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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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