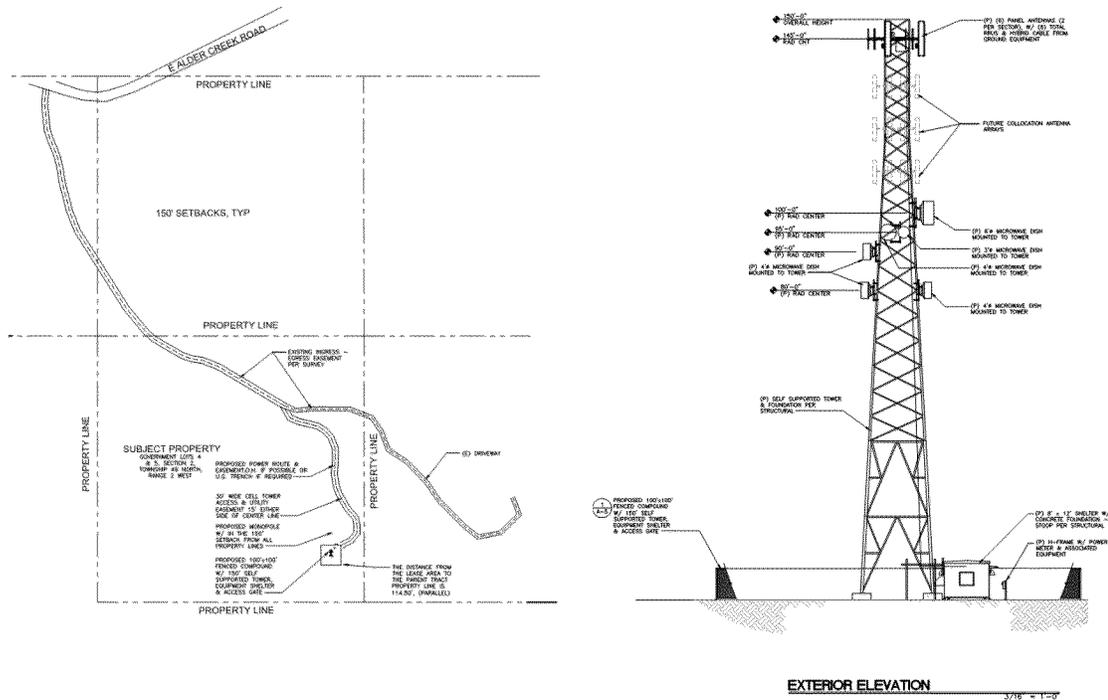


BEFORE THE BOARD OF COMMISSIONERS OF KOOTENAI COUNTY, IDAHO

IN THE MATTER OF THE APPLICATION) CASE NO. CUP23-0003
OF WEIS TOWERS LLC FOR A CONDITIONAL)
USE PERMIT TO ALLOW THE ESTABLISHMENT) ORDER OF DECISION ON
OF A WIRELESS COMMUNICATION FACILITY) REMAND
ON 78.10 ACRES IN THE RURAL ZONE.)

I FINDINGS OF FACT

1.01 **Proposal.** The Applicant is requesting approval of a Conditional Use Permit to construct a new Wireless Communication Facility (WCF) consisting of a 150-foot self-support tower and small equipment building adjacent to the base of the tower on property located in the Rural Zone. This proposed facility is designed to fill the gap of communication along Interstate 90. The unmanned tower and associated equipment will be located within a 100 ft. x 100 ft. fenced area to be leased by the property owner to WEIS Towers, LLC. Existing vegetation surrounding the site will remain undisturbed so as to provide screening. At the time of writing this staff report, both Inland Cellular and Verizon Wireless have expressed interest in collocating at this location.



- 1.02 **Owner.** David Spiker, 2864 S. Evergreen Lane, Coeur d'Alene, ID 83814.
- 1.03 **Applicant.** WEIS Towers, LLC, P.O. Box 711, Roslyn, WA 98941.
- 1.04 **Applicant Representatives.** Justin Abbot, 870 Oravetz Road SE, Auburn, WA 98092; Anne Watanabe, Inland Cellular Corporate Office, PO Box 688, Roslyn, WA 98941.

- 1.05 **Existing Structures.** The subject property is currently undeveloped.
- 1.06 **Location and Legal Description.** The subject property is located within the 17000 Block of E. Alder Creek Road approximately 2.8 miles east of the intersection of E. Alder Creek Road and S. Wolf Lodge Creek Road. The parcel number is 49N02W023200 and is described as: GOVT LTS 4 & 5 EX RW in Section 02, Township 49 North, Range 02 West, Boise Meridian, Kootenai County, Idaho. The AIN number is 122916.
- 1.07 **Zoning.** The subject property is zoned Rural. Pursuant to Kootenai County Title 8, Section 8.2.208, Wireless Communication Facilities are allowed upon approval of a Conditional Use Permit.
- 1.08 **Surrounding Land Use and Zoning.** The subject parcel is surrounded by properties zoned Rural, the parcel sizes of which range between 7.5 and over 250 acres in size. Uses in the area predominantly agricultural and residential in nature.
- 1.09 **Area of City Impact.** The subject parcel is not located within an Area of City Impact.
- 1.10 **Comprehensive Plan Designation.** The Kootenai County Comprehensive Plan Future Land Use Map designates the subject property as “*Resource Recreation.*” The primary purpose of the Resource/Recreation designation is to promote commercially viable and productive resource cultivation and extraction of agriculture, timber production, and surface mining. This designation also includes lands suitable for recreation and support services related to recreation such as, but not limited to, dude ranches and lodges. The secondary purpose of this designation is to promote large tracts of environmentally sensitive lands, such as wetlands, very steep slopes, and areas with highly erodible soils with sustainable resources. Non-residential uses are limited to resource cultivation or extraction services that support forestry, agriculture, mining (including surface mining), recreation, and the facilities necessary to sustain those uses.

Wireless Communications Facilities are not directly addressed in the Comprehensive Plan, but utilities are defined as “*the generation, transmission, and/or distribution of electricity, gas, steam, communications, and water; the collection and treatment of sewerage and solid waste; and the provision of mass transportation.*”

Element (h) lists the following goals and policies for public services, facilities and utilities:

GOAL 1: To provide adequate county- regulated services and facilities to the public at a reasonable cost.

GOAL 2: To coordinate with the public and private service providers to deliver public services.

Policies:

1. Work with different county departments to identify future county service and facility needs and promote the acquisition of properties to meet these needs.
2. Supply public service providers with population forecasts, development plans, and technical data.
3. Allow utility facilities in all land use designations as necessary when and where utility franchises or easements exist and if they are in compliance with applicable development regulations.

- 1.11 **Physical Characteristics.** Pursuant to the Applicant’s narrative, site photos, and aerial map, the subject property is heavily vegetated with mature and young trees and varies in slope. According to the National Wetland Inventory by the U.S. Fish & Wildlife Service, there is a Riverine habitat classified as a “R4SBC” which represents the following characteristics: Riverine (R), Intermittent (4), Streambed (SB), and Seasonally Flooded (C). The description appears to fall within the definition of a Class II Stream per Kootenai County Code: 2. Class 2 Stream, which is *a stream that does not provide fish habitat and are usually found in headwater areas or minor drainages, and their principal value lies in their influence on water quality or quantity downstream in Class 1 streams.* At time of development, Kootenai County would require more information about the stream and require the application of necessary Best Management Practices.
- 1.12 **Access/Transportation.** Access to the leased area for the cell tower would be provided via easements across the subject parcel and the neighboring parcel to the west, Parcel No. 49N02W030200, from E. Alder Creek Road, a public road within the maintenance jurisdiction of East Side Highway District. The neighboring parcel, Parcel No. 49N02W030200, is currently owned by 2022 Nikole Barger GST Trust, but had previously been owned by Shane and Amara Zaring. The Applicant submitted two signed easement agreements between Weis Towers, LLC and the property owners Shane and Amara Zaring and David and Jill Spiker (Instrument Nos. 2888991000 and 2888990000, respectively), which allows Weis Towers, LLC to access the leased area.
- In a comment dated September 21, 2023, Ben Weymouth, on behalf of the East Side Highway District, stated: *“We have no comment on the proposed Land Use. Alder Creek Road is a public road under our jurisdiction, and applicant will be required to obtain an Approach Permit. Applicant is also advised this roadway is subject to seasonal weight limits during spring breakup [sic].”* During spring break-up, roads tend to be more susceptible to damage from heavy traffic, hence the limitations. **(Reference Condition 8.08)**
- In a comment dated August 29, 2023, Symone Legg on behalf of the Idaho Transportation Department stated, *“If access to the cell tower is from Alder Creek Rd, ITD has no comment.”*
- 1.13 **Fire Protection.** The property is within the boundaries of the Kootenai County Fire & Rescue District. In a comment dated August 29, 2023, Michelle Lewis, Administrative Assistant for Kootenai County Fire & Rescue District stated, *“Approved as submitted.”* **(Reference Condition 8.07)**
- 1.14 **Idaho State Division of Aeronautics.** In an email dated August 30, 2023, Florian Ghighina, Airport Inspector/Obstructions Evaluator stated: *“I received your info and request for comments for the proposed project #CUP23-003. After reviewing all the info you submitted and on your website, under the authority of the Idaho Code 21-513 through 21-520 and Idaho Transportation Rule No. 39.04.02, the Idaho Division of Aeronautics has performed an obstruction evaluation for the proposed 150’ cell tower project mentioned above. It is our determination that the project itself, in its current location, will not be a hazard to air navigation or the safety of air operations in the immediate area. Based on this evaluation, the Idaho State Division of Aeronautics has no objection to the project. Lighting and marking will not be required by the State of Idaho, however, due to the mountainous terrain and higher elevations in the area, we recommend that you install a collision avoidance light on top of the structure and that you follow the FAA installation guidelines outlined in the FAA Advisory Circular 70/7460-1 M.”* **(Reference Condition 8.12)**
- 1.15 **Federal Aviation Administration (FAA).** The Applicant provided a copy of a “Determination of no hazard to air navigation” from the Federal Aviation Administration (FAA), which was issued

upon the completion of an aeronautics study, Aeronautical Study No. 2021-ANM-365-OE. The Applicant also submitted an Antenna Structure Registration (ASR) issued by the Federal Communications Commission.

- 1.16 **Kootenai County Airport.** In a comment dated September 5, 2023, Kim Stevenson from the Coeur d'Alene Airport stated, *"The Airport concurs with the determination by the FAA. Prior to finaling a building permit, an FAA Form 7460 must be completed and approved, with the tower marked on all FAA charts/publications and meet all FAA guidelines for lighting/markings."*
- 1.17 **Kootenai County Community Development-Building Division.** On August 29, 2023, Robert "Bob" Ankersmit with Kootenai County Community Development Building Division stated, *"All new construction will be required to meet all construction code requirements as adopted by Kootenai County at the time of building permit application. Any future proposed construction not listed as exempt in IBC §105.2 will require permitting."* **(Reference Condition 8.09)**
- 1.18 **Water Supply and Sewage Disposal.** The project would be an unmanned site and would not require domestic water or septic service. In a comment dated, August 29, 2023, Jay Loveland stated, *"If wastewater is generated from this proposal, an application is needed for review at Panhandle Health."*
- 1.19 **Parking.** Per Kootenai County Code 8.4.703(A)(3)(j), parking is not required for wireless communication facilities.
- 1.20 **Kootenai County Sheriff's Office.** Although requested by Community Development, the Kootenai County Sheriff's Office did not provide comment.
- 1.21 **Public Comment.** Prior to the public hearing before the Hearing Examiner, Kootenai County Community Development received fifty-eight (58) comments with regard to this request: Zero (0) in support, fifty-four (56) in opposition, zero (0) neutral. There was one (1) comment submitted that did not indicate whether that individual was in support, in opposition or neutral and one (1) comment unrelated to the project. After the public hearing before the Hearing Examiner and prior to the public hearing before the Board of County Commissioners, Community Development received thirty-six (36) comments, including 16 late comments, in opposition to the request. Late comments were officially entered into the record at the hearing. **(Exhibits P-1 through P-55; Exhibits P-59 through P-75; Exhibit B-1001).**
- 1.22 **Staff Analysis.** The submitted application is complete and meets the requirements for Conditional Use Permit submittals. Public agencies have commented and their conditions appear to be reasonable and manageable. Special requirements and standards for this use are contained in Article 5.1, Section 8.5.132, (A) through (C). The requirements as outlined in Section 8.5.132 are listed below as A. through C. in italics, along with a description on how the application meets these requirements:

A. Zones Permitted: Agricultural, Rural, Agricultural Suburban, Commercial, Light Industrial, Industrial

This WCF is proposed to be located on a parcel of approximately 78.1034 acres in the Rural Zone.

B. Standards.

1. *Maximum allowable tower height, including antennas, is one hundred fifty feet (150'). The Board may impose stricter height limitations as a condition of approval in order to mitigate obstruction of views or incompatibility with surrounding uses.*

The Applicant proposes a new 150-foot self-support tower and small equipment building adjacent to the base of the tower. Upon initial review of the application, specifically the structural analysis by engineer Allen Burton Schneider, P.E. (**Exhibit A-04**), the diagram of the tower depicted a 15-foot extension. In a letter dated May 24, 2023, Anna Watanabe confirmed that the tower would not exceed 150 feet in height.

2. *Setbacks.*

- a. *All WCFs shall be set back at least three hundred feet (300') from any existing residential structure.*

According to **Exhibit A-10b**, the closest residence is located on the neighboring property to the east and is located approximately 770 feet from the proposed WCF site.

- b. *All WCFs shall be set back at least one hundred fifty feet (150') from the boundary of any parcel located the Agricultural Suburban, Restricted Residential, or High Density Residential zone.*

According to the site plan, **Exhibit A-03**, the proposed WCF is more than 150 feet from all property lines.

3. *No new WCF tower greater than sixty feet (60') in height shall be constructed within a two (2) mile radius of an existing WCF unless engineering data demonstrates the existence of a significant network coverage gap which would be impractical to remedy by other means.*

Pursuant to the Applicant's narrative, no existing WCFs exist within a two mile radius of the proposed site.

4. *All WCFs shall be of a design which best blends in with the surrounding area, as determined by the Board.*

According to the Applicant, in their narrative, no camouflaging or special design is necessary as the facility will be barely visible to surrounding properties as well as vehicular traffic on I-90 due to the existing vegetation.

According to the Photo Recon document, **Exhibit A-10d**, the Applicant also provided the results of a balloon float test, including photographs and photo renderings of various elevations where the public might view the tower. Based on these photographs, the tower will be visible from the main access road which travels on the subject property and from I-90.

While staff will rely on the Board to determine a design which best blends in with the surrounding area, staff recommends the tower and the fence around the leased area be sight-obscuring and be painted a neutral color, such as dark brown or green, to blend in with the natural landscape (**see Condition 8.11**)

5. *Collocation.*

- a. *All new transmission towers and tower sites shall be designed to structurally allow for a minimum collocation of three (3) additional providers. Collocation shall be a permitted use accessory to any permitted WCF.*

In a letter dated April 4, 2023, Allen Schneider, P.E. stated, on behalf of ROHN Products, LLC, "ROHN is designing and manufacturing a 150' self-supporting tower for the above referenced site. The tower has been designed in accordance with ASCE 7-16 Wind Speed of 103 MPH with 0.5 Inch of Radial Ice at 40 MPH, Structure Class: II; Exposure Category: B; Topographic Category: 1. The tower has been designed to support (4) carrier levels of cellular loading." See **Exhibit A-04**.

- b. *Transmission towers sixty feet (60') high or less are exempt from collocation requirements and may be located within a two (2) mile radius of an existing tower.*

This provision does not apply as the proposed tower is 150 feet in height.

- c. *No lot shall contain multiple WCF towers.*

The subject property currently does not have an existing WCF on-site.

- d. *Antennas placed for purposes of collocation shall be placed and colored to blend into the architectural detail and coloring of the host structure.*

This will be made a Condition of Approval. (**Reference Condition 8.11**)

- e. *The placement of an antenna on an existing tower or structure for collocation purposes shall not require a new conditional use permit or modification of an existing permit unless otherwise required by this title*

This provision of the code does not apply to the request since this is a new tower proposed on-site.

6. *A landscape design plan prepared by a landscape design professional shall be required. The following standards shall apply:*

- a. *Existing vegetation at the tower site shall be preserved to the maximum extent possible. Landscaping shall be placed completely around the site except as required to access the facility. Landscaping shall be compatible with other nearby landscaping and shall be kept healthy and well maintained.*

Based on the narrative, photographs provided in **Exhibit A-10d** and observations made by staff during a site visit, the existing cell site is heavily vegetated with mature and young trees and underbrush. Although the leased area will be 100 ft. x100 ft., only a portion of the area will be developed for the WCF. Staff finds that additional landscaping will not be necessary in this instance as the existing vegetation provides for sufficient screening. As a condition of approval, however, Kootenai County will require the vegetation around the tower site be preserved in a healthy and well maintained state. (**Reference Condition 8.13**)

- b. *A chain link fence no less than six feet in height from the finished grade shall be constructed around each siting area. Access shall be by locked gate.*

According to the Applicant's narrative, the developed compound will be fenced for security by a 6' chain link fence. As a condition of approval, the access shall also be by locked gate. The Applicant also proposes barb wire. **(Reference Condition 8.14)**

7. *Outdoor storage of any supplies or vehicles is prohibited.*

As a Condition of Approval, the facility equipment will be placed within the fenced lease area and the site will not be used for outdoor storage of supplies or vehicles. **(Reference Condition 8.15)**

8. *If any antenna or tower is not operated for a continuous period of six months it shall be considered abandoned. The owner of an abandoned antenna or tower, or property owner, shall remove the same within ninety (90) days. If such antenna or tower is not removed within a ninety (90) day period, the County may, at the property owner's expense, remove the antenna or tower and file a lien on the subject property for expenses incurred in removal. If the County is compelled to seek judicial authority to undertake such removal, the reasonable costs and attorney fees incurred by the County in the course of doing so shall constitute a charge against the owner.*

This provision will be made a Condition of Approval. **(Reference Condition 8.16)**

9. *WCF towers shall comply with the applicable requirements of the Federal Communications Commission (FCC) and other agencies with jurisdiction.*

The Applicant submitted an Antenna Structure Registration (ASR) issued by the Federal Communications Commission. These documents are included in the project file as **Exhibit A-10e**. This provision will also be made a condition of approval. **(Reference Condition 8.05)**

10. *The standards and application requirements contained in this section shall not be interpreted or applied in a manner which would constitute a violation of, or conflict with, the applicable provisions of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq.*

The request is not interpreted or applied in a manner which would constitute a violation of, or conflict with, the applicable provisions of the Telecommunications Act of 1996.

11. *The provisions of this section shall not apply to public safety WCFs which are permitted of right in the underlying zone.*

Not applicable to this request.

C. Application Requirements. Except as may be waived by the Director with respect to modifications to existing conditional use permits, the following shall be submitted with a permit application for a new WCF or a modification to an existing WCF:

1. *Written verification from a licensed engineer that a structural analysis of the tower has been completed which demonstrates the tower's ability to accommodate the collocation of three additional providers.*

The Applicant submitted a preliminary structural analysis letter signed and stamped by a professional licensed engineer. See **Exhibit A-04**.

2. *Written verification that alternative sites within a radius of four (4) miles have been considered and have been determined to be unavailable or are not technologically feasible.*

In their letter to Kootenai County dated May 24, 2023 (**Exhibit A-10a**), the Applicant provided the following comment stating, *“Please see the enclosed Google Earth image showing the location of alternative sites within 4 miles of the subject property. Only one tower owned by American Tower Company meets this criteria and is within three miles of the subject property. The American Tower site was deemed not feasible to support the applicant’s proposed network in the geographic area to be served by Inland Cellular and Verizon. Please see the attached RF [Radio Frequency] Usage and Facility Justification dated April 12, 2023, and prepared by Verizon Wireless which supports both Inland’s and Verizon’s rejection of the American Tower Site and selection of the proposed WEIS Towers tower.”* The Applicant continues to explain, *“The geographic location of the American Tower will not provide Inland Cellular the intended service coverage or opportunity for increased capacity as demand grows.”*

The Google Earth image and the RF Usage and Facility Justification referenced by the Applicant are included in the project file as **Exhibit A-10f**. The American Tower Company site is depicted as “AMT” on the Google Earth image and depicted as “9999 Independence” on the RF Usage maps in the report prepared by Verizon Wireless.

According to Verizon Wireless RF Usage and Facility Justification, the first RF map depicts the existing coverage. In reference to the existing tower, Verizon Wireless states, *“the RF from a single co-location opportunity cannot be efficiently directed toward the intended target of I-90 and is largely lost to the surrounding area. On the second RF Map, where the proposed site is depicted as “0999 Independence”, Verizon states, “Coverage from proposed location provides more reliable network coverage along I-90 where people are using the network. This also helps Verizon potentially develop additional locations that will hand off from and to this site along I-90 providing higher quality and potentially contiguous service.”*

3. *A description of the need for the proposed facility at the proposed location and justification for site selection, including appropriate engineering data. The Applicant shall also provide a radio frequency coverage plan.*

Pursuant to the Applicant’s narrative, the 150-foot WCF will be located an area where there is a coverage gap and loss of signal along Interstate 90. The proposed facility will be designed to fill the gap of communication along Interstate 90. Furthermore, due to the very small coverage gap, potential locations were extremely limited for siting a tower that would have line-of-sight onto the roadway. Inland Cellular also provided a breakdown of the traffic along this section of I-90 (see **Exhibit A-11c**) stating that in 2022, the Idaho Department of Transportation documented an average annual daily trip count of 14,500 vehicles, 3,500 commercial vehicles, and 11,000 passengers moving through this section of I-90, which equates to 6.48 million vehicles and an estimated 9.18 million passengers per year that could benefit from the additional coverage and E911 calling capabilities from this proposed site.

According to Verizon Wireless in their RF Usage and Facility Justification report (**Exhibit A-10f**), there are two main drivers that prompt the need for a new cell site. One is coverage and the other is capacity. Coverage is the need to expand wireless services to areas there is no service or bad service. Capacity is the need for more wireless resources to meet customer demand. When the limits of those resources is met, services, such as making/receiving phone calls or internet usage, tend to degrade. Since it can take up to 3 years to complete a cell site project, Verizon relies on usage trends to forecast future needs before capacity limits are

reached. A good capacity, according to Verizon, is the need for the cell site to be located in the center of the user population. In their concluding remarks, Verizon states that the new cell site will improve service along I-90 around Fourth of July Summit and will improve customer experience (faster webpage downloads and fewer dropped calls).

As previously described, Verizon Wireless and Inland Cellular provided RF (Radio Frequency) maps. Each of these maps depict what are known as Reference Signal Received Power levels, or RSRP, which is a way to measure signal power. RSRP values are presented in “-dBm” format and are always negative. The higher the number (i.e., closer to zero), the higher the power signal. Usable signal levels, according to Inland Cellular, range between -75 dBm nearest to cell sites and -120 dBm at the edge of cell coverage.

In their RF Usage and Facility Justification report (**Exhibit A-10f**), Verizon depicts the existing coverage to be very low ranging between -100dBm and -110dBm or non-existent. With the installation of the proposed tower, cell coverage is predicted to range between -70dBm and -110dBm. This predicted map is consistent with that provided by Inland Cellular entitled, “Inland Cellular Solo Study for I90 Wolf 10-03-2022” which is included as **Exhibit A-08** in the project file where the predicted range is expected to be between -80dBm and -110dBm.

With regard to engineering data supporting the production of the RF maps, Verizon’s response was that “exact data about sites is proprietary and cannot be disclosed due to competitive reasons.” Unfortunately, this was not sufficient for a complete application and Kootenai County staff advised the Applicant of a previous cell tower application (CUP22-0004) that had been recently denied due to lack of sufficient evidence to satisfactorily show that there are significant gaps in coverage with real time data.

In response, Inland Cellular provided the results of their analysis using the Cell Mapper website (https://www.cellmapper.net/First_Time_Startup). The Cell Mapper website is a crowd-sourced cellular tower and coverage mapping service that measures the signal strength and other network data collected by end users and uses the data collected to locate network base stations and their coverage. This website is able to interpret real time data, such as LTE Reference Signal Received Power (RSRP) and the quality of the incoming reference signal. Using Cell Mapper, Inland Cellular generated three maps depicting the lack of coverage for three major networks, Verizon, AT&T, and T-Mobile. See **Exhibit A-11b**.

While the use of the Cell Mapper site is not technically engineering data, staff finds it is sufficient in explaining that there is little to no coverage in the area with the use of real time data.

4. *A notarized statement from the property owner granting authorization to proceed with the permit application.*

The Applicant submitted a document titled “Consent to Obtain Permits” in which the property owner granted authorization to Weis Towers, LLC to proceed with the permit application. Both Justin Abbot and Anne Watanabe represent Weis Towers, LLC in this case. See **Exhibit A-02**.

5. *Proof of a duly recorded legal right of access to the site for the intended purpose. The County may restrict the location and number of access points to the property.*

As previously described, Weis Towers, LLC has two recorded easements to access the proposed leased area which are recorded as Instrument Nos. 2888991000 and 2888990000. The

Applicant also provided a Memorandum of Land Lease Agreement included as **Exhibit A-12** in the project file.

6. *A signed agreement stating that the tower owner is willing to allow collocation on the proposed tower. This agreement shall also state that any future owners or operators will allow collocation on the tower.*

The Applicant also provided a copy of a signed Declaration to Allow Use of Wireless Communications Tower to allow collocation with other uses. See **Exhibit A-09**.

7. *Documents demonstrating that the Federal Aviation Administration (FAA) has reviewed and approved the proposal.*

The Applicant provided a copy of a Determination of No Hazard to Air Navigation (“Determination”) dated April 5, 2021 from the Federal Aviation Administration (FAA), which was issued upon the completion of an aeronautics study, Aeronautical Study No. 2021-ANM-365-OE (See **Exhibit A-10e**)

According to the Determination made by FAA, the aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation. Based on their evaluation, marking and lighting are not necessary for aviation safety.

It is important to note that the Determination by FAA expired on October 5, 2022; however, staff still finds that it meets the application requirement as it does indicate that the FAA has reviewed and approved the proposal in the past. Furthermore, Kootenai County has also received recent comments from the ITD Division of Aeronautics, who performed an obstruction evaluation and determined there to be no hazard to air navigation or air operations. The Kootenai County Airport also concurred with the findings made by FAA. The ITD Division of Aeronautics, the Kootenai County Airport and the FAA each reference the FAA Form 7460, which is to be approved by the FAA prior to construction.

Therefore, staff finds that this Application requirements have been met, but will require the Applicant demonstrate compliance with the FAA at time of building permit and site disturbance application. (**Reference Condition 8.05**)

8. *Only such lighting as required by the FAA is permitted. The FAA lighting requirement shall be complied with in the least obtrusive manner, as determined by the Director. Security lighting for the tower site is permitted as long as it is downward directed and shielded to prevent illumination at the site boundary to be no greater than 0.2 foot-candles.*

Should the Applicant find it necessary to install security lighting, such lighting will need to be downward directed and shielded to prevent illumination and be no greater than 0.2 foot-candles.

Based on the evaluation made by the FAA, marking and lighting are not necessary for aviation safety. However, the Idaho Division of Aeronautics did recommend a collision avoidance light on top of the structure due to the mountainous terrain. Kootenai County is hesitant to require a collision avoidance light if it is not specifically required by Idaho State or the FAA as it may be a nuisance to current or future property owners. Unless otherwise required by FAA, a collision avoidance light will not be required. (**Reference Condition 8.06**)

9. *A photo simulation (including elevations) of the proposed facility from selected properties and public rights of way as requested by the Director.*

The Applicant has provided photo simulations included in **Exhibit A-10d**.

10. *A detailed site plan and letters of comment from agencies with jurisdiction, as deemed applicable by the Director.*

The Applicant provided all of the necessary documentation.

As of September 25, 2023, 55 comments had been submitted to Kootenai County. Out of the 54 comments opposed to the application, there were only two written comments describing reasons for the opposition. These included concerns related to health, environmental, aesthetics, and fire issues. While staff acknowledges the concerns raised by the public with regard to aesthetics, light/noise pollution, health concerns, increase of fire risk, staff believes that the public's concerns are adequately addressed. The existing vegetation and mature trees adjacent to the proposed site will buffer the location of the cell tower. The tower will be painted a dark or neutral color to blend in with the surrounding environment. Concerns related to fire risk were not raised by Kootenai County Fire and Rescue. As it relates to the potential health risks, the Telecommunications Act of 1996 prohibits State and local regulation of such facilities to deny an application on the basis of environmental effects of radio frequency emissions to the extent such facilities comply with FCC regulations.

- 1.23 **Staff Recommendation.** In conclusion, for the reasons stated above, staff finds the Applicant has provided a sufficient application meeting the requirements of Kootenai County code. The Applicant has demonstrated the lack of cell coverage in this area and how the proposal will benefit the public. Therefore, staff recommends approval of the request.

Exhibit Key					
A = Applicant		S = Staff		PA = Public Agency	
A-01	Narrative	S-01	Aerial Map	PA-01	Kootenai County Building Division
A-02	Notarized Owner consent	S-02	Assessor Parcel Information	PA-02	Coeur d'Alene Airport
A-03	Site plan and architectural plans 5-18-2022	S-03	Assessor Parcel Map	PA-03	East Side Highway District
A-04	Structural Analysis by Engineer 1-20-2023	S-04	Comprehensive Plan Map	PA-04	Idaho Division of Aeronautics
A-05	ID7103 - I-90 Wolf-Spiker Easement, Inst. No. 2888990000	S-05	Zoning Map	PA-05	Idaho Transportation Dept.
A-06	ID7103 - I-90 Wolf-Zaring Easement, Inst. No. 2888991000	S-06	Site Visit Photographs 9-25-2023	PA-06	Kootenai County Fire and Rescue
A-07	Balloon test	S-07	S-07 Staff Report	PA-07	Panhandle Health District

[Exhibit key continues on next page]

Exhibit Key (continued)					
A = Applicant (cont.)		HE = Hearing Examiner		B = Board of County Commissioners	
A-08	Inland Cellular Solo Study for I90 Wolf 10-03-2022	HE-01	Hearing Examiner Recommendation	B-01	Request for Public Hearing before BOCC
A-09	Signed Declaration for Collocation	HE-02	HE Hearing Minutes 10-5-2023	B-02	BOCC Hearing Minutes 12-14-2023
A-10a	Letter to County 5-24-2023	HE-2000 through HE-2008	Exhibits Presented 10-5-2023	B-03	BOCC Deliberation Minutes 1-11-2024
A-10b	Addendum 1: Distance from nearest residence			B-1000 through B-1006	Exhibits Presented BOCC
A-10c	Addendum 2: Ability to support 4 carriers			B-11	Decision of U.S. District Court in Case No. 2:24-cv-375
A-10d	Addendum 3: Landscaping Request and Photographs				
A-10e	Addendum 4: FAA and ASR				
A-10f	Addendum 5: Nearest cell tower, RF Maps and Verizon Response				
A-11a	Letter to County 8-1-2023				
A-11b	Addendum 1B: Coverage via Cell Mapper, First Time Start Up, Maps of Lack of coverage				
A-11c	Addendum 2B: Annual Average Daily Traffic 2022				
A-12	I90 Wolf SIGNED Memo of Lease 12-14- 2020				

II COURSE OF PROCEEDINGS

- 2.01 On July 14, 2022, Kootenai County Community Development conducted a Pre-Application conference with the Applicant's representative regarding a Wireless Communication Facility.
- 2.02 On February 10, 2023, the Applicant submitted an application with Community Development for a Conditional Use Permit to allow the construction of a Wireless Communication Facility. This application was assigned Case No. CUP23-0003 and was determined complete on August 29, 2023.
- 2.03 Community Development issued a Notice of Public Hearing for a hearing to be held on this application on October 5, 2023 before the Kootenai County Hearing Examiner. On August 31, 2023, notice was mailed to adjacent property owners within 500 feet of the project site. On September 5, 2023 notice was published in the *Coeur d'Alene Press*. On September 14, 2023, notice was posted near the site.
- 2.04 This matter came before the Hearing Examiner on October 5, 2023.

- 2.05 Amy Hilland, Planner II, introduced the application and presented evidence with the aid of a PowerPoint Presentation. Ms. Hilland presented facts, information, and analysis in support of staff's recommendation that this Conditional Use Permit for a Wireless Communication Facility be approved. Ms. Hilland described the history of her handling of the application and the myriad of communications she had with the parties and other governing bodies. A discrepancy regarding whether a collision avoidance light would be needed will likely be resolved in favor of the FAA's recommendation of not requiring lighting.
- 2.06 Several representatives of the applicant and other similarly interested parties appeared in person and via Zoom to present testimony in support of the application. Nathan Weis, of Weis Towers, testified as to the history of the intent to build a tower here, which started four years ago. This location was determined as most suitable for the purpose of providing coverage to this four-mile stretch of I-90 that has no coverage. Since initiating this process, several carriers have expressed interest in locating on this tower.
- 2.07 Joe Palicony, an RF engineer with Verizon Wireless, appeared via Zoom to testify as to the need for this specific tower location, primarily to serve the I-90 corridor below the tower site. There is currently no Verizon cell service on this four-mile stretch of highway. Currently technology and use demands require direct line of sight to usage areas, which is why there is no coverage on this stretch of freeway and why this location is one of the only locations that can serve this need. Paul Slotemaker, also of Verizon, appeared in person to provide testimony and documentary evidence to support the contention that there is currently no cell service in this stretch of I-90.
- 2.08 David Spiker, the owner of the underlying parcel that is leasing the space for the proposed tower, appeared in person in support of the application. He stated that this is a very dangerous stretch of I-90 before Fourth of July Pass that has no cell service, and that this should have been done years ago.
- 2.09 Many members of the public, primarily neighboring property owners, appeared in person at the hearing to provide testimony in opposition to this proposal. Two representative groups provided testimony and documentation regarding increased risk of fire and the potential of negative health effects of tower emissions.
- 2.10 Other individual community members questioned the need for the tower, whether other towers could serve the same purpose, the potential for negative effects on neighboring property values, that the tower will negatively affect the people in the region while only benefitting drivers on I-90, and the increased threat to local bee colonies.
- 2.11 Applicant representatives provided rebuttal testimony to address some of the concerns raised. "Trouble tickets" from this stretch of I-90 were what alerted carriers to the coverage issue and initiated the process of ameliorating this coverage gap. The alternative existing tower site ("AMT") would obviously be preferred if it would work to fill this gap, but it currently does not. The proposed plans include fire mitigation, and a NEPA analysis was completed to address the possible environmental effects.
- 2.12 On October 25, 2023, the Hearing Examiner submitted a recommendation to approve the request. **(Exhibit HE-01, Hearing Examiner Recommendation)**
- 2.13 Community Development received a request for a public hearing before the Board. The Board heard the request on November 9, 2023 and granted the request at a regularly scheduled business meeting on November 14, 2023.

2.14 This matter came before the Board on December 14, 2023 for public hearing. Chair Duncan was absent. Commissioners Bill Brooks and Bruce Mattare were present. Commissioner Bruce Mattare served as Chair Pro-Tem.

2.15 Chair Pro-Tem Mattare made an opening statement and read into the record the following text from Title 47 of the United States Code, specifically U.S.C. Title 47 § 332(c)(7)(B)(i) and (iv):

“(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

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

Chair Pro-Tem Mattare clarified that the term Commission referred to the Federal Communication Commission (FCC) and continued to state, *“In short, federal law prohibits local jurisdictions from denying cell tower construction if the facts show that wireless service will be prohibited or have the effect of being prohibited, and jurisdictions cannot use the environmental effects of radio frequencies unless the Federal Communications Commission says there is an environmental effect with the particular radio frequency.”*

2.16 Amy Hilland, Planner II, introduced the application and presented evidence with the aid of a PowerPoint Presentation. Similarly to what was presented before the Hearing Examiner, Ms. Hilland presented the facts of the case and the course of proceedings up to that point. Ms. Hilland provided a brief synopsis of the Hearings Examiner’s analysis and recommendation for approval. The Hearing Examiner requested the Board consider a Monopine design and a reduction in tower height. Ms. Hilland pointed out that while the Hearing Examiner struggled with the height of the tower from an aesthetics point of view, he conceded that there was not enough evidence to recommend a lower tower height. Ms. Hilland’s PowerPoint also included a statement about the Telecommunication Act of 1996 in that it prohibits State and local regulation of such facilities to deny an application on the basis of environmental effects of radio frequency emissions to the extent such facilities comply with FCC regulations.

2.17 The Applicant, Nathan Weis, presented on behalf of Weis Towers and Inland Cellular. His family has been in the telecommunications business since 1950 and is very familiar with regulations and compliance with regulations. Since 1989, they have constructed over 200 towers in Washington and Idaho, most of which are registered with the FCC. Towers are not lit unless required or needed. Mr. Weis stated this tower is intended to house Inland Cellular and Verizon Wireless. Mr. Weis stated both Inland Cellular and Verizon Wireless have “licensed spectrum,” but each carrier’s spectrum covers differently, hence the differences shown in maps submitted. AT&T, T-Mobile and Verizon do use Inland Cellular’s networks to roam and all emergency phone calls, such as 9-1-1, could use the network if they were the only provider there. He explained the location was selected because there are federal and government lands to the east, west and south, and frequencies don’t bend and curve, hence the need for elevation to provide coverage for I-90. The 150-foot tower is

- suitable not only due to topography and trees, but to provide coverage for I-90 and wider signal and the ability to provide for three carriers. Monopine is not recommended due to the antennas and the tower height limit of 150 feet.
- 2.18 Chair Pro-Tem Mattare asked Mr. Weis how gaps in coverage are determined, specifically with respect to this area. Mr. Weis stated that he has multiple carriers' phones and when traveling, he determines locations where there is no coverage, including along I-90. Coverage maps are also used to determine lack of coverage, but they don't show topography. Pro-Tem asked Mr. Weis if, outside of the highway, there was a constituency that he has identified that's not getting service. Mr. Weis responded that to the north there is no service on Alder Creek Road up to Fourth of July Pass. The tower is intended to cover from Fourth of July Pass down to Wolf Lodge restaurant which then connects with Verizon's tower's further to the west. Cell phone users would have continued coverage up to Fourth of July Pass. Mr. Weis further explained that towers used to be placed at high elevations to blast the signal across further distances. Today, however, technology needs to be consolidated so as not to interfere with frequencies of other towers.
- 2.19 Anne Watanabe, counsel for the Applicant, then presented. She thanked the Board for their preamble regarding the federal laws which partially preempt local jurisdiction. She briefly explained the contents of the letter submitted as **Exhibit B-1002** addressing the open-ended comments made by the Hearing Examiner. The Applicant agrees with the Hearing Examiner's decision to approve with the conditions 8.1 through 8.18. The lower tower height and suggestion for Monopine is outside the conditions, and the Applicant did not agree with those suggestions. The 150-foot tower is needed for proper transmission and is essential due to topography. Ms. Watanabe explained that the Hearing Examiner was not clear as to the reasons for a Monopine design. She explained that the tower would be painted to blend in, but a Monopine tends to take up more space and would actually be more unsightly. Ms. Watanabe also addressed the concern for property values, which was the reason stated in the request for a hearing before the Board. The property values were addressed by the HE and said economic impact are not a reason to deny the proposal, specifically that property values are dependent on market conditions. The Applicant has sold properties in rural areas with towers already built or under construction and the owners intended to build homes with knowledge of the tower. Every buyer and every property is unique. She stated that the Applicant is bringing a lot of economic impact by bringing coverage to this area.
- 2.20 Paul Slotemaker, consultant for Verizon Wireless, then presented. Verizon would be collocating on this tower and Verizon would like to see this approved based on the Hearing Examiner's recommendation of approval with conditions.
- 2.21 Chair Pro-Tem Mattare then opened the hearing to public testimony.
- 2.22 Mark Mathes, who submitted the request for public hearing before the Board, was the first to present. He spoke in opposition to the request. He was allowed to make a 15-minute group presentation, as he had obtained 10 signatures on a petition from those who donated their time. Chair Pro-Tem Mattare confirmed there were 10 individuals present at the hearing willing to donate their time. Mr. Mathes provided a PowerPoint presentation (included as **Exhibit B-1004**). He quoted subsection 8.8.201(C)(1)(d) of the Kootenai County Code, which states that the *Hearing Body shall not recommend for approval, and the Board shall not approve, a conditional use permit except upon the following finding that the proposal adequately addresses site constraints or hazards, and adequately mitigates any negative environmental, social and economic impacts*. Mr. Mathes shared his concern that if a tower fire were to occur, his escape would be cut off. Mr. Mathes stated that there is no one in this room who wants this tower. Mr. Mathes then addressed the economic impact, citing multiple surveys that prove cell towers impact property values. He

- shared his concern that the cell tower would negatively impact his property value. He pointed out that the Applicant's intent is to provide service along I-90, not the Wolf Lodge area. According to Mr. Mathes, Realtors in the area have estimated a possible 10-20% decrease in property value based on proximity to a cell tower. Mr. Mathes shared a screenshot of his phone which displayed 5G coverage on his property. He concluded his presentation by listing pros and cons about his property, and that the proposed cell tower would be a con.
- 2.23 In addition to Mr. Mathes, seven other members of the public provided testimony in opposition to the request. Concerns included the impact on eco-tourism, effect on wildlife, health, safety and the environment, outdated FCC regulations, and the impact of future commercial development made possible by the tower. Concerns were raised as to the purpose of the tower in that it is intended to serve I-90 and were not convinced 5G is needed. Full testimony is available online via YouTube, and a summary is contained in the hearing minutes. **(Exhibit B-02)** Joe Whipple and Danielle Gregorio both submitted statements entered into the record as **Exhibits B-1005 and B-1006**.
- 2.24 Anne Watanabe presented rebuttal. She addressed the concerns regarding wildlife and fires. She stated that the Applicant concurred with the public agency responses, none of which raised any issues regarding those matters. With regard to environmental issues, the Applicant conducted a study required by the FCC under the National Environmental Policy Act (NEPA). She also reminded the Board that "drop call" data was provided by the engineers as part of the application. She emphasized there are benefits to 5G as described in the letter provided **(Exhibit B-1002)**, that federal funding is supporting the expansion of broadband Internet into rural communities, and that services to increase 9-1-1 communication along highways and in rural areas are also expanding. With regard to property values, Ms. Watanabe noted that there is no information at this time to know what the property value will be at time of sale, but that there will likely be a buyer who does not mind a tower. She notes that the comments regarding property values were speculative and based on opinion. Broadband services schools, health services, telecommunications, and remote workforces, and those can actually add value to real estate.
- 2.25 Paul Slotemaker concurred with Ms. Watanabe. This project has met all criteria and code requirements. Verizon has provided real time drive test data. This is a health and safety need on this stretch of road, which is known to be treacherous for motorists, and lack of coverage is a cause for concern. He also added that reliable wireless service is one of the top considerations for prospective home buyers, especially for those who do not have a landline.
- 2.26 Nathan Weis added that as more people use the networks, the signal dissipates. Many people who use the I-90 corridor need better service. This is the only stretch that does not have reliable coverage for Verizon. He explained that they have never had a tower catch on fire. He explained that if there is a fire near a tower, the firefighters will often put a retardant on the tower to keep communication lines open. Car fires along I-90 are much more likely than a cell tower fire. Inland Cellular is also a 4G carrier.
- 2.27 Commissioner Brooks moved to close public testimony and schedule deliberations in this matter for January 11, 2024 at 10:00 a.m. Chair Pro-Tem Mattare seconded, and the motion carried.
- 2.28 This matter came before the Board for deliberations on January 11, 2024. All Commissioners were present.
- 2.29 Chair Duncan asked if Planner Amy Hilland could present her PowerPoint as a review of the case. Because no new information can be provided in deliberations, Ms. Hilland only reviewed existing information included in the record and course of proceedings up that point.

- 2.30 Commissioner Mattare read a statement to be entered into the record which is included in the minutes (**Exhibit B-03**). In summary, he acknowledged that federal law is clear that a local jurisdiction cannot prevent telephone service from being provided to a community where none currently exists. However, he found it difficult to identify how the Federal statute applies to those areas where service does exist, even if the signal is not strong. He found that the Applicant had not established that a gap in service was continuous, but rather under only certain conditions. Commissioner Mattare agreed with the surveys and statements of professional real estate agents that home values would be adversely affected when located near a cell tower. Commissioner Mattare also found the issue of possible fire to be a reasonable concern. Such a risk would need to be determined by an insurance actuary. He felt that before approving a cell tower in a wooded area, insurance cost and availability of information is needed. Commissioner Mattare concluded his statement by stating, *“Because the gap in cell service coverage was not conclusively established (except under unexplained conditions) and the very likely possibility that neighboring property values can – and most likely will – be adversely affected by the installation of such a tower, I recommend not to approve the Conditional Use Permit.”*
- 2.31 Chair Duncan stated that the Telecommunications Act from 1996 doesn’t take into account modern technology. She agreed with Commissioner Mattare’s statement that the intent behind the rule was so service could not be denied to certain people. She emphasized that Conditional Use Permits are not by-right uses and found concerning the amount of public comment in opposition. Chair Duncan shared her concerns about fire risk and found the images presented at previous hearings to be disturbing. She could not find a good reason to support the application when she has a duty to listen to constituents when they have valid concerns for a Conditional Use Permit, which she repeated are not by-right uses. At this point, Chair Duncan does not believe that denying this application will prevent the proper amount of coverage in that area. She explained the Telecommunications Act of 1996 did not take into consideration the change in technology and therefore did not address the possibility that modern technology could be more dangerous than it was in 1996. While she is not denying this based on health reasons, she is denying it on the fact that the Telecommunications Act of 1996 did not take modern technology into consideration. She is also denying it based on the fact that constituents are telling her they are concerned about fire danger, especially adjacent property owners. Chair Duncan also gave weight to the effect cell towers have on property values.
- 2.32 Civil Deputy Prosecutor Pat Braden requested Chair Duncan to clarify which specific standard in the 1996 Telecommunications Act she thought was defective. He reminded the Chair that this is federal law that remains applicable in 2024 and must be followed. Chair Duncan acknowledged that she could not render a decision based on health effects, but explained that the health effects of concern in 1996 were related to the technology at that time. Today, it is unknown if the technology in existence today is more harmful or less harmful.
- 2.33 In response to Chair Duncan’s comments, Mr. Braden stated that this reasoning did not provide a valid basis for denial. While he agreed that the FCC and/or Congress do need to reexamine the Telecommunications Act, the reasons stated by Chair Duncan fall within the health effects category and cannot be a basis for a decision. He advised her that she needed to make a decision based on substantial evidence in the record and consider the decision criteria contained in the Telecommunications Act and in the Land Use and Development Code. This includes the findings that the proposed tower would not address a specific gap in coverage or that it would not be the least intrusive means of filling that gap. The 1996 Telecommunications Act still applies and the FCC rules implementing the Act still apply until they are changed. He then advised her to revisit her reasoning for denial.

- 2.34 Chair Duncan stated her decision for denial was based on the social impact that CUPs are not uses permitted by-right and the people affected stated they don't want it. Economically, property values of the adjacent property may or may not be affected and insurance rates may increase for the area due to fire risk.
- 2.35 Commissioner Mattare requested Mr. Braden confirm his understanding that the statute is based on whatever technology the FCC has approved at the time. If the FCC can approve technology today and if they have approved it, we cannot use that technology as a basis for denial. As long as the FCC is approving the technology, you can't use technology as a basis to deny. Mr. Braden confirmed that to be accurate.
- 2.36 Commissioner Brooks stated he did not find anything other than anecdotal evidence and subjective evidence in support of the opposition. As a past real estate broker, he did not agree with the real estate agent's comments regarding loss in 15-20% in property values.
- 2.37 Chair Duncan posed a question. What effect do the citizens' desires have on what they want to live with? If the majority of citizens do not want to live with certain technology, is it still necessary that technology be provided, whether they want it or not? With that, she called for a motion.
- 2.38 Commissioner Mattare motioned to deny the application in Case No. CUP23-0003, I-90 Wolf Cell Site. Commissioner Brooks seconded the motion. The Board voted 2-1 to deny the request with Commissioner Brooks dissenting.
- 2.39 On February 13, 2024, the Board signed the Order of Decision denying the request.
- 2.40 On February 26, 2024, Community Development received a request for reconsideration of the Board's decision to deny the request.
- 2.41 Community Development issued a Notice of Public Hearing on the requests for reconsideration of the decision to deny this application, with the reconsideration hearing before the Board of County Commissioners to be held on May 9, 2024. On April 5, 2024, notice was mailed to all of the effected parties. On April 9, 2024, notice was published in the *Coeur d'Alene Press*. On April 15, 2024, notice was posted near the site. Based on the signed affidavits in the file, public notice procedures have been met.
- 2.42 On May 9, 2024, the Board conducted a public hearing on the request for reconsideration of the Board's prior decision to deny this application. In attendance at the hearing were Commissioners Duncan and Mattare, with Commissioner Brooks being excused. Chair Duncan addressed the audience by explaining the Code of Conduct that was expected during the hearing.
- 2.43 Following Chair Duncan's brief introduction, Pat Braden, Civil Deputy Prosecuting Attorney, stated that staff will remain neutral on the matter. Mr. Braden then stated that the procedures for the hearing had been sent to the parties involved stating the amount of time allotted for each presentation, but that the Board had the discretion to grant additional time if deemed necessary. He then recited the legal standard for requests for reconsideration pursuant to Section 8.8.502 of the LUDC: "*Requests for reconsideration shall be limited to the grounds set forth in section 67-6535, Idaho Code.*" Subsection 2(a) of this section states that "*failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site specific authorization or the denial of the same upon appeal.*" With this in mind, the Board has the authority to uphold the decision previously made, overturn the decision previously

made, affirm the decision with modifications, or remand the matter back to the Community Development staff, or the Hearing Examiner. The Federal Telecommunications Act, 47 U.S.C. § 253(a), applies and FCC regulations state the decision cannot be based on the actual or perceived acts of radio-frequency radiation on human health.

- 2.44 Following Mr. Braden's brief legal analysis with respect to the Board's conduct of the public hearing, Ben Tarbutton, Planning Manager, introduced the request. Mr. Tarbutton briefly spoke about the history of the project and the Board's final decision in January of 2024.
- 2.45 Anne Wantanabe, legal counsel representing the Appellant, started by focusing on arguments suggesting that the past decision by the Board of County Commissioners to deny the request was made in error. Ms. Watanabe addressed the following:
1. The BOCC failed to recognize the evidence provided by the Applicant to demonstrate the significant gap of coverage with real-time crowdsourced data and drive test data. Further, the BOCC inappropriately relied on anecdotal data from members of the public about their personal experience.
 2. The BOCC failed to recognize the other sites the Applicant considered, but determined to be infeasible per the RF study.
 3. The BOCC erroneously determined that there is an enhanced fire risk associated with the proposed tower. The tower will include modern design which mitigates the risk of lightning strikes resulting in fire. Economic hardship will not be realized by the neighbors due to increased fire insurance premiums, based on a letter from Novak Insurance.
 4. The BOCC erroneously determined that the proposal does not adequately address constraints or hazards, and does not adequately mitigate negative environmental, social, and economic impacts. The Applicant submitted a NEPA report, which indicates no environmental impacts. Furthermore, the record does not have sufficient evidence to conclude an economic impact is present.
- 2.46 Nathan Weis, President and CEO of Inland Cellular, spoke in support of the Appellant. He stated that evaluation of additional sites were considered, including the site on U.S. Forest Service property. Mr. Weis indicated that this site would not provide the necessary RF coverage needed. Furthermore, Mr. Weis indicated that there is a significant gap in coverage and this is detrimental to providing emergency services along I-90.
- 2.47 Ron Hartman, whose stated position was neutral, felt that the Appellant's application was lacking information regarding business plan and motive.
- 2.48 Mark Mathes, representing a group of 10 residents, who are opposed to the request for reconsideration (supporting the BOCC original decision to deny the request), provided a PowerPoint presentation. In his presentation, Mr. Mathis focused his efforts on how the cell tower would negatively affect his property value. Furthermore, he provided maps generated by AT&T and T-Mobile which show current 5G coverage. Therefore, he believed that the Applicant has not demonstrated that there is a significant gap in coverage.
- 2.49 Randy Neal, speaking in opposition to the request for reconsideration (supporting the BOCC original decision to deny the request), referenced an article from Forbes Magazine which indicated harmful effects of radiation emitted from cell towers.

- 2.50 Joe Whipple, speaking in opposition to the request for reconsideration, indicated that the Applicant has not demonstrated that there is a significant gap of coverage.
- 2.51 Eugene Kalinowski, speaking in opposition to the request for reconsideration, expressed his disagreement with the Telecommunications Act preventing a decision on the basis of health effects of cell tower radiation.
- 2.52 Roger Dunham, opposed to the request for reconsideration, believed that the BOCC made the right decision, initially to deny the request. Mr. Dunham emphasized the negative health, aesthetic, and negative property value effects of cell towers.
- 2.53 Brent Regan, opposed to the request for reconsideration, indicated that 5G cellular technology will be obsolete shortly and it wouldn't make sense to approve a cell tower that promotes it. Furthermore, he encouraged the Commissioners to fulfill their responsibility to the public by protecting their rights.
- 2.54 On rebuttal, Ms. Watanabe reiterated that the comments related to alleged health effects associated with cell towers cannot be taken into consideration by the BOCC when making their final decision. Furthermore, she reminded the BOCC that based on the submitted evidence, property values are not adversely affected by the presence of cell towers, but conversely are benefited by them. Benefiting the public on a whole should be part of the decision making process of the BOCC, not necessarily based on the few. Cell towers are much like a utility and their presence is everywhere. There is a legitimate gap in service along I-90. Furthermore, the Applicant has demonstrated that there is a significant gap in coverage. The Applicant has evaluated the site for environmental concerns with respect to National Environmental Policy Act and no concerns were raised.
- 2.55 Commissioner Mattare followed with a question to Ms. Watanabe about the desire of the public to have broadband and cellular service, and whether these two terms are interchangeable or separate. Ms. Watanabe clarified and indicated that cellular service is considered to be mobile, where broadband is meant to be high-speed data. Commissioner Mattare followed with an additional question about the type of service that was referenced to benefit or increase property values. In response, Ms. Watanabe confirmed that this particular case referenced broadband service more generally. Lastly, Commissioner Mattare asked Ms. Watanabe to clarify a point that was made about property values. According to the report, there appeared to be a correlation of a discount in property values with the proximity to a cell tower. Ms. Watanabe acknowledged that the point could be understood that way.
- 2.56 Commissioner Mattare had one final question to be clarified in regards to the letter from Novak Insurance, and whether this provider had underwritten policies in the rural areas of the Pacific Northwest. Ms. Watanabe confirmed that they do provide homeowner insurance policies for properties in the rural areas of the Pacific Northwest.
- 2.57 With no additional public testimony, the Board made a motion to close the public hearing and enter into deliberations on June 13, 2024.
- 2.58 On June 13, 2024 the Board proceeded with deliberations. Chair Duncan and Commissioner Mattare were present, with Commissioner Brooks being excused. At the request of Pat Braden, Civil Deputy Prosecuting Attorney, the Board moved to enter into executive session. After the Board exited executive session, the Board continued with deliberations. Commissioner Mattare found that according to the Appellant's case it is clear that cell towers have an effect on property values, it's just a matter of degree depending on market conditions. Furthermore, he believed that

the Appellant did not provide compelling evidence that there is a significant gap in cellular coverage. Chair Duncan agreed with the points made by Commissioner Mattare. Additionally, Chair Duncan believed that the Appellant has not demonstrated that the required findings to approve a Conditional Use Permit have been met.

With no additional deliberations, Commissioner Mattare made a motion to deny the request for reconsideration and uphold the original decision to deny the application in Case No. CUP23-0003. Chair Duncan seconded the motion. The Board voted 2-0 to uphold the original decision to deny this application.

- 2.59 The Applicant then filed a civil action in the U.S. District Court for the District of Idaho entitled *WEIS Towers, LLC v. Kootenai County, Idaho et al.*, Case No. 2:24-cv-375, on August 16, 2024.
- 2.60 The U.S. District Court entered a Memorandum Decision and Order in *WEIS Towers v. Kootenai County* on September 4, 2025, finding that the Board's decision to deny the application in Case No. CUP23-0003 was not based on substantial evidence, and that it effectively prohibited Verizon and Inland Cellular from providing wireless communications services in the proposed coverage area. The U.S. District Court entered a judgment in favor of the Applicant on September 11, 2025.
- 2.61 On September __, 2025, the Board again proceeded with deliberations. Chair Mattare, Commissioner Duncan and Commissioner Eberlein were present. They indicated that they understood that the federal court decision compelled them to approve this application. In discussion, they indicated that they generally agreed with the proposed conditions of approval from the Hearing Examiner's recommendation, with the exception of proposed Conditions 8.11 and 8.13, which were modified to address concerns expressed by the Applicant.
- 2.62 Upon review of all files, exhibits and testimony of record regarding this request, the Board hereby makes the following Findings of Fact and Conclusions of Law:

III APPLICABLE LEGAL STANDARDS

- 3.01 Telecommunications Act of 1996, 47 U.S.C. § 251 *et seq.* (TCA).

47 U.S.C. § 253(a) provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

47 U.S.C. § 332(c)(7) provides as follows:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

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

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

MetroPCS, Inc. v. City and County of San Francisco, 400 F.3d 715, 731-35 (9th Cir. 2005). Even in the absence of a general ban on wireless services, a locality can run afoul of the TCA's effective prohibition clause if it prevents a wireless provider from closing a significant gap in service coverage. This inquiry generally involves a two-pronged analysis requiring (1) the showing of a significant gap in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations. A significant gap in service (and thus an effective prohibition of service) exists whenever a provider is prevented from filling a significant gap in its own service coverage. The manner in which it proposes to fill the significant gap in service must be the least intrusive on the values that the denial sought to serve.

T-Mobile USA, Inc. v. City of Anacortes, 572 F.3d 987, 997 (9th Cir. 2009). A telecommunications provider must show that a denial of a tower application constitutes an effective prohibition on the provision of telecommunications services. By contrast, a denial of an application that merely could potentially prohibit the provision of telecommunications services will not be found to constitute a violation of the TCA. This determination is to be made in a manner that allows for a meaningful comparison of alternative sites before the siting application is needlessly repeated, and that gives providers an incentive to choose the least intrusive site in their first siting applications.

3.02 Kootenai County Land Use and Development Code, Title 8, Kootenai County Code.

Article 2.2, Rural Zone, Section 8.2.208, Uses Requiring a Conditional Use Permit. This section states that a Wireless Communication Facility (WCF) may be permitted in the Rural zone with a Conditional Use Permit.

Article 5.1, Section 8.5.132, Wireless Communication Facilities (WCF). This section provides that WCFs are permitted with a Conditional Use Permit in the Agricultural, Rural, Agricultural Suburban, Commercial, Light Industrial, and Industrial zones. Items (A) through (C) outline the standards that apply to WCFs.

Article 7.1, Sensitive Areas. This article establishes regulations regarding site disturbances, stormwater control and shoreline development. Management of runoff and control of erosion during construction must be in compliance with this Code and the associated plan requirements. Plans must be prepared by a “design professional,” as defined in the Code, and must use calculations that include anticipated runoff from future developed portions of each lot.

Article 8.1, Administration, Section 8.8.201, Conditional Use Permits. This section outlines the general provisions, procedures, application requirements and findings for granting a Conditional Use Permit. It also authorizes the hearing body to attach conditions to a Conditional Use Permit approval. This section further states that a public hearing shall be held with notice according to Article 8.4.

The Hearing Body shall not recommend for approval, and the Board shall not approve a Conditional Use Permit except upon the following findings:

- a. The applicable procedural requirements have been met;
- b. The proposal is in compliance with the applicable standards for the proposed use without variances or with such variances as may be approved by the Board;
- c. The proposal is compatible with existing homes, businesses and neighborhoods, and with the natural characteristics of the area.
- d. The proposal adequately addresses site constraints or hazards, and adequately mitigates any negative environmental, social and economic impacts.
- e. Services and facilities for the proposal are available and adequate.
- f. The proposal will meet the duly adopted requirements of other agencies with jurisdiction.
- g. The proposal is not in conflict with the comprehensive Plan.

In conjunction with the granting of any Conditional Use Permit request, the hearing body may stipulate restrictions or conditions which uphold the spirit and intent of this title and are roughly proportional, both in nature and extent, to the reasonably expected impacts of the approved use, including without limitations, a definite time limit, hours of operation, provisions for front, side, and rear yard setbacks less than or greater than the normally applicable standards suitable landscaping, sight restrictions, or greater than the normally applicable standards, suitable landscaping, sight restrictions or other conditions or safeguards which address reasonably expected impacts of the approved use. Permit approval may be conditioned on approval of other agencies with jurisdiction, and the Board may impose, conditions of approval which further the purposes of this title and are roughly proportional, both in nature and extent, to the impacts of the variance. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation governed under article 8.6 of this chapter. Conditional Use Permits without a time deadline shall expire after two years from the date of signing the order of Decision approving the permit if the use authorized by the permit has not been established through, at a

minimum, development activity apparent upon a view of the site or submittal of an application for one or more development permits.

Article 8.3, Establishment of Hearing Bodies. This article establishes the Planning and Zoning Commission and the position of Hearing Examiner, and sets forth mandatory and discretionary procedures for hearings on matters authorized under the Local Land Use Planning Act, Title 67, Chapter 65, Idaho Code, and under Titles 7, 9, 10, and 11 of the Kootenai County Code.

Article 8.4, Public Hearings. This article establishes and outlines the procedures and requirements to conduct hearings and notice requirements for quasi-judicial and legislative public hearings. A legislative hearing is held for applications or proposals of a general nature, such as those affecting county wide ordinances or plans. Quasi-judicial hearings are held for situation or site specific requests, including applications for zone changes, subdivisions, conditional use permits, variances, and appeals of Department decisions.

Article 8.5, Hearings on Appeals and Requests for Reconsideration. This article outlines that any applicant or affected person, as defined in Section 8.9.101, of this title, may appeal a Department action by submitting, within twenty-eight (28) days of the decision. This Section further outlines the process for making a request for reconsideration of a final decision of the Board of County Commissioners, which must be submitted within fourteen (14) days of the decision.

3.03 2010 Kootenai County Comprehensive Plan, 2020 Update.

The Comprehensive Plan establishes long range plans for growth, development, land use, and environmental protection in Kootenai County. The plan outlines goals, objectives and policies that provide fundamental decision-making guidance for other County ordinances and for future development. Included in the Comprehensive Plan is a Future Land Use Map that provides a general outline of areas of suitable projected land uses.

3.04 *Idaho Code* § 67-6512, Special Use Permits; § 67-6519 and § 67-6520, Permit Process; § 67-6521, Actions by Affected Persons; § 67-6535, Approval/Denial Requirements; § 74-204, Notice of Meetings; other sections specific to the type of project (such as Title 47, Chapter 15 for Surface Mines).

Idaho Code § 67-6512 states that a permit may be granted if the proposed use is conditionally permitted by the terms of the zoning ordinance, subject to the ability of political subdivisions to provide services for the proposed use, and when it is not in conflict with the Comprehensive Plan. At least one public hearing must be held. This section also outlines the types of conditions that may be imposed, and the public notification requirements that must be met. The hearing notice must be published in the newspaper at least 15 days prior to the hearing, must be posted on the premises at least one week prior to the hearing, and must be provided to property owners within the land being considered, within 300 feet of the external boundaries of the land being considered, and to any additional area that may be substantially impacted by the proposed use.

Idaho Code § 67-6519 and § 67-6520 outline the permit process and decision specifications for special or conditional use permits. The application must first go to the Planning Commission or Hearing Examiner for their recommendation. Recommendations and/or decisions must specify the ordinances and standards used in evaluating the application, the reasons for the approval or denial, and if the decision is a denial, the actions, if any, that the Applicant could take to obtain a permit.

Idaho Code § 67-6521 defines the term “affected person” and states that an affected person may request a hearing on any permit authorized under Title 67, Chapter 65, *Idaho Code*, outlines the actions the Board may take, and provides for judicial review, if requested, within 28 days after all remedies have been exhausted under local ordinances.

Idaho Code § 67-6535 requires that the approval or denial be accompanied by a reasoned statement that explains the express criteria and standards considered relevant, the relevant contested facts, and the rationale for the decision based on the applicable provisions of the Comprehensive Plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. This section also requires any applicant or affected person seeking judicial review of a final decision for failure to identify the nature of compliance or noncompliance with express approval standards, or for failure to explain compliance or noncompliance with relevant decision criteria, to first file a request for reconsideration with Community Development within fourteen (14) days of the date of this decision. Any such request must identify the specific deficiencies in the decision for which reconsideration is sought.

Idaho Code § 74-204 is the section of the Open Meetings Law that provides general requirements for meeting notices such as the Commissioner’s weekly deliberations.

Idaho Code § 67-8003 states that an owner of real property that is the subject of a final decision on this application has the right to request a regulatory takings analysis. Any such request must be submitted to Kootenai County Community Development within twenty-eight (28) days from the date of mailing of the final decision on this application.

IV COMPREHENSIVE PLAN ANALYSIS

This proposal is not in conflict with the Comprehensive Plan.

This parcel is designated as Resource Recreational on the Future Land Use Map. Typically, this designation is designed to maintain land for resource cultivation or rural recreation (with supporting services). Residential uses are permitted but should maintain large tracts. While Wireless Communication Facilities (“WCFs”) are not specifically designated, they have been addressed as elements within the broader text of the Comprehensive Plan. A WCF is properly defined as a utility, given our definitions within the Comprehensive Plan, but also within the wider context of understanding wireless technology to be a key component of our communication infrastructure. The locating of key utility infrastructure is an important element of any jurisdiction’s planning process and is primarily found in Element (h) of our Comprehensive Plan. The siting of WCFs in the Resource Recreational designation is not in conflict with the Comprehensive Plan.

V HEARING EXAMINER ANALYSIS (from Hearing Examiner Recommendation)

This application for a Conditional Use Permit to construct a Wireless Communication Facility should be APPROVED with the listed conditions, or with a possible alteration to proposed condition 8.11.

Staff has provided an extensive and thorough analysis of this proposal and how this application satisfies our code criteria for Wireless Communication Facilities (WCFs) and Conditional Use Permits (CUPs) more generally. This Hearing Examiner has likewise had an opportunity to review the case file, as well as the voluminous exhibit file made a part of the official record for this proposal. I conclude that based on the totality of the evidence presented and made a part of the record, that the Applicant has satisfied their burden to prove they have satisfied of all criteria of approval found in Kootenai County Code Sections 8.2.208, 8.5.132, 8.8.201, and other minor applicable provisions.

The process of siting and constructing Wireless Communication Facilities is heavily regulated and controlled by a myriad of federal laws and agencies. The Telecommunications Act of 1996, and other subsequent federal legislation and administrative rules promulgated by the FCC, amongst other agencies with jurisdiction over portions of the siting, construction, operation, and maintenance of WCFs, leave local jurisdictions with only limited control over these projects (though this differs with evolving regulations of Small Cell Wireless Facilities). In short, we cannot deny this application based on environmental or health factors, but may still use zoning and development code provisions to control certain aspects, such as density and aesthetics.

The ability to control how many WCFs may be located within a certain distance is largely self-limiting. That is, wireless carriers have a strong incentive to collocate on existing towers that work with extant technology. This is the industry standard and matches with the public policy to minimize the number of these towers that are constructed. These towers are expensive to build and maintain, including the costs to lease portions of parcels the purveyors do not entirely own. There are several portions of our code that enforce these portions of our power to control the siting of these facilities. This includes Section 8.5.132.B.3, which generally forbids two WCFs within two miles of each other, Section 8.5.132.C.2 that requires verification that alternative sites within a four-mile radius have been considered and ruled out, and Section 8.5.132.C.6, wherein we require a signed agreement of intent to allow collocation. Again, these criteria control a portion of these projects that are largely self-limiting, as providers have a strong incentive to collocate on existing towers, and almost universally do so when feasible.

The record indicates that the Applicant submitted a signed *Declaration to Allow Use of Wireless Communications Tower* to allow collocation with other uses. The applicant also submitted uncontested evidence that no other towers are located within the two-mile radius. Further, much discussion was had about the only other potential feasible tower in the area, the one designated as the “AMT” tower in the record. While community members questioned whether this AMT tower could be used, the evidence in the record leads me to conclude that locating on the AMT tower is unfeasible to address the coverage gap that was established along this stretch of I-90. In this regard, evidence was presented by the Applicant that the AMT site has been considered. In their analysis, the Applicant’s Radio Frequency (RF) Engineer testified that locating on this site would not ameliorate the signal gap in our subject corridor of I-90. First, and in line with the self-limiting principle at play here, if locating on this tower were feasible to address the underlying problem, that would be the most ideal solution and that’s what he would recommend. From an engineering perspective, current technology requires line of sight for the radio waves to provide effective service. The AMT tower is too far away and there is too much interfering topography to make a collocation there effective. The Applicant has selected this particular location so that the tower can hold equipment intended to point directly down into this narrow corridor of I-90. I find the evidence and testimony credible and compelling enough to conclude that there are no other feasible locations, existing or not, that can be used to ameliorating the established deficiency in coverage.

Which leads me to the issue of whether a deficiency in coverage exists at all in this subject four-mile stretch of I-90. In Section 8.5.132.C.3 we require the Applicant to define the need for the proposed facility at the proposed location, to include engineering data. Again, this is a code criterion that is designed to prevent over-production or redundant construction that is similar to the analysis above. This criterion combines the public policy interest to minimize the density of these facilities with the public policy imperative to provide effective infrastructure facilities. These facilities are an important part of our modern utility infrastructure. This stretch of I-90 is a portion of the highway leading to and from Fourth of July Pass, and the County has a compelling interest to ensure there is adequate communication infrastructure to support emergency service response for the estimated 9 million passengers that traverse this roadway each year. The Applicant presented evidence with their application, as well as drive test data that was presented at the hearing (HE-2002), that there is a gap in coverage along this stretch of I-90. I would also add that, anecdotally, this Hearing Examiner personally drove through this applicable stretch of I-90 and was unable to receive a

cellular connection from their service provider (AT&T) throughout the corridor. Based on the totality of the evidence presented and made a part of the record, I conclude that the Applicant has satisfied their burden to prove that there is an existing need for this proposed facility at this proposed location, and otherwise satisfies the requirements of 8.5.132.C.3.

Before returning to the other sphere of control the County has over these facilities (aesthetics), I want to stop to address the concerns raised by the community members who oppose this application. Despite many heartfelt and well composed arguments in opposition to this proposed WCF, we are completely preempted by the federal government from denying these applications based on health or environmental concerns. This, fortunately or unfortunately, prevents me being able to seriously consider or factor these arguments into my analysis and recommendations. I will not be directly addressing the contention that RF waves are detrimental to human, animal, or insect health. Again, we are precluded from factoring these arguments into our decision. The closest related factor in this regard that could be considered would be testimony regarding a fear of increased risk of fire in this rural area. That argument, in short, was that the tower can catch fire and/or attract additional lightning strikes that could increase the risk of fire in this immediate area and therefore pose an increased risk to neighboring properties. Without being able to make a definitive conclusion on this myself, even with evidence presented by community members at the hearing, I am inclined to rely on our local authority that is charged with considering and addressing such concerns. That is, the Kootenai County Fire & Rescue District, who provided no substantive comment or concerns about this proposal. Still, even if I were to disagree with or try to supersede the Fire District's position, basing a denial on this concern could be construed as a denial on environmental grounds and be overturned on the federal preemption issue stated above. And I remain inclined to defer to our subject matter experts at the Fire District. With one remaining exception, the remainder of the arguments presented at the hearing, even if I were to agree with some or all of them, cannot serve as a basis for denial as they would likely be construed as a denial based on environmental or health concerns. Which, again, are preempted by federal law. As such, I have primarily focused my analysis on the factors which we do have control over, or which could possibly serve as a basis for a legal denial of this application.

The one other compelling argument raised at the hearing was concerns about the effects on neighboring property values. I am unconvinced that an argument about effects on property values should serve as a basis for denial of this application. Such effects are quite difficult to quantify one way or the other, as there are reasonable arguments to be made that better and higher quality access to cellular connection can increase desirability in rural areas. Still, as will be addressed more fully below in my discussion of aesthetic-related conditions of approval, there is only likely one neighboring property owner who will be able to see the tower at all. Even so, the Applicant and the County should strive to mitigate any of these potential negative effects, not deny the application based on this purported fact, and this will be addressed below. As I have already concluded that the Applicant has satisfied their burden as to criteria related to necessity and density, I will turn to the other sphere of influence we have some control over.

The last area of our consideration are criteria that I lump together into an overall category of aesthetics. In this, the Board of County Commissioners has some discretion in the imposition of conditions or limitations on certain aspects of the site and the tower itself. This includes landscaping, fencing, and what is generally referred to as "stealththing." The relevant code provisions here are Section 8.5.132.B.1, 8.5.132.B.4, 8.5.132.B.5.d, 8.5.132.B.6, and 8.5.132.C.9. First, fencing has been properly identified as a condition of approval under 8.5.132.B.6.b. As to the need for a landscaping plan, I agree with the Applicant and Staff in concluding that additional landscaping should not be required. Based on evidence presented, as well as this Hearing Examiner's visit to the site and surrounding areas, no other property owners or travelers along Alder Creek Road will be able to see the base of the tower. In fact, the evidence in the record suggests that travelers on Alder Creek Road won't even be able to see the top of the tower. As such, the existing vegetation is sufficient to satisfy the landscaping requirement. A maximal preservation of the existing

vegetation will serve to preserve the necessary aesthetic qualities of the site and satisfy the requirements of 8.5.132.B.6.a.

This turns me to the tower itself. In general, the operation of painting, obscuring, or using mock material to camouflage the tower falls under the industry term of “stealthing” the tower. Opinions differ as to the preferred method of having these towers “blend” in with the surrounding area.” The current condition proposed by staff is to require the tower, fencing, and all attached equipment to be painted with a neutral color, such as dark brown or green, in order to blend in and match the surrounding area and vegetation. The main alternative I would recommend that the Board considers would be to require the use of faux-vegetative materials such as a “Monopine” type construction. In this Hearing Examiner’s experience, there is a wide range of quality that these towers can end up as in their final form. Some considerably aid in the “stealthing” of the tower into the surrounding vegetation, while others end up sticking out even more starkly and actually inhibit a person’s ability to let the existence of the tower fade out of their conscious perception. From the perspective of drivers along this stretch of I-90, I don’t think requiring a Monopine construction would provide much putative benefit. Most drivers will likely not consciously notice the tower either way (matching paint versus Monopine). The evidence in the record shows that, at most, one neighboring property owner will be able to see the tower at all, as the topography of the site makes it so the tower will not be seen from Alder Creek Road, or from other properties in the less immediate vicinity. Unfortunately, the neighboring property owner likely to have their view affected did not allow the Applicant access to their property during the balloon test to determine the extent to which they would be able to see the proposed tower. It seems likely that the neighboring property will be able to see the top of the tower from their residence, but whether and especially how much are unclear. Relatedly, Section 8.5.132.B.1 gives the Board some discretion to limit the height of the tower “in order to mitigate obstruction of views...” It is possible that a limitation on the height of the tower could be warranted, so as to ameliorate the “obstruction of views,” but I do not have enough evidence in the record to make a definitive recommendation in this regard. And further, given the distance between the structures, it is also unclear to me whether this would constitute an “obstruction” per se, or whether it will just become a permanent, but minor, part of this resident’s evening westwardly views. It is also not definitively in the record whether a reduction in maximum height would reduce or completely inhibit the intended functionality of hardware on the tower. As such, I am unfortunately not able to make a specific recommendation about imposing a height restriction. Yet, the Board should seriously consider the imposition of a condition to require the use of Monopine type construction with deference to the likely effect this tower will have on the evening view of the neighboring residence. Again, noting that it is arguable which stealthing technique actually better serves the intent to reduce the aesthetic disturbance of the tower. Paint can only match color, but Monopine type materials physically take up more space. Either approach will serve to mitigate the probable negative aesthetic effects on nearby properties.

Based on my review of the record, along with the evidence and testimony offered at the Hearing, I find that staff and the Applicant have properly complied with the criteria for approval found in Kootenai County Code Sections 8.5.132 and 8.8.201. I recommend that the Board strongly consider an alteration of Condition 8.11 to require the tower to be constructed in the fashion of a “Monopine” that matches the shape, texture, and color of the pine trees in the immediate vicinity of the tower site. Otherwise, this Application should be APPROVED with the conditions listed below.

VI BOARD ANALYSIS ON REMAND

The Board understands that the federal court decision in *WEIS Towers v. Kootenai County* compels them to approve this application. In that regard, the Board now adopts the Hearing Examiner’s analysis and conclusions stated above, with the exception of proposed conditions of approval 8.11 and 8.13 and the discussion thereof. While the Board generally agrees with the proposed conditions of approval from the

Hearing Examiner's recommendation, proposed Conditions 8.11 and 8.13 will be modified to address concerns expressed by the Applicant.

VII CONCLUSIONS OF LAW

The Board makes the following Conclusions of Law pursuant to Section 8.8.201, Kootenai County Code, which states the required findings for approval of a Conditional Use Permit:

- 7.03 The applicable procedural requirements **HAVE** been met.
- 7.04 The proposal **DOES** comply with the applicable standards for the proposed use without variances, or with such variances as may be approved by the Board.
- 7.05 The proposal **IS** compatible with existing homes, businesses and neighborhoods, and with the natural characteristics of the area.
- 7.06 The proposal **DOES** adequately address site constraints or hazards, and **DOES** adequately mitigate any negative environmental, social and economic impacts.
- 7.07 Services and facilities for the proposal **ARE** available and adequate.
- 7.08 The proposal **DOES** meet the duly adopted requirements of other agencies with jurisdiction.
- 7.09 The proposal **IS NOT** in conflict with the Comprehensive Plan.

The Board further makes the following Conclusions of Law pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 251 *et seq.*:

- 7.10 Approval of this application does not unreasonably discriminate among providers of functionally equivalent services.
- 7.11 Approval of this application does not prohibit or have the effect of prohibiting the provision of personal wireless services for the following reasons:
 - a. The Applicant has shown that the proposed tower would address a significant gap in service coverage, including its own service coverage.
 - b. The Applicant has also shown that the manner in which the application proposed to fill the significant gap in service is the least intrusive means to do so.

VIII ORDER OF DECISION AND CONDITIONS OF APPROVAL

Based on the evidence in the record and the Findings of Fact, Applicable Legal Standards, Analyses, and Conclusions of Law set forth herein, the Kootenai County Board of Commissioners **ORDERS** that the application in **Case No. CUP23-0003**, a request by Weis Towers, LLC for a Conditional Use Permit to allow the establishment of a Wireless Communications Facility consisting of a 150-foot tower and small equipment building, shall be, and is hereby **APPROVED with the following conditions**:

- 8.01 The terms and conditions placed on this Conditional Use Permit shall run with the land and remain valid upon a change of ownership, until such a time as the Permit expires, is revoked, is relinquished by the owner, or is replaced with another approved use. The Permit is not transferable from the approved site to another site. The Applicant, or future assigns having an interest in the subject

- property, shall fully comply with all conditions placed upon this Permit. This approval is based on the information presented in the project application, plans and testimony provided as part of the request, and the Permit is limited to that request.
- 8.02 Changes in the conditions and terms of this Order of Decision shall not be undertaken by the Applicant or future assigns having an interest in the subject property, until the Community Development Director has reviewed the proposed changes and approval has been granted by the appropriate official(s).
- 8.03 The project shall conform to the Narrative and project plan that were submitted, **A-01, Narrative; A-03, Site Plan; A-04, Structural Analysis; A-10d, Photos Simulations**. Minor modifications to the approved use may be granted, as determined by the Director, pursuant to Subsection 8.5.132(D) of the Land Use and Development Code.
- 8.04 The Applicant or future owner(s) shall, pursuant to Section 8.7.101 of the Kootenai County Code, obtain a site disturbance permit prior to beginning any land disturbing activity associated with the construction or improvement of the driveway providing access to the WCF, unless the nature and extent of the activities qualify for an exemption from site disturbance requirements. The site disturbance plan may address the proposed landscaping improvements associated with the request.
- 8.05 The Applicant shall demonstrate compliance with the Federal Aviation Administration and the Federal Communications Commission prior to the issuance of any building permit or site disturbance permit.
- 8.06 Lighting of the tower shall be prohibited unless found to be necessary in the future by the FAA. In the event security lighting is installed in the future, it shall be downward directed and shielded to prevent illumination at the site boundary to be no greater than 0.2 foot candles.
- 8.07 The Applicant shall comply with the requirements of Kootenai County Fire and Rescue.
- 8.08 The Applicant shall comply with the requirement of East Side Highway District, as outlined in **Exhibit PA-03**.
- 8.09 The Applicant shall comply with the requirements of Kootenai County Building Division, as outlined in **Exhibit PA-01**.
- 8.10 Prior to issuance of any development permits for the construction of the Wireless Communication Facility, the Applicant shall provide to Community Development Staff a duly recorded perpetual “Right of Entry” and/or “Land Lease Agreement” from the underlying property owner.
- 8.11 The Wireless Communication Facility shall be treated (whether via painting, galvanizing, etc.) so as to maintain a neutral appearance.
- 8.12 Should the Federal Aviation Administration find it necessary to install a collision avoidance light on top of the tower as recommended by the Idaho Division of Aeronautics, this shall be required as part of the design. Otherwise, a collision avoidance light will not be required.
- 8.13 Any existing vegetation to remain within the leased area shall be preserved in a healthy and well maintained state.

- 8.14 A chain link fence no less than six feet in height from the finished grade shall be constructed around each siting area. Access shall be by locked gate. No barbed wire will be permitted.
- 8.15 The facility equipment will be placed within the fenced lease area and the site will not be used for outdoor storage of supplies or vehicles.
- 8.16. If any antenna or tower is not operated for a continuous period of six months it shall be considered abandoned. The owner of an abandoned antenna or tower, or property owner, shall remove the same within ninety (90) days. If such antenna or tower is not removed within a ninety (90) day period, the County may, at the property owner’s expense, remove the antenna or tower and file a lien on the subject property for expenses incurred in removal. If the County is compelled to seek judicial authority to undertake such removal, the reasonable costs and attorney fees incurred by the County in the course of doing so shall constitute a charge against the owner.
- 8.17. Unless otherwise approved, if the proposed construction or use authorized by this Conditional Use Permit has not been established within two (2) years from the date of the signing of the Order of Decision, this approval shall expire.
- 8.18. The Order of Decision approving a conditional use permit application shall be recorded at the owner’s expense, in accordance with Subsection 8.8.201(E) of the Kootenai County Land Use and Development Code.

Dated this _____ day of September, 2025, by the following vote:

**BY ORDER OF THE KOOTENAI COUNTY
BOARD OF COMMISSIONERS**

Yea *Nay*

Bruce Mattare, Chair

Leslie Duncan, Commissioner

Marc Eberlein, Commissioner

ATTEST:
JENNIFER LOCKE, CLERK

BY: _____
DEPUTY CLERK