Exhibit 1

Walla Walla County Community Development Department

310 W. Poplar Street, Suite 200, Walla Walla, WA 99362 / 509-524-2610 Main

To:	Walla Walla County Hearing Examiner
From:	Don Sims, Associate Planner
Date Prepared:	September 2, 2022
Hearing Date:	September 15, 2022
RE:	**Agenda Item #1 –** File Number CUP22-010, CAP22-014 Conditional use permit and critical areas applications for Depping WCF tower construction

Background and Summary of Proposal

RYKA Consulting, representing DISH Network has proposed to erect a new 100-foot tall cell tower, and associated electronic ground equipment, on a site south of Russell Creek Rd, south of an existing cell tower built-in 2004. The new tower would accommodate other carriers whereas the existing tower is not able to be utilized for co-location. After reviewing the Federal Communication Commissions' Antenna Structure Register (ASR), staff found an additional tower located within 1 mile of the site (see Exhibit 4).

A critical areas permit application is required due to the mapped geologically hazardous areas (erosion hazard areas with slopes greater than 15%) and critical aquifer recharge areas (Walla Walla River Shallow Aquifer area of Moderate Vulnerability). The site is on a vacant field south of Russell Creek Rd between Depping Rd and Berney Dr (APN 360727440004).

General Information

Owner(s):	Depping, Duane C & Deanna F Milne 450 Tuttle Ln Burbank, WA 99323
Applicant:	RYKA Consulting, Jeff Smith Representing DISH Wireless 5628 Airport Way South, Suite 330 Seattle, WA, 98102
Tax parcel #:	360727440004
Location:	Vacant property, south of Russell Creek Rd, Between Depping Rd and Berney Dr

Zoning and Land Use

The project on land zoned Exclusive Agriculture 120-acres and located in the Exclusive Agriculture Comprehensive Plan land use designation.

Regional Land Uses – Development Conditions.

WWCC Section 17.16.014 – Permitted uses table, lists Wireless Communication Facilities in the Regional Land Uses category. The table states that wireless communication facilities are allowed outright in the Exclusive Agriculture 120 zoning district with two development conditions, listed as 4 & 6, which are listed below:

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

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

As stated in the summary of proposal above, staff used the FCC's ASR to find wireless communications facilities in Walla Walla. While the tower constructed in 2004 just north of the 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).

After talking to staff about conditions of approval on the draft staff report on August 29, 2022, the Applicant submitted a document related to the timeline of approving building permits for collocation or modifications to existing Wireless Facilities (Exhibit 12). The Applicant states that his understanding would be minor modifications to existing towers as described in Exhibit 12 in the future would not cause staff to require a modification to the conditional use permit through a Type 3 process. He states that Dish hopes whenever the tower is in place, it will likely be utilized as a co-locator and would not expect an amended conditional use permit application to be required. Staff agrees.

State Environmental Policy Act

On August 9, a Notice of Application was issued via the optional State Environmental Policy Act (SEPA) Determination of Non-Significance (ODNS) process with a 14-day comment period (Exhibit 7). The Walla Walla County Community Development Director, the County's SEPA Responsible Official, issued a Final Determination of Non-Significance (DNS) (Exhibit 9) on August 29, 2022, with no additional comment period.

No appeals of the SEPA determination have been filed.

Public Hearing Notice

A Notice of Public Hearing (Exhibit 11) was published in the Walla Walla Union Bulletin on September 11, 2022. The notice was mailed to property owners within 500 feet of the property and posted on the CDD website on September 9.

Public Comments

No members of the general public submitted written comments during the NOA ODNS comment period (Exhibit 10) although a letter of support from the property owner was received.

Agencies Contacted

As shown in Exhibit 7, application materials were distributed to the following agencies for review and comment. While several reviewers submitted notes through the 'County's project permit system, no formal comments were received throughout the comment period.

- Walla Walla County Public Health Department, Environmental Health Division
- Walla Walla County Public Works Department
- Walla Walla County Addressing Authority
- Walla Walla County Fire Marshal/Building Official
- Walla Walla County Fire District # 4
- Confederated Tribes of the Umatilla Indian Reservation
- State of Washington Department of Archaeology and Historic Preservation
- State of Washington Department of Natural Resources
- State of Washington Department of Ecology
- Walla Walla County Sheriff
- Walla Walla County Conservation District

- State of Washington Department of Fish and Wildlife
- Walla Walla Valley Metropolitan Planning Organization

County Public Works and Community Development Department staff noted that the project will require a building permit, address assignment and County road access permit, but no concerns or comments related to the CUP criteria were submitted.

Utilities

Stormwater: A memo addressing stormwater for the development was prepared by Harold M. Duncanson, PE (Exhibit 2). The memo identifies stormwater prevention BMPs and that construction will preserve the natural drainage to the west.

Wastewater Disposal: This will be an unmanned facility with no wastewater.

Natural Environment

Topography and soil: The tower site is located within a mapped geologically hazardous area (erosion hazard area with slopes greater than 15%), which requires a critical areas permit application. Sheet 2 of the site plan submittal contains topographic lines showing the on-site elevation slopes west about 10%. The Applicant indicated in the SEPA Checklist that the property will continue being farmed and that less than 50 square feet of impervious surface will be created for the tower's foundation and concrete pad for equipment.

Surface Water: There is no surface water present on site.

Wildlife: The site is not located within any fish or wildlife habitat area regulated under *Chapter 18.08, Critical Areas Protection*.

Critical Areas: The site is not located within two mapped critical areas: geologically hazardous areas with slopes greater than 15% and an area of moderate vulnerability for the Walla Walla River's Critical Aquifer Recharge area (CARA). Wireless communication facilities are not among the land use activities listed as allowed outright in WWCC 18.08.220 with no review documentation for the CARA. WWCC 18.08.240.D (1-3) addresses land use activities otherwise not listed in CARA regulations. Planning staff believe sub-section 1 is appropriate for a wireless communications facility that will retain storm water on site and not have on-site waste water facilities. A Critical Areas Permit application was submitted. No critical areas reports were required.

Transportation and Land Use

Access: The site will require an access permit application from the Walla Walla County Public Works Department.

Cultural Resources: The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and Washington State Department of Archaeology and Historic Preservation (DAHP) were among the agencies to receive the NOA ODNS; neither agency submitted comments.

Neighborhood Characteristics: The uses adjacent to the site are commercial farming activities to the south, east, and west; the property adjacent to the north is a vineyard owned by Leonetti Property which contains the nearest tower mentioned above. The City of Walla Walla Urban Growth Area begins west of Depping Road. As noted in Exhibit A of the application, telecommunications are an essential utility and are located both in urban and rural areas.

Comprehensive Plan
Pursuant to Walla Walla County Code Section 17.40.020E, all proposed conditional use permits for sites located in the County shall be reviewed to ensure compatibility with the Walla Walla County Comprehensive Plan. The site has a land use designation of Exclusive Agriculture; below are applicable Comprehensive Plan goals and policies.

Goal RL 17 Protect and conserve long-term, commercially viable forest, agricultural and mineral natural resource lands.

Staff Response: Towers in the area have not been known to have any negative impact to surrounding resource lands and it is not expected that the new tower will either. This will be an unmanned facility. In the submitted comment the property owner explained that the supplemental lease income provided by the tower will help the owners retain the property in the long term (Exhibit 10).

Goal RL-18 Maintain the current quality of life for county residents, while making efficient use of resource land and improving the economic base of the county.

Policy RL 18.1 Require that land use activities within or adjacent to resource lands are sited and designed to minimize conflicts with and impacts on resource lands. Minimization of impacts may be accomplished through the use of setbacks, buffers and other requirements.

Staff Response: The new tower will be located near an existing wireless communication facility which is not suitable for co-location. The site has no critical areas or buffers. The residences located west of the new tower will provide new opportunities for other carriers to co-locate in the future reducing the probability that new wireless communication facilities will need to be constructed in the area.

The application's Exhibit A identifies the proposed WCF as a utility. Utilities are addressed in Chapter 9 of the Comprehensive Plan. Several applicable goals and policies from Chapter 9 of the Comprehensive Plan are below.

Goal UT 1 To facilitate the development of all utilities at the appropriate levels of service to accommodate growth that is anticipated to occur in the county in a manner concurrent with development.

Policy UT 1.1 Recognize that the utilities have an obligation to serve and provide the same level of service to all of its customers.

Policy UT 1.3 Promote, when reasonably feasible, co-location of new public and private utility distribution facilities in shared trenches and coordination of construction timing to minimize construction-related disruptions and reduce the cost of utility delivery.

Staff Response: While the site is zoned Exclusive Agriculture, it is within 1-mile of the City of Walla Walla and the associated Urban Growth Area for future urban growth, meaning the area to be served by the tower will likely have future development. The application further states that the tower will be designed to co-locate, and the existing tower north of the site is not suitable for co-locaters.

Statutes/Codes
The subject site is located in the Exclusive Agriculture 120 zoning district; below is Walla Walla County Code Section 17.12.040(B) which establishes the purpose of the district.

Exclusive Agriculture. All lands in this district are lands of long-term commercial significance. This district is intended to: preserve agriculture lands of long-term commercial significance; protect and preserve land for agricultural use in areas of large holdings with a minimum of roads and other utilities and services; recognize the desire of owners of large commercial agricultural operations to maintain those operations and limit the creation of nonfarm parcels. Natural resource related industries are priority compatible uses. Limited outdoor recreation uses and agricultural accessory uses and non-agricultural accessory uses and activities that support, promote, or sustain agricultural operations and production consistent with RCW 36.70A.177 are permitted uses. Residences are an allowed use in this district, but clustering of residential development is not allowed.

Chapter 17.40, Conditional Uses

Wireless communication facilities (WCF) are identified in WWCC 17.16.014 as a conditional use in the EA-120 zoning district if located within one mile of another WCF. This WCF will be located south to an existing tower, which is why a CUP is required. Walla Walla County Code Section 17.40.020 states that a conditional use shall be approved, approved with conditions, or denied based on the following criteria.

A. That the use will not endanger the public health or safety;
Staff Conclusion: The proposed cell tower is located and will be an unmanned facility. Construction of the tower will immediately increase service to the area, but will allow for future co-locations. The Applicant has argued that the new tower will provide opportunities for increased and enhanced telecommunications services, including for 911 communications, which will benefit public health and safety. The facility will be engineered and constructed in compliance with applicable building codes.

B. That the use will not generate significant nuisance conditions such as noise, dust, glare, vibration;
Staff Conclusion: At the time of building permit application, staff will review the construction drawings to ensure compliance with Chapter 17.34, Development Standards – Wireless Communications Facilities to ensure the tower will be finished with a non-reflective material to prevent glare. According to the application, some noise and dust may be generated during construction, but the facility is not expected to generate significant noise or dust during operation. According to the SEPA Checklist (Page 2), all construction will be completed within 45 days of commencement.

C. That the use meets all required conditions and standards set forth in the district where it proposes to locate;
Staff Conclusion: The proposed use is subject to applicable building and zoning regulations. At the time of building permit application, staff will review the construction drawings to ensure compliance with Chapter 17.34, Development Standards – Wireless Communications Facilities to ensure the tower will be finished with a non-reflective material and any other applicable standards; the applicant has addressed the criteria of WWCC Chapter 17.34, which are the development standards for WCFs in Exhibit 2

D. That the location and character of the use is compatible and consistent with the character of the area in which it is to be located;
Staff Conclusion: The Applicant states that wireless communication facilities are a utility that is comparable to overhead power lines serving rural areas. As stated previously, the proposed tower site is within one mile of residential developments, including the City of Walla Walla. Wireless communication facilities (cell phone towers) are common in rural and agricultural areas near urban areas.

E. That the use is in conformance with the Comprehensive Plan; and
<u>Staff Conclusion:</u> Pursuant to Goals RL-17, RL-18, and Goal UT-1, the proposal is in conformance with the Comprehensive Plan.

F. That the use will be supported by adequate public facilities or services.
<u>Staff Conclusion:</u> The site will be unmanned, and the application states will only require one vehicle trip every thirty days for routine maintenance after it is constructed. No local or state agencies submitted comments objecting to the application or noting improvements that will need to be made that could not be processed through a building permit application.

<u>Chapter 17.34 – Development Standards – Wireless Communication Facilities</u>
All wireless communication facilities (WCF) must meet the development standards in Chapter 17.34. The letter included in Exhibit 2 details responses to Section 17.34.100; it explains that the tower to the north is not adequate to be used as a co-locater and shows images showing how this area doesn't have WCF facilities and a complete search result from the FCC Website. Staff has provided a screenshot of those results as a map (Exhibit 4). The final review of the tower for compliance with Chapter 17.34 will be done by staff at the time of the building permit application.

<u>Chapter 18.08 – Critical Area Protection</u>

As stated previously in the staff report, critical areas permit application was required because the site is located in two mapped critical areas. With the site plan showing on-site slopes are under 15%, and the memo provided addressing the stormwater management to be utilized for the aquifer recharge areas, no further information is required per WWCC 18.08.240.D.1.

<u>Recommendation</u>
Staff recommends that the Hearing Examiner approve conditional use permit CUP22-010 and critical areas application CAP22-014, subject to the conditions of approval below:

1. Future development on this site must comply with the requirements of Chapter 18.08, Critical Areas Protection. A critical areas permit application and reports may be required.
2. The Applicant must comply with all requirements of WWCC Chapter 17.34 – Development Standards – Wireless Communication Facilities prior to building permit issuance.
3. The action for which the conditional use permit and critical areas application are required shall begin within one year of approval unless extended for up to one year by the director. Failure to begin such action within the time limits specific shall void the approval of the conditional use.
4. 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.
5. Future changes in operations, plans, or additions will require an amendment, approved by the Hearing Examiner, to the conditional use permit pursuant to WWCC Section 14.03.050.

<u>Attached Exhibits</u>

2. Conditional Use Permit (CUP22-010) application and attached documents (Exhibit A, stormwater memo, warranty deed).
3. Letter from Applicant dated July 27, 2022; Notice of incomplete application dated July 26, 2022.
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

5. Critical Areas Permit (CAP22-014) application, signed June 30, 2022 and July 1, 2022
6. Site Plans
7. Notice of Application (NOA)/ODNS and proof of posting/mailing affidavit
8. SEPA Environmental Checklist (SEPA22-018), dated June 30, 2022
9. Final SEPA Determination of Non-Significance (DNS) for SEPA22-018 issued January 27, 2022
10. Letter from Duane Depping, dated August 11, 2022
11. Notice of Public Hearing (NOPH) and proof of posting/mailing affidavit
12. Wireless Facility Siting: Section 6409(a), Checklist, dated June 19, 2015