

**COLVILLE TRIBAL CODE
TITLE 4 NATURAL RESOURCES AND THE ENVIRONMENT**

CHAPTER 4-22 WIRELESS TELECOMMUNICATIONS FACILITIES

GENERAL PROVISIONS

4-22-1 Purpose and Legislative Intent

The Confederated Tribes of the Colville Reservation (“Colville Tribes”) finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Colville Reservation. The Colville Tribes also recognizes that facilitating the development of wireless service technology can be an economic development asset and of significant benefit to the Colville Reservation and its community. The intent of this Code is to set forth the requirements relating to the construction, operation, maintenance and modification of a wireless telecommunications facility and the application for a special use permit; to minimize the impact of wireless telecommunications facilities; establish a fair and efficient process for the review, approval, or denial of applications; assure an integrated, comprehensive review of environmental and cultural impacts of such facilities, and protect the health, safety and welfare of the Colville Reservation and its community.

4-22-2 Title

This Chapter shall be known and cited as the Wireless Telecommunications Facilities Code.

4-22-3 Severability

(a) If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

(b) Any special use permit issued under this Chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Colville Tribes.

4-22-4 Definitions

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number

include the plural number. The word “shall” is always mandatory, and not merely directory.

(a) “Accessory facility or structure” means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

(b) “Applicant” means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

(c) “Application” means all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

(d) “Antenna” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

(e) “Co-location” means the use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonable short time frame after the new tower is constructed.

(f) “Colville Reservation,” consistent with the definition of Indian country in 18 United State Code (U.S.C.) section 1151, means:

(1) all land within the exterior boundaries of the Colville Reservation, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; and

(2) all Indian allotments or other lands held in trust for an Indian or the Colville Tribes, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(g) “Commercial impracticability” or “commercially impracticable” means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”

- (h) “Completed application” means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.
- (i) “Council” means the Colville Business Council of the Colville Tribes.
- (j) “FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency, of the United States.
- (k) “FCC” means the Federal Communications Commission, or its duly designated and authorized successor agency, of the United States.
- (l) “Fee property” means property that is not held in trust for an Indian or the Colville Tribes, or not otherwise subject to a restriction against alienation imposed by the United States.
- (m) “Height” means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.
- (n) “Modification” or “modify” means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless telecommunications facility without adding, removing or changing anything.
- (o) “NIER” means Non-Ionizing Electromagnetic Radiation.
- (p) “Person” means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- (q) “Personal wireless facility” See definition for wireless telecommunications Facilities.
- (r) “Personal wireless services” or “PWS” or “personal telecommunications service” or “PCS” shall have the same meaning as defined and used in the United States 1996 Telecommunications Act.

(s) “Repairs and maintenance” means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted

(t) “Special use permit” means the official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the Colville Tribes.

(u) “Stealth” or “stealth technology” means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,

(v) “Telecommunications” means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems

(w) “Telecommunication site” See definition for wireless telecommunications facilities.

(x) “Telecommunications structure” means a structure used in the provision of services described in the definition of wireless telecommunications facilities.

(y) “Temporary” means, temporary in relation to all aspects and components of this Chapter, something intended to, or that does not exist for more than ninety (90) days.

(z) “Tower” means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

(aa) “Trust property” means property held in trust status by the United States under its trust responsibility for the tribes or individual tribal members.

(bb) “Wireless telecommunications facilities” means and includes a “telecommunications site” and “personal wireless facility.” It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other

structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

4-22-5 Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the Colville Tribes' health, safety, public welfare, environmental features, the natural and cultural resources and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the Colville Tribes hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (a) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility.
- (b) Implementing an application process for persons seeking a special use permit for wireless telecommunications facilities;
- (c) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent.
- (d) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers on trust property in association with facilities owned and maintained by the Colville Tribes.
- (e) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- (f) That in granting a special use permit, the Colville Tribes has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available on the Colville Reservation.

4-22-6 Conflict With Other Laws

Where this Chapter differs or conflicts with other tribal laws, rules and regulations this Chapter shall apply.

4-22-7

Effective Date

This Chapter shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

SPECIAL USE PERMIT

4-22-20

Special Use Permit for Wireless Telecommunications Facilities

(a) Except as otherwise provided by this Chapter no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities without having first obtained a special use permit for wireless telecommunications facilities.

(b) Any repair and maintenance of a wireless telecommunications facility does not require an application for a special use permit, but does require adequate prior notice be provided to the Colville Tribes' IT Department.

4-22-21

Application Fee

(a) At the time that a person submits an application for a special use permit for a new tower or to increase the height or profile of an existing structure being attached to, such person shall pay a non-refundable application fee of \$6,000.00 to the IT Department.

(b) At the time that a person submits an application for a special use permit to co-locate on an existing tower or other structure without increasing the height or profile of the structure being attached to such person shall pay a non-refundable application fee of \$3,500.00 to the IT Department.

4-22-22

Exemptions

The following shall be exempt from the application fee and may be exempt from the consultant costs under this Chapter:

(a) The Colville Tribes' fire, police, schools, or other public service facilities owned and operated by the Colville Tribes;

(b) Facilities exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio, and other similar noncommercial telecommunications.

4-22-23

Special Use Permit Application and Other Requirements

(a) All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this Chapter and applicable requirements of Chapter 4-3. Applicants must submit applications to the IT Department. The IT Department has the authority to review, analyze, evaluate and make recommendations to the Land Use Review Board with respect to the granting, denying, or revoking special use permits for wireless

telecommunications facilities. After performing its review and making its recommendations on a special use permit, the IT Department will forward the application to the administrator of the Planning Department. At that point, the application will be processed following the applicable requirements for special use permits in Chapter 4-3.

(b) The IT Department may reject applications not meeting the requirements stated herein or which are otherwise incomplete.

(c) No wireless telecommunications facilities shall be installed, constructed or modified until the application is reviewed and approved by the Colville Tribes, the special use permit has been issued, and any other necessary permits or approvals are obtained.

(d) Any and all representations made by the applicant to the Colville Tribes on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Colville Tribes.

(e) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

(f) The applicant must provide documentation to verify it has the right to proceed as proposed on the site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

(g) The applicant shall include a statement in writing:

(1) That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the Colville Tribes in writing, as well as all applicable codes, rules, and regulations;

(2) That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business on the Colville Reservation.

(h) Where a certification is called for in this Chapter, such certification shall bear the signature and seal of a registered professional licensed in the State of Washington.

(i) In addition to all other required information as stated in this Chapter, all applications for the construction or installation of new wireless telecommunications facilities or modification of an existing facility shall contain the following information:

- (1) A descriptive statement of the objectives for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
- (2) Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the Colville Reservation. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
- (3) The name, address and phone number of the person preparing the report;
- (4) The name, address, and phone number of the property owner and applicant, and to include the legal name of the applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;
- (5) The parcel number;
- (6) The zoning district or designation in which the property is situated, in accordance with Chapter 4-3;
- (7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- (8) The location of nearest residential structure if within one quarter (1/4) mile of the proposed facility;
- (9) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
- (10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- (11) The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
- (12) The number, type and model of the antenna(s) proposed with a copy of the specification sheet;
- (13) The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users;

(14) A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

(15) The frequency, modulation and class of service of radio or other transmitting equipment;

(16) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

(17) Signed documentation such as the “Checklist to Determine Whether a Facility is Categorically Excluded” to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;

(18) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

(19) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

(20) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design.

(j) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also apply to any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided with the application.

(k) Application for New Tower

(2) In order to better inform the public, in the case of a new telecommunication tower, the applicant shall, prior to the public hearing on the application, hold a “balloon test.” The applicant shall arrange to fly, or raise upon a temporary mast, a brightly colored balloon, that is representative in size of the initial antenna array including all standoffs, at the maximum height of the proposed tower. The dates, (including a second date, in case of

poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation on the Colville Reservation. The applicant shall inform the Colville Tribes, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the application.

(2) The applicant shall examine the feasibility of designing the proposed tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate at least four (4) additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

(A) The kind of wireless telecommunications facilities site and structure proposed;

(B) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;

(C) Available space on existing and approved towers or other appropriate structures.

(3) The owner of a proposed tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

(A) Respond within 60 days to a request for information from a potential shared-use applicant;

(B) Negotiate in good faith concerning future requests for shared use of the proposed tower by other telecommunications providers;

(C) Allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less

depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

(D) Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.

(l) The applicant shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all applicable tribal and federal structural requirements for loads, including wind and ice loads.

(m) If the proposal is for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition, such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers and any remediation reports necessitated by the findings of the inspection.

(n) All proposed wireless telecommunications facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved, and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the wireless telecommunications facility.

(o) If a new tower, proposal for a new antenna attachment to an existing structure, or modification adding to a visual impact, the applicant shall furnish a visual impact assessment, which shall include:

(1) If a new tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.

(2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the Colville Reservation as may be appropriate. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.

(3) A written description of the visual impact of the proposed facility including; and as applicable the tower base, guy wires, fencing and accessory

buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

(p) The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility.

(q) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment techniques as may be required by the Colville Tribes.

(r) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

(s) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all applicable technical, safety and safety-related codes adopted by - the Colville Tribes, the State of Washington or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

(t) A holder of a special use permit for a wireless telecommunications facility shall obtain, at its own expense, all permits and licenses required by applicable, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Colville Tribes or other governmental entity or agency having jurisdiction over the applicant.

(u) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.

(v) An applicant shall submit to the Colville Tribes the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.

(w) The holder of a special use permit shall notify the Colville Tribes of any intended modification of a wireless telecommunication facility and shall apply to the Colville Tribes, pursuant to the Chapter, to modify, relocate or rebuild a wireless telecommunications facility.

4-22-24 Performance Security

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Colville Tribes a bond, or other form of security acceptable to the Colville Tribes as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the Colville Tribes to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the permit.

4-22-25 Relief, Waiver, Exemption

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter may request such, pursuant to and in compliance with the applicable provision on variances in Chapter 4-3, provided that the relief or exemption is contained in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Colville Tribes, its residents and other service providers.

LOCATION AND CHARACTER OF FACILITIES

4-22-30 Location of Wireless Telecommunications Facilities

(a) Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one (1) being the highest priority and six (6) being the lowest priority.

(1) On existing towers or other structures on trust property owned by the Colville Tribes.

(2) On a new tower on trust property owned by the Colville Tribes.

(3) On existing towers or other structures on trust property not owned by the Colville Tribes.

(4) On a new tower on trust property not owned by the Colville Tribes.

(5) On existing towers or other structures on fee property.

(6) On a new tower on fee property.

(b) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

(c) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Colville Tribes why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

(d) Notwithstanding the above, the Colville Tribes may approve any site located within an area in the above list of priorities, provided that the Colville Tribes finds that the proposed site is in the best interest of the health, safety and welfare of the Colville Tribes its community members and will not have a deleterious effect on the nature and character of the community and neighborhood.

(e) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

(f) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Colville Tribes may disapprove an application for any of the following reasons:

(1) Conflict with safety and safety-related codes and requirements;

(2) Conflict with the historic nature or character of a neighborhood or historical district or the natural or cultural resources;

(3) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific land use designation;

(4) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Colville Tribes, or employees of the service provider or other service providers;

(5) Conflicts with the provisions of this Chapter.

4-22-31 Shared Use of Wireless Telecommunications Facilities and Other Structures

(a) As opposed to the construction of a new tower, the Colville Tribes shall prefer locating on existing towers or others structures without increasing the height. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within two (2) miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used.

(b) An applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.

(c) Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Colville Reservation, to the extent practicable, unless good cause is shown.

4-22-32 Height of Telecommunications Towers

(a) The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Colville Reservation, unless good cause is shown.

(b) No tower constructed after the effective date of this Chapter, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with tribal or FAA regulations.

4-22-33 Visibility of Wireless Telecommunications Facilities

(a) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by applicable law.

(b) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Chapter.

(c) If lighting is required, applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under tribal and federal regulations.

4-22-34 Security of Wireless Telecommunications Facilities

All wireless telecommunications facilities and antennas and the entire leasehold area shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

(a) All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

(b) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

4-22-35 Signage

Wireless telecommunications facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

4-22-36 Lot Size and Setbacks

All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: a distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten percent (10%) of the height of the tower or structure, or the existing setback requirement of the Colville Tribes, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

EXPERT ASSISTANCE

4-22-40 Retention of Expert Assistance and Reimbursement by Applicant

(a) The Colville Tribes may hire a consultant to assist in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.

(b) An applicant shall deposit with the IT Department funds sufficient to reimburse the Colville Tribes for all reasonable costs of the consultant evaluation in connection with the review of any application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the Colville Tribes shall precede the pre-application meeting. The Colville Tribes will maintain a separate escrow account for all such funds. The Colville Tribes' consultant shall invoice the Colville Tribes for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the Colville Tribes, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Colville Tribes before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Colville Tribes is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be promptly refunded to the applicant.

(c) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

HEARING AND DETERMINATION ON APPLICATION

4-22-50 Public Hearing and Notification Requirements

(a) If the IT Department recommends approving the special use permit for a wireless telecommunications facility, it will forward the application to the Planning Department, which will then process the application following applicable provisions of Chapter 4-3, including a hearing by the Land Use Review Board. In order that the Colville Tribes may notify nearby residents, the application shall contain the names and address of all residents whose residences are located within one-half mile of the proposed wireless telecommunications facility.

(b) There shall be no public hearing required for an application to co-locate on an existing tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the tower or structure, including attachments thereto.

(c) The Colville Tribes shall schedule the public hearing referred to in subsection (a) of this section once it finds the application is complete. The Colville Tribes, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary.

4-22-51 Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities

(a) The Colville Tribes will undertake a review of an application pursuant to this Chapter in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

(b) If the Council approves the special use permit for wireless telecommunications facilities, pursuant to Chapter 4-3, then the applicant shall be notified of such approval in writing within ten (10) calendar days of the Council's action, and the special use permit shall be issued within thirty (30) days after such approval.

(c) If the Council denies the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the Council's action.

PERMIT HOLDER MISCELLANEOUS PROVISIONS

4-22-60 Extent and Parameters of Special Use Permit for Wireless Telecommunications Facilities

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

(a) Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Colville Tribes.

(b) Pursuant to applicable provisions of Chapter 4-3, a special use permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this Chapter.

4-22-61 Reservation of Authority to Inspect Wireless Telecommunications Facilities

In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, and regulations and other applicable requirements, the Colville Tribes may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

4-22-62 Liability Insurance

(a) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death

and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below

- (1) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- (2) Automobile coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
- (3) Workers compensation and disability: statutory amounts.

(b) For a wireless telecommunications facility on property of the Colville Tribes, the commercial general liability insurance policy shall specifically include the Colville Tribes and its officers, councils, employees, committee members, attorneys, agents and consultants as additional insureds.

(c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.

(d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the IT director with at least thirty-(30) days' prior written notice in advance of the cancellation of the insurance.

(e) Renewal or replacement policies or certificates shall be delivered to the IT director at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

(f) Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than fifteen (15) days after the granting of the special use permit, the holder of the special use permit shall deliver to the IT director a copy of each of the policies or certificates representing the insurance in the required amounts.

4-22-63 Indemnification

(a) Any application for wireless telecommunication facilities, pursuant to this Chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Colville Tribes, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Colville Tribes, or

its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Colville Tribes.

(b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the Colville Tribes itself applies for and secures a special use permit for wireless telecommunications facilities.

ENFORCEMENT

4-22-70 Fines

(a) In the event of a violation of this Chapter or of any special use permit issued pursuant to this Chapter, the Colville Tribes may impose and collect against the holder of the special use permit fines or penalties as set forth in Chapter 4-3.

(b) The failure of the holder of a special use permit to comply with provisions of this Chapter shall constitute a violation of this Chapter and shall subject the holder to the enforcement provisions and procedures provided in Chapter 4-3.

(c) Notwithstanding anything in this Chapter, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. If necessary, the Colville Tribes may also seek appropriate relief to prevent the continued violation of this Chapter, without limiting other remedies available to the Colville Tribes.

4-22-71 Default and/or Revocation

If a wireless telecommunications facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the special use permit, then the Colville Tribes shall notify the permit holder in writing of such violation. A permit holder in violation may be considered in default and subject to fines pursuant to section 4-22-25, and if a violation is not corrected to the satisfaction of the Colville Tribes in a reasonable period of time the special use permit is subject to revocation pursuant to applicable revocation provisions of Chapter 4-3.

REMOVAL OF FACILITIES

4-22-80 Removal of Wireless Telecommunications Facilities

(a) Under the following circumstances, the Colville Tribes may determine that the health, safety, and welfare interests of the Colville Tribes warrant and require the removal of wireless telecommunications facilities:

- (1) Wireless telecommunications facilities with a permit have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding

ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;

(2) Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard;

(3) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization and the permit may be revoked.

(b) If the Colville Tribes makes such a determination as noted in subsection (a) of this section, then the Colville Tribes shall notify the holder of the special use permit within forty-eight (48) hours that said wireless telecommunications facilities are to be removed, the Colville Tribes may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.

(c) The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within thirty (30) days of receipt of written notice from the Colville Tribes. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Colville Tribes.

(d) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within ninety (90) days after the permit holder has received notice, then the Colville Tribes may order officials or representatives of the Colville Tribes to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder.

(e) If the Colville Tribes removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the Colville Tribes may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.

(f) Notwithstanding anything in this section to the contrary, the Colville Tribes may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more ninety (90) days, during which time a suitable plan for removal,

conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the Colville Tribes, and an agreement to such plan shall be executed by the holder of the special use permit and the Colville Tribes. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Colville Tribes may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

(Enacted 12/3/09, Resolution 2009-910)