



Community Development Department

Director: Lauren Prentice

310 W. Poplar, Suite 200 | Walla Walla, WA 99362

commdev@co.walla-walla.wa.us | 509-524-2610

Submit to: planning@co.walla-walla.wa.us

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NOTICE OF DECISION (NOD)

Date of Notice: 10/19/2022

Applicant: JEFF SMITH, RYKA CONSULTING
5628 AIRPORT WAY S, SUITE 330

Type of Application: Conditional Use & Critical Areas

File Number: CUP22-010 & CAP22-014

Decision: PUBLIC HEARING

Pursuant to Walla Walla County Code (WWCC) 14.09.090(F), enclosed is the Hearing Examiner's decision. This decision shall be effective on the date of this notice (WWCC 14.09.090(H)).

Affected property owner(s) may request a change in valuation for property tax purposes notwithstanding any program of revaluation (WWCC 14.090.090(F)(6)).

APPLICATION FILE

The file is available for inspection electronically or in person; please contact our Planning Technician, Michael Maret, or the assigned planner, Don Sims, by phone at 509-524-2610 or by email at planning@co.walla-walla.wa.us between 10 AM and 3 PM Monday through Friday to make arrangements to access the files.

APPEAL

This decision will be considered final if no appeals are filed within the allowed time frame described in [Walla Walla County Code \(WWCC\) Chapter 14.11, Appeals](#). Firstly, WWCC 14.11.060 allows for the applicant or party of record to seek reconsideration of the final decision. A reconsideration request (appeal) must be submitted to the Director within ten (10) days of this notice. If no reconsideration request is submitted by this date, the decision will be final.

Submittal Requirements for Reconsideration Requests

The following must be submitted to the Department by the end of business (5 PM) on October 31, 2022 by email to planning@co.walla-walla.wa.us or via the Department's drop-box at 310 W. Poplar, Walla Walla, WA.

- A. [Appeal \(reconsideration\) Application](#)
- B. **Written Notice of Appeal** containing a concise statement identifying:
 1. The decision being appealed;
 2. The name and address of the appellant and his or her interest(s) in the matter;
 3. The specific reasons why the appellant believes the decision to be wrong, including identification of each finding of fact, each conclusion, and each condition or action

ordered which the appellant alleges is erroneous. The reconsideration request must be based on one of the following grounds: (1) A material error of law was made; (2) a material error or omission of material fact was made; (3) new material information is presented that was not knowable at the time of hearing. The appellant shall bear the burden of proving the decision was wrong; and

4. The specific desired outcome or changes to the decision.
- C. The **appeal fee (\$745)**, payable by cash, check, or credit card. If you wish to pay by credit card, notify the department and they will help you make arrangements to pay by credit card once the request is entered into the County's tracking system.

Pursuant to WWCC 14.11.020 and 14.11.040, **after/if** a reconsideration request has been considered, the Hearing Examiner's decision may be appealed to the Walla Walla County Superior Court under the Land Use Petition Act (LUPA), RCW 36.70C. A LUPA petition must be submitted to the Walla Walla County Superior Court within twenty one (21) days of issuance of the final decision (on reconsideration) per RCW 36.70C.040(3), unless another time period is established by state law.

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**BEFORE THE HEARING EXAMINER
FOR WALLA WALLA COUNTY**

)
)
)
Application for a Conditional Use Permit)
submitted by)
)
RYKA CONSULTING, FOR)
DISH WIRELESS,)
Applicant)
)
(Project: A new 100' cell tower, and associated)
ground equipment, on a vacant site south of Russell)
Creek Road, between Depping Rd. and Berney Dr., in)
unincorporated Walla Walla County, Tax Parcel No.)
360727440004, within 1-mile of an existing WCF)
tower))
)
_____)

File No. CUP 22-010, CAP 22-014

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING
CONDITIONAL USE PERMIT**

I. SUMMARY OF DECISION.

The requested Conditional Use Permit, for a new 100 foot tall wireless communication facility (WCF) tower and associated ground equipment to be located within one-mile of an existing WCF tower, meets applicable County development regulations and policies for such facilities and is therefore approved, subject to conditions. The associated Critical Areas Permit is also approved, subject to conditions.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING CONDITIONAL USE
PERMIT FOR NEW 100-FOOT WCF TOWER
WITHIN ONE MILE OF EXISTING TOWER, RYKA
CONSULTING, FOR DISH WIRELESS, APPLICANT –
FILE NO. CUP22-010**

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1 **II. BACKGROUND AND RELEVANT CODE PROVISIONS.**

2 The applicant, RYKA Consulting, on behalf of DISH Wireless, requests Conditional
3 Use Permit approval and an associated Critical Areas Permit approval needed to develop a
4 new 100' cell tower, and associated ground equipment, on a vacant site south of Russell
5 Creek Road, between Depping Rd. and Berney Dr., in unincorporated Walla Walla County,
6 Tax Parcel No. 360727440004, within 1-mile of an existing WCF tower.

6 ***Basis for Conditional Use Permit Requirement.***

7 The County's permitted uses table, found at WWCC 17.16.014, lists Wireless
8 Communication Facilities in the Regional Land Uses category, and provides that wireless
9 communication facilities are allowed outright in the Exclusive Agriculture 120 zoning
10 district, where the project site is located, subject to two limitations numbered 4 and 6, which
11 read as follows:

10 *4. If located within one mile of another wireless communication facility, a conditional use permit is
11 required.*

12 *6. See Development Standards for Wireless Communication Facilities, Chapter 17.34.*

13 In addition, WWCC 17.34.030(C) reads as follows: "*WCFs shall not be located
14 within one mile (measured from tower structure to tower structure) of any other WCF except
15 when located in an existing building, structure or wireless facility (that is, without support
16 structures) or by a conditional use permit as identified within the table of permitted uses...*".

16 ***Criteria for Approval of a Conditional Use Permit.***

17 The general criteria for approval of a conditional use permit are found at WWCC
18 17.40.020. Specific development standards for Wireless Communication Facilities are found
19 in Chapter 17.34 of the County's Code. Consistent with other WCF projects approved by the
20 Examiner, the Staff Report generally explains that final review of the proposed tower and
21 associated equipment for compliance with such development standards will be conducted by
22 staff as part of the building permit application process, when construction drawings must be
23 submitted by the applicant, all to occur following review and approval of the requested
24 Conditional Use Permit addressed in this Decision. (*Staff Report*).

22 ***Consideration of Critical Areas is integrated with the underlying Conditional Use Permit
23 Process.***

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND
26 DECISION – APPROVING CONDITIONAL USE
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1 As provided in the “Permit Processing” section of the County’s Critical Areas
2 Ordinance, codified at WWCC 18.08.060(B), “[i]f a project requires another permitting
3 action by the county that requires a public hearing, consideration of critical areas will be
4 integrated with the underlying permitting process”. The Conditional Use Permit addressed
5 in this Decision fully integrates consideration of applicable Critical Areas code provisions,
6 as reflected in some specific conditions of approval for the project.

7
8 ***Jurisdiction of Hearing Examiner:***

9 The County Code vests the Hearing Examiner with authority to hear and issue
10 decisions on applications for Conditional Use Permits. See *WWCC 2.50.070(A)(3);*
11 *14.09.020(C), and 14.09.025, Table 14-1.*

12
13 **III. RECORD.**

14 All exhibits entered into evidence as part of the record, and an audio recording of the
15 public hearing, are maintained by the County, and may be examined or reviewed by
16 contacting the County’s public records officer.

17
18 ***Exhibits entered into evidence by the Examiner:***

19 *Exhibit 1 – Staff Report – Walla Walla County Community Development Department Report and
20 Recommendation of Approval to the Hearing Examiner for the RYKA/DISH Wireless (Depping) Tower
21 project application, dated September 2, 2022, prepared by Associate Planner, Don Sims (seven pages, with
22 the following Exhibits);*

23 *Exhibit 2 – Conditional Use Permit (CUP22-010) application and supplemental materials, including Ex. A,
24 Stormwater memo, and warranty deed;*

25 *Exhibit 3 – Notice of Incomplete Application and Letter from Applicant, dated July 26 and 27, 2022
26 respectively;*

*Exhibit 4 – Map showing the location of existing wireless communication facilities in the Walla Walla area
and the nearest towers to the proposed site (one on Leonetti property adjacent to the north and one northeast
next to a church), prepared by Don Sims, Associate Planner;*

Exhibit 5 – Critical Areas Permit (CAP22-014) application, signed June 30, 2022 and July 1, 2022;

Exhibit 6 – Site Plans;

Exhibit 7 – Notice of Application (NOA)/ODNS and proof of posting/ mailing affidavit;

Exhibit 8 – SEPA Environmental Checklist (SEPA22-018), dated June 30, 2022;

Exhibit 9 – Final SEPA Determination of Non-Significance (DNS) for SEPA22-018 issued January 27,

27 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND
28 DECISION – APPROVING CONDITIONAL USE
29 PERMIT FOR NEW 100-FOOT WCF TOWER
30 WITHIN ONE MILE OF EXISTING TOWER, RYKA
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2022;

Exhibit 10 – Letter from Duane Depping, dated August 11, 2022;

Exhibit 11 – Notice of Public Hearing (NOPH) and proof of posting/ mailing affidavit;

Exhibit 12 – Wireless Facility Siting: Section 6409(a) Checklist, dated June 19, 2015;

Following discovery by Staff that notices for the initially advertised public hearing were not published as required by standard County practices, the Examiner opened the public hearing on September 15, 2022, and continued the hearing to another date, October 5, 2022, to allow for proper notices to be issued and published. Before the hearing continued, Staff issued a Supplemental Staff Report, with several additional exhibits, numbered and described as follows:

Exhibit 13 – Supplemental Staff Report, dated Sept. 26, 2022, for continued hearing on Oct. 5, 2022;

Exhibit 14 – Notice of Continued Public Hearing, with confirmation materials.

Testimony: The following persons provided testimony under oath as part of the record during the open-record hearing opened on September 15, 2022, and continued to October 5, 2022:

1. Don Sims, Associate Planner and primary Staff Contact for the pending application, for Walla Walla County; and
2. Jeff Smith, with RYKA Consulting, as Agent and hearing representative for the Applicant, DISH Wireless.

IV. FINDINGS OF FACT.

Based on the record, and following consideration of all the evidence, testimony, codes, policies, regulations, and other information included therein, the undersigned issues the following findings of fact:

1. All statements of fact included in previous or following sections of this Decision, including without limitation those included in the Background summary, that are deemed to be findings of fact are incorporated by reference into this section as findings of fact issued by the Hearing Examiner.
2. In this matter, RYKA Consulting (Jeff Smith) is the applicant, on behalf of DISH Wireless, and proposes to erect a new 100-foot tall Wireless Communication Facility (WCF) tower, and associated electronic ground equipment, on a site south of Russell Creek Rd, south of an existing cell tower built-in 2004. (*Staff Report, page 1*).

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
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1 3. Application materials and the Staff Report indicate that the new tower would
2 accommodate other carriers whereas an existing tower is not able to be utilized for co-
3 location. After reviewing the Federal Communication Commissions' Antenna Structure
4 Register (ASR), staff found an additional tower located within 1 mile of the site (*see Exhibit*
5 *4*).

6 4. A critical areas permit application is required due to the mapped geologically
7 hazardous areas (erosion hazard areas with slopes greater than 15%) and critical aquifer
8 recharge areas (Walla Walla River Shallow Aquifer area of Moderate Vulnerability) on the
9 subject property, based on official maps used to identify such areas. Upon review of the
10 applicant's stormwater memo (*Ex. 2*) and detailed site plans, Staff determined that Critical
11 Areas issues should be adequately addressed, by avoiding slopes greater than 15%, and
12 preserving natural drainage to the west. (*Staff Report, page 3*). Compliance with all Critical
13 Areas Protections found in WWCC Chapter 18.08 is a specific Condition of Approval for
14 this project. (*See Condition No. 5*).

15 5. The site is on a vacant field south of Russell Creek Rd between Depping Rd and
16 Berney Dr., on tax parcel no. 360727440004. The property owners are Duane Depping and
17 Deanna Milne. (*Staff Report, page 1*).

18 6. The project site is on land zoned "Exclusive Agriculture 120-Acres" and located in
19 the Exclusive Agriculture Comprehensive Plan land use designation. (*Staff Report, page 1*).
20 As summarized in the staff report, the proposed WCF tower is permitted in the zone where
21 the project is located, subject to compliance with all WCF development standards found in
22 WWCC Ch. 17.34, but a conditional use permit is required if the proposed WCF facility is
23 within one mile of another WCF.

24 7. For this application, staff relied upon the FCC's ASR to find wireless communications
25 facilities in the Walla Walla area. While the tower constructed in 2004 just north of the
26 proposed site was not shown, a second tower within one mile is located to the northwest of
the site in the rear area of the Blue Mountain Community Church's property at 928 Sturm
Ave, Walla Walla (*see Exhibit 4 Pages 3-4; Staff Report, page 2*).

8. The Staff Report credibly summarizes the review process for this application,
including issuance of a SEPA Determination of Non-Significance for this project, which was
not appealed as allowed in County codes. (*Staff Report, page 2; Exs. 8 and 9, SEPA Checklist
and DNS*).

9. As noted above, the Hearing Examiner is delegated specific authority to hear,
consider, and decide on applications for conditional use permits. See *WWCC 2.50.070(A)(3);
14.09.020(C), and 14.09.025, Table 14-1*.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
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1 10. In accord with applicable county project review regulations, Ms. Sims, the County’s
2 designated Staff Contact for this matter, reviewed the application materials, and generated a
3 Staff Report, which was transmitted to the Examiner in the week prior to the public hearing.

4 11. Unfortunately, notices for the open-record public hearing initially set to occur on
5 September 15, 2022 were not published in the time required by County practices for such
6 hearings. (*Testimony of Mr. Sims on Sept. 15th*). Based on this concern, the Examiner opened
7 the public hearing on September 15th to allow any members of the public who may have
8 received the notice to speak. No members of the public asked to speak on Sept. 15th, when
9 the Examiner continued the public hearing for this matter to October 5, 2022, to allow Staff
10 to re-notice the hearing in accord with County practices. Before the continued hearing, Staff
11 issued a Supplemental Staff Report, which verified that notice requirements were satisfied.

12 12. On October 5, 2022, the Examiner re-opened the public hearing and invited testimony
13 from Staff, the applicant team, and any members of the public who wished to offer comments
14 regarding the pending application. Mr. Sims summarized the County’s review process and
15 its recommendation of approval, subject to conditions. Mr. Smith appeared on behalf of the
16 applicant, and generally accepted the analysis and proposed conditions included in the Staff
17 Report. Throughout the hearing, no one from the general public asked to speak or participate
18 in any portion of the public hearing. There was no opposition or challenge to the pending
19 applications or the staff’s recommendation of approval.

20 13. During the public hearing, the Examiner sought to clarify an issue raised by Mr.
21 Smith, generally regarding the type of modifications to the proposed tower that might trigger
22 the need for new Conditional Use Permit or other approval from the Hearing Examiner. As
23 Mr. Sims explained, the pending application seeks approval to construct a 100-foot tall WCF
24 tower, and co-location is strongly encouraged or required in the County’s WCF standards, so
25 adding or replacing equipment on the tower would not generally require a new or modified
26 CUP, so long as such work is consistent with WCF standards set forth in WWCC 17.34.
(*Testimony of Mr. Sims; Supplemental Staff Report, Ex. 13*).

14. The Examiner directed attention to WWCC 17.34.050(B), in the WCF standards,
which provides that 120 feet is the maximum height for a WCF tower and that any height
greater than 120 feet would require a Variance. Because the applicant’s tower is proposed to
be less than 120 feet [i.e. just 100 feet], presumably County staff has authority to authorize
additions to the WCF tower, so long as it remains less than 120 feet tall.

15. Based on a preponderance of evidence in the record, the Examiner finds and
concludes that, as conditioned, the applicant’s proposed WCF Tower satisfies all of the
approval criteria for a Conditional Use Permit set forth in WWCC 17.40.020(A – F).

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1 16. Again, no one submitted any comments or questions that would rebut or challenge the
2 Staff Report's recommendation of approval, subject to conditions. Except as modified in this
3 Decision, all Findings, and statements of fact contained in the Staff Report, are incorporated
4 herein by reference as Findings of the undersigned hearing examiner, particularly those
5 addressing compliance with the CUP approval criteria for this project.

6 17. As summarized above in previous findings, and in the un rebutted Staff Report, the
7 record contains a preponderance of evidence to demonstrate that the pending application
8 meets all of the required criteria for approval, including without limitation those found in
9 WWCC 17.40.020(Conditional Use Criteria). (See Staff Report, particularly pages 5 and 6).

10 V. CONCLUSIONS OF LAW.

11 1. As explained above, the record, particularly the County Staff's recommendation of
12 approval, includes a preponderance of un rebutted evidence that the pending permit
13 application satisfies all applicable decision criteria specified in the County's code.

14 2. WWCC 17.40.020 mandates that a conditional use *shall be approved or approved*
15 *with conditions* if the application meets the approval criteria set forth in WWCC
16 17.40.020(A) through (F). As explained in the Findings of Fact, including without limitation
17 Findings 15-17, the applicant has satisfied its burden of proof, to demonstrate that its proposal
18 complies with, or can be conditioned to comply with, all applicable approval criteria.

19 3. Any finding or other statement contained in this Decision that is deemed to be a
20 Conclusion of Law is hereby adopted as such and incorporated by reference.

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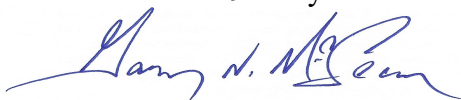
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VI. DECISION.

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the contents of the record, and the examiner’s online review of aerial maps and images of the project site and surrounding area, the undersigned Examiner APPROVES Conditional Use Permit No. CUP22-010, to authorize development of a WCF tower and associated equipment within one mile of an existing WCF tower, all as described in the application materials included in the Record, subject to the following Conditions of Approval, which are attached hereto and incorporated as part of this Decision.

ISSUED this 19th Day of October, 2022



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

1
2 1. The action for which the conditional use permit (CUP) is required shall commence within
3 one year of approval unless extended for up to one year by the Director. Failure to proceed
4 with the approved use within such timeframe shall void approval of the conditional use.

5
6 2. Before construction, the applicant must first obtain any Building or other associated
7 permit(s) or approval required by the County of any other government agency or regulatory
8 authority with jurisdiction over a particular aspect of the project. Any conditions of approval
9 or requirements imposed as part of such permits or approvals shall be and are hereby
10 incorporated as Conditions of Approval for this CUP. Specific development standards for
11 Wireless Communication Facilities are found in Chapter 17.34 of the County's Code. The
12 final review of the proposed tower and associated equipment for compliance with such
13 development standards will be conducted by staff as part of the building permit application
14 process, when construction drawings must be submitted by the applicant, all to occur
15 promptly following issuance of this Decision.

16
17 3. For the duration of this permit, the applicant's WCF tower must be constructed,
18 maintained, and operated in compliance with the County's standards for Wireless
19 Communications Facilities, found in Ch. 17.34. County staff is authorized to review and
20 approve co-location work, changes in equipment, and the like, without need for a modified or
21 new conditional use permit, so long as such work is in full compliance with WCF standards
22 found in Ch. 17.34.

23
24 4. Proposed tower modifications that would exceed the maximum height allowed for WCF
25 towers in the applicable zoning district would require a Variance, as provided in WWCC
26 17.34.050.

5 All development on the property must be in compliance with the County's Critical Areas
Protection requirements found in WWCC Ch. 18.08. The Director is authorized to require
reports addressing specific critical areas issues associated with aspects of this project, and to
add conditions (including compliance with Best Management Practices) to building, grading,
or other permits required for the project.

6 Pursuant to Walla Walla County Code Section 14.13.110, at any time during the life of the
permit, the Walla Walla County Community Development Department Director may ask the
Hearing Examiner to revoke the permit if the project is not in compliance with any of the
conditions of approval and/or required permits.

7 Except for changes or modifications to the WCF tower that are authorized by WWCC
17.34, future changes in operations, plans, or additions may require an amendment to the CUP
issued herein, pursuant to WWCC 14.03.050.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING CONDITIONAL USE
PERMIT FOR NEW 100-FOOT WCF TOWER
WITHIN ONE MILE OF EXISTING TOWER, RYKA
CONSULTING, FOR DISH WIRELESS, APPLICANT –
FILE NO. CUP22-010

WALLA WALLA COUNTY HEARING EXAMINER
310 W. POPLAR STREET, SUITE 200
WALLA WALLA, WASHINGTON 99362

1 **FINALITY OF DECISION AND NOTICE OF RIGHTS OF APPEAL**

2 As provided in WWCC 2.50.070(B), *the decision of the hearing examiner on all matters is final and*
3 *conclusive, unless appealed pursuant to Chapter 14.11 of the Walla Walla County Code.*

4 WWCC 2.50.120, captioned “Reconsideration”, provides that: *An applicant or party of record to a*
5 *hearing examiner's public hearing may seek reconsideration only of a final decision by filing a written request*
6 *for reconsideration with the community development director within ten days of the final decision. The request*
7 *shall comply with Section 14.11.030 of this code. The hearing examiner shall consider the request at the next*
8 *regularly scheduled meeting, without public comment or argument by the party filing the request. If the request*
9 *is denied, the previous action shall become final as of the date of the decision on the request for*
10 *reconsideration. If the request is granted, the hearing examiner may immediately revise and reissue its decision*
11 *or may call for argument in accordance with the procedures for closed record appeals. Reconsideration should*
12 *be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that*
13 *would change the previous decision.*

14 Finally, WWCC 2.50.130 addresses appeals of a hearing examiner decision, and reads as follows:
15 *The final decision by the hearing examiner on any matter within his or her jurisdiction may be appealed in*
16 *accordance with Chapter 14.11 of the Walla Walla County Code.*

17 **NOTE:** The Notice provided on this page is only a short summary, and is not a complete
18 explanation of fees, deadlines, and other filing requirements applicable to appeals.
19 Individuals should confer with advisors of their choosing and review all relevant codes,
20 including without limitation the code provision referenced above and state law, particularly
21 the Land Use Petition Act (Chapter 36.70C RCW), for additional information and details that
22 may apply.
23
24

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
26 **DECISION – APPROVING CONDITIONAL USE**
PERMIT FOR NEW 100-FOOT WCF TOWER
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