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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS S. TAORMINA and MIDGE A.
TAORMINA,

Plaintiffs,

vs.

STOREY COUNTY, NEVADA and DOES
1-10,

Defendants.

CASE NO. 3:11-CV-00645-LRH-VPC

**STIPULATION AND ORDER FOR DISMISSAL
WITH PREJUDICE**

COME NOW, Plaintiffs, THOMAS S. TAORMINA and MIDGE A. TAORMINA, and Defendant, STOREY COUNTY, by and through their respective counsel, and pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby stipulate that the above-entitled matter may be dismissed with prejudice in its entirety and each party to bear their own costs and attorney's fees.

IT IS FURTHER STIPULATED that this Court maintain jurisdiction of this matter to enforce the provisions of the settlement reached by the parties which is inclusive of the conditions of the special use permit approved by the Storey County Board of County Commissioners on May 21, 2012 (Special Use Permit No. 2011-010). The conditions approved by the Storey County Board of County Commissioners and agreed to by THOMAS S. TAORMINA and MIDGE A. TAORMINA are attached hereto as Exhibit 1.

* * *

1 DATED: June 27th, 2012.

DATED: June 28th, 2012.

2 McMAHON LAW OFFICES, LTD.

THORNDAL, ARMSTRONG DELK,
BALKENBUSH & EISINGER

3
4 By 

By 

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STOREY COUNTY, NEVADA

10 Attorneys for Plaintiffs
11 THOMAS S. TAORMINA and MIDGE A.
TAORMINA

12
13 **ORDER**

14 IT IS SO ORDERED this 29th day of June, 2012.

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18 _____
19 LARRY R. HICKS
20 UNITED STATES DISTRICT JUDGE

EXHIBIT 1

EXHIBIT 1

CONDITIONS OF SUP APPROVAL

All of the following conditions of Special Use Permit (SUP) No. 2011-010 shall be met to the satisfaction of Storey County Community Development Department staff, unless otherwise noted:

1. Special Use.

SUP No. 2011-010 shall be for the purpose of erecting and maintaining amateur radio antenna support structures pursuant to the settlement agreement between Thomas and Midge Taormina (the "Permit Holders") and Storey County and the SUP approval by the Board of Storey County Commissioners for the property located at 370 Panamint Road (APN 003 431-18), Highland Ranches, Storey County, Nevada (the "Property"). 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. Required Permits and Licenses.

If not already done, the Permit Holders shall apply for all required permits and licenses, including building and fire permits as may be necessary, for the project within twelve (12) months from the date of final approval of SUP No. 2011-010. All applications for permits or licenses will be processed expeditiously. In the event that the amateur radio licenses for Thomas and Midge Taormina expire for a period of 30 days or more, the associated antenna support structures shall be deemed abandoned and taken down in accordance with Condition No. 7 (Closure and Reclamation) of this SUP.

3. No transfer of Rights.

This SUP is personal to the Permit Holders and shall belong exclusively to Thomas and/or Midge Taormina and the real property applicable to this SUP so long as Thomas and/or Midge Taormina reside for a material part of each year on the property. This SUP shall not be transferrable.

4. Indemnification/Insurance.

The Permit Holders agree to hold Storey County, its officers, and representatives harmless from the costs and responsibilities associated with any damage or liability to persons or property and any/all other claims now existing or which may occur as a result of construction and maintenance under this SUP. The Permit Holders 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 to the issuance of a building permit pursuant to the SUP.

5. Emergency Telephone Contact.

Any persons located on the premises in connection with maintenance, repairs, or other work to the amateur radio system and associated antenna support structures 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 Holders 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 support structures and related appurtenances: (1) Permit Holders 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, cleanup, 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. Abandonment/Closure/Reclamation.

Any antenna support structure out of operation for longer than (12) consecutive months shall be deemed abandoned. All antenna support structures and antennas shall be taken down at the Permit Holders' expense within 180 days of abandonment or as otherwise determined by a plan which is mutually acceptable to Storey County and the Permit Holders and submitted to be filed with Storey County Community Development. Under no circumstances shall Storey County, its officers, or representatives bear any cost or responsibility for the deconstruction, disassembly, or removal of any antenna support structure or reclamation.

8. Finding of Necessity to Local Jurisdiction.

In accordance with section 17.62.010 of the Storey County Code and applicable FCC regulations Storey County finds that the Amateur Radio facility is used partly for the convenience and necessity of the local jurisdiction and community. Accordingly, the Permit Holders shall collaborate with Storey County to develop a mutually acceptable plan by which county-owned emergency radio communications repeater antenna(s) may be installed and operated on one or more antenna support structures applicable to this SUP (as compatible with all amateur radio equipment thereon or proposed to be placed

thereon) and by which necessary ground support equipment may be placed and operated within the property of Tom and Midge Taormina. This condition of approval recognizes that Storey County shall be responsible for all costs for acquiring, installing, maintaining, operating (i.e., utility costs), and repairing the county-owned antennas, ground support equipment, and other appurtenances, including any associated financial burden by the Permit Holders, but Storey County shall not be assessed any fee or other charge for said use of the tower and facility. Storey County will insure that any County-owned equipment placed upon exterior portions of the facility shall comply with the visual design requirements under this SUP.

9. Plans Submittal.

If not done already, the Applicants shall provide Storey County Community Development Department site plans, drawn to scale, which shall include dimensions of existing and proposed antenna support structures, including guy wires and anchor points, as applicable, setback dimensions, and driveway dimensions. It is hereby noted that all necessary plans appear to have been submitted to Storey County; if not, the Permit Holders and Storey County hereby agree to work together in good faith to get all necessary plans submitted as required by the Storey County Code and this SUP.

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 antenna support structures, 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 guy 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 Holders property.

11. Restrictions on Mounted Devices; Anti-climbing Required.

The amateur radio antenna support structures shall be used exclusively for yagi array and wire amateur radio antennas. Except for antennas or other devices used for the exclusive use of the residence on the property, the antenna support structures shall not support common-carrier cellular telephone or any other commercial purpose antenna or device. The antenna support structures shall not be used to support other items not related to amateur radio operations. Anti-climbing devices shall be installed at each antenna support structure to protect the public.

12. Noise.

Power generator(s) shall comply with Storey County Code, Chapter 8.04 and Storey County Code, § 17.40.070. Nonetheless, any generator(s) on the property shall only operate during power outages and/or during routine recharge and maintenance intervals. Maintenance/recharge operation shall be limited to three thirty-minute intervals per week and shall take place on weekdays (Monday thru Friday) between the hours of 11:00 a.m. and 3:00 p.m. Other maintenance and repair of the facility, except during emergencies, shall be limited to 9:00 a.m. and 5:00 p.m. during said weekdays.

13. Lighting.

Any outdoor lighting shall be installed and operated in accordance with Chapter 8.02 of the Storey County Code ("Dark Skies"). No support structure or antennas applied thereto shall be constructed or altered to a height that would necessitate Federal Aviation Administration (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 antenna support structure, including additional antenna support structures 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 oxidized galvanized steel antenna support structures existing on-site) in order to facilitate blending with the backdrop terrestrial and sky environment. The existing and additional galvanized steel lattice antenna support structures 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. Antenna Support Structures — Limitations and Height.

The following indicates the number and type of amateur radio antenna support structures (towers) that are permitted under this SUP. At no time during the duration of this SUP shall additional amateur radio antenna support structures be permitted on the property, including antenna support structures at, below, or above 45' in height. The Permit Holders shall be permitted to repair, remove, add to, modify, and maintain antennas upon each support structure in accordance with the provisions of this SUP without modifying or amending this SUP or applying for a new SUP. Building Permit requirements shall still apply in accordance with the Storey County Code. Antennas as well as fasteners and other holding devices placed upon the support structures shall not be designed or placed such as to violate the specific provisions or the letter and spirit of the regulations under this SUP.

- a. **Towers 1 and 2 (45' lattice):** These structures exist as of the date of this SUP, are permitted to remain at or below 45', and shall otherwise remain unaltered from their current state, including height (unless reduced), width, shape, mass, and surface color/treatment.
- b. **Tower 3 (45' lattice):** This structure exists as an 85' antenna support structure as of the date of this SUP. It shall be reduced to a total height at or below 45', shall remain a lattice structure, and shall remain at its current width, shape, mass, and surface color/treatment.
- c. **Towers 4 (45' lattice):** This structure exists as a 110' antenna support structure as of the date of this SUP. It shall be reduced to a total height at or below 45', shall remain a lattice structure, and shall remain at its current width, shape, mass, and surface color/treatment.
- d. **Tower 5 (120' monopole):** This structure shall be permitted as proposed in SUP Application No. 2011-010, Building Permit Application No. 8354, and the PE stamped engineered plans submitted to the Community Development Department, and shall remain at or below 120' in height.
- e. **Towers 6 and 7 (140' lattice):** These structures exist as of the date of this SUP, are permitted to remain at or below 140' in height, and shall otherwise remain unaltered from their current state, including height (unless reduced), width, shape, mass, and surface color/treatment.
- f. **Tower 8 (175' monopole):** This structure shall remain similar in width, shape, and mass as proposed in SUP Application No. 2011-010 and Building Permit Application No. 8354; however, it shall be limited to a total height at or below 175'. Submitted engineered plans for the previously proposed 195' support structure shall be amended as necessary for reduced height and submitted to the Community Development Department for approval.

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 Holders shall be responsible for maintaining the premises and managing operations in accordance with all conditions and stipulations set forth by SUP 2011-010 and all other federal, Nevada statutes, and Storey County codes and regulations. Failure to comply with the requirements herein shall elicit a written warning to the Permit Holders

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 Holders compliance with all conditions and stipulations of the SUP.

18. SUP Conditions Recording.

This SUP approval, inclusive of all conditions of approval, shall be recorded with the Office of the Storey County Recorder to accompany the deed for the real property owned by Thomas and Midge Taormina and applicable to this SUP.