

Section 8.8 Personal Wireless Service Facilities

Whereas, the Telecommunications Act of 1996, codified as sections of the U.S. Code, Title 47 was adopted on February 8, 1996; and

Whereas, 47 U.S.C. Section 332©(7) establishes the regulatory treatment of mobile services by preservation of local zoning authority; and

Whereas, 47 U.S.C. Section 332©(7)© specifically defines personal wireless services and personal wireless service facilities; and

Whereas, the Federal Communications Commission promulgated on November 18, 2009, a declaratory ruling known as WT Docket No. 08-165 establishing maximum timeframes for exercising local zoning authority; and

Whereas, Section 8.8 of the West Tisbury Zoning Bylaw, heretofore known as “Wireless Communications Facilities” is hereby rescinded and replaced by the following in order to regulate “personal wireless service facilities” as defined herein;

NOW, THEREFORE BE IT ENACTED BY THE TOWN OF WEST TISBURY:

8.8-1 This Bylaw may be cited as the Town of West Tisbury Personal Wireless Service Facilities Bylaw, and is intended to replace Section 8.8 et seq. “Wireless Communications Facilities.”

8.8-2 Purpose and Intent.

A. Purpose and Intent. The purpose and intent of this Bylaw is to establish standards for the location, siting and design of PWSFs, and to protect the attractiveness, health, safety, general welfare, and property values of the community.

B. Relationship to PWSFs Not Approved Under this Bylaw

1. A PWSF for which a permit has been issued prior to the effective date of this Bylaw shall be deemed a permitted use, subject to the conditions of that permit and the regulations in force until this Bylaw is adopted. The issuance of permit renewals or other new permits for such facilities after this Bylaw is adopted shall be in accordance with the provisions of this Bylaw.
2. Damaged or destroyed facilities may be rebuilt and all such facilities may be replaced by facilities of the same type and height at the same location to the extent that such facilities complied with the Town regulations at the time of original approval.
3. A pre-existing or new ground mount may be extended or rebuilt, including antennas on top, up to 125 feet AGL for the purpose of co-location, provided that:
 - a. The ground mount is located at the Martha’s Vineyard Airport in the Light Industrial District

- b. The PWSF as it pre-existed was in compliance with the then existing zoning and building regulations of the Town.
 - c. An analysis of the structural integrity of the existing PWSF plus proposed co-location meets the standards of EIA/TIA 222 (Version G).
4. A pre-existing or new ground mount not located at the Martha's Vineyard Airport in the Light Industrial District may be extended or rebuilt, including antennas on top, up to 10 feet above the existing height provided that:
- a. The PWSF as it pre-existed was in compliance with the then existing zoning and building regulations of the Town.
 - b. An analysis of the structural integrity of the existing PWSF plus proposed co-location meets the standards of EIA/TIA 222 (Version G)

C. Unpermitted Facilities, Mounts or Equipment.

- 1. Unpermitted facilities are those with permits, including drawings that no longer describe the existing facility as well as those facilities with no permits at all. A permit is, by definition, complete and valid.
- 2. No issuance of any permit under this Bylaw shall occur for a request to co-locate, attach, or share an existing PWSF site, mount or facility, when such existing site, mount or facility is found to have one or more unpermitted PWSFs as described in Section 8.8-2.C.1 above.

8.8-3 Complete Applications. Any proposal or request for a Special Permit for a PWSF shall not be accepted by any Board or representative of the Town if the applicant:

8.8-4 Timeframes for Approval or Denial.

A. The amount of time required for a decision by the Town on an application for a special permit under this Bylaw shall be known as a timeframe and shall not exceed:

- 1. 90 calendar days for a co-location from the date an application is found by the Town to be complete.
- 2. 120 calendar days for any other PWSF from the date an application is found by the Town to be complete.

B. A timeframe does not commence until:

- 1. A proposal or request is found by the Zoning Board of Appeals to be a complete application.
- 2. A Letter of Completion has been issued by the Town in compliance with Section 8.8-15 of this Bylaw. The issuance of a letter of completion signifies that the required items have been submitted but does not preclude the ZBA from requiring more items and information or revisions and additions to those submitted.

8.8-5 Permits Required. Each personal wireless service facility (PWSF) must have at least two permits: one building permit and one Special Permit, each of which shall be issued by the Town of West Tisbury in accordance with this Bylaw. The Special Permit and the building permit for a PWSF must be consistent with each other.

8.8-6 Tiered Applications.

ZBA. The ZBA Administrator or his/her designee shall receive all PWSF applications and assign each application to one of the following three “tiers”:

1. Tier One. This tier is limited to applications that:
 - a. Place PWSFs on new or existing utility poles within public and private rights of way.
 - b. Meet the required Location Standard and Safety Standards that apply in this Bylaw. In the event any of the standards in the Bylaw are in conflict for a particular application, one or the other conflicting standard shall be met.
 2. Tier Two. This tier is limited to applications that:
 - a. Attach a PWSF to an existing structure other than a new utility pole (as described in this Bylaw in Section 8.8-24.KK).
 - b. Meet all Location Standards, Design Standards and Safety Standards in this Bylaw. In the event any of the standards in the Bylaw are in conflict for a particular application, one or the other conflicting standard shall be met.
 3. Tier Three. All applications that do not qualify as either Tier One or Tier Two status shall be considered Tier Three applications.
- B. Planning Board.** The Planning Board shall receive copies of all complete PWSF applications and may submit a written report in accordance with Town’s existing Zoning Bylaws, Section 9.2-1.D.

8.8-7 Application Procedures. Applicants and the ZBA Administrator shall use the following procedures when reviewing PWSF applications, although the ZBA may waive some steps if they are redundant.

- A. Pre-Application Conference.** Applicants shall contact the ZBA Administrator prior to submitting an application for a PWSF.
1. The applicant shall inform the ZBA Administrator of the location of the proposed facility, as well as its scale and design.
 2. The ZBA Administrator shall inform the applicant about the application procedures.
 3. A pre-application conference between the proposed applicants and the ZBA should be scheduled prior to submission of the application for a PWSF. The purpose of such conference is to foster preliminary discussions regarding planning design and siting of the proposal among the applicants, the ZBA and the town residents.
- B. Application Form.** The applicant shall submit a completed application form and all required items as specified in this Bylaw to the ZBA when applying for PWSFs.
- C. Tier One Review.**
1. The ZBA shall notify or cause to be notified all property owners within 300 feet of the site of a proposed application. Notice shall be given by first class mail, to the address shown on the property roll of the Town Assessor. The property owners shall be informed that an application has been filed

and they have the right to inspect the application and comment thereon for or at the public hearings. The applicants shall have the right to respond to any comments received.

2. The ZBA shall hold a public hearing to review each completed application and take any testimony or additional evidence provided by either the applicant or other persons. The ZBA may reassign the application to a Tier Two or Three if testimony and evidence submitted supports this.
 - a. Following review, the ZBA shall either approve or deny the application. Such approval or denial shall be in writing and supported by substantial evidence contained in the written record. Any conditions attached to the approval shall be designed to mitigate any adverse impacts of the proposed PWSF. Such decision shall be in writing and supported by findings of fact based on competent and substantial evidence contained in a written record.
3. Either party, applicant or opposition, may appeal a decision of the ZBA.
4. If the application meets the requirements for a Tier One application in this Bylaw, two permits will be issued to the applicant:
 - a. The ZBA shall issue a Special Permit that is a prerequisite for:
 - b. A Building Permit, which the Building Inspector shall issue provided the applicant meets all criteria imposed by the State Building Code or other applicable law.

D. Tier Two and Tier Three Review.

1. The ZBA shall notify or cause to be notified all property owners within 500 feet of the property lines of a proposed application. Notice shall be given by first class mail, to the address shown on the property roll of the Town Assessor. The property owners shall be informed that an application has been filed and they have the right to inspect the application and comment thereon for or at the public hearings. The ZBA shall conduct a public hearing and take any testimony or additional evidence provided by either the applicant or other persons.
 - a. Following the close of the hearing, the ZBA shall approve the application, deny the application or approve with conditions.
 - b. Any conditions attached to the approval shall be designed to mitigate any adverse impacts of the proposed PWSF. Such decision shall be in writing and supported by findings of fact based on competent and substantial evidence contained in a written record.
2. If the application is approved, the Town will issue two permits to the applicant:
 - a. The ZBA shall issue a Special Permit, which is a prerequisite for:
 - b. The Building Inspector to issue a Building Permit, provided the applicant meets all criteria imposed by the State Building Code or other applicable law.

8.8-8 Co-Locations.

- A. **Worst-Case Review.** The ZBA shall review applications for co-locations on the basis of all positions on the mount, i.e., the cumulative, worst-case condition.

1. When future co-locatees are unknown, the worst-case co-locatee (e.g., number of antennas, size of equipment shelter, etc.) shall be assumed.
 2. The entire structure, including all future known or unknown co-locatees, shall be subject to review for compliance with EIA/TIA 222 (Version G).
- B. **Co-locations Previously Approved.** Applications for co-locations on mounts previously approved for co-location in the position applied for, require review of only the equipment to be added above ground and on the ground, including:
1. New equipment shelters.
 2. New contents of the existing equipment shelter or equipment cabinet.
 3. Changes that were initially less stringent or not required for new equipment to be co-located (e.g., the need for a strengthened mount).
- C. **Co-locations Not Previously Approved.** Applications for co-locations on mounts not previously approved for co-location in the position applied for require review of the existing mount as well as co-location under the requirements of this Bylaw.

8.8-9 Standards. The approval of PWSFs shall be subject to meeting or exceeding the following standards.

A. Location Standards.

1. The only mandatory location standard shall be that Tier One PWSFs will be permitted only in existing or approved public or private rights-of-way.
2. Opportunity Sites. A PWSF should be located at one of the following Opportunity Sites:
 - a. New utility poles in the public or private right-of-way, provided such utility poles are no higher than 50 feet AGL, including antennas.
 - b. Churches.
 - c. Commercial and industrial buildings
 - d. Light Industrial District 2 located on the map entitled "Zoning Map of West Tisbury, Massachusetts".
3. Avoidance Areas. A PWSF shall not be located in the following Avoidance Areas:
 - a. Schools, nursery schools, playgrounds or child care centers.
 - b. Single family homes.
4. In all instances except for Sections 8.8-9.A.1 and 8.8-9A.3, above, these location standards shall be considered directory but not mandatory. PWSFs may also be permitted in areas that are not Opportunity Sites subject to the following siting, design and safety standards and permitted in Avoidance Areas subject to the following siting, design and safety standards.
5. These standards apply regardless of radio frequency (RF) engineering considerations.

- B. Siting Standards.** PWSFs should meet the following siting standards. These standards are directory, not mandatory.
1. To the greatest extent possible, PWSFs should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.
 2. Placement within trees should be encouraged.
 3. Roof-mounted PWSFs should not project more than ten additional feet above the height of a legal building.
 4. Side-mounted PWSFs should not project more than forty-two inches from the face of the mounting structure.
- C. Design Standards.** PWSFs should meet the following design standards.
1. **Color.** All Tier One or Tier Two PWSFs should be painted or camouflaged to match the host structure color.
 2. **Size.** The silhouette of the PWSF should be reduced to the minimum visual impact.
 3. PWSFs within 100 feet of a residential building should either:
 - a. Provide underground vaults for equipment shelters, or
 - b. Place equipment shelters within enclosed structures approved by the Town.
 4. **Equipment.** The following types of equipment are discouraged except when in the Light Industrial District 2:
 - a. Roof-mounted monopoles, lattice towers or guyed towers.
 - b. Ground-mounted lattice towers.
 - c. Ground-mounted guyed towers.
 5. Antennas, including panels, whips, dishes and any array holding several antennas, should be kept as close to the mount as possible.
 6. **Heights.**
 - a. Heights of ground mounted PWSFs located in the Light Industrial District 2 should be no higher than 125 feet AGL, including antennas.
 - b. All ground-mounted PWSFs not located in the Light Industrial District 2 should be no higher than 80 feet AGL, including antennas. All ground-mounted PWSFs not located in the Light Industrial 2, (including any security barrier), should be surrounded by nearby dense tree growth for a radius of 20 horizontal feet (when trunk centerlines are measured on the ground) from the PWSF in any direction. These trees can be existing on the subject property or installed to meet the 20 foot requirement as part of the proposed PWSF or they can be a combination of both. These ground-mounted PWSFs may project up to 15 feet above the ambient tree height.

c. Tier One utility poles should be no higher than 50 feet AGL, including antennas.

7. These standards apply regardless of RF engineering considerations.

D. Safety Standards. PWSFs must meet the strictest of the following safety standards.

1. Wind load and ice load design standards shall be those of EIA-TIA 222 (Version G).
2. Safety standards of the Town.
3. Safety standards of the Commonwealth of Massachusetts.

8.8-10 Fall Zone and Setback Requirements.

A. Fall Zone.

1. Light Industrial District 2: No habitable structure or outdoor area where people congregate shall be within a fall zone, which is the height of the Tier Three PWSF plus 10 feet.
2. Districts other than Light Industrial 2: No habitable structure or outdoor area where people congregate shall be within a fall zone, the radius of which is two times the height of a Tier three PWSF, including its mount.
3. In all Districts: No abutting property line may be within the fall zone of a radius equal to the height of a ground-mounted PWSF plus 30 feet, including its mount. Tier One poles are exempt from this provision.

B. Setback.

1. All PWSFs, including mounts and equipment shelters or cabinets, shall comply with the setback requirements on all sides of the lot of the applicable zoning district as set forth in the Town Zoning Bylaw.
2. On parcels with a main building housing a primary use, all components of the PWSF shall be located behind the main building line in the front yard.
3. No portion of any PWSF shall project into a required setback, including the antenna array.

8.8-11 Submittal Requirements. An applicant shall submit the following information as part of an application for a PWSF. Each node of a proposed DAS, whether on an existing pole or a proposed pole, shall have a separate, stand-alone and independent application. The ZBA may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed PWSF.

A. Application Information.

1. Name, address and telephone number of applicant and all co-applicants as well as any agents for the applicant or co-applicants.
2. A carrier must either be an applicant or a co-applicant and no more than one carrier is allowed in one application. If the proposed PWSF is for two or more carriers, each carrier must file its own application as either the applicant or co-applicant.

3. A DAS pole or node shall have at least two PWSF carriers as co-applicants. Additional carriers on a DAS pole are not considered co-locatees unless new equipment will be added to the PWSF for the additional carrier.
4. A copy of the lease with the property owner and/or the structure owner of the proposed PWSF must be submitted, whichever or both that apply. If an existing utility pole is proposed, the pole attachment agreement must be submitted.
5. Original signatures for the applicant and all co-applicants applying for the PWSF must be submitted. If an agent will represent the applicant or co-applicant, original signature authorizing the agent to represent the applicant and/or co-applicant must be submitted.
6. Copies of all submittals pertaining to FCC licensing; environmental impact statements; draft environmental assessments for Tier Three applications (described in Section 8.8-18.A); FAA notice; aeronautical studies; letter of approval from the Massachusetts Department of Public Health; and all data, assumptions and calculations relating to RFR.
7. On a zoning or assessor's map, the locations of all existing and proposed PWSFs for that carrier in the Town and outside the Town within one mile of its corporate limits.
8. Details of proposed method of finance surety as required in Section 8.8-22.J.
9. Required plans and engineering plans, prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.

B. Location Information.

1. Identify the subject property by including the name of the nearest street or streets, and street address, if any. A right-of-way location must indicate the three closest street addresses.
2. Assessor's lot number of subject property or, in the case of a new utility pole in the public right-of-way, the nearest property. A utility pole in a private right-of-way shall show precise placement relative to the paved travelway or track.
3. Zoning district designation for the subject lot and for all lots within 300 feet of the property lines of the subject lot.
4. A line map or aerial photograph to scale showing the subject property and all properties within 300 feet and the location of all buildings, including accessory structures, on all properties shown.

C. Siting Information.

1. A one inch-equals-forty feet vicinity plan showing the following (not required for a new utility pole in the right-of-way):
 - a. Property lines for the subject property and for all properties abutting to the subject property, including those lines furthest from the subject property.
 - b. Distances, at grade, from the proposed PWSF to each building on the vicinity plan.
 - c. Contours at each foot AMSL (above mean sea level).
 - d. Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" in Section 8.8-9.C.2 below.

2. Sight lines and photographs as described below:
 - a. Sight line representation. A sight line representation shall be drawn from the closest facade of each residential building (viewpoint) included on the vicinity plan to the highest point (visible point) of the PWSF.
 - b. Existing (before condition) photographs. Each sight line shall be illustrated by one four inch-by-six inch, or larger, color photograph of what can currently be seen from the residential building.
 - c. Proposed (after condition) photosimulation. Each of the existing condition photographs shall have the proposed PWSF superimposed on it to show what will be seen from residential buildings if the proposed PWSF is built. All photosimulations shall be positioned to show maximum exposure of any proposed service drive, such drive to be represented in its proposed, finished appearance
3. A Site Plan meeting the requirements of Section 9.2 of the existing Town Zoning Bylaw and, in addition showing the following.
 - a. The entire subject property, or 300 feet of right-of-way (150 feet to each side of the proposed facility, including property lines and streets (public and private) adjacent to the subject property.
 - b. All existing buildings, including accessory structures, either on the lot or for rights-of-way, on lots adjacent to the right-of-way.
 - c. All existing vegetation, by mass or individually by diameter (four feet from the ground) of each stand-alone tree or shrub. Tree masses or individual stand-alone trees shall be identified by specie(s).
 - d. Proposed security barrier for a ground mount, indicating type and extent as well as point of controlled entry (not required for Tier One utility poles).
 - e. All proposed changes to the existing property or right-of-way, including grading, vegetation removal and temporary or permanent streets and driveways.
 - f. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the PWSF, including those portions on abutting properties.
4. Siting elevations, or views at-grade from the north, south, east and west for a 50 foot radius around the proposed PWSF. When a proposed PWSF is set back more than 50 feet from a public or private right-of-way, an elevation shall include any existing public and private streets that serve the subject property. Elevations shall be at either one-quarter inch-equals-one foot or one-eighth inch-equals-one foot scale and show the following:
 - a. Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
 - b. Security barrier. If the security barrier will block views of the PWSF, the barrier drawing shall be cut away to show the view behind the barrier.
 - c. Any and all structures on the subject property.

- d. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
- e. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two foot contours AMSL.

D. Design Information.

- 1. Equipment brochures or cut sheets for the proposed PWSF such as manufacturer's specifications or trade journal reprints. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- 2. Materials of the proposed PWSF specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- 3. Dimensions of the PWSF specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
- 4. Appearance shown by at least two photographic photosimulations of the PWSF within the subject property. The photosimulations shall show the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.
- 5. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species (not required for a new utility pole in the right-of-way).
- 6. All Tier Three applications shall submit a foundation plan for any structural mount, including width, depth and materials of the caisson or footing. Notations such as "foundation by others" shall not be acceptable.

E. Narrative Information.

- 1. Applicant shall submit a notarized statement signed by the applicant(s) stating that all information included in the submittal is materially accurate, true, complete, and verifiable. Inaccurate, untrue, misleading or false information submitted in pursuit of a special permit by the applicant, the provider company or their agents may be grounds for denial of a special permit.
- 2. Carrier shall identify:
 - a. Site latitude
 - b. Site longitude
 - c. AGL to the radiation center and the top of highest projection (e.g., lightning rod).
- 3. Tier Two and Tier Three applicants should provide:
 - a. Two alternatives to the proposed PWSF.
 - b. Alternatives should comply with criteria in Section 8.8-13.E of this Bylaw for differences between the proposed PWSF and the alternatives.
 - c. Failure of the applicant to provide two alternatives does not constitute an incomplete application, however:

- i. The Town reserves the right to select its own alternatives.
 - ii. Each alternative selected by the Town will be analyzed in terms of Section 8.8-13.E factors only.
- 4. The Town reserves the right to select alternative sites for new utility poles in the right-of-way.
- 5. Applicant to identify construction sequence and route(s) to be used to transport materials and equipment to the site.

F. Geographic Information.

- 1. Area to be served by the proposed PWSF.
 - a. Within the Town (not a radio frequency propagation plot).
 - b. Adjacent to the Town (not a radio frequency propagation plot).
- 2. Tax map showing adjacent properties and existing land use on these properties.

8.8-12 Alternatives Analysis and Comparison. Each application for a PWSF should also contain at least two alternatives that differ from the PWSF proposed in the application. These requirements do not apply to proposals for new utility poles in the right-of-way.

A. Alternative Sites. A description of alternative sites for the proposed PWSF with the following information:

- 1. A U.S.G.S. topographic map which identifies the location of alternative sites.
- 2. An assessor's map of the lots or tracts of the alternative sites showing the acreage and dimensions of each site, the name and location of adjoining or nearest public roads and names of abutting property owners.
- 3. Any additional information necessary to provide a comparison of the costs and environmental impacts of the alternative sites with that of the proposed site.

B. Differences. The alternatives need not be totally different from the proposed PWSF; however, the alternatives should contain measurable differences, such as:

- 1. Height. An alternative can be identical to the proposed PWSF except to be for a shorter height.
- 2. Number. An alternative could be for two or more PWSFs that are shorter than the proposed PWSF.
- 3. Location. An alternative could be located on a different property than the proposed PWSF.
- 4. Siting. An alternative could be in a different place on the same property as the proposed PWSF.
- 5. Design. An alternative could be of the same height, location and siting as the proposed PWSF, but be designed to appear differently, such as a farm silo.
- 6. Technology. An alternative could be the use of a Distributed Antenna System instead of the proposed PWSF.

- C. Submittal Requirements for Alternatives.** The materials submitted for each alternative should show only the differences between each of the alternatives and the proposed PWSF.
- D. Town of West Tisbury Provision of Alternatives.**
1. If the applicant has not submitted two alternatives, the ZBA Administrator or his/her designee shall prepare at least two alternatives.
 2. If the applicant has submitted two or more alternatives, the ZBA Administrator or his/her designee shall prepare at least one alternative.
- E. Comparison of Proposed PWSF and Alternatives.** The ZBA shall compare the proposed PWSF to the alternatives on the basis of the following:
1. Change in community scale, as exhibited in relative height, mass or proportion of the PWSF within its proposed surroundings.
 2. New visible elements proposed on a contrasting background.
 3. Different colors and textures proposed against a contrasting background.
 4. Use of materials that are foreign to the existing built environment.
 5. Conservation of opportunities to maintain community scale, not compromising buffering areas and low-lying buildings so as to start a trend away from the existing community scale.
 6. Amount and diversity of landscaping and/or natural vegetation.
 7. Preservation of view corridors, vistas, and viewsheds.
 8. Continuation of existing colors, textures and materials.
- F. Ranking of Proposed PWSF and Alternatives.** The ZBA Administrator or his/her designee shall rank the proposed PWSF and each alternative based on the criteria listed in Section 8.8-13.E above. The ranking of the proposed PWSF and each alternative shall be submitted to the ZBA along with each application for review by the ZBA. The ZBA shall consider the alternatives along with the proposed PWSF.

8.8-13 Hazardous Materials Filing Requirements.

- A. Written Description.** The applicant should provide a written description of the type(s) and quantities of any hazardous waste and/or hazardous materials to be used, stored or generated for each wireless carrier proposed to be located on the project site, as well as provide a written description and plans for containment of any hazardous materials/waste.

8.8-14 Environmental Compliance

A. Federal Environmental Assessment Requirements for Tier Three applications.

1. The National Environmental Policy Act (NEPA) applies to all applications for PWSFs. NEPA is administered by the FCC via procedures adopted as Subpart 1, Section 1.1301 et seq. (47 CRF Ch. I). The FCC requires that an environmental assessment (EA) be filed with the FCC prior to beginning operations for any PWSF proposed in certain type of areas or which certain characteristics.

2. At the time of application filing, a draft EA that meets FCC requirements shall be submitted to the Town for each Tier Three PWSF site that requires such an EA to be submitted to the FCC.

B. Radio Frequency Radiation Emissions Requirements.

1. Each application for a PWSF shall be accompanied by a statement by a professional engineer certifying that, as proposed, the PWSF complies with the FCC *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation* (FCC Guidelines) concerning radio frequency radiation and emissions.
2. The ZBA may require applicants for a Tier One, Two or Three PWSF to submit a report containing the following information on the existing and maximum future projected measurements of RFR from the proposed PWSF, for the following situations:
 - a. Existing, or ambient: the measurement of existing RFR.
 - b. Existing plus proposed wireless facility: maximum estimate of RFR from the proposed personal wireless facility plus the existing RFR environment.
 - c. Existing plus proposed wireless facilities plus cumulative: maximum estimate of RFR from the proposed wireless facility plus the maximum estimate of RFR from the total addition of co-located wireless facilities plus the existing RFR environment.
 - d. Certification, signed by a professional engineer, stating that the RFR measurements are accurate and meet the requirements for radio frequency radiation reports in this Bylaw.

C. Monitoring and Evaluation of RF Radiation for Tier One, Tier two and Tier Three PWSF's

1. Pre-testing

After the granting of a Special Permit and before the applicant's PWSF begins commercial transmission, the applicant shall pay for an independent consultant, hired by the Town, to monitor the background levels of EMF radiation, around the proposed facility site and/or any repeater locations to be utilized. Testing results shall meet FCC and state standards. A report of monitoring results shall be prepared by the independent consultant and submitted to the Board of Health.

2. Post-testing

After transmission begins, the owner(s) of any PWSF located on any facility site shall pay for an independent consultant, hired by the Town, to conduct testing and monitoring of EMF radiation emitted from said site, and to report results as follows:

a. Every two years there shall be routine monitoring of emissions by the independent consultant using actual field measurement of radiation, utilizing FCC and State monitoring protocol. This monitoring shall measure levels of EMF radiation from the facility site's primary antennas as well as from repeaters (if any). Testing will be conducted during the peak use time in August, to give the most accurate indication of impacts on abutters and others. A report of monitoring results shall be prepared by the independent consultant and submitted to the Zoning Board within 30 days of completion of the testing.

b. Any modification of an existing PWSF or the activation of any additional permitted channels or co-location shall require new monitoring, and every time a modification or a co-location is proposed for the PWSF.

3. Excessive Emissions

a. Should the monitoring of a facility site reveal that the site exceeds the Federal Communications Commission (FCC) 96-326 standard, then the owner(s) of all facilities using the site shall be so notified. The owner(s) shall submit to the Board of Health a plan for reduction of emissions to a level that complies with the FCC 96-326 standard within 10 business days of notification of noncompliance. That plan shall reduce emissions to the standard within 15 days of initial notification of non-compliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of non-compliance shall be a violation of the Special Permit and subject to a fine of \$300 per day for each offense and/or revocation of the Special Permit and removal of the facility at the owner(s) expense. Such fines shall be payable by the owner(s) of the facilities with antennas on the facility site, until compliance is achieved.

b. If such standards and regulations are changed, then the owners of the towers and antennas shall bring them into compliance with the revised standards within six months of the effective date. Failure to bring towers and antennas into compliance with revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's

C. Noise Requirements.

1. In all instances except emergency situations, no equipment shall be operated at a PWSF in excess of 50 dBA at the nearest property line.
2. Noise filing requirements. The ZBA shall require applicants for a Tier Two or Three PWSF to submit a report containing the following information on the existing and maximum future projected measurements of noise from the proposed PWSFs, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following situations:
 - a. Existing, or ambient: the measurements of existing noise.
 - b. Existing plus proposed PWSF: maximum estimate of noise from the proposed PWSF plus the existing noise environment.
 - c. Existing plus proposed wireless facilities plus cumulative: maximum estimate of noise from the proposed wireless facility plus the maximum estimate of noise from the total addition of co-located wireless facilities plus the existing noise environment.
 - d. Certification, signed by an acoustical engineer, stating that noise measurements are accurate and meet the requirements of Section 8.8-18.C of this Bylaw.
3. The ZBA may require as part of conditions of approval for Tier Two or Three applications that a noise report as described in this Section be submitted every two years as well as every time a modification or a co-location is proposed for the PWSF.

8.8-15 Signs/Identification Plaques. No signage shall be permitted on any PWSF other than that required for public safety purposes or by the FCC or FAA, except that each PWSF shall have a weather-proof plaque mounted at eye level by the entry gate of the fence identifying the carrier, frequency and date of approval of zoning permit and direct contact 24 hour emergency phone number. In addition, No Trespassing or other warning signs may be posted on the fence. No sign may exceed 2 square feet.

8.8-16 Screening and Landscaping for Tier Two and Tier Three.

- A. **Natural Vegetation.** Existing natural vegetation shall be undisturbed to the greatest extent practicable.
- B. **Landscaping.** Landscaping of disturbed areas on the ground of the Tier Three PWSF site and security barriers shall be required.

8.8-17 Access and Parking for Tier Two and Tier Three.

- A. **Parking.** Areas sufficient for the temporary off-street parking of at least two vehicles shall be provided for Tier Two and Tier Three PWSFs. The type and configuration of parking may be approved by the ZBA.
- B. **Private Access.** A copy shall be provided to the Town ZBA of any street maintenance agreement for any site accessed by private easement.
- C. **Tier One PWSFs.** No parking areas are required.

8.8-18 Insurance. PWSFs shall be insured by the owner(s) against damage to persons or property with coverage limits not less than five million dollars. The owner(s) shall provide a certificate of insurance to the Selectmen's office on an annual basis in which the Town shall be an additional named insured. The ZBA may from time to time require the applicant to increase the limits of such coverage.

8.8-19 Fees

A Special Permit and/or new operating license shall not be issued until all fees due and owing have been paid.

1. Filing Fee

Every submission for a Special Permit for a Wireless Communication Facility or for a Special Permit for a proposed modification of an existing Wireless Communication Facility shall be accompanied by a Filing Fee of \$200 payable by certified check to the Town of West Tisbury.

2. Review Fee

Every submission for a Special Permit for a Wireless Communication Facility or for a Special Permit for a proposed modification of an existing WCF shall be accompanied by a Review Fee payable by certified check to the Town of West Tisbury. The procedure for Review Fees shall be subject to M.G.L. C.44, Section 53G and project review fee regulations as adopted by the ZBA.

The initial amount of the review fee shall be \$7,500.00 for all new PWSFs and \$3,500 for all co-locations and amendments as described in Section 8.8-16, with the ZBA determining any additional funds during the process which may be required to cover the expenses incurred by the ZBA in reviewing the Special Permit application, including without limitation any engineering, planning or technical consulting services necessary for review purposes. Any monies remaining from the fee once Special Permit application review is concluded shall be returned to the applicant(s).

3. Fee Schedule; Payment of Fees

A schedule of fees for permitting towers, antennas and PWSFs, monitoring of emissions and inspection of structures, and any other fees shall be established by the ZBA. This schedule may be amended from time to time. Failure of the applicant(s) to pay such fees shall result in revocation of the Special Permit.

8.8-20 Provision of Independent Consultants.

- A. **Types of Independent Consultants.** These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields: telecommunications engineering; structural engineering; monitoring of electromagnetic fields; and, if determined necessary by the ZBA, other consultants.
- B. **Copy of Application to Independent Consultants.** Upon submission of a complete application for a Special Permit under this Article, the ZBA shall provide its independent consultants with the full application for their analysis and review.
- C. **Site Visits.** Applicants for any Special Permit under this Article shall grant permission for the Town's independent consultant(s) to conduct any necessary site visits.

8.8-21 Additional Requirements After Approval or Construction

- A. **Easement.** The landowner shall enter into a recordable easement, restriction or similar instrument enforceable by the Town, by which it is agreed that:
 - 1. No cutting of trees or other vegetation shall occur within 200 feet of the facility without prior written approval of the ZBA, and
 - 2. All supplemental landscaping required by the ZBA shall be fully maintained.
- B. **Maintenance.** The applicant shall maintain the PWSF. Such maintenance shall include, but shall not be limited to, structural integrity; painting; and landscaping.
- C. **Inspection.** The owner or operator of PWSFs shall provide for and conduct an inspection of mounts at least once every five years in conjunction with the review of the zoning permit required in Section 8.8-22.K. A report by a structural engineer on this inspection shall be provided to the Town building Inspector verifying that the structural integrity of the mount meets EIA/TIA 222 (Version G) standards.
- D. **Unsafe Structure.** In the event the structure is not maintained or found to be unsafe, the owner(s) of the PWSF shall submit a plan within 10 business days of notification to remediate the defect(s). Failure to accomplish this remediation within 20 days of the initial notification shall be a violation of the Special Permit and subject to a fine of \$300 per day for each offense. Such fines shall be payable by the owner(s) of the facilities.
- E. **Operation.** All active PWSFs shall be operated continuously except for maintenance. Seasonal operation is not permitted and may result in revocation of permits and removal of facility. Any cessation of operation for more than five contiguous days shall be reported to the Zoning Inspector within five working days.
- F. **Abandonment.** If a licensed carrier plans to abandon or discontinue operation of a PWSF, that carrier shall notify the Zoning Inspector by certified U.S. mail of the proposed date. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations.
- G. **Failure to Operate.** In the event that a carrier fails to give such notice, or if the facility ceases to operate, the PWSF shall be considered abandoned. Ceases to operate is defined as not performing the normal functions associated with the PWSF and its equipment on a continuous and ongoing basis for a period of 90 days.

- H. **Removal Upon Abandonment.** Upon abandonment or discontinuation of use, the carrier shall physically remove all structures associated with the PWSF and the site shall be fully restored to its former condition, or to such condition as the Zoning Inspector may require, within 90 days from the date of abandonment or discontinuation of use.
- I. **Town Removal.** If a carrier fails to remove a PWSF in accordance with this article, the Town shall have the authority to enter the subject property and physically remove the facility.
- J. **Surety.** The applicant(s) shall, as a condition of the Special Permit, provide a financial surety payable to the Town, to cover the cost of removal of the PWSF, the remediation of the landscape, and the abatement of any pollution when the facility ceases to operate. Every owner/operator of a PWSF shall be required to post and maintain a bond with the Town in the amount of \$10,000.00 to cover such costs.
- K. **Review of Permit.** Special Permits issued under the terms of this Bylaw shall be reviewed by the Town ZBA every five years from the date of issuance for compliance with this Bylaw and any special terms or conditions of approval. Such permits are subject to suspension or revocation at any time if it is determined that the terms of the permit and any conditions contained therein, or any rules or regulations adopted by the state or federal government concerning the use of such facilities, are being violated.

8.8-22 Severability. Should any portion of this Bylaw be found by a court of competent jurisdiction to be illegal or unconstitutional, then such portion shall be severed and the remaining portions of the Bylaw shall be unaffected thereby.

8.8-23 Effective Date. This Bylaw shall take effect on the day after adoption by Town Meeting.

8.8-24 Definitions. To the extent the following definitions conflict with a definition contained in Section 14.2, the following definitions are applicable to structures or uses permitted under Section 8.8.

- A. **Antenna.** A whip (omni directional antenna), panel, (direction antenna), disc (parabolic antenna) or similar device used for transmission and / or reception of radio frequency signals.
- B. **Antenna Array.** An antenna array is one or more whips, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antennas (whips), directional antennas (panels), and parabolic antennas (discs). The antenna array does not include the mount as defined herein.
- C. **Applicant.** A person or entity with a proposal, request or an application before the Town for a permit for a PWSF. The applicant must be a carrier, a landowner where the facility will be located or the proposed owner of the facility. A carrier must be either the applicant or the co-applicant on each application. If the proposed PWSF is for two or more carriers, each carrier must file its own application as either the applicant or co-applicant.
- D. **Application.** A complete proposal or request for review under this Bylaw. An incomplete proposal or request is not an application by definition.
- E. **AGL (above ground level).** The actual height of the PWSF from the ground to the highest part of the mount or the antenna, whichever is higher. Beacons, lightning rods and other appurtenances are included in this calculation.

- F. **Camouflage.** A way of painting and mounting a PWSF that requires minimal changes to the host structure in order to accommodate the facility.
- G. **Carrier.** A company licensed by the Federal Communications Commission (FCC) to provide personal wireless services. A tower company, a tower management firm or a tower builder is not a carrier. A licensed carrier or Broadband Radio Services or any other Federal Communications Commission (FCC) licensee other than a personal wireless service carrier is not a carrier for purposes of this Bylaw.
- H. **Cellular.** A mobile telephone service operating in the 800 MHz spectrum.
- I. **Co-applicant.** A person or entity that joins with an applicant in an application before the Town for a permit for a PWSF. The co-applicant can only be a carrier, a landowner where the facility will be located or the proposed owner of the facility. A carrier must be either the applicant or the co-applicant on each application. If the proposed PWSF is for two or more carriers, each carrier must file its own application as either the applicant or co-applicant.
- J. **Co-location.** The use of a common support structure or common site by two or more PWSFs or by one carrier for more than one type of frequency, FCC license or branded name. A single carrier mounting on a structure for any other use, such as electrical transmission or distribution, is not co-location.
- K. **Commercial Mobile Radio Services (CMRS).** Per Section 332(d)(1) of the Telecommunications Act of 1996, any of several technologies using radio signals at various frequencies to send and receive voice, data and video. These services include Cellular PCS, paging, Enhanced Specialized Mobile Radio and Specialized Mobile Radio. CMRS must be interconnected to the Public Switched Telephone Network.
- L. **Conceal.** To enclose a PWSF within a natural or man-made feature resulting in the facility being either invisible or made part of the feature enclosing it.
- M. **Design.** The appearance of PWSFs such as their materials, colors and shape.
- N. **Distributed Antenna System (DAS).** A system combining fiber optic or hybrid fiber optic or free optic transport and PWSFs. The part of a DAS, known as a "node," that transmits or receives a personal wireless service carrier's signal is a PWSF and is governed by this Bylaw.
- O. **EIA/TIA 222 (Version G).** The American National Standards Institute (ANSI) standard for a tall structure's resistance to wind load and ice load.
- P. **Elevation.** The measurement of height above sea level. Also AMSL, or above mean sea level.
- Q. **Enhanced Specialized Mobile Radio (ESMR).** Private land mobile radio with telephone services.
- R. **Equipment Cabinet/Equipment Shelter.** An enclosed structure at the base of the mount within which are housed the equipment for the PWSF such as batteries and electrical equipment.
- S. **Fall Zone.** The area on the ground within a prescribed radius from the base of a PWSF. The fall zone is the area within which there might be a potential hazard from falling debris or collapsing material.
- T. **Height.** The distance measured from ground level to the highest point of a PWSF, including the antenna array. For purposes of measuring height, all antennas or other attachments mounted on a structure shall be included in the measurements to determine overall (i.e. combined) height.

- U. **Lattice Tower.** A type of mount that is usually ground-mounted and self-supporting with multiple legs and cross-bracing of structural steel.
- V. **Location.** The area where a PWSF is located or proposed to be located.
- W. **Modification.** The changing of any portion of a PWSF from its description in a previously approved permit. This includes adding or subtracting frequencies, new FCC licenses and name changes of the carriers. The FCC definitions for “modification” are different than local government rules.
- X. **Monopole.** The shape of mount that is self-supporting with a single shaft of wood, steel or concrete and antennas at the top and/or along the shaft.
- Y. **Mount.** The structure or surface upon which antennas are mounted, e.g.:
 1. Roof-mounted. Mounted on the roof of a building.
 2. Side-mounted. Mounted on the side of a building.
 3. Ground-mounted. Mounted on the ground.
 4. Structure-mounted. Mounted on a structure other than a building.
- Z. **Personal Wireless Service Facility (PWSF).** Facility for the provision of personal wireless services, as defined by Section 704 of the Telecommunications Act of 1996, which amended Section 332©(7)(A) of the Communications Act of 1934. A PWSF is any unstaffed facility for the transmission and/or reception of personal wireless services, usually consisting of an antenna array, transmission cables, equipment shelter and a mount. The transmission or reception portion of a Distributed Antenna System including the mount is a PWSF and is governed by this Bylaw.
- AA. **Personal Wireless Services.** Any personal wireless service defined in the Federal Telecommunications Act which includes Federal Communications Commission (FCC) licensed commercial wireless communications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging as well as unlicensed wireless services, and common carrier wireless exchange access services.
- BB. **Radio Frequency Propagation.** The metrics by which the wireless industry measures the acceptability of a PWSF. The metrics by which the Town measures acceptability of a PWSF are contained in this Bylaw.
- CC. **Radio Frequency Radiation (RFR).** The emissions from PWSFs that can, in excessive amounts, be harmful to humans. RF emissions are part of the RF signal.
- DD. **Security Barrier.** A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.
- EE. **Site.** That portion of a subject property where a PWSF is to be placed. Any acceptable location may have several potential sites within it.
- FF. **Siting.** The method and form of placement of PWSFs on a specific area of a subject property. Location is different than siting.
- GG. **Specialized Mobile Radio (SMR).** A form of dispatch or two-way communication used by companies that rent space or time from an SMR carrier. Used primarily for data, delivery vans, truckers or taxis within a small, definable geographic area.

- HH. Standards.** Rules or measures by which acceptability is determined. PWSFs are measured by standards measuring visibility or safety. Wireless planning tends to regulate PWSFs on three levels: location (or where the PWSF site can go), siting (or how the PWSF is placed within its setting) and design (or what the PWSF looks like).
- II. Tower.** A term used as a modifier (e.g., tower builder) or when modified (e.g., lattice tower). PWSFs are not towers.
- JJ. Unlicensed Wireless Services.** Commercial mobile services that can operate on public domain frequencies and therefore need no FCC license for their sites. Wi-Fi and garage door openers are examples of unlicensed wireless services.
- KK. Utility Pole.** For purposes of this Bylaw, any public, semi-public or quasi-public vertical element in the Town, such as a distribution pole for electricity, a cable pole, a traffic signal stanchion or a light pole.
- LL. Wireless Communications.** Any form of signaling by wireless, including personal wireless services that require a transmitter, a receiver and a path – sometimes straight, sometimes indirect – between them. Personal wireless services are a small subset of wireless communications and are the only services regulated by this Bylaw.