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Bonner County
Planning Department

**NOTICE OF APPEAL
CUP0011-24 -Communications Tower**

Date: March 30, 2026
To: Kendra Smith, Bonner County Planning Director
Applicant: WEIS Towers LLC
Owner: Northflex LLC
Address: 329 Northgate Road, Priest River, Bonner County, Idaho 83856
Tax Parcel: RP57N05W160151

Bonner County Planning & Zoning Commission Decision Date: March 23, 2026
Appeal Submitted by: Anne Watanabe, Counsel for Applicant

This timely Appeal is hereby submitted on behalf of WEIS Towers LLC, (the “Applicant”) in accordance with Bonner County Revised Code (BCRC) 12-262 and appeals the Bonner County Planning and Zoning Commission’s (“Commission”) decision to deny the permit by vote at a public hearing held on February 12, 2026 (the “February Hearing”), and by final written decision from Jeff Poulsen, Chair of the Commission and presented to the Applicant by letter dated March 23, 2026, along with the Zoning Commission’s Decision Making Worksheet, and the Staff Report, both of which were adopted by the Commission at the February Hearing (altogether referred to herein as the “Decision Document”).

The Applicant requests the Board of Bonner County Commissioners (the “Board”) to REVERSE the Commission’s decision and APPROVE and issue the Applicant’s proposed conditional use permit based on the following grounds.

CONDITIONS OF APPROVAL

The evidence in the record supports the conclusion that the proposal as conditioned by the Conditions of Approval A.1 through A.21, and B-1 through B-4 as presented at the February Hearing is not in conflict with the Comprehensive Plan and will neither create a hazard nor be dangerous to persons on or adjacent to the subject property, and is compliant with applicable standards in Bonner County Revised Code (BCRC) Title 12.

The Applicant has satisfied all reasonable conditions and restrictions upon development of a communications tower as required by BCRC 12-488. Therefore, the Commission erred in denying the Applicant’s permit.

The Commission denied the CUP in violation of the Telecommunications Act of 1996¹ (the “Act”), BCRC, and the Local Land Use Planning Act, namely Idaho Code 67-6501 through 67-6538, and such denial based on the Commission’s Decision Document should be reversed for the following reasons:

¹ 47 U.S.C. §251 et seq.

- a. The Commission's decision violated the Applicant's due process right to a fair and neutral hearing based on the entire record.
- b. The Commission's Conclusions are not supported by substantial and competent evidence in the record as a whole.
- c. The Commission ignored the substantial evidence in the record which supports the Staff's Recommendation to Approve the CUP with the Conditions of Approval A.1 through A.21, and B-1 through B-4.
- d. The Commission's decision to deny the permit exceeded the Commission's statutory authority.
- e. The Commission's decision to deny the permit was arbitrary and capricious or an abuse of discretion.

SETBACK VARIANCE

The County Staff Report presented to the Commission and adopted by the Commission at the February Hearing indicate that the proposal appears to be in conflict with only two components of the Comprehensive Plan, namely the Land Use and Community Design components, because the tower's eastern fall zone will not meet the 1:1 setback standard as required by BCRC 12-488.B, and that the Applicant is seeking a variance from that standard through this CUP request.

LEGAL AUTHORITY

The Commission has the legal authority under the terms of Idaho's Local Land Use Planning Act, namely IRC 67-6512(f) and IRC 67-6516, and Bonner County Revised Code, namely BCRC 2.3, each which explicitly allow the Commission to approve CUP0011-24 with a variance to the setback requirement and allow that deviation to the CUP as proposed, and with conditions of approval, and as reflected on the approved site plan, and supported by reasonable evidence in the record.

IRC 67-6516 explicitly mandates the County to have a zoning ordinance that allows for the processing of applications for variance permits despite the fact that there is an ordinance that establishes a standard to be met. In other words, the setback requirement is not "black and white" as one Commissioner stated at the prior November 20, 2025, Commission hearing. Instead, it is an explicit standard allowed to be deviated from in accordance with local and state laws which the Applicant has complied with.

There was no substantive discussion or deliberation by the Commission, and no substantial and competent evidence in the record to support the Commission's conclusion that the Applicant has not met the burden under BCRC 12-234 to obtain the requested setback variance as part of the CUP. The Applicant has established in the record that:

- A. Conditions apply to property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.
- B. Special conditions and circumstances do not result from the actions of the applicant.

- C. The granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

The Commission based its denial on the suggestion that the Applicant has “self-created” the need for the variance by electing to place the tower on the subject property at the chosen location as shown on the Applicant’s Site Plan.

Consistent with BCRC 12-234(A), the Applicant provided evidence in the record that specific conditions apply to the property that make it uniquely suitable for the 190’ cell tower to serve the target area which do not apply generally to other properties in the vicinity due to its location, topography, and a willing landowner. The location was not generally chosen, but was selected based on latitude and longitude, and network mapping to allow connection to the Applicant’s proposed network in the area.

PUBLIC NECESSITY; SIGNIFICANT GAP IN COVERAGE

The tower location was selected to benefit the public by filling a significant gap in coverage along Hwy 57 as identified by network engineers, technicians, and other network mapping tools available to the Applicant. The gap in coverage along Hwy 57 was not created by the Applicant and is instead a result of other carriers not wanting to build out in “high-cost” rural areas. This gap in coverage, and the proposed tower’s ability to fill that gap by the least intrusive means is a special condition and circumstance that does not result from the actions of the Applicant.

After the Applicant’s reasonable investigation into potential sites, the subject property was determined to be uniquely suitable and other properties deemed not suitable or otherwise not available to the Applicant.

In addition, the Staff Report indicates that:

“Regarding the public convenience and necessity of the tower, the applicant submitted the following:

This tower location was chosen to provide the best cellular coverage along Hwy 57 for approximately 5 miles (16 square miles) and adjacent property between the town of Priest River and Priest Lake. There is currently no coverage in this area. This coverage will allow emergency services, forest service, and vehicles to connect with their communications systems. The propagation map shown below shows the proposed coverage of the area the tower will provide.”

The FCC has declared rural broadband a public necessity and has mandated carriers to deploy in rural areas.

There is no substantial evidence in the record to demonstrate why the Applicant’s construction of a 190’ tower to provide in-building and in-vehicle service and fill a significant gap in coverage along Hwy 57 in a manner that minimizes adverse effects on surrounding properties is not a public convenience and necessity.

The Commission's denial based on lack of public convenience and necessity is arbitrary and capricious and violates the Applicant's due process right to a fair and neutral hearing based on the entire record.

PUBLIC SAFETY; TOWER DESIGN

The Commission requested, and the Applicant provided a licensed engineer's certification of the tower designed for a zero-foot fall zone such that the tower would buckle and collapse in place and not fall 190' outward. In this unique instance, and consistent with BCRC12-234(C), the engineered design of the tower is a mitigating circumstance such that the granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

The zero-fall design is a safety feature that will *enhance* public health, safety and welfare, and substantially reduces the likelihood (if any) of the tower ever encroaching the one-hundred fifteen-foot (115') setback shown on the Applicant's Site Plan.

The Applicant provided evidence of the tower's zero-foot fall zone design, yet the Commission did not consider it or address why the tower designed with a zero-foot fall zone was not a sufficient mitigating condition to grant the CUP with a variance to the setback standard.

The Commission's denial of the permit without consideration of the evidence in the record regarding the tower's design and the benefits to the public health, safety, and welfare is arbitrary and capricious and violates the Applicant's due process right to a fair and neutral hearing based on the entire record.

SURROUNDING AREA

Land Use Policy #2 indicates that, "Commercial and industrial uses may be conditionally permitted in areas not identified for such uses in the Comprehensive Plan if a critical review of the proposed use determines that with appropriate conditions the use will not adversely impact the surrounding area (emphasis added).

The evidence in the record and the Conditions of Approval clearly demonstrate that the project as conditioned will not adversely impact the surrounding area.

The Commission did not explain, and there is no substantial evidence in the record to demonstrate that the project would impact the surrounding area nor was there any deliberation or substantial evidence in the record as to why the engineered zero-fall tower design was not an appropriate condition to prevent the use from impacting the surrounding area, and denial on this basis is arbitrary and capricious and violates the Applicant's due process right to a fair and neutral hearing based on the entire record.

RURAL CHARACTER

The stated purpose of the setbacks is to create rural rather than urban setback standards aimed at preserving the rural, natural character of the community. While the tower does not meet the 1:1 setback from the eastern property line, it is still well over one hundred feet (100') away from the

nearest property line and any structures on the adjacent or subject property. Approval of CUP0011-24 as conditioned by the Conditions of Approval including a variance to the setback requirement will preserve the rural, natural character of the community.

The Commission did not explain, and there is no substantial evidence in the record as to how the tower's placement, appearance, or presence, as conditioned, will not preserve the rural, natural character of the community, and therefore a denial based on impacts to the rural character is arbitrary and capricious.

VIOLATION OF THE TELECOMMUNICATIONS ACT

The Commission's decision to deny the permit violated Section 332(c)(7)(B)(i)(II) of the Act which specifically states in part that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any . . . local government thereof . . . shall not have the effect of prohibiting the provision of personal wireless services."

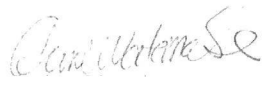
Inland Cellular is a local regional carrier and like the national and other carriers, it operates pursuant to an FCC license with buildout and service requirements. Inland intends to collocate on the Applicant's tower should it be approved. As an FCC license holder, Inland Cellular, like other carriers, has an obligation to provide comprehensive rural coverage.

Denying the Applicant a permit for this tower impedes Inland Cellular and other carriers from achieving compliance with FCC mandates and denies certain subscribers access to broadband using high speed data and voice networks and therefore prohibits or has the effect of prohibiting the provision of personal wireless services in violation of the Act.

CONCLUSION; REQUEST TO REVERSE

For the reasons stated herein and elsewhere in the record, the Commission erred in denying the Applicant's CUP Application, and the Applicant herein requests the Board to REVERSE the Commission's February 12, 2026, decision and APPROVE CUP0011-24 with Conditions of Approval A.1 through A.21 and B.1 through B.4.

Dated this 30th day of March 2026

By: 
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