

AGENDA
OURAY COUNTY PLANNING COMMISSION
REGULAR MEETING & WORKSHOP

October 4, 2016, 6:00 - 8:00 PM
Meeting to be held at the Ouray County Land Use Office
111 Mall Road, Ridgway, Colorado

*If all agenda items are not covered in this time frame they may be continued until the next regular meeting. ***Times are approximate and subject to change***. If an item is finished early the Planning Commission will move directly to the next agenda item. If not a Public Hearing, public comment may or may not be taken during the meeting. Action may be taken at the conclusion of public hearings.*

I. Call to Order – Workshop of the Ouray County Planning Commission (6:00 PM)

1. The Planning Commission will hold a workshop to review additional changes/revisions to the proposed Communications Facilities regulations.
2. Adjourn Workshop

II. Call to Order – Regular Meeting of the Ouray County Planning Commission

1. Request for approval of minutes; 9/6/2016
2. Election of Officers
3. New Business
4. Adjourn Regular Meeting

Copies of land use applications or workshop materials can be obtained at the Land Use Office at 111 Mall Road, Ridgway, CO; by calling 970.626.9775 or e-mailing mcastrodale@ouraycountyco.gov. Comments on the agenda items may be sent to Mark Castrodale, County Planner, P.O. Box 28, Ridgway, CO 81432

THIS PAGE INTENTIONALLY LEFT BLANK

OURAY COUNTY
LAND USE DEPARTMENT

- STAFF REPORT -

STAFF REPORT REGARDING: Communications Facilities – Proposed Land Use Code Update
DEVELOPED FOR: Ouray County Planning Commission
DRAFTED BY: Mark Castrodale
Date: September 21, 2016

Purpose

The purpose of this Staff Report is to provide the Planning Commission with the current status of the Communications Facilities draft and to communicate the direction from the County Commissioners regarding moving forward with a revised draft.

HISTORY

The Planning Commission reviewed their final draft of the Communications Facilities draft in a public hearing held on May 17th. At the conclusion of that hearing, the Planning Commission voted unanimously to forward the draft to the BOCC with a recommendation of approval.

The BOCC reviewed and considered the Communications Facilities Draft in a public hearing held on June 21st. At the conclusion of the hearing the BOCC approved the draft. However, the resolution ratifying the draft was never approved. The BOCC held a subsequent public hearing on MONTH, DAY where they voted to send the draft back to the Planning Commission for further review/revision.

INPUT FROM COMMUNICATIONS SME's AND HOA REPRESENTATIVES

The Board directed Staff and the Planning Commission to consider input from Ethan Funk, a local Communications Engineer, regarding the draft regulations. In a letter (email) to the BOCC, Mr. Funk provided several suggestions to tighten up the language and to avoid possible unintended consequences. Staff developed a new draft based upon the input from Mr. Funk and presented this draft to the BOCC. This revised/redline version of the draft was sent back to Planning Commission for consideration.

The Board also directed Staff to reach out to local communications companies and companies that currently have or use communications towers in Ouray County and request feedback on the proposed regulations. Staff sent an email with the new *redlined* draft attached, requesting feedback and inviting the following recipients to our October 4th work session:

- OurayNet
- Brainstorm Internet
- Cherry Creek Radio
- Ouray Schools R1
- North Fork Valley Public Radio (KVNF)
- Rocky Mountain PBS
- Ethan Funk

The Board also directed Staff to contact local HOA representatives, requesting feedback or input on the proposed draft regulations. Staff sent an email to all current HOA representatives (with a valid, current,

and active email address) along with a copy of the new *redlined* draft attached, requesting feedback and inviting them to the October 4th work session.

CURRENT STATUS OF THE DRAFT

In addition to the changes based upon the input from Ethan Funk, Staff is proposing additional changes based upon input received during a telecommunications permitting webinar. Staff also made minor modifications after consulting with Jonathan Kramer, lead attorney with the Telcom Law Firm, P.C., out of Los Angeles.

**LETTERS/EMAIL FROM
ETHAN FUNK – COMM.
ENGINEER
AND
RANDY CASSINGHAM
COUNTY
COMMUNICATIONS
COORDINATOR**

THIS PAGE INTENTIONALLY LEFT BLANK

June 26, 2016

RF Design Engineer / Partner
970-325-2158 x11
ethan@redmountainradio.com

Red Mountain Radio LLC
PO Box 1058
331 Six Avenue #3
Ouray, CO 81427
<http://www.redmountainradio.com>

Please find my comments regarding the recently adopted changes to the land use code, section 23. There are some serious shortcomings in the code as adapted on JUNE 21, 2016, due to what appears to be a lack of information and understanding of how communications towers are used, how radio frequency propagation works, and how sites must be selected for federal compliance. The most serious of these shortcomings are in section 23.4, which in it's current state is arbitrary and poorly aligned with federal and natural requirements for development of wireless communications coverage. I have addressed each section with comments in red after the session I am commenting on.

Section 23.3 DEFINITIONS

ANTENNA Any exterior apparatus designed for wireless telecommunication, radio or television communications through the sending and/or receiving of electromagnetic waves.

[COMMENT]: An antenna is a transducer that couples electromagnetic energy between the air and a device that generates or receives that energy. For your application of the term, you might consider this:

“An apparatus designed to couple electromagnetic energy between the air and communications equipment for the purpose of.... “

R.F. Electromagnetic wave frequencies that lie in the range extending from around 3kHz to 300GHz.

[COMMENT]: Use of RF later in the document is inconsistent with this definition. I think “propagation” or “coverage” would be the word you would like to use later in the document in place of RF.

[COMMENT]: Technically, RF is simply an abbreviation for “Radio Frequency,” and is not specific to electromagnetic waves. While the frequency range specified is generally correct, it should be noted that the abbreviation of Hertz is Hz, not hz. 3 kHz to 300 GHz for example.

23.4 C. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures within the same functional RF area or region.

[COMMENT]: What does “within the same functional RF area or region” mean? As an RF design engineer, with over 20 years of experience doing work with both the government and private sector, I have never heard of such an expression. May I suggest that you might be thinking of “coverage area.” In which case I recommend the following alternate wording:

“towers or alternative tower structures that would produce a similar and acceptable coverage area, as indicated by an industry accepted coverage model for the frequency band or bands of use.”

[COMMENT]: I would recommend a whole new approach (re-write) to section C and E, where you begin by requiring an applicant to provide a desired coverage area map, including the reference signal level value which defines the edge end-of-coverage boundary on the map. The map should also include any interference based, FCC, or other agency required coverage “keep-out” areas where coverage at the

reference level or other specified level is forbidden for interference or other regulatory reasons.

The county would then have a "reference" map that shows where coverage is needed and where it must be excluded. Your section 23 currently have no consideration for the exclusion case, which is a very significant short coming. The applicant would then provide coverage area predication maps (new Section E), using industry standard propagation models for the RF frequency band of use, for the requested and alternate tower locations, referring back to the reference map to demonstrate that the requested site meets the requirements and that alternate sites do not, due to either not meeting at least the reference signal strength requirement in the entire reference coverage area, or due the the signal strength exceeding the level allowed in a keep-out area. Note that the county should except any industry standard coverage model for the predicted site coverage maps, as long as the same model is used of all site. Many versions of the Longley-Rice coverage model are freely available for general use, and most applicants requiring FCC licensing will have already used various FCC approved models for the FCC paperwork. So flexibility in the model used is important to prevent conflicts with other government agency modeling requirements.

It would be reasonable to require applicants to demonstrate that the coverage and/or keep-out areas requirements of the reference map are not met by any existing antenna sites that are within the requested coverage area, and that would other wise qualify for use by not being excluded due to other restrictions such as RF exposure limits (see below). The county should be required to make available all existing, permitted site informations to the public, including site related lease restrictions information, such as site power limits, if any, which the country should obtain from tower owners as part of the permitting process.

C (1) The inventory shall include all such structures that are within the jurisdiction of the County; and within one (1) mile beyond the County border; within a municipality located, in whole or in part, within the County; and shall include specific information about the location (latitude and longitude coordinates), height, design, tower type and general suitability for antenna co-location of each tower, and other pertinent information as may be required by the Department

[COMMENT]: This is sub-paragraph sets an area of consideration that is both arbitrary and in some cases burdensome in that it fails to consider the desired coverage area of the service being sought (see comment above). For example, this paragraph may require that an applicant spend time and money considering a tower sites that lies outside of the desired coverage area. This needs to be reconsidered. See my comments above on using a coverage reference map alternate site consideration instead of the current approach.

C (2) The Department may share such information with other applicants for a cellular communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable

[COMMENT]: Bad idea to write a specific technology into law – i.e. Cellular Communications. Future commissioners and applicants will hate you. Why are you singling out Cellular service?

[COMMENT]: This paragraph provides NO CONSIDERATION for the following site parameters which can adversely effect the use-ability of a site to meet required coverage. As written, sub-paragraphs should be added to this section for allowances for the following:

1. Site transmitter power restrictions – For example, I have a Gray Head tower lease with has a 250 watt transmitter power output limit, enforced by the Nation Forest Service, which would exclude the site for uses that would otherwise require more transmitter power for the requested or licensed

coverage.

2. Site separation distance requirements from other stations for interference protection, or from population centers for blanketing interference protection of the population centers – For example the KURA interference problems that existed when their antenna was located on the Ouray school building in downtown Ouray.

3. Site human RF exposure limit restrictions – For example, a 750 watt VHF transmit antenna MUST BE at least 12 meters (36 feet) off the ground before the FCC will license it. Any alternate tower with a height less than 12 meters can not be used by such an applicant, regardless of the coverage, due the federaly required human RF exposure limits.

23.4 D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all towers, except amateur radio towers, shall be designed and installed to accommodate the co-location of additional cellular communications equipment.

[COMMENT]: Again, not good to write a specific technology into law. Why are you singling out cellular service? What about LMDS, WISP, or something that doesn't exist yet? You should also be aware of the massive infrastructure requirements that come with a cellular installation, such as Backup power, lightning protections, grounding, etc. Making a site cellular ready can be cost prohibitive unless the site is already being built for cellular service. Additionally, some tower uses prohibit co-location, such as base feed AM radio broadcast towers. Only shunt-feed AM towers can support other services on the same tower. Are you intending to REQUIRE that any AM broadcast applicants use the more expensive shunt-feed towers?

23.4 E. Co-location; Availability of Suitable Existing Structures:

No new tower, except amateur radio towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

[COMMENT]: See my comments on Section C regarding reference and coverage maps demonstrating coverage suitability.

E (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.

[COMMENT]: Again, see my comments on Section C, regarding the creation of alternate site exclusions for site power restrictions, RF exposure limits, etc.

23.4 F. Tower Height Restrictions:

(2) Proposals for towers at a height of greater than 50 feet must include RF analysis or other technical data that supports the requirement for an extended tower height.

[COMMENT]: I suspect you actually want a Longley-Rice or similar industry standard coverage analysis map, consistent with use the models use elsewhere in the application, and referring back to the reference coverage map, to show that the excess height is actually required.

23.4 G. Aesthetics:

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

(2) All towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness.

[COMMENT]: First, you should be aware than most low cost, anodized metal towers, as are used by KVNE, RMPS, CO State Patrol (all at the Golden Crystal Site), Colorado Public Radio, OurayNet (at the Blowout Site), etc., do not like to be painted due to the anodization. Second, this requirement may be in direct conflict with FCC tower requirements for tower painting, lighting and strobing near airports, where high visibility is the goal. While none of the current towers in the county that I am aware of require FCC mandated painting, it is not out side of the realm of possibility in the future. FCC paint requirements consider height of the tower AND distance to the nearest airport, not just height.

23.4 J Landscaping:

(1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.

[COMMENT]: This should include an exception to exclude tree and shrub based landscaping where ground radial (AM Broadcast) and lightning protection/mitigation system ground lines would be adversely effected by the tree roots.

23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.

[COMMENT]: "Components" has not been defined. This could be anything from tower sections, to nuts, bolts, screws and washers depending on thre preference of the reader.

Sent: Tue 7/6/2016 11:35 PM
From: Randy Cassingham <rcassingham@ouraycountyco.gov >
To: Mark Castrodale
Cc: None
Subject: Re: FW: Letter for meeting tomorrow

I am indeed aware that the regulations were finalized by the Planning Commission, but had not had a chance to read through them until now.

I have read, but not carefully analyzed, the "062116 PC FINAL BOCC DRAFT" of Section 23, and Mr. Funk's brief analysis of some parts of that document.

Further, I am familiar with the "Funk Tower" on McKenzie Butte (BLM land on Log Hill) and its purpose, and agree that these regulations do not affect that, and I don't find bias in Mr. Funk's comments due to his obvious personal interests. As a trained and experienced RF Engineer, he is more learned and capable on the technical matters being addressed than I am. I do have a unique blend of working technical knowledge and political understanding so that I am capable of understanding his points, and am able to put them into the context of the sometimes conflicting interests of visual impact, land use issues, and other factors.

So with all that said, in general I find Mr. Funk's analysis to be very good -- his points are excellent, and he doesn't just complain about the points he raises, but he offers suggestions on how to improve the Section's wording so that it is more accurate, workable, and understandable by industry professionals who will have to work to comply with it. I do agree, for instance, that specifying "cellular communications" (as one example) is a bad idea, in that this clouds the concepts and intent of the Section: do the regulations apply to (for instance) WiMax wireless Internet antennas? It is likely the Planning Commission -- and Governing Body -- would answer "yes," but it's much better to be clear from the outset than to settle the matter with expensive litigation.

At the same time, Mr. Funk's analysis is not complete -- though it is probably not meant to be. As an example of wording that could be problematic, "(4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential or commercial structure, including homes, businesses, garages, and greenhouses." could be construed to prohibit the towers' own supporting facilities, such as equipment shacks, that are an absolute necessity for the telecom towers being addressed by the Section. They are, after all, "commercial structures" that necessarily must be close to the towers.

None of this should be construed to be a criticism of the Planning Commission or County Staff. This all delves deeply into highly technical topics that are difficult for those who do not work in this field on a daily basis to explain in regulatory language. The PC and Staff did a credible job juggling a number of technical and political issues to meld them together into an understandable Section. They did get an awful lot of things right! But indeed there is still work to be done.

RECOMMENDATIONS

I do not believe that the entire Section needs to be scrapped, but it does definitely need some cleaning up so that it is fully understandable by the telecommunications professionals and engineers who will have to comply with it, while at the same time not unduly suggesting loopholes which could lead to litigation over meaning. We must be sure to address not only the "cellular industry" but also other telecom industry sectors, from radio and television broadcasters to Internet providers and -- as Mr. Funk pointed out -- technology-enabled industries which have yet to be invented, at the very least the ones that are already on the horizon. We must juggle conflicting interests: we want the County to be hospitable to technologies which enable our residents to be entertained, make a living, stay informed, and foster growth while at the same time protecting the County's natural beauty that attracts residents and visitors alike.

I recommend that an industry consultant be brought in to clean up the language -- especially the technical language -- so that the Section clearly communicates the intent and purpose of the Governing Body and complies with existing federal and state law. I do not believe this will be a large or lengthy job. And frankly, I can't think of a better person for that job than the trained and experienced local resident who has pointed out the shortcomings in the 062116 Draft than Mr. Funk himself, assuming he is amenable to doing that work at a reasonable cost.

While I myself don't have that formal training and decades of RF engineering experience, I remain at the disposal of the Staff, the Planning Commission, and the BOCC for further discussion from my own expertise as needed.

Last, to address a specific point as requested by Staff: I do not see anything in the Section that gives me concern as regard to Emergency Communications, either on a local governmental level (law enforcement/fire department/EMS/etc.) or with regards to amateur ("ham") radio, which is a vital component of national disaster response planning, as the Section allows for exceptions based on demonstrated technical need and compliance with federal regulations, which are certainly numerous in this field.

--

**Randy Cassingham, Ouray County Communications &
Chair - Ouray County Emergency Telephone Service Authority
Direct Phone: 970-626-6030**

COMMUNICATIONS

FACILITIES

DRAFT

VERSION ORIGINALLY

APPROVED BY THE

PLANNING

COMMISSION AND

FORWARDED TO BOCC

THIS PAGE INTENTIONALLY LEFT BLANK

SECTION 23

COMMUNICATIONS FACILITIES

23.1 PURPOSE AND LEGISLATIVE INTENT:

The purpose of this Code section is to establish guidelines for the siting of wireless, broadcast, wireless internet, digital television, and amateur (ie. *ham*) radio towers, antennas, ground equipment, and related structures.

Specifically, the purpose of this Code section is to:

- A. Allow sufficient, up-to-date communication in the County.
- B. Encourage co-location of facilities and avoid a proliferation of towers where possible.
- C. Locate communication towers, antennas, and related equipment and shelters, minimizing adverse impacts on the County.
- D. Encourage design and construction of towers, antennas, and related facilities to minimize adverse visual impacts.
- E. Encourage communications providers to deliver services in the County effectively and efficiently.
- F. Promote the health, safety, and general welfare of the public by regulating the siting of wireless communications facilities.
- G. Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulations consistent with Federal law and regulations.
- H. Protect the character of the County while meeting the needs of its citizens to enjoy the benefits of communications services.
- I. To complete County permitting within the time frames established by Federal law and regulation.

23.2 PERMITTING AND ZONING:

- A. Communications facilities are permitted in all zoning districts, subject to the provisions of this Section with a Communications Facility Permit (CFP) as provided for in this Section.
- B. All new communications facilities and modifications to existing facilities shall obtain approval and/or permitting as provided for in this Section. Approval shall be initiated by submittal to the Department of a Communications Facility Permit Application.
- C. A separate Special Use Permit is not required.

- D. The County may approve permits for new communications towers and facilities with a duration not exceeding a period of up to 20 years.
- E. Applications will be processed within the timeframes established by Federal law and regulation.

23.3 DEFINITIONS:

Words not defined herein shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence, Section, and Subsection in which they occur.

The word(s) “**map**” or “**zoning map**” means the Zoning Map of Ouray County.

ABANDONED. No longer in use and has not been in use for more than 365 days.

ALTERNATIVE TOWER STRUCTURE. Light/power poles, electric transmission towers, and similar natural or man-made alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. Any exterior apparatus designed for wireless telecommunication, radio or television communications through the sending and/or receiving of electromagnetic waves.

BLEND. That which does not stand in stark contrast to the immediate surroundings.

CO-LOCATION. The placement of the antennas of two or more service providers upon a single tower or alternative tower structure.

C.O.W. Acronym for “*Carrier On Wheels*”. Communications equipment mounted on a vehicle, trailer, or other similar apparatus, intended to provide temporary service during maintenance or outage.

DEPARTMENT. The Ouray County Land Use Department.

EQUIPMENT SHELTER. A permitted structure, built to house communications and associated equipment, that supports a communications installation.

EXISTING STRUCTURES. Those communications related structures which were in place prior to the adoption of this Code section.

F.A.A. The Federal Aviation Administration.

F.C.C. The Federal Communications Commission.

FACILITIES / SUPPORT STRUCTURES. Something designed, built, installed, etc. related to a communications equipment installation.

GOVERNING AUTHORITY. The Board of County Commissioners of Ouray County.

HEIGHT. When referring to a tower or other structure, the term *height* shall mean the distance measured from the ground level to the highest point on the tower structure or appurtenance.

MONOPINE TOWER. See “Stealth Tower”.

MONOPOLE TOWER. Any structure designed to support antennae and which consists solely of a stand-alone ground mounted support pole or pipe, without guy or other supporting wires.

NON-SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

PHOTO-SIMULATION. A facsimile of a building or structure, superimposed on to an actual photo of a proposed site, area, or location, typically produced in a software package such as Adobe Photoshop.

PUBLIC OFFICER. Shall mean the Planning Director or other representative of the Land Use Department.

R.F. Electromagnetic wave frequencies that lie in the range extending from around 3khz to 300Ghz.

REPLACEMENT. A substitution of an existing item for a new, different, or revised item.

STEALTH TOWER. A communications structure consisting of a tower and antennae that have been designed to effectively blend in with the existing environment by use of camouflaging techniques, such as a faux tree or similar.

SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

TEMPORARY EQUIPMENT. Items installed at or in a communications facility for a particular purpose, but not intended or approved by the County to be part of the permanent structure or overall facility installation.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telecommunication towers, man-made trees (with accessory buildings/structures) and other similar structures.

23.4 REQUIREMENTS FOR COMMUNICATIONS FACILITIES APPLICATIONS:

A. Federal Requirements:

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If these Federal laws and regulations are changed, the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised Federal laws and regulations, as provided by the controlling Federal agency.

B. Planned Unit Developments/Subdivisions:

New communications towers and their associated support facilities are prohibited in County-approved PUDs and subdivisions, and subdivisions filed prior to 1974. New tower structures to be located within 1 mile of a PUD or subdivision are limited to a maximum height of 50

feet. Amateur Radio (HAM) towers and facilities are allowed in PUDs/Subdivisions, as provided for in this Section.

C. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures within the same functional RF area or region.

- (1) The inventory shall include all such structures that are within the jurisdiction of the County; and within one (1) mile beyond the County border; within a municipality located, in whole or in part, within the County; and shall include specific information about the location (latitude and longitude coordinates), height, design, tower type and general suitability for antenna co-location of each tower, and other pertinent information as may be required by the Department.
- (2) The Department may share such information with other applicants for a cellular communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all towers, except amateur radio towers, shall be designed and installed to accommodate the co-location of additional cellular communications equipment.

E. Co-location; Availability of Suitable Existing Structures:

No new tower, except amateur radio towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

- (1) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (4) The applicant's proposed equipment/antenna(s) would cause electromagnetic interference with equipment/antenna(s) on the existing towers or structures, or the equipment/antenna(s) on the existing towers or structures would cause interference with the applicant's proposed equipment/antenna(s).

- (5) The cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure or to adapt an existing tower or structure exceed the costs of new tower development.
- (6) The applicant adequately demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

F. Tower Height Restrictions:

- (1) Communications towers and related facilities are presumed to have a maximum height of **50 feet**.
- (2) Proposals for towers at a height of greater than 50 feet must include RF analysis or other technical data that supports the requirement for an extended tower height.
- (3) Applicants must also demonstrate that a multi-tower approach is not technically feasible; cost alone is not determinative of feasibility.
- (4) Applicants proposing towers at a height of greater than 50 feet may be required to reimburse the County for additional costs related to review by a qualified engineer.
- (5) No towers shall be allowed at a height greater than 180 feet.

G. Aesthetics:

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

- (1) All new or total replacement tower/antenna structures shall be designed as alternative tower structures or stealth towers unless otherwise approved by the County. Proposed tower stealth or camouflage design and elements must be approved by the BOCC.
- (2) All towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness.
- (3) For tower sites, the design of all buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment.
- (4) For antennas installed on a structure other than a tower, the antenna and supporting electrical and mechanical ground equipment shall be of a dark color so as to make the antenna and related equipment visually unobtrusive.
- (5) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (6) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure within the County, unless otherwise required by a governmental authority.
- (7) For alternative tower structures, the co-location design requirement may be waived by Staff.

- (8) In addition to approval as set forth in this Section, all wireless concealment structures require issuance of a building permit.

H. Setbacks:

The following setbacks shall apply to all communication towers:

- (1) Tower setbacks from property lines shall be a distance equal to the height of the tower, or, must meet the minimum setback requirement for the zoning district, whichever is greater.
- (2) Guywires, accessory buildings and facilities shall meet the minimum building setback requirements as set forth in this Code.
- (3) All structures shall meet the setback, screening, and buffer requirements contained herein.
- (4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential or commercial structure, including homes, businesses, garages, and greenhouses.

I. Fencing:

Fencing proposed by Applicant and approved by the County shall be of materials that blend with the surroundings. Any installed fencing shall be properly maintained.

J. Landscaping:

- (1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.
- (2) Required landscaping shall be consistent with surrounding vegetation and shall be properly maintained by the facility owner or leased tenant.
- (3) The BOCC may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgement of the BOCC landscaping is not appropriate or necessary.
- (4) The BOCC shall consider wildfire implications when imposing requirements for landscaping.

K. Additional Requirements:

- (1) Applicant must submit evidence that demonstrates the proposed facility or facility modification does not create undue impacts to surrounding areas. Potential impacts include, but are not limited to: water pollution, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable impacts beyond the boundaries of the property where the facility is located.
- (2) Applicant must submit evidence that demonstrates that legal access and all utilities required to serve the proposed use are available.
- (3) Applicant must submit evidence that demonstrates the proposed facility will not unreasonably impact wildlife or significant wildlife habitat.

- (4) Applicant must submit evidence that demonstrates the proposed facility will not alter, restrict, inhibit, or interfere with historic irrigation practices, headgates, ditches, and ditch rights-of-way.
- (5) Applicant must submit a geo-hazard mitigation report for any proposed facility located within any area subject to potential geo-hazards, including, but not limited to: rockfall areas, avalanches, landslide, potential unstable slopes, slopes greater than 30%, alluvial/colluvial fans, talus slopes, shale, faults, expansive soils, or ground subsidence. Such report must be prepared by a Colorado Licensed Geo-Technical Engineer and approved by the County.
- (6) Applicant must submit evidence that demonstrates the proposed facility has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (7) Applicant must submit evidence that demonstrates the proposed facility would not have a material adverse effect on the surrounding area.
- (8) Applicant must submit evidence that demonstrates the proposed facility will not create impacts on existing infrastructure beyond what would be created by a use-by-right, or, evidence that such impacts will be sufficiently mitigated.
- (9) Applicant must submit a weed management/mitigation plan if required by the County Weed Manager.

Note: The County may require qualified professional geologic or engineering certification that the proposed tower facility and associated structures can be located and developed in a safe manner.

L. Pre-Existing Towers and Facilities:

- (1) Towers and facilities in existence prior to the adoption of this Section may be allowed to continue in their current state; provided, however, that any modification to a pre-existing communications tower and/or facility must be in substantial conformance with this Code.
- (2) Pre-existing towers and facilities are allowed to conduct typical maintenance and upkeep of such facilities.

M. Change of Ownership Notification:

Upon the transfer of ownership of any tower, alternative tower structure, or lot upon which such a structure has been erected, the tower permittee shall notify the Department of the transaction in writing within 30 days.

N. Written Notification of Denial:

- (1) Within thirty (30) days of the receipt of an application, the Department shall either:
 - (a) send written notice to the Applicant that the application is complete and shall be processed according to this Section; **or**

- (b) send written notice informing the Applicant that the application does not meet submittal requirements, stating the specific deficiencies.
- (2) If the Department informs an Applicant of an incomplete application within thirty (30) days of submittal, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

23.5 HEARINGS, NOTICE, AND SCHEDULING:

- A. If the request for a Communications Facility Permit is located within an Urban Growth Management Area or an Area of Influence, the request shall also be submitted to the adjacent municipality for review and comment. Any such comments shall be provided to the Department within thirty (30) days of transmittal of the application to the municipality.
- B. After the receipt of a complete application for a Communications Facility Permit by the Department, the permit application shall be considered at the next available Planning Commission agenda or, if the request is located within an Urban Growth Management Area or Area of Influence the appropriate Joint Planning Board shall review the request.
 - (1) The Planning Commission or Joint Planning Board shall review the application and shall recommend approval, recommend approval with conditions, or recommend denial of the application if it does not meet the requirements of this Code and the action shall be in the form of a motion as noted in the minutes.
 - (2) Staff shall forward such recommendation to the BOCC.
 - (3) If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Permit application within 14 days of the scheduled public hearing, the application shall be forwarded to the BOCC for a public hearing.
- C. Before granting a Communications Facility Permit, the BOCC shall hold a public hearing on the matter.
 - (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
 - (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1 mile of the subject lot or parcel.
 - (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.

Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.
 - (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.6 EXCEPTIONS / VARIANCE / APPEALS:

- A. For applications proposing a new tower/facility, rather than co-location on an existing tower, see Section 12 for additional information regarding a variance or exception.
- B. An Applicant has the right to appeal a denial by Staff per Section 12 of this Code.

23.7 FEES FOR COMMUNICATION FACILITY APPLICATIONS:

Application fees for Communications Facility Permits, or renewal fees of Communications Facility Permits, will be in accordance with the County's current fee schedule.

Note: If it is determined by the County that it is necessary to consult with a third-party in considering the factors listed in this Section, all reasonable costs and expenses associated with such consultation shall be borne by the Applicant.

23.8 PERMIT TERMS AND RENEWAL:

- A. After a Communications Facility Permit has been issued, it shall be effective for a term of up to twenty (20) years, as determined by the BOCC. The Applicant shall be responsible for contacting the Department regarding the renewal of the Communications Facility Permit.
- B. In the event that the Applicant shall fail to contact the Department for renewal of a Special Use Permit within one-hundred eighty (180) days of the expiration of the permit, such permit may be revoked or suspended. If the permit is revoked, the Applicant shall be allowed to re-apply for a new permit according to the then existing requirements of this Code.

23.9 EVALUATION – SUBSTANTIAL VS. NON-SUBSTANTIAL MODIFICATIONS:

Staff may administratively approve tower modifications that are deemed to be non-substantial under Federal guidelines (Federal Statutes, Regulations, and FCC Interpretation).

Note: Modifications deemed substantial shall require approval of a Communications Facility Permit.

23.10 BUILDING PERMIT REQUIRED:

All new towers, new structures, new support facilities, and new equipment shelters require issuance of a building permit prior to commencing construction. Refer to application form for specific submittal requirements.

23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

- A. Owners, manager, and lessee of communications facilities may conduct maintenance, but no expansion, of such facility with notification to Staff.

- B. Typical maintenance may include the repair of a tower, antenna, communications equipment, or other repair of any existing facility component(s).
- C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.
- D. Maintenance of communications facilities may also include the temporary use of COWs or other temporary equipment for a period not to exceed 90 days.

Notes: The use of temporary equipment for a period exceeding 90-days requires prior approval by Staff. The use of equipment for emergency repairs requires notification to Staff within 72 hours of implementation.

23.12 AMATEUR RADIO (HAM) TOWERS AND FACILITIES:

- A. Amateur radio towers and antennas are limited to a maximum height of 35 feet except as otherwise provided by Federal law or regulation, and do not require prior approval from the County.
- B. All amateur radio towers must be set back from any property line, at a minimum, a distance equal to the height of the tower, or a minimum of 25 feet, whichever is greater.
- C. Amateur radio operators wishing to erect a tower at a height greater than 35 feet may apply to the Department for approval prior to erecting such tower. Applications for variance in amateur radio tower height restrictions must include sufficient justification. Variance applications must show proof of notification to any applicable home owners association(s).
- D. Modifications to existing amateur radio towers require prior approval by Staff.

Notes: Staff may at their discretion forward any such requests to the BOCC for final approval. Also, amateur radio operators are strongly encouraged to research possible homeowners association covenants and regulations that may affect the installation of radio equipment and towers in their area.

23.13 REMOVAL OF ABANDONED ANTENNAS OR TOWERS:

- A. Any tower or antenna that is not operated for twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna or tower shall remove the structure within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment.
- B. If said tower or antenna is not removed within ninety (90) days, it may be subject to enforcement action.

23.14 CONFLICT WITH OTHER LAWS:

If the County codes or regulations are in conflict with Federal law or regulations, Federal law or regulations shall control.

Note: Where HOA covenants/CCRs are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an HOA. The County does not enforce HOA covenants.

23.15 SEVERABILITY:

- A.** In the event any article, section, sentence, clause or phrase of this Section shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, sentences, clauses or phrases of this Section, which shall remain in full force and effect, as if the article, section, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.
- B.** The BOCC hereby declares that it would have adopted the remaining parts of this Section if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.

THIS PAGE INTENTIONALLY LEFT BLANK

**COMMUNICATIONS
FACILITIES
DRAFT**

**VERSION DRAFTED
BASED UPON INPUT
FROM
ETHAN FUNK**

THIS PAGE INTENTIONALLY LEFT BLANK

SECTION 23

COMMUNICATIONS FACILITIES

23.1 PURPOSE AND LEGISLATIVE INTENT:

The purpose of this Code section is to establish guidelines for the siting of wireless, broadcast, wireless internet, digital television, and amateur (ie. *ham*) radio towers, antennas, ground equipment, and related structures.

Specifically, the purpose of this Code section is to:

- A. Allow sufficient, up-to-date communication in the County.
- B. Encourage co-location of facilities and avoid a proliferation of towers where possible.
- C. Locate communication towers, antennas, and related equipment and shelters, minimizing adverse impacts on the County.
- D. Encourage design and construction of towers, antennas, and related facilities to minimize adverse visual impacts.
- E. Encourage communications providers to deliver services in the County effectively and efficiently.
- F. Promote the health, safety, and general welfare of the public by regulating the siting of wireless communications facilities.
- G. Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulations consistent with Federal law and regulations.
- H. Protect the character of the County while meeting the needs of its citizens to enjoy the benefits of communications services.
- I. To complete County permitting within the time frames established by Federal law and regulation.

23.2 PERMITTING AND ZONING:

- A. Communications facilities are permitted in all zoning districts, subject to the provisions of this Section with a Communications Facility Permit (CFP) as provided for in this Section.
- B. All new communications facilities and modifications to existing facilities shall obtain approval and/or permitting as provided for in this Section. Approval shall be initiated by submittal to the Department of a Communications Facility Permit Application.
- C. A separate Special Use Permit is not required.

- D. The County may approve permits for new communications towers and facilities with a duration not exceeding a period of up to 20 years.
- E. Applications will be processed within the timeframes established by Federal law and regulation.

23.3 **DEFINITIONS:**

Words not defined herein shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence, Section, and Subsection in which they occur.

The word(s) “**map**” or “**zoning map**” means the Zoning Map of Ouray County.

ABANDONED. No longer in use and has not been in use for more than 365 days.

ALTERNATIVE TOWER STRUCTURE. Light/power poles, electric transmission towers, and similar natural or man-made alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. ~~Any exterior apparatus designed for wireless telecommunication, radio or television communications through the sending and/or receiving of electromagnetic waves. A transducer that couples electromagnetic energy between the air and communications equipment for the purpose of sending or receiving information.~~

BLEND. That which does not stand in stark contrast to the immediate surroundings.

CO-LOCATION. The placement of the antennas of two or more service providers upon a single tower or alternative tower structure.

C.O.W. Acronym for “*Carrier On Wheels*”. Communications equipment mounted on a vehicle, trailer, or other similar apparatus, intended to provide temporary service during maintenance or outage.

DEPARTMENT. The Ouray County Land Use Department.

EQUIPMENT SHELTER. A permitted structure, built to house communications and associated equipment, that supports a communications installation.

EXISTING STRUCTURES. Those communications related structures which were in place prior to the adoption of this Code section.

F.A.A. The Federal Aviation Administration.

F.C.C. The Federal Communications Commission.

FACILITIES / SUPPORT STRUCTURES. Something designed, built, installed, etc. related to a communications equipment installation.

GOVERNING AUTHORITY. The Board of County Commissioners of Ouray County.

HEIGHT. When referring to a tower or other structure, the term *height* shall mean the distance measured from the ground level to the highest point on the tower structure or appurtenance.

MONOPINE TOWER. See “Stealth Tower”.

MONOPOLE TOWER. Any structure designed to support antennae and which consists solely of a stand-alone ground mounted support pole or pipe, without guy or other supporting wires.

NON-SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

PHOTO-SIMULATION. A facsimile of a building or structure, superimposed on to an actual photo of a proposed site, area, or location, typically produced in a software package such as Adobe Photoshop.

PUBLIC OFFICER. Shall mean the Planning Director or other representative of the Land Use Department.

RADIO FREQUENCY (RF) Any frequencies that lie in the range extending from around 3 kHz to 300 GHz, which include those frequencies used for communication or radar signals. (RF usually refers to electromagnetic rather than mechanical oscillations.) ~~Electromagnetic-wave frequencies that lie in the range extending from around 3khz to 300Ghz.~~

REPLACEMENT. A substitution of an existing item for a new, different, or revised item.

STEALTH TOWER. A communications structure consisting of a tower and antennae that have been designed to effectively blend in with the existing environment by use of camouflaging techniques, such as a faux tree or similar.

SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

TEMPORARY EQUIPMENT. Items installed at or in a communications facility for a particular purpose, but not intended or approved by the County to be part of the permanent structure or overall facility installation.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, ~~cellular~~ telecommunication towers, man-made trees (with accessory buildings/structures) and other similar structures.

23.4 **REQUIREMENTS FOR COMMUNICATIONS FACILITIES APPLICATIONS:**

A. Federal Requirements:

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If these Federal laws and regulations are changed, the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised Federal laws and regulations, as provided by the controlling Federal agency.

B. Planned Unit Developments/Subdivisions:

New communications towers and their associated support facilities are ~~prohibited~~ permitted in County-approved PUDs and subdivisions, and subdivisions filed prior to 1974, where not otherwise prohibited by covenant or plat restriction. ~~New tower structures to be located within 1 mile of a PUD or subdivision are limited to a maximum height of 50 feet. Amateur Radio (HAM) towers and facilities are allowed in PUDs/Subdivisions, as provided for in this Section.~~

C. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures that would produce a similar and acceptable coverage area, as indicated by an industry accepted coverage model for the frequency band or bands in use, within the same functional RF area or region.

- (1) Applicant shall provide desired coverage area map*, including the reference signal level value which defines the edge and end-of-coverage boundary on the map. Map shall also include any interference based, FCC, or other agency required coverage keep out areas where coverage reference level or other specified level is forbidden for interference or other regulatory reasons.
- (2) Applicant shall demonstrate that the requirements of the coverage areas of the reference map are not met by any existing antenna site that are within the desired coverage area. Applicant shall also provide any information regarding possible tower exclusions due to other possible restrictions, including but not necessarily limited to RF exposure limits.
- ~~(2)~~(3) The inventory shall include all such structures that lie within the desired coverage area per the provided coverage area map, ~~that are within the jurisdiction of the County; and within one (1) mile beyond the County border; within a municipality located, in whole or in part, within the County;~~ and Such map shall include specific information about the location (latitude and longitude coordinates), height, design, tower type, and general suitability for antenna co-location of each tower, including any site transmitter power restrictions, site separation distance requirements from other stations, site human RF exposure limits, general suitability for co-location, and any other pertinent information as may be required by the Department.
- ~~(3)~~(4) The Department may share such information with other applicants for a ~~cellular~~ communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

* Note: Ouray County will accept any industry-standard coverage model as long as the same model is used for the entire application process for a given band of operation.

D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all towers intended for licensed data and/or voice services to the general public, ~~except amateur radio towers~~, shall be designed and installed to accommodate the co-location of additional carriers providing licensed data and/or voice services to the general public. *Note: Co-location of additional carriers providing licensed data and/or voice services to the general public shall mean accommodating at least a second set of the same equipment as what is being proposed.*

E. Co-location; Availability of Suitable Existing Structures:

No new tower, except amateur radio towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure, within the coverage area as detailed in the coverage area map provided by the Applicant, can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

- (1) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (4) ~~The applicant's proposed equipment/antenna(s) would cause electromagnetic interference with equipment/antenna(s) on the existing towers or structures, or the equipment/antenna(s) on the existing towers or structures would cause interference with the applicant's proposed equipment/antenna(s).~~
- (5) Site separation distance requirements from other stations.
- (6) Site RF human exposure limits.
- ~~(6)~~(7) _____ The cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure or to adapt an existing tower or structure exceed the costs of new tower development.
- ~~(7)~~(8) Site transmitter power restrictions that conflict with the applicant's proposed equipment/antenna(s).
- ~~(8)~~(9) _____ The applicant adequately demonstrates that the existing site is not generally suitable for co-location or there are other limiting factors that render existing towers and structures unsuitable.

F. Tower Height Restrictions:

- (1) Communications towers and related facilities are presumed to have a maximum height of 50 180 feet.
- (2) Proposals for towers at a height of greater than 50 180 feet must include a Longley-Rice or similar industry standard coverage analysis map ~~RF analysis or other technical data~~ that supports the requirement for an extended tower height.
- (3) Applicants must also demonstrate that a multi-tower approach is not technically feasible; cost alone is not determinative of feasibility.

(4) Applicants proposing towers at a height of greater than ~~50~~ 180 feet may be required to reimburse the County for additional costs related to review by a qualified engineer.

(5) ~~No towers shall be allowed at a height greater than 180 feet.~~

(6) **Aesthetics:**

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

(1) All new or total replacement tower/antenna structures shall be designed as alternative tower structures or stealth towers unless otherwise approved by the County. Proposed tower stealth or camouflage design and elements must be approved by the BOCC.

(2) Unless otherwise required by FCC regulation, All towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness. Applicants may propose alternatives to these requirements based upon specific technical requirements, maintenance concerns, or potential anodization issues.

(3) For tower sites, the design of all buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment.

(4) For antennas installed on a structure other than a tower, the antenna and supporting electrical and mechanical ground equipment shall be of a dark color so as to make the antenna and related equipment visually unobtrusive.

(5) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

(6) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure within the County, unless otherwise required by a governmental authority.

(7) For alternative tower structures, the co-location design requirement may be waived by Staff.

(8) In addition to approval as set forth in this Section, all wireless concealment structures require issuance of a building permit.

G. Setbacks:

The following setbacks shall apply to all communication towers:

(1) Tower setbacks from property lines shall be a distance equal to the height of the tower, or, must meet the minimum setback requirement for the zoning district, whichever is greater.

(2) Guywires, accessory buildings and facilities shall meet the minimum building setback requirements as set forth in this Code.

(3) All structures shall meet the setback, screening, and buffer requirements contained herein.

- (4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential or commercial structure, including homes, businesses, garages, and greenhouses.

H. Fencing:

Fencing proposed by Applicant and approved by the County shall be of materials that blend with the surroundings. Any installed fencing shall be properly maintained.

I. Landscaping:

- (1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.
- (2) Required landscaping shall be consistent with surrounding vegetation and shall be properly maintained by the facility owner or leased tenant.
- (3) The BOCC may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgement of the BOCC landscaping is not appropriate or necessary.
- (4) The BOCC shall consider wildfire implications when imposing requirements for landscaping.
- ~~(4)~~(5) Tree or shrub based landscaping will not be required where the applicant demonstrates that ground radial or lightning protection/mitigation system ground lines might be adversely effected by tree roots.

J. Additional Requirements:

- (1) Along with all information required on the County application, Applicant shall provide information regarding any overall site transmitter power limits, if applicable.
- (2) Applicant must submit evidence that demonstrates the proposed facility or facility modification does not create undue impacts to surrounding areas. Potential impacts include, but are not limited to: water pollution, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable impacts beyond the boundaries of the property where the facility is located.
- (3) Applicant must submit evidence that demonstrates that legal access and all utilities required to serve the proposed use are available.
- (4) Applicant must submit evidence that demonstrates the proposed facility will not unreasonably impact wildlife or significant wildlife habitat.
- (5) Applicant must submit evidence that demonstrates the proposed facility will not alter, restrict, inhibit, or interfere with historic irrigation practices, headgates, ditches, and ditch rights-of-way.
- (6) Applicant must submit a geo-hazard mitigation report for any proposed facility located within any area subject to potential geo-hazards, including, but not limited to: rockfall areas, avalanches, landslide, potential unstable slopes, slopes greater than 30%, alluvial/colluvial fans, talus slopes, shale, faults, expansive soils, or ground subsidence. Such report must be prepared by a Colorado Licensed Geo-Technical Engineer and approved by the County.

- (7) Applicant must submit evidence that demonstrates the proposed facility has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (8) Applicant must submit evidence that demonstrates the proposed facility would not have a material adverse effect on the surrounding area.
- (9) Applicant must submit evidence that demonstrates the proposed facility will not create impacts on existing infrastructure beyond what would be created by a use-by-right, or, evidence that such impacts will be sufficiently mitigated.
- (10) Applicant must submit a weed management/mitigation plan if required by the County Weed Manager.

Note: The County may require qualified professional geologic or engineering certification that the proposed tower facility and associated structures can be located and developed in a safe manner.

K. Pre-Existing Towers and Facilities:

- (1) Towers and facilities in existence prior to the adoption of this Section may be allowed to continue in their current state; provided, however, that any modification to a pre-existing communications tower and/or facility must be in substantial conformance with this Code.
- (2) Pre-existing towers and facilities are allowed to conduct typical maintenance and upkeep of such facilities.

L. Change of Ownership Notification:

Upon the transfer of ownership of any tower, alternative tower structure, or lot upon which such a structure has been erected, the tower permittee shall notify the Department of the transaction in writing within 30 days.

M. Written Notification of Denial:

- (1) Within thirty (30) days of the receipt of an application, the Department shall either:
 - (a) send written notice to the Applicant that the application is complete and shall be processed according to this Section; **or**
 - (b) send written notice informing the Applicant that the application does not meet submittal requirements, stating the specific deficiencies.
- (2) If the Department informs an Applicant of an incomplete application within thirty (30) days of submittal, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

23.5 HEARINGS, NOTICE, AND SCHEDULING:

- A. If the request for a Communications Facility Permit is located within an Urban Growth Management Area or an Area of Influence, the request shall also be submitted to the adjacent municipality for review and comment. Any such comments shall be provided to the

Department within thirty (30) days of transmittal of the application to the municipality.

- B.** After the receipt of a complete application for a Communications Facility Permit by the Department, the permit application shall be considered at the next available Planning Commission agenda or, if the request is located within an Urban Growth Management Area or Area of Influence the appropriate Joint Planning Board shall review the request.
- (1) The Planning Commission or Joint Planning Board shall review the application and shall recommend approval, recommend approval with conditions, or recommend denial of the application if it does not meet the requirements of this Code and the action shall be in the form of a motion as noted in the minutes.
 - (2) Staff shall forward such recommendation to the BOCC.
 - (3) If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Permit application within 14 days of the scheduled public hearing, the application shall be forwarded to the BOCC for a public hearing.
- C.** Before granting a Communications Facility Permit, the BOCC shall hold a public hearing on the matter.
- (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
 - (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1 mile of the subject lot or parcel.
 - (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.
- Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.*
- (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.6 EXCEPTIONS / VARIANCE / APPEALS:

- A.** For applications proposing a new tower/facility, rather than co-location on an existing tower, see Section 12 for additional information regarding a variance or exception.
- B.** An Applicant has the right to appeal a denial by Staff per Section 12 of this Code.

23.7 FEEES FOR COMMUNICATION FACILITY APPLICATIONS:

Application fees for Communications Facility Permits, or renewal fees of Communications Facility Permits, will be in accordance with the County's current fee schedule.

Note: If it is determined by the County that it is necessary to consult with a third-party in considering the factors listed in this Section, all reasonable costs and expenses associated with such consultation shall be borne by the Applicant.

23.8 PERMIT TERMS AND RENEWAL:

- A. After a Communications Facility Permit has been issued, it shall be effective for a term of up to twenty (20) years, as determined by the BOCC. The Applicant shall be responsible for contacting the Department regarding the renewal of the Communications Facility Permit.
- B. In the event that the Applicant shall fail to contact the Department for renewal of a Special Use Permit within one-hundred eighty (180) days of the expiration of the permit, such permit may be revoked or suspended. If the permit is revoked, the Applicant shall be allowed to re-apply for a new permit according to the then existing requirements of this Code.

23.9 EVALUATION – SUBSTANTIAL VS. NON-SUBSTANTIAL MODIFICATIONS:

Staff may administratively approve tower modifications that are deemed to be non-substantial under Federal guidelines (Federal Statutes, Regulations, and FCC Interpretation).

Note: Modifications deemed substantial shall require approval of a Communications Facility Permit.

23.10 BUILDING PERMIT REQUIRED:

All new towers, new structures, new support facilities, and new equipment shelters require issuance of a building permit prior to commencing construction. Refer to application form for specific submittal requirements.

23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

- A. Owners, manager, and lessee of communications facilities may conduct maintenance, but no expansion, of such facility with notification to Staff.
- B. Typical maintenance may include the repair of a tower, antenna, communications equipment, or other repair of any existing facility component(s).
- C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.
- D. Maintenance of communications facilities may also include the temporary use of COWs or other temporary equipment for a period not to exceed 90 days.

Notes: The use of temporary equipment for a period exceeding 90-days requires prior approval by Staff. The use of equipment for emergency repairs requires notification to Staff within 72 hours of implementation.

23.12 AMATEUR RADIO (HAM) TOWERS AND FACILITIES:

- A. Amateur radio towers and antennas are limited to a maximum height of 35 feet except as otherwise provided by Federal law or regulation, and do not require prior approval from the County.
- B. All amateur radio towers must be set back from any property line, at a minimum, a distance equal to the height of the tower, or a minimum of 25 feet, whichever is greater.
- C. Amateur radio operators wishing to erect a tower at a height greater than 35 feet may apply to the Department for approval prior to erecting such tower. Applications for variance in amateur radio tower height restrictions must include sufficient justification. Variance applications must show proof of notification to any applicable home owners association(s).
- D. Modifications to existing amateur radio towers require prior approval by Staff.

Notes: Staff may at their discretion forward any such requests to the BOCC for final approval. Also, amateur radio operators are strongly encouraged to research possible homeowners association covenants and regulations that may affect the installation of radio equipment and towers in their area.

23.13 REMOVAL OF ABANDONED ANTENNAS OR TOWERS:

- A. Any tower or antenna that is not operated for twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna or tower shall remove the structure within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment.
- B. If said tower or antenna is not removed within ninety (90) days, it may be subject to enforcement action.

23.14 CONFLICT WITH OTHER LAWS:

If the County codes or regulations are in conflict with Federal law or regulations, Federal law or regulations shall control.

Note: Where HOA covenants/CCRs are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an HOA. The County does not enforce HOA covenants.

23.15 SEVERABILITY:

- A. In the event any article, section, sentence, clause or phrase of this Section shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, sentences, clauses or phrases of this Section, which shall remain in full force and effect, as if the article, section, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

- B.** The BOCC hereby declares that it would have adopted the remaining parts of this Section if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.

**COMMUNICATIONS
FACILITIES DRAFT**

**VERSION DRAFTED BASED
ON INPUT FROM
ETHAN FUNK
AND
RANDY CASSINGHAM**

THIS PAGE INTENTIONALLY LEFT BLANK

SECTION 23

COMMUNICATIONS FACILITIES

23.1 PURPOSE AND LEGISLATIVE INTENT:

The purpose of this Code section is to establish guidelines for the siting of wireless, broadcast, wireless internet, digital television, and amateur (ie. *ham*) radio towers, antennas, ground equipment, and related structures.

Specifically, the purpose of this Code section is to:

- A. Allow sufficient, up-to-date communication in the County.
- B. Encourage co-location of facilities and avoid a proliferation of towers where possible.
- C. Locate communication towers, antennas, and related equipment and shelters, minimizing adverse impacts on the County.
- D. Encourage design and construction of towers, antennas, and related facilities to minimize adverse visual impacts.
- E. Encourage communications providers to deliver services in the County effectively and efficiently.
- F. Promote the health, safety, and general welfare of the public by regulating the siting of wireless communications facilities.
- G. Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulations consistent with Federal law and regulations.
- H. Protect the character of the County while meeting the needs of its citizens to enjoy the benefits of communications services.
- I. To complete County permitting within the time frames established by Federal law and regulation.

23.2 PERMITTING AND ZONING:

- A. Communications facilities are permitted in all zoning districts, subject to the provisions of this Section with a Communications Facility Permit (CFP) as provided for in this Section.
- B. All new communications facilities and modifications to existing facilities shall obtain approval and/or permitting as provided for in this Section. Approval shall be initiated by submittal to the Department of a Communications Facility Permit Application.
- C. A separate Special Use Permit is not required.

- D. The County may approve permits for new communications towers and facilities with a duration not exceeding a period of up to 20 years.
- E. Applications will be processed within the timeframes established by Federal law and regulation.

23.3 **DEFINITIONS:**

Words not defined herein shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence, Section, and Subsection in which they occur.

The word(s) “**map**” or “**zoning map**” means the Zoning Map of Ouray County.

ABANDONED. No longer in use and has not been in use for more than 365 days.

ALTERNATIVE TOWER STRUCTURE. Light/power poles, electric transmission towers, and similar natural or man-made alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. A transducer that couples electromagnetic energy between the air and communications equipment for the purpose of sending or receiving data.

BLEND. That which does not stand in stark contrast to the immediate surroundings.

CO-LOCATION. The placement of the antennas of two or more service providers upon a single tower or alternative tower structure.

C.O.W. Acronym for “*Carrier On Wheels*”. Communications equipment mounted on a vehicle, trailer, or other similar apparatus, intended to provide temporary service during maintenance or outage.

DEPARTMENT. The Ouray County Land Use Department.

EQUIPMENT SHELTER. A permitted structure, built to house communications and associated equipment, that supports a communications installation.

EXISTING STRUCTURES. Those communications related structures which were in place prior to the adoption of this Code section.

F.A.A. The Federal Aviation Administration.

F.C.C. The Federal Communications Commission.

FACILITIES / SUPPORT STRUCTURES. Something designed, built, installed, etc. related to a communications equipment installation.

GOVERNING AUTHORITY. The Board of County Commissioners of Ouray County.

HEIGHT. When referring to a tower or other structure, the term *height* shall mean the distance measured from the ground level to the highest point on the tower structure or appurtenance.

MONOPINE TOWER. See “Stealth Tower”.

MONOPOLE TOWER. Any structure designed to support antennae and which consists solely of a stand-alone ground mounted support pole or pipe, without guy or other supporting wires.

NON-SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

PHOTO-SIMULATION. A facsimile of a building or structure, superimposed on to an actual photo of a proposed site, area, or location, typically produced in a software package such as Adobe Photoshop.

PUBLIC OFFICER. Shall mean the Planning Director or other representative of the Land Use Department.

RADIO FREQUENCY (RF). Any of the wave frequencies that lie in the range extending from around 3 kHz to 300 GHz, which include those frequencies used for communication or radar signals. (RF usually refers to electrical rather than mechanical oscillations.)

REPLACEMENT. A substitution of an existing item for a new, different, or revised item.

STEALTH TOWER. A communications structure consisting of a tower and antennae that have been designed to effectively blend in with the existing environment by use of camouflaging techniques, such as a faux tree or similar.

SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

TEMPORARY EQUIPMENT. Items installed at or in a communications facility for a particular purpose, but not intended or approved by the County to be part of the permanent structure or overall facility installation.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, telecommunication towers, man-made trees (with accessory buildings/structures) and other similar structures.

23.4 **REQUIREMENTS FOR COMMUNICATIONS FACILITIES APPLICATIONS:**

A. Federal Requirements:

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If these Federal laws and regulations are changed, the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised Federal laws and regulations, as provided by the controlling Federal agency.

B. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures that would produce a similar and acceptable coverage area, as indicated by an industry accepted coverage model for the frequency band or bands in use.

- (1) Applicant shall provide desired coverage area map*, including the reference signal level value which defines the edge and end-of-coverage boundary on the map. Map shall also include any interference based, FCC, or other agency required coverage *keep out* areas where coverage reference level or other specified level is forbidden for interference or other regulatory reasons.
- (2) Applicant shall demonstrate that the requirements of the coverage areas of the reference map are not met by any existing antenna site that are within the desired coverage area. Applicant shall also provide any information regarding possible tower exclusions due to other possible restrictions, including but not necessarily limited to RF exposure limits.
- (3) The inventory shall include all such structures that lie within the desired coverage area per the provided *coverage area map*, . Such map shall include specific information about the location (latitude and longitude coordinates), height, design, tower type, including any site transmitter power restrictions, site separation distance requirements from other stations, site human RF exposure limits, general suitability for co-location, and any other pertinent information as may be required by the Department.
- (4) The Department may share such information with other applicants for a communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

Note: Ouray County will accept any industry-standard coverage model as long as the same model is used for the entire proposed site.

C. Planned Unit Developments/Subdivisions:

New communications towers and their associated support facilities are permitted in County-approved PUDs and subdivisions, and subdivisions filed prior to 1974, where not otherwise prohibited by covenant or plat restriction.

D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all cellular communications towers, except amateur radio towers, shall be designed and installed to accommodate the co-location of additional cellular communications equipment.

E. Co-location; Availability of Suitable Existing Structures:

No new tower, except amateur radio towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure, within the coverage area as detailed in the coverage area map provided by the Applicant, can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

- (1) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (4) Site separation distance requirements from other stations.
- (5) Site RF human exposure limits.
- (6) The cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure or to adapt an existing tower or structure exceed the costs of new tower development.
- (7) Site transmitter power restrictions that conflict with the applicant's proposed equipment/antenna(s).
- (8) The applicant adequately demonstrates that the existing site is not generally suitable for co-location or there are other limiting factors that render existing towers and structures unsuitable.

F. Tower Height Restrictions:

- (1) Communications towers and related facilities are presumed to have a maximum height of **80 feet**.
- (2) Proposals for towers at a height of greater than 80 feet must include a Longley-Rice or similar industry standard coverage analysis map, ~~that~~ supportings the requirement for an extended tower height.
- (3) Applicants must also demonstrate that a multi-tower approach is not technically feasible; cost alone is not determinative of feasibility.
- (4) Applicants proposing towers at a height of greater than **80 feet** may be required to reimburse the County for additional costs related to review by a qualified engineer.

G. Aesthetics:

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

- (1) All new or total replacement tower/antenna structures may be required to shall be designed as alternative tower structures or camouflage/stealth towers. Tower location.

height, design, and overall visibility will be considered in determining the extent of camouflage elements required, unless otherwise approved by the County. Proposed tower stealth or camouflage design and elements must be approved by the BOCC.

- (2) Unless otherwise required by FCC regulation, all towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness. Applicants may propose alternatives to these requirements based upon specific technical requirements, maintenance concerns, or potential anodization issues.
- (3) For tower sites, the design of all buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment.
- (4) For antennas installed on a structure other than a tower, the antenna and supporting electrical and mechanical ground equipment shall be of a dark color so as to make the antenna and related equipment visually unobtrusive.
- (5) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (6) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure within the County, unless otherwise required by a governmental authority.
- (7) For alternative tower structures, the co-location design requirement may be waived by Staff.
- (8) In addition to approval as set forth in this Section, all wireless concealment structures require issuance of a building permit.

H. Setbacks:

The following setbacks shall apply to all communication towers:

- (1) Tower setbacks from property lines shall be a distance equal to the height of the tower, or, must meet the minimum setback requirement for the zoning district, whichever is greater.
- (2) Guywires, accessory buildings and facilities shall meet the minimum building setback requirements as set forth in this Code.
- (3) All structures shall meet the setback, screening, and buffer requirements contained herein.
- (4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential or commercial structure, including homes, businesses, garages, and greenhouses.

I. Fencing:

Fencing proposed by Applicant and approved by the County shall be of materials that blend with the surroundings. Any installed fencing shall be properly maintained.

J. Landscaping:

- (1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.
- (2) Required landscaping shall be consistent with surrounding vegetation and shall be properly maintained by the facility owner or leased tenant.
- (3) The BOCC may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgement of the BOCC landscaping is not appropriate or necessary.
- (4) The BOCC shall consider wildfire implications when imposing requirements for landscaping.
- (5) Tree or shrub based landscaping will not be required where the applicant demonstrates that ground radial or lightning protection/mitigation system ground lines might be adversely effected by tree roots.

K. Additional Requirements:

- (1) Along with all information required on the County application, Applicant shall provide information regarding any overall site power limit, if applicable.
- (2) Applicant must submit evidence that demonstrates the proposed facility or facility modification does not create undue impacts to surrounding areas. Potential impacts include, but are not limited to: water pollution, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable impacts beyond the boundaries of the property where the facility is located.
- (3) Applicant must submit evidence that demonstrates that legal access and all utilities required to serve the proposed use are available.
- (4) Applicant must submit evidence that demonstrates the proposed facility will not unreasonably impact wildlife or significant wildlife habitat.
- (5) Applicant must submit evidence that demonstrates the proposed facility will not alter, restrict, inhibit, or interfere with historic irrigation practices, headgates, ditches, and ditch rights-of-way.
- (6) Applicant must submit a geo-hazard mitigation report for any proposed facility located within any area subject to potential geo-hazards, including, but not limited to: rockfall areas, avalanches, landslide, potential unstable slopes, slopes greater than 30%, alluvial/colluvial fans, talus slopes, shale, faults, expansive soils, or ground subsidence. Such report must be prepared by a Colorado Licensed Geo-Technical Engineer and approved by the County.

- (7) Applicant must submit evidence that demonstrates the proposed facility has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (8) Applicant must submit evidence that demonstrates the proposed facility would not have a material adverse effect on the surrounding area.
- (9) Applicant must submit evidence that demonstrates the proposed facility will not create impacts on existing infrastructure beyond what would be created by a use-by-right, or, evidence that such impacts will be sufficiently mitigated.
- (10) Applicant must submit a weed management/mitigation plan if required by the County Weed Manager.

Note: The County may require qualified professional geologic or engineering certification that the proposed tower facility and associated structures can be located and developed in a safe manner.

L. Pre-Existing Towers and Facilities:

- (1) Towers and facilities in existence prior to the adoption of this Section may be allowed to continue in their current state; provided, however, that any modification to a pre-existing communications tower and/or facility must be in substantial conformance with this Code.
- (2) Pre-existing towers and facilities are allowed to conduct typical maintenance and upkeep of such facilities.

M. SUBSTANTIAL VS. NON-SUBSTANTIAL MODIFICATIONS:

Staff may administratively approve tower modifications that are deemed to be non-substantial under Federal guidelines (Federal Statutes, Regulations, and FCC Interpretation).

Note: Modifications deemed substantial shall require approval of a Communications Facility Permit.

N. Change of Ownership Notification:

Upon the transfer of ownership of any tower, alternative tower structure, or lot upon which such a structure has been erected, the tower permittee shall notify the Department of the transaction in writing within 30 days.

O. Written Notification of Denial:

- (1) Within thirty (30) days of the receipt of an application, the Department shall either:
 - (a) send written notice to the Applicant that the application is complete and shall be processed according to this Section; or
 - (b) send written notice informing the Applicant that the application does not meet submittal requirements, stating the specific deficiencies.

- (2) If the Department informs an Applicant of an incomplete application within thirty (30) days of submittal, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

23.5 HEARINGS, NOTICE, AND SCHEDULING – NEW TOWERS/FACILITIES:

- A. If the request for a Communications Facility Permit is located within an Urban Growth Management Area or an Area of Influence, the request shall also be submitted to the adjacent municipality for review and comment. Any such comments shall be provided to the Department within thirty (30) days of transmittal of the application to the municipality.
- B. After the receipt of a complete application for a Communications Facility Permit by the Department, the permit application shall be considered at the next available Planning Commission agenda or, if the request is located within an Urban Growth Management Area or Area of Influence the appropriate Joint Planning Board shall review the request.
- (1) The Planning Commission or Joint Planning Board shall review the application and shall recommend approval, recommend approval with conditions, or recommend denial of the application if it does not meet the requirements of this Code and the action shall be in the form of a motion as noted in the minutes.
 - (2) Staff shall forward such recommendation to the BOCC.
 - (3) If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Permit application within 14 days of the scheduled public hearing, the application shall be forwarded to the BOCC for a public hearing.
- C. Before granting a Communications Facility Permit, the BOCC shall hold a public hearing on the matter.
- (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
 - (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1 mile of the subject lot or parcel.
 - (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.
Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.
 - (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.6 HEARINGS, NOTICE, SCHEDULING – SUBSTANTIAL MODIFICATIONS:

- A. Before granting a Communications Facility Permit for a *substantial modification* of an existing tower/facility, the BOCC shall hold a public hearing on the matter.**

- (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
- (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1 mile of the subject lot or parcel.
- (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.

Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.

- (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.7 EXCEPTIONS / VARIANCE / APPEALS:

- A. For applications proposing a new tower/facility, rather than co-location on an existing tower, see Section 12 for additional information regarding a variance or exception.
- B. An Applicant has the right to appeal a denial by Staff per Section 12 of this Code.

23.8 FEES FOR COMMUNICATION FACILITY APPLICATIONS:

Application fees for Communications Facility Permits, or renewal fees of Communications Facility Permits, will be in accordance with the County's current fee schedule.

Note: If it is determined by the County that it is necessary to consult with a third-party in considering the factors listed in this Section, all reasonable costs and expenses associated with such consultation shall be borne by the Applicant.

23.9 PERMIT TERMS AND RENEWAL:

- A. After a Communications Facility Permit has been issued, it shall be effective for a term of up to twenty (20) years, as determined by the BOCC. The Applicant shall be responsible for contacting the Department regarding the renewal of the Communications Facility Permit.
- B. In the event that the Applicant shall fail to contact the Department for renewal of a Special Use Permit within one-hundred eighty (180) days of the expiration of the permit, such permit may be revoked or suspended. If the permit is revoked, the Applicant shall be allowed to re-apply for a new permit according to the then existing requirements of this Code.

23.10 BUILDING PERMIT AND AS-BUILT DRAWINGS REQUIRED:

- A. All new towers, new structures, new support facilities, and new equipment shelters require issuance of a building permit prior to commencing construction. Refer to application form for specific submittal requirements.
- B. As-built drawings and photographs of the completed tower, site, or approved modification must be submitted to the Land Use Department within 30-days from the date of the completion of the project. Final sign-off and Certificate of Completion will *not* be issued until drawings are submitted.**

23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

- A. Owners, manager, and lessee of communications facilities may conduct maintenance, but no expansion, of such facility with notification to Staff.
- B. Typical maintenance may include the repair of a tower, antenna, communications equipment, or other repair of any existing facility component(s).
- C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.
- D. Maintenance of communications facilities may also include the temporary use of COWs or other temporary equipment for a period not to exceed 90 days.

Notes: The use of temporary equipment for a period exceeding 90-days requires prior approval by Staff. The use of equipment for emergency repairs requires notification to Staff within 72 hours of implementation.

23.12 AMATEUR RADIO (HAM) TOWERS AND FACILITIES:

- A. Amateur radio towers and antennas are limited to a maximum height of 35 feet except as otherwise provided by Federal law or regulation, and do not require prior approval from the County.
- B. All amateur radio towers must be set back from any property line, at a minimum, a distance equal to the height of the tower, or a minimum of 25 feet, whichever is greater.
- C. Amateur radio operators wishing to erect a tower at a height greater than 35 feet may apply to the Department for approval prior to erecting such tower. Applications for variance in amateur radio tower height restrictions must include sufficient justification. Variance applications must show proof of notification to any applicable home owners association(s).
- D. Modifications to existing amateur radio towers require prior approval by Staff.

Notes: Staff may at their discretion forward any such requests to the BOCC for final approval. Also, amateur radio operators are strongly encouraged to research possible homeowners association covenants and regulations that may affect the installation of radio equipment and towers in their area.

23.13 REMOVAL OF ABANDONED ANTENNAS OR TOWERS:

- A.** Any tower or antenna that is not operated for twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna or tower shall remove the structure within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment.
- B.** If said tower or antenna is not removed within ninety (90) days, it may be subject to enforcement action.

23.14 CONFLICT WITH OTHER LAWS:

If the County codes or regulations are in conflict with Federal law or regulations, Federal law or regulations shall control.

Note: Where HOA covenants/CCRs are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an HOA. The County does not enforce HOA covenants.

23.15 SEVERABILITY:

- A.** In the event any article, section, sentence, clause or phrase of this Section shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, sentences, clauses or phrases of this Section, which shall remain in full force and effect, as if the article, section, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.
- B.** The BOCC hereby declares that it would have adopted the remaining parts of this Section if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.

MINUTES
OURAY COUNTY PLANNING COMMISSION
REGULAR MEETING & WORKSHOP

September 6, 2016 6:00 – 8:00 p.m. (appx)

Meeting held at the Land Use/Road & Bridge Offices, Conference Room
111 Mall Road, Ridgway, Colorado

Attending:

PC: Jackman, Orgren, Carr, Parker (by phone)
Staff: Castrodale, Sampson
Absent: Miller, Williams, Peters, Baskfield

Note: These minutes are not intended to be a transcription of the hearing. Comments are abbreviated and paraphrased. Every intention is made to capture the intent and meaning of the comments made during the hearing.

I. Call to Order – Regular Meeting of the Ouray County Planning Commission (6:10 P.M.)

1. Request for approval of minutes; 7/27/2016

- i. **MOTION:** Carr moved to approve the minutes as amended
- ii. **SECOND:** Orgren seconded the motion
- iii. **DISCUSSION:** None
- iv. **VOTE:** A vote was taken and the motion passed unanimously.

2. Adjourn Regular Meeting

- i. **MOTION:** Orgren moved to adjourn the regular meeting
- ii. **SECOND:** Carr seconded the motion
- iii. **DISCUSSION:** None
- iv. **VOTE:** A vote was taken and the motion passed unanimously.

II. Call to Order – Workshop of the Ouray County Planning Commission (6:12 P.M.)

- The Planning Commission held a brief workshop to introduce the additional changes requested by the BOCC regarding the recent work on Communication Facility regulations.

Submitted By:

Approved By:

Bryan Sampson
Associate Planner

Randy Parker
Chair