

# Article 74 – Communication Facilities & Towers

## **ARTICLE 74 – COMMUNICATION FACILITIES & TOWERS**

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### **Section 74.00 - Purpose**

The purpose of this Article is to provide a process and standards for the construction, modification and removal of communication towers, meteorological towers, non-commercial wind energy systems using towers (collectively referred to as ‘towers’) while protecting public health and safety and the scenic quality of unincorporated Hood River County. At the same time it encourages managed development of needed wireless communication facilities.

The specific purposes of this Article are:

- To recognize that towers are required to serve a variety of public needs.
- To provide communication services to county residents, businesses and visitors.
- To protect the unique scenic quality of the county and its neighborhoods by the thoughtful design, siting, landscaping, and camouflaging techniques of wireless communication facilities.
- To encourage the collocation of facilities as a primary option rather than the construction

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of additional single-use towers.

- To ensure the prompt and complete removal of facilities when abandoned or discontinued, including site restoration.

### **Section 74.05 – Applicability**

1. This Article does not apply to those areas within the Mount Hood National Forest, the Columbia River Gorge National Scenic Area, or the Urban Growth Areas of the cities of Hood River and Cascade Locks.
2. Wireless telecommunications facilities existing prior to the effective date of this Article that do not conform to the standards of this Article and which have been in continuous use prior to the effective date of this Ordinance are allowed to continue as non-conforming uses. Expansion of an existing facility is subject to the requirements of this Article if the proposed changes exceed the dimensional standards of the Spectrum Act (see 47 C.F.R. § 1.40001 and definition of “substantial change,” below).
3. All wireless telecommunication facilities are subject to the requirements of this Article, except those Exempt Towers and Facilities identified below. The requirements of this Article are in addition to the requirements of the base or overlay zone and all other applicable county ordinances and regulations. Except for height, if a conflict is noted between development standards, the restrictive will govern.

### **Section 74.10 - Exempt Facilities & Towers**

The following towers and wireless telecommunication facilities are not subject to the standards and requirements of this Article:

1. Amateur (Ham) radio towers, citizen band transmitters and antennas.
2. Whip or other similar antennas no taller than 6-feet with a maximum diameter of 2-inches.
3. Residential scale antennas designed to receive television broadcast signals.
4. Low-powered networked telecommunications facilities such as microcell radio transceivers, small cell and Distributed Antenna Systems (DAS) located on existing utility poles and light standards within public right-of-ways.
5. Wireless communication devices less than or equal to 10 square feet in area and approved by the Federal Communications Commission (FCC) for residential areas (regardless of the zone).
6. Cells-On-Wheels (COW), are permitted as temporary uses in all zones for a period not to exceed 30 days or during a period of emergency as declared by the City, County, or State, or to address a short term capacity or coverage need, such as an event, relocation or repair of an existing facility.
7. Emergency or routine repairs or maintenance of previously approved facilities, or replacement of transmitters, antennas, or other components of approved facilities which

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do not create a significant change in visual impact.

8. Two-way communication transmitters used on a temporary basis by “911” emergency services, including fire, police, and emergency aid or ambulance service.
9. Essential public communication services such as police, fire and other emergency communication networks.
10. Existing electrical utility poles and towers.

### **Section 74.15 - Review Procedures**

The review procedure and approval for an application for a communication facility and tower shall be as indicated in Table A and described in this Article.

### **Section 74.20 - Definitions**

Abandonment – Wireless telecommunication facilities will be considered abandoned when there has not been a carrier licensed or recognized by the FCC operating on the facility for a period of one year (365 consecutive days).

Antenna - A transmitting or receiving device used in telecommunications that radiates or captures electromagnetic waves, including, but not limited to, directional antennas, such as panel and microwave dish antennas, and omni-directional antennas, such as whips.

Antenna, Whip - An antenna that transmits or receives 360 degree signals. Whip antennas are typically cylindrical in shape, less than 3 inches in diameter and no more than 6 feet long, including the mounting assembly.

Base Station - A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

- (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (iii) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the County under this Chapter, supports or houses equipment described in paragraphs (i) - (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (iv) For the purposes of a “Spectrum Act” Modification Request, the term does not include any structure that, at the time the relevant application is filed with the County under this Article,

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does not support or house equipment described in paragraphs (i) - (ii) of this definition.

Carrier/Provider - A company that provides wireless services.

Collocation - The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Concealment Technology - The use of technology (e.g., stealth) through which a wireless communications facility is designed to resemble an object which is already present in the natural environment; is designed to resemble a building, building feature or facade of a type typically found in the area; or is placed within an existing or proposed structure.

Eligible Facilities Request - Any proposed modification of an existing eligible support structure that does not substantially change the physical dimensions of that eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and which involves:

- (i) Collocation of new transmission equipment;
- (ii) Removal of transmission equipment; or
- (iii) Replacement of transmission equipment.

Eligible Support Structure - Refers to any base station or tower as defined in this Article, provided that it is existing at the time the relevant application for a Spectrum Act modification is filed with the County under this Article.

Essential Public Communication Service - Police, fire and other emergency communications networks.

Equipment Shelter - A structure that houses power lines, cable, connectors and other equipment ancillary to the transmission and reception of telecommunications.

Existing Telecommunication Facility - A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process of the County, or under another State, or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this Article.

Existing Tower - A tower, or other supporting structure, attached equipment and associated structures that received land use approval prior to the adoption of this Article.

FCC - Federal Communications Commission.

Grade - The lowest point of elevation of the finished surface of the ground within 5 feet of the structure.

Maintenance - Emergency or routine repairs of previously approved facilities and the replacement of components of previously approved facilities which do not create a significant change in visual impact.

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Microcell - A cell in a mobile phone network served by a low power cellular base station (tower), covering a limited area such as a hotel, and typically the range is less than two kilometers. Microcell antennas are typically mounted at street level on the external walls of existing buildings, lamp-posts and other street furniture. These include small cells and Distributed Antenna Systems (DAS).

Modification - The changing of any portion of a tower and its associated facility from its description in a previously approved permit.

Restoration - To return a site to its pre-construction condition unless otherwise reviewed and approved by the Hood River County Planning Department.

Site - For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

“Spectrum Act” - Means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act, 47 U.S.C. § 1455(a), as amended.

Speculation Communications Tower - A tower designed for the purpose of providing location mounts for wireless telecommunications facilities without a binding commitment or option to lease a location upon the tower at the time of application.

Substantial Change - A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- a. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- b. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- d. It entails any excavation or deployment outside the current site;

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- e. It would defeat the concealment elements of the eligible support structure; or
- f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (a) – (d) of this definition.
- g. For purposes of this definition, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

Support Structure - A wireless telecommunication tower, building, or other structure that supports an antenna used for wireless telecommunications.

Tower - A pole, telescoping mast, tripod or any other structure that provides support for or is an integral component of such devices as wireless antennas, wind power generation facilities and meteorological measuring and recording equipment.

Tower Height - The distance from the finished grade at the tower base to the highest point of the tower, including the base pad and turbine blades, mounting structures and panel antennas, but not including lightning rods and whip antennas.

Wireless Telecommunication Facility (“WTCF”) - An unmanned facility for the transmission of radio frequency (RF) signals, consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a support structure, antennas or other transmission and reception devices. Freestanding point-to-point microwave dishes, high power television and FM transmission and AM facilities are considered wireless telecommunication facilities.

Wireless Telecommunication Tower – Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

### **Section 74.25 - Application Requirements**

A complete application is one that contains the information required to address the relevant standards as specified by this Article. At any time during the application process, the Planning Director may request additional information relevant to the proposal. *Furthermore, the Director may require review and validation of technical information contained in an application by a qualified, county approved, independent third party. The cost of such a review shall be borne by the applicant.*

#### **A. Submittal Requirements**

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The following information may be required for an application for a Type I, Type II, or a Type II Conditional Use Permit (CUP):

1. Description of the proposed facility; demonstrated need for the WTCF; distance from the nearest WTCF and nearest potential collocation site; total anticipated capacity of the structure, including number and types of antennas which can be accommodated; the proposed color, surfacing of the facility and associated fixtures; and use of concealment technology (if applicable).
2. A site plan, drawn to scale, that includes:
  - a. Existing and proposed improvements.
  - b. Adjacent roads.
  - c. Parking, circulation and legal access.
  - d. Connections to utilities required.
  - e. Areas of existing and proposed vegetation to be retained, replaced, added, or removed.
  - f. Setbacks from property lines of all existing and proposed structures.
3. Elevations showing height above ground, antennas, towers, equipment shelters, area enclosure and other improvements related to the facility.
4. A landscape plan, if ancillary facilities will be located on the ground, to obscure equipment.
5. Applications for eligible facilities or collocations requests must include documentation from a qualified professional demonstrating:
  - a. Applicant has the owner's permission to collocate, if applicable.
  - b. The project will not produce noise levels in excess of the levels set forth in the Hood River County Noise Ordinance and state code.
  - c. The eligible facilities request, if applicable, is not a substantial change, as defined in this Article.
  - d. All components of the eligible facilities request are located within the previously approved site.
  - e. The project complies with the conditions of approval for the structure's existing permits.

### **B. Submittal Requirements - Construction of a New WTCF or Tower**

In addition to the application requirements in Section A, specified above, applications for

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construction of new WTCF and towers shall include:

1. A vicinity map showing:
  - a. The applicant's proposed facility site.
  - b. Other sites in the vicinity evaluated for the proposed facility.
  - c. Other similar existing facilities in the area and distance to them.
  - d. The proposed coverage area and approximate geographic limits of the “cell” to be created by the facility.
2. A photographic simulation showing how the facility will appear on the landscape. The simulation should contain a graphic simulation showing the appearance of the proposed tower, antennas and ancillary facilities from at least three points within a five mile radius. Such points shall include views from public places, including but not limited to parks, rights-of-way, and waterways to ensure that various potential views are represented. The study shall also include existing scaled elements (e.g., houses, trees, power lines).
3. A report/analysis from a qualified professional documenting the following:
  - a. Demonstrated need for the WTCF.
  - b. Information justifying the need to locate the proposed facility in the requested location and why collocation is not feasible.
  - c. The reasons why the WTCF must be constructed at the proposed height.
  - d. The use of sensitive site design demonstrating compliance with Section 74.35.B (Siting Requirements).
4. A signed statement by the applicant and future owners or operators will allow collocation with other users provided all safety, structural, and technological requirements are met, and reasonable charges for collocation can be reached.
5. Documentation that the proposed WTCF is in compliance with the requirements of the FAA, the Oregon Department of Aviation, the FCC and any other local or state agency with jurisdiction.
6. Statement demonstrating compliance with the applicable Approval Criteria of this Article, and Burden of Proof Criteria in Article 60, if applicable.

### **Section 74.30 - General Standards & Requirements Applicable to New Facilities & Towers**

- A. Outstanding scenic views and sites will be conserved.



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- B. Protect and preserve the visual character of the county.
- C. No application shall be accepted or approved for a speculation tower (i.e., from an applicant that proposes to construct a tower only). The application must be signed by a lawful representative of a service provider intending to lease the tower in addition to other required signatures.
- D. The applicant has the burden of proof to demonstrate concealment technology designs have been explored and are unworkable with regard to the primary purpose of the tower or are not necessary for compatibility with the surrounding area.
- E. All support structures shall be designed to comply with applicable Building Codes.
- F. All necessary local, state and federal authorizations/permits shall be obtained prior to constructing the use.
- G. The applicant shall comply with all applicable FCC Radio Frequency emission standards (FCC Guidelines).
- H. Within 180 days of receipt of written notice, all facilities located on a utility pole shall be promptly removed at the operator's expense at any time a utility is scheduled to be undergrounded or otherwise moved.
- I. No WTCF shall be located on any single family residential structure.

### **Section 74.35 - Standards & Approval Criteria (Lands Not Zoned EFU)**

#### **A. Operating Requirements**

If technologically possible, all new and replacement towers shall provide for the future collocation of antenna systems by other service providers with a tower sharing plan as follows:

1. The applicant and/or service provider of the wireless telecommunication tower, on behalf of his or her successors and assigns, shall agree to negotiate in good faith for shared use of the tower by third parties. The applicant shall allow shared use of the tower if the third party agrees in writing to pay reasonable charges for collocation.
2. Any proposed new wireless telecommunication tower shall be designed to accommodate both the applicant's antennas and comparable antennas for at least two additional facilities if the tower is over 100 feet in height and for at least one additional facility if the tower is between 60 and 100 feet in height.

#### **B. Siting Requirements**

1. Location - WTCFs shall be located so as to minimize their visibility. The ranking of siting preferences is as follows: first, collocation upon an existing tower or existing structure; second, use of concealment technology; third, a new tower screened by trees or

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other natural or built features; and last, other new towers.

a. Collocation

1. All WTCF's shall be designed to permit shared parking areas and access roads.
2. Existing sites for potential collocation may include, but are not limited to buildings, water towers, existing WTCF's, utility poles and towers, and related facilities
3. A proposal for a new tower shall not be approved unless the approving authority finds that the wireless communications equipment for the proposed tower cannot be accommodated on any existing tower or structure within 2,630 feet of the proposed site, due to one or more of the following reasons (as documented by a qualified professional):
  - a. No existing towers or support structures, or approved but not yet constructed towers or support structures, are available within the geographic area required to meet the applicant's coverage objectives, including engineering requirements.
  - b. Existing towers or support structures are not of sufficient height to meet the applicant's coverage objectives, including engineering requirements.
  - c. Existing towers or support structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment and tower/structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
  - d. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or structure and the interference cannot be prevented at a reasonable cost.
  - e. The applicant demonstrates that there are other limiting factors that render existing towers and support structures unsuitable.

b. Use of Concealment Technology - When demonstrated that it is not feasible to collocate the antenna(s) on an existing structure or tower, the WTCF shall be designed so as to be concealed to the greatest extent possible, including but not limited to the use of concealment technology, and the use of compatible building materials and colors. All concealment facilities shall be designed to visually and operationally blend into the surrounding area in a manner consistent with the natural environment and existing development. The facility shall also be appropriate for the specific site. For example, the WTCF should not "stand out" from its surrounding environment.

c. Screening - To the extent practicable, towers shall not be sited in locations where

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there is no vegetative, structural, or topographic screening available. A WTCF tower not employing concealment technology shall not be installed on a site unless it blends with the surrounding natural environment and existing development. Existing trees or significant vegetation should be retained to the greatest possible degree in order to help screen a facility or tower. New vegetation used to screen a facility or tower shall be of a species similar to that existing at the site and a size acceptable to the approval authority and shall be planted immediately following completion of construction. Applicant agrees to maintain added vegetation.

2. Height - The maximum structure height requirements of each zoning district are not applicable to WTCFs which shall comply with the following requirements:
  - a. See Table A for the height requirements in each zone. Request to modify height requirement are subject to Section 74.55.
  - b. Building or other structure mounted WTCF, other than an existing tower or a concealed facility, shall not project more than twenty (20) additional feet above the highest point on the existing building or structure.
  
3. Setbacks
  - a. Unless permission is received from affected property owner(s), road authority or utility; towers associated with a tower shall be required to meet the property line/yard setbacks and buffer requirements of the underlying zone in which they are located or a minimum distance equal to the total height of the tower plus 10% whichever is greater.
  - b. Unless permission is received from affected property owner(s), road authority or utility; equipment shelters and guy wires associated with a tower shall be required to meet the property line/yard setbacks and buffer requirements of the underlying zone in which they are located.
  - c. Exception to the setback standards of (a) or (b) of this section may be granted if the applicant can demonstrate all of the following:
    - (i) A reduced setback would provide better concealment or screening than the setback required by (a) and (b) above.
    - (ii) Signed agreements from adjacent property owners assenting to the reduced setback.
  
4. Storage – Equipment Shelters
  - a. No on-premise storage of material or equipment shall be allowed other than that used in the operation and maintenance of the tower site.
  - b. WTCFs (i.e. vaults, equipment rooms, utilities, and equipment cabinets or enclosures) shall be non-reflective material (exterior surfaces only) that blends with the

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- surrounding environment. All equipment shall be stored inside a building or suitable enclosure rated for outdoor use. The placement of equipment in underground vaults is encouraged.
- c. WTCFs storage facilities shall be not taller than one story (15-feet) in height and shall blend with existing development.
  - d. Equipment shelters shall be entirely enclosed.
5. Color & Visibility - All buildings, poles, towers, antenna supports, antennas, and their accessory electrical control equipment shall be a non-reflective, unobtrusive color that blends in with the surrounding environment unless otherwise required by the FAA or Oregon Department of Aviation.
6. Fences
- a. A sight obscuring fence may be required to be installed and maintained around the perimeter of a ground mounted facility not employing concealment technology.
  - b. Chain link fences shall be painted or coated with a non-reflective color that blends with the surrounding natural and built environment to the greatest extent feasible.
  - c. Barbed or razor wire fencing is discouraged, particularly in residential areas.
7. Lighting
- a. No lighting shall be permitted on a tower, except as required by state or federal regulations or as required by the reviewing body for aerial spraying. If required, the light shall be shielded or deflected from the ground and other properties, to the extent practicable (e.g., dual mode light or radar trigger lighting).
  - b. No other exterior lighting shall be permitted on the premises unless necessary for emergency repairs and services.
8. Signs & Advertising
- a. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.
  - b. No commercial or advertising markings shall be allowed except those of the manufacturer and installer.
9. Access Driveways & Parking - All access drives and parking areas shall be no longer or wider than necessary and be improved to comply with the requirements of the local Rural Fire District.
- a. Existing driveways shall be used for access whenever possible.
  - b. New parking areas shall be shared with subsequent WTCF's or other permitted uses whenever feasible. Any new access and parking areas shall consist of a durable and

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dustless surface and shall comply with local Fire District Standards.

10. Landscaping & Screening - WTCF's shall be improved in such a manner so as to maintain and enhance existing vegetation and to install suitable landscaping to screen the base of the tower and all accessory equipment where necessary. All of the following measures shall be implemented for all ground mounted WTCF's including accessory structures.
  - a. A landscape plan shall be submitted indicating all existing vegetation, and landscaping that is to be retained within the leased area on the site, and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land, adjacent roads and public view areas. Planted vegetation shall be evergreen trees or shrubs and placed outside the fenced area.
  - b. Existing trees and other screening vegetation in the vicinity of the facility and along the access drive shall be protected from damage during the construction period.
11. Noise – Noise generated by the WTCF shall comply with the Hood River County Noise Ordinance and not exceed the levels established by the State of Oregon, Department of Environmental Quality (DEQ). Operation of a backup generator in the event of a power failure or the testing of a backup generator between 8 AM and 8 PM are exempt from this standard. No testing of backup power generators shall occur between the hours of 8 PM and 8 AM.

*Requests to modify any of the above siting requirements/standards are subject to Section 74.55.*

### **Section 74.40 - Standards & Approval Criteria for Land Zoned EFU**

Facilities and towers located in Exclusive Farm Use (EFU) zone as authorized by ORS 215.283(1)(c) are subject to the criteria and standards as set forth in ORS 215.275.

- A. That a facility is necessary under ORS 215.283(1)(c), an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors:
  1. Technical and engineering feasibility;
  2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
  3. Lack of available urban and non-resource lands;

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4. Availability of existing rights-of-way;
5. Public health and safety; and
6. Other requirements of local, state or federal agencies.

Cost associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a WTCF is necessary for public service. Land costs shall not be included when considering alternative locations.

- B. When a WTCF is abandoned or decommissioned, the property owner shall be responsible for restoring the land to its former agricultural condition as is reasonably possible. The owner may obtain a bond or other security from the contractor or carrier for the cost of restoration.
- C. Conditions for mitigating and minimizing impacts resulting from the WTCF shall assure farm uses on surrounding lands will not experience significant changes in accepted farm practices or significant increases in the cost of farm practices on the surrounding farmlands.

### **Section 74.45 - Maintenance**

The applicant, co-applicant or tenant shall maintain the WTCF. Such maintenance shall include, but shall not be limited to painting, maintaining structural integrity, and landscaping.

### **Section 74.50 – Abandonment**

- A. Determination of abandonment will be made by the Planning Director, who shall have the right to demand documentation from the facility owner regarding the tower or antenna use.
- B. Upon determination of abandonment, the facility owner shall have 60-calendar days to:
  1. Reuse the facility or transfer the facility to another owner who will reuse it within 120-calendar days of the determination of abandonment; or
  2. Remove the facility.
- C. If the facility is not reused within 120-calendar days of the determination of abandonment, county authorization for the use shall expire. Once authorization for the use has expired, the property owner or facility operator shall remove the facility from the property within 90-calendar days. Failure to remove an abandoned facility as required by this subsection shall constitute a violation and be subject Article 1 – Enforcement.

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### Section 74.55 - Wireless Communications Facilities Adjustment

- A. Applicability - Except as otherwise provided in this Article, no WTCF shall be used or developed contrary to any applicable development standard unless an adjustment has been granted pursuant to this Section. These provisions apply exclusively to wireless communications facilities, and are in lieu of the County's generally applicable variance provisions.
- B. Submittal Requirements - An application for a WTCF adjustment shall include:
1. A written statement demonstrating how the adjustment would meet the criteria.
  2. A site plan that includes:
    - a. Description of the proposed siting's design and dimensions, as it would appear with and without the adjustment.
    - b. Elevations showing all components of the wireless communications facility, and its connection to utilities, as it would appear with and without the adjustment.
    - c. Color simulations of the wireless communications facility after construction demonstrating compatibility with the vicinity, as it would appear with and without the adjustment.
- C. Criteria - An application for a WTCF adjustment will be granted if the following criteria are met:
1. The adjustment is consistent with the purpose of the development standard for which the adjustment is sought.
  2. Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.
  3. The owner demonstrates the existence of either of the following:
    - a. Gap in Service
      - (i) A gap in the coverage or capacity of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection.
      - (ii) The gap can only be filled through an adjustment in one or more of the standards in this Article; and

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(iii) The adjustment is narrowly tailored to fill the service gap such that the wireless communications facility conforms to this Article's standards to the greatest extent possible.

b. Minimization of Impacts - The adjustment would minimize or eliminate negative impacts to surrounding properties and their uses, through a utilization of existing site characteristics, including, but not limited to, the site's size, shape, location, topography, improvements, and natural features. Negative impacts are minimized or eliminated if there is:

- (i) A decrease in negative visual impacts, including, but not limited to, visual clutter;
- (ii) Better preservation of views or view corridors;
- (iii) A decrease in negative impacts on property values; or
- (iv) A decrease in any other identifiable negative impacts to the surrounding area's primary uses.

D. Requests for adjustment under this subsection shall be considered part of the application to establish a WTCF, not a separate application.



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Article 74 – Table A: Height Requirement in Each Zone						
ZONE	COLLOCATIONS / ELIGIBLE FACILITIES REQUESTS <sup>1</sup>	HEIGHT LIMIT (Feet) <sup>2</sup>	TOWER WITH CONCEALMENT TECHNOLOGY	HEIGHT LIMIT (Feet)	NEW TOWER	HEIGHT LIMIT (Feet)
F-1	Type I	200	Type II	200	Type II - CUP	200
F-2	Type I	200	Type II	200	Type II - CUP	200
EFU	Type I	200	Type II	200	Type II - CUP	200
R-1	Type I		P	N/A	P	N/A
RR	Type I		Type II	60	Type II - CUP	60
C-1	Type I		Type II	55	Type II - CUP	55
RC	Type I		P	N/A	P	N/A
RUC-1	Type I		P	N/A	P	N/A
MH-C1	Type I		P	N/A	P	N/A
M-1	Type I		Type II	65	Type II - CUP	65
M-2	Type I		Type II	65	Type II - CUP	65
AD Zone	Type I		Type II	50	Type II - CUP	50
NA Zone	Type I		P	N/A	P	N/A
Overlays: SPO, EP, FP, GH, HHO	Type I		P	N/A	P	N/A

Footnotes:

<sup>1</sup> Existing facilities must be in compliance with the terms of existing permits, if any were required at the time the facility was constructed.

<sup>2</sup> Eligible facilities requests must not exceed the dimensional requirements of the Spectrum Act.

Review Types:

**Building Permit** – All approvals are subject to building code review and permits.

**Type I (Ministerial Review) / Land Use Permits (LUPs)** are permitted by right, requiring only non-discretionary staff review to demonstrate compliance with the standards in this Ordinance or Article.

**Type II (Administrative Actions) / Planning Director’s Decision** involve permits that are *Subject to Standards* contained in Article 74, and do not include the “Burden of Proof Criteria” contained in Article 60.

**Type II - CUP (Administrative Actions) / Planning Director’s Decision** involve permits that are *Subject to Standards* contained in Article 74 and the “Burden of Proof Criteria” contained in Article 60. In the Forest and EFU zones, new tower without concealment technology reviews are subject to the CUP criteria contained in Sections 3.05 and 4.05 respectively //Staff comment: Need to reevaluate this provision. Oregon courts have held counties may not apply local land use regulations to deny or condition uses authorized under 215.281(1), unless the county is required to do so by Land Conservation and Development Commission rules. Brentmar v. Jackson County, 321 OR 481, 900 2<sup>nd</sup> 1030 (1995). //, not the Burden of Proof Criteria contained in Article 60.