

EXHIBIT A

Amend WCC 20.13, Wireless Communication Facilities, as shown below.

Chapter 20.13

~~PERSONAL WIRELESS SERVICE~~ COMMUNICATION FACILITIES

Sections:

Rationale: Modify the chapter title for consistency with the terminology used in 47 US Code 332(c)(7) and the Code of Federal Regulations (47 CFR 1.6002(i)).

20.13.010 Purpose.

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20.13.110 Special exceptions for small and macro wireless facilities.

20.13.120 Conditions associated with siting approval. ~~Application requirements and conditions of issuance.~~

20.13.130 General criteria for issuance of permits for small and macro wireless facilities.

20.13.140 Federal requirements.

20.13.150 Removal of antennas and support structures.

20.13.160 Third party review.

20.13.170 Project permit procedures. ~~Appeals.~~

20.13.010 Purpose.

The purpose of this chapter is to establish regulations for the placement, development, permitting, and removal of personal wireless ~~service communication~~ facilities including support structures and antennas. These standards were developed to comply with the federal laws and regulations relating to personal wireless service facilities (47 US Code Sections 253, 332, and 1455 and 47 CFR Sections 1.6001 through 1.6100)Federal Telecommunications Act of 1996. They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the county.

Rationale: The above amendments provide specific references to the applicable federal laws (US Code) and Code of Federal Regulations (CFR), rather than a reference to a single federal law adopted in 1996.

The term “personal wireless communication facilities” has been changed to “personal wireless service facilities” to match the term defined by the FCC in 47 CFR 1.6002(i).

The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to discriminate between providers of functionally equivalent personal wireless services.

Whatcom County recognizes its requirement to provide for communication services and a commitment to the health of its citizens.

Rationale: Planning Commission – Recognizes both federal rules relating to wireless, including rules that currently preempt local government regulation of radio frequency emissions, and health concerns expressed by citizens of the County relating to such emissions.

~~In reviewing an application to provide personal wireless service or to install personal wireless service facilities, the county shall act within a reasonable period of time, taking into account the nature and scope of the application and the required notice and necessary review process. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record.~~ (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).

Rationale: Permit review time frames for wireless communication facilities are proposed in WCC 22.05.130. The language relating to denials has been moved to proposed WCC 20.13.170.

20.13.020 Definitions - General.

As used in this chapter, the following terms shall have the following meanings. Additional definitions that only apply to eligible facilities requests are set forth in WCC 20.13.025. Other words and terms shall have meanings assigned to them by ~~Chapter WCC 20.97-WCC~~ or, if not defined in this chapter or ~~Chapter WCC 20.97-WCC~~, the meaning customarily assigned to them.

- (1) “Administrator” means the director of planning and development services or his designee.
- (2) “Amateur radio” or “ham radio” means radio facilities operated for noncommercial purposes by individuals licensed by the FCC with an interest in construction and operation of radio equipment, usually as a hobby or vocation.
- (3) “Ancillary equipment facility ~~(AEF)~~” means ancillary equipment and/or an unstaffed structure used to contain ancillary equipment for a personal wireless service facility ~~WCF~~. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment ~~may include~~ means equipment necessary for the functioning of personal wireless service facilities, which may include but is not limited to air conditioners and backup power supplies (including emergency generators).
- (4) “Antenna” means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location pursuant to Federal Communication Commission (FCC) authorization, for the provision of personal wireless service and any commingled information services. means any pole, panel, reflection disc, or similar device used for the transmission or reception of radio frequency signals, including but not limited to directional antennas, omni-directional antennas, and parabolic antennas.

Rationale: The definition of “antenna” has been modified for consistency with 47 CFR 1.6002(b).

- (5) “Antenna array” means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals. An antenna array can be made up of one or more antennas including but not limited to the following:

- (a) Directional antenna (also known as a panel antenna) which transmits signals in a directional pattern of less than 360 degrees.
- (b) Omni-directional antenna (also known as a whip antenna) which transmits signals in a 360-degree pattern.
- (c) Parabolic antenna (also known as a dish antenna) which is a bowl-shaped device that receives and transmits signals in a specific directional pattern (e.g., point-to-point).

- (6) “Antenna equipment” means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

Rationale: The definition of “antenna equipment” has been inserted for consistency with 47 CFR 1.6002(c).

- (7) “Antenna facility” means an antenna and associated antenna equipment.

Rationale: The definition of “antenna facility” has been inserted for consistency with 47 CFR 1.6002(d).

~~(86)~~ “Attached wireless communication support structure” is a support structure not specifically designed and constructed to support an antenna array. Such structures may include but are not limited to buildings or structures, utility poles, signs, and water towers, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure.

~~(97)~~ “Attached wireless communication facility” is a personal wireless ~~service~~communication facility that utilizes an attached wireless communication support structure ~~as defined in subsection (6) of this section~~. It means the site, the leased area, attached wireless communication support structures, antennas, antenna array(s), ~~accessory-ancillary~~ equipment ~~facilities~~structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communication, together with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure, transmission cables, and an ancillary equipment facility which may be located either inside or outside of the attachment structure.

~~(108)~~ “Citizens band radio” means two-way radio facilities operated for short-range personal and business communications, without necessity of a federal license, ~~pursuant to 47 Congressional Federal Register Part 95~~.

~~(9)~~ “Clustering” means the placement of more than one wireless communication support structure on a single site either by one provider or by several different providers.

Rationale: The term “clustering” is not used in the proposed amendments to WCC 20.13.

(11) “Collocation” means:

(a) Mounting or installing an antenna facility on a pre-existing structure; and/or

(b) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

The definition of “collocation” in WCC 20.13.025 applies to eligible facilities requests.

~~(10) “Collocate” means the installation of wireless services equipment on a freestanding or attached wireless communication facility that may be shared by one or more wireless service providers to transmit and/or receive radio frequency signals for communication purposes. For the purposes of this chapter, the terms “collocate”, “collocation” or “co-locate” may be used interchangeably to describe action taken by a principal facility owner, an authorized agent, or a valid lessee to add wireless services equipment to an existing facility. Note: The spelling of these terms may vary based on local vernacular used by wireless service industry professionals, and in accordance with state and federal law.~~

Rationale: The definition of “collocation” has been modified for consistency with 47 CFR 1.6002(g).

(12) “Deployment” means placement, construction, or modification of a personal wireless service facility.

Rationale: The definition of “deployment” has been inserted for consistency with 47 CFR 1.6002(h).

~~(1311)~~ “Direct-to-home satellite service” means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

~~(1412)~~ “FAA” means the Federal Aviation Administration.

~~(1513)~~ “FCC” means the Federal Communications Commission.

~~(1614)~~ “Freestanding wireless communication facilities” means the site, the lease area, freestanding wireless communication support tower(s), antennas, antenna array(s), ~~accessory-ancillary~~ equipment ~~facilities~~ structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless ~~communication~~ services. Freestanding wireless communication facilities include but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

~~(1715)~~ “Freestanding wireless communication support structure” is a freestanding structure, designed and constructed to specifically support an antenna array, and may include but is not limited to any of the structures listed below:

(a) “Lattice tower” means a wireless communication support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.

(b) “Monopole tower” means a wireless communication support structure consisting of a single pole to support antennas and connecting appurtenances.

(c) “Guyed tower” means any variety of wireless communication support structures using wire guys connecting above grade portions of a communication support structure diagonally with the ground or the structure on which the tower is placed. The purpose of the wire guys is to provide support for wireless communication towers, antennas, and connecting appurtenances.

(18) “Macro wireless facilities” means any personal wireless service facilities that:

(a) Do not qualify as an exemption pursuant to WCC 20.13.030;

(b) Are not eligible facilities requests;

(c) Are not permitted replacement of components; and

(d) Are not small wireless facilities.

Rationale: The subject amendments relate to wireless eligible facilities requests, small wireless facilities, and macro wireless facilities. Eligible facilities requests and small wireless facilities are classifications of wireless facilities that are set apart in the Code of Federal Regulations from other (larger) wireless facilities. The FCC Declaratory Ruling and Third Report and Order in the matter of *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (adopted September 26, 2018) indicates “. . . While the existing wireless infrastructure in the U.S. was erected primarily using macro cells with relatively large antennas and towers, wireless networks increasingly have required the deployment of small cell systems to support increased usage and capacity. . .” (page 9). The proposal adopts the “macro” facility language to signify larger wireless installations.

(19) “Personal wireless service facility” means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services. Personal wireless service facilities include, but are not limited to, antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic and switching equipment. ~~(16) “Personal wireless communication services” means wireless communication services.~~

Rationale: The first sentence is the definition of “personal wireless service facility” from 47 CFR 1.6002(i). The second sentence is elaboration from the definition of “wireless communication facilities” below, which is proposed to be deleted.

~~(2017)~~ “Satellite earth station” means the facilities used for reception and processing of programming services from a satellite prior to transfer to terrestrial distribution systems or for processing of programming and services from a terrestrial source before transmission via satellite.

~~(2118)~~ Site. For the purpose of this chapter, “sSite” means a leased area which may contain a base station, building(s) or structure in compliance with provisions of Whatcom County subdivision regulations, site easement area or lot of record upon which a wireless communications facility is or will be located. The definition of “site” in WCC 20.13.025 applies to eligible facilities requests.

(22) “Small wireless facilities” are facilities that meet each of the following conditions:

(a) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR 1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(b) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR 1.1320(d)), is no more than three cubic feet in volume;

(c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(d) The facilities do not require antenna structure registration under 47 CFR part 17 (Construction, Marking, and Lighting of Antenna Structures);

(e) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(f) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

Rationale: The definition of “small wireless facility” has been inserted for consistency with 47 CFR 1.6002(l).

(23) “Structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

Rationale: The definition of “structure” has been inserted for consistency with 47 CFR 1.6002(m).

(2419) “Unlicensed wireless services” means commercial mobile services that operate on public frequencies and do not need a FCC license.

~~(20) “Wireless communication facilities” means facilities for the provision of wireless service. Wireless communication facilities include, but are not limited to, antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic and switching equipment.~~

(2521) “Wireless communication service” means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

~~(22) “Substantially change the physical dimensions” means:~~

~~(a) The installation or mounting of wireless services equipment on an existing support structure that would increase the overall height of the structure by more than 10 percent, or 20 feet, whichever is greater; provided, that any such increase in height must conform to the provisions of this chapter; or~~

~~(b) The installation or mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than 20 feet or more than the width of the structure at the level of the appurtenance, whichever is greater; provided, that in making determinations as to whether or not project proposals constitute a substantial change as described in this subsection, and in order to limit incremental and cumulative effects concerning the overall size of such facilities, measurements shall be taken to establish a base line for determining whether or not proposed changes constitute a substantial change; such measurements shall be taken from the dimensions of the existing facility as it was approved and constructed under the original building permit issued by Whatcom County. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).~~

Rationale: A definition of “substantially change” has been inserted in the definitions relating to eligible facility requests below, consistent with 47 CFR 1.6100(b)(7).

20.13.025 Definitions - Eligible facilities requests.

The following definitions shall only apply to eligible facilities requests:

(1) “Base station” means a structure or equipment at a fixed location that enables FCC licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this section or any equipment associated with a tower.

(a) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(b) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(c) The term includes any structure other than a tower that, at the time the relevant application is filed with the County for an eligible facilities request, supports or houses equipment described in subsections (a) and (b) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(d) The term does not include any structure that, at the time the relevant application is filed with the County for an eligible facilities request, does not support or house equipment described in subsections (a) and (b) above.

(2) “Collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) “Eligible facilities request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(a) Collocation of new transmission equipment;

(b) Removal of transmission equipment; or

(c) Replacement of transmission equipment.

(4) “Eligible support structure” means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the County for an eligible facilities request.

(5) “Existing” means a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) “Site” means, for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act (Middle Class Tax Relief and Job Creation Act of 2012, which was signed into law on February 22, 2012) or otherwise outside of the eligible facilities request review process.

(7) “Substantially change the physical dimensions” means a modification of an eligible support structure that meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(i) Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (Middle Class Tax Relief and Job Creation Act of 2012) on February 22, 2012.

(ii) The phrase “with separation from the nearest existing antenna not to exceed twenty feet” allows an increase in the height of the tower of up to twenty feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower.

(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure. The term “equipment cabinets” does not include relatively small electronic components, such as remote radio units, radio transceivers, amplifiers, or other devices mounted on the structure, and up to four such cabinets may be added to an existing facility for each separate eligible facilities request;

(d) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(e) It would defeat the concealment elements of the eligible support structure. The term “concealment element” means an element that is part of a stealth-designed facility intended to make a structure look like something other than a wireless facility, and that was part of a prior approval. Examples of concealment elements include painting to match the supporting façade and making the structure look like a tree or flag pole. To “defeat” a concealment element, a proposed modification must cause a reasonable person to view a structure’s intended stealth design as no longer effective; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections (a) through (d) above. The phrase “conditions associated with the siting approval” may include aesthetic conditions to minimize the visual impact of a wireless facility as long as the condition does not prevent modifications explicitly allowed under subsections (a) through (d) above (height, width, equipment cabinets, and excavations or deployments outside the current site) and so long as there is express evidence that at the time of approval the locality required the feature and conditioned approval upon its continuing existence. Examples of aesthetic conditions include requiring a specific placement, requiring a shroud, requiring walls or fences, setbacks, location behind a tree-line, **and landscaping.**

(8) “Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as

well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(9) “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Rationale: The above definitions are primarily from 47 CFR 1.6100. Minor changes have been made, such as changing “Commission” to “FCC” and referencing subsections of this proposed code instead of subsections of the CFR. The FCC’s *Declaratory Ruling and Notice of Proposed Rulemaking* (June 2020, pages 7, 8, 18, 20, 23, and 24) elaborated on the definition of “Substantial change” by clarifying the meaning of:

- The phrase “with separation from the nearest existing antenna not to exceed twenty feet”;
- Equipment cabinets;
- Concealment element;
- To defeat a concealment element; and
- Conditions associated with siting approval.

These FCC clarifications have been incorporated into the definition of “Substantially change” above (language and concepts from the FCC’s 2020 Declaratory Ruling have been inserted in italics). Staff has added an example of a “condition associated with siting approval” shown in bold.

20.13.030 Applicability – Exemptions.

The requirements of this chapter shall apply to all new personal wireless ~~service~~communication facilities and the expansion and/or alteration of any existing personal wireless ~~service~~communication facilities, except that, ~~the~~ the following are exempt from the provisions of this chapter:

- (1) Satellite earth stations using antenna(s) not more than two meters in diameter in commercial and industrial districts and direct-to-home satellite services.
- (2) Send and receive citizen band radio antennas or antennas operated by federally licensed amateur (“ham”) radio operators.
- (3) Industrial, scientific and medical equipment using frequencies regulated by the FCC.
- (4) Electronic communications structures and telecommunication towers including associated maintenance and operations structures that do not qualify as “personal wireless service facilities” and, therefore, are regulated under WCC 20.82. ~~Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC under 47 Congressional Federal Register Parts 97 and 95 respectively.~~

Rationale: The above language was inserted for consistency with the language of WCC 20.82.030(5). It would also point the reader to WCC 20.82 for rules relating to facilities that do not fit within the definition of “personal wireless service facilities.”

(5) Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes, which are regulated under WCC 20.82.

Rationale: The above facilities are permitted uses pursuant to WCC 20.82.021.
 Inserting the reference will point the reader to that section of the code.

(6) Normal, routine and emergency maintenance and repair of existing personal wireless service communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the county, state, and federal law and regulations; provided, that compliance with design and development standards of this chapter is maintained.

(7) Personal wireless service facilities in the County right-of-way, provided that the applicant obtains other necessary County authorizations (e.g. revocable encroachment permit and/or franchise agreement).

(8) Personal wireless service facilities in the State right-of-way, provided that the applicant obtains necessary state authorizations.

(Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).

20.13.040 Permitted uses.

.041 Eligible facilities requests.

.042 Collocation of small wireless facilities using existing structures.

Rationale: Regarding eligible facility requests, 47 CFR 1.6100(c) indicates: “A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure. . . Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section. . .”

Regarding small wireless facilities, 47 CFR 1.6003(c) states: “The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments . . . (i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days. . .”

The FCC’s Declaratory Ruling and Third Report and Order (September 26, 2018) states:

. . . Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment. . . we find that “any request for authorization to place, construct, or modify personal wireless service facilities” under [CB](ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. . . (pages 68-69, paragraph 132).

Furthermore, 47 CFR 1.6002(f) states “*Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.” It would be very difficult, if not impossible, to process an administrative approval use permit or conditional use permit, along with other required permits, within the 60 day time-frame allowed by the federal rules. Therefore, the proposal is to allow eligible facilities requests and small wireless facilities using existing structures as permitted uses.

~~The following uses shall be considered permitted uses and shall comply with federal, state, and local laws and regulations and the provisions of this chapter (including but not limited to WCC 20.13.120); the following uses shall also be subject to environmental review under the State Environmental Policy Act (SEPA), unless categorically exempt:~~

~~.043 (1) Replacement construction. In all districts: Replacement of any component of an existing freestanding or attached personal wireless service communication facility; and/or replacement of any component of an existing ancillary equipment facility on existing, approved and conforming sites that does not increase the physical dimensions of the components being replaced.~~

~~; provided, that such replacement does not increase the total number of components lawfully existing on the site at the time of application for such replacement construction; and further provided, that such replacement construction does not “substantially change the physical dimensions” of the individual components being replaced as defined in WCC 20.13.020(22).~~

~~Determinations made as to whether or not replacement proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:~~

~~(a) The applicant or applicant’s agent must submit documentation to the administrator that demonstrates that replacement construction proposals do not substantially change the physical dimensions of such facilities as defined in WCC 20.13.020(22). Examples of such documentation may include specification sheets and/or area calculations for both the existing and proposed replacement equipment. Such documentation must be submitted at the time of preapplication interview for the required commercial building permit(s).~~

~~(b) The applicant or applicant’s agent must also submit documentation to the administrator demonstrating that replacement construction meets Federal Communications Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s).~~

~~(2) New antenna or new antenna array construction. In all districts: New antennas or new antenna arrays may be constructed on or added to existing, attached or freestanding wireless communication facilities on existing, approved and conforming sites; provided, that such new antennas or antenna arrays do not “substantially change the physical dimensions” of such facilities, as defined in WCC 20.13.020(22).~~

~~Determinations made as to whether or not new construction proposals substantially change the physical dimensions of existing facilities shall be made by the administrator, as follows:~~

~~(a) The applicant or applicant’s agent must submit documentation to the administrator that demonstrates that the proposed new antenna or new antenna array construction does not substantially change the physical dimensions of such facilities. Examples of such documentation may include specification sheets and/or area calculations for both the existing and the proposed new equipment.~~

~~Such documentation must be submitted at the time of pre-application interview for the required commercial building permit(s).~~

~~(b) The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communications Commission (FCC) Emission Standards (as applicable). Such documentation must be submitted at time of application for the required commercial building permit(s). (Ord. 2017-030 § 1 (Exh. N), 2017; Ord. 2014-042 § 1 (Att. A), 2014).~~

20.13.050 Administrative approval uses.

.051 Small wireless facilities on a new structure.

.052 Collocation of macro wireless facilities using an existing structure.

.053 New ancillary equipment facilities that:

(1) Do not qualify as eligible facilities requests;

(2) Do not qualify as small wireless facilities; and

(3) Are not part of a macro wireless facility using a new structure.

Rationale: Regarding small wireless facilities and macro wireless facilities, 47 CFR Section 1.6003(c) states that the following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments . . .

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days. . .

A facility "other than a Small Wireless Facility" is called a "macro wireless facility" in the proposed regulations.

The FCC's Declaratory Ruling and Third Report and Order (September 26, 2018) states:

. . . Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment. . . we find that "any request for authorization to place, construct, or modify personal wireless service facilities" under [47 US Code] Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. . . (pages 68 and 69, paragraph 132).

Furthermore, 47 CFR 1.6002(f) states "*Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit."

It would be very difficult to process a conditional use permit, along with other required permits, within the 90 day time-frame allowed by the federal rules. Therefore, the proposal is to allow small wireless facilities on new structures and macro wireless facilities using existing structures as administrative approval uses. These structures would have more impact than the proposed uses allowed in the permitted use section, so it is reasonable to provide notice and seek comments from neighboring property owners and the public.

The following uses are considered administrative approval uses and shall require a wireless communication facility (WCF) permit in accordance with Chapters 22.05 and 20.84 WCC, and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance unless categorically exempt; provided, that WCF permit proposals located in nonresidential related districts shall be exempt from the public noticing requirements found in Chapter 22.05 WCC, Project Permit Procedures.

Uses described in this section must comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The administrator may refer an application for a WCF permit to a technical review committee for its review prior to making a decision on the application.

(1) ~~Wireless Communication Facility (WCF) Permit. New freestanding wireless communication support structures, new antennas or antenna arrays on existing freestanding or attached wireless communication structures on existing approved and conforming sites, and new attached wireless communication facilities that substantially change the physical dimensions of a facility as defined in WCC 20.13.020(22) may be approved by the administrator through issuance of a WCF permit, subject to a required commercial building permit. Prior to application approval, the applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antenna(s) meet Federal Communication Commission (FCC) emission standards (as applicable).~~

~~(a) New Freestanding Wireless Communication Support Structures.~~

~~(i) New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Rural, Residential Rural, and Rural Residential Island.~~

~~(ii) New freestanding wireless communication support structures (monopoles only) may be collocated or clustered on existing, approved and conforming wireless communication facility sites in the following residential related districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided, that the site does not also contain residential uses.~~

~~(iii) Monopoles that are permitted as a WCF may exceed the height limits of the underlying residential related zone by 15 feet; provided, the applicant demonstrates that the structure's height is the minimum necessary to adequately function, or if collocation is specifically provided for on the tower. The additional 15 feet for collocation may be added to the 15 feet necessary for adequate function for a total of 30 feet in the event both situations pertain.~~

~~(iv) In all nonresidential districts: New freestanding wireless communication support structures (lattice towers or monopole towers) may be collocated or clustered on approved and conforming sites; provided, that the height of such structures shall be subject to requirements of WCC 20.13.092(9)(b); and provided further, that the height does not exceed 150 feet. Additional height may be approved only by special exception as provided in WCC 20.13.110.~~

~~(b) New Attached Wireless Communication Facilities. New attached wireless communication facilities may be approved by the administrator through issuance of a WCF permit, and subject to a required commercial building permit(s), as provided below:~~

~~(i) In all residential districts: new attached wireless communication facilities or new antennas attached to existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110.~~

~~(ii) In all nonresidential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites; provided, that the site is not used exclusively for residential purposes.~~

~~(iii) In all residential related districts: Ground mounted dish antennas may be located on existing approved, conforming sites; provided, that the site is not used exclusively for residential purposes and the antenna is not more than 15 feet above ground level nor more than 12 feet in diameter.~~

~~(c) New antennas or antenna arrays on existing freestanding wireless communication facilities or existing attached wireless communication facilities on existing, approved and conforming sites may be approved by the administrator through issuance of a WCF permit, and subject to required commercial building permit(s):~~

~~(i) In all nonresidential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on existing approved and conforming sites; provided, that the height of such new antennas or antenna arrays shall not extend more than 15 feet above the attachment device.~~

~~(ii) In all residential districts: New antennas or antenna arrays may be added to existing freestanding wireless communication support structures on approved and conforming sites; provided, that the height of such new antennas or antenna arrays shall be subject to the requirements of WCC 20.13.092(9)(b).~~

~~(iii) In all residential districts: new antennas on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet wall or top of structure (if not a building). Installation of dish antennas on the roof of an attached wireless communication structure may be permitted as a WCF permit if the applicant demonstrates to the administrator that such proposal satisfies the special exception criteria pursuant to WCC 20.13.110.~~

~~(iv) In all nonresidential related districts: new antennas attached on existing attached wireless communication structures that utilize a nonresidential structure on a parcel or lot not used primarily for residential purposes; provided, the antenna is not more than 15 feet above the roof or parapet.~~

~~(2) Ancillary Equipment Facilities.~~

~~(a) New ancillary equipment facilities or replacement construction that substantially increases the physical dimensions of an existing facility as defined in WCC 20.13.020(22) may be permitted on existing approved, conforming sites as an ancillary equipment facility (AEF) under the scope of a WCF permit. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a WCF permit shall conform to original time frames for completion set by the administrator, or as further amended by the administrator. (Ord. 2018-032 § 1 (Exh. D), 2018; Ord. 2014-042 § 1 (Att. A), 2014).~~

20.13.060 Conditional uses.

.061 Macro wireless facilities using a new structure, including associated ancillary equipment facilities.

Rationale: 47 CFR Section 1.6003(c) states:

The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments . . .

- (iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days. . .

A facility “other than a Small Wireless Facility” is called a “macro wireless facility” in the proposed regulations.

The FCC’s Declaratory Ruling and Third Report and Order (September 26, 2018) states:

. . . Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment. . . we find that “any request for authorization to place, construct, or modify personal wireless service facilities” under [47 US Code] Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. . . (pages 68 and 69, paragraph 132).

Furthermore, 47 CFR 1.6002(f) states “*Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.”

The 150 day federal time frame would allow sufficient time to process a conditional use permit, along with a building permit, for these larger macro wireless facilities. These larger structures have the potential for greater visual impact than the proposed uses allowed in the permitted and administrative approval uses section. Therefore, it is reasonable to provide notice and hold a public hearing to allow comments from neighboring property owners and the public.

~~(1) The following uses shall require conditional use permit approval by the hearing examiner, and shall be processed in accordance with Chapters 22.05 and 20.84 WCC and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance, unless categorically exempt. Such uses shall comply with county, state, and federal law and regulations and all applicable provisions of this chapter. The applicant or applicant's agent must also submit documentation to the administrator that demonstrates that any new antennas meet Federal Communication Commission (FCC) emission standards (as applicable). The administrator may refer an application for a conditional use to a technical review committee for review and comment prior to referring the application to the hearing examiner for a decision.~~

~~(a) New Freestanding Wireless Communication Facilities.~~

~~(i) In all nonresidential related districts: new freestanding wireless communication facilities that utilize lattice tower or monopole wireless communication support structures; provided, that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b); and further provided, that the height does not exceed 150 feet. Additional height may only be approved by special exception as provided in WCC 20.13.110.~~

~~(ii) New freestanding wireless communication facilities that utilize lattice towers or monopole towers in the following residential related districts: Rural, Residential Rural, Rural Residential Island; provided, that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b).~~

~~(iii) New freestanding wireless communication facilities that utilize monopole towers only in the following residential districts: Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island; provided, that the site does not also contain existing residential uses; and further provided, that the height of such structures shall be subject to the requirements of WCC 20.13.092(9)(b).~~

~~(b) New Attached Wireless Communication facilities:~~

~~(i) In all nonresidential related districts: New attached wireless communication facilities that utilize a residential structure on a site used exclusively for residential purposes shall require a conditional use permit; provided, that the antenna shall not extend more than 15 feet above the roof or parapet.~~

~~(ii) In all residential districts: New attached wireless communication facilities that utilize an attached wireless communication support structure that is a residential building or on a parcel used exclusively for residential purposes shall require a conditional use permit; provided, that the antenna shall not extend more than 15 feet above the roof top (or top of the structure if not a building) and that the requirements of WCC 20.13.092(1) are met. The hearing examiner shall have the authority to restrict the height of the attached antenna to a figure less than 15 feet in order to attain compliance with WCC 20.13.092(1).~~

~~(2) New ancillary equipment facilities may be permitted under the scope of a conditional use permit, or may be permitted separately as an AEF under a WCF permit pursuant to WCC 20.13.050. Such structures include cabinets, shelters, remodeled structures, pedestals and other similar structures. Ancillary equipment may include air conditioners, emergency generators, and GPS units. Installation of such ancillary equipment when included in the scope of a conditional use permit shall conform to original time frames for completion set by the hearing examiner, or as further amended by the hearing examiner. (Ord. 2018-032 § 1 (Exh. D), 2018; Ord. 2014-042 § 1 (Att. A), 2014).~~

20.13.070 Nonconforming uses and structures.

Expansion of nonconforming personal wireless service facilities shall be treated as follows:

- (1) Eligible facilities requests are permitted uses that are required to comply with WCC 20.13, but shall not be subject to WCC 20.83.020.
- (2) Collocation of small wireless facilities using existing structures are permitted uses that are required to comply with WCC 20.13, but shall not be subject to WCC 20.83.020.
- (3) Collocation of a macro wireless facilities using existing structures, including associated ancillary equipment facilities, are administrative approval uses that are required to comply with WCC 20.13, but shall not be subject to WCC 20.83.020.
- (4) Other expansions shall be subject to WCC 20.83.020.

~~Freestanding and attached wireless communication facilities, and ancillary equipment facilities in operation as of the effective date of the ordinance codified in this chapter or amendment hereto, including vested applications for such facilities, that do not conform to the use standards or development standards of this chapter shall be subject to the provisions of Chapter 20.83 WCC governing nonconforming uses. Routine maintenance on existing towers and antennas is permitted as provided in WCC 20.13.030(6). However, any new construction other than routine maintenance on existing nonconforming towers, antennas, buildings or other facilities shall comply fully with the requirements of Chapter 20.83 WCC governing nonconforming uses, and this chapter. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000. Formerly 20.13.040).~~

Rationale: The expansion of a nonconforming use currently requires a conditional use permit under existing WCC 20.83.020.

However, under federal rules, a local government has 60 days to process permits for eligible facilities requests and small wireless facilities using existing structures. It would be very difficult, if not impossible, to process a conditional use permit, along with other required permits, within the 60 day time-frame allowed by the federal rules. Therefore, the proposal is to allow eligible facilities requests and small wireless facilities using existing nonconforming structures as permitted uses.

Under federal rules, a local government has 90 days to process permits for collocation of macro wireless facilities using existing structures. It would be very difficult to process a conditional use permit, along with other required permits, within the 90 day time-frame allowed by the federal rules. Therefore, the proposal is to allow collocation of macro wireless facilities using existing structures as administrative approval uses.

Other expansions, such as increasing the height of an existing nonconforming macro tower, would still require a conditional use permit under WCC 20.83.020.

20.13.080 Prohibited locations for small and macro wireless facilities.

(1) New attached antennas or antenna arrays shall not be mounted, installed or affixed to a single-family residence, duplex or their accessory structures; this prohibition shall not apply to residential structures such as multifamily housing, condominiums, apartment buildings, hotels, rooming houses, and their appurtenant structures, such as parking garages, and storage buildings.

(2) New freestanding wireless communication support structures (lattice towers) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts.

(3) New freestanding wireless communication support structures (monopole towers and ground level dishes) are prohibited in Urban Residential, Urban Residential Medium, Urban Residential Mixed, Neighborhood Commercial, and Eliza Island districts on sites that also contain residential uses.

(4) New support structures are prohibited on lands within the jurisdiction of the Whatcom County Shoreline Program. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000. Formerly 20.13.050(4)).

Rationale: 47 CFR 1.6100(c) indicates: “A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure. . .” Because of this federal preemption, eligible facilities requests are not included in the types of wireless facilities that are prohibited in the above areas.

20.13.085 Siting priorities for small and macro wireless facilities.

(1) In reviewing applications for new freestanding wireless communication facilities, and new attached wireless communication facilities, the approving authority shall evaluate the proposal in relationship to the following siting priorities. Unless the facility will be located at the highest priority location, the applicant shall demonstrate that:

- (a) None of the higher priority locations are available; or
- (b) If one is available it is not a feasible location for the proposed facility, based upon a feasibility study demonstrating that higher priority locations have been explored and are not feasible or available; or
- (c) If feasible, the location is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

Rationale: The subject proposal includes deleting WCC 20.13.130(1)(a) because it is largely redundant. However, this section does mention a feasibility study that should be preserved in the code. Therefore, feasibility study language has been inserted above.

(2) For the purpose of this chapter:

- (a) Residential related districts include Urban Residential (UR), Urban Residential Medium (URM), Urban Residential Mixed (UR-MX), Eliza Island (EI), Neighborhood Commercial (NC), Residential Rural (RR), Rural Residential Island (RR-I), and Rural (R) Districts;
- (b) Nonresidential related districts include:
 - (i) Commercial districts, including Rural General Commercial (RGC), Small Town Commercial (STC), General Commercial (GC), Resort Commercial (RC) and Tourist Commercial (TC) Districts; and
 - (ii) Industrial districts including Heavy Impact Industrial (HII), Light Impact Industrial (LII), Gateway Industrial (GI), Rural Industrial and Manufacturing (RIM), General Manufacturing (GM), and Airport Operations (AO) ~~and the Cherry Point Industrial District (CP-ID)~~; and
 - (iii) Resource districts including Agriculture (AG), Commercial Forestry (CF), Rural Forestry (RF) and Recreation Open Space (ROS).

Rationale: The Small Town Commercial zone was inadvertently omitted from the above list of commercial zoning districts. The last Gateway Industrial zoned land was annexed into a city and this zoning district has been removed from the Whatcom County Zoning Code. The Cherry Point Industrial District is an overlay zone that encompasses Heavy Impact Industrial and Light Impact Industrial zones (which are already mentioned above).

(3) Siting Priorities. Listed in descending order with the highest priority first:

(a) Collocated antennas on attached wireless communication support structures that are nonresidential buildings and structures, and collocated antennas on existing freestanding wireless communications towers in nonresidential related districts.

(b) Collocated antennas on attached wireless communication support structures that are nonresidential buildings and structures, and collocated antennas on existing freestanding wireless communications towers in residential related districts on property not used exclusively for residential purposes.

~~(c) New antennas on attached wireless communication structures such as nonresidential buildings and structures in nonresidential related districts.~~

Rationale: An attached wireless communication support structure is “. . . a support structure not specifically designed and constructed to support an antenna array. . .” such as a building or water tower (WCC 20.13.020(8)). Collocation includes mounting an antenna (presumably, a new antenna) on a pre-existing structure (proposed WCC 20.13.020(11)). A collocated antenna on an attached wireless communication support structure and a new antenna on such a structure are the same thing. Since subsection (a) already addresses collocated antennas on existing structures, subsection (c) addressing new antennas on existing structures is redundant and not needed.

~~(c)~~ (ce) New freestanding wireless communication support structures in low visual impact locations in resource and industrial districts.

~~(d)~~ (de) New attached wireless communication facilities that utilize nonresidential buildings and structures in residential related zones on property not used exclusively for residential purposes.

~~(e)~~ (ef) New freestanding wireless communication support structures at low visual impact locations in commercial districts.

~~(f)~~ (fg) Locations other than those listed above. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2000-006 § 1, 2000. Formerly 20.13.050(1) – (3)).

20.13.090 Design and development standards for small and macro wireless facilities.

.091 Design and Development Standards. ~~The development standards set forth below shall apply to all wireless communication facilities.~~ These development standards are minimum standards and shall be in addition to any development standards ~~or project review process which applies~~ in the underlying district in which a personal wireless ~~service communication~~ facility is located. In the event of a conflict between the provisions of this chapter and the general development standards of this title, ~~or the~~

~~project review process~~, the more stringent provision shall govern; provided, that where a provision of this chapter is the more specific in its application to personal wireless ~~service~~communication facilities, that provision shall prevail regardless of stringency.

- (1) Anti-Climbing Devices. All freestanding and attached wireless communication support structures ~~and required fencing~~ shall be equipped with appropriate anti-climbing devices.

Rationale: In an email dated June 23, 2022, an industry representative asked for:

. . . clarification on the requirement for anticlimbing devices on all facilities and on the fencing. For building mounted sites, I am not sure what that would look like and for fencing, the only anticlimbing device that comes to mind is barbed wire, which is tough aesthetically. . .

The industry representative made similar comments at the June 23, 2022 Planning Commission hearing.

At the request of the Planning Commission, Planning and Development Services staff met on July 6, 2022 to discuss this provision. PDS finds that there are anti-climbing devices that may be appropriate for antennas attached to existing buildings (such a locked metal plate over wall mounted ladders). However, given that anti-climbing devices are required on a tower (such as anti-climbing sheets on the tower supports), it does not appear that a fence around the tower would need additional anti-climbing devices. Barbed wire has generally not been required on such fences. Therefore, fencing may be deleted from the anti-climbing provision above.

- (2) Attachment to Trees Prohibited. It is prohibited to attach any personal wireless ~~communications~~service facility or portion thereof to any tree.

- (3) Signage. All freestanding and attached wireless communication support structures shall be identified with a nonilluminated sign not exceeding four square feet. The sign shall list the wireless service provider’s name and emergency telephone number and shall be posted in a place visible to the general public. Safety signs required by applicable laws and regulations are also permitted. No ~~other advertising~~ signs shall be located on support structures or antennas; ~~however, arrays may be camouflaged as otherwise permitted signs.~~

Rationale: The existing text would allow signs with a non-advertising message but not signs with an advertising message. However, sign regulations are to be content neutral in accordance with U.S. Supreme Court’s decision in *Reed v. Town of Gilbert* (2015).

- (4) Lighting. All freestanding and attached wireless communication facilities shall not be illuminated except where required by the FAA.

- (5) Painting. All freestanding and attached wireless communication facilities shall be painted or finished in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.

~~(6) Noise from Accessory Equipment. Accessory equipment facilities shall comply with state noise level standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.~~

Rationale: Noise requirements have been modified and moved to proposed WCC 20.13.105.

~~(67)~~ Copies of deeds or other instruments such as lease agreements and site easements that establish the applicant’s right to use the site shall be provided at the time of application. These may be in unsigned final draft form pending the outcome of the approval process. The boundaries of a proposed personal wireless ~~service~~communications facility site shall be defined in each such instrument in a manner that will provide a land surveyor sufficient information to accurately locate the site boundaries using standard survey methods. The applicant may redact proprietary information or lease terms that are not relevant to establishing the applicant’s right to use the site or defining the site boundaries.

~~(78)~~ If the proposed site is leased, the terms of the lease shall not restrict the land owner in any way from leasing other areas of his property to other wireless communications providers with the exception that the lease may include a provision that any additional facilities so located not materially interfere with the operation of the existing facility.

~~**.092 General Design Standards.**~~

~~(81)~~ Antennas that are mounted, installed or affixed to an attached wireless communication support structure shall be designed or placed to blend with the predominant background or architectural features as seen from abutting residential uses, roadways or other public rights-of-way.

~~(92)~~ When located on buildings, panel antennas shall be placed closely against walls or parapets and not extend above the wall or parapet unless an alternative design is required to (a) achieve better compatibility with the building design or (b) to obtain antenna function. In the alternative, antennas may be placed on an attached wireless communication support structure if designed with concealment elements, screened or otherwise obscured from view in a manner compatible with the structure’s design. Such antennas shall not extend more than 10 feet above the top of the structure.

Rationale: In an email dated June 23, 2022, and in comments at the June 23, 2022 Planning Commission hearing, an industry representative asked for greater flexibility to mount antennas on rooftops.

At the request of the Planning Commission, Planning and Development Services staff met on July 6, 2022 to discuss this issue.

WCC 20.13.085 contains siting priorities for small and macro wireless facilities. This section of the Zoning Code states that collocated antennas on existing structures are the highest priority locations in the County. New freestanding towers or support structures are a lower priority. Given that locating new antennas on existing structures is a higher priority, it makes sense to provide flexibility in the language above.

~~(103)~~ Ancillary equipment facility structures shall be placed underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, they shall be screened from view.

~~(114)~~ Ground-mounted dishes shall be located outside any required landscaped area and preferably located in service areas or other less visible locations. They shall be solidly screened to at least as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the top of the dish on sides adjacent to residential zones.

Roof-mounted dishes shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. The dish should be placed as close to the center of the roof as possible.

~~(5) Antennas on utility poles shall be limited to antennas that are no more than two feet in length unless the approving authority finds that the visual impact of a longer antenna would not have an appreciable effect on surrounding uses. No more than one antenna is permitted per pole. No utility pole shall be extended in height in order to accommodate an antenna. No antenna shall be allowed on light standards.~~

Rationale: 47 US Code 253(a) indicates that “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Additionally, 47 US Code 332(c)(7)(B)(i) states: “The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”

The FCC Declaratory Ruling and Third Report and Order in the matter of *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (adopted September 26, 2018) states:

. . . The “effectively prohibit” language must have some meaning independent of the “prohibit” language . . . our interpretation that ‘effective prohibition’ does not require a showing of an insurmountable barrier to entry is demonstrated not only by a number of circuit courts’ acceptance of that view, but in the Supreme Court’s own characterization of Section 253(a) as “prohibit[ing] state and local regulation that *impedes* the provision of ‘telecommunications service’”. . . (paragraph 41).

Initially, it should be noted that utility poles are often located in the road right-of-way. Additionally, the County Engineer indicated, in an e-mail of October 20, 2021, that he is not aware of any County light standards (street lights or traffic lights) located outside the County right of way and that all County-owned facilities should be in the County right of way. Utility poles and light standards within the road right of way will be addressed by County revocable encroachment permit or franchise agreement (or comparable State permits), rather than the regulations of WCC 20.13.

Utility poles and/or light standards outside of the right-of-way should be treated like any other structure, so potential wireless services on such structures (if allowed by the owner) will not be impeded. Therefore, we are proposing to delete the text above.

~~(126)~~ Setbacks Applicable. The following setback standards shall apply to personal wireless service communication facilities:

(a) ~~Accessory-Ancillary~~ equipment ~~facilitiesstructures~~ shall comply with the setback requirements ~~for principal nonaccessory structures~~ in the underlying district or be located in a legally established existing structure.

~~(b)~~ An antenna and its attachment device attached to a building or other permanent structures shall comply with the setback requirements ~~for principal nonaccessory structures~~ in the underlying district. Where the setback requirement in the underlying zone is based on the height of the structure, the height used to compute the setback for the antenna array shall be the height of the structure plus the additional height that will be added by the antenna array and its attachment device.

~~(c)~~ Freestanding wireless communication support structures located in a residential related district as described in WCC 20.13.085 shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

~~(d)~~ Freestanding wireless communication support structures located in other than residential related districts shall be set back from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless

communications support structure or the setback of the underlying use district, whichever is greater.

(~~ed~~) Regardless of the district, freestanding wireless communication support structures shall be set back from dwellings not on the same legal lot, a distance equal to the height of the freestanding wireless communication support structure or the setback of the underlying use district whichever is greater.

(~~fe~~) Setbacks for freestanding wireless communication support structures shall be measured from the ground level base of the structure.

(~~gf~~) The setback requirements for freestanding and attached wireless communication facilities under WCC 20.13~~this chapter~~ may be reduced by the approving authority subject to the satisfaction of the special exception criteria in WCC 20.13.110.

(~~137~~) In the event that a new freestanding or attached wireless communication facility is proposed on land zoned agriculture or in an agriculture overlay zone and the land is otherwise suitable for agricultural use, the facility shall be located and maintained so as not to interfere with current agricultural activities or the potential future use of the site for agricultural activities.

(~~148~~) Screening Standards. Freestanding and attached wireless communication facilities shall be subject to the following standards for visual screening:

(a) The perimeter of the wireless communication support structure and any guyed wires and anchors shall be enclosed by a fence or wall at least six feet in height. A row of evergreen shrubs, spaced not more than five feet apart and capable of growing to form a continuous hedge at least five feet high within five years of planting, and at least one row of evergreen trees or shrubs spaced not more than 10 feet apart nor less than six feet high when planted shall be installed outside and adjacent to the fence.

(b) Landscape material used for screening should be selected and sited to produce a hardy and drought-resistant landscape area. Native plant materials are preferred.

(c) Maintenance of landscaped areas shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy manner. Trees and shrubs that die must be replaced with healthy in-kind materials such that during the life of the facility the landscaping continues to satisfy the requirements of the permit. Temporary irrigation shall be provided to help ensure survival during the plant establishment period. If the approving authority determined that existing vegetation provided adequate screening without the need for additional landscaping, then no action shall be taken by the applicant or his assigns or successors that would diminish its effectiveness in screening the site. In the event that natural vegetation is removed to the extent that the area required to be screened is made more visible, the operator of

the facility shall prepare a revegetation plan and submit the plan to the administrator for review and approval. Upon approval, the operator shall implement the plan.

(d) The administrator or the hearing examiner as appropriate may approve any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. Either, as appropriate, may waive the requirement for the installation of screening for those sides of the facility that are naturally screened so as not to be visible from public streets or adjoining properties.

(e) Existing vegetation shall be preserved to the maximum extent practicable.

(f) When landscaping is required to be installed a maintenance bond, assignment of funds or other financial guaranty acceptable to the county shall be provided in the amount of 50 percent of the value of the labor and materials. The guaranty shall be in effect for two years from the date of planting.

(159) General Height Standards. The following standards shall apply to wireless communications facilities:

(a) The height of a freestanding or attached wireless communication facility shall be measured to include the support structure and any antennas proposed to be attached to the structure at the time of application; provided, that a lightning rod, not to exceed 10 feet, or FAA required lighting shall not be included in the height measurement.

(b) The height limit on a freestanding wireless communications facility shall be the minimum height necessary for the facility to function satisfactorily provided the height does not exceed height restriction imposed elsewhere in this chapter. The applicant shall provide technical documentation that the height proposed is the minimum necessary. As provided in WCC 20.13.160, the administrator or the hearing examiner may require a third party review of this information.

(c) The height of antennas mounted or installed on an attached wireless communication support structure may exceed the height limit of the underlying zone; provided, that the height does not exceed height restriction imposed elsewhere in this chapter.

(1610) Parking. Each freestanding and attached wireless communication support structure shall be provided with at least one adjacent parking space or more if needed to accommodate staff. All unstaffed facilities shall have access to parking for maintenance personnel; however, such parking may be shared or public parking at the discretion of the county. Staffed facilities shall require one parking space per staff ~~member under the standard provisions of the zone in which it is located.~~

Rationale: Parking space requirements are contained in WCC 20.80.580. These requirements do not address wireless facilities.

(~~1711~~) Building and Utility Permits. Approval of a ~~WCF~~-permit pursuant to WCC 20.13 does not exempt or otherwise remove any requirements for obtaining building permits and other applicable construction, development or operation related permits, licenses or approvals for the project. It shall be the permittee's responsibility to secure all other necessary permits and approvals prior to beginning work on the installation of the facility. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000. Formerly 20.13.060).

20.13.095 Concealment elements for small and macro wireless facilities.

Small wireless facilities and macro wireless facilities may be designed with concealment elements. The term "concealment element" means an element that is part of a stealth-designed facility intended to make a structure look like something other than a wireless facility, and is part of the eligible support structure approval. Examples of concealment elements include painting to match the supporting façade and making the structure look like a native tree or flag pole.

The FCC's *Declaratory Ruling and Notice of Proposed Rulemaking* (June 2020) states:

. . . The term "concealment element" in [47 CFR] section 1.6100(b)(7)(v) means an element that is part of a stealth-designed facility intended to make a structure look like something other than a wireless facility, and that was part of a prior approval . . . the *2014 Infrastructure Order* identified parts of a stealth wireless facility such as "painting to match the supporting façade or artificial tree branches" as examples of concealment elements. . . a concealment element must have been part of the facility that was considered by the locality at the original approval of the tower . . . a concealment element. . . would look like something else, such as a pine tree, flag pole, or chimney. . . (pages 8, 18, and 20).

The significance of the term "concealment element" is derived from the federal definition of "eligible facilities request" and the related definition of "substantially change" (incorporated into proposed WCC 20.13.025). In order to qualify as an eligible facilities request the proposal cannot, among other things, defeat the concealment elements of the eligible support structure.

As a related matter, in order to qualify as an eligible facilities request a proposal cannot violate certain conditions associated with approval of the eligible support structure. These "conditions" may include aesthetic conditions to minimize the visual impact of a wireless facility as long as the condition does not prevent modifications explicitly allowed under the eligible facility request provisions (relating to antenna height, antenna width, equipment cabinets, and excavations or deployments outside the current site). There must be express evidence that at the time of approval the local government required the feature and conditioned approval upon its continuing existence. Examples of aesthetic conditions include requiring a specific placement, requiring a shroud, requiring walls or fences, setbacks, or location behind a tree-line (FCC's *Declaratory Ruling and Notice of Proposed Rulemaking*, June 2020, pages 8, 18, 23, and 24).

Therefore, when permitting support structures that eligible facility requests may later be located on, it is useful to distinguish between concealment elements (addressed in proposed WCC 20.13.095) and other aesthetic conditions of approval (addressed in proposed WCC 20.13.120). Furthermore, some aesthetic "conditions associated with siting approval" (i.e. screening) may not be needed if the original tower or support structure is designed with concealment elements.

20.13.100 Temporary uses.

Freestanding or attached wireless communication facilities may be permitted as a temporary use with review by the administrator in order to facilitate continuity in personal wireless ~~communication~~-service during repair or maintenance of existing personal wireless ~~service~~communication facilities, when a supporting structure and site are being redeveloped, or prior to completion of construction of new personal wireless ~~service~~communication facilities. ~~Such temporary uses shall operate for not more than 60 days at any one location within a six-month period commencing when transmission from such facility begins, provided that the administrator may approve additional one six month extensions if the applicant demonstrates that substantial progress has been made on the repair, maintenance, redevelopment, or new construction. Additional extension requests must be submitted before the end of any extension period.~~ Temporary uses shall not be authorized for more than a cumulative total of 24 months. The personal wireless ~~service~~communication facility(s) shall be removed within 30 days after the facility is no longer needed for telecommunications purposes. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000. Formerly 20.13.090).

Rationale: In an email dated June 23, 2022, an industry representative stated:

. . . It often takes a more than a year for demolition and redevelopment of a building mount site, especially with the labor shortages in both the construction and local planning/building departments. Verizon would request that the director have discretion to grant more than one 6 month extension if the project is still underway. The telecom carrier waiting to go on the roof has no control over these delays and having to remove a temp facility results in gaps in coverage. . .

The industry representative made similar comments at the June 23, 2022 Planning Commission hearing.

At the request of the Planning Commission, Planning and Development Services staff met on July 6, 2022 to discuss this provision. PDS finds that it is reasonable to allow temporary uses for a longer period of time. We suggest that such uses could qualify for “temporary” status for a maximum of 24 months.

20.13.105 Noise requirements.

(1) Personal wireless service facilities shall comply with state noise level standards under Chapter 173-60 WAC, as amended.

(2) Generator use is only permitted as a backup power supply for emergency operation purposes or other times when the regular power supply is not available. If generators, air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

Rationale: Noise requirements have been modified and moved from WCC 20.13.090 (which, under the proposal, only applies to small and macro wireless facilities) to proposed WCC 20.13.105 (which applies to all personal wireless service facilities).

20.13.110 Special exceptions for small and macro wireless facilities.

When adherence to ~~all development standards~~ the requirements of ~~WCC 20.13~~ this chapter would prohibit, have the effect of prohibiting or materially inhibit personal wireless service, including but not limited to resulting in a physical barrier which would block signal reception or transmission or preventing effective communication in all permissible locations, a special exception may be permitted provided criteria outlined below are met. Exceptions do not apply to variations from ~~the current code as adopted and amended per~~ WCC Title 15, Buildings and Construction. A variance pursuant to ~~WCC 22.05.024~~ Chapter 20.84 WCC is required for variations from applicable zoning regulations not contained in WCC 20.13 ~~described in this section~~.

Rationale: 47 US Code 253(a) indicates that “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Additionally, 47 US Code 332(c)(7)(B)(i) states: “The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”

The FCC *Declaratory Ruling and Third Report and Order in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (adopted September 26, 2018) indicates:

. . . a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities. . . a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services. . . (paragraph 37).

An industry representative requested that the “materially inhibit” language be inserted in the Special Exception section of the code.

The approval authority for granting of the special exception shall be the same as that of the authority authorized to approve the permit for the ~~personal wireless service facilities antenna location~~. A request for a special exception shall be processed in conjunction with the permit approving the antenna location.

Rationale: A special exception may be requested for the whole wireless facility, not just the antenna.

~~Upon review of special exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.~~

Rationale: The special exception approval criteria are listed below and it is unclear what the above text is intended to achieve.

(1) Special Exception Criteria.

(a) The applicant shall justify the request for a special exception by documenting and providing evidence that the full application of a particular standard or standards of ~~WCC 20.13 this chapter~~ would ~~prohibit, have the effect of prohibiting or materially inhibit personal wireless service, including but not limited to~~ resulting in an obstruction or inability to send and receive a communication signal from the proposed location of the facility and, further, that the obstruction or inability to send or receive a signal from that location is the result of factors beyond the property owner’s or applicant’s control. Pictures, scaled drawings, maps and/or manufacturer’s specifications, and other technical information as necessary should be provided to substantiate the need for the special exception.

(b) The applicant for a special exception shall demonstrate that the proposed materials, shape, and color of the ~~proposed personal wireless service facilities antenna~~ will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.

(c) Any request for a special exception to heights for new antennas that are proposed to be mounted or installed on an attached wireless communication support structure shall be reviewed relative to height limitations set for structures in the underlying zone district in which the antenna is to be located.

(d) Requests for special exceptions for setback reductions shall also be ~~evaluated~~ ~~judged~~ based on the following criteria:

(i) The extent to which screening and camouflaging is existing or will be employed to mitigate the effects of the structure versus the effectivenessvalue of the setback in providing such screening.

(ii) The need for the setback reduction to facilitate a location or design that better satisfies the criteria of this chapter.

(iii) The impact on adjacent properties.

~~(iv) Location in a street right of way.~~ (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 2000-006 § 1, 2000).

Rationale: WCC 20.13 does not apply within the street right of way (see proposed WCC 20.13.030(7) and (8).

(e) A special exception for small wireless facilities shall not be granted that would alter the dimensional, bulk, numerical, or other criteria in the definition of small wireless facilities in WCC 20.13.020.

Rationale: If a proposal does not meet the definition of small wireless facility, it would have to be re-submitted as a macro wireless facility.

20.13.120 Conditions associated with siting approval.

The County may impose conditions associated with any permit for a personal wireless service facility in accordance with the WCC. Conditions may require that all activity on site shall be done in accordance with the site plan approved by the County and that any alterations from the approved site plan will require further review by Whatcom County Planning and Development Services and/or the Hearing Examiner. Conditions must be incorporated into the permit in writing. Subsequent eligible facilities requests must comply with conditions associated with permits for construction or modification of the eligible support structure or base station equipment, except as set forth in WCC 20. 13. 025(3) and (7).

Rationale: Pursuant to 47 CFR 1.6100(b)(3) and (7) a proposal will not qualify as an “eligible facilities request” if, among other things, “It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment.” The FCC’s *Declaratory Ruling and Notice of Proposed Rulemaking* (June 2020) states “. . . there must be express evidence that at the time of approval the locality required the feature and conditioned approval upon its continuing existence in order for non-compliance with the condition to disqualify a modification from being an eligible facilities request. . .” (page 22). Therefore, it is important to explicitly set forth conditions associated with the original permit for a small wireless or macro wireless facility so that subsequent eligible facility requests can be evaluated for compliance with these conditions.

~~20.13.120 Application and conditions of issuance.~~

Applicants shall submit the following information in addition to standard application materials:

~~(1) A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines. Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.~~

~~(2) Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.~~

~~(3) Legal description and ownership of the parcel.~~

~~(4) A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in subsection (5) of this section.~~

~~(5) For new freestanding support structures, a location evaluation study shall be provided as follows:~~

~~(a) A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a nonresidential zone.~~

~~(6) The applicant shall submit a performance bond or other security acceptable to the county, as described in WCC 20.13.130(4), to cover the future costs of removal of the facility.~~

~~(7) A report from a licensed professional engineer documenting that:~~

~~(a) The support structure is designed for collocation of other antennas (if applicable).~~

~~(b) The antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.~~

~~(c) The wireless communications facility complies with all applicable standards of the FCC for such facilities including EMF emission standards, if applicable.~~

~~(8) Proof of license by the FCC, if applicable.~~

~~(9) A copy of the findings from the FAA's Aeronautical Study Determination regarding the proposed wireless communication support structure.~~

~~(10) A copy of the instrument that establishes the right of the applicant to use the site for the intended purpose as required in WCC 20.13.091(7).~~

~~(11) If the site is a leased site, a copy of lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers. (Ord. 2017-030 § 1 (Exh. M), 2017; Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).~~

Rationale: In accordance with proposed amendments to WCC 22.05.050, the County will prepare application forms specifying submittal requirements for wireless communication facilities. These submittal requirements may also be included in the Planning and Development Service Department’s administrative manual.

20.13.130 General criteria for issuance of permits for small and macro wireless facilities.

(1) Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:

~~(a) The antenna must be located at the site to satisfy its function in the wireless service provider’s local system. The county may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.~~

~~(b) T~~he height requested is the minimum height necessary to fulfill the site’s function within the wireless service provider’s system.

Rationale: There may be multiple high priority sites available, so it is not necessary to show that the antenna must be located at any one particular site. Additionally, the applicant must address higher priority locations under criterion (2) below.

(2) ~~In addition to standard criteria, t~~he authority granting the permit shall find that, unless the facility will be located at the highest priority location as set forth in WCC 20.13.085, the applicant has demonstrated that none of the higher priority locations are available or if one is available it is not a feasible location for the proposed facility, or if feasible is less desirable than the one proposed from the standpoint of minimizing impacts on surrounding land uses.

~~(3) The permit may include requirements which:~~

~~(a) Minimize visual impacts to the greatest extent possible by maximum feasible use of camouflage or screening, including but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or live or simulated vegetation, undergrounding of accessory equipment structures, incorporation of wireless communications support structures, antennas and other appurtenances into the architectural features of existing buildings or structures and by requiring compatibility with key design elements in the surrounding area; for example, use of brick or other material similar to that used in adjacent buildings or structures, incorporation of~~

~~support structures into compatible architectural features such as flag poles, bell towers or cornices, or use of simulated vegetation to camouflage support structures.~~

~~(b) Locate wireless communication facilities so as to minimize the visibility of the facility to residentially zoned land and so as to minimize the obstruction of scenic views from residentially zoned land.~~

~~(c) Require the mounting of the facility on existing buildings or structures, or use of other alternatives with less visual, aesthetic or safety impacts, as an alternative to use of a monopole or lattice tower.~~

Rationale: Conditions of approval are addressed under proposed WCC 20.13.120. Visual impacts are addressed in WCC 20.13.080 (prohibited locations), WCC 20.13.085 (siting priorities), WCC 20.13.090 (design and development standards), and WCC 20.13.095 (concealment elements).

(3) The applicant shall submit documentation that the personal wireless service facilities comply with applicable FCC regulations concerning radio frequency emissions.

Rationale: Federal law, passed by the U.S. Congress, indicates that:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions (47 U.S. Code 332(c)(7)(B)(iv)).

While the federal government preempts regulation of radio frequency emissions, there is nothing that says local government cannot require documentation that a proposed small or macro wireless facility will comply with FCC regulations.

With regard to eligible facilities requests, federal regulations adopted by the FCC state:

. . . a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation. . . (47 CFR 1.6100(c)(1)).

Therefore, it appears that the County cannot require the applicant to submit radio frequency emission documentation for eligible facilities requests.

(4) Performance Bond or Other Security Acceptable to the County. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond or other security acceptable to Whatcom County payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than \$1,000. The

bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).

20.13.140 Federal requirements.

All wireless communications support structures must meet or exceed applicable current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless communication support structures and antennas. If such standards and regulations are changed, owners of the freestanding or attached wireless communication support structure, antennas and electronic equipment governed by this chapter shall bring such facility into compliance with such revised standards and regulations if required by~~within the compliance schedule of~~ the federal agency. Failure to bring such facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the facility at the owner's expense. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).

20.13.150 Removal of antennas and support structures.

No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the Whatcom County planning and development services director by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the county. In any case, if the county finds that any wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property shall remove the facility within 36 months of receipt of notice to remove from the county. If the abandoned facility is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).

20.13.160 Third party review.

Personal wireless service providers use various methodologies and analyses, ~~including geographically based computer software,~~ to determine the specific technical parameters of their services ~~and low power mobile radio service facilities,~~ such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. Because of the technical nature of methodologies and analyses, the county may find it necessary to require a third party technical review of the material submitted by the applicant as part of a permitting process. The expert review is intended to address ~~interference and~~ public safety issues and be a site-specific review of technical aspects of the facilities or a review of the provider's methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the county may require changes to the provider's application. The expert review shall address the following:

Rationale: An industry representative recommended removing “interference” in the above text stating:

. . . the Federal Communications Commission has the exclusive authority to regulate radio frequency interference, and local regulations that require a wireless applicant to demonstrate that its facilities will not cause RFI are impliedly preempted by federal law. [New York SMSA Limited Partnership v. Town of Clarkstown](#), 612 F.3d 97, 105 (2nd Cir. 2010).

A representative of the Whatcom County Prosecuting Attorney’s Office reviewed this case and stated in an e-mail of January 20, 2022 that frequency regulation is preempted and it is appropriate to remove the word “interference” (in the text above).

- (1) The accuracy ~~and completeness~~ of submissions;
- (2) The applicability of analysis techniques and methodologies;
- (3) The validity of conclusions reached; and
- (4) Any specific technical issues designated by the county.

Rationale: The Planning and Development Services Department makes determinations of completeness without consultant assistance.

In general, and if necessary, the administrator shall consider requiring a third party review of technical information submitted in support of a special exception, and technical information submitted in support of a personal wireless ~~service communication~~ facility proposed at a low priority, high visual impact location.

The selection of a third party expert shall be by mutual agreement between the provider and the county. The cost of the technical review shall be borne by the applicant. (Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).

20.13.170 Project permit procedures.

Project permit procedures including application procedures, permit review time frames, deemed granted provisions (for eligible facilities requests), and appeals are contained in WCC 22.05. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record.

Rationale: The language relating to denials has been moved to from WCC 20.13.010 (Purpose), because it fits better under the Project permit procedures section. This language is from 47 US Code Section 332(c)(7)(B)(ii).

~~20.13.170 Appeals.~~

~~The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible as provided in WCC 22.05.160. (Ord. 2018-032 § 1 (Exh. D), 2018; Ord. 2014-042 § 1 (Att. A), 2014; Ord. 2000-006 § 1, 2000).~~

Rationale: Appeal procedures are set forth in WCC 22.05, Project Permit Procedures.