



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of)	NO. 2021104293
)	
Thurston 911 Communications)	FINDINGS, CONCLUSIONS,
)	AND DECISIONS
For a Special Use Permit and)	
<u>Variances</u>)	

SUMMARY OF DECISIONS

The request for special use permit and setback, co-location, and screening variances to install a 100-foot tall monopole wireless communication facility and associated equipment at 8100 Johnson Point Road NE is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Thurston 911 Communications requested a special use permit to construct a 100-foot tall monopole wireless communication facility and install associated equipment at 8100 Johnson Point Road NE, Olympia, Washington. The project would include installation of a new 500-gallon liquefied propane tank and a 50kW generator on-site, and an interior remodel of an existing equipment room. The equipment mounted on the monopole would include one microwave antenna, three new omni antennas, one TTA unit, and an additional omni antenna to be relocated from an existing lattice tower on-site. The Applicant also requested variances from the setback standard of Thurston County Code (TCC) 20.33.080(3)(a), the co-location requirement of TCC 20.33.070, and some of the screening requirements of TCC 20.33.080.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on September 12, 2023. The record was held open through September 14, 2023 to allow members of the public who may have had technology difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted, and the record closed on September 14, 2023.

The Examiner did not conduct an in-person site visit but did review the subject property and vicinity on Google Maps.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning and Economic Development Department

Dawn Peebles, Program Manager, Thurston County Environmental Health Division

Michael Daversa, Project Manager, Motorola Solutions (Applicant representative)

Brian Van Kamp, Fire Chief, District 8

Wendy Hill, Executive Director, Thurston 911 Communications

Exhibits:

At the open record public hearing, the following exhibits were admitted into the record:

Exhibit 1 Community Planning and Economic Development Staff Report, including the following attachments:

- A. Notice of Public Hearing, dated August 28, 2023
- B. Master Application, submitted August 3, 2021 and revised January 30, 2023
- C. Special Use Permit Application, submitted August 3, 2021
- D. Project Narrative, dated June 1, 2023, received July 10, 2023
- E. Variance from co-location requirement, received July 10, 2023
- F. Variance from screening requirement, received July 10, 2023
- G. Variance from setback requirement, received July 10, 2023
- H. Site plans, submitted November 21, 2022 and revised on January 13, 2022
- I. Notice of Application and SEPA Mitigated Determination of Non-Significance, dated March 23, 2022
- J. Site Justification Letter, received July 10, 2023
- K. Critical Areas Report, dated May 12, 2021
- L. Critical Area Aquifer Report, dated April 28, 2021
- M. Geotechnical Report, dated October 28, 2020
- N. FCC License Information
- O. NIER Report, dated October 14, 2020
- P. Balloon Test Map
- Q. Acoustical Report, dated August 28, 2020
- R. Photo Simulations
- S. Migratory Bird Impacts Report, dated May 14, 2021

- T. Structural Report, May 17, 2021
- U. Certified Sewage Site Plan Prepared by Jim Hunter, September 1, 2022
- V. SEPA Checklist
- W. Title Report
- X. Temporary Erosion Control
- Y. Comments from Department of Ecology, dated September 13, 2021
- Z. Comment letter from the Nisqually Indian Tribe, dated August 30, 2021
- AA. Third Party Review, received February 14, 2023
- BB. Map of Closest Tower, received July 10, 2023
- CC. Noise Report, received July 10, 2023
- DD. Lighting Requirements, received July 10, 2023
- EE. Lighting Specifications, received July 10, 2023
- FF. Generator dBA statement, received July 10, 2023
- GG. Communications Matrix with Geotech comments, dated February 10, 2023
- HH. Communications Matrix, dated January 25, 2023
- II. Communications Matrix, received July 6, 2023
- JJ. Approval Memo from Amy Crass, Environmental Health, dated September 19, 2022
- KK. Approval memo from Arthur Saint, Thurston County Public Works, dated January 25, 2023
- LL. Wetland Review Comments, dated February 7, 2023
- MM. Wetland Review Comments, dated August 15, 2023
- NN. Statement that the WCF/antenna support structure will comply with all Federal Aviation Administration (FAA) regulations and documentation indicating whether the FAA will require attachment of a light/signal to the proposed antenna support structure
- OO. FAA Obstruction Marking and Lighting Circular
- PP. Statement that the WCF/antenna support structure is not feasible for co-location
- QQ. Statement indicating exemption from the National Environmental Policy Act (NEPA) and all documents filed under NEPA
- RR. SEPA checklist
- SS. Addendum to Setback Variance Request - Fire Station 82

Based on the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Thurston 911 Communications (Applicant) requested a special use permit (SUP) to construct a 100-foot tall monopole wireless communication facility and install associated equipment at 8100 Johnson Point Road NE, Olympia, Washington.¹ The project would include installation of a new 500-gallon liquefied propane tank and a 50kW generator on-site and an interior remodel of an existing equipment room. The equipment mounted on the monopole would include one microwave antenna, three new omni antennas, one TTA unit, and an additional omni antenna to be relocated from an existing lattice tower on-site. The Applicant also requested variances from the setback standard of Thurston County Code (TCC) 20.33.080(3)(a), the co-location requirement of TCC 20.33.070, and some of the screening requirements of TCC 20.33.080. *Exhibits 1, 1.B, 1.C, 1.D, 1.E, 1.F, 1.G, and 1.H.*
2. The subject property is 16,028 square feet in area and is developed with a fire station building, a 46.3-foot tall lattice radio tower, and a propane tank. *Exhibits 1 and 1.H.*
3. Surrounding properties are developed with single-family residential land uses. *Exhibits 1 and 1.H.*
4. The Applicant is an intergovernmental nonprofit entity that serves fire and law enforcement agencies by providing call center and dispatch services. The Applicant is upgrading Thurston County's emergency 911 system to provide enhanced communication and coordination with and between emergency first responders. One of 17 sites within the larger upgrade project, the proposed WCF site is critical for emergency response, because there is a gap in portable radio coverage in the Johnson Point area of Thurston County. The coverage is particularly poor inside buildings; the submitted radio frequency coverage maps depict that many areas in the vicinity have no indoor coverage at all. The proposed WCF would largely fill the coverage gap. *Exhibit 1.J; Testimony of Michael Daversa and Wendy Hill.*
5. From a technical perspective, the subject property is suitable for the proposed WCF because it is close to being the highest point in the area, can provide the coverage that is currently lacking, and is exposed (i.e., lacks vegetation that would absorb radio frequency energy). *Exhibit 1.AA.* The subject property is also suitable because the radio equipment can be housed within the existing Fire Station building, the site is already served by electric and other utility services, the site is accessible for maintenance, and the location is cost-effective for the nonprofit and government agencies it serves. *Exhibit 1.J; Brian Van Kamp Testimony.*
6. After construction is complete, technicians would visit the site one to two times per month. *Exhibit 1.RR.*

¹ The legal description of the subject property is a portion of Section 09 Township 19 Range 1W TR B BLA981011 3251449 BEING PTN SE NW; also known as Tax Parcel No. 11909240100. *Exhibit 1.*

7. The subject property is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibit 1*. The purpose of the RRR 1/5 zone is “to encourage residential development that maintains the county’s rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site’s physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services.” *TCC 20.09A.010; Exhibit 1*. Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture, accessory farm housing, and home occupations. *TCC 20.09A.020*. Freestanding WCFs are allowed in the RRR 1/5 zone with approval of a SUP, subject to compliance with the Wireless Communication Facilities and Antenna Support Structures chapter of the Thurston County Code (TCC 20.33). *TCC 20.54, Table 1*. In order to place a freestanding WCF in a residential zone (such as the RRR 1/5 zone), TCC 20.33.080(2)(a) requires applicants to demonstrate that a nonresidential site is not available or technically feasible, and that not allowing the WCF in a residential district would have the effect of prohibiting the provision of personal wireless communication service. In this case, the Applicant provided technical justification for the specific site selected. *Exhibits 1.D, 1.J, and 1.AA*. Of note, the Thurston County Comprehensive Plan 2020 Update Future Land Use Map (L-1) depicts that Johnson Point is virtually all residentially zoned, with small areas of public parks land but no commercial or industrial land.²
8. The subject property does not contain any streams, wetlands, or geologic hazards, but there are wetlands and/or suspected wetlands within 300 feet of the subject property. *Exhibits 1.K, 1.M, 1.GG, 1.HH, and 1.MM*. Because these wetlands are physically separated from the site by roads or preexisting structures such that any buffer on the subject property would not protect the wetlands, the on-site buffer is excluded from the buffers required by the County’s critical areas ordinance (CAO). *Exhibit 1.MM*.
9. TCC 20.33.080(2)(i) contains siting provisions designed to minimize bird collisions with towers. WCFs cannot be located within 1,000 feet of wetlands supporting species of birds listed as priority species by the Washington Department of Fish and Wildlife, endangered or threatened species listed in the Endangered Species Act, or species of local importance, unless the Applicant demonstrates that the proposed location would not have a significant impact on such birds. *TCC 20.33.080(2)(i)*. Towers that are 250 feet tall or higher with solid lights pose the greatest risk to birds, as the lights can cause birds to stray off course or collide with the structure. Greater tower height increases the chance of bird interference. The Applicant’s environmental consultant and a biologist with the Washington Department of Fish and Wildlife concurred that the proposed tower at the proposed location would not impact protected species of birds. *Exhibit 1.S*.
10. TCC 20.33.070 states that an application for a WCF may only be approved if “the proposed facilities cannot be accommodated on any existing, approved or applied for

² The Examiner notes that the Thurston County Comprehensive Plan and maps can be viewed online at <https://www.thurstoncountywa.gov/departments/community-planning-and-economic-development/community-planning/comprehensive-plan/current-comprehensive-plan>.

antenna support structure or other suitable structure within one mile of the proposed site or one-half of the proposed facility's radio frequency coverage area, whichever is greater," for one or more specified reasons. The reasons allowed for not co-locating on-site include (paraphrased) that the site is not suitable in terms of coverage, the proposed equipment would exceed the structural capacity of the structure, the proposed equipment would interfere with the existing use, the structure could not accommodate the proposed equipment at the necessary height, sufficient area is not available to accommodate ground equipment, co-location is not available at market rate cost, or any other substantial reason that precludes co-location. *TCC 20.33.070(1)*. Although no variance is required to obtain a determination regarding the criteria of 20.33.070, the Applicant requested a variance from the co-location requirement. The reason for not co-locating and thus requesting the variance is that the existing communications tower on-site is not tall enough to meet the Applicant's needs, and because the next nearest existing WCF is 6.27 miles away, in an area that would not fill the coverage gap. With respect to the need for a height of 100 feet on the subject property, the Thurston County emergency radio network uses a private microwave network to interconnect the radio tower sites, and a microwave link would need to be established between the subject property and a transmitting tower on Crawford Mountain, 21.3 miles away by line of sight. To establish the link, the tower on the subject property would need to be 100 feet tall to clear the trees between the two locations. The 100-foot height requirement was verified by third-party review. *Exhibits 1.E, 1.J, 1.AA, and 1.BB*

11. The existing lattice tower on-site contains a VHF radio antenna, which the Applicant proposes to relocate onto the proposed monopole at the 40-foot level. The existing lattice tower would then be removed. *Exhibit 1.O*. The Applicant submitted documentation that indicates that allowing other carriers to co-locate onto the facility per *TCC 20.33.050(2)(c)* is not feasible due to security issues, as the fire station is not always staffed, and the radio system would be used for law enforcement and fire purposes. *Exhibit 1.PP*.
12. Pursuant to *TCC 20.07.080*, radio towers, transmission towers, and other similar structures are exempt from the height limit of the underlying zone. *TCC 20.07.080*.
13. *TCC 20.33.080(3)(a)* contains the setback standard applicable to WCFs not located within the right-of-way. *TCC 20.33.080(3)(a)* specifies that WCFs must be set back from all property lines a minimum of 110% of the structure height, including antennas. For a 100-foot tower, a setback of 110 feet is required. *Exhibit 1*. The Applicant requested a variance from this standard, because the 100-foot tower is needed for radio coverage, yet the site dimensions would not allow 110-foot setbacks. The north-south property dimension is only 80 feet. The proposed setbacks would be: 31 feet, seven inches from the northern property line (a reduction of 78 feet, five inches); 48 feet, five inches from the southern property line (a reduction of 61 feet, seven inches); 37 feet, four inches from the eastern property line (a reduction of 72 feet, eight inches); and 162 feet, nine inches from the western property line (no reduction).³ *Exhibit 1.G; Exhibit 1.H, Sheets A-1.0*

³ The undersigned takes note that the setback variance request is incorrectly described in *Exhibit 1.SS* and on page 3 of the Staff Report. Both documents reverse the reductions requested with the actual setbacks proposed. The error is evident by comparing the numbers with the property dimensions shown on the property survey (Sheet SV-1.0 of

and SV-1.0. As mitigation for the reduced setbacks, the tower would be designed to collapse into itself in the event of structural failure instead of falling over. *Exhibit 1.D.*

14. The electronic equipment required for the WCF would be housed in an equipment room (10 feet, three inches by 15 feet, seven inches) within the existing fire station building. No new stand-alone equipment structure is proposed. All cables and conduit would be routed from the existing building to the tower via a 10-foot “ice bridge” and then ascend the tower internally. *Exhibits 1.D and 1.H.*
15. The proposed generator, which is needed for emergency backup power in the event of an outage, would be located to the north of the monopole, and the propane tank would be located to the northeast of the monopole. The propane tank would be anchored to a new five-foot by 10-foot concrete slab and would be placed at least 10 feet away from potential ignition sources, buildings, and property lines. The generator would be anchored to an existing concrete slab. *Exhibits 1.D and 1.H.*
16. Consistent with the public safety requirements of TCC 20.33.080(8), the Applicant proposes to enclose the facility perimeter with a six-foot tall chain link fence with non-reflective deep green privacy slats. The fence would be topped with barbed wire and include a locked gate. The tower would be equipped with an anti-climbing device. A device that would stop transmission in the event of collapse is not technically feasible, but an alarm system would provide notice of a collapse to technicians. *Exhibits 1.D and 1.H.*
17. The Applicant had a noise study performed, which found that the proposed WCF equipment would meet applicable noise standards without mitigation, and that the emergency generator would meet applicable noise standards with construction of a sound barrier along the north and east sides of the generator. Consistent with the conclusions of the noise report, the proposed site plans include the recommended sound barrier. *Exhibits 1.CC and 1.H.*
18. TCC 20.33.080(10) prohibits signals, lights, or signs on a WCF unless required by the FCC or FAA. FAA regulations do not require lighting or marking of towers of the height proposed. Although the Staff Report contains a condition requiring lighting, Planning Staff withdrew the requested condition at the hearing because the Applicant revised the proposal to exclude tower lighting. *Exhibits 1, 1.NN, and 1.OO; Sharon Lumbantobing Testimony.*

Exhibit 1.H). Because the north-south property lines are only 80 feet long, it would not be possible to have a 78-foot setback from the northern property line and a 61-foot setback from the southern property line. However, the setbacks shown on the Boundary Plan (Sheet A-1.0 of Exhibit 1.H), which formed the basis for this finding, add up to 80 feet. Part of the confusion appears to relate to the Applicant’s labeling of the setback distance lines on the Boundary Plan (which lacks a scale bar and does not show property dimensions for comparison). Instead of labeling them as setbacks or proposed setbacks, they are labeled as “setback variance req.,” which suggests that the numbers represent the proposed reduction in setbacks and not the proposed reduced setbacks.

19. Based on analysis by a professional engineer, radio frequency emissions from the proposed WCF would meet FCC requirements for general population/uncontrolled exposure at ground level. *Exhibit 1.O.*
20. As required by TCC 20.33.050(3)(a), the Applicant performed balloon testing and created photosimulations to demonstrate the visual impacts of the WCF. Although the WCF would likely be screened by existing vegetation as viewed from the west side of Johnson Point Road to the northwest of the subject property, it would not be screened as viewed from the south/southwest along Johnson Point Road, or from the parcel to the north or the site driveway to the west, except that the base would be screened by existing structures. *Exhibits 1.P and 1.R.*
21. The Applicant submitted a variance request to address the screening standards of TCC 20.33.050(2)(g), 20.33.080(2)(b)(v), 20.33.080(2)(b)(vi), and 20.33.080(7)(d)(iv).⁴ These standards in relevant part require the Applicant to demonstrate that forested sites are not available or technically feasible; prohibit WCFs in open areas “unless the applicant demonstrates that a less visually impacting site is not available to provide service;” and require uncammouflaged WCFs to be located to take maximum advantage of existing screening. The Applicant requested the variance due to the limited trees in the immediate area, none of which are tall enough to screen a 100-foot tower. The Applicant submitted that there are no other sites within the coverage area that would offer sufficient trees, topography, or structures to adequately screen a 100-foot tower.⁵ *Exhibit 1.F.*
22. Consistent with TCC 20.33.080(2)(b)(vi), the monopole would be sited to take maximum advantage of existing screening (although existing screening is limited). The monopole would be placed in the interior of the site, behind the fire station building as viewed from the site driveway. Although the subject property and its immediate vicinity are not forested, there are some trees on or near the site, including a couple trees along the southern property line and a row of trees within a setback easement to the north of the subject property, west of the fire station building. *Exhibits 1.H and 1.R.* Because the existing vegetation would not completely screen the base of the monopole, the Applicant proposes, consistent with TCC 20.33.080(7)(d)(ii), to plant a 20-foot wide buffer of conifer trees around the facility perimeter (excluding the site access) where there is not currently screening vegetation. *Exhibit 1.D; Michael Daversa Testimony.*
23. Consistent with TCC 20.33.080(2)(b)(vii), the microwave antenna would be flush mounted. Proposed 700 MHz and VHF antennas would have three-foot standoffs, which are needed to add structural stability to the antennas and to mitigate interference from other antennas and from the tower itself. *Exhibit 1.D.*

⁴ TCC 20.33.080(7)(d)(iv) appears to relate to circumstances in which required setbacks and screening extend onto adjacent property. In this case the Applicant is seeking a variance from the setback standards and is not relying on vegetation on adjacent property to meet the screening requirements of the code. Consequently, it does not appear that this provision is relevant to this case.

⁵ The undersigned also notes that, while this is not stated in the variance materials, the 100-foot tower height is needed in order to provide line of sight connectivity with the off-site tower and any trees tall enough to screen its visual impacts would also possibly interfere with the WCF’s effectiveness.

24. Consistent with TCC 20.33.080(7)(a), the tower would have a non-glare, gray finish, and the cables would be placed within the interior of the tower. *Exhibit 1.D.*
25. There is an existing parking area in front of the fire station that would meet the parking space and turnaround area requirements of TCC 20.33.080(9). *Exhibit 1.D.*
26. The Fire Station is served by a Group B water supply and an on-site septic system. Based on a certified septic site plan, the tower base would be outside of the 100-foot protective radii of existing on-site and off-site wells, 10 feet from the existing septic drainfield lateral, and 2.5 feet from the existing effluent line from the septic tank. Vertical boring would be used for tower construction to avoid over excavation toward the septic drainfield. *Exhibit 1.U; Dawn Peebles Testimony.* The Thurston County Environmental Health Division reviewed the proposal for compliance with the requirements of the Thurston County Sanitary Code and recommended approval, subject to conditions that all construction activities meet the septic system setbacks required by the Sanitary Code, that all components of the septic system remain accessible for routine maintenance and inspection, and that caution be taken to prevent vehicle or equipment travel over the septic system components. *Exhibit 1.JJ.*
27. The Applicant has submitted a temporary erosion control plan for the project. *Exhibit 1.X.*
28. Thurston County Public Works reviewed the proposal for compliance with the requirements of Thurston County Road Standards and the Drainage Design and Erosion Control Manual and did not identify any issues of concern. Public Works recommended approval of the application without conditions. *Exhibit 1.KK.*
29. The proposal is not subject to National Environmental Policy Act (NEPA) review because it is a state-funded project, with no assistance from federal agencies. *Exhibit 1.QQ.*
30. The Thurston County Community Planning and Economic Development Department acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) under the Optional DNS process of Washington Administrative Code (WAC) 197-11-355 on March 23, 2022. The mitigation measures imposed by the MDNS require implementation of an inadvertent discovery plan for protection of archaeological resources, limit construction hours, prohibit guy wires or lights that would obstruct aviation, prohibit night lights except when technicians are present, and require placement of hazing structures to prevent birds from nesting on the WCF. The MDNS was not appealed and became final on April 19, 2022. *Exhibits 1 and 1.I.*
31. The Washington Department of Ecology (DOE) commented on the application, identifying solid waste management, toxics cleanup, and water quality requirements potentially applicable to the project. Planning Staff incorporated DOE's comments into the recommended conditions of SUP approval. *Exhibits 1 and 1.Y.*

32. Notice of the open record hearing was mailed to the owners of properties within 500 feet of the site on August 28, 2023 and published in *The Olympian* on September 1, 2023. There was no public comment on the application. *Exhibits 1 and 1.A*. There was no public comment submitted on the proposal prior to or through the public hearing process. *Exhibit 1*.
33. Having heard all testimony, Planning Staff maintained their recommendation that the conditions recommended in the staff report be imposed if permit approvals were granted. *Exhibit 1; Sharon Lumbantobing Testimony*. The Applicant waived objection to the recommended conditions. *Michael Daversa Testimony*.

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide requests for special use permits for wireless communications facilities pursuant to Thurston County Code 2.06.010, 20.54.015(2), and 20.33.040(1). The Hearing Examiner has jurisdiction to hear and decide variance requests pursuant to Thurston County Code 20.52.010.

Criteria for Review:

Special Use Permit

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54.040 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.

2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Variance

Pursuant to TCC 20.52.020, before any variance can be granted, the Hearing Examiner shall make findings of fact setting forth and showing that the following circumstances exist:

1. That the granting of the proposed variance will not result in the allowance of a use which is not classified as a permitted or special use in the district wherein the use would be located;
2. That special conditions and circumstances exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;
3. That the special conditions and circumstances are not the result of the actions of the applicant;
4. That granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;
5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated;
6. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land;
7. That the granting of the variance will be in harmony with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Conclusions Based on Findings:

Special Use Permit

1. As conditioned, and with approval of the requested variances, the proposed use at the proposed location would comply with applicable laws and plans, including the Wireless Communication Facilities chapter of the TCC, the critical areas ordinance, the Drainage Design and Erosion Control Manual, the Thurston County Sanitary Code, the State Environmental Policy Act, and applicable Federal Communications Commission requirements. The conditions of this decision incorporate the conditions of the MDNS and those recommended by Environmental Health Staff and the Washington Department of Ecology. The conditions of this decision also prohibit lighting of the facility unless

mandated by the FAA. *Findings 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, and 31.*

2. As conditioned, and assuming the ultimate approval of the setback variance, the use would comply with the general purposes and intent of the RRR 1/5 zone and with applicable open space, lot, setback, and bulk standards. Consistent with the purpose of the RRR 1/5 zone, the emergency communications provided by the facility would support surrounding rural residential land uses, and the facility would avoid impacts to critical areas and wildlife. The use is not subject to the height limitation of the zoning ordinance. The Applicant's request for a setback variance is approved as detailed below. *Findings 7, 8, 9, 12, and 13.*
3. As conditioned, the proposed use is appropriate in the location for which it is proposed.
 - a. As conditioned, the use would not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. The subject property already contains a communications tower, which would be removed and replaced by the proposed taller tower. The impacts of reduced setbacks and lack of sufficient screening vegetation relative to code-based performance standards would be mitigated through the planting of trees and the use of a monopole structure designed to collapse into itself. Once established, the use would be passive in nature, with only occasional maintenance visits. Parking is available on-site for the occasional technicians. A sound barrier would be installed around the emergency generator, and the record shows that noise from the facility would comply with County standards. The site would be secured with a fence and locked gate, and the monopole would be equipped with an anti-climbing device. RF emissions would not exceed FCC standards at ground level. The conditions of this decision expressly do the following: prohibit tower lighting unless required by the FAA; incorporate the requirements identified by the Environmental Health Division and the Department of Ecology; and incorporate the conditions of the MDNS. To the extent that the visual effect of the tower might be deemed substantial, the Hearing Examiner finds that the facility would have an overriding public benefit justifying approval of the permit. *Findings 2, 3, 4, 5, 6, 11, 13, 16, 17, 18, 19, 20, 21, 22, 24, 25, 30, 31, and 32.*
 - b. With the conditions identified by the Environmental Health Division, the use would be adequately served by and would not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area. *Findings 4, 5, 26, and 32.*

Setback Variance

4. Granting the setback variance would not result in a disallowed use. WCFs are allowed in the RRR 1/5 zone subject to the siting criteria of TCC 20.33.080(2)(a). In this case the criteria are satisfied. *Finding 7.*

5. Special conditions and circumstances exist in that a 100-foot tower height is needed to provide needed radio frequency coverage in the area, but the property dimensions are not sufficient to allow for a 110-foot setback from the property lines. Aside from the fact that the size of the site prevents compliance with WCF-specific setback standards, the proposed location is otherwise uniquely suited for placement of a WCF to be used as part of the emergency communication network, a public service that is needed in the vicinity of the subject property. *Findings 4, 5, 10, and 13.*
6. The special conditions and circumstances are not the result of the actions of the Applicant. The WCF location on the site is constrained by the size of the subject property, the location of the existing fire station building, the location of existing septic system components, and the need to comply with code requirements to maximize use of existing screening. *Findings 2, 22, and 26.*
7. Granting the setback variance would not confer a special privilege to the property due to the public benefit provided, including the cost savings resulting from the Applicant not having to acquire a site. *Findings 4 and 5.*
8. As conditioned, granting the setback variance would not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated. The Applicant proposes a self-collapsing monopole structure that would fall into itself instead of onto adjacent property. Noise from the facility would meet applicable standards with the setbacks proposed. Screening vegetation would be planted around the base of the facility. *Findings 13, 17, and 22.*
9. The reasons set forth in the application justify granting the setback variance, and the variance would be the minimum needed to make possible the reasonable use of the land. The WCF location on the site is constrained by the location of the existing fire station building, the location of existing septic system components, and the need to comply with code requirements to maximize use of existing screening. Due to the 80-foot width (north-south dimension) of the subject property, it would not be possible to provide code-compliant setbacks from either of those property lines. *Findings 2, 13, 22, and 26.*
10. As conditioned, granting the setback variance would be in harmony with the general purpose and intent of TCC Title 20 and would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The purpose of Title 20 is to “maintain, enhance, and perpetuate environmental quality and to promote the public health, safety, and general welfare by guiding development according to the goals, objectives and policies set forth in the Thurston County Comprehensive Plan and in adopted subarea plans. It is further intended to provide regulations and standards which will ... facilitate adequate provisions for ... utilities, ... and other necessary public needs.” *TCC 20.02.010.* The requested setback variance would allow operation of a necessary public service in the Johnson Point area. *Findings 4 and 32.*

Co-Location Variance

11. With respect to the request for a variance from the co-location requirement of TCC 20.33.070, the criteria for *not* co-locating are easily satisfied in this case, suggesting that a variance is not needed. However, to the extent any reviewing body disagrees, and in response to the application submitted, the Hearing Examiner concludes that the criteria for a variance are satisfied as follows: (1) granting the variance would not result in a disallowed use; (2) special circumstances exist in that the existing tower is too short for the proposed antennas and the nearest off-site tower is 6.27 miles away, and that these circumstances prevent the Applicant from providing locally needed emergency communications; (3) the Applicant did not create the special circumstances; (4) granting the variance would not be a grant of special privilege due to the unique public benefit provided; (5) through compliance with the other requirements of TCC 20.33, including installing security features and planting trees around the perimeter of the facility, compliance with the conditions of the MDNS, and construction of a sound barrier between the generator and adjacent residential uses, granting the variance would not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity; (6) the reasons in the application justify the variance, in that they suggest compliance with the exceptions described in the code, and the variance would be the minimum needed given the lack of facilities available for co-location; and (7) granting the variance would be consistent with the intent of Title 20 and, as described previously, would not be injurious to the neighborhood or detrimental to the public welfare. The use would meet an important public safety need. *Findings 4, 7, 10, 16, 17, 22, 30, and 32.*

Screening Variance

12. With respect to the variance from the screening requirements of TCC 20.33.080, these requirements are arguably met, to the extent they are applicable. For example, subsection (2)(b)(v) prohibits WCFs in open areas without trees screening at least one half the height of the structure “unless the applicant demonstrates that a less visually impacting site is not available to provide service.” In this case, the Applicant submitted that there are no sites that would offer the required screening while meeting service objectives. With respect to TCC 20.33.080(2)(b)(vi), compliance has been demonstrated because the tower would be sited behind the existing fire station building. However, in response to the application submitted, the Hearing Examiner concludes that the criteria for a variance are satisfied as follows: (1) granting the variance would not result in a disallowed use; (2) special circumstances exist in that the subject property is uniquely positioned to fill the radio coverage gap in the vicinity, and as a fire station is an appropriate site for an emergency communications tower, yet there is limited existing vegetation in the immediate vicinity; (3) the Applicant did not create the special circumstances; (4) granting the variance would not be a grant of special privilege due to the unique public benefit provided; (5) through installation of the 20-foot buffer required by TCC 20.33.080(7)(d)(ii), use of nonreflective materials, and compliance with the County’s noise standards, granting the variance would not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity; (6) the reasons in the application justify granting the variance, in that they suggest compliance with the exceptions described in the code, and the variance is the minimum needed, and (7) granting the variance would be consistent with the intent of Title 20 and, as described previously, would not be injurious to the neighborhood or detrimental to the public

welfare. The use provides an important public safety benefit. *Findings 4, 5, 7, 17, 21, 22, 24, and 32.*

DECISIONS

Based on the preceding findings and conclusions, the requested special use permit and setback, co-location, and screening variances to install a 100-foot tall monopole wireless communication facility and associated equipment at 8100 Johnson Point Road NE are **GRANTED** subject to the following conditions:

A. Community Planning and Economic Development Conditions:

1. The approved setback between the WCF and the northern property boundary is 31 feet, seven inches. The approved setback between the WCF and the eastern property boundary is 37 feet, four inches. The approved setback between the WCF and the southern property boundary is 48 feet, five inches. Although these distances are correctly depicted on the Boundary Plan Sheet No. A-1.0, the labels shall be revised to clarify that the distances are setbacks and not “variance requests” (such as by removing the language “variance req.” from each label).
2. The tower shall be no higher than 100 feet above grade.
3. There shall be no rotary converters, generating machinery, or other equipment that would cause substantial (above regulated standards at the property lines) odors, smoke, noise, electrical interference, or similar disturbances.
4. A six-foot high chain link fence with non-reflective green color privacy slats and three strands of barbed wire at the top shall be installed around the perimeter of the site for public safety and screening requirements. The fence shall have a locking gate.
5. The tower shall be designed, or fitted with appropriate anti-climbing devices, to prevent unauthorized climbing of the tower.
6. The tower shall not be lit unless required by the FAA.
7. A sign shall be posted on the access gate with the name Thurston 911 Emergency Communications and an emergency contact phone number on it. All maintenance lights shall only be used when a technician is on-site and shall automatically turn off within one hour of the technician leaving the site (Exhibit 1.D).
8. Ground mounted equipment shall not exceed 10 feet in height.
9. The WCF shall remain in compliance with the Thurston County Wireless Communication Facilities and Antenna Support Structure Chapter (TCC 20.33).
10. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department

of Ecology must be notified. (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300.)

11. The Applicant shall notify Thurston County Community Planning and Economic Development of any changes in ownership and any significant changes in technology or operation affecting the facility within 60 days of the change. The current owner of the tower must provide all documents containing conditions of approval to each new owner or lessee.
12. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that initially approved by the Hearing Examiner will require approval of a new or amended special use permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

B. Conditions from the MDNS:

1. Inadvertent Discovery. In the event that ground disturbing activities encounter or uncover archaeological deposits, features of burial or interment, or other cultural material, all work on the site shall stop immediately. The crew, contractor, project proponent, landowner, and/or any persons acting on their behalf shall contact the relevant Tribal Nation(s), the Department of Archaeology & Historic Preservation, the Thurston County Planning Manager, and, if human remains are found, the county medical examiner/coroner. The area shall be secured and protected, and no material shall be moved or further disturbed. Work shall not resume on the site until a determination is reached regarding the discovery and the project proponents are notified by Thurston County officials.
2. Construction activity shall be limited to the hours of 7: 00 am to 7: 00 pm.
3. The proposed monopole shall not include any guy wires or any aviation obstruction lights.
4. Night lights for the equipment area shall be controlled by a timer, so that there will be no lighting except when technicians are present.
5. The Applicant shall place hazing structures on the WCF to prevent birds from nesting on the WCF.

C. Public Health and Social Services Department Conditions:

1. All proposed construction activities on site must meet all required septic system setbacks as outlined in Article IV of the Thurston County Sanitary Code.
2. All components of the on-site septic system must remain accessible for routine maintenance and inspection.

3. Caution should be taken to prevent any vehicle or equipment travel over the existing septic system components. There should be no staging of materials and no parking of vehicles or equipment over any portion of the septic system.

D. Washington State Department of Ecology Conditions:

1. *Solid Waste Management:* Derek Rockett (360) 407-6287
All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department for proper management of these materials.
2. *Toxics Cleanup:* Thomas Middleton (360) 407-7263
If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.
3. *Water Quality/Watershed Resources Unit:* Greg Benge (360) 690-4787
Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitats and are considered to be pollutants. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.

E. Construction Stormwater General Permit: The following construction activities require coverage under the Construction Stormwater General Permit:

1. Clearing, grading and/or excavation that results in the disturbance of one or more acres and discharges stormwater to surface waters of the State; and
2. Clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more and discharge stormwater to surface waters of the State.
 - a) This includes forest practices (including, but not limited to, class IV conversions) that are part of a construction activity that will result in the disturbance of one or more acres, and discharge to surface waters of the State; and

3. Any size construction activity discharging stormwater to waters of the State that Ecology:
- a) Determines to be a significant contributor of pollutants to waters of the State of Washington.
 - b) Reasonably expects to cause a violation of any water quality standard.

If there are known soil/ground water contaminants present on-site, additional information including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a site map depicting the sample location(s); and additional studies/reports regarding contaminant(s) will be required to be submitted. For additional information on contaminated construction sites, please contact Carol Serdar at Carol.Serdar@ecy.wa.gov, or by phone at (360) 742- 9751.

Additionally, sites that discharge to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to meet additional sampling and record keeping requirements. See condition S8 of the Construction Stormwater General Permit for a description of these requirements. To see if your site discharges to a TMDL or 303(d)-listed waterbody, use Ecology's Water Quality Atlas at: <https://hfortress.wa.gov/ecy/waterqualityatlas/StartPage.aWx>. The Applicant may apply online or obtain an application from Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/-Application>. Construction site operators must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice.

DECIDED September 29, 2023.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable**. If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20____, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.