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Tiffany Lee Parker, La Plata County Clerk eml Trans # 23523

RESOLUTION NO. 2014-6

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, AMENDING THE LA PLATA COUNTY LAND USE CODE TO ADDRESS DEVELOPMENT OF TELECOMMUNICATIONS FACILITIES

WHEREAS, pursuant to the Colorado Planning Code, C.R.S. §§ 30-28-101, et seq., the Board of County Commissioners of La Plata County, Colorado (the "Board") is empowered to plan and provide for the physical development of the unincorporated territory of La Plata County (the "County");

WHEREAS, the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101, et. seq., empowers the Board to plan for and regulate the use of land within the unincorporated territory of the County, including but not limited to: regulating the use of land on the basis of the impact thereof on the community or surrounding areas; regulating the location of activities and developments which may result in significant changes in population density; providing for phased development of services and facilities; and otherwise planning for and regulating use of land so as to provide for the planned and orderly use of land;

WHEREAS, Colorado counties possess those powers enumerated by the Colorado Constitution and Colorado Revised Statutes and such further incidental implied powers as are reasonably necessary to carry out the express powers;

WHEREAS, the Colorado Planning Code and Local Government Land Use Control Enabling Act constitute a broad delegation of authority to the County generally encompassing the subject of land use;

WHEREAS, pursuant to these authorities, the Board adopted land use regulations and subdivision regulations set forth in Subpart B of the La Plata County Code (the "Code");

WHEREAS, the Planning Commission for the County held duly noticed public hearings on November 14, 2013 and December 12, 2013, and after receiving competent evidence at the hearings, made a recommendation to the Board to approve Project No. 2013-0304;

WHEREAS, the Board held a duly noticed public hearing on January 7, 2014 and heard testimony and received competent evidence that the Code should be amended to modify and amend Sections106-111, 106-353, 106-373 and 106-393 and to add Sections 82-205, 82-206, 82-207, 82-208 and 106-116 to address the development of new telecommunications facilities as set forth in the attached Exhibit A; and

WHEREAS, the Board received competent evidence that it would be in the best interest of the general health, safety and welfare of La Plata County citizens to amend the Code to add Sections 82-205, 82-206, 82-207, 82-208 and 106-116 to address the development of new telecommunications facilities as set forth in the attached Exhibit A.

NOW THEREFORE, BASED UPON THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARINGS, BE IT RESOLVED BY THE LA PLATA COUNTY BOARD OF COUNTY COMMISSIONERS:

1. That the La Plata County Code shall be and is hereby amended to modify and amend Sections 106-111, 106-353, 106-373 and 106-393 and to add Sections 82-205, 82-206, 82-207, 82-208 and 106-116 to address the development of new telecommunications facilities as set forth in the attached Exhibit A.

2. The enactment of this Resolution is necessary for the immediate preservation of public health, safety and welfare and, therefore, this Resolution shall take effect on date of its adoption.

DONE AND ADOPTED IN DURANGO, LA PLATA COUNTY, COLORADO, this 21st day of January, 2014.

BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO

ATTEST:

Clerk to the Board

Julie Westendorff, Chair

Gwen Lachelt, Vice-Chair

Robert A. Lieb, Jr., Commissioner

EXHIBIT A

DIVISION 5. TELECOMMUNICATIONS FACILITIES.

Sec. 82-205. General provisions.

(a) *Purpose.* The general purpose of this division is to regulate the placement, construction, and modification of telecommunications facilities in order to protect the health, safety, or welfare of the public, while considering the need for sufficient telecommunications facilities and competitive wireless telecommunications services in unincorporated La Plata County, Colorado. More specifically, the purposes of this division are:

(1) To regulate the location of telecommunications facilities in unincorporated La Plata County;

(2) To protect residential areas and land uses from potential adverse impacts of telecommunications facilities;

(3) To minimize potential adverse visual impact of telecommunications facilities through careful design, siting, landscaping, and camouflaging techniques;

(4) To encourage shared use of telecommunication facilities as the preferred option to construction of new towers; and

(5) To avoid potential adverse impacts caused by telecommunications facilities by ensuring that such structures are carefully designed, constructed, modified, and removed when no longer used.

(b) *General definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them:

(1) *Antenna* means any device mounted on a tower or structure to receive, transmit, or relay wireless telecommunications signals.

(2) *Antenna mount* means a construction used for the sole purpose of attaching one or more antennae to an already existing structure. An antenna mount is not a tower.

(3) *Freestanding facility* means a telecommunications facility that consists of a tower, attached antennae, and associated support facilities.

(4) *Lattice tower* means any tower designed to support antennae and comprised of interconnected poles, pipes, bars, or wires. A lattice tower includes, but is not limited to, any tower that incorporates guy or supporting wires.

(5) *Monopole tower* means any structure designed to support antennae and which consists solely of a stand-alone ground mounted support pole or pipe, without guy or supporting wires.

(6) *Speculative tower* means a tower for which no antennae are immediately proposed.

(7) *Stealth tower* means a telecommunications facility consisting of a tower and antennae that have been designed to effectively blend in with the existing environment by use of camouflaging techniques. The determination that a telecommunications facility is a stealth tower shall be made by the director as the result of a pre-application conference prior to the submission of an application for such facility.

(8) *Structure* means a placement or combination of materials to form a construction for use or occupancy, whether installed on, above, or below the surface of land or water.

(9) *Structure-mounted facility* means any telecommunications facility, antenna, antenna mount, or support facilities mounted upon an already existing structure.

(10) *Support facilities* means any electrical or mechanical equipment, equipment cabinets, structures, and other forms of physical improvements used in support of towers and antennae.

(11) *Telecommunications facility* means any antennae, towers, support facilities, and personal property used to provide telecommunications services. The term telecommunications facility shall not include:

a. Amateur radio operators' equipment licensed by the Federal Communications Commission;

b. Any satellite earth station antenna two meters (i.e. six feet and six and six eighths inches) or less in diameter which is located in an area whose existing or intended use is commercial or industrial;

c. Any non-commercial satellite earth station antenna one meter (i.e. three feet and three and three eighths inches) or less in diameter;

d. Towers with a tower height of less than thirty-five feet, located on a gas or oil well pad, supporting only antennae that are solely used to transmit or receive information related to gas or oil well production.

e. Utility meters that enable communication between the meter and the central utility system.

(12) *Tower* means any structure designed to support one or more antennae in order to provide telecommunications services.

(13) *Tower height* means the distance measured from the lowest finished grade adjacent to the base pad to the highest point on the tower, including any antennae attached to the tower.

(c) *Development not subject to land use review.* A permit approved in accordance with this division shall be required prior to construction or modification of all telecommunication facilities, except the following development shall not be subject to county land use code review:

(1) Repairs that will not alter the physical appearance of the telecommunications facility;

(2) Removal of antennae from a telecommunications facility;

(3) Replacement of existing antennae on a telecommunications facility if the director determines that the new antennae are comparable in size to or smaller than the existing antennae; and

(4) The addition of support facilities within a structure, which will not expand the existing use/structure.

Sec. 82-206. Standards.

(a) *Collocation required.* Collocation shall be required for all new telecommunications facilities, except if waived by the director. Such waiver shall be approved by the director upon a submittal of a written request by the applicant that demonstrates a need for a new tower. To support a need for a new tower, the applicant shall provide evidence that demonstrates there are no existing towers or structures capable of supporting antennae that will provide the proposed telecommunications service, or evidence that demonstrates an unsuccessful good-faith effort to co-locate on existing towers or structures.

(b) *General standards.* In additional to all other applicable standards in subpart b, the provisions of this section shall apply. If the standards identified in this section conflict with any other standards and cannot be read harmoniously with such standards, the standards in this section shall control and apply.

(1) Telecommunications facilities shall be no larger than necessary to efficiently provide telecommunication services and space for collocation as required by section 82-206 (d) (3).

(2) Telecommunication facilities shall demonstrate, through certification from the Federal Communications Commission or other applicable federal agency, prior to permit issuance, compliance with federal frequency emissions limits.

(3) Building plans for telecommunication facilities shall be certified by a licensed professional engineer to be structurally sound and must meet applicable building code requirements.

(4) Telecommunications facilities shall be sited, designed, and screened to minimize the visibility of the facility. The environmental context, such as topography and vegetation, of the facility shall be considered when applying this standard.

(5) Existing vegetation and topography shall be preserved or improved to the greatest extent possible to provide screening for the support facility. If existing vegetation and topography do not adequately screen support facilities, other visual mitigation techniques shall be used, including but not limited to fencing, berms, and landscaping boulders. Any fencing shall be designed to blend into the character of the existing environment.

(c) *Design and performance standards for structure-mounted facilities.* In addition to the requirements of paragraph (b) of this section, the following standards shall apply to structure-mounted facilities:

(1) As determined by the director, all structure-mounted facilities shall be designed and constructed to blend with the architectural characteristics of the structure they will be mounted upon.

(2) Support facilities associated with structure-mounted facilities shall be either inside the structure, inside an existing equipment penthouse, or in a new shelter adjacent to and similar in material and color to an existing equipment penthouse or to the structure itself.

(d) *Design and performance standards for freestanding facilities.* In addition to the requirements of paragraph (b) of this section, the following standards shall apply to freestanding facilities:

(1) Speculative towers are prohibited.

(2) Lattice towers are prohibited unless the director determines in writing that:

a. The construction and maintenance of a monopole tower would not meet the standards of this section;

b. Aesthetic considerations favor the use of a lattice tower at the proposed location; or

c. A licensed engineer provides written certification that a monopole tower would not be technically feasible for the proposed project.

(3) New freestanding facilities shall be capable of supporting at least three other antennae mounts.

(4) The maximum tower height allowed is one hundred and ninety-nine feet.

(5) The setback from a tower to any property line shall be at least 1.3 times the tower height.

(6) Support facilities associated with freestanding facilities shall meet the following requirements:

a. Support facilities shall be located in an enclosed structure that is architecturally compatible with the surrounding environment or shall be screened completely with other visual mitigation techniques, including but not limited to, vegetation, berms, landscaping boulders, or an architecturally compatible wall or fence;

b. Where security fencing is used, such fencing shall enclose the minimum space necessary for safety;

c. Support facilities shall be grouped as closely as possible to each other and the tower; and

d. Support facilities shall not exceed a surface area of four hundred and fifty square feet per telecommunications provider.

e. Light fixtures located on or used for support facilities shall be shielded to prevent light trespass.

Sec. 82-207. Review process and application requirements.

(a) *Review process.*

(1) Administrative review. The following types of construction or modification of telecommunications facilities shall be subject to administrative review as described in chapter 82 of subpart b:

a. The addition of antennae to a stealth tower where the new antennae are camouflaged in a manner comparable to the existing antennae.

b. Structure-mounted facilities that do not increase the total height of the structure to which the facility is mounted. This measurement shall be made vertically from the antenna mount.

c. Structure-mounted facilities that increase the total height of the structure to which the facility is mounted but are completely screened with RF-transparent material (or non-RF-transparent material where possible).

d. The expansion of existing support facilities.

(2) Class I review. The following types of construction or modification of telecommunications facilities shall be subject to class I review as described in chapter 82 of subpart b:

a. Replacement of existing antennae on a telecommunications facility if the director determines that the new antennae are larger than the existing antennae.

b. Structure-mounted facilities that extend higher than the surface of the structure to which the facility is mounted but are not completely screened.

c. The construction of a stealth tower.

(3) Class II review. The following types of construction or modification of telecommunications facilities shall be subject to class II review as described in chapter 82 of subpart b:

a. Construction of a tower not subject to class I review.

b. Replacement of a tower not subject to class I review.

c. The addition of antennae to a tower if such addition is not subject to administrative review.

(b) *Application requirements.* The application requirements in this paragraph shall be required in addition to all other application requirements in this subpart b. The director may waive in writing any application requirements if he or she determines that they are not required to demonstrate compliance with the standards of approval for the proposed construction or modification. An application shall not be deemed complete until the department receives all information required in this section. Application review and actions by planning staff shall be as described in section 82-92.

(1) General application requirements. The following items shall be required for all applications for construction or modification of a telecommunications facility submitted pursuant to this division.

a. Proof that the lot subject to the application was legally subdivided.

b. A written narrative describing the purpose of the proposal and the nature of the construction or modification. The narrative shall clearly explain the type of service to be provided, the frequency or bandwidths to be used, and a graphic depiction of the area to be served by the telecommunications facility and of the area that is already being served by the telecommunications provider. The narrative shall also address lighting, security, and signage for the

telecommunications facility and explain how applicable requirements regarding these are met.

c. Elevation drawings of at least two sides of the proposed telecommunications facility in its entirety. Drawings of structure-mounted facilities must include the structure.

d. Photo-simulations of at least two sides of the proposed telecommunications facility. For modifications of existing facilities, photographs of the facility in its current state shall also be provided.

e. A licensed engineer's certification that the proposed construction or modification is structurally sound.

f. A description of the size, type, and output of any proposed lighting on the telecommunications facility. This may be included on the above-mentioned elevation drawings.

g. Written certification from the Federal Communications Commission or other applicable federal agency that demonstrates compliance with standards regarding electromagnetic radiation emissions.

(2) Class I application requirements. The following items shall be required for all applications for construction or modification of a telecommunications facility submitted pursuant to this division and subject to class I review.

a. For construction of a stealth tower, a written narrative describing the potential for future collocation on the stealth tower. The potential for collocation shall also be shown on the elevation drawings and certified by a licensed engineer.

b. For construction of a stealth tower or the addition of support facilities outside of an existing structure, a landscaping plan.

(3) Class II application requirements. The following items shall be required for all applications for construction or modification of a telecommunications facility submitted pursuant to this division and subject to class II review.

a. For construction of a lattice tower, documentation indicating that the construction and maintenance of a monopole tower would not meet the standards of this division, documentation indicating aesthetic considerations favor the use of a lattice tower at the proposed location, or a written certification from a licensed engineer that a monopole tower would not be technically feasible for the proposed project.

b. For construction of a tower, a written narrative describing the potential for future collocation on the tower. The potential for collocation shall also be shown on the elevation drawings and certified by a licensed engineer.

c. A landscaping plan.

Sec. 82-208. Abandonment, removal and reclamation.

(a) *Abandonment and removal determination.* The department may request that the board hold a hearing on abandonment and removal of a telecommunications facility. The board shall declare a telecommunications facility abandoned and require removal if the facility is unused by all telecommunication providers for a period of at least one hundred and eighty (180) days or if the facility presents an imminent danger to the health, safety or welfare of the public. If requested, a permittee shall provide to the director documentation of usage. Notice of the abandonment and removal hearing shall be provided to the permittee and property owner by certified mail at least ten days prior to the hearing.

(b) *Removal.* Upon a determination by the board that the telecommunications facility is abandoned and removal is required, the permittee shall have ninety days (90) to resume use of the facility or remove it.

(c) *Reclamation.* If a telecommunications facility is removed, the permittee shall at his or her own expense restore the lot or structure containing the facility to a condition substantially similar to that existing before the development. Such removal shall not include removal of any landscaping unless the director approves the removal or the property owner requests the removal.

Sec. 106-116. Telecommunications Facilities.

(a) In the Animas Valley Planning District, telecommunications facilities as defined in chapter 82, division 5 may only be constructed in the neighborhood commercial, general commercial, and industrial land use plan districts, except for the co-location of antennae on existing towers in any district.

(b) The construction of new telecommunication facilities or co-location of antennae as described above shall require approval of a special use permit. Application requirements shall be those listed for Class II approval in section 82-207 (b).

Sec. 106-111. Definitions.

Public and quasipublic facilities means schools; churches; cemeteries; grange halls; fire stations; utility and transportation facilities; and county, state or federal uses or facilities. All outdoor storage shall be screened from view.

Sec. 106-353. Uses permitted by special use permit.

Uses permitted by special use permit in the neighborhood commercial district include neighborhood-oriented businesses, public and quasipublic facilities, single-family residential, multifamily residential (up to six units per net acre), general and professional offices not to exceed 2,500 square feet, mini-storage facilities, telecommunication facilities, and bed and breakfasts of no more than six guestrooms. Impervious coverage of a lot shall not exceed 50 percent. All outdoor storage shall be screened from view. New structures shall be designed, built and buffered to blend in with the rural and scenic character of the area. Intersections along public rights-of-way shall be consolidated and improved to a level commensurate with any approved development. Developments shall provide for adequate internal circulation between properties in order to facilitate the sharing of road intersections. Parking shall be as required in section 106-111 of this chapter. It is an objective of this plan to provide for high quality commercial development at locations so designated. Projects proposed within the neighborhood and general commercial districts should be designed in a comprehensive manner with regard to access, internal circulation, drainage, parking and landscaping. It is not the purpose of these commercial districts to promote small lot subdivisions that lead to a strip commercial development.

Sec. 106-373. Uses permitted by special use permit.

Uses permitted by special use permit in the general commercial district include low-intensity, tourist-oriented recreational uses, motels, restaurants, outdoor entertainment, professional office buildings, plant nurseries, sale of goods hand-produced or hand-assembled on site, neighborhood-oriented businesses, public and quasipublic facilities, and telecommunication facilities. In all cases, outdoor storage shall be screened, and lighting shall be minimal. Noise levels shall be maintained so as to minimize the nuisance for nearby residents. Intersections along public rights-of-way shall be consolidated where appropriate and improved to a level commensurate with any approved development. Developments shall be encouraged to provide for adequate internal circulation between properties in order to facilitate the sharing of road intersections. Parking shall be as required under section 106-11. It is an objective of this plan to provide for high quality commercial development at locations so designated. Projects proposed within the neighborhood and general commercial districts should be designed in a comprehensive manner with regard to access, internal circulation, drainage, parking and landscaping. It is not the purpose of these commercial districts to promote small lot subdivisions that lead to a strip commercial development.

Sec. 106-393. Uses permitted by special use permit.

Uses permitted by special use permit in the industrial district are sand and gravel operations, asphalt plants, public and quasipublic facilities, and telecommunication facilities. The location of sand and gravel type industrial properties indicated on the Animas Valley Land Use Plan Map are based on the permitted areas map provided by the state division of minerals and geology. If there is any question of land use map accuracy, the records of the state division of minerals and geology shall prevail.