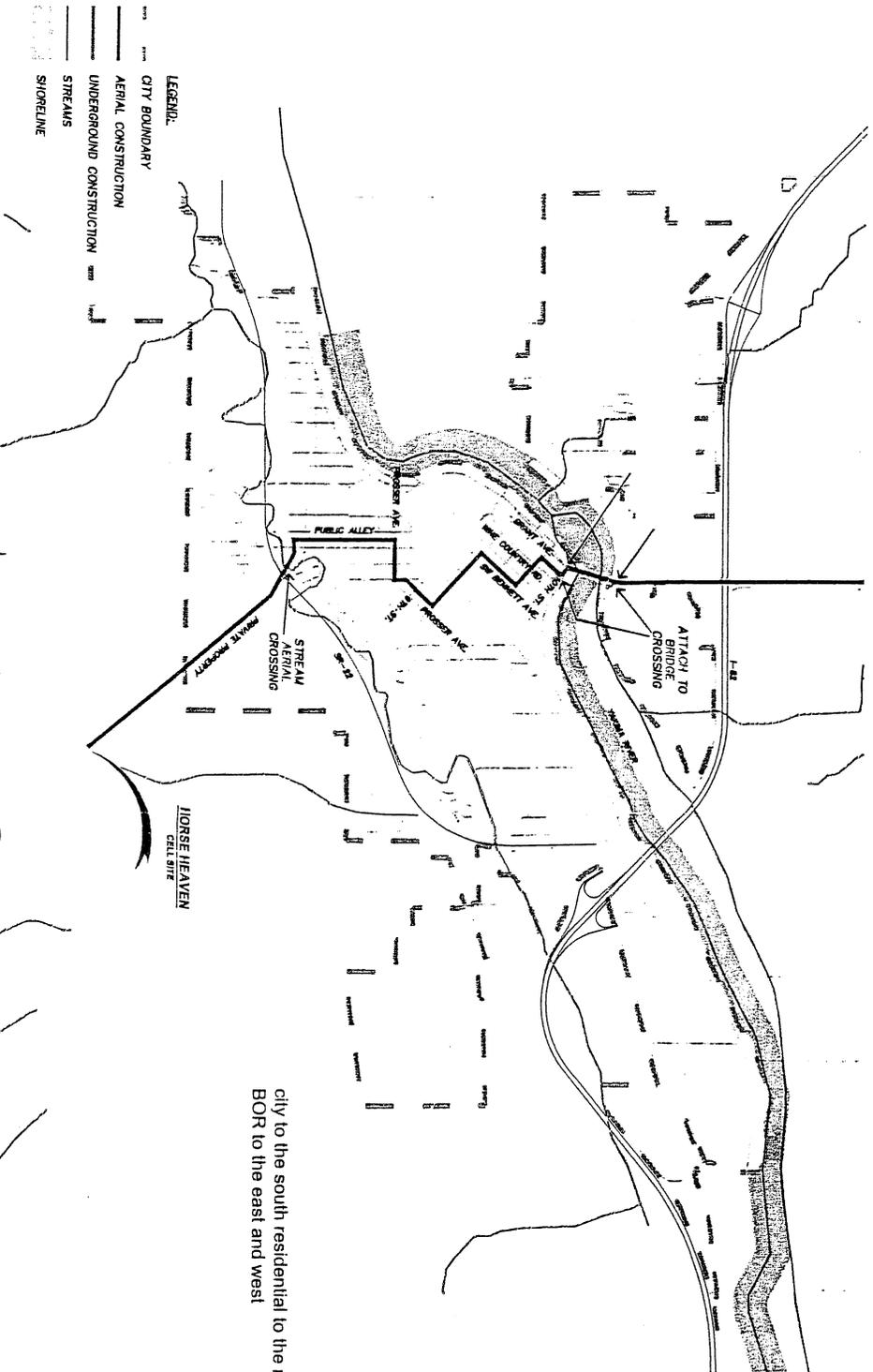
PRELIMINARY SET

# US CELLULAR: YAKIMA TO TRI-CITIES-LSN#20120588

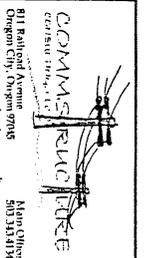
## LSN FIBER OPTIC BACKBONE

PROSSER - BENTON COUNTY, WASHINGTON  
AUGUST 2012

SCUP 12-03



city to the south residential to the north  
BOR to the east and west



DESIGNED BY: K. WALLERIS  
DRAWN BY: J. GREENWOOD  
CHECKED BY: E. ORLON  
APPROVED BY: E. ORLON

| REV | DESCRIPTION | DATE | ENG |
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SCALE: AS SHOWN  
1" = 70'



821 SW WASHINGTON ST., STE. 370  
PORTLAND, OR 97205  
503-284-5300  
214-889-6299 FAX

YAKIMA TO TRI-CITIES CITY OF KENNEWICK  
YAKIMA TO TRI-CITIES CITY OF RICHLAND  
COUNTY: BENTON  
LSN PROJECT #20120588  
PASCO, WASHINGTON

PROSSER  
VICINITY MAP

TRAIL NAME: FLENNAGUE.DWG - TAB SHEET #  
VICINITYMAP.DWG - MAP 7.0  
PLOT DATE: 8/13/2012 SHEET: 7.0

**EXHIBIT LIST FOR SCUP 12-04  
LS NETWORKS**

| <b>SHORELINES HEARING BOARD STAFF MEMO EXHIBITS</b>    |                  |  |                              |
|--|------------------|--|------------------------------|
| <b>SHB INCLUDES</b>                                    | <b>EXHIBIT #</b> | <b>DOCUMENT NAME</b>   | <b>DATE</b>                  |
|  | SHB 1.1          | Staff Memo   | December 6, 2012             |
|  | SHB 1.2          | Notice of Open Record Hearing  | December 6, 2012             |
|  | SHB 1.3          | Notice of Application  | September 29, 2012           |
|  | SHB 1.4          | Aerial of the site   |                              |
|  | SHB 1.5          | Aerial of the site showing existing pole   |                              |
|  | SHB 1.6          | BFHD comments  | October 8, 2012              |
|  | SHB 1.7          | Department of Ecology Comments   | October 9, 2012              |
|  | SHB 1.8          | Benton County Fire Marshal comments  | September 27, 2012           |
|  | SHB 1.9          | Notice of Completeness/Notice of Application/Notice of Environmental Review - Preliminary SEPA Determination - Yakima County | Published<br>October 8, 2012 |
|  | SHB 1.10         | Email Yakima County - SEPA Application and Environmental Checklist Review  | Rec'd October 5, 2012        |
|  | SHB 1.11         | Notice of Completeness/Notice of Application - Yakima County   | Rec'd October 9, 2012        |
|  |                  |  |                              |
| <b>SHORELINES HEARING BOARD - APPLICATION EXHIBITS</b> |                  |  |                              |
| <b>SHBR 1 INCLUDES</b>                                 | <b>EXHIBIT #</b> | <b>DOCUMENT NAME</b>   | <b>DATE</b>                  |
|  | SHBR 1.1         | Shorelines Application   | Rec'd Sept. 18, 2012         |
|  | SHBR 1.2         | Benton City Shoreline Exhibit C  | August 24, 2012              |
|  |                  |  |                              |
| <b>SHORELINES HEARING BOARD JANUARY 3, 2013</b>        |                  |  |                              |
| <b>SHBH 1 INCLUDES</b>                                 | <b>EXHIBIT #</b> | <b>DOCUMENT NAME</b>   | <b>DATE</b>                  |
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|  |                  |  |                              |

EXHIBIT SHEET - E-1 - Exhibit listing  
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# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

SHB 1.1

MEMO DATE: DECEMBER 6, 2012

HEARING DATE: JANUARY 3, 2013

BOARD: BENTON COUNTY SHORELINES HEARING BOARD

FROM: CLARK A. POSEY, SENIOR PLANNER   
BENTON COUNTY PLANNING DEPARTMENT

RE: SHORELINES CONDITIONAL USE PERMIT SCUP 12-04

APPLICANT: LS NETWORKS  
C/O LEIF HANSEN  
921 SW WASHINGTON ST STE 370  
PORTLAND, OREGON 97205.

**SPECIFIC REQUEST:** The application was submitted to the Benton County Planning Department on September 18, 2012 and deemed complete for processing on September 20, 2012. LS Networks proposes to install new fiber optic cable on the existing power poles spanning the Yakima River. The proposed fiber optic cable will be suspended above the Yakima River and be attached to the existing power poles, located at the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 18, Township 9 North, Range 27 East, W.M., approximately 350 feet south of the North line of Section 18.

## **BACKGROUND:**

Site Location: The site is located over the Yakima River, in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter in Section 18, Township 9 North, Range 27 East W.M, approximately 350 feet south of the North line of Section 18.

Land Use: The site surrounding the power poles is currently pasture and farm ground,

Zoning: The site and surrounding areas are zoned city limits of Benton City and the county designation of Rural Lands 5 (RL5).

Comprehensive Plan: The Benton County Comprehensive Plan designated the site and surrounding areas as Benton City, city limits on the West side of the Yakima River and Rural Lands 5 in the county, East of the Yakima River.

Shoreline Master Plan: The Benton County Shorelines Plan designates this portion of the shoreline of the Yakima River as Rural Environment.

State Environmental Policy Act: Environmental Review was submitted to Yakima County on SCUP 12-04 which has been reviewed under the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance was issued By Yakima County on December 4, 2012. Accordingly, an Environmental Impact Statement is not required.

## **ANALYSIS:**

History Shoreline Conditional Use Application SCUP 12-04 was submitted to the Benton County Planning Department on September 18, 2012 and was determined a complete application for processing on September 20, 2012. The application was sent to the Benton Franklin Health District, Corps of Engineers, Washington State Department of Ecology – Shoreline Division Yakima and Olympia, Washington State Department of Natural Resources; Washington State Department of Fish and Wildlife, Yakama Indian Nation; Natural Resources Conversation Service, Natural Resource Conservation Service, Fire District 3, Department of Transportation, FEMA, City of Prosser, Archeological/Historical Preservation, Washington State Department of Health, Bureau of Land Management and Bureau of Reclamation on September 27, 2012.

### **Applicable Development Regulations**

1. Section 7.00 of Phase II of the Benton County Shoreline Master Program provides the following purpose and definition for the Rural Environment:

Purpose The purpose of assigning an area to a Rural Environment is to ensure optimum utilization of shorelines occurring within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses.

Definition The Rural Environment is an area of high intensity land-use including residential, commercial, recreational and industrial development. It is particularly suitable to those areas presently subject to extremely intensive use and pressure as well as areas planned to accommodate urban expansion. Shorelines planned for future urban expansion should present few bio-physical limitations for urban activities and not have a high priority for designation as an alternative environment.

2. The Benton County Master Program Regulations provide the following information for conditional use permits:

"Conditional uses are those uses which may be permitted to locate in shoreline areas, but are usually seen as uses which either do not need, or depending on the environment, considered not to be suitable for siting in shoreline locations. It is understood, however that there may be special circumstances or special types or styles of conditional uses that would make shoreline siting of special cases acceptable to the goals, policies, and intentions of the Master Program.

3. The applicant must supply whatever evidence, information, or agreements to assure the local hearings board that the following conditions will be met:

a. That there is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area.

b. That the design of the proposed use will make it compatible with the environment it will be placed in.

c. That water, air, noise and other classes of pollution will not be more severe than pollution that would result from the uses, which are permitted, in the particular environment.

d. That none of the goals, policy statements or specific aims of the particular environment would be violated, abrogated, or ignored.

Should the local hearings board find insufficient evidence, explanation, or guarantees that the above conditions will be met, they may deny the request or indicate to the applicant what changes he could make that would cause the local hearings board to reconsider."

e. Washington Administrative Code states the following for review criteria for conditional use permits:

"The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

f. Section 9.00 (Miscellaneous Use Regulations) of the Benton County Master Program Regulations provides the following. This section applies to all environments and to all activity regulations; other applicable ordinances must also be followed and may be more restrictive.

1. Parking areas shall be located upland of the uses they serve.
2. Public access rights of way and improvements shall be required in large developments if the shorelines or waters are of an appropriate nature and can withstand the access. Access will be restricted if the development could pose a hazard by its very nature.
3. All development shall prepare the land to prevent wind and water erosion.
4. Protection from siltation and erosion shall be provided for all earth changing acts.
5. No debris shall be allowed to enter the water. Accidentally injected debris shall be immediately removed.
6. No equipment or machinery of any kind shall enter any body of water or wetland, except when authorized under the terms of a substantial development permit. This prohibition shall not apply to floating equipment.
7. Vegetation along the water's edge shall be returned or left in the original condition unless permit stipulations allow or require otherwise.
8. Any permit in, on or near an area designated or considered an archaeological or historical site shall apply for a conditional use permit. This applies to all uses in all environments.

9. Shoreline structures and roads and railroads shall be constructed so as not to constitute a hazard to river navigation.

In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

G. SECTIONS 15.20.060 AND 15.20.070 of the Benton County Code (Title 15 is Protection of Critical Areas and Resources) provides the following regulations related to rivers:

BCC 15.20.060 DEVELOPMENT-GENERAL REQUIREMENTS, In addition to other provisions of this title, the applicant shall provide that the flood carrying capacity of the river or creek is maintained and has not impacted the flood zone from its original intent.

BCC 15.20.070 PROHIBITED ACTS. The introduction of any vegetation or wildlife, which is not indigenous to the Pacific Northwest into any river or creek or its nearshore riparian area, is prohibited unless authorized by a State of Washington or a federal license or permit.

**FINDINGS OF FACT:**

Planning Staff has reviewed the application and information received in the SCUP 12-04 application. Based on the application and information received the planning staff makes the following findings.

1. The applicant LS Networks is requesting a Shoreline Conditional Use Permit to attach a fiber optic cable to the existing power poles crossing the Yakima River. There is no physical address for this property or power poles. The fiber optic cable will be attached to the power poles that cross the Yakima River Northeast of Benton City, WA 99350.
- 2.. The site is located along the Yakima River, in the Northwest Quarter of Northeast Quarter of the Northeast Quarter of Section 18, Township 9 North, Range 27 East W.M. approximately 350 feet south of the North line of Section 18.
3. The applicants are proposing to use the existing concrete bridge structure over the Yakima River to attach a fiber optic cable. Point of crossing is in the Rural Designation of the Yakima River Shorelines.
4. The application for SCUP 12-04 was submitted to Benton County on September 18, 2012. It was declared complete for the purpose of processing and routing for comments on September 20, 2012.
5. The application was sent for comment on September 27, 2012 to the Benton Clean Air Authority, Benton-Franklin District Health Department, Benton County Fire Marshall, Benton County Building Department, Benton County Department of Public Works, Corps of Engineers, Washington State Department of Ecology – Shoreline Division Yakima and Olympia, Washington State Department of Natural Resources; Washington State Department of Fish and Wildlife, Yakama Indian Nation; Natural Resources Conversation Service, Natural Resource Conservation Service, Fire District 2, Department of Transportation, FEMA, the City of Benton

City, Archeological/Historical Preservation, Washington State Department of Health, Bureau of Land Management and Bureau of Reclamation.

6. The Notice of Application for SCUP 12-03 was published on, October 8, 2012 by Yakima County with a thirty (30) day comment period. This notice was published and mailed to property owners of record within 300 feet of the outer boundaries of the parcel, described in the application as required by BCC 17.10.100. The Benton County Planning Department published a Notice of Application for SCUP 12-03 on October 4, 2012 with a (2) twenty day comment period. This notice was published and mailed to property owners of record within 300 feet of the outer boundaries of the parcel, described in the application as required by BCC 17.10.100.

7. The notice for the Benton County Shoreline Hearing Board's Open Record Hearing for application SCUP 12-03 was published on December 13, 2012 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for January 3, 2013.

8. An Environmental Determination of Non-Significance for Benton County SCUP 12-03 was issued by Yakima County (File Numbers: WET 12-034, WET 12-033 & SEP 12-024) on December 4, 2012.

9. The property is in two zones, Rural Lands 5 on the East side of the river in the county and in the city limits of Benton City on the West side of the river.

10. The 1998 Benton County Comprehensive Plan designates the site as Rural Lands 5 and City Limits of Benton City.

11. The Benton County Shoreline Master Program designated the site as Rural Environment.

12. The proposed use for SCUP 12-04 is allowable by conditional use permit as stated in Benton County Shoreline Master Program Phase II, Section 8.08 Shoreline Utilities, page, 17.

13. To comply with the Benton County Code and Shoreline Master Program the site must be returned to its natural state.

14. The Benton County Shoreline Master Program provides the following policies statements for Shoreline Structures Use Regulations:

**Shoreline Master Program Phase II (I) General Regulations.**

- A. Earth changes shall not interfere with free passage of river and floodwater except where such is specifically intended and authorized.
- B. All applications for a conditional use permit shall be reviewed to determine if the proposed activities are consistent with the goals and policies of the Benton County Shoreline Management Master Plan.
- C. Shoreline structures shall be constructed so as not to constitute a hazard to river flow or navigation.

15. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that there is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area. The power poles in question already exist and will not cause any diversion of the Yakima River during any high water event.

16. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that the design of the proposed use will make it compatible with the environment that it will be placed in. An onsite visit with the Planning Manager and Senior Planner verified that attaching the fiber optic cable to the existing poles would not create any hazard to the site or surrounding areas downstream from the existing structure.

17. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that water, air, noise and other classes of pollution will not be more severe than pollution that would result from the uses, which are permitted, in the particular environment. No other construction or excavation will be performed.

18. The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that none of the goals, policy statements or specific aims of the particular environment would be violated, abrogated, or ignored, and that no other applicable regulations will be violated. Based on the above findings it appears all goals of the Benton County Shoreline Master Program are complied with. If this permit is approved the Planning Department suggests the following conditions be listed as requirements for the approval of SCUP 12-04 and placed upon the final permit. The applicant shall continue to meet these requirements while SCUP 12-04 is in effect. In addition the applicant must comply will all applicable local, state and federal regulations.

**BENTON COUNTY SHORELINES SUBSTANTIAL DEVELOPMENT AND SHORELINES CONDITIONAL USE PERMIT:**

A DNS (Determination of Non-Significance) was issued on December 4, 2012 relative to the facts submitted to the Planning Department on December 5, 2012 from Yakima County Planning (File Nos. WET 12-034, WET 12-033 and SEP 12-024) for the application of a Benton County Shoreline Conditional Use Permit SCUP 12-03 under the requirements of the Benton County Shorelines Management Plan, Phase II 8.04 (B)-(C) and 8.16 (B) & (D).

**Utilities 8.09 Uses requiring a Conditional Use Permit:** All transmission lines, unless physically impossible, for power, gas, sewage communications, oil, water, etc. shall be underground. Public utilities such as substations, telephone exchanges, and power generating plants shall require a Shoreline Conditional Use Permit.

**Utilities 8.09 Use Regulations Rural Environment:**

(A) All transportation lines for power, gas, sewage, communications, oil, water, etc. shall be underground, whenever feasible.

(B) After location of utilities, the area shall be returned to its natural state as much as possible.

(C) Utilities shall be designated and installed in such a way as to minimize damage to the scenic view or aesthetic qualities of the shoreline.

No additional construction or grading will be allowed within the designated shoreline of the Yakima River without prior approval of State and Local Authorities, governing the rules and regulations of shorelines of the State of Washington

**APPLICABLE DEVELOPMENT REGULATIONS:**

The Benton County Code Section 11.13.060 (Urban Growth Area Residential Zone District) states that: "Any use not authorized or approved pursuant to BCC 11.13.030, or BCC11.13.040, or BCC 11.13. 050 are prohibited by laws of Benton County or within the Urban Growth Area Residential District.

**DISPOSITION OF THE APPLICANT'S REQUEST: (CONDITIONS ATTACHED TO THE DNS)**

If the Benton County Shoreline Hearings Board is able, after receiving all public testimony, makes the required findings and approves the proposed conditional use application, the Benton County Planning Department recommends that the following conditions be added to the approval:

1. During construction precautions must be taken to prevent siltation, erosion or other debris from entering into the surface waterway. Should any debris accidentally be interjected into the surface water it should be immediately removed contained and removed from the river shoreline. Spoilage and construction debris should be stockpiled and the original materials should be used to replace or backfill the project area. Spoilage not used should be disposed of upland of the project and outside of the shoreline area.
2. The original contour of the landscape should be restored upon completion of construction. In the wetland and riparian areas only native soils should be used to backfill and level the disturbed area.
3. All areas that are cleared or backfilled or otherwise disturbed shall be replanted with native vegetation that is representative of the site (natural reference site) immediately following any earthwork or grading of the site.
4. Copies of all permits pertaining to approval and/or construction (building and/or grading) of the project shall be submitted to the Benton County Planning Office and shall be considered as a condition of this Shorelines/SCUP Permit.
5. Construction is not authorized for any other structure within the shoreline setback without prior approval from the Benton County Shorelines Hearing Board and the Washington State Department of Ecology; see RCW 90.58.140(5) and WAC 173-14-090.
6. The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date of receipt as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of receipt as defined in subsection (6) of this section except as follows:

7. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescinding of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.