

Exhibit J – Staff Report to County Commission, May 3, 2011



**Board of Storey County Commissioners**

May 3, 2011

Staff Report

**APPLICANT:** Thomas Taormina

**PROPERTY OWNER:** Thomas S. and Midge A. Taormina

**APN NUMBER:** 003-431-18

**ADDRESS OF PROJECT:** 370 Panamint Road, Highland Ranches, Storey County, Nevada

**REQUEST:** Request to obtain special use permit to maintain existing amateur ham radio antenna towers and erect two additional amateur ham radio antenna towers exceeding 45 feet in height.

**MEETING LOCATION:** Storey County Courthouse, District Courtroom  
26 South "B" Street, Virginia City, Nevada

**MEETING TIME:** 2:00 PM

**KEY DEFINITION:**

What is amateur radio? The Federal Communications Commission (FCC) defines amateur radio as being a voluntary, non-commercial radio service involving amateur radio operators communicating locally and worldwide using store-bought or homemade radios, computers, satellites, and the internet. Known as "hams", amateur radio operators oftentimes facilitate emergency communicators during the Emergency Operations Command (EOC) during disasters.

**I. ADVISORY ACTION TAKEN:**

At its March 3, 2011, hearing, the Storey County Planning Commission by a vote of 3 to 1, with one abstaining and two absent, approved an advisory recommendation to the Board of County Commissioners to approve Application No. 2011-010 for the applicant of an existing amateur radio communication facility to maintain four (4) existing amateur ham radio antenna towers in accordance with the limitations set forth by the approved conditions and stipulations and to deny installation of any additional towers on the property located at 370 Panamint Road (APN 003-431-18), Highland Ranches, Storey County, Nevada.

**II. BACKGROUND:**

The special use permit application, with exhibits provided by the applicant, was submitted pursuant to sections 17.12.044 and 17.62.010 of the Storey County Code and to resolve issues surrounding the several existing and proposed amateur radio antenna support structures located on the applicant's property. Tom and his wife Midge Taormina have been licensed by the

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Federal Communications Commission to operate amateur radios since 1959 and 1991, respectively.

Between 1997 and 2008 the applicant erected seven amateur radio antenna support towers on his ten acre property located in the Highland Ranches. Four of those existing structures are higher than 45' above grade and thus are applicable to this special use permit application. Two of those towers, one 40' and the other 140' above grade, were installed in 1997, two years prior to the County Commission's adoption of Title 17 of the Storey County Code and height limitations included therein (see Exhibit D, pp. 4-7). In 2007 two additional towers up to 140' in height were constructed.

In 2008 the applicant brought to the Storey County Building Department plans to erect two additional antenna support structures, one 120' and the other 195' in height. The applicant was provided a building permit by the building department and construction of foundation pads began. Shortly thereafter, a Stop-Work-Order was issued to the applicant ordering work on both towers to cease. The Order cited non-compliance with the 45' height limitation set forth in 17.12.044 of the County Code and directed the applicant to apply for a special use permit in accordance with Section 17.62.010 of the County Code before resuming work on said towers.

According to documents on file with the building department and a 2010 ruling by the District Court (see *Taormina v. Storey County* in paragraph 6 of this section and in enclosed Exhibit A), the applicant refused several opportunities provided him by Storey County to apply for a special use permit. The applicant argued that federal regulations under the Federal Communications Commission (FCC) (47 CFR 97.15\*), also codified in the Nevada State Statute (NRS 278.02085\*\*), preempted local regulations and that his proposal to erect the antenna towers was thereby exempt from the County Code.

The applicant brought the Building Department's direction to apply for a special use permit to the Storey County District Attorney in attempt to gain concurrent legal interpretation of the federal and state regulation. The District Attorney sided with the building department and directed the applicant to follow through with the special use permit application process in accordance with the local ordinance.

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\* 47 CFR 97.15: Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose.

\*\* NRS 278.02085: A governing body shall not adopt an ordinance, regulation or plan or take any other action that precludes amateur service communications or that in any other manner does not conform to the provisions of 47 C.F.R. § 97.15 and the limited preemption entitled "Amateur Radio Preemption, 101 F.C.C. 2d 952 (1985)" as issued by the Federal Communications Commission.

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In 2009, without filing for a special use permit as directed, the applicant filed civil action against the Storey County in the United States District Court for the District of Nevada for Summary Judgment. In *Taormina v. Storey County*, the Plaintiff (applicant) relied on his interpretation of the FCC ruling known as "PRB-1" (Amateur Radio Preemption, 101 F.C.C. 2d. 952 (1985)) in arguing that federal law preempts the relevant Storey County Code provisions. The FCC's ruling in PRB-1 addresses the "conflict between ham [radio] operators' needs for effective antennas and a municipality's enforcement of its local zoning ordinances"\*\*\*

In 2010 the District Court denied Mr. Taormina's motion for Summary Judgment. The ruling cited that the local ordinance was not preempted by federal or state law, the applicant had not taken advantage of the special use permit process set forth in County Code, and that the applicant "may apply for a special use permit pursuant to section 17.62.010" of the County Code and that the "standard, or test, for whether an applicant may receive a special use permit pursuant to section 17.62.010 is whether the use is 'deemed essential or desirable for the public convenience or welfare.'" Specifically, the ruling against Summary Judgment stated,

To date, the court has not considered the merit of the Plaintiff's contention that, as applied to him, the Storey County regulations violate certain FCC regulations. In its order addressing the motion for summary judgment, the court noted that because the Plaintiff has not applied for a special use permit that would enable him to construct the radio antennas, Storey County has not had the opportunity to apply its zoning regulations to Plaintiff's amateur communications. As a result, the court could not determine whether Storey County has reasonably accommodated Plaintiff. [Hicks, *Taormina v. Storey County*, 2010]

The 2010 District Court ruling against declaratory relief was based on the following findings:

- a. That federal law under PRB-1 only preempts a local ordinance where a local zoning ordinance bans or imposes an unvarying height restriction on amateur radio antennas and where a city [county] has not applied in a manner that reasonably accommodates amateur communication.

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\*\*\*On July 16, 1984, the American Radio Relay League, Inc. (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective, reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications. Interested parties were advised that they could file comments in the matter. In the view of the Federal Communications Commission, the Petitioner had not demonstrated that the clarifications requested were necessary. Accordingly, it concluded that the public interest would be best served by denying the ARRL request for modification and clarification of Commission policies and procedures concerning the limited preemption of state and local regulations that affect amateur service radio facilities. Accordingly, the petition for ruling was denied. (Federal Communications Commission, 1985, 1999, & 2001)

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- b. That Section 17.62.010 of the Storey County Code provides for reasonable accommodations for amateur communications in that, “Certain uses may be permitted by the Board of Storey County Commissioners in zones in which they are not permitted by this title where such uses are deemed essential or desirable for the public convenience or welfare.”
- c. That the process for applying for a special use permit in accordance with Section 17.62.010 is similar to the procedure for applying for a Variance as set forth in Chapter 17.60 of the County Code in that, “the procedure for filing of applications, filing fees, public hearings, filing and appeals shall be the same as provided for variances in Chapter 17.60 of this title.”
- d. The local regulations “which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority’s legitimate purpose,” *Id* In other words, PRB-1 “entitles the operator only to a reasonable accommodation”.
- e. The findings of PRB-1 appear in section 97.15 of Title 47 of the Code of Federal Regulations (C.F.R.), which states in relevant part, “[A] station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulations of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority’s legitimate purpose.
- f. That the Ninth Circuit of Appeals in *Howard v. City of Burlingame* \*\*\*\*, 937 F.2d 1376 (9th Cir. 1991), “does not appear to confer rights upon licensees to anything more than “reasonable accommodation”. Instead, under the rule, as long as a city [county] has considered the application, made factual findings, and attempted to negotiate a compromise with the application, a city [county] may deny the antenna permit”.
- g. That Section 17.12.044, while unclear as to how it applies to the height limitation of towers, may also apply to special use permits for communications towers as “structures or buildings” that would be limited to no higher than “35 feet in height” without an approved special use permit.

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\*\*\*\*The Ninth Circuit Court of Appeals in *Howard v. City of Burlingame* [California] held that: (1) neither Federal Communications Act, FCC Regulations, nor FCC declaratory ruling created obligation enforceable under § 1983, and (2) city [county] zoning ordinances requiring special permit for antennas of certain height was legitimate.

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- h. That the issuance of a building permit without first requiring a special use permit did not constitute as a waiver of section 17.12.044's height requirements, and that the county did exercise due diligence in notifying the Plaintiff of its mistake. Further, the Plaintiff had not presented to the Court any evidence suggesting that he reasonably relied on the granting of his building permits to his detriment.
- i. The Plaintiff refused to apply for a special use permit that would enable him to construct the radio antennas and thus the county has not had the opportunity to apply its zoning regulations.

### III. ANALYSIS

3.1 Antenna Support Structures: Physical characteristics of the existing and proposed amateur radio antenna support towers are summarized as follows. See illustrations in Figures 1-3 below and further details provided by the applicant in Exhibit E.

**Tower 1** (140 feet) - This structure was installed in 1997. It has had successive iterations of antenna arrays installed on it. This tower is guyed in four places to concrete guy anchors. This structure was installed prior to adoption of Title 17 of the Storey County Code; thus this structure should be considered as a "non-conforming use" as defined by Chapter 17.06 of the title. The structure must comply with applicable local building codes, as demonstrated by plans submitted by a Nevada licensed structural engineer.

**Tower 2** (85 feet) -This structure was installed in 1998. It has had successive iterations of antenna arrays installed on it. This tower is guyed at four levels to concrete anchors. Similar to Tower 1, this structure was installed prior to adoption of Title 17 of the County Code and needs to be treated in accordance with the "non-conforming use" provisions. The local building code and certificate of engineering will need to apply as well.

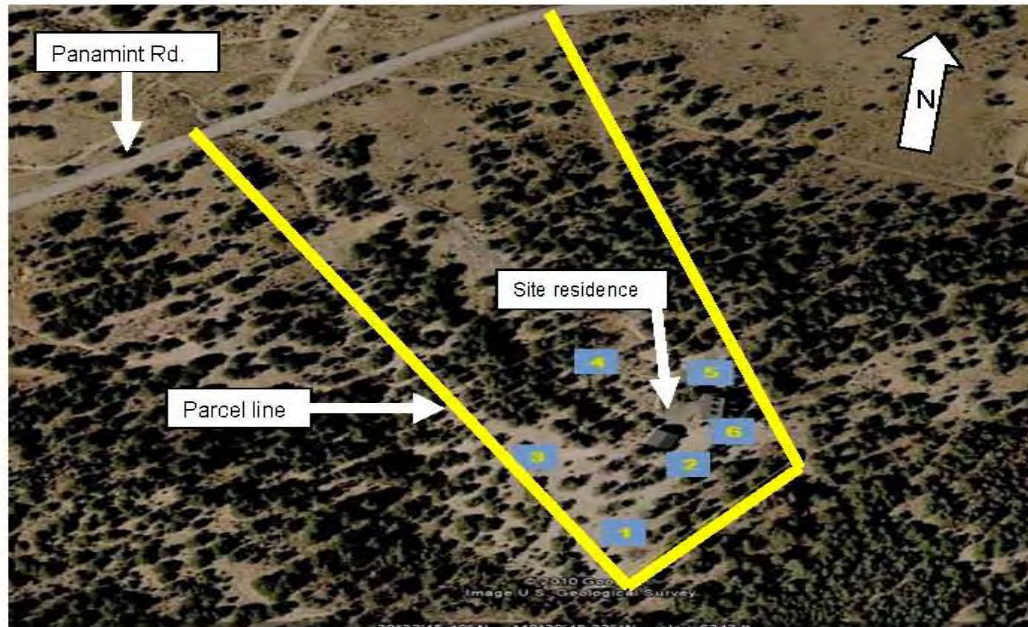
**Tower 3 and 4** (110 feet and 140 feet, respectively) –Tower 3 is a radiating antenna structure and Tower 4 is similar in design to Tower 1. Both were installed in 2007 and are guyed at three levels to concrete anchors. Tower 3 is proposed to be moved north-east to relieve the close proximity to the parcel's western boundary. In accordance with sections 17.12.044 and 17.62.010 of the County Code the special use permit process will apply to these structures.

**Tower 5 & 6** (proposed) – Tower 5 support is scheduled to be 120' in height and to hold four 15 Meter (21 MHz) antennas. Building Permit No. 8354 was issued by Storey County; however, the required special use permit was not applied for and a Stop-Work-Order was issued by Storey County. The tower 6 support is scheduled to be 195' in height and to hold two 80 Meter (3.5 MHz) antennas, four 10 Meter (28 MHz) antennas, and a 440 MHz vertical antenna for an emergency communications repeater. A building permit issued for the proposed 120' tower applied; however, the required special use permit was not applied for and the project was stopped.

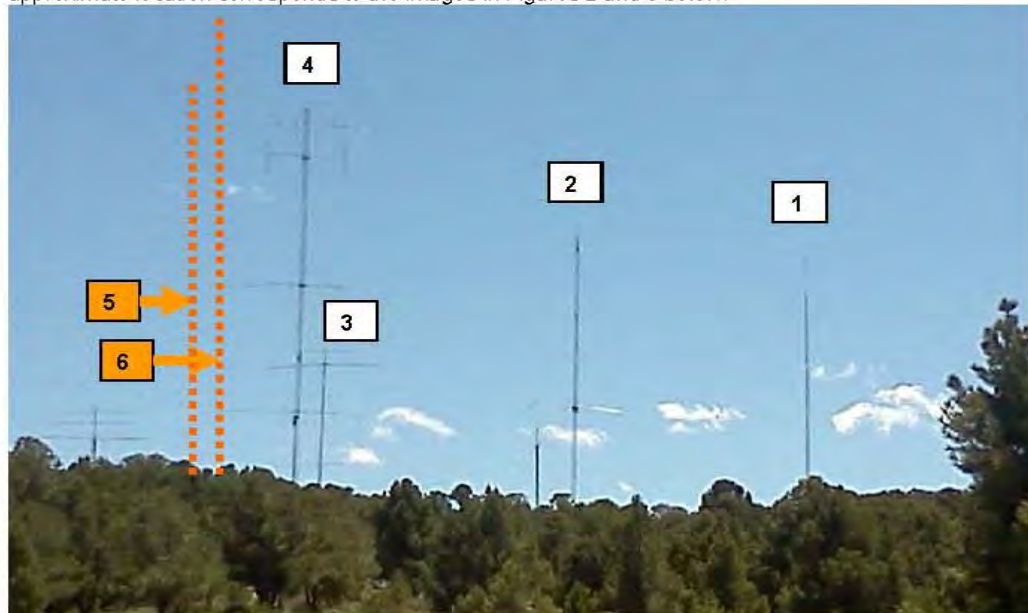
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**Figure 1:** Towers 1 through 4 are existing structures; towers 5 and 6 are proposed. Each number and approximate location corresponds to the images in Figures 2 and 3 below.



**Figure 2:** This south facing image (from Panamint Road) corresponds to the above estimated locations of existing towers. 5 and 6 (orange) shows the approximate placement of the proposed monopole structures.

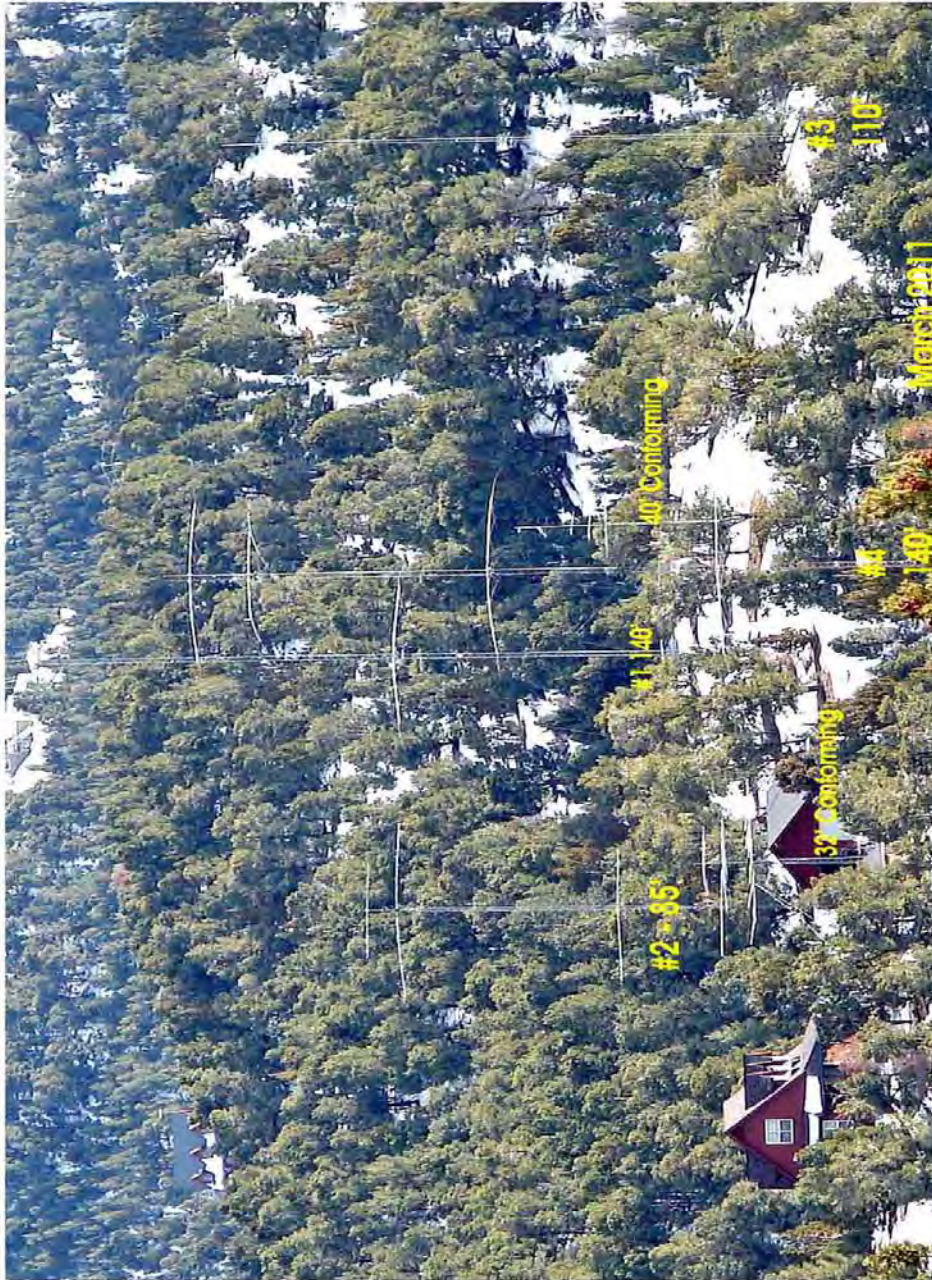
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*(Plaintiff's Note – Orange insertions in Figure 2 above, are not to scale and photo taken from 100'+ below grade of antennas)*

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**Figure 3:** The image provided by the applicant portrays the level of visual impact of the existing facility on the surrounding area. The two proposed monopole structure (see Figures 2 and 6) are not included in this visual representation. The information contained herein should be considered approximate.

3.2 Tower Performance: In Sowing of Need for Height of Amateur Radio Antenna Support

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*(Plaintiff's Note: Photo taken using 10X Zoom)*

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Structures submitted by the applicant and included as Exhibit F, the applicant argues a need for an antenna system of sufficient height and dimensions to provide reliable High Frequency, or 'shortwave', communications, under the changing variables that impact amateur radio communications. The report considers amateur radio antenna systems on two proposed supporting structures. The studies presented in the provided materials consider antenna heights to compute standard reliability criteria for communications on the 80 and 40-meter Amateur Radio bands for:

- a. A height of 195 feet for the 80-meter band (3.5 to 4.0 MHz) to Asia and Europe
- b. A height of 45 feet, for the 80-meter band (3.5 to 4.0 MHz) to Asia and Europe
- c. A height of 140 feet for the 40-meter band (7.0 to 7.3 MHz) to Asia and Europe
- d. A height of 45 feet for the 40-meter band (7.0 to 7.3 MHz) to Asia and Europe

The applicant has specified that the purpose the High Frequency (1.8 to 30 MHz) antenna systems is intended to serve is to provide effective communications with Europe, Asia, and North America. These three geographic areas are, according the applicant, the most highly populated areas for Amateur Radio operators. North America, basically Canada, the USA and Mexico, is located relatively close to Nevada, while Asia and Europe are far more distant, requiring higher antennas for reliable communications.

It is the conclusion of the applicant's submitted report that the proposed antenna systems at a height of only 45 feet are too low to accomplish the purpose they are intended to serve. He states that the proposed heights under this application for the antennas are barely adequate for the modest needs of these Amateur Radio operators, when measured against commonly used engineering metrics.

3.3 Benefit to Storey County. One standard, or "test", found in *Taormina* for whether an applicant may receive the special use permit is whether the proposed development of amateur radio antenna towers is "deemed essential or desirable for the public convenience or welfare" ("general public, as opposed to any individual operator" cited in *Howard*, p. 4). Section 17.62.010 states similar language in that "certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title where such uses are deemed essential or desirable for the public convenience or welfare."

The Communications Act, under which Part 97 of the Federal Communication Commission's rules governing Amateur Radio are promulgated, and states in 47 United States Code § 303 that radio licenses are issued only where the public interest, convenience, or necessity require. The proposal to operate the amateur radio system satisfies both requirements.

Accordingly, as stated in the submitted application, Mr. Taormina serves as the Emergency Coordinator for the local Amateur Radio Emergency Service, a national volunteer organization, and the Radio Amateur Civil Emergency Service, created by the Federal Emergency Management Agency and the Federal Communications Commission. These services are affiliated with the Department of Homeland Security (see Exhibit D, p.5), and the American Red Cross. The applicant also serves as a self-proclaimed volunteer member of the Storey County Local Emergency Planning Committee (LEPC). Storey County, while welcoming Mr.  
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Taormina's volunteer efforts, finds his involvement and amateur radio facility non-essential to the LEPC function.

In accordance with the above, access to the amateur radio communication system by key staff may prove to be beneficial and desirable for the public convenience and welfare during times of Emergency Operations Command and extended power or emergency communication outages.

#### IV. KEY ISSUES

**4.1 Setbacks.** In accordance with Section 17.40.050 of the Storey County Code, minimum setbacks for structures in the E-10-HR Zone shall be as follows: (a) front 30 feet; (b) rear 40 feet; and (c) sides 15 feet. The existing four towers and the proposed location for the additional two proposed structures appear to comply with these setback requirements (see Table 1 excerpt from submitted application correspondence). In addition, the distance of each tower to the nearest adjacent residential dwelling (except the applicant's residence) are outside the area in which a failed tower may fall.

While the existing and proposed structures have been designed by a Nevada licensed engineer, it is important to note that the height of each structure far exceeds the distance to each parcel boundaries in which they are located. In order to assure that people and structures on abutting parcels will remain safe from the neighboring towers, an engineering certificate must be submitted to Storey County stating that each structure complies with the International Building Code and can withstand lateral wind load common to the area as determined by the Storey County Building Department. In addition, it is recommended that an insurance policy adequate in scope is in place to insure any damage that may occur in association with tower failure.

Structure #	Tower Identifier	Height of Structure	Erected	Nearest Property Line	Setback
1	40 Meter Rohn 45G	140'	1997	76'	Side
2	20 Meter Rohn 25G	85'	1998	145'	Side
3	160 Meter Rohn 25G	110'	2007	34'	Side
4	20 Meter Rohn 45G	140'	2007	170'	Side
5	15 Meter Monopole (proposed)	120'	Base installed 7/08	38'	Side
6	80 Meter Monopole (proposed)	195'	Base installed 7/08	72'	Side

**Table 1:** Distance schedule of setbacks submitted by the applicant as part of the special use permit application. Data contained herein is considered approximate.

**4.2 Visual Impacts (towers):** The subject property and abutting parcels are designated low density residential (one residence per ten acres) and are zoned E-10-HR. The estimated distance between nearest residences and the amateur radio antenna towers are demonstrated in Table 2 and Figure 4. The existing and proposed tower designs, as submitted by the applicant, are summarized in Section III of this report and detailed in Exhibit E. As demonstrated by the applicant, existing and proposed towers applicable to this special use permit request range from 85' to 195' in height, and include various linear type antenna arrays which will not exceed the maximum height of 195'.

The existing towers are constructed of uncoated galvanized triangular steel lattice type

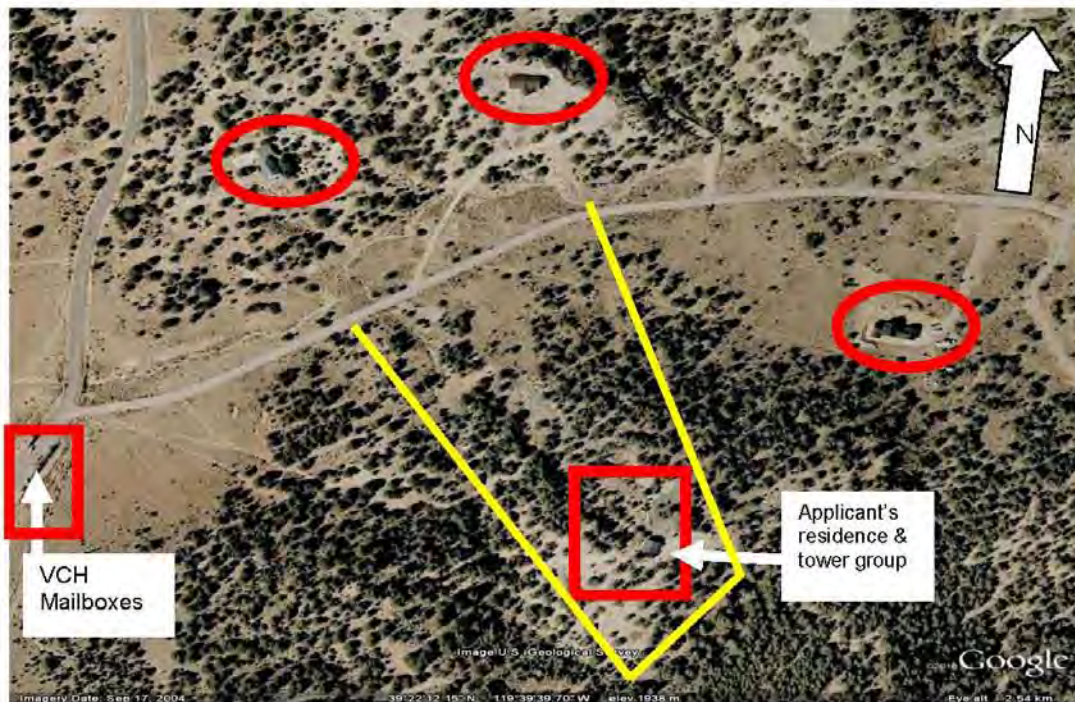
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framework which has oxidized to a dull-gray finish. The lattice framework with its exposed and dulled finish blends relatively well with the sky and surrounding mountain backdrop (see Figure 3 and 4). Information submitted by the applicant pertaining to the proposed monopole towers, however, describes a beige “Nevada Sand” (see photo in Figure 6) color that will be used. This color, or any variation thereof, will exhibit a stark contrast to the forested backdrop and blue or gray sky. Staff recommends, as demonstrated in the list of conditions for this special use permit, that a durable coating which visually resembles the non-reflective (dull) gray finish that is seen of the existing structures be applied to the additional structures, if approved.

Structure #	Tower Identifier	Distance to Nearest Adjacent Residential Structure
1	40 Meter Rohn 45 G (140')	960'
2	20 Meter Rohn 25G (85')	802'
3	160 Meter Rohn 25 G (110')	873'
4	20 Meter Rohn 45G (140')	670'
5	15 Meter Monopole (proposed) (120')	610'
6	80 Meter Monopole (proposed) (195')	721'

**Table 2:** The distances indicated above were provided by the applicant (see Exhibit D). An on-site visual determination was conducted to verify general accuracy thereof. The approximate distances above appear to be correct.



**Figure 4:** Red circles show approximate location of the nearest adjacent residences.

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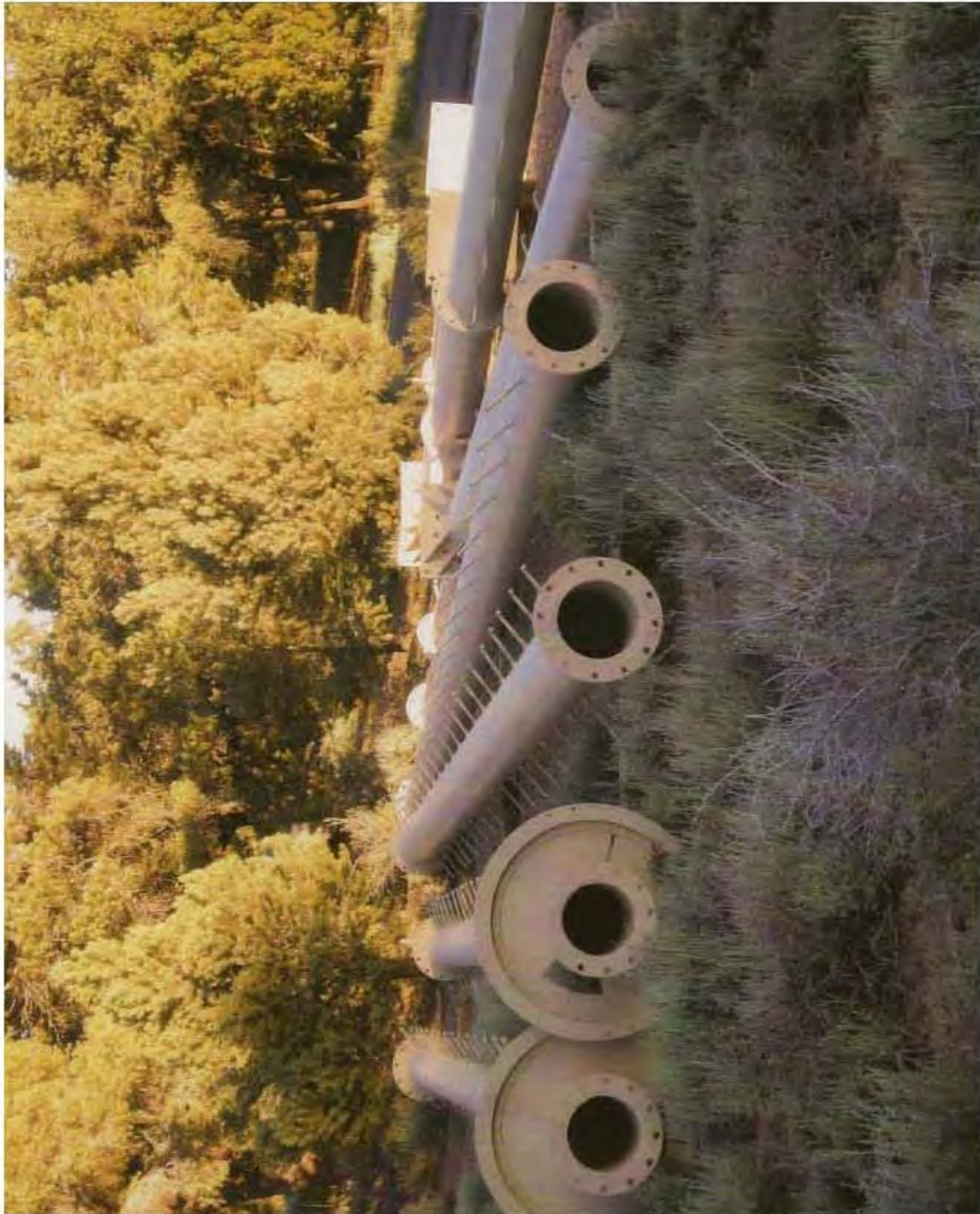
**Figure 5:** Photos illustrate visibility of existing amateur radio antenna towers. The two proposed monopole structures (see Figure 6 below) are not included in this visual representation. Visibility of the existing structures is also portrayed in Figure 3 above.

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**Figure 6:** The proposed monopole structures have a tapered design with a base diameter of twenty (20) inches and a tip diameter of ten (10) inches. Final design, as recommended by staff, will be pursuant the approval of the building department.

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4.3 Visual Impacts (FAA lights/coloration): The Federal Aviation Administration (FAA) requires towers (“obstructions”) to be lighted (beacons) with devices which either flash, strobe, remain steady burning, or perform a combination thereof. The FAA states specifically that, “Any temporary or permanent structure, including all appurtenances, that exceeds and overall height of 200 feet (61m) above ground level (AGL) or exceeds any obstruction standard contained in 14 CFR [Code of Federal Regulations] part 77, should normally be marked and/or lighted” (US Department of Transportation Federal Aviation Administration, p. 3, 2007).

The existing and proposed amateur radio antenna towers are between 85’ and 195’ and should require no FAA signal lighting or applied coloration. In order to maintain the rural residential character of the surrounding area, including the area’s dark skylines (see regulations for outdoor lighting in Chapter 8.02, “Dark Skies”, of the Storey County Code) the height of all structures (including antennas and other devices placed thereupon) should be limited to no more than 195’ and the entire premises should be limited in design and placement so that no FAA lighting or applied coloration becomes necessary.

4.4 Activity and Traffic: The amateur radio and computer controls are located in a segregated portion of a detached two-car garage. The radio system will be in operation 24 hours per-day, 12 months a year. There are no customers or employees associated with the operation, with exception of maintenance workers who may enter the premises occasionally to make repairs and adjustments to the system. Temporary traffic related to construction of the two additional towers, if approved, will take place for a limited period of time and is expected to impose minimal to no impacts on the surrounding area.

4.5 Noise: The applicant proposes to maintain a portable 50 kilowatt (5,000 watt) back-up generator in order to maintain communications and provide for soft shut-down of radio/computer equipment during power outages. Staff recommends that the SUP stipulates that the generator is only used during such times of necessity. Any other use of the machine should necessitate sound muffling and encasement in a sound-insulated structure sufficient in design to abate all noise that may take place at parcel boundary lines. There are no other anticipated noise sources associated with the operation.

4.6 Electromagnetic Interference. There has been no reported interference with emergency and non-emergency communications related to existing amateur radio operation. Potential interference from additional systems put in place may result. It must be noted, however, that the regulation and enforcement of any form of interference resulting from amateur radio systems is entirely within the jurisdiction of the Federal Communications Commission (FCC). No local jurisdiction may impose or enforce regulations related thereto. All complaints related to alleged interference from the amateur radio system must be submitted directly to the FCC.

4.7 Emergency Access. Access and circulation for vehicles and emergency equipment is well facilitated throughout the premises. As there are safety risks associated with work being done on or in connection with the towers and electrical systems, the permit holder must maintain clear emergency vehicle access ways. In addition, all persons working within the premises need to be informed by the applicant to dial Emergency Services Direct-Connect 775.847.0950 (in lieu of 9-11) from cellular telephones during times of emergencies.

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Figure 7: The paved driveway facilitates continuous circular traffic flow. Provided that the travel way is maintained free of vehicles and other obstructions, there appears to be adequate travel and staging space for emergency vehicles and other equipment.

4.8 Emergency Management Plan. The applicant should develop a comprehensive Emergency Management Plan which is submitted to Storey County Emergency Fire and Management for review and approval prior to the special use permit being issued. The plan shall include, but not be limited to, the following in case of failure of one or more amateur radio antenna towers and related appurtenances: (1) Permit Holder's emergency contact phone number(s); (2) emergency contact procedure, including for Dispatch 9-1-1, Storey County Emergency Direct-Connect 775.847.0950, and Fire and Emergency Management Departments; (3) documenting and reporting; (4) post structure failure management, clean-up, reclamation, and material disposal; (5) electrical system shut-down procedure; (6) disclosure and management of hazardous materials (e.g., asbestos) or other conditions (e.g., radiation), if applicable; and (7) post structure failure damage reporting and treatment of affected neighboring properties.

#### **V. LAND USE COMPATIBILITY & PROJECT ALTERNATIVES**

The purpose and findings set forth in Section 17.40.015 (Estate Zoning) of the County Code state that, "The E estate zone is established for areas particularly suited for low density residential use, to further enhance the quality of life and to prohibit the development of uses which are incompatible and detrimental to a residential environment".

While the existing amateur radio antenna towers are in fact visible to the neighboring areas, they do not appear to cause detriment or otherwise impact the "quality of life" that presently exists in the residential area. The two proposed monopole towers, exclusively, in accordance with the recommended conditions of approval, also do not appear to cause substantial aesthetic impacts to the area. Erecting the two proposed monopole towers in addition to the existing structures, creating the appearance of an "antenna farm", however, appears to cross that threshold and is hereby found to substantially impact the visual aesthetics and character of the surrounding area.

In accordance with *Taormina* and PRB-1, the county may "attempt to negotiate a compromise with the applicant" in order to provide for a "reasonable accommodation" for amateur radio

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communications in administering practicable regulations with regard to health, safety, and aesthetic considerations for the area. Under the rule of the Ninth Circuit Court noted in *Howard* and included in *Taormina*, “the city [county] may deny the antenna permit” if attempts “to negotiate a compromise with the [amateur radio] applicant” (p.5) in accordance with factual findings are unsuccessful (*Taormina*, p.5).

Accordingly, staff recommends that the applicant is granted a special use permit to operate the amateur radio communications facility; however, the motion for approval should be consistent with stated findings and apply the limitations detailed in the recommended motion in Section XI if this report.

#### **VI. PUBLIC SAFETY**

In addition to maintaining necessary setback from parcel boundaries, a certificate from a Nevada licensed structural engineer will need to be submitted stating that the towers meet or exceed local building code regulations and lateral wind load requirements as determined appropriate by the Storey County Building Department.

#### **VII. GENERAL ORDINANCE COMPLIANCE**

17.12.044 (Height of Buildings) of the County Code states that, “In the R-1, R-2, E, A, PUD, and F zones, no building, manufactured building or manufactured home shall exceed a height of three stories or thirty-five feet, whichever is higher, except as may be allowed by special use permit.” It continues that, “Radio, television, and other communication masts may extend not more than forty-five feet above grade level, provided that the same may be safely erected and maintained at such height in view of surrounding conditions and circumstances.”

The ruling in *Taormina* states that ambiguous language in this Section could apply to radio communication towers as “buildings” not to exceed 35 feet without special use permit, or “communication masts” not to be more than 45 feet above grade – with no provision for special use permit provided. The Court, however, also points to the clear applicability of Section 17.62.010 (Special Uses) to communication masts in that, “Certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title where such uses are deemed essential or desirable for the public convenience or welfare.” The Court concluded that, notwithstanding the provisions set forth by 17.12.044, the regulations in 17.62.010 do apply.

#### **VIII. MASTER PLAN**

The proposal appears to comply with the provisions of the Storey County Master Plan. Emergency communications during times of power failure may be enhanced by the amateur ham radio operation making the proposal consistent with provisions on the Mater Plan for Emergency Response and Planning. No provisions of the Master Plan prohibit the use.

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AREA DESCRIPTION			
	LAND USE	MASTER PLAN DESIGNATION	ZONING
SUBJECT LAND	Residence and amateur ham radio communication towers	Estate (10 ac.)	HR-10
LAND TO NORTH	Occupied Residence	Estate (10 ac.)	HR-10
LAND TO SOUTH	Occupied Residence	Estate (10 ac.)	HR-10
LAND TO EAST	Occupied Residence	Estate (10 ac.)	HR-10
LAND TO WEST	Vacant	Estate (10 ac.)	HR-10

#### **IX. RECOMMENDED CONDITIONS OF APPROVAL:**

All of the following conditions shall be met to the satisfaction of Storey County Community Development Department staff, unless otherwise noted:

1. **Special Use.** This Special Use Permit (SUP) No. 2011-010 shall be for the purpose of operating amateur ham radio antenna towers as defined and regulated pursuant to the advisory motion made by the Storey County Planning Commission and approved by the Board of Storey County Commissioners on property located at 370 Panamint Road (APN 003-431-18), Highland Ranches, Storey County, Nevada. The operation shall remain in compliance with all of the provisions set forth by this SUP and federal, Nevada State, and Storey County codes and regulations, including the Federal Communications Commission (FCC). Issuance of this SUP does not convey property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local laws or regulations.
2. **Requirements.** The Permit Holder shall apply for all required permits and licenses, including building and fire permits, for the project within twelve (12) months from the date of final approval of SUP No. 2011-010, and continuously maintain the validity of those permits/licenses, or this approval shall be null and void. Additionally, the Permit Holder shall maintain and furnish proof at the beginning of each year to Storey County of a current valid license from the Federal Communications Commission (FCC) to operate an amateur radio. In the event the amateur radio license expires for a period of 30 days or more, the associated project shall be deemed abandoned and all associated towers and antennas must be removed within 180 days thereof at the Permit Holder's expense. This SUP shall remain valid as long as the Permit Holder remains in compliance with the terms of this SUP and Storey County, Nevada State, and federal regulations. No construction or permitting for construction shall commence prior to issuance of the SUP.
3. **Transfer of Rights.** This SUP shall inure to the record owner that resides at the residence of the Subject Property and to the Permit Applicant (Thomas and Midge Taormina) and shall run with the land defined herein. The SUP shall be non-transferrable.
4. **Indemnification/Insurance.** The Permit Holder warrants that the future use of land will conform to the requirements of Storey County, State of Nevada, and applicable federal

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regulatory and legal requirements; further, the Permit Holder warrants that continued and future use of the land shall so conform. The Permit Holder and property owner(s) agree to hold Storey County, its officers, and representatives harmless from the costs and responsibilities associated with any damage or liability, and any/all other claims now existing or which may occur as a result of this SUP. The Permit Holder shall maintain satisfactory liability insurance for all aspects of this operation under SUP No. 2011-010 for a minimum amount of \$1,000,000.00 (one million dollars) and provide proof thereof to Storey County prior securing rights to the SUP.

5. Emergency Telephone. Any persons located on the premises in connection with maintenance, repairs, or other work to the amateur radio system and associated antenna towers shall be made aware to dial Storey County **Emergency Services Direct-Connect 775.847.0950** (in lieu of 9-11) when dialing emergency service from **cellular telephone**. **Emergency 9-11 still applies to landline telephones.**
6. Emergency Management Plan. A comprehensive emergency management plan shall be developed by the Permit Holder and submitted to the Storey County Emergency Management Department for review and approval prior to securing rights to the SUP. The plan shall include, but not be limited to, the following in case of failure of one or more amateur radio antenna towers and related appurtenances: (1) Permit Holder's emergency contact phone number(s); (2) emergency contact procedure, including for Dispatch 9-1-1, Storey County Emergency Direct-Connect 775.847.0950, and Fire and Emergency Management Departments; (3) documenting and reporting; (4) post structure failure management, clean-up, reclamation, and material disposal; (5) electrical system shut-down procedure; (6) disclosure and management of hazardous materials (e.g., asbestos) or other conditions (e.g., radiation), if applicable; and (7) post structure failure damage reporting and treatment of affected neighboring properties.
7. Closure/Reclamation. Any tower or antenna out of operation for longer than twelve (12) consecutive months shall be deemed abandoned. Removal of the abandoned tower(s), antenna(s), and other appurtenance(s) (appurtenances include, but are not limited to: foundations/pads; anchor points; guy wires; electrical wiring, connections, and conduit; and ground excavations) shall be completed at the Permit Holder's expense within 180 days after abandonment, to the satisfaction of Storey County. Under no circumstances shall Storey County, its officers, and representatives bare any cost or responsibility for the removal of said facilities or reclamation thereof.
8. Necessity to Local Jurisdiction. In accordance with section 17.62.010 of the County Code and applicable regulations under the Federal Communications Commission in determining that the Amateur Radio facility is used partly for the convenience and necessity of the local jurisdiction and community, the Permit Holder shall coordinate with the Storey County Emergency Management Departments to develop a binding agreement acceptable thereby which will enable the Amateur Radio facility and/or the operator (Permit Holder) to be utilized by the County during times of Emergency Operations Command, or extended power, or communication outages.
9. Plans Submittal. The Applicant shall provide Storey County Community Development Department site plans, drawn to scale, which shall include dimensions of existing and proposed structures (towers), including guy wires and anchor points, as applicable,

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setback dimensions, and driveway dimensions.

10. Setbacks. In accordance with Section 17.40.050 of the Storey County Code, minimum setbacks for each tower shall be as follows: (a) front yard, 30 feet; (b) rear yard, 40 feet; and (c) side yards, 15 feet. The minimum setback requirement shall apply to towers, antennas, foundation pads, and buildings. Reduced setbacks for guy wires, anchor points, and other appurtenances of the tower system shall be subject to the approval of the Storey County Building Department. Existing approved guide wire anchor(s) and associated guy wire foundation(s) shall be allowed to remain at their existing location(s) so long as they are located entirely within the Permit Holder's property.
11. Antenna Limitations. The amateur radio communication towers and related structures shall be used exclusively for Yagi array and wire amateur "ham" radio antennas. The structures shall not be used to support common-carrier cellular telephone or any other commercial purpose antenna or device. The towers shall not be used to support other items not related to amateur "ham" radio operations, such as lights, flags, banners, pennants, etc. Anti climbing devices shall be installed at each tower to protect the public.
12. Noise. Installation or use of generator(s) (also to include "alternator(s)") as a power source shall not be permitted unless they are muffled and remain in a sound-insulated building sufficient in design to abate all noise that would take place at the parcel boundary line. This condition shall not apply during times of emergency power-outage.
13. Lighting. Any outdoor lighting shall be installed and operated in accordance with Chapter 8.02 of the Storey County Code ("Dark Skies"). No tower or antennas applied thereto shall be constructed or altered to a height that would necessitate Federal Aviation Association (FAA) beacon lighting. There shall be no direct or indirect illumination of or on any tower or antenna system. The FAA shall be the responsible agency for requiring, or not requiring, beacon lighting or other signaling devices to be applied to the structures.
14. Visual Impact. All exterior finishes for each tower, including additional towers as applicable to the approved SUP, shall be non-reflective, dull in appearance, and gray in color (with a hue similar to that of the existing oxidized galvanized steel structures) in order to facilitate blending with the backdrop terrestrial and sky environment. The existing galvanized steel lattice towers may remain uncoated and exposed to the natural environment (as determined safe by the engineered design) in order to retain their naturally occurring dull gray exterior.
15. Design Limitations. The two (2) additional monopole structure towers, if approved as part of SUP No. 2011-010, shall be limited to a tapered design approved by Storey County with a base diameter not exceeding twenty (20) inches and a tip diameter not exceeding ten (10) inches. The height and width of all tower approved by this SUP shall remain as proposed in the SUP application or be reduced. No tower shall be constructed or altered to a height that would necessitate Federal Aviation Association (FAA) beacon lighting.
16. Electrical Distribution and Controls. The location, routing, and alignment of exterior electrical and communication controls, associated wiring, and power lines shall be approved by Storey County Building Department, when applicable.
17. Compliance. The Permit Holder shall be responsible for maintaining the premises and managing operations in accordance with all conditions and stipulations set forth by SUP

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2011-010 and all other federal, Nevada State, and Storey County codes and regulations. Failure to comply with the requirements herein shall elicit a written warning to the Permit Holder by Storey County on the first and second offense. A third offense shall warrant Storey County to revoke the SUP. Storey County shall reserve the right to conduct periodic reviews of the Permit Holder's compliance with all conditions and stipulations of the SUP.

#### X. LEGAL REQUIREMENTS

At the conclusion of the hearing, the Planning Commission shall take such action thereon as it deems warranted under the circumstances and shall announce and record its action by formal resolution, and such resolution shall recite the findings of the Planning Commission upon which it bases its decision. Conditions of approval shall be included in the resolution. The resolution shall be sent to the Board of County Commissioners within twenty-one (21) days of approval of the minutes by the Planning Commission. The decision of the Planning Commission in the legislative matter of granting, granting with conditions, or denying the special use permit shall be advisory only to the Board of County Commissioners.

#### XI. PROPOSED MOTIONS:

This section includes five motions from which to choose. The first set, A and B, are in accordance with the advisory recommendation by the planning commission at its March 3, 2011, hearing, with minor staff amendments (explanation provided therein), and with stated findings under *Taormina v. Storey County* as well as federal, Nevada State, and Storey County regulations and rulings applicable to the installation and maintenance of amateur ham radio antenna towers exceeding 45 feet in height. The subsequent three motions, C, D, and E, offer alternatives in accordance with federal rulings that authorize the Governing Board to "attempt to negotiate a compromise with the applicant" in order to "reasonably accommodate" amateur radio antenna towers. The presented motions are as follows:

**PROPOSED: MOTION A:** Based on findings and compliance with all conditions and stipulations stated forth in this report, staff moves to recommend that the Board of Storey County Commissioners approve SUP Application No. 2011-010, as recommended by the planning commission, to **maintain the four (4) existing amateur ham radio antenna towers** in accordance with the limitations set forth hereby and **deny installation of any additional towers**. In addition to the planning commission's advisory recommendation, this motion would **allow the permit holder to move the permitted towers around the associated property**, so long as each device remains in compliance with the limitations of this special use permit, the applicable Storey County Building Code, and setbacks. Staff also moves to recommend that Condition #12 approved by the planning commission is amended to allow the use of a generator outside of a sound insulated building in accordance with the applicable zoning regulation during times of emergency power outages. "Existing" contained herein means that each permitted tower will remain at or lower than its current height and at or less than its current body mass (no monopole structures permitted).

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**PROPOSED: MOTION B:** Based on findings and compliance with all conditions and stipulations stated forth in this report, staff moves to recommend that the Board of Storey County Commissioners approve SUP Application No. 2011-010, as recommended by the planning commission, to **maintain four (4) existing amateur ham radio antenna towers and deny installation of any additional towers.** Staff also moves to recommend that Condition #12 approved by the planning commission is amended to allow the use of a generator outside of a sound insulated building in accordance with the applicable zoning regulation during times of emergency power outages. “Existing” contained herein means that each permitted tower will remain at or lower than its current height and at or less than its current body mass (no monopole structures permitted).

**ALTERNATIVE: MOTION C:** A possible alternative motion based on findings and compliance with all conditions and stipulations stated forth in this report is to approve SUP Application No. 2011-010 to **maintain three (3) of the four (4) existing amateur ham radio antenna towers and to remove one (1) of those existing towers** to be determined by the permit holder. “Existing” contained herein means that each permitted tower will remain at or lower than its current height and at or less than its current body mass (no monopole structures permitted).

**ALTERNATIVE: MOTION D:** A possible alternative motion is to approve Planning Case No. 2011-010 to **maintain all existing amateur ham radio antenna towers and install two additional monopole towers** in accordance with SUP Application No. 2011-010. “Existing” contained herein means that each permitted tower will remain at or lower than its current height and at or less than its current body mass (no monopole structures permitted).

**ALTERNATIVE: MOTION E:** A possible alternative motion is to approve SUP Application No. 2011-010 to **maintain all existing amateur ham radio towers which have received approved Storey County Building Permits (one 32’ and one 40’ tower) and deny those which have not been erected with an approved Building Permit.** This motion would constitute a denial of SUP Application No. 2011-010. “Existing” contained herein means that each permitted tower will remain at or lower than its current height and at or less than its current body mass (no monopole structures permitted).

Prepared by Austin Osborne, Senior Planner

**Enclosed Exhibits:**

- Exhibit A: Federal District Court Ruling *Taormina v. Storey County*
- Exhibit B: Ninth Circuit Court Ruling *Howard v. City of Burlingame*
- Exhibit C: PRB-1 FCC Ruling
- Exhibit D: Supplemental Information Accompanying SUP Application
- Exhibit E: Accompanying Exhibits for SUP Application
- Exhibit F: Showing Need for Height Accompanying SUP Application
- Exhibit G: Development Application No. 2011-010
- Exhibit H: Letter to Osborne from Applicant

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