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## TELECOMMUNICATIONS FACILITIES REGULATIONS

### SECTION I: AUTHORITY

These Regulations are adopted by the Town of Hancock Planning Board (“the Board”) on April 15, 2009, in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:44 and pursuant to the authority vested in the Board to adopt Site Plan Review Regulations voted on at the March 14, 1987 Town Meeting in accordance with the provisions of New Hampshire Revised Statutes Annotated (RSA) Chapter 674: Sections 43 and 44.

### SECTION II: PURPOSE

These regulations have been enacted in order to inform the Planning Board and other parties interested in Conditional Use Permits and Site Plan Review of any proposed Telecommunications Facility and to establish general regulations for the siting of towers and antennas and to enhance and fulfill the following goals:

:

Preserve the authority of the Town of Hancock to regulate and provide for reasonable opportunity for the siting of Telecommunications Facilities.

Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.

Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.

Preserve unique viewsheds and scenic values, in particular those associated with the Hancock Historic District.

### SECTION III: DEFINITIONS

**Antenna:** Means any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any frequency and bandwidth.

**Average Tree Canopy Height:** Means the average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet.

**Personal Wireless Service Facility:** See 47 USC 332 (7)(C).

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**Tower:** Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.

**Telecommunications Facilities:** Means any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic transmission/receptions which comprises a Personal Wireless Service Facility.

#### SECTION IV: LOCATION OF TELECOMMUNICATIONS FACILITIES

Telecommunications Facilities may be permitted as a Conditional Use in the Rural and Agricultural District, provided that they are camouflaged, hidden or disguised, but are not permitted in any other District on in any location were they would have a visual impact upon locations within the Hancock Historic District which would contravene these Regulations..

#### SECTION V: PERMITTED USES

*Principal or Secondary Use.* Telecommunications Facilities may be considered either a principal or a secondary use. Having an existing-permitted use on site shall not preclude the addition of facilities as a Secondary Use as long as all other provisions of these Regulations are met. A different existing use or an existing structure on the same lot shall not preclude the installation of facilities on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facilities may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of these Regulations shall not be deemed to constitute the expansion of a nonconforming use or structure.

Any alteration of the original permitted use and device configuration of the facility will require a new approval.

Limitations on Scope of Regulations; Height; Amateur Radio; Receive-Only Antennas; Astronomy. These Regulations shall not govern (i) any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or (ii) is used exclusively for receive-only antennas or (iii) is used exclusively for astronomical observations . These Regulations adopt the provisions and limitations as referenced in RSA 674:16,IV.

Essential Services & Public Utilities. Telecommunication facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications facilities is a use of land, and is addressed by these Regulations.

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## SECTION VI: CONSTRUCTION PERFORMANCE REQUIREMENTS

*Federal Requirements.* All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of facilities governed by these Regulations shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal of the tower or antenna at the owner's expense, in accordance with Section X through the execution of the posted security.

*Building Codes/Safety Standards.* To ensure the structural integrity of towers and antennas, all facilities will be inspected every three years by an engineer approved by the Selectboard, with the cost to be paid by the owner. The engineer will submit a report to the Town. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with Section X, of the tower or antenna, at the owner's expense through execution of the posted security.

*Height.* All efforts should be made to keep tower height at a minimum; in no case shall a tower exceed 180 feet.

*Setbacks and Separation.* In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.

*Security Fencing.* Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.

*Landscaping.* A buffer shall be provided that effectively screens the view of the compound from any adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.

In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.

Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

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*Camouflaging.*

- a. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.
- b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment visually unobtrusive.

*Use of Existing Structure.*

Where a proposed Telecommunications Facility will be wholly within an existing structure and shall not require any changes to the external appearance of such structure, it shall be deemed to be adequately camouflaged for purposes of this Regulation.

*Balloon Test.* Following agreement between the applicant and the Board as to the date, time and duration of a test, the applicant shall publish notice of the time and date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible.

*Visual Impact on Historic District:* In cases where there are issues concerning the potential visual impact of a proposed Telecommunications Facility on the Hancock Historic District, it is the policy of the Board to abide resolution of such issues using the standards and procedures set out in a certain agreement between the Federal Communications Commission, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers dated September 2004 (the so-called "Nationwide Agreement") (FCC 04-222) as it may be revised from time to time. Where a determination under the Nationwide Agreement is necessary or desirable, applicants should seek such a determination in advance of making an application to the Board.

## SECTION VII:           CONDITIONAL USE PERMITS

*General.* Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit from the Planning Board. All such uses must comply with the Hancock Zoning Ordinance and with other applicable Ordinances and Regulations adopted by the Town of Hancock. To the extent, if at all, that such regulations are in conflict, the provisions of these Regulations shall govern.

*Issuance of Conditional Use Permits.* In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Regulation.

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*Procedure on Application.*

Site Plan Review of any application relating to Telecommunications Facilities shall normally be considered together with an application for a Conditional Use Permit involving the same facility. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4 and shall consider the substantive requirements of both Conditional Use Permits and Site Plan Review.

*Regional Notification.* All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 10 days nor more than 21 days prior to the public hearing date.

*Decisions.* All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.

*Plan Requirements.* Each applicant requesting a Conditional Use Permit and Site Plan Review under these Regulations shall submit a scaled plan showing or accompanied by the following information:

Title block that shows the name of the development or project.

North arrow, date of plat, scale; name, address and seal of all persons preparing the plat.

Signature block for Planning Board endorsement.

Vicinity sketch and zoning district(s).

Total area of the parcel in acres and square feet.

Lot frontage.

Boundary lines and approximate dimensions and bearings.

Tax map and lot numbers.

Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.

Physical features on the site and within 200 feet of the site.

Soil information based on the Hillsborough County Soil Survey (Western Half).

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All natural features, such as streams, ponds, wetlands, etc.

Existing and proposed grades and contours, and base flood elevations.

Shape, size, height, location and use of existing and proposed structures on the site.

Existing buildings and structures within 500 feet of the site.

Access to the site, with location and width of existing and proposed driveways.

A notation that a driveway permit been granted by either the NH DOT or the Town of Hancock.

Locations, names, right-of-way and travel widths of any existing and proposed roads on the property and within 200 feet of the site.

Final road profiles and cross sections for any new roads.

Locations and sizes of all electric and telephone lines on the site.

Existing and proposed fire hydrants and/or fire ponds.

Existing and proposed methods of handling stormwater runoff, and the direction of the flow indicated by arrows.

Sizes and locations of all stormwater drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts.

Location, types, and sizes of all existing and proposed landscaping and screening.

Location of any proposed lighting.

*Other Information Required.* In order to assess compliance with these Regulations, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

Propagation map showing proposed radio frequency coverage.

Photographic documentation of the balloon test(s).

The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.

The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the

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proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.

The applicant shall submit written proof that it has complied with the requirements of section 106 of the National Historic Preservation Act of 1966 (16 USC § 470f) as implemented through a certain agreement approved by the Federal Communications Commission in September 2004 (the so-called “Nationwide Agreement”) and, in particular, that in any case in which the proposed Telecommunications Facility would be visible from the Hancock Historic District or from the grounds of any structure listed on the National Register of Historic Places, that it has consulted with the NH Division of Historical Resources as to the appropriate Area of Potential Effects and resolved any disagreement on that subject in accordance with Article VI C of the Nationwide Agreement. The applicant shall also submit a copy of any determination made by the NH Division of Historical Resources relating to the proposed Telecommunications Facility.

The applicant will provide the Board with the following information:

The number of sites for telecommunication facilities each provider will require;

Sites outside of the Town for the particular coverage area that are being considered;

How the siting of Telecommunications Facilities will affect the ability to allow a competitor’s antennas on the same property;

The applicant will provide the Board with studies of alternative sites in Town that have been considered for siting.

The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.

The applicant will provide the Board with any copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.

Upon request, the applicant will provide:

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Detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive; and

Site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.

Test results of radio frequency emissions at the house site of any abutter or other aggrieved person who requests the same (i) prior to the installation of a Telecommunications Facility and (ii) when such facility is in operation.

*Reports; Peer Review:* Whenever a plan, report or analysis is required by these Regulations, it shall be filed by the Applicant in accordance with the following:

- The report shall be prepared, signed and sealed by an individual having relevant professional qualifications. Where such a person is subject to licensing requirements, the person signing the report shall have a valid, current license to practice within the State of New Hampshire.
- The report shall contain sufficient detail to permit peer review. The Board shall, on notice to Applicant, have discretion to commission peer review of any such report at Applicant's expense and to require Applicant to provide security for the cost of such expenses.
- If the Applicant is required to submit two or more reports having duplicative or overlapping requirements, the Applicant may submit a consolidated report.
- The Board shall have discretion, in appropriate circumstances, to waive or modify requirements relating to such reports. In exercising such discretion, the Board may conduct a public hearing limited to the issue of the propriety of requiring such report or reports.

*Hold Harmless Agreement.* The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

## SECTION VIII: WAIVERS

Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations.

*Conditions.* In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

*Procedures.* A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

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**SECTION IX: BONDING AND SECURITY INSURANCE**

The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Selectboard shall set the form and amount of the security after receiving advice from the Planning Board and the Director of Public Works. The Selectboard shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.

The term of the bond shall be negotiated with and administered by the Selectboard. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

**SECTION X: REMOVAL OF ABANDONED ANTENNAS AND TOWERS**

If any antenna or tower is not operated for a continuous period of 12 months it shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

**SECTION XI: ADMINISTRATION AND ENFORCEMENT**

It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of these Regulations. The Selectmen may appoint an agent to enforce these Regulations.

Upon any well-founded information that these Regulations are being violated, the Selectmen shall take immediate steps to enforce the provisions of these Regulations by seeking an injunction in the Superior Court or by any other legal action.

**SECTION XII: SEVERABILITY**

The invalidity of any provision of these Regulations shall not affect the validity of any other provision.

**SECTION XIII: APPEALS**

Pursuant to RSA 676:5, any decision made under these Regulations cannot be appealed to the Board of Adjustment, but may be appealed to the superior court as provided by RSA 677:15.