



NOTICE OF DECISION

PURSUANT TO RICHLAND MUNICIPAL CODE SECTIONS 19.60.080 & 23.46.050, NOTICE IS HEREBY GIVEN THAT THE RICHLAND HEARING EXAMINER HELD A PUBLIC HEARING ON JULY 14, 2023, TO CONSIDER AN APPLICATION SUBMITTED BY MORRISON HERSHFIELD ENGINEERING ON BEHALF OF DISH WIRELESS FOR A SPECIAL USE PERMIT TO CONSTRUCT AN 80-FOOT-TALL CELLULAR MONOPOLE WITH RELATED EQUIPMENT AND SCREENING. THE PROJECT SITE IS LOCATED ON ASSESSOR'S PARCEL NUMBER 102983020732025. ON SEPTEMBER 13, 2023 THE EXAMINER ISSUED A WRITTEN DECISION TO APPROVE SPECIAL USE PERMIT # 2023-102.

REQUEST: Special Use Permit to construct an 80-foot-tall cellular service monopole tower, and related equipment to be screened by vegetation and a fence occupying approximately 275 square feet.

LOCATION: Parcel Numbers 102983020732025

DESCRIPTION OF ACTION: Request approved subject to the conditions as enumerated in the Hearing Examiner's written decision, attached below.

SEPA REVIEW: The above referenced action was reviewed in compliance with the requirements of the State Environmental Policy Act (RCW 43.21c). A SEPA Threshold Determination of Non-Significance was issued by the City of Richland on May 1, 2023 after utilizing the Optional DNS Method.

APPEAL PROCEDURES: This Special Use Permit is a Type II Permit action under RMC 19.20.010.B.9. RMC 19.70.010 explains that project permit applications shall be appealable as provided in the framework in RMC 19.20.030, which provides that Type II Permit decisions are not subject to a closed record appeal before the City Council but may be appealed to Superior Court. RMC 19.70.060, captioned "Judicial appeals", reads as follows: *Except in the event of legal authority providing for a different appeal process, the city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Benton County superior court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW.*

Mike Stevens
Planning Manager

September 13, 2023
Date

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF RICHLAND**

Regarding an Application for a Special)
Use Permit to construct a new 80-foot)
tall wireless communications facility)
(monopole), with associated ground)
equipment, all to be located within a 275)
sq.ft. fenced area, located in the C-2)
(Retail Business) Zone, submitted by)
Leslie Bradley, of Morrison Hershfield)
Engineering, on behalf of)
DISH WIRELESS,)
Applicant,)

(*The site is located at 311 Van Giesen Street, Parcel No.)
102983020732025, in the City of Richland*))
_____)

File No. SUP 2023-102

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION**

I. SUMMARY OF DECISION.

The applicant met its burden of proof to demonstrate that its Special Use Permit application to construct a new 80-foot tall wireless communications facility (monopole) with associated ground equipment located in the C-2 (Retail Business) Zone, merits approval, subject to appropriate conditions of approval.

II. BACKGROUND and APPLICABLE LAW.

In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing and issue a Decision regarding the pending application for a Special Use Permit authorizing a monopole in a C-2 (Retail Business) zoning district. *See RMC 23.46.025(A)(6) and RMC 23.46.060.*

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1 The applicant bears the burden of proof to show that its application conforms to the
2 relevant elements of the city’s development regulations and comprehensive plan, and that
3 any significant adverse environmental impacts have been adequately addressed. RMC
4 19.60.060.

5 Chapter 23.62 RMC is designated as the City of Richland’s “wireless
6 communications facilities chapter,” the purpose of which is “to minimize the unsightly
7 characteristics associated with wireless communications facilities and to provide for a wide
8 range of locations and options for wireless communications providers and to encourage
9 creative approaches in locating wireless communications facilities, which will blend in with
10 the surroundings of such facilities.” *RMC 23.62.010*.

11 The pending application for a Special Use Permit flows from the requirement for such
12 permit as explained in RMC 23.62.060(A)¹, which reads as follows:

13 **RMC 23.62.060 Permitted zones for monopoles and lattice towers.**

14 A. Monopoles up to 80 feet in height are considered a permitted use in the general business
15 (C-3), business research park (B-RP), medium industrial (I-M), and heavy manufacturing (M-
16 2) zoning districts. Monopoles up to 80 feet in height may be permitted in the parks and public
17 facilities (PPF), business commerce (B-C), central business district (CBD) and retail business
18 (C-2) zoning districts subject to issuance of a special use permit as set forth in
19 RMC 23.62.070. (emphasis added).

20 Specific Development Standards apply to all monopole towers in the City of
21 Richland, whether they are permitted outright or when a special use permit it required. Those
22 standards are found at RMC 23.62.050, and read as follows:

23 **RMC 23.62.050 Development standards for monopoles and lattice towers.**

24 A. All monopoles and lattice towers exceeding 60 feet in height shall be designed to
25 accommodate two or more wireless communications facilities.

26 B. Macrofacilities are the largest wireless communications facilities allowed on a monopole
or lattice tower. Antennas not exceeding 15 feet in height which extend above the wireless
communications support structure shall not be calculated as part of the height of the wireless
communications support structure.

C. On monopoles, antennas and antenna arrays together with any associated antenna mount
shall be designed utilizing the narrowest dimensions possible, and in no instance shall they

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1 extend further, as measured horizontally, from the centerline of the monopole than a distance
2 of 15 feet.

3 D. On lattice towers, antennas and antenna arrays together with any associated mounts shall
4 extend no further, as measured horizontally, than 15 feet from the portion of the lattice tower
5 to which the antennas are mounted.

6 E. Co-location on an existing support structure shall be permitted.

7 F. The shelter or cabinet, if necessary, used to house radio electronics equipment and the
8 associated cabling connecting the equipment or cabinet to the monopole or lattice tower shall
9 be concealed, camouflaged or underground.

10 G. When a monopole or lattice tower is adjacent to a suburban agricultural (SAG), single-
11 family residential – 12,000 (R-1-12), single-family residential – 10,000 (R-1-10), medium-
12 density residential (R-2), medium-density residential small lot (R-2S) or multiple-family
13 residential (R-3) zoning district, the wireless communications support structure must be set
14 back a distance equal to twice the height of the wireless communications support structure
15 from the nearest residential lot line.

16 H. All monopoles and lattice towers shall be lighted and painted, if necessary, in accordance
17 with Federal Aviation Administration regulations.

18 RMC 23.46.040 specifies the hearing process and criteria that must be satisfied by an
19 applicant to obtain a Special Use Permit, and reads as follows:

20 **23.46.040 Hearings – Findings – Conditions.**

21 The hearing body shall conduct an open record public hearing on an application for special
22 use permit as required by RMC Title 19 for a Type III permit application.

23 A. Any person may appear at the public hearing in person, or by agent or attorney.

24 B. The hearing body shall make a finding that it is empowered under the section of this code
25 described in the application to consider the application for the special use permit.

26 C. The hearing body shall approve, approve with conditions or deny an application for a
special use permit based on findings of fact with respect to the following criteria:

1. The size and dimensions of the site provide adequate area for the proposed use;
2. The physical conditions of the site, including size, shape, topography, and drainage, are suitable for the proposed development;
3. All required public facilities necessary to serve the project have adequate capacity to serve the proposed project;

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1 4. The applicable requirements of this zoning regulation (RMC Title 23), the city
2 comprehensive plan, the city sensitive area regulations (RMC Title 20), the city
3 shoreline management regulations (RMC Title 26) and the city sign regulations
4 (RMC Title 27) have been met; and

5 5. Identified impacts on adjacent properties, surrounding uses and public facilities
6 have been adequately mitigated.

7 D. The hearing body may impose conditions on the approval of a special use permit in
8 addition to or above and beyond those required elsewhere in this title, which are found
9 necessary to ensure the use is compatible with the public interest. These conditions may
10 include, but are not limited to, the following:

- 11 1. Limiting the hours, days, place and/or manner of operation;
- 12 2. Requiring design features which minimize environmental impacts such as noise,
13 vibration, air pollution, glare, odor and/or dust;
- 14 3. Requiring additional setback areas, lot area and/or lot depth or width;
- 15 4. Limiting the building height, size or lot coverage, and/or location on the site;
- 16 5. Designating the size, number, location and/or design or vehicle access points;
- 17 6. Requiring street right-of-way dedication and/or street improvement;
- 18 7. Requiring additional landscaping, berms and/or screening of the proposed use
19 and/or its parking or loading areas and designating the required size, height, type
20 and/or location of fencing and landscaping materials;
- 21 8. Limiting the number, size, location, height and/or lighting of signs.

22 E. Violation of any conditions, requirements, and safeguards, when made a part of the terms
23 under which the special use permit is granted, shall be deemed a violation of this code and
24 punishable under RMC 23.70.270.

25 F. The hearing body may prescribe a time limit within which the action for which the special
26 use permit is required shall be begun and/or completed. Failure to begin and/or complete such
action within the time limit set shall void the special use permit. The time limits may be
extended by the hearing body for good cause shown. In the event that no specific time limit
to begin or complete a special use permit is identified, then the special use permit shall remain
valid for a period of two years from the date that the permit was issued. The hearing body
may authorize issuance of a special use permit for a specified probationary period of time, at
the termination of which the applicant must resubmit a new application in accordance with
the provisions of RMC 23.46.020.

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1 Finally, RMC 23.62.070 mandates the following, additional, and specific review
2 criteria for monopoles such as that proposed in this matter:

3 **RMC 23.62.070 Special use permit criteria for monopoles and lattice towers.**

4 Requests for special use permits shall be considered in accordance with the provisions of
5 Chapter 23.46 RMC. In addition to the provisions of Chapter 23.46 RMC, the following
6 specific criteria shall be met before a special use permit can be granted:

7 **A. Visual Impact.**

- 8 1. Antennas may not extend more than 15 feet above their supporting structure,
9 monopole, lattice tower, building or other structure.
- 10 2. Site location and development shall preserve the pre-existing character of the
11 surrounding buildings and land uses and zone district to the extent consistent with the
12 function of the communications equipment. Wireless communications towers shall be
13 integrated through location and design to blend in with the existing characteristics of the
14 site to the extent practical. Existing on-site vegetation shall be preserved or improved,
15 and disturbance of the existing topography shall be minimized, unless such disturbance
16 would result in less visual impact of the site to the surrounding area.
- 17 3. Accessory equipment facilities used to house or contain wireless communications
18 equipment should be located within buildings when possible. When they cannot be
19 located in buildings, equipment shelters or cabinets shall be screened and landscaped.
- 20 4. All monopoles and lattice type facilities shall be screened with trees, shrubs and
21 landscaping planted in sufficient depth to form an effective and actual sight barrier
22 within five years. Said landscaping shall have a minimum mature height of eight feet.

23 **B. Noise.** No equipment shall be operated so as to produce noise in levels above 45 dBA as
24 measured from the nearest property line on which the attached wireless communications
25 facility is located.

26 **C. Availability of Suitable Existing Towers or Other Structures.** Applications for a special
use permit shall reasonably demonstrate that alternatives such as lower structures that are
permitted without special use permit or other existing support structures are not capable of
accommodating the applicant's needs. Evidence and information shall be submitted to
establish the following:

1. Permitted shorter support structures are not of sufficient height to meet the applicant's
engineering requirements.
2. No existing support structures are located within the geographic area required to meet
the applicant's engineering requirements.
3. Existing support structures do not have sufficient structural strength to support the
proposed antenna and related equipment.

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1 4. The applicant's antenna would cause electromagnetic interference with antennas on
2 the existing support structures, or the antenna on the existing support structures would
3 cause interference with the applicant's proposed antenna.

4 5. The fees, costs, or contractual provisions required in order to share or adapt an
5 existing support structure for sharing are unreasonable. Costs exceeding new tower
6 development are presumed to be unreasonable.

7 6. The applicant demonstrates that there are other limiting factors that render existing
8 towers and structures unsuitable.

9 III. QUESTION PRESENTED.

10 Whether the application for a Special Use Permit satisfies the approval criteria set
11 forth in applicable city codes and regulations, particularly RMC 23.46.040(C) and the
12 specific requirements for wireless communications facilities found in Chapter 23.62 RMC?

13 Short Answer: Yes, subject to specific conditions of approval.

14 IV. RECORD AND EXHIBITS.

15 Exhibits entered into evidence as part of the record, and an audio recording of the
16 public hearing, are maintained by the City of Richland, and may be examined or reviewed by
17 contacting the City Clerk's Office.

18 **Hearing Testimony:** The following individuals presented testimony under oath at the
19 duly noticed public hearing for the underlying application, held on July 14, 2023:

- 20 1. Mike Stevens, Planning Manager, for the City of Richland. Mr. Stevens
21 summarized the Staff Report, site conditions, staff analysis of proposal,
22 suggested conditions, and his recommendation of approval.
- 23 2. Leslie Bradley, the applicant's agent and hearing representative, accepted the
24 Staff Report analysis and recommended conditions without objection or
25 requests for changes; described maintenance tech parking space area,
26 addressed noise, project location well removed or generally buffered from
surrounding residential uses.

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1 portion of C-2 Zoned property located in the City of Richland. *Staff Report, page 14; Exhibit*
2 *1, application materials.* Staff determined the application materials to be complete in the
3 following month, when Staff issued, posted, and mailed a Notice of Application, Public
Hearing and Environmental Determination (an Optional DNS). *Staff Report page 14;*
Exhibits 4 and 5.

4 3. During review, Staff noted how the property was covered by several old easements
5 dating back to the time the City incorporated. To clear up the situation and prevent potential
6 conflicts with this proposed use on a portion of the affected property, Staff moved forward
7 with a request for the City Council to relinquish a drainage easement that no longer serves a
8 public purpose, which was up for consideration on the Council's July 18th agenda. *Staff*
9 *Report, page 12.* To complete the record for this Special Use Permit application, the
Examiner has added a new exhibit to the record, confirming the City Council's formal action
to relinquish an old easement on the property. *(See new Ex. 7, Richland City Council*
Resolution No. 2023-121, Relinquishing a Utility Easement at 311 Van Giesen Street as the
easement is no longer needed for municipal purposes).

10 4. As part of the SUP review, the applicant filed a completed SEPA Checklist disclosing
11 various project features that could impact aspects of the surrounding environment. *Exhibit 3.*
12 Staff reviewed the completed checklist and issued a Determination of Non-Significance for
13 the underlying SUP application. *Exhibit 4, DNS.* No one offered comments or questions
challenging the DNS issued for the pending proposal.

14 5. No one submitted any written comments questioning or opposing the pending
15 application. The Staff Report mentions that an adjacent property owner visited City Hall to
16 express his concerns about the new tower, generally questioning if the pole would be in the
17 best interest of the surrounding area. *(Staff Report, page 14).* There was no evidence showing
18 that the proposed location would be contrary to site location preferences currently codified
19 in portions of the City's specific development regulations for telecommunications equipment
20 such as that proposed herein. For instance, monopoles up to 80 feet in height may be
21 permitted in the parks and public facilities (PPF), business commerce (B-C), central business
district (CBD) and retail business (C-2) zoning districts subject to issuance of a special use
permit. *(See RMC 23.62.060(A), re: Permitted zones for monopoles and lattice towers).*
There is no dispute that the proposed tower location is entirely within a property zoned C-2,
so this requested special use permit and conditions are intended to assure that the applicant's
facility will not be detrimental to the surrounding area and uses.

22 ***Proposal description and location.***

23 6. The Special Use Permit addressed in this decision would authorize he applicant, Dish

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1 Wireless, to locate and construct an 80-foot tall monopole tower and accessory facilities
2 within a 275-sq.ft. area to be leased by the property owner for such use. The project site is
3 located at 311 Van Giesen Street, on Parcel No. 102983020732025.

3 7. The proposed site is located on the SE corner of the affected parcel. The property
4 currently includes a car wash facility known as the Van Giesen Car Wash, with seven (7)
5 self-serve car wash bays and several coin operated commercial grade vacuum cleaners. The
6 self-serve car wash facility, including the coin operated vacuum cleaners is open for business
7 24 hours, 7 days a week. The property's northern boundary, Van Giesen Street frontage, is
8 about 110 feet from the project site; to the east lies vacant commercial property; the southern
9 boundary is adjacent to a parking lot; the western property line is about 120 feet from the
10 project site, and uses to the west include a 7-11 store and the VCA Animal Medical Center.
11 Residential uses to the north are separated by the Van Giesen right-of-way corridor. (*Ex. 1,*
12 *Application Materials, Noise Survey on page 2; Staff Report, Site Description & Adjacent*
13 *Land Uses, on page 6; Site visit).*

10 **Noise.**

11 8. Part of reviewing a project of this sort involves consideration of potential noise
12 impacts on the surrounding area. (*See RMC 23.62.070(B), "No equipment shall be operated*
13 *so as to produce noise in levels above 45 dBA as measured from the nearest property line on*
14 *which the wireless communications facility is located."*). For comparison purposes, the
15 Examiner takes notice of the Washington State Department of Ecology online FAQ providing
16 General Noise Pollution Information, which provides the following list of common noise
17 levels:

- 16 • Airport plan take-off - 120dB
- 17 • Rock concert - 105dB
- 18 • Lawn Mower - 100dB
- 19 • Blender - 90dB
- 20 • Garbage disposal - 80dB
- 21 • Traffic noise - 70-80dB
- 22 • Vacuum - 70dB
- 23 • Office - 60-65dB
- 24 • Library - 35dB
- 25 • Breathing - 10dB

22 9. The application materials include an Acoustical Report, prepared by qualified
23 professionals from the Morrison Hershfield engineering firm, which summarizes results of a
24 noise survey performed in the immediate vicinity of the proposed telecommunications site at

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1 311 Van Giesen Street. The noise survey covered an area from existing and proposed
2 equipment on the parcel to the nearest property lines. The purpose of the noise report was to
3 document the existing conditions and the impacts of the acoustical changes due to the
4 installation of proposed telecommunications equipment. (*Ex. 1, Application Materials,*
5 *Acoustical Report [also referenced as “noise report”], on page 2).*

6 10. Based on un rebutted evidence in the record, the existing average ambient noise levels
7 measured at property lines for the proposed project location is 57.33 dBA, which the noise
8 survey primarily attributes to vehicular traffic along the intersection of Van Giesen Street and
9 Jadwin Avenue. (*Ex. 1, Application Materials, Acoustical Report, “Ambient Conditions” on*
10 *page 2).*

11 11. The noise survey explains that the estimated noise generated by the equipment cabinet
12 place at ground level would be 65dBA daytime/60dBA night time, from 5 feet away.
13 (*Acoustical Report, on page 3).*

14 12. The Acoustic Report includes the following findings and conclusions:

15 *When the average ambient noise level of 57.33 dBA was measured, none of*
16 *the several commercial grade, coin operated automobile vacuum cleaner was*
17 *in use.*

18 *The proposed equipment located at 76’-11” elevation [i.e. up high in the*
19 *proposed tower] produces no noise.*

20 *The proposed telecommunications equipment cabinet at grade level will be*
21 *enclosed by a 6-foot-tall wood fence and will have new landscaping*
22 *(arborvitae; 5’ tall at planting) on its east and south sides. To its immediate*
23 *west, approximately 20 feet away is a commercial grade, coin operated*
24 *automobile vacuum cleaner (open for business 24hours/day). The proposed*
25 *new equipment cabinet which is expected to run 24 hours a day. However, the*
26 *sound emitting apparatus on the equipment cabinet will only run*
intermittently throughout the day. (Acoustical Report, on page 3).

With the only noise emitting proposed equipment fully enclosed by a 6-ft tall
wood fence and bordered by 5-ft tall landscaping vegetations on two sides of
the fence, the proposed installation will not add significant change in sound
level from the existing ambient noise from the property (car wash facility;
open 24 hours/day 7days/week). Therefore, the new equipment noise is
expected to meet the City of Richland’s Municipal Code 9.38 [typo] limits at

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1 *all other receiving property lines. (Acoustical Report, on page 4).*

2 13. Based on the unchallenged Acoustical Report, the Examiner finds and concludes that
3 the proposed equipment cabinet with fencing and landscape plants will not be operated in a
4 manner that results in noise levels above 45 dBA as measured from the nearest property line,
because noise at such level is already drowned out by ambient noise levels that exceed 57
dBA.

5 14. Further, the wood fence panels and landscape screening plants should serve to reduce
6 noise levels produced by the equipment cabinet (65/60 dBA) to a level no greater than the
7 existing average ambient noise levels at property boundaries (57 dBA)), and noise levels
8 associated with the Permittee's telecommunications equipment operations would never
9 exceed existing noise levels generated when coin operated automobile vacuum cleaner on the
same property might be in use (at least 70 dBA), which can occur at any time, 7 days a week,
24 hours a day.

10 15. Unrebutted evidence in this record establishes that a 45 dBA noise level is regularly
11 and substantially exceeded on the project site, where the existing average ambient noise level
12 is over 57 dBA. Thus, additional mitigation to reduce noise levels for the equipment cabinet
13 to something closer to 45 dBA would probably not be noticed on surrounding properties. If
14 on-site uses and surrounding traffic conditions should change dramatically in the coming
15 years, and ambient noise levels in the area drop below the 45 dBA threshold, then the
16 Planning Director may find cause to pursue a code violation matter and/or impose additional
17 noise mitigation measures as a corrective action for on-site mechanical equipment operated
under this Special Use Permit, including replacement with quieter equipment, construction
of a 6 to 8 foot CMU block wall around the equipment cabinet with substantial perimeter
landscape plantings, or other measures similar to those used in connection with permitting
other telecommunication facilities in other parts of the City where noise levels are much
lower than the current project site.

18 ***As conditioned, the application satisfies approval criteria.***

19 16. The Staff Report and application materials include substantial, unrebutted evidence
20 demonstrating and explaining how the pending application, subject to appropriate conditions
21 of approval, can satisfy applicable approval criteria, including without limitation RMC
22 19.60.095, 23.46.040, 23.62.050 and .070. Except as modified in this Decision, the Examiner
adopts all findings and statements of fact included in the Staff Report and exhibits referenced
therein as findings of fact supporting issuance of the requested permit.

23 17. In this matter, substantial evidence in the record demonstrates how the application

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1 meets the City’s zoning and specific development regulations applicable to wireless
2 communications facilities.

3 18. Any factual matters set forth in the foregoing or following sections of this Decision
4 are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this
5 section as such.

6 19. Based on the record, the applicant demonstrated its special use permit application
7 merits approval, meeting its burden of proof imposed by RMC 19.60.060.

8 20. Approval of this special use permit will not and does not constitute, nor does it imply
9 any expectation of, approval of any administrative permit or subsequent reviews that may be
10 required for construction or other activities on the site of the special use permit.

11 **VI. CONCLUSIONS OF LAW and DISCUSSION.**

12 1. Based on substantial evidence in the Record, and all findings set forth above, the
13 Examiner concludes that the applicant has met its burden to demonstrate that the pending
14 application for a special use permit, as conditioned, meets all applicable review and approval
15 criteria, including without limitation those found in RMC Chapter 23.62 and 23.46.040.

16 2. No one submitted comments questioning the SEPA DNS issued for this project, so
17 there is no basis to exercise substantive SEPA authority to order mitigation measures beyond
18 those needed to comply with applicable development regulations.

19 3. No one offered expert or qualified consultant reports or testimony that would serve
20 to rebut or question the credibility or reliability of information and evidence provided in the
21 application materials.

22 4. As conditioned, the proposed tower facility merits approval.

23 5. Any findings or other portions of this Decision that are deemed conclusions of law
24 are hereby adopted as such and included in this section.

25 **VII. CONDITIONS OF APPROVAL.**

26 Based on the record and authority specifically granted under applicable city codes,

FINDINGS OF FACT, CONCLUSIONS AND
DECISION RE: DISH WIRELESS APPLICATION
FOR A SPECIAL USE PERMIT TO LOCATE A
NEW 80-FOOT TALL WIRELESS
COMMUNICATIONS FACILITY (MONOPOLE
TOWER) ON PROPERTY IN THE C-2 ZONE – FILE
NO. SUP 2023-102

GARY N. MCLEAN
HEARING EXAMINER FOR THE CITY OF RICHLAND
CITY HALL – 505 SWIFT BOULEVARD
RICHLAND, WASHINGTON 99352

1 including without limitation RMC 23.46.040(D), the Examiner hereby imposes the following
2 conditions on the approval for the pending special use permit in addition to or above and
3 beyond those required elsewhere in the city's municipal code, specifically finding that such
4 conditions are necessary to ensure the proposed use is compatible with the public interest:

5 1. Construction pursuant to the special use permit shall be completed within 1 year of
6 the date of issuance of the special use permit notice of decision. For good cause, the Planning
7 Manager shall have discretion and authority to grant an extension not to exceed an additional
8 year.

9 2. The project shall be developed in substantial conformance with the site development
10 plans on-file, particularly those submitted with the special use permit application included in
11 the Record as Exhibit 2, subject to revisions that may be approved by the Planning Manager
12 to ensure compliance with standards found in RMC 23.62.070.

13 3. All construction work shall be accomplished entirely out of any public easements
14 (for drainage, utilities and the like) that apply to portions of the property.

15 4. Within the first year of operation, the Permittee must submit an Acoustical Report
16 from a qualified professional, certifying that the noise produced by on-ground equipment
17 authorized by this permit does not exceed 45 dBA or the average ambient sound levels
18 measured at the nearest property line(s), whichever is higher. If such report shows that the
19 equipment exceeds such level, the Planning Manager shall have full discretion and authority
20 to require additional sound mitigation that must be implemented in order for this permit to
21 remain valid. Failure to implement such measures in a timely manner shall be grounds for
22 revocation of this permit.

23 5. Signage shall be limited to safety signs or those mandated by other government
24 entities. No other signs are permitted on the telecommunications facility.

25 6. All trees and vegetation planted to provide screening and sound reduction for this
26 facility shall be maintained in a live and healthy condition for the duration of this permit. The
Planning Manager has full discretion and authority to mandate replacement or proper
maintenance in order to assure this condition is satisfied going forward.

7. Given the project site location, the Permittee shall notify the Richland Airport
authorities of tower construction work windows, at least two weeks before such work is to
commence, or sooner if required by applicable law.

8. The Permittee shall complete Forms 7460-1 and 7460-2 in accord with applicable
Federal Aviation Administration guidance and regulations.

9. An additional parking space shall be designated and marked for maintenance
purposes.

10. Future alterations to the wireless facility shall be reviewed by the Planning
Department for general consistency with the special use permit and applicable city

24 **FINDINGS OF FACT, CONCLUSIONS AND**
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telecommunications facility regulations.

11. The applicant shall provide the City of Richland Planning Department with 24-hour contact information for maintenance related matters to be kept in the master file and provided to the public upon request. Said maintenance contact information shall be dually posted on the exterior of the ground-level equipment enclosure or gate.

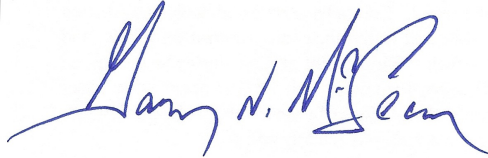
12. Consistent with RMC 23.62.100, the wireless communications facility authorized by this permit, including all supporting structures and equipment, shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair.

13. Violation of any condition of approval shall be deemed a violation of City codes, including without limitation RMC 23.46.040(E), and punishable under RMC 23.70.270.

VIII. DECISION.

Based upon the preceding Findings, Conclusions and Conditions of Approval, the Dish Wireless Special Use Permit application to locate and construct a new 80-foot tall monopole tower with associated ground equipment, is hereby APPROVED, as conditioned herein. Consistent with RMC 23.46.060, this Decision authorizes the City's administrative official to issue a special use permit, subject to the applicant's compliance with the above-referenced Conditions of Approval.

ISSUED this 13th Day of September, 2023



Gary N. McLean
Hearing Examiner

FINDINGS OF FACT, CONCLUSIONS AND
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Opportunity to Appeal

RMC 19.20.030 details the project permit application framework for various Types of Project Permits. The chart provided in RMC 19.20.030 shows that Type II Permits, which include Special Use Permits issued by the Hearing Examiner (see RMC 19.20.010), *are not* subject to an open record appeal hearing or a closed record appeal hearing before the City Council but are instead subject to Judicial Appeal.

RMC 19.70.060, captioned “Judicial appeals”, reads as follows: *“Except in the event of legal authority providing for a different appeal process, the city’s final decision on an application may be appealed by a party of record with standing to file a land use petition in Benton County superior court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW.”*

RMC 23.46.070 provides that this Decision shall be final unless written notice of appeal to the city council, together with such fees as are required by RMC 19.80.020 is filed with the city clerk within 10 days from the date of this Decision. Such appeal shall be consistent with the requirements set forth in Chapter 19.70 RMC for appeal of decisions on Type II permit applications. The city council shall review the official record of the special use permit application, including the notice of appeal, and shall consider testimony pertinent to the official record. If new evidence is received that is not part of the official record, the city council shall not use the new evidence as a basis of reversing a decision, but instead shall remand the application to the hearing body for reconsideration. The city council may, so long as such action is in conformity with the terms of this code, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as the city council deems appropriate.

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