

# LEWIS COUNTY HEARING EXAMINER

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November 18, 2025

Lewis County Commissioners  
360 N.W. North Street  
Chehalis, Washington 98532

Re: Harmoni Tower/Verizon Wireless and Lewis County Safe Technology  
Hearing No. 25-2-002

Dear Sirs and Madam:

Enclosed herewith please find a copy of the Order Granting Lewis County's Motion to Dismiss Appeal; Denying Applicant's Motion to Dismiss; and Denying Appellant's Motion for Summary Judgment with regard to the above matter. Should you have any questions, certainly feel free to call.

Very truly yours,

SENT WITHOUT SIGNATURE TO AVOID DELAY

Mark C. Scheibmeir  
Lewis County Hearing Examiner

MCS:tl  
Encl

cc: Ms. Karen Witherspoon, w/encl.  
Ms. Karin Phomma, w/encl.  
Mr. James Howsley, w/encl.  
Mr. Ezra Hammer, w/encl.  
Mr. Todd Richardson, w/encl.  
Mr. W. Scott McCullough, w/encl.

1 BEFORE THE LEWIS COUNTY HEARING EXAMINER

2  
3 IN RE: ) HEARING NO. 25-2-002  
4 PERMIT APPLICATION NO. ) APPLICATION NO. MSR24-0462  
5 WCG25-0002/SEP25-0021, )  
6 HARMONI TOWER/VERIZON ) ORDER:  
7 WIRELESS, ) 1. GRANTING LEWIS  
8 ) COUNTY'S MOTION TO DISMISS  
9 ) APPEAL  
10 ) 2. DENYING APPLICANT'S  
11 ) MOTION TO DISMISS  
12 ) 3. DENYING APPELLANT'S  
13 ) MOTION FOR SUMMARY  
14 ) JUDGMENT  
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THIS MATTER comes before the Hearing Examiner upon dispositive motions brought by all three parties: Lewis County has submitted a Motion to Dismiss the Appellant's SEPA Appeal on timeliness grounds; the Applicant, Harmoni Tower/Verizon Wireless (Verizon) joins in the County's Motion to Dismiss and also brings its own separate motion to dismiss on the alternative ground that the Appellant lacks standing to appeal the SEPA determination.; the Appellant, Lewis County for Safe Technology (LCST) submits a Motion for Summary Judgment seeking to reverse the SEPA determination as a matter of law. Lewis County appears through Karin Phomma of the Prosecuting Attorney's Office; the Applicant, Verizon, appears through James Howsley and Ezra Hammer; the Appellant, LCST, appears through Todd Richardson and W. Scott McCullough (pro hac vice).

The Hearing Examiner has considered the following pleadings (including attachments):

1. Appeal submitted by LCST on September 12, 2025, by W. Scott McCullough on behalf of the Appellant, LCST.
2. New Appeal submitted on behalf of LCST by Todd Richardson, submitted to the County on September 22, 2025.
3. Lewis County's Motion to Dismiss Appeal of LCST.

Order Granting Motion and  
Denying Motions - 1

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1           4. Notice of Appearance, Motion and Support of Lewis County's Motion to Dismiss  
2 Appeal of LCST and Motion for Alternative Relief, submitted by counsel on behalf of Applicant  
3 Verizon.

4           5. Motion for Decision/Judgment on the pleadings for Summary Judgment or for  
5 relief in the alternative submitted by LCST.

6           6. Order Denying Motion on the pleadings.

7           7. Verified opposition to the Harmoni Towers' and Lewis County's Motion to  
8 dismiss appeal.

9           8. County's Brief and Response to Appellant's Motion for Summary Judgment.

10           9. Response to Appellant's Motion for Summary Judgment.

11           10. Applicant's reply to verified opposition to Harmoni Towers and Lewis County's  
12 motion to dismiss appeal.

13           11. Reply to Harmoni Towers' opposition to Motion and for judgment granting SEPA  
14 Appeal.

15           12. Lewis County's reply to LCST's response to Motion to Dismiss Appeal,  
16 NOW, THEREFORE,

17           1. Lewis County's Motion to Dismiss the SEPA Appeal brought by LCST  
18 untimeliness grounds is **granted**.

19           Although the granting of Lewis County's Motion is dispositive of the SEPA Appeal, the  
20 Hearing Examiner issues the following additional decisions for completeness of all pending  
21 Motions:

22           2. Appellant's Motion to Dismiss on the alternative ground of standing is **denied**.

23           3. Appellant's Motion for Summary Judgment is **denied**, including request for alternative  
24 relief.

#### ANALYSIS

25           The Hearing Examiner is not required to provide a detailed analysis of his rulings on

1 dispositive motions but such analysis is often beneficial to the parties and useful in the event of  
2 additional review. For those purposes, the following analysis is provided as to each of the  
3 rulings on dispositive motions.

4 **Lewis County's Motion to Dismiss the SEPA Appeal On Timeliness Grounds**

5 It is undisputed that the County's SEPA determination on Application SEP25-0021 was  
6 published August 21, 2025, and that the deadline for its appeal was September 12, 2025. On  
7 September 12, 2025, an appeal was submitted on behalf of LCST by W. Scott McCullough, an  
8 attorney licensed to practice in the State of Texas but not in the State of Washington. Shortly  
9 thereafter, the Hearing Examiner was notified of the Appeal and, upon reviewing the  
10 documentation, observed that Mr. McCullough's address was in Texas. A quick review of the  
11 Washington State Bar website failed to identify Mr. McCullough as being licensed to practice  
12 law in Washington State. The Hearing Examiner notified the Appellant of this information,  
13 reminded Mr. McCullough that his Appeal constituted the practice of law in Washington State,  
14 and sought confirmation that Mr. McCullough was properly licensed to practice in this State.

15 In response to this inquiry, the Appellant submitted a new Appeal 10 days later on  
16 September 22, 2025, authored by a different attorney, Todd Richardson, who is licensed to  
17 practice in this State. The new Appeal is virtually identical to the first one excepting various  
18 attachments. Thereafter, Mr. McCullough sought approval as pro hac vice co-counsel for LCST.  
19 This request was approved by the Hearing Examiner.

20 Lewis County moves to dismiss the SEPA Appeal brought by LCST on the basis that it is  
21 untimely, that is, that the first Appeal submitted September 12, 2025, was invalid, leaving only  
22 the later, September 22, 2025, Appeal submitted well past the deadline for appeal of the SEPA  
23 determination. The Applicant, Verizon, joins in this Motion.

24 LCST argues that the second Appeal relates back to the first one. The Appellant argues  
25 that the only defect with the first Appeal was Mr. McCullough's right to practice in Washington  
State, and that this defect was subsequently cured by his approval as pro hac vice

1 counsel. LCST further asserts that the Hearing Examiner granted an opportunity to cure by  
2 allowing the Appellant to resubmit its Appeal through proper counsel. The Appellant adds that  
3 the defective submission by unlicensed counsel is the equivalent of an unsigned petition and that  
4 our courts have readily granted relief for such technical defects. I respectfully disagree with all  
5 of LCTS's assertions.

6 I did not offer the Appellant the opportunity to cure by submitting a new appeal through  
7 properly licensed counsel. Rather, I provided an opportunity to cure by a demonstration that Mr.  
8 McCullough was properly licensed to practice in Washington at the time the Petition was  
9 submitted. This was not demonstrated. Instead, it is conceded that Mr. McCullough was not  
10 licensed to practice in Washington when the Appeal was submitted.

11 Importantly, and as noted by the County, the Appellant candidly admits that its  
12 submission of an appeal by someone not properly licensed to practice in this state was a knowing  
13 and calculated act which it felt it needed to take due to difficult time constraints, with the  
14 expectation that the defect could be subsequently cured. While the Appellant's candor is  
15 appreciated, its approach is not. The knowing violation of the rules of practice cannot be  
16 excused or accommodated. In particular, the knowing violation of the Rules of Practice cannot  
17 be used to gain any sort of advantage, including compliance with time requirements that are  
otherwise not met.

18 The Appellant compares its action to that of a petitioner who inadvertently fails to sign a  
19 petition, treating the two as the same. They are not the same but are instead worlds apart. An  
20 inadvertent omission of a signature is deserving of equitable relief. The wrongful practice of law  
21 is not.

22 **Verizon's Motion to Dismiss the SEPA Appeal Due to Lack of Standing**

23 As noted earlier, the granting of the County's Motion to Dismiss the SEPA Appeal makes  
24 it unnecessary to rule on the other pending dispositive motions. Nonetheless, the remaining  
25 dispositive motions are being ruled upon for completeness of the record and as a courtesy to the

1 parties.

2 The Applicant, Verizon, joins in the County's Motion to Dismiss and also brings its own  
3 alternative dispositive motion based upon an argument that the Appellant lacks standing to  
4 challenge the SEPA determination. The Applicant identifies the well-recognized two-prong  
5 standard for standing to challenge a SEPA determination: 1) the alleged endangered interest must  
6 fall within the "zone of interest" protected by SEPA and 2) the party must allege an "injury in  
7 fact". Verizon concedes that the Appellant satisfies the first prong but argues that it fails to  
8 demonstrate injury in fact. I conclude to the contrary. I agree with the Appellant that many of  
9 its members reside within close proximity to the Project, share the same road, and will  
10 experience visual and other impacts if approved. I therefore conclude that the Appellant has  
11 demonstrated the potential for injury in fact and has therefore established standing.

12 **LCST's Motion for Summary Judgment**

13 Once again recognizing that the granting of the County's Motion to Dismiss is  
14 dispositive, it remains valuable to provide a ruling on the Appellant's Motion for Summary  
15 Judgment. I conclude that, even if the Appellant's Appeal had not been dismissed, its Motion for  
16 Summary Judgment should be denied.

17 Rather than provide a lengthy explanation, I adopt the analysis set forth in Verizon's  
18 "Response to Appellant's Motion for Summary Judgment", commencing at page 5 and  
19 continuing to page 9. I agree with Verizon that LCST provides only vague and generalized  
20 claims that the County's SEPA review is inadequate, and offers no specifics as to what the  
21 County allegedly failed to do. And in the few instances where any degree of specificity is  
22 provided, such as with the issues of ground disturbance or possible impacts to protected or  
23 endangered species, LCST fails to demonstrate how the County's review was inadequate. For  
24 example, LCST repeatedly references protection accorded to the lone grey wolf population and  
25 asserts that the County has failed to consider such protection. But the Appellant provides no  
evidence that a lone grey wolf exists anywhere in Lewis County let alone in the vicinity of this

1 project. If the Appellant's standard was adopted, every SEPA review in the County, including  
2 ones for projects in downtown Centralia, would be required to undertake an examination of  
3 impacts to lone grey wolf populations. I conclude that such analysis are not required unless  
4 demonstrated to have a nexus to the project. The Appellant has not demonstrated this nexus.

5 It may also be important to remember how the role of SEPA has evolved. Increasingly, it  
6 has become recognized that other important environmental regulations have supplanted SEPA  
7 with respect to several issues. For example, modern Critical Areas regulations, stormwater  
8 regulations, shoreline regulations, grade and fill regulations, design standards, etc. have lessened  
9 the need to analyze these issues through the SEPA lens. This evolution is not intended to lessen  
10 environmental protections but rather to strengthen them through more complete and uniform  
11 regulations. As one example here, the Appellant's complaint regarding ground disturbance  
12 during construction fails to recognize that the County has enacted extensive grading and filling  
13 regulations such that compliance with these regulations serves as compliance with SEPA.

14 In summary, I conclude that the Appellant has failed to demonstrate that the County's  
15 SEPA determination was clearly erroneous as a matter of law.

16 In its rebuttal briefings, the Appellant counters some of the Applicant's arguments  
17 regarding the practice of law by asserting that the submission of the Application by a non-  
18 attorney is a similar violation, and that the Application should therefore be dismissed as  
19 improperly submitted. I respectfully disagree on both procedural and substantive grounds:  
20 Procedurally, this challenge is not timely. Substantively and more importantly, the wireless  
21 facility application is not a "pleading" subject to the practice of law requirements, although it  
22 eventually leads to a hearing where representation is required. The Appellant has not cited to  
any authority to the contrary.

23 DATED this 18 day of November, 2025.

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Mark C. Scherbmeir,  
Lewis County Hearing Examiner