Moscow City Council

Regular Meeting
~Agenda~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Monday, November 2, 2020 **7:00 PM** **Council Chambers**
206 E. Third St.

The Moscow Mayor, City Council and Staff welcome you to tonight's meeting. This meeting is open to the public, but is subject to social distancing protocols as recommended in Governor Little's Stay Healthy Guidelines, so the number of attendees at any one time may be limited, and masks will be required of attendees. If you do not have a mask, a disposable mask will be provided. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item; therefore, the Mayor may exercise discretion in deciding when to allow public comment during the course of the proceedings and limitations may be placed on the time allowed for comments. Citizens wishing to comment on business that is not on the agenda will be provided the opportunity to do so during the public comment item on the agenda. If you plan to address the Council, you will find a list of "Tips for Addressing the Council" in the door pocket outside the City Council Chambers. Pursuant to the Governor's Proclamation relating to the conduct of public meetings during the COVID-19 crisis, the meeting will be broadcast. Citizens wishing to comment on business on the agenda are encouraged to communicate with the Mayor and City Council by phone or email (council@ci.moscow.id.us) in order to respect social distancing protocol. Please note that Moscow City Council meetings are televised, videotaped and/or recorded. Thank you for your interest in City government.

PLEDGE OF ALLEGIANCE

REGULAR AGENDA

1. **Approval of Moscow City Council October 19, 2020 Minutes (ACTION ITEM) - Laurie M. Hopkins**
   Minutes presented for approval.
   PROPOSED ACTIONS: Approve minutes as presented; approve minutes with amendments; or take such other action deemed appropriate.

2. **Staff Recognition Report - Gary J. Riedner**

3. **Mayors Appointments (ACTION ITEM)**

4. **Public Comment and Mayor's Response Period (limit 15 minutes)**

5. **Farmers Market Costume Contest Presentation – Amanda Argona**

6. **Citizen Commission Report - Moscow Tree Commission - David Schott / Ellis Eifert**

7. **Acceptance of Berman Estate Land Donation (ACTION ITEM) – David Schott**

   The City of Moscow has been approached by Hoey Graham, Personal Representative of the Estate of Katrina Berman, and John H. Norton, the attorney for the estate. Mrs. Berman's Will provided for a gift of land to the City of Moscow as a small addition to the western side of Berman Creekside Park. The parcel contains approximately 0.36 acres on the western edge of Berman Creekside Park and will add approximately thirty-two (32) feet to the western boundary of the park. This parcel lies directly west of the parcel of land previously donated to the City of Moscow in November of 1996. The proposed 0.36-acre parcel is expected to have similar conditions as the 0.73-acre parcel donated in 1996, encumbered with a conservation easement to the Palouse Land Trust. Under Idaho Law, any donation or transfer of real property to the City must be accepted by the City Council. Parks and Recreation staff recommends acceptance of the Berman Estate land donation. The Administrative Committee reviewed this on October 26 and recommended acceptance.

   PROPOSED ACTIONS: Accept the Berman Estate land donation subject to a conservation easement.

8. **Ordinance Amending Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities (ACTION ITEM) - Mike Ray**

   Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. 5G/small cell high speed deployment will bring much higher data speeds and traffic through the use of higher-frequency radio waves, which have a shorter range than the frequencies used by previous cell phone towers. Since small wireless facilities have a shorter range, they require a greater number of facilities which are typically located in the public right-of-way. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. This item was reviewed by the Public Works/Finance Committee on October 12, 2020 and considered on first reading by the Council on October 19, 2020.

   PROPOSED ACTIONS: Approve the proposed Ordinance on second reading under suspension of the rules requiring a third reading and that it be read by title and published by summary; or consider the Ordinance on second reading; or reject the Ordinance; or take such other action deemed appropriate.

9. Stormwater Update – Kyle Steele

10. Proposal to Develop Plan to Address Potential for Gender-Neutral Restroom Conversion (ACTION ITEM) - Jen Pfiffner

At the request of the Mayor in response to inquiries and encouragement from citizens and the Human Rights Commission, City staff has conducted preliminary research to determine the potential for converting city-owned restrooms to gender-neutral facilities where feasible. Preliminary research has been conducted to determine an approach to address that request. A review of gender-neutral restrooms in Idaho have been completed to provide background on how other municipalities have or have not addressed the conversion process. An inventory of the existing City of Moscow restroom facilities has also been completed. Facilities include City occupied buildings, City owned but not occupied buildings, and City parks facilities. Should staff receive direction to develop a plan, additional considerations initially identified (certainly not limited to) would include safety, privacy, number of fixtures, accessibility, etc. Additional considerations would include costs for conversion.

Staff is seeking City Council direction to develop a phased planning approach for conversion of existing City restrooms to gender-neutral restrooms.

PROPOSED ACTIONS: Recommend Council approve development of a phased planning approach for conversion of existing City restrooms to gender-neutral restrooms, or provide staff further direction.

11. COVID / CARES Act Update and Direction (ACTION ITEM) – Gary J. Riedner

Staff will present an update regarding the City's current COVID-19 response, including authorization for reimbursements under the City's CARES Act allocation.

PROPOSED ACTIONS: Receive status report and authorize requests for reimbursements under the City's CARES Act allocation, or provide staff direction.

REPORTS

City Council

Mayor

Staff

ADJOURN

NOTICE: Moscow City Council and committee meetings are televised, videotaped and/or recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

Moscow City Council

Regular Meeting
~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Monday, October 19, 2020 **7:00 PM** **Council Chambers**
206 E. Third St.

The meeting was called to order at 7:00 p.m.
PRESENT: Mayor Bill Lambert, Art Bettge, Sandra Kelly, Maureen Laflin, Brandy Sullivan, Gina Taruscio, Anne Zabala
STAFF: Gary J. Riedner, Mia Bautista (Virtual), Bill Belknap (Virtual), Jen Pfiffner (Virtual), Dwight Curtis, Laurie M. Hopkins (Virtual)

PLEDGE OF ALLEGIANCE
Councilmember Taruscio led the Pledge of Allegiance.

PROCLAMATION Domestic Violence Action Month

Mayor Lambert read the proclamation and presented it to Alyda Jaegerma. Jaegerma spoke on domestic violence and the ATVP.

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council October 5, 2020 Minutes - Laurie M. Hopkins
Minutes presented for approval.

ACTION: Approve minutes.

B. Disbursement Report September 2020 - Sarah L. Banks

Staff presented the September, 2020 Accounts Payable Report to Public Works/Finance Committee on October 12, 2020. The Committee received the report and approved the disbursements as presented.

ACTION: Receive the Disbursements Report.

C. Compensation and Benefit Structure Personnel Policies - Jen Pfiffner

Updates to the City of Moscow Personnel Policies continue. Compensation and Benefit Structure includes policies addressing employee classification, salary administration, compensation, benefits, and work period. Policy sections will continue to be presented for review. The current Personnel Policy manual will remain in place until all policies have been reviewed and approved. This was reviewed by the Administrative Committee on October 12, 2020 and recommended for approval.

ACTION: Approve the Compensation and Benefits Structure Personnel Policies.

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Bettge moved, Taruscio seconded to approve the consent agenda as presented. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

REGULAR AGENDA

2. Staff Recognition Report - Gary J. Riedner

None offered.

3. Mayors Appointments (ACTION ITEM)

None offered.

4. Public Comment and Mayor's Response Period (limit 15 minutes)

David Hall (Moscow) reminded everyone the Palouse Basin Water Summit is taking place October 22, 2020 via Zoom.

5. Citizen Commission Report – Parks and Recreation Commission – Dwight Curtis / Robby Cooper

Curtis introduced Robby Cooper, chair for the Parks and Recreation Commission. Cooper went through the members and mission. The Commission worked on installation of interpretive signs, COVID-related playground closures, and Rotary Park playground replacement. Upcoming projects include pickleball courts, unisex restroom at Indian Hills Park, and lighting on Paradise Path.

6. Public Hearing: Ordinance Amending Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities (ACTION ITEM) - Mike Ray

Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. 5G/small cell high speed deployment will bring much higher data speeds and traffic through the use of higher-frequency radio waves, which have a shorter range than the frequencies used by previous cell phone towers. Since small wireless facilities have a shorter range, they require a greater number of facilities which are typically located in the public right-of-way. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. This item was reviewed by the Public Works/Finance Committee on October 12, 2020.

PROPOSED ACTIONS: After conducting the public hearing and consideration of testimony received, approve the proposed Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading; or reject the Ordinance; or take such other action deemed appropriate.

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Ray introduced the item by going over the background of cellular communication systems. City's existing Telecommunications Code does not address Small Cell facilities and does not distinguish between macro-cell towers and small cell poles. Under the Telecommunications Act, local jurisdictions have to provide telecommunications providers reasonable access within the public right-of-way (ROW) and cannot effectively deny their ability to provide service. Local governments are prohibited from regulating wireless communications facilities based upon RF emissions and effectively prohibiting delivering telecommunications services. In 2018, the FCC issued a new ruling intending to streamline permitting of 5G small cell deployments. The proposed ordinance defines small wireless facility, standards and categories of installations. See attached presentation for additional information. SEC will continue to monitor health concerns and the Legal Department will monitor legal issues. The proposed ordinance requires towers to be located no closer than 250' away from another small wireless facility antenna tower but does not apply to co-locations. This was based on research, size of typical city block, coverage for multiple provides and minimizing the number of free-standing poles.

Mayor Lambert opened the public hearing at 7:39 p.m.

David Hall (Moscow) feels this is a complex issue of balancing federal issues and responsibility to protect citizens. He asked the Council to consider continuing the hearing for at least 2 weeks and hear from the other City commissions such as HPC and HRC; consider the Idaho Falls ordinance as it has more information on health issues; review the master license agreement template for liabilities; include requirement in telecom application that significant gap of service would be remedied with installation; consider a resolution requesting telecoms not apply for small cell and prioritize wired. Moscow citizens deserve as much protection as possible.

Bautista explained the master license agreement template is in draft form and not finalized as it will depend on when an application comes through, what requirements the ordinance contains if approved, and is always up to negotiation with the specific company applying.

Hall added the Council received an email from Americans for Responsible Technology, who looks at health and safety issues in regards to 5G that can be included in an ordinance and they haven't been challenged.

Mayor Lambert closed the public hearing at 7:45 p.m.

Sullivan is not confident the proposed ordinance includes everything it could within the City's legal rights to reserve as much local control as possible. She would be more comfortable if facilities were not allowed in residential and didn't see anything in the Idaho Falls ordinance nor the city attorney memo that would preclude it. Ray pointed out that would effectively deny providers the ability to provide service, for instance there would be no facilities east of Mountainview Road. Sullivan suggested a clause such as allowing exceptions when required to fill a gap. Ray said a provider could provide the documentation, effectively allowing the facility. Mia explained current legal restrictions do not allow local jurisdictions to require providers to fill a service gap. A local jurisdiction cannot prevent deployment.

Sullivan said she is interested in restricting in residential because of possible health concerns. Can put something in the ordinance because of that concern as long as it is in the legal right. Bettge said there

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has to be a rationale to do so. Sullivan responded there could be recommendations included such as setbacks, historical preservation rules, aesthetics and devaluation risks. Zabala likes the possibility of including those as restrictions. Bettge hasn't heard anything that shows it is not based on health. He feels the proposed ordinance does the best that it can within the bounds of the FCC restrictions. Taruscio commented the concern is not property devaluation, it is health and cannot block based on health. Staff and City Attorney have done a good job within the bounds that can exist. She feels being creative to add things in that are perceived as health issues is not genuine.

In staff review there wasn't numerous cities that had exceptions. Mill Valley had preferences to where they would go but no restrictions on residential. Discussion ensued regarding regulations in rights-of-ways and possibility of homeowner's authorization in the easement. Kelly said as P&Z liaison she has been a part of the many discussions and arguments. There are health concerns but are hamstrung with the regulations. She doesn't feel adding workarounds will accomplish anything and at this time, it is the best that can be done. Sullivan suggested requiring facilities to be underground in specific neighborhoods. Ray replied providers must be treated equally, and if light poles, are already above ground, undergrounding could not be required. There are specific design standards which anticipates what it will look like, staff felt it wasn't appropriate to submit multiple renderings as it would be a moot point. If the facility was going through a CUP process, neighbors would be notified. If there was a colocation, neighbors would not be notified, just as they would not with any other utility.

Bettge moved to approve the proposed Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Taruscio seconded. Zabala moved to amend the motion by removing the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary and instead consider the ordinance on first reading. Sullivan seconded the motion for amendment. Moscow has no requirements for small cell so if a provider applies, there are no design standards in effect. Zabala said things have been brought up in this discussion and would like to look at other municipalities and feels there isn't a rush. Taruscio reiterated blocking because of health issues no matter if it is covered up by design standards is not possible.

Mayor called for a vote on the amendment to the motion. Roll Call Vote: Ayes: Four. Nays: Two (Bettge, Taruscio). Abstentions: None. Motion carried.

Mayor called for a vote on the amended motion which states considering the ordinance on first reading. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

7. CARES Act and COVID Update - Gary J. Riedner

Riedner explained CARES Act is an allocation based on population with two programs, one for direct costs because of response to COVID, second being a public safety salary reimbursement. The salary reimbursement request is ready to go. The direct costs are being tallied and will come before Council.

Graphs of confirmed cases and reported cases in Latah County was presented and both are attached. Public Health Idaho North Central District previously met and defined tools for determining health alert levels for District 2. A Harvard Global Health Institute document was used as a basis for defining alert levels, including testing, tracking and supported isolation; new daily cases less than 1 per 10,000 residents (Latah County being four or less per day); hospital admissions being less than five; and test

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reporting complete within 1-4 days. Latah county infection rate is rising but hospitalization rate is low, no deaths, and testing is completed quickly. Additional considerations include feedback from health care partners, institutional partners, monitoring experience and conditions of surrounding jurisdictions, capacity to obtain testing, turnaround time for results, related hospitalizations and related deaths. Riedner went through the Idaho Health District score tracker for all the Idaho health districts as well as finer details for District 2. Specific data through October 19,2020 for Latah and Whitman County was shared and is attached.

In talking with medical experts from CDC down, they are in the mode of take as many precautions with as many freedoms. Important to early identify those infections, increase hygiene, social distancing and wear masks. There is a cautious optimism there will be a vaccine and need to take flu season into consideration. Sullivan said people want to know when the mask order can be removed and she would like to get to a target that gets us there. Mayor Lambert commented downgrade to a mask advisory rather than mandate could be an option.

REPORTS

City Council

Farmers Market Commission – Zabala heard from a vendor that the growers are very positive about the Motor-in Moscow and would like it to continue.

Moscow Arts Commission – Zabala said the Commission is moving forward with applications for Mayor's Arts Awards; discussed a third Thursday event to feature local artists and rotating to different businesses in town.

Palouse Basin Aquifer Committee – Zabala reported the LEAP analysis results should be done soon.

Transportation Commission – Sullivan said the Commission held officer elections; reviewing of draft code amendments; and reviewing street standards.

Moscow Tree Commission – Sullivan said the Arbor Day planting took place at Harvest Park.

Building Code Advisory Committee – Bettge said they considered the International Fire Code and will submit to Council.

Planning & Zoning Commission – Kelly said the Commission is reviewing the Schweitzer rezone and annexation which will come before Council soon.

Moscow Volunteer Fire Department – Laflin said they are still discussing changes in transitions

Mayor

Mayor Lambert attended an AIC Board meeting and talked about possible topics the legislators would discuss; quality-based service and contracts with vendors; energy codes; possible rewriting of some sections of the bylaws; virtual fall academy. Attended the Moscow Food Bank christening on their new building.

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Staff

No report.

ADJOURN

The meeting adjourned at 9:00 p.m.

_____

Bill Lambert, Mayor

ATTEST:

_____

Laurie M. Hopkins, City Clerk

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COMMITTEE STAFF REPORT

DATE: Monday, November 2, 2020

RESPONSIBLE STAFF

David Schott, Assistant Parks and Recreation Director

ADDITIONAL PRESENTER(S) OTHER RESOURCES

AGENDA ITEM TITLE

Acceptance of Berman Estate Land Donation (ACTION ITEM) – David Schott

DESCRIPTION

The City of Moscow has been approached by Hoey Graham, Personal Representative of the Estate of Katrina Berman, and John H. Norton, the attorney for the estate. Mrs. Berman's Will provided for a gift of land to the City of Moscow as a small addition to the western side of Berman Creekside Park.

The proposed 0.36-acre parcel will have similar conditions as the 0.73-acre parcel donated in 1996, encumbered with a conservation easement to the Palouse Land Trust. The conservation easement will prevent the property from being subdivided. The conservation easement on the proposed property will also include restrictions on construction and alteration of the land.

The terms of the 1996 conservation easement restricts placement or construction of any buildings, structures, or other improvements of any kind, with the exceptions for those structures necessary for members of the public to fully and substantially enjoy the property for low impact recreational and natural area purposes. This would include such amenities as paths, walkways, benches, trash cans, and picnic areas with a maximum square footage of 360 feet. The alteration of the natural lay of the property and only such surface disturbance as is necessary to construct the improvements as described herein.

Under Idaho Law, any donation or transfer of real property to the City must be accepted by the City Council. Parks and Recreation staff recommends acceptance of the Berman Estate land donation.

The Administrative Committee reviewed this on October 26 and recommended acceptance.

STAFF RECOMMENDATION

Recommend acceptance of the Berman Estate land donation subject to a conservation easement.

PROPOSED ACTIONS

PROPOSED ACTIONS: Accept the Berman Estate land donation subject to a conservation easement.

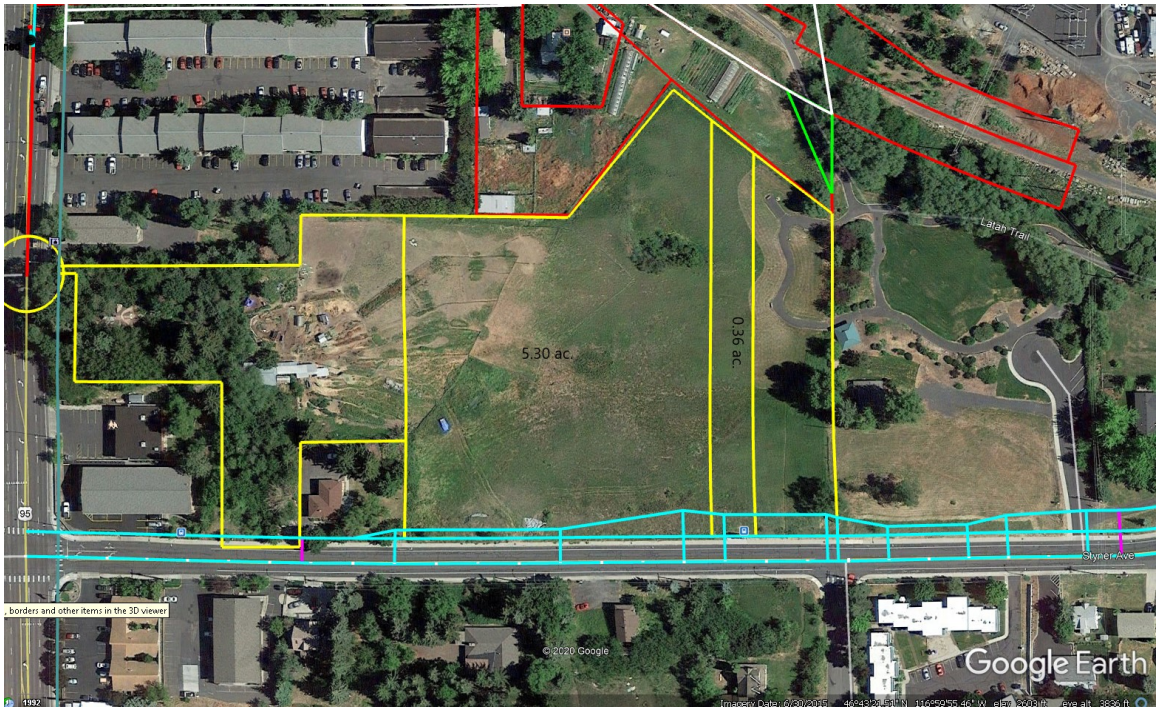
FISCAL IMPACT

N/A

PERSONNEL IMPACT

ATTACHMENTS

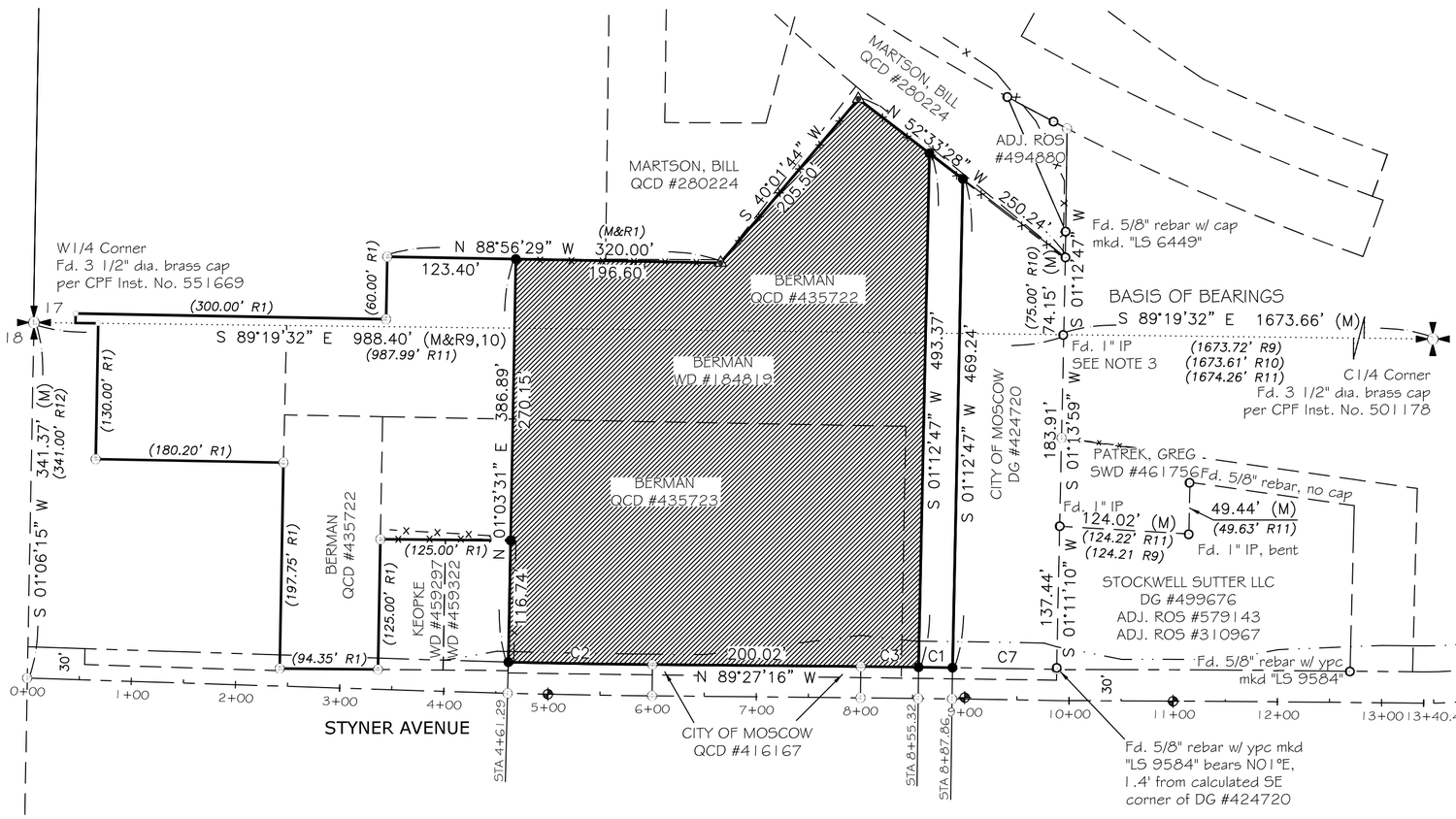
1. Rim Rock Aerial Preliminary
2. Berman Parcel ROS - PRELIMINARY
3. NortonLetterKatrinaBermanBequest


5.30 ac.
0.36 ac.
Lalah Trail
95
Skyline Ave
borders and other items in the 3D viewer
© 2020 Google
Google Earth

T 39 N, R 5 W, S 17

RECORD OF SURVEY

A Conservation Easement and Division of Land Located in the W1/2 of the W1/2 of Section 17, T39N, R5W, Boise Meridian City of Moscow, Latah County, Idaho



NORTH

100 0 100 200

ORIGINAL SCALE : 1" = 100 FEET

CADD FILE : Berman Parcel ROS.dwg

LEGEND

- Set 5/8" X 30" long rebar w/ aluminum cap LS 17534
- Found Property Corner as Described
- Found Centerline Monument - 2" aluminum cap
- Found fence post at location of property corner
- Calculated Position - Nothing Found or Set
- Found Section or 1/4 Section Corner
- (M) Measured
- (R) Record Per References
- Subject Property Boundary Line
- Section Line
- Section Subdivision Line
- City Street Centerline
- City Street Right of Way Line
- Permanent Construction Easement Line
- Deed Line
- Fenceline
- Conservation Easement

BASIS OF BEARINGS

The Basis of Bearings for this survey is the Idaho Coordinate System, West Zone, NAD 83, as shown between the found west quarter corner and the found center quarter corner of Section 17, said bearing being S 89°19'32" E.

SURVEYOR NARRATIVE

1. The purpose of this survey is to create a 0.36 acre parcel, more or less, and to create a conservation easement from the parcel of land described in Instrument Numbers 184819, 435722, & 435723.
2. According to the adjacent land owner, Bill Martson, the fence running along the north property line has always been used as the property line. Mr. Martson's family moved to Moscow in 1953 and rebuilt the fence where it stood. This survey will use the existing fence corners as the property corners.
3. The iron pipe found bears S62°W, 0.67 feet from record position. This survey will use the calulated position for description purposes.
4. Styner Avenue is located at the found centerline monuments.
5. The west half of the Berman parcel was not surveyed per client's request.

SURVEY REFERENCES

1. Warranty Deed, Inst. No. 184819
2. Quitclaim Deed, Inst. No. 435722
3. Quitclaim Deed, Inst. No. 435723
4. Deed of Gift, Inst. No. 424720
5. Quitclaim Deed, Inst. No. 416167
6. Warranty Deed, Inst. No. 459322
7. Warranty Deed, Inst. No. 459297
8. Quitclaim Deed, Inst. No. 280224
9. Record of Survey, Inst. No. 310967, PLS 3003, 1980
10. Record of Survey, Inst. No. 494880, PLS 6449, 2005
11. Record of Survey, Inst. No. 579143, PLS 9584, 2016
12. Styner Avenue - L.I.D. 113 Roadway Plan, PE 6895, 1994

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	CHORD BEARING	CHORD LENGTH
C1	32.58'	20029.81'	S 89°14'58" E	32.58'
C2	138.24'	8600.33'	S 88°59'42" E	138.24'
C3	55.41'	20029.81'	S 89°22'31" E	55.41'
C4	138.15'	8617.27'	N 88°59'41" W	138.15'
C5	5.56'	20054.81'	N 89°18'12" W	5.56'
C6	32.58'	20054.81'	S 89°14'56" E	32.58'
C7	100.00'	20029.81'	S 89°03'35" E	100.00'

SURVEYOR CERTIFICATION

This map correctly represents a survey made by me or under my direction in conformance with the Survey Recording Act. This survey map was prepared at the request of Charles Graham, in October, 2020.

PRELIMINARY NOT FOR RECORDING

PROFESSIONAL LAND SURVEYOR LICENSED 17534 STATE OF IDAHO MICHAEL E. DAHLIN

Michael E. Dahlin - Idaho Professional Land Surveyor

COUNTY RECORDER CERTIFICATE

STATE OF IDAHO, COUNTY OF LATAH
RECORDED AT THE REQUEST OF _____
AT _____ THIS _____ DAY OF _____,_____

_____
RECORDER

_____
DEPUTY

RIM ROCK CONSULTING, INC.
Land Surveying
Site Planning
Mapping
129 West 3rd Street #102 Moscow, Idaho 83843 208-883-5339 rimrock@rimrockconsulting.net

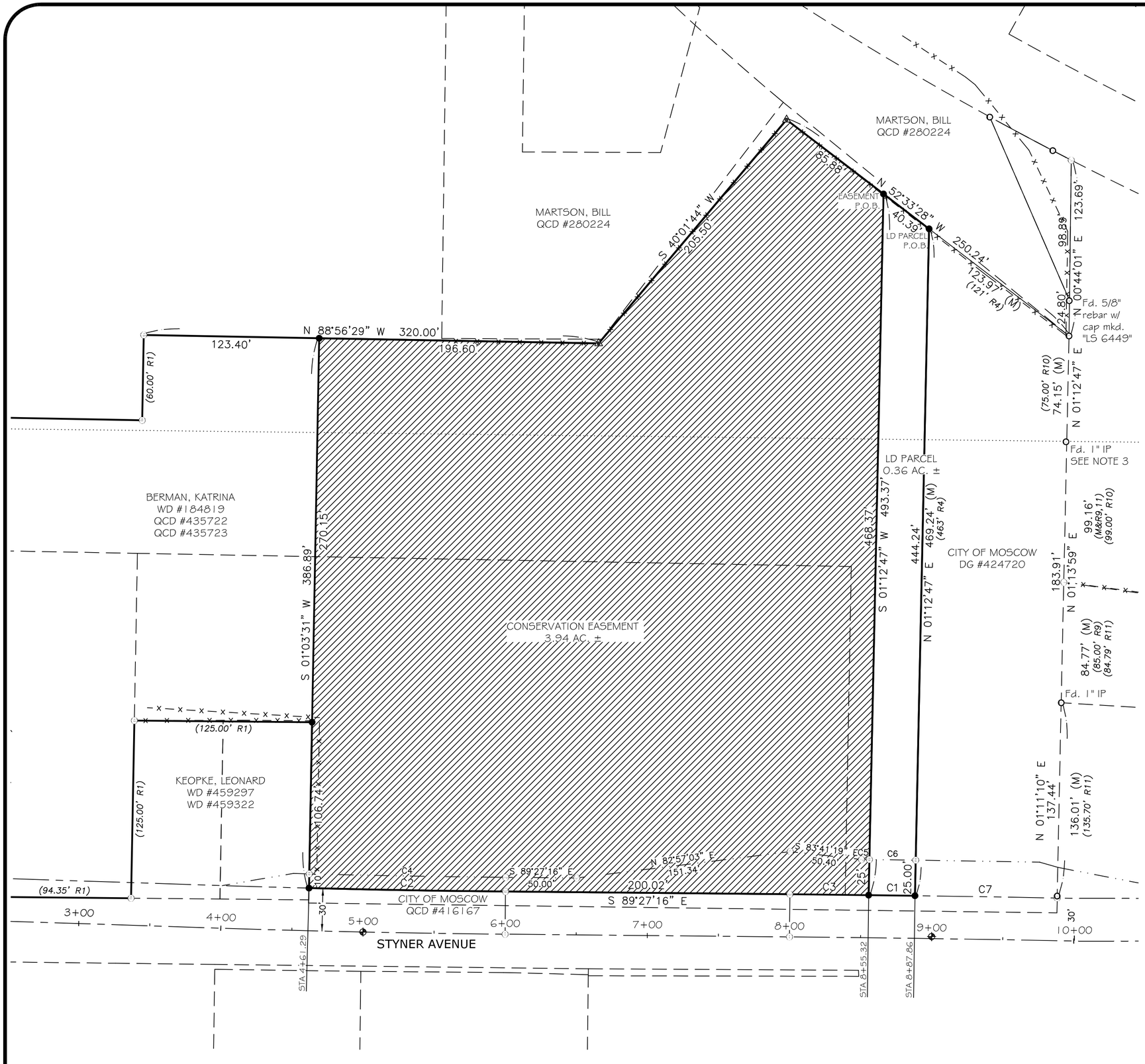
SHEET 1 OF 2

DATE	STATE	COUNTY	PROJECT	DRAWN BY
OCTOBER 2020	ID	LATAH	BERMAN LD & CONSERVATION EASEMENT	TMH

T 39 N, R 5 W, S 17

RECORD OF SURVEY

A Conservation Easement and Division of Land Located in the W1/2 of the W1/2 of Section 17, T39N, R5W, Boise Meridian City of Moscow, Latah County, Idaho



50 0 50 100

ORIGINAL SCALE : 1" = 50 FEET

CADD FILE : Berman Parcel RO5.dwg

LEGEND

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- Deed Line
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- Conservation Easement

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PRELIMINARY
NOT FOR RECORDING

PROFESSIONAL LAND SURVEYOR LICENSED 17534 STATE OF IDAHO MICHAEL E. DAHLIN

Michael E. Dahlin - Idaho Professional Land Surveyor

COUNTY RECORDER CERTIFICATE

STATE OF IDAHO, COUNTY OF LATAH
RECORDED AT THE REQUEST OF _____
AT _____ THIS _____ DAY OF _____,_____

_____
RECORDER

_____
DEPUTY

DATE	STATE	COUNTY	PROJECT	DRAWN BY
OCTOBER 2020	ID	LATAH	BERMAN LD & CONSERVATION EASEMENT	TMH

RIM ROCK CONSULTING, INC.
Land Surveying
Site Planning
Mapping
129 West 3rd Street #102 Moscow, Idaho 83843 208-883-5339 rimrock@rimrockconsulting.net

JOHN H. NORTON
ATTORNEY AT LAW
1522 BORAH AVE.
MOSCOW, ID 83843

1-208-882-5169
attorneynorton@moscow.com

PRACTICING IN IDAHO
AND WASHINGTON

September 9, 2020

Mia Bautista
City Attorney
City of Moscow
P.O. Box 9203
Moscow, ID 83843

Lovina Englund
Executive Director
Palouse Land Trust
PO Box 8506
Moscow, ID 83843

Re: Bequests of Katrina Berman, deceased
***Latah County Probate Case#* - CV2012-1019**
Charles Graham, Personal Representative

Dear Mia and Lovina,

I represent Charles Graham, the Personal Representative of the Estate of Katrina Berman. This may be new territory for Mia, but Lovina is familiar with the fact that Mrs. Berman's Will provided for a gift of land to the City of Moscow as a small addition to the western side of the Berman Creekside Park. The Will also provides that such gift to the City come after placement of a conservation easement on the property. I do believe Gary Riedner is also aware of this gift.

Mrs. Berman's Last Will and Testament, a copy of which is attached, was admitted to probate in the above Latah County probate proceeding in 2012 and remains under informal administration with Mr. Graham serving as the personal representative. A copy of the Letters Testamentary is attached. In her Will, Mrs. Berman stated:

1.07 Specific Bequest I direct my Personal Representative to grant to the City of Moscow the small strip of land next to the parcel I previously donated to the City of Moscow. This parcel contains approximately .36 acres on the east side of my property, directly west of the .73 acre parcel currently owned by the City of Moscow which is directly east of my property. I direct this bequest be made whether the property is owned by Berman Family Limited Partnership or myself. I further direct my personal representative to place a conservation easement on any property given to the City of Moscow such that it may not be subdivided.

Prior to Mrs. Berman's death, and as noted in the quote above, she had created a limited partnership for tax planning purposes and placed some of her real property into that partnership. This created a cloud upon the Estate's claim to fee simple title and conflicted with her intent to gift the additional .36 acres of land in order to expand the Park.

Recently, in response to a Petition filed by the Estate, which Petition was not contested, Magistrate Marshall entered an Order, among other relief, Quieting Title to the land in the partnership in the name of the Estate of Katrina Berman and directing the Estate to begin preparations for transfers to the City and the conservation easement called for in the Will. The pertinent part of the Order states:

> 1. **IT IS HEREBY ORDERED, DECREED AND ADJUDGED THAT**:
>
> All right title and interest in the real property legally described in the attached Exhibit A is hereby quieted in and vested solely and exclusively in the Estate of Katrina Voorhees Berman. This ORDER shall act and have the same effect as a final Judgment Quieting Title in fee simple in the Estate of Katrina Voorhees Berman for the real property legally described in Exhibit A as against the entity named the Berman Limited Partnership. The Estate may record this ORDER in the records of Latah County as a judgment.
>
> 2. **IT IS FURTHER ORDERED** that the entity known as the Berman Limited Partnership, the same being the entity acting under a certificate of organization originally filed with the Secretary of the State of Idaho on August 4th, 1997, is hereby terminated and shall be deemed void ab initio. The Estate is authorized to file with the Secretary of the State of Idaho any documents as may be necessary to formally terminate such entity.
>
> 3. **IT IS FURTHER ORDERED** that the Estate effectuate transfer of the easternmost .36 acre portion of the Estate's real property to the City of Moscow, encumbered with a conservation easement to the Palouse Land Trust.

A copy of the full Order is attached.

We have asked Moscow Title Company to prepare an updated title commitment showing, we assume, clear title in the name of the Estate of Katrina Berman. A copy of the prior title commitment by Moscow Title, showing an ownership interest in the Berman Limited Partnership, is being updated to reflect the Court's Order quieting title in the Estate. We will share this update with you as soon as we receive it.

Further, the Estate has engaged Rim Rock Consulting to prepare a survey of the .36 acres. This will provide the Estate with a legal description, and we have asked Rim Rock to stake the new property boundary line which will form the new western boundary of Berman Creekside Park, assuming the City accepts the gift, making visual inspection possible.

As stated in the Will, and the Court's Order, it was Mrs. Berman's desire that the land gifted to the City was to be encumbered with a conservation easement. As such, a condition of the gift would be that the City accept such encumbrance as part of the gift of land. Fortunately, the earlier gift of land made to the City by Mrs. Berman came with the same proviso. Thus, there currently exists a conservation easement on a portion of the Berman Creekside Park and we are hopeful the same terms will be acceptable to all parties. It is our understanding that the Palouse Land Trust is willing simply to consider an extension of the existing easement. A copy of the existing recorded conservation easement is attached.

Based upon the Court's Order creating a pathway for completion of Mrs. Berman's wishes, it is time for us to contact you both and ask that each of you proceed with the steps necessary to bring this matter to the Council, or the Board in the case of the Land Trust, and make a determination as to whether each entity will accept the gift.

Mr. Graham and I are available to answer any questions that arise. (Mia, you are welcome to contact Mr. Graham without my consent, and the same is true for any City official.) If you need further documentation, I may be in a better position than Mr. Graham to quickly provide that information. I will get the title commitment to you as soon as I have it, and the same is true of the preliminary survey. I can prepare the Personal Representative's Deed and we will all coordinate efforts to create an extension of the existing easement.

Mr. Graham and I understand that you both have procedures to follow in ultimately bringing these matters for a vote and would like to urge that you move this process along as soon as possible.

Again, let us know how best we can assist. We look forward to working with you both.

Sincerely,

John H. Norton

FOR HOEY 9/21/12

COPY

Last Will and Testament

OF

KATRINA V. BERMAN

I, KATRINA V. BERMAN, of Latah County, Idaho, make my Last Will and Testament, revoking all previous wills and codicils. I am a widow. I have four (4) children born unto me, namely, JONATHAN D. BERMAN, MATTHEW D. BERMAN, DEBORAH V. BERMAN, and JUDITH E. BERMAN, all legal age. All references to my children are to such children and to any child subsequently born to or legally adopted by me.

ARTICLE 1: SPECIFIC GIFTS.

1.01 Personal and household effects.

(a) Gift by Written Statement. I give my personal and household effects of every kind, including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glassware, jewelry, wearing apparel, boats, automobiles and other vehicles, in accordance with a written statement signed by me or in my handwriting which I intend to leave at my death.

(b) Contingent Gift. I give all of such property not effectively disposed of by such written statement to my children who survive me, to be divided among them, as they shall agree, or, if they shall fail to agree within six (6) months after the appointment of my personal representative, to be divided among them in portions of approximately equal value, as determined by my personal representative.

1.02 Ademption. Except as expressly provided to the contrary, the gift of any item of property under this Article 1 shall fail to the extent that I do not own such property at my death.

1.03 Lapse. If the gift of any item of property under this Article 1 fails or lapses, such property shall become a part of my residuary estate and shall be distributed as provided in Article 2.

1.04 Personal Representative's Decision Final. All matters pertaining to identification, distribution or division of property given by this Article 1 shall be determined by my personal representative, and its determinations shall be final and binding upon all persons having any interest in my estate.

1.05 Specific Bequest. I hereby direct that all alpacas that I own at the time of my death and any shelters for them be given to my daughter, DEBORAH V. BERMAN.

1.06 Specific Bequest. I give all of my property, both real and personal, that is located on Quadra Island in British Columbia, Canada to my children, equally, share and share alike, by representation. Before this bequest is completed, however, I direct my personal representative to place a conservation covenant upon said property. The larger parcel containing approximately 50+ acres shall have a conservation covenant placed against it such that the property may not be subdivided. The smaller parcel, consisting of approximately 10 acres, shall have a conservation covenant placed against it that precludes placing structures or other physical improvements upon the property, as well as prohibiting subdivision of the property. To the extent that conservation covenants must be bequeathed to a charitable organization, I give those conservation covenants rights to the Quadra Island Conservancy and Stewardship Society.

1.07 Specific Bequest I direct my Personal Representative to grant to the City of Moscow the small strip of land next to the parcel I previously donated to the City of Moscow. This

parcel contains approximately .36 acres on the east side of my property, directly west of the .73 acre parcel currently owned by the City of Moscow which is directly east of my property. I direct this bequest be made whether the property is owned by Berman Family Limited Partnership or myself. I further direct my personal representative to place a conservation easement on any property given to the City of Moscow such that it may not be subdivided.

1.08 Specific Bequest. I direct that my personal representative place a conservation easement on the remainder of my property in Latah County located within the City limits of the City of Moscow, such that the property may not be developed and shall be managed in a manner that sustains itself through permaculture methods.

1.09 Specific Bequest. I direct that my Personal Representative enter into a two year lease, from the date of my death, with Suvia Judd and Deborah V. Berman, at then current market rates, for my Moscow, Idaho real property. The rental rate shall be the fair market rental rate for a residence and property subject to the conservation easement set out in Paragraph 1.08 herein. This is so that they have a place to live and continue the Alpaca venture.

1.10 Specific Bequest. I give Suvia Judd and Deborah V. Berman an Option to Purchase my real property located in Latah County within the City limits of the City of Moscow (excluding the small parcel of property being given to the City of Moscow). The Option must be exercised within a two-year period following my death, and may be exercised by both Suvia Judd and Deborah V. Berman, or by either one. The purchase price shall be the fair market value of the real property subject to the conservation easement set out in Paragraph 1.08 herein. The terms of the sale shall consist of no money down, and equal payments of the purchase price and accrued interest to be paid in equal payments on a monthly basis over a ten-year period. The interest rate shall be the market interest rate at the time the Option to Purchase is exercised.

KVB

ARTICLE 2: RESIDUARY ESTATE.

2.01 Definition of Residuary Estate. All the residue of my estate, real and personal, tangible and intangible, including any community property over which I have the right of testamentary disposition, but excluding property over which I may have a power of appointment, shall constitute and be referred to in this will as my "residuary estate."

2.02 Gift of Residuary Estate. I give my residuary estate as follows:

I give one-fifth (1/5) of my residuary estate to each of my children, JONATHAN D. BERMAN, MATTHEW D. BERMAN, DEBORAH V. BERMAN, and JUDITH E. BERMAN, by representation, equally, share and share alike.

I give one-fifth (1/5) of my residuary estate to all of my grandchildren, by representation, equally, share and share alike.

ARTICLE 3: APPOINTMENT AND SUCCESSION OF FIDUCIARIES.

3.01 Personal Representative.

(a) Designation. I nominate as my personal representative JOHN HOLLAND.

(b) Succession. In the event a vacancy exists, for any reason, in the office of personal representative, I nominate as substitute personal representatives, to act successively: CHARLES L. GRAHAM of Moscow, Idaho; DAYTON ~~BERMAN~~ Voorhees KVB.

3.02 Powers of Substitute Fiduciaries. Every substitute fiduciary shall have all the title, rights, powers, privileges and duties herein conferred or imposed upon the original fiduciary without any act of conveyance or transfer. No substitute fiduciary shall be obligated to examine the accounts, records and acts of any previous fiduciary or any allocation of my estate or any trust estate,

KVB

KVB

nor shall such substitute fiduciary be required to proceed against a previous fiduciary for any act or omission to act on the part of such previous fiduciary.

3.03 Ancillary Fiduciaries. If it shall be necessary for a representative of my estate to qualify as a fiduciary in any jurisdiction other than my domicile, I appoint as ancillary fiduciary in such jurisdiction such person, bank or trust corporation (including my domiciliary personal representative) as may be designated in writing by my domiciliary personal representative. Such ancillary fiduciary shall have in such other jurisdiction all the rights, powers, privileges and immunities conferred upon my fiduciaries under this will and under the laws of such other jurisdiction.

3.04 Bonds Waived. I direct that each fiduciary, including substitutes, shall be permitted to qualify without the necessity of giving a bond or other undertaking in this or any other jurisdiction for the faithful performance of such fiduciary's duties, or if any bond shall be required by law, statute or rule of court, without the necessity of sureties thereon.

ARTICLE 4: PAYMENT OF TAXES AND EXPENSES.

All expenses of administering my estate and all inheritance, estate and similar taxes payable by reason of my death, including taxes with respect to property not passing under this will, shall be paid, without right of contribution from any person, by my personal representative out of my residuary estate.

ARTICLE 5: ADMINISTRATION OF ESTATE.

5.01 No Supervised Estate Administration. If any person interested in my estate shall petition for supervised administration, such administration shall not be ordered unless the

court finds that changed circumstances which I could not have anticipated would require supervised administration to protect the interests of my estate and its beneficiaries.

5.02 Administrative Powers of Personal Representative. In addition to the powers it would otherwise have by reason of any statute or rule of law, my personal representative shall have power, without prior authorization or approval of any court, to do everything it shall consider advisable in the management of my estate, including actions not specifically authorized by statute or rule of law.

ARTICLE 6: CONSTRUCTIONAL RULES.

6.01 Issue. "Issue" means all persons who are descended from the person referred to for purposes of intestate succession as determined under the laws of Idaho as those laws exist on the date of my death. However, for the purposes of the foregoing, an adopted person shall be considered as descended from the person referred to only if he has been adopted while under the age of eighteen (18).

6.02 Determination of Distributees. If under any provision of this will a distribution of my estate is to be made to the issue of any person, my personal representative shall make distributions to those persons whom it believes, after making such inquiry as it thinks reasonable, to be the persons so described, or if after making such inquiry it believes there is no such person, it may act upon such belief. My personal representative shall not be obliged to secure judicial ascertainment of the identity of such issue or the lack thereof and shall be immune from all liability which it might otherwise incur by reason of making distribution without the aid of judicial settlement or decree.

6.03 Order of Deaths. If any person dies within thirty (30) days after my death or under such circumstances that there is not, in the judgment of my personal representative, whose

decision shall be conclusive, sufficient evidence to determine whether such person has died within thirty (30) days after my death, I shall be deemed to have survived such person.

6.04 Court Decrees. All decrees of adoption of persons under the age of eighteen (18) when such decrees are rendered and all decrees of divorce at any time rendered by courts of record shall be considered valid for all purposes of this will and codicils to this will.

6.05 Child in Gestation. A child in gestation who is later born alive shall be considered as a living child throughout the period of gestation.

6.06 Personal Representative. Unless a contrary meaning or reference shall be expressly indicated or clearly implied from the context, the terms "personal representative" and the pronoun "it" in reference to personal representative always refer interchangeably to the male or female person or persons or to the institution or any combination of them then acting as my personal representatives.

6.07 Governing Law. The laws of Idaho shall govern all questions as to the validity and construction of this will.

6.08 Other Principles of Construction. Words in any gender shall be deemed to include the other genders; the singular shall be deemed to include the plural and vice versa; the word "give" shall also mean devise and bequeath but shall not mean appoint; the words "pay" and "distribute" shall also mean assign and convey; and the table of contents, headings and paragraph titles are for guidance only and shall have no significance in the interpretation of this will.

IN WITNESS WHEREOF I have hereunto set my hand and published and declared this to be my Last Will and Testament dated this 24th day of January, 2008.

Katrina V. Berman
KATRINA V. BERMAN

KVB
KVB

The foregoing instrument, consisting of 8 pages, including this additional page, was at the date thereof by KATRINA V. BERMAN, the Testatrix named herein, signed, sealed and published as, and declared by her to be her Last Will and Testament, in the presence of us, who at her request and in her presence, and in the presence of each other, and who being of the opinion that she at the time of executing this Will, was of sound and disposing mind and memory, and not acting under duress, menace, fraud or undue influence of any person, have subscribed our names as witnesses thereto.

_____ 1/24/08 residing at Moscow Idaho

_____ 1/24/08 residing at Moscow Idaho

KVB

KVB

JOHN H. NORTON, ISBN 2520
Attorney at Law
Kenworthy Plaza 5
127 South Washington
Moscow, ID 83843
(208) 882-5169

CASE NO CV-2012-1019

2012 OCT 16 PM 1:02

CLERK OF DISTRICT COURT
LATAH COUNTY
BY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the Estate	**Case No. CV-2012-1019**
Katrina Voorhees Berman,	**LETTERS TESTAMENTARY**
Deceased.	

Charles Graham, duly appointed and qualified as general personal representative of the estate of the above-named decedent on the 16th day of October, 2012, by the above-entitled Court, with all authority pertaining thereto. The administration of this estate is unsupervised.

These Letters are issued to evidence the appointment, qualification, and authority of said personal representative.

WITNESS my signature and seal of this Court this 16th day of October, 2012.

RANDALL W. ROBINSON
Magistrate

C:probate.Berman.testlet pr2

LETTERS TESTAMENTARY

CERTIFIED COPY

I certify that I am the clerk of the district court of the above-named, that the above is a true and correct copy of that record and that I have a seal of office and that seal is affixed hereto.

Date OCT 16 2012

Susan R. Peterson
Clerk of District Court
Latah County, Idaho

By Deputy

Filed: 08/04/2020 16:13:39
Second Judicial District, Latah County
Henrianne K. Westberg, Clerk of the Court
By: Deputy Clerk - Lynd, Peggy

JOHN H. NORTON, ISB#2520
Attorney at Law
5 Kenworthy Plaza
109 South Washington
Moscow, ID 83843
(208) 882-5169
attorneynorton@moscow.com

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

In the Matter of the Estate of:	**Case No. CV-2012-1019**
KATRINA VOORHEES BERMAN,	**1. ORDER QUIETING TITLE TO REAL PROPERTY IN THE ESTATE OF KATRINA V. BERMAN**
Deceased.	**2. ORDER AUTHORIZING SURVEY, APPRAISAL AND REAL PROPERTY TRANSFERS TO THE CITY OF MOSCOW AND THE PALOUSE LAND TRUST**
	3. ORDER GRANTING AN OPTION TO PURCHASE REAL PROPERTY FOR SUVIA JUDD AND DEBORAH BERMAN, AND MAKE DISTRIBUTION

The Estate of Katrina Voorhees Berman, deceased, through the Estate's Personal Representative Charles Graham, petitioned this Court to review and effectuate portions of the terms of the decedent's Last Will and Testament admitted to informal probate in the above matter. The Court has reviewed the file in this matter, the Petition to Quiet Title, et. seq., the supporting briefs of the Estate and heir Suvia Judd, and upon notice properly and duly given to

all interested parties with an opportunity to be heard and object, oral argument was held and participated in by Estate's attorney John Norton and its Personal Representative Charles Graham, Laurene Sorenson for Suvia Judd, and Jonathan Berman, heir, in his individual capacity.

At the close of the hearing, the Court provided an additional two week period for the non-appearing heirs of the Estate, being the children (Jonathan Berman excepted) and grandchildren of the decedent, to respond to the brief filed by Laurene Sorenson on behalf of Suvia Judd on the 29th day of June, 2020.

The Court has had a opportunity to review this matter in full and it appears that there is no objection to this Court granting the relief sought under the Petition to Quiet Title, et. seq. The entity known as the Berman Limited Partnership was never properly formed and should be terminated so as not to frustrate and contravene the explicit terms and conditions provided in the Last Will and Testament of the decedent. As such, title to the real property of the Estate should be cleared and quieted in fee simple in the Estate. It further appears that three provisions of the Last Will and Testament regarding the real property, now quieted in the Estate, ought to be effectuated. First, the Will provides for transfer of a small parcel to the City of Moscow encumbered by a conservation easement. Second, the Will also provides for a transfer of a conservation easement on the remaining portion of the real property, but only as to that portion of such real property as may be suitable and acceptable for such conservation easement. Third, it appears that provisions in the decedent's Will to provide an option to purchase the real property granted to Suvia Judd and/or Deborah Berman can only now be effectuated. It is determined that application of the two (2) year period within which the option was to have been exercised would bar Suvia Judd and/or Deborah Berman from deriving the benefit of an option to purchase the Estate's real property as contemplated by the Will.

THEREFORE, IT IS ORDERED as follows:

1. **IT IS HEREBY ORDERED, DECREED AND ADJUDGED THAT:**

All right title and interest in the real property legally described in the attached Exhibit A is hereby quieted in and vested solely and exclusively in the Estate of Katrina Voorhees Berman. This ORDER shall act and have the same effect as a final Judgment Quieting Title in fee simple in the Estate of Katrina Voorhees Berman for the real property legally described in Exhibit A as against the entity named the Berman Limited Partnership. The Estate may record this ORDER in the records of Latah County as a judgment.

2. **IT IS FURTHER ORDERED** that the entity known as the Berman Limited Partnership, the same being the entity acting under a certificate of organization originally filed with the Secretary of the State of Idaho on August 4th, 1997, is hereby terminated and shall be deemed void ab initio. The Estate is authorized to file with the Secretary of the State of Idaho any documents as may be necessary to formally terminate such entity.

3. **IT IS FURTHER ORDERED** that the Estate effectuate transfer of the easternmost .36 acre portion of the Estate's real property to the City of Moscow, encumbered with a conservation easement to the Palouse Land Trust.

4. **IT IS FURTHER ORDERED** that the Estate is authorized to negotiate the terms of the transfer of a conservation easement to the Palouse Land Trust for a portion of the real property of the Estate as set forth in Exhibit A, less real property as conveyed to the City of Moscow. Such conservation easement shall be for that portion of the real property lying easterly of a line extending from the south boundary of the such real property to its

north boundary, such line being parallel to the eastern most boundary of the Estate's real property and beginning at the point on the southern boundary where such real property adjoins the southeast corner of Latah County Assessor's Parcel RPM00000175585, thence running north to the north boundary of the Estate's real property.

5. **IT IS FURTHER ORDERED** that Deborah Berman and/or Suvia Judd shall have a period of One-Hundred and Eighty (180) days, such period to begin running as provided below, within which to purchase the real property interests of the Estate remaining following the transfers provided in paragraphs 3 and 4 above. Such purchase shall be for the fair market value of the real estate as shown by an independent MAI certified appraisal and on the following terms and conditions, or more favorable conditions for the Estate as may be negotiated and determined by the Personal Representative, to wit: No earnest money or payment of a down payment shall be required, and equal monthly payments of the purchase price and accrued interest shall be paid under a promissory note payable in full over a ten- year (10) period. The interest rate shall be the market interest rate for 10 year fixed rate real property purchases at the time the Option to Purchase is exercised. The promissory note shall be secured by a standard form deed of trust upon the real property in favor of the Estate, subordinate to any conservation easement, payable through an escrow account, with such note and deed of trust assignable and distributable to the residuary heirs of the Estate. The 180 period shall begin to run from the date of the last to receive delivery of the appraisal of either Suvia Judd or Deborah Berman, either in person or via United States mail, postage prepaid, proof of delivery to be provided by the Estate and filed with the Court.

6. **IT IS FURTHER ORDERED** that if there is no sale consummated to either Deborah Berman and/or Suvia Judd, the Estate is authorized to distribute the real property of the Estate to the heirs, in-kind, as provided in Idaho Code §15-3-906 as a residuary asset of the Estate.

Either or both Deborah Berman and/or Suvia Judd may decline to exercise such option and shall do so by executing a declination suitable for recording in the real property records of Latah County.

7. **IT IS FURTHER ORDERED** that in order to effectuate such conveyances and the purchase option as ordered herein, the Estate is authorized to purchase such surveys, appraisals, title insurance policies, and expend such transfer, recording and stewardship fees as may be necessary to accomplish such transfers.

DATED this 4th day of August, 2020.

Megan E Marshall

Magistrate Megan Marshall

Signed: 8/4/2020 03:32 PM

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ORDER was delivered by first class mail, postage prepaid, or by ELECTRONIC delivery, as indicated below, this 4th day of August, 2020, to:

Personal Representative
By Electronic delivery to:
John Norton, Attorney for the Personal Representative at:
attorneynorton@moscow.com

and to:

Suvia Judd, c/o her Attorney Laurene Sorensen at:
sorensen@mralegal.com

By United States Mail to:

Matthew D. Berman, PO Box 662, Girdwood, AK 99587
Jonathan D. Berman, 8550 North Tyler, Portland, OR 97203
Judith E. Berman, 2316 Howard St., Victoria BC V8R 4K7
Deborah V. Berman, 1304 South Main, Moscow, ID 83843

Mei Xing Berman, 3340 NW Norwood Dr., Corvallis, OR 97330
Samuel Holland, 2316 Howard St., Victoria, BC V8R 4K7
Robert Berman, 1015 High Street, #101, Bellingham, WA 98225
Maya Berman, 1450 N. Prescott St. #429., Portland, OR 97217
Naomi Berman, 4315 Indian Pipe Loop NE, Building A 905, Box 60470, Olympia, WA 98505

DATED this _____ day of _____, 2020.

Signed: 8/4/2020 04:14 PM

Peggy Lynd
Clerk of the Court

EXHIBIT A

Situate in the County of Latah, State of Idaho, to-wit:

Beginning at a point 130.0 feet South and 61.53 feet East of the Northwest corner of the Southwest Quarter of Section 17, Township 39 North, Range 5 West Boise Meridian and on the East right-of-way line of U. S. Highway No. 95 and running thence East 180.2 feet; thence South 197.75 feet to a point on the North line of Styner Avenue; thence N. 89° 28' East 94.35 feet on said North line of Styner Avenue; thence North 125.0 feet; thence N. 89° 28' E. 125.0 feet; thence South 125.0 feet to a point on the said North line of Styner Avenue; thence N. 89° 28' E, 527.15 feet on said North line of Styner Avenue; thence North 404.4 feet to the South line of the right-of-way of the O. R. & N. Ry's Survey for extension; thence following the South line of said right-of-way in a Northwesterly direction for a distance of 258.0 feet; thence Southwesterly for a distance of 210.0 feet to a point 4 rods North and 40 rods East of the Southwest corner of the Northwest Quarter of said Section 17; thence West 320.0 feet; thence South 60.0 feet; thence West 280.0 feet to a point on the East right-of-way line of U. S. Highway No. 95, said point being also 60.0 feet East and 6.0 feet North of said Southwest corner of the Northwest Quarter of Section 17; thence S. 00° 38' E, 136.0 feet along said East right-of-way line of U. S. Highway No. 95 to the Point of Beginning.

EXCEPTING THEREFROM that portion of Tax No. 2735 described in the following parcel:
The East 100 feet of Tax No. 2432 and the East 100 feet of Tax No. 2735, records of Latah County, Idaho, situated in the SW 1/4 of Section 17, Township 39 North, Range 5 West, Boise Meridian, Latah County, Idaho, more particularly described as follows: Beginning at a point at the Southeast corner of Tax No. 2432 which is a point on the Northerly right-of-way of Styner Avenue; thence Westerly 100 feet along the arc of a circular curve concave to the South, said curve having a radius of 20028.21 feet, a central angle of 0° 32' 17" and a long chord that bears North 89° 16' 57" West; thence North approximately 463 feet to the South line of the right of way if the O. R. & N. Ry's Survey for Extension; thence following the South line of said right-of-way in a Southeasterly direction a distance of approximately 121 feet to the East line of Tax Parcel No. 2735 (as conveyed in Instrument No. 184819, records of Latah County, Idaho; thence South approximately 394 feet to the Point of Beginning.

AND ALSO EXCEPTING THEREFROM all that portion of land deeded to the City of Moscow as disclosed in a Quit Claim Deed recorded November 3, 1995 as Instrument No. 416167, records of Latah County, Idaho.

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

STEWART TITLE GUARANTY COMPANY

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned:

Authorized Countersignature

Moscow Title, Inc.
Company Name

Moscow, ID
City, State

stewart
title guaranty company

Matt Morris
President and CEO

Denise Carraux
Secretary

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AMERICAN LAND TITLE ASSOCIATION

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.

2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at http://www.alta.org/.*

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

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AMERICAN LAND TITLE ASSOCIATION

Stewart Title Guaranty Company

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Commitment No. 16837

1. Effective Date: November 26, 2013 at 8:00 a.m.

2. Policy or Policies to be issued:

   (a) ☒ ALTA Owner's Policy Standard Coverage – (6/17/06) Amount

   Premium

   Proposed Insured:

   (b) ☐ ALTA Loan Policy Standard Coverage– (6/17/06) Amount

   Premium

   Proposed Insured:

   Endorsements:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

   Parcel # 1: Katrina V Berman
   Parcel # 2: Berman Limited Partnership, an Idaho Limited Partnership

5. The land referred to in the Commitment is described as follows:

See attached Exhibit A hereto and made a part hereof.

According to the information available to our office the address to the subject property is:

1304 S Main Street
Moscow, Idaho 83843

MTI-16837

EXHIBIT A

Parcel # 1:

Situate in the County of Latah, State of Idaho, to-wit:

Beginning at a point 130.0 feet South and 61.53 feet East of the Northwest corner of the Southwest Quarter of Section 17, Township 39 North, Range 5 West Boise Meridian and on the East right-of-way line of U. S. Highway No. 95 and running thence East 180.2 feet; thence South 197.75 feet to a point on the North line of Styner Avenue; thence N. 89° 28' East 94.35 feet on said North line of Styner Avenue; thence North 125.0 feet; thence N. 89° 28' E. 125.0 feet; thence South 125.0 feet to a point on the said North line of Styner Avenue; thence N. 89° 28' E, 527.15 feet on said North line of Styner Avenue; thence North 404.4 feet to the South line of the right-of-way of the O. R. & N. Ry's Survey for extension; thence following the South line of said right-of-way in a Northwesterly direction for a distance of 258.0 feet; thence Southwesterly for a distance of 210.0 feet to a point 4 rods North and 40 rods East of the Southwest corner of the Northwest Quarter of said Section 17; thence West 320.0 feet; thence South 60.0 feet; thence West 280.0 feet to a point on the East right-of-way line of U. S. Highway No. 95, said point being also 60.0 feet East and 6.0 feet North of said Southwest corner of the Northwest Quarter of Section 17; thence S. 00° 38' E, 136.0 feet along said East right-of-way line of U. S. Highway No. 95 to the Point of Beginning.

EXCEPTING THEREFROM that portion of Tax No. 2735 described in the following parcel:
The East 100 feet of Tax No. 2432 and the East 100 feet of Tax No. 2735, records of Latah County, Idaho, situated in the SW 1/4 of Section 17, Township 39 North, Range 5 West, Boise Meridian, Latah County, Idaho, more particularly described as follows: Beginning at a point at the Southeast corner of Tax No. 2432 which is a point on the Northerly right-of-way of Styner Avenue; thence Westerly 100 feet along the arc of a circular curve concave to the South, said curve having a radius of 20028.21 feet, a central angle of 0° 32' 17" and a long chord that bears North 89° 16' 57" West; thence North approximately 463 feet to the South line of the right of way if the O. R. & N. Ry's Survey for Extension; thence following the South line of said right-of-way in a Southeasterly direction a distance of approximately 121 feet to the East line of Tax Parcel No. 2735 (as conveyed in Instrument No. 184819, records of Latah County, Idaho; thence South approximately 394 feet to the Point of Beginning.

ALSO EXCEPTING THEREFROM the following described real property in the County of Latah, State of Idaho, to-wit: Beginning at a point 61.53 feet East of the Northwest corner of the Southwest Quarter of Section 17, Township 39 North, Range 5 West, Boise Meridian, in the City of Moscow, Idaho and on the East right of way of U. S. Highway 95 and running thence South 130 feet; running thence East 180.2 feet; running thence South 197.75 feet to a point on the North line of Styner Avenue; running thence North 89° 20' East 94.35 feet on the North line of Styner Avenue; running thence North 125 feet to the True Point of Beginning; thence running North 89° 28' East 125 feet; running thence South 125 feet; running thence East along the North line of Styner Ave. 377.15 feet; running thence North 240.00 feet; running thence West 502.15 feet; running thence Southerly to the True Point of Beginning.

AND ALSO EXCEPTING THEREFROM all that portion of land deeded to the City of Moscow as disclosed in a Quit Claim Deed recorded November 3, 1995 as Instrument No. 416167, records of Latah County, Idaho.

Parcel # 2:

Situate in the County of Latah, State of Idaho, to-wit:

A parcel of land located in the Northwest Quarter of the Southwest Quarter (NW 1/4 SW 1/4) of Section 17, Township 39 North, Range 5 West Boise Meridian and more particularly described as follows:

Beginning at a point 61.53 feet East of the Northwest corner of the Southwest Quarter of Section 17, Township 39 North, Range 5 West, Boise Meridian in the City of Moscow, Idaho and on the East right of way of U. S. Highway No. 95 and running thence South 130 feet; running thence East 180.2 feet; running thence South 197.75 feet to a point on the North line of Styner Ave; running thence North 89° 20' East 94.35 feet on thence North line of Styner Avenue; running thence North 125 feet to the True Point of Beginning; thence running North 89° 28' East 125 feet; running thence South 125 feet; running thence East along the North line of Styner Ave. 377.15 feet; running thence North 240.00 feet; running thence West 502.15 feet; running thence Southerly to the True Point of Beginning.

EXCEPTING THEREFROM all that portion of land deeded to the City of Moscow as disclosed in a Quit Claim Deed recorded November 3, 1995 as Instrument No. 416167, records of Latah County, Idaho.

Stewart Title Guaranty Company

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

1. *Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency, which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public record.*

2. *Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by any inspection of the land or by making inquiry of persons in possession thereof.*

3. *Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.*

4. *Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.*

5. *(a) Unpatented mining claims; (b) reservations or exceptions in patents, or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.*

6. *Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.*

7. *Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.*

   NOTE: The above paragraphs 1 through 7 may be cleared on the forthcoming Extended Lender's, and Residential Owner's Title Policies.

8. General taxes for the year 2013, which are a lien, payable on or before December 20 of said year and not delinquent until after said date.

9. All rights of way for public utilities and public roads as the same now exists over and across the herein described property.

10. Right of Way Easement granted to the Washington Water Power Company, recorded December 15, 1930 in Book 89 of Deeds at Page 415, records of Latah County, Idaho.

Stewart Title Guaranty Company

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II

EXCEPTIONS

11. Right of Way Deeds to the State of Idaho, recorded February 10, 1939 in Book 99 of Deeds at Pages 36 and 37, records of Latah County, Idaho.

12. City of Moscow Ordinance No. 94-12 for Local Improvement District No. 113, recorded July 11, 1994 as Instrument No. 406099, records of Latah County, Idaho.

13. Permanent Easement granted to the City of Moscow, recorded November 3, 1995 as Instrument No. 416168, records of Latah County, Idaho.

14. Grant Deed of Conservation Easement granted to the Palouse Land Trust, recorded December 23, 1996 as Instrument No. 424719, records of Latah County, Idaho.

15. The Effect of and conditions contained in Deed of Gift between Katrina V Berman, Grantor to the City of Moscow, Grantee, recorded December 23, 1996 as Instrument No. 424720, records of Latah County, Idaho.

16. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.

NOTE: Taxes on Statement No.RPM00000174055 originally assessed in the amount of $2,003.04 for the year 2013, which are Due and Payable, with Homeowners.

POWE STREET
STINER AVENUE
U.S. HIGHWAY 26
N. P. R. R.
U. P. R. R.
SW¼ NW¼
HARRISON
HOWARD
R. JEFFERSON

424719

Conservation Easement ORIGINAL

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 12th day of November, 1996, by **Katrina Berman**, a single woman dealing with her sole and separate property, having an address at 1304 S. Main, Moscow, Idaho, **Grantor**, and in favor of the **Palouse Land Trust**, non-profit corporation qualified to do business in Idaho, having an address: 109 South Washington, Moscow, Idaho 83843, and the **Idaho Foundation for Parks and Lands**, 5657 Warm Springs Road, Boise, Idaho 83712, **Grantees.**

I. RECITALS

WHEREAS, Grantor is the owner in fee simple of that certain real property (hereinafter the "Protected Property") in Latah County, State of Idaho , more particularly described in Exhibit "A" (legal description) and shown on Exhibit B (site plan), which are attached hereto and incorporated herein by this reference.

AND WHEREAS, The Protected Property possesses natural, scenic, open space, educational, and recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of The City of Moscow, Latah County and the people of State of Idaho.

The Conservation values of the Protected Property consist of :

A. Opportunities for outdoor recreation by, or education of, the general public.

B. Open space, that provides a significant public benefit in preserving open space contiguous to and adjoining areas designated for purchase and preservation or already owned by the city as part of the City of Moscow Linear Park, and open space that both furthers clearly delineated federal or state governmental policies relative to wetlands, erosion control, and provides for the scenic enjoyment of the public by providing views of Moscow Mountain and Paradise Creek providing relief from urban closeness in the multi-family residential area not otherwise served by a City park.

C. Physical access to other land and the waters of Paradise Creek.

D. The Protected Property would also be extremely desirable property for substantial residential development because of its location and orientation. In the absence of a Grant Deed of Conservation Easement, the Protected Property could be developed in a manner which would destroy the open-space character of the Protected Property and its significant natural, recreational, scenic and open space value.

E. Baseline documentation. The specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, dated DEC. 20th, 1996, on file at the offices of Grantees and incorporated herein by this reference. ("Baseline Documentation consists of reports, maps, photographs, Plot plan, with structures, improvements, roads, wells, flora and fauna, general and specific Baseline data photos, soil maps, vegetation maps, existing "views" and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.) Grantor and Grantees further agree that, within three (3) months of the execution hereof, a collection of additional Baseline Documentation may be compiled by Grantees, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof.

F. Continuation of Existing Uses:
Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by the continuation of land uses on the Protected Property that do not significantly impair or interfere with those Conservation Values. These current uses include the scenic, agricultural and recreational uses as permitted herein and as consistent with this Easement.

G. Conveyance of Right to Protect Conservation Values

Grantor, owner in fee of the Protected Property, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantees .

H. Qualifications of Grantees

Grantees are publicly supported, tax-exempt nonprofit organizations, qualified under Sections 501(c)(3)and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a non-profit corporation under the laws of the state of Idaho and whose primary purpose is consistent with the preservation of the Protected Property.

I. Grantees' commitment

Grantees agree by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

II. CONVEYANCE AND CONSIDERATIONS

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants, conveys, and warrants to Grantees a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein ("Easement").

B. This conveyance is a conveyance of an interest in real property under the provisions of the law of the State of Idaho, and is made as an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and terms, conditions, and restrictions hereinafter set forth, and for no other consideration whatsoever.

C. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, open space recreational condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Property to such activities that are consistent with this purpose as set forth below.

IV. RIGHTS CONVEYED TO GRANTEES

To accomplish the purpose of this Easement the following rights are conveyed to Grantees by this Easement:

A. To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property;

B. Recreational or Educational Use or Management

For the benefit of the public, and for the public's substantial and regular use, to allow persons or groups to enter upon the Protected Property for low impact non-motorized recreational and educational uses and scenic enjoyment. Low impact shall mean by way of example and not by way of limitation, the following: in keeping with the natural topography, for dispersed non-motorized individual type recreation or small unorganized activities such as walking, jogging, dog walking, skiing, sledding, picnicking, nature study, kite flying, and scenic enjoyment, and to restrict use of the property for organized recreational activities.

C. Injunction and Restoration

To enjoin any use of, or activity on, the Protected Property which is inconsistent with this Easement, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof, all in accordance with Section IX.

D. Assignment

To assign, convey, or otherwise transfer Grantees' interest in the Protected Property in accordance with Section XIII herein.

V. USE

A. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in Section VI below:

B. Subdivision. The legal or "de facto" subdivision and development of the Protected Property.

C. Feedlots. The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.

D. Construction. The placement or construction of any buildings, structures, or other improvements of any kind EXCEPT as follows: Those structures necessary for members of the public to fully and substantially enjoy the property for low impact recreational and natural area purposes including but not limited to paths and walkways, benches, refuse disposal cans, picnic areas (including one covered, unsided picnic area with a slab base of no greater square footage than 360 feet, directional safety lighting, and fencing to protect the adjoining property to the West of the Protected Property from trespass, which fencing shall be constructed and maintained at the request of the owner of the adjoining property and at the cost of the Grantor or assigns, with the type of fencing as may be agreed between the parties. Nothing in this paragraph shall be construed to permit the construction or placement of restrooms on the property.

E. Alteration of Land. The alteration of the natural lay of the property and only such surface disturbance as is necessary to construct improvements listed in Paragraph D above, and except as deemed necessary by Grantees to preserve or protect the Conservation Values of the Protected Property and as is necessary for the installation of underground irrigation and utilities services.

F. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

G. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live trees and other vegetation located in the Protected Property, except in accordance with the Moscow Community Forestry Ordinance.

H. Waste Disposal. The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property.

I. Utilities. The installation of above ground utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, except as reasonably necessary to service underground irrigation and underground utility service.

J. Signs, Parking and Ballfields. The placement of commercial signs, billboards, or other advertising material on the Protected Property, or the use of the Protected Property for a parking, or as a ballfield, basketball court or similar organized activity requiring a level playing surface. This does not include a restriction on the use of informational, directional, or educational signage.

L. Hunting. Hunting or trapping, except to the extent determined necessary by Grantees to preserve or protect the Conservation Values of the Protected Property, but under no circumstances shall cats or dogs be hunted or trapped.

M. Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.

N. Wildlife Disruption. The disruption of wildlife breeding and nesting activities except during permitted development.

O. Introduced Trees and Scrubs. The planting or introduction of non-native species of trees and shrubs, or native species not from Paradise Creek drainage genetic material on the Protected Property.

P. Harvesting of Native Plants. The gathering, picking, taking or harvesting of native plants from the Protected Property.

Q. Off-Road Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snow mobiles, or other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution inconsistent with City noise ordinances, and excepting the operation of maintenance equipment.

R. Access to the Protected Property from Styner Avenue shall be by foot traffic only. There shall be no motorized vehicles permitted on the property except motorized wheelchairs or other similar devices for the disabled or maintenance vehicles as necessary for maintenance only. Other access to the Protected Property shall be through any adjoining publicly owned facilities or grounds.

S. Pesticides. Integrated pest management shall be used, with use of pesticides as a last resort and only with prior approval of Grantees.

VI. PERMITTED USES

General. Grantor reserves for herself and her heirs, successors, and assigns, any use of, or activity on, the Protected Property which is not inconsistent with the purposes of the Easement and which is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for herself and her heirs, successors, and assigns, the following uses and activities:

A. To provide for the substantial and regular use by the general public, including the handicapped, for low impact uses (as defined above) that enhance and use the natural terrain and take advantage of the natural features of the property, the Grantor shall have the control of the design of the landscaping, pathway and public picnic and recreation facilities. This shall include design decisions for the improvements, placement of pathways and prevention of random pathway development, utility design layouts, code compliance, and the placement and choices of native vegetation, all as restricted hereinabove.

B. To provide for the maintenance and improvement of the facilities for the recreational, scenic, educational and open space values of the area.

VII. NOTICE AND APPROVAL

Grantor shall notify Grantees prior to undertaking those permitted uses provided in Section VI which are in the nature of permanent improvements or changes and to review any integrated pest management (IPM) activities. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing prior to the date Grantor intends to undertake the use or activity in question: in the case of permanent improvements, not less than twenty-one days (21) notice; in the case of IPM activity, not less than seven (7) days notice.

VIII. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) days of the receipt of such a request, the parties shall select a single mediator to hear the matter, and the mediator shall decide the matter within the next ten (10) days. The parties agree not to proceed with the use or activity pending resolution of the dispute.

IX. GRANTEES' REMEDIES

A. -E. Notice and Enforcement Action

A. Notice of Failure. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured.

B. Grantor's Failure to respond. If Grantor .

1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees; or

2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or to continue diligently to cure such violation until finally cured;

Grantees may bring an action as provided in subsection C.

C. Grantees' Action. Grantees may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary by temporary or permanent injunction, and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

D. Immediate Action Required. If Grantees, in the reasonable exercise of their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantees may pursue their remedies under this section without prior notice to Grantor, without mediation or without waiting for the period provided for cure to expire.

E. Nature of Remedy. Grantees' rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantees' remedies at law for any violation of the terms of this Easement are inadequate and that Grantees shall be entitled to the injunctive relief described in this section both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

F. Costs of Enforcement. In the event either party must enforce the terms of this Easement, the costs, expenses, including attorney's fees, shall be borne by those against whom a judgment is entered. In the event that Grantees secure redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantees' reasonable expenses shall be borne by Grantor and those of its heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized activity or use. If Grantor prevails in any judicial proceeding initiated by Grantees to enforce the terms of the Easement, Grantor's cost of suit, including attorney's fees, shall be borne by Grantees.

G. Grantees' Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantees, and any forbearance by the Grantees to exercise their rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantees of such term of any Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Claims and Defenses. Grantor acknowledges that it has carefully reviewed this Grant Deed of Conservation Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Grant Deed of Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantees or their successors in interest under or pertaining to this Easement based upon waiver, lashes, estopped adverse possession, or prescription.

I. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantees to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

X. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

A. Liabilities and Insurance

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor.

B. Environmental Representations and Warranties

Grantor represents and warrants that to the best of Grantor's knowledge:

1. There are no apparent or latent defects in or on the Protected Property;
2. There has been no release, dumping, burying, abandonment, or migration from off-site on the Protected Property of any substances, materials, or wastes which are hazardous, toxic, dangerous, harmful or are designated as, or contain components which are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state or local law, regulation, statute, or ordinance;
3. Neither Grantor nor Grantees' predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal or state Superfund site; and
4. There is no pending or threatened litigation affecting the Protected Property or any portion thereof which will materially impair the Conservation Values of the Protected Property or any portion thereof to the Grantees. No civil or criminal proceedings have been instigated or are pending against the Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

C. Indemnification

Each part shall hold the other harmless, indemnify, and defend the other and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively Indemnified Parties-) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands. or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
2. The obligations specified in subsection A of this section;
3. The breach of the environmental representation and warranties specified in subsection B of this section; or
4. The existence or administration of this Easement.

XI. SUBSEQUENT TRANSFER OR EXTINQUISHMENT

A. Extinguishment

If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantees shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Idaho law at the time, in accordance with subsection B herein. Grantees shall use all such proceeds in a manner consistent with the conservation purposes of this Easement.

B. Valuation

This Easement constitutes a real property interest immediately vested in Grantees, which, for the purpose

of subsection A herein, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reasons of this grant, pursuant to section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant.

C. Condemnation

If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantees shall be entitled to compensation in accordance with applicable law.

D. Subsequent Transfers

Grantor agrees (1) to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected property. Grantor further agrees to give written notice to the Grantees of the transfer of any interest of at least thirty (30) days prior to the date of such transfer. Such notice to Grantees shall include the name, address, and telephone number of the prospective transferee or his or her representative. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XII. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantees under any applicable laws, or Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of County, State, and any other jurisdiction in which such recording is required.

XIII. ASSIGNMENT

A. Assignment. This Easement is transferable, but Grantees may assign their rights and obligations under this easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under [any applicable state law] (or any successor provision then applicable). As a condition of such transfer, Grantees shall require that the Conservation Purposes that this Easement is intended to advance continue to be carried out by the transferee. Grantees shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

B. Succession. If at any time it becomes impossible for Grantees to ensure compliance with the covenants contained herein and Grantees has not named a successor organization, or the Grantees shall cease to exist, then their rights and duties hereunder shall become vested and fall upon the following named entities to the extent that they shall accept this Easement, in the following order:

Such other entity, with purposes similar to the Palouse Land Trust , constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 (or corresponding provision of any future statute); provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable state law and the Internal Revenue Code of 1986 (or corresponding provision of any future statute) and with due regard to the purposes of this Easement.

XIV. RECORDATION

Grantees shall record this instrument in a timely fashion in the official records of Latah County, Idaho and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve their rights in this Easement.

XV. GENERAL PROVISIONS

A. Controlling Law

The interpretation and performance of this Easement shall be governed by the laws of the State of Idaho.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of [any applicable state law]. if any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII herein.

E. No Forfeiture

Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

F. "Grantor" -"Grantees"

The term "Grantor" and "Grantees," wherever used herein, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantees, their successors and assigns.

G. Successors

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

H. Termination of Rights and Obligations

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

J. Counterparts

The parties may execute this instrument in two or more Counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

K. Joint Obligation

The obligations imposed by this Easement upon Grantor shall be joint and several.

TO HAVE AND TO HOLD unto Grantees, their successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 12th day of November, 1996.

Grantor Katrina V. Berman
Katrina Berman

THE Palouse Land Trust and the Idaho Foundation for Parks and Lands does hereby accept the above Grant Deed of Conservation Easement.

Grantees
Palouse Land Trust Inc. by John Norton, President

Grantees
Idaho Foundation for Parks and Land
By: Don K. Weilmunster, President

STATE OF IDAHO)
)ss.
COUNTY OF LATAH)

On this 12th day of November, 1996, before me personally appeared Katrina Berman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

Charles L. Crab
NOTARY PUBLIC in and for the
State of Idaho, residing at Moscow,
Idaho therein.

My commission expires 10/04/01

STATE OF IDAHO)
)ss.
COUNTY OF LATAH)

On this 20TH day of ~~November~~ December, 1996, before me personally appeared John Norton, known to me to be the President of the Palouse Land Trust, Inc. and whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the Corporation.

Kathleen Hardcastle
NOTARY PUBLIC in and for the
State of Idaho, residing at
Moscow therein.
Commission expires 9-20-97

STATE OF Idaho)
)ss.
COUNTY OF Latah)

On this 19th day of ~~November~~ December, 1996, before me personally appeared Don K. Weil-munsterknown to me to be the President of the Idaho Foundation for Parks and Lands and whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of the Corporation.

NOTARY PUBLIC in and for the
State of Idaho, residing at
Boise, Idaho therein.
expires: 3-18-98

SCHEDULE OF EXHIBITS

A. Legal Description of Property Subject to Easement
B. Site Map

EXHIBIT A

The east 100 feet of Tax No. 2432 and the east 100 feet of Tax No. 2735, records of Latah County, Idaho, situated in the SW1/4 of Section 17, Township 39 North, Range 5W, Boise Meridian, Latah County, Idaho more particularly described as follows:

Beginning at a point at the Southeast corner of Tax No. 2432 which is a point on the Northerly right-of-way of Styner Avenue; thence Westerly 100 feet along the arc of a circular curve concave to the south, said curve having a radius of 20028.21 feet, a central angle of 0°32'17" and a long chord that bears North 89°16'57" West;

Thence North approximately 463 feet to the South line of the right-of-way of the O.R. & N. Ry's Survey For Extension;

Thence following the South line of said right-of-way in a Southeasterly direction a distance of approximately 121 feet to the east line of Tax Parcel No. 2735 (as conveyed in Instrument No. 184819, records of Latah County, Idaho); thence South approximately 394 feet to the point of beginning and containing .98 acre, more or less.

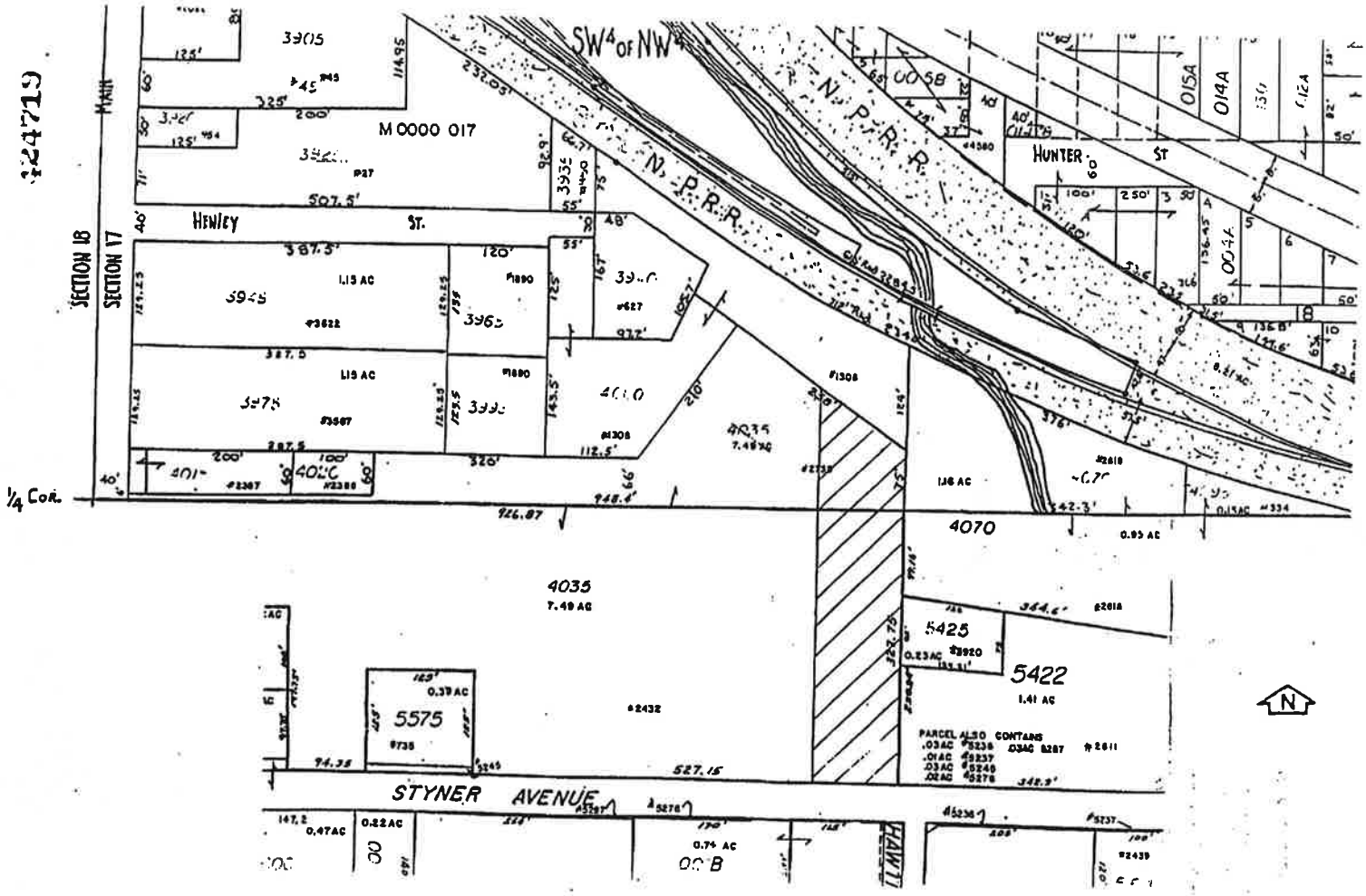
SECTION 18
SECTION 17
SW4 OF NW4
N.P.R.R.
HENLEY ST.
HUNTER ST
STYNER AVENUE
1/4 Cor.
M 0000 017
3905
3945
3925
3935
3965
3975
3985
4010
4035
7.49 AC
4070
0.95 AC
5425
0.23 AC
5422
1.41 AC
5575
0.39 AC
0.47AC
0.22AC
0.74 AC
1.13 AC
1.19 AC
1.36 AC
0.82 AC
527.15
926.87
948.4'
507.5'
387.5'
344.4'
342.75'
376'
94.35'
147.2'
0154
014A
004A
00B

EXHIBIT B

CITY COUNCIL STAFF REPORT

DATE: Monday, November 2, 2020

RESPONSIBLE STAFF	REVIEWED BY
Michael Ray, Assistant CD Director/Planning Manager	Public Works/Finance Committee
ADDITIONAL PRESENTER(S)	**OTHER RESOURCES**

AGENDA ITEM TITLE

Ordinance Amending Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities (ACTION ITEM) - Mike Ray

DESCRIPTION

Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. 5G/small cell high speed deployment will bring much higher data speeds and traffic through the use of higher-frequency radio waves, which have a shorter range than the frequencies used by previous cell phone towers. Since small wireless facilities have a shorter range, they require a greater number of facilities which are typically located in the public right-of-way. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. This item was reviewed by the Public Works/Finance Committee on October 12, 2020 and considered on first reading by the Council on October 19, 2020.

STAFF RECOMMENDATION

Approve the proposed Ordinance on second reading under suspension of the rules requiring a third reading and that it be read by title and published by summary.

PROPOSED ACTIONS

PROPOSED ACTIONS: Approve the proposed Ordinance on second reading under suspension of the rules requiring a third reading and that it be read by title and published by summary; or consider the Ordinance on second reading; or reject the Ordinance; or take such other action deemed appropriate.

FISCAL IMPACT

PERSONNEL IMPACT

N/A

ATTACHMENTS

1. Ordinance
2. Staff Memo
3. Legal Memo
4. P&Z Minutes
5. Public Hearing Notice
6. Public Comments
7. Chaney Comments
8. Hall Comments
9. Staff Memo - Chaney Hall Response

ORDINANCE NO. 2020 -

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 3; PROVIDING FOR THE AMENDMENT OF THE TELECOMMUNICATIONS CODE TO ESTABLISH STANDARDS FOR SMALL WIRELESS FACILITIES; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, in 2001 the City first adopted regulations and development standards specific to telecommunications facilities and antenna towers; and

WHEREAS, since the telecommunications code was initially established there have been federal laws, regulations, and court decisions that have impacted the way telecommunications facilities are permitted and regulated, which is the basis for updating the City's telecommunication regulations; and

WHEREAS, the implementation of 5G technology will bring significantly higher data speeds and traffic through the use of higher-frequency radio waves, which have a shorter range than the frequencies used by previous cell phone towers; and

WHEREAS, since small wireless facilities have a shorter range by which they transmit data, they require a greater number of facilities which are typically located in the public right-of-way; and

WHEREAS, with the number and frequency of small wireless facilities that are needed to create a 5G network, the City wishes to encourage the location and co-location of transmission equipment on existing structures in order to reduce visual clutter, promote public safety, and reduce impacts to the existing built environment; and

WHEREAS, the City's existing telecommunications code does distinguish between macrocell facilities and small wireless facilities; and

WHEREAS, establishing predictable and balanced regulations within the authority reserved for local governments is in the best interest of the City; and

WHEREAS, the City desires to update the telecommunications code to protect and promote the public health, safety and welfare of the community, to reasonably regulate wireless communication facilities aesthetics, and to protect and promote the character of the City in a manner consistent with State and Federal laws and regulations; and

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WHEREAS, on September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the amendments contained herein and recommended approval to the City Council with minor modifications; and

WHEREAS, on October 19, 2020 the City Council conducted a public hearing and considered and adopted the amendments contained herein;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 4, Chapter 3 be amended as follows:

• • •

H. Telecommunications Facilities.

1. Applicability. This Section shall apply to antenna towers, antenna support structures, antennas and their ancillary facilities (telecommunications facilities) any of which ~~are~~ is used to provide commercial telecommunications services. This Section shall not apply to noncommercial antenna towers ~~exclusively used~~used exclusively as accessory to a residential use on the same lot.
2. Purpose. The provisions of this Section are intended to ensure that telecommunications facilities are located, installed, maintained and removed in a manner that:
   a. Minimizes the number of antenna towers throughout the community;
   b. Encourages the co-location of telecommunications facilities;
   c. Encourages the use of existing buildings, light or utility poles, water towers or other structures for antenna mounting and discourages construction of new antenna towers;
   d. Ensures that telecommunications facilities are located and designed to minimize visual impact on the surroundings; and
   e. Ensures that regulation of telecommunications facilities does not have the effect of prohibiting the provision of telecommunications services, does not unreasonably discriminate among functionally equivalent providers of such services, and allows the provision of adequate area coverage by such services.
3. Definitions.
   a. *Ancillary Facilities*. Buildings, cabinets, vaults, enclosures, equipment, and the like required for operation of telecommunications systems.
   b. *Antenna*. Any device that transmits and/or receives radio waves, microwaves, or other electro-magnetic radiation for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, micro-wave, cellular telephone and similar forms of communications.
   c. *Antenna Support Structure*. Any structure or building not constructed primarily for the purpose of supporting an antenna but that supports an antenna as a secondary or accessory use.
   d. *Antenna Tower*. Any structure or pole erected primarily for the purpose of supporting one or more antennas that are used to provide commercial wireless communications or telecommunications services.
   e. *Antenna Tower Height.* The overall vertical length of the antenna tower above ground level.
   f. *Co-location*. Placement of one or more antenna(s) on an antenna support structure or

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the placement of an antenna on an antenna tower on which one or more antennas are already located.

g. *Lattice Tower*. An antenna tower characterized by a framework of lateral or diagonal cross members that stabilize the tower.

h. *Monopole*. An antenna tower that consists of a single upright pole, which is self-supporting and without supports or guys wires.

i. *Small Wireless Facility.* A telecommunications facility that meets each of the following conditions:

i. The structure on which the antenna facilities are mounted is:

(a) Fifty (50) feet or less in height; or

(b) No more than ten percent (10%) taller than other adjacent structures; or

(c) Not extended to a height of more than ten percent (10%) above the height as a result of the co-location of new antenna facilities.

ii. Each antenna (excluding associated antenna equipment) is no more than three (3) cubic feet in volume; and

iii. All antenna equipment associated with the facility (excluding antennas) is cumulatively no more than twenty-eight (28) cubic feet; and

iv. The facility does not require antenna structure registration under Part 17 of FCC regulations; and

v. The facility does not result in human exposure to radiofrequency radiation in excess of the application safety standards specified in FCC Rule 1.1307(b) or any rule that subsequently replaces FCC Rule 1.1307(b).

j. *Telecommunications ~~facilities~~Facilities*. Antenna towers, antenna support structures, antennas and their ancillary facilities that are used to provide commercial wireless communications or telecommunications services.

k. *Temporary Antenna Tower*. An antenna tower established for the purpose of providing tele-communications services on a temporary basis for a special event or to temporarily replace an antenna tower while it is being repaired.

4. General Use Regulations

a. The installation of lattice towers is prohibited, except as permitted as ~~lattice towers that qualify and are permitted as~~ temporary antenna towers subject to Section 4.d. herein. Replacement, relocation or alteration of non-conforming lattice towers shall be subject to the Nonconformity Regulations in Section 4-1-~~6~~7 of this Zoning Code.

b. A Conditional Use Permit shall be required before the installation, relocation, replacement, and/or alteration of an antenna tower that exceeds thirty-five ~~feet~~ (35') feet in height in all Zoning Districts.

c. ~~Co-location shall be a permitted use if the property upon which such antenna is located is within one of the following Zoning Districts: U, RO, NB, RTO, CB, GB, MB, or I. An antenna may be co-located as a permitted use on existing antenna towers and antenna support structures in all zoning districts if the antenna extends no more than eighteen feet (18') above, and projects no more than eight feet (8') horizontally away from the existing tower or support structure. Colocation shall also be a permitted use on nonconforming antenna towers if the antenna extends no more than eighteen feet (18') above, and projects no more than eight feet (8') horizontally away from, the nonconforming antenna tower.~~ Except for small wireless facilities, which are subject to the standards contained in Section 6 herein, co-location shall be a permitted use

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within all zoning districts when located upon existing antenna towers and antenna support structures if the antenna extends no more than fifteen (15) feet above, and projects no more than eight (8) feet horizontally away from the existing tower or support structure. Any co-location of wireless facilities that exceed such limits shall require a Conditional Use Permit.

d. A temporary antenna tower as defined herein shall be a permitted use in all zoning districts, subject to site plan approval by the Zoning Administrator. The duration of the temporary antenna tower at the site shall not exceed the special event time or the time reasonably needed to repair the antenna tower in need of repair, as determined by the Zoning Administrator.

5. General Telecommunication Facility Development Standards

a. Prohibited Towers. The installation of telecommunications facilities utilizing lattice towers or towers requiring supporting guy wires shall be prohibited.

b. Antenna Tower Setback from Highway Right-of-Way. No antenna tower that exceeds sixty ~~feet~~ (60~~'~~) feet in height shall be permitted within five hundred ~~feet~~ (500~~'~~) feet of US Highway 95 and/or State Highway 8 rights-of-way unless the proposed site is in the U, MB, or I Zoning District, in which case the antenna tower shall be set back a minimum of one hundred ~~feet~~ (100~~'~~) feet from said right-of-way.

c. Antenna Tower Setback from Property Lines. Antenna towers shall be separated from the property line of any adjacent property zoned for residential uses at least a distance equal to the height of the antenna tower, and shall be separated from adjacent property lines in all other zones by at least a distance equal to one-half (1/2) the height of the antenna tower.

d. Security. Every telecommunications facility shall be protected from unauthorized access by appropriate security measures.

e. Lighting. No~~Every~~ antenna ~~and~~or antenna tower shall ~~not~~ be lighted unless required by the Federal Aviation Administration or other state or federal agency having such authority, and such lighting shall not be more than the minimum required by such agency.

f. Noise Reduction. ~~In any SR, R-1, R-2, R-3, or R-4 Zoning District, and in all other Zoning Districts when the adjacent property is zoned SR, R-1, R-2, R-3, or R-4 or occupied by a dwelling, hospital, school, library, or nursing home or similar use, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to forty five decibels (45 dB).~~ Noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to no more than forty-five decibels (45 dB).

g. Signage. The placement of signage on antenna towers is prohibited, except for the placement of security signage, which shall not exceed six (6) square feet on each side of the antenna tower and shall not be located higher than six ~~feet~~ (6~~'~~) feet above grade. Additionally, one security sign not to exceed one (1) square foot may be provided on each fifty (50) lineal feet ~~(50')~~ of wall or fence enclosing the facility.

~~Antenna towers shall be separated from the property line of any adjacent property zoned SR, R-1, R-2, R-3, or R-4 at least a distance equal to the height of the antenna tower, and shall be separated from all other adjacent property lines at least a distance equal to one-half (1/2) the height of the antenna tower.~~

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h. Aesthetic Considerations.

i. Antenna towers shall be painted a neutral color consistent with the natural or built environment of the subject site and the surrounding area unless otherwise required by ~~the Federal Aviation Administration or~~ any ~~other~~ State or Federal agency having such authority.

ii. Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the subject site and the surrounding area and shall also comply with any design guidelines applicable to the particular zoning district in which the facility is located.

iii. Antennas and cables shall be of a color identical to or closely compatible with that of the structure to which they are attached unless otherwise required by the Federal Aviation Administration or any applicable state or federal agency. Telecommunications facilities located above ground in or directly adjacent to any ~~SR, R-1, R-2, R-3, and R-4 Zoning Districts~~ residential zoning district shall be surrounded by a minimum six (6)- foot ~~(6')~~ high decorative wall constructed of brick, stone, or textured concrete block. Said wall shall be surrounded by a Type "A" Landscape Buffer Yard planted adjacent to said wall or fence or at an alternate location providing equal or better buffering. Telecommunications facilities in all other zoning districts shall be surrounded by a minimum six (6)- foot ~~(6')~~ high wall or solid or slatted fence. Said fence or wall shall be surrounded by a Type "A" Landscape Buffer Yard planted adjacent to said wall or fence or at an alternate location providing equal or better buffering.

iv. Vehicle or outdoor storage on any antenna tower site is prohibited unless otherwise permitted by the Zoning District in which the tower is located.

v. At least one (1) on-site parking stall with a vehicle turnaround area shall be provided at each antenna tower site for temporary use by authorized personnel. The parking area and driveway to it shall consist of asphalt, concrete, or gravel.

vi. ~~Ancillary facilities located above ground for antennas in or directly adjacent to any SR, R-1, R2, R-3, or R-4 Zoning District shall be set back a minimum of twenty-five feet (25') from any SR, R-1, R-2, R-3, or R-4 zoned property, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties. Above ground ancillary facilities in any other Zoning District shall be located a minimum of fifty feet (50') from any SR, R-1, R-2, R-3, or R-4 zoned property, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties.~~ Ancillary facilities located above ground for antennas shall be set back a minimum of fifty (50) feet from any adjacent property that is either located within a residential zoning district or utilized for residential purposes, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties.

i. Co-~~Location~~ location Consent for New or Existing Antenna Towers.

i. Existing Antenna Towers. Prior to the issuance of any permit to relocate, alter or modify any antenna tower, the tower owner shall provide to the City a notarized written commitment to make said antenna tower available for use by others subject to technical and structural limitations and reasonable financial terms. The failure of an antenna tower owner to agree to shared use or to negotiate in good faith with

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potential users shall be unlawful and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.

ii. New Antenna Towers. Any new or relocated antenna tower eighty ~~feet~~ (80~~'~~) feet or greater in height shall be designed and constructed to accommodate at least two (2) additional users unless a larger number of users needs to be accommodated as indicated by the response to the Notice provisions herein. As an alternative, a smaller tower may be approved if the tower owner commits in writing to "swap out" to a larger tower, or extend the tower, when needed to allow co-location space for additional service providers. A notarized written commitment to shared use as specified in Subsection 5.j.i~~6.a.~~ above shall be submitted to the Zoning Administrator by the antenna tower applicant. The failure of the owner of an antenna tower built with a capacity for shared use to negotiate in good faith with potential users shall be unlawful and shall be a violation of this Ordinance and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.

j. Antenna Tower Inventories. Prior to the issuance of any permit to install, relocate, replace or alter any antenna tower, the tower owner shall furnish the Zoning Administrator an inventory of all of the owner's antennas and antenna towers in the City of Moscow and ~~the Area of City Impact~~ within one (1) mile of the City limit boundary. The inventory shall include the reference name or number, or other description of location including a site map(s), structure type, height, type of antenna tower(s) or antenna support structure(s) and height of all existing antennas and an assessment of available ground space for the placement of additional equipment shelters for potential future users.

k. Notice of Antenna Tower Permit Applications. The applicant for any new antenna tower permit shall have a copy of the application and a summary containing the height, design, location, type and frequency of antennas delivered by certified mail to all known and potential antenna tower users within the service area ~~as identified by a list maintained by the Community Development Department~~. Proof of such delivery of the summary shall be submitted with the permit application to the City. Such notification shall be so mailed no less than sixty (60) days prior to ~~Zoning Administrator decision or Board of Adjustment~~ the public hearing at which the application will be considered and shall specifically solicit co-location discussion between the applicant and recipients of the notice. The Zoning Administrator may establish a form required to be used for such notifications. Upon request, the Zoning Administrator shall place on a list the name and address of any user or prospective user of antenna towers to receive notification of applications. The failure of the party receiving such Notice to use this process or respond to any such Notice may be considered cause for denying requests by such party for antenna tower permits. Such response shall be provided in writing to the Zoning Administrator within forty-five (45) days of mailing and shall contain a statement specifying desire to co-locate on the applicant's proposed tower and a statement regarding the responder's ability to

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accommodate the needs of the applicant on an existing tower or support structure owned or operated by the responder. ~~Additionally, the Zoning Administrator shall cause notice of any required public hearing for a proposed antenna tower to be mailed to owners of property within six hundred feet (600') of the permit application site not less than sixty (60) days prior to the public hearing.~~

6. Small Wireless Facility Standards.
   a. Applicability. These standards shall apply to the installation of new small wireless facility antennas or the co-location of small wireless facilities on existing antenna support structures. The City Council may adopt additional small wireless facility design and construction standards by Resolution and the most restrictive provisions of either shall apply.
   b. Approvals. Small wireless facilities shall be subject to the administrative approval of the Zoning Administrator, or their designee, subject to the construction standards and permit and application process contained herein and as established by Resolution of the City Council.
   c. Co-location Upon Existing Antenna Support Structures. Co-location of small wireless facilities upon existing antenna support structures shall be a permitted use subject to the following standards.
      i. Height of co-location antennas. Small wireless facilities shall not extend more than five (5) feet above and two (2) feet horizontally from the existing antenna support structure.
      ii. Shrouding of antennas and supporting equipment. All small wireless facility antennas, attendant equipment, and cabling shall be shielded from view by equipment and cable shrouds and/or equipment enclosures that shall be colored gray (RAL 7074) or other similar color as approved by the City.
      iii. Maximum number of shrouds. Only one equipment shroud, containing all required small wireless facility equipment, shall be installed per antenna support structure. Except, one additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud.
      iv. Shroud mounting method. Small wireless facility shrouds may be either top or side mounted to an existing antenna support structure, or suspended from strand-mounted to aerial cables as may be approved by the utility cable owner in accordance with the standards contained herein.
         (a) Side mounted. Side mounted equipment shrouds shall be located in such a manner as to not obstruct pedestrian access on adjacent sidewalks. Where side mounted equipment shrouds are placed above adjacent sidewalks a minimum clearance of eight (8) feet shall be maintained between the bottom of the shroud and mounting hardware and the walking surface. Where side mounted shrouds overhang the adjacent curb or roadway, a minimum clearance of fourteen (14) feet shall be maintained between the bottom of the equipment shroud or mounting hardware to the roadway surface. If the antenna is mounted to the side of the pole it shall be located inside a maximum shroud of 5.5 cubic feet in volume with a sixteen (16) inch maximum width.
         (b) Top mounted. If the antenna shroud is located on top of the antenna support structure, the outer diameter shall be fourteen (14) inch maximum and the antenna shroud shall be no more than five (5) feet tall, including antenna, radio

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head, mounting bracket, and all other hardware necessary for a complete installation.

v. Obstruction of lighting prohibited. Shroud installations upon antenna support structures containing street lights shall not obstruct, interfere with, or diminish the light distribution and lighting levels of the street light fixture.

d. Replacement Combination Light and Antenna Towers.

i. Existing antenna support structures (such as light poles) may be replaced with new equivalent combination structures intended to accommodate the intended function of the existing antenna support structure and accommodate a small wireless facility subject to the following requirements:

(a) The replacement antenna support structure is of the same quality, color, design and style to be consistent with other existing support structures in the surrounding area subject to the approval of the Zoning Administrator;

(b) The replacement antenna support structure is of the same height as the existing support structure excluding the top mounted small wireless facility antenna which may exceed the height of the existing antenna support structure and which shall comply with the top mounted shroud standards contained herein;

(c) The replacement antenna support structure shall be designed to internally accommodate all necessary small wireless supporting equipment in accordance with the standards required of new small wireless facilities contained herein;

(d) The replacement of decorative and/or historic light fixtures shall not be permitted unless the applicant can demonstrate that the proposed replacement antenna support structure will not disrupt or interfere with the visual theme and style of lighting within the surrounding area.

e. New Small Wireless Facility Antenna Towers.

i. Maximum height. No new small wireless antenna tower may exceed forty (40) feet in height unless a Conditional Use Permit is received to exceed this height limitation.

ii. Antenna and equipment shrouding. New standalone or new and/or replacement combination light and small wireless antenna towers shall fully enclose and contain all the small wireless communications equipment, cabling, and antennas, and shall be of a style and color that is consistent with other similar light poles and fixtures within the surrounding area as approved by the City.

iii. Maximum number of shrouds. Only one equipment shroud, containing all required small wireless facility equipment, shall be installed per antenna tower.

iv. Minimum spacing between small wireless facility antenna towers. Small wireless facility antenna towers shall be located no closer than two hundred fifty feet (250') from any other small wireless facility antenna tower. This separation requirement shall not apply to co-locations upon existing antenna support structures or replacement combination light and small wireless antenna towers.

v. Antenna tower design. New small wireless antenna towers shall consist of a ten (10) inch galvanized straight steel pole, powder coated black over zinc paint, with a foundation base of sixteen (16) inches in diameter designed to accommodate all necessary supporting equipment and a top antenna shroud of no more than fourteen (14) inches in diameter. All tower components and antenna shrouds shall be painted a matching black color.

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7. Permits Required
   a. A building permit shall be required to construct, install, relocate, replace, or alter any antenna tower. An administrative zoning permit shall be required to locate or replace any antenna on an antenna tower or antenna support structure or for the installation of a small wireless facility. A Conditional Use Permit shall be required as specified in Section 4 herein.
   b. An application for any of the above-mentioned permits shall include or be accompanied by all of the information necessary to determine and document compliance with the regulations established herein. Where no application or permit form exists, the application shall be in the form of a letter signed and dated by the applicant, and the permit issuance shall be in the form of a letter of approval signed and dated by the Zoning Administrator or a dated signature by the Zoning Administrator on the applicable site plan.
   c. Specific permit application submittal requirements shall be determined by the Zoning Administrator and may include, but are not limited to, the following:
      i. Permit application.
      ii. Site plan.
      iii. Elevation drawing(s) of the antenna tower or antenna support structure, antenna(s) and ancillary facilities.
      iv. Photo simulations from three different perspectives of the installation site illustrating the anticipated visual appearance of the proposed wireless facility (not required for small wireless facilities).
      v. Description of proposed and required lighting including light locations. Documentation of required lighting, as specified in Section 5.~~ee~~. herein, may be deferred until prior to issuance of building permit if not available at time of application submittal.
      vi. Any plans necessary to depict structural requirements.
      vii. Description of the number and types of antennas being proposed, as well as the expected or known capacity of the antenna tower in terms of the number of antennas the antenna tower can accommodate.
      viii. Antenna tower or antenna location study specifying the search process by which the proposed site was chosen.
      ix. Antenna tower inventory as specified in Section 5.j.~~6.c.~~ herein.
      x. Notarized written commitment to allow co-location/shared use as specified in Section 5.i.i~~6~~ herein (not required for small wireless facilities).
      xi. Documentation by a certified radio frequency engineer demonstrating compliance with current non-ionizing electromagnetic radiation (NIER) or radio frequency (RF) emissions standards as established by the Federal Communications Commission (FCC). Such documentation may be deferred until prior to issuance of building permit if not available at time of application submittal. Once the facility is constructed, the City reserves the right to require additional NIER and RF emissions testing by a certified radio frequency engineer to verify that the facility is in compliance with FCC standards.
      xii. Current FCC license to operate.
      xiii. Documentation of a review by the Federal Aviation Administration (FAA) and/or the Aviation Division of the Idaho Transportation Department (ITD). Such

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documentation may be deferred until prior to issuance of building permit if not available at time of application submittal.

xiv. Name and address of the property owner, telecommunications service provider, and owner of the telecommunications facility on the permit application, and a written statement of approval of the application by the property owner.

xv. Description of proposed security measures as required in Section 5.~~b~~d. herein.

xvi. A tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or within a ten-foot radius of the base of such a tree.

8. Findings for Conditional Use Permit.

a. Before a Conditional Use Permit for an antenna tower may be issued, the applicant must demonstrate, and the Zoning Board of Adjustment must find, compliance with all of the following:

i. No existing antenna towers or antenna support structures within the necessary geographic area for the applicant's antenna tower meet the applicant's requirements considering (a) height, (b) structural integrity, or (c) that there are other prohibitive conditions that render existing antenna towers or antenna support structures within the applicant's required geographic area unsuitable.

ii. That the design of the antenna tower, including the antennas and ancillary facilities, minimizes visual impact and otherwise complies with provisions and intent of this Section.

iii. That the proposed antenna tower location minimizes the number and/or size of antenna towers or antenna support structures that will be required in the area.

iv. That the applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Ordinance or otherwise.

These findings shall be required in addition to those required for the Reasoned Statement of Relevant Criteria and Standards provided in Section 4-8-4 of the Zoning Code.

9. Abandonment and Removal.

a. All telecommunications facilities shall be removed by the owner of the facility, by the operator of the facility, and/or by the property owner within six (6) months of the time that the facility has substantially ceased being used to provide telecommunications services to the public. Removal shall not be required when the owner or operator of the facility has, within the aforementioned six (6) months, filed with the City a written request to reuse the antenna tower and the City has approved such request. Such written request shall detail the circumstances that justify why the antenna tower should not be removed, why it will be unused for six (6) months or more, and shall commit to a date certain, not to exceed twelve (12) months from the date of last use, by which time the antenna tower will again provide telecommunications services to the public. Before issuance of an antenna tower permit, the applicant for any antenna tower permit shall provide to the City financial security, such as but not limited to an open-ended bond, to ensure removal of the antenna tower and ancillary facilities after the facility is no longer being used to provide telecommunications services to the public.

10. Affirmative Duty to Keep City Informed.

a. All telecommunications service providers having telecommunications facilities in the

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jurisdiction of the City shall be required to report in writing to the Zoning Administrator any change in the status of their operations. Change in status shall include, but is not limited to, the following:

i. Change in or loss of license from the FCC to operate.
ii. Receipt of notice of failure to comply with the regulations of any other authority having jurisdiction over the business or facility.
iii. Change in ownership of the company that owns the telecommunications facilities or that provides telecommunications services.
iv. Loss or termination of lease with the property owner or the owner of the telecommunications facilities.
v. Abandonment of a facility or non-use of a facility for a period of six (6) months or longer.

b. All telecommunications service providers having facilities in the jurisdiction of the City shall file with the Zoning Administrator an annual written statement verifying continued use of each of their facilities in the City's jurisdiction as well as continued compliance with state and federal agency regulations.

• • •

SECTION 5: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 shall be in full force and effect.

SECTION 6: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 7: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2020.

_____
Bill Lambert, Mayor

ATTEST:

_____
Laurie M. Hopkins, City Clerk

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City of Moscow
Community Planning & Design

Memo

To: Mayor and City Council

From: Mike Ray, AICP - Planning Manager

Date: October 6, 2020

Re: Amendment of Moscow City Code Title 4, Chapter 3 Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities

Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. Historically, cellular communication systems were designed to transport voice communications, which were easily handled with tall, high-power communications towers. As technology has evolved and wireless data demand has grown, those legacy towers have become overwhelmed with wireless data traffic. 5G/small cell high speed deployment will bring much higher data speeds and traffic through the use of higher-frequency radio waves, which have a shorter range than the frequencies used by previous cell phone towers. Since small wireless facilities have a shorter range, they require a greater number of facilities which are typically located in the public right-of-way.

In 2001, the City first adopted regulations and development standards specific to telecommunications facilities and antenna towers. Since 5G/small cell technology was not in existence at that time, the City's existing telecommunications code does not distinguish between the larger macrocell towers and small cell facilities. Since the existing code only contemplates macrocell towers, the co-location (locating an antennae and equipment on an existing structure such as a utility or light pole) is permitted by-right throughout the City without any standards. Therefore, there are currently no aesthetic, public safety, and visual clutter standards that would apply to small cell facilities in the existing code. In implementing a small cell program, the following objectives have been identified: Provide reasonable access to provide desired services; minimize visual clutter upon utility poles; ensure installations are as aesthetically pleasing as possible; ensure that installations do not obstruct sidewalks and roadways and do not interfere with light fixture function; create a permitting system that can facilitate processing of applications within the allotted time period; and coordinate with utility and street light owners.

Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. Under the Telecommunications

Act, local jurisdictions have to provide telecommunications providers reasonable access within the public right-of-way and cannot effectively deny their ability to provide service. Additionally, local governments are prohibited from regulating wireless communications facilities based upon radio frequency (RF) emissions and effectively prohibiting delivering telecommunications services.

In September of 2018, the FCC issued a Declaratory Ruling that was intended to streamline the permitting of 5G/small cell deployments. The FCC ruling included maximum fees that can be charged for small cell applications and right-of-way use, new "shot clock" decision time frames for small cell applications (60 days for a co-location upon an existing utility pole and 90 days for a new standalone small cell tower), and a new appeal process for shot clock violations. The City Attorney has provided a legal memo regarding the regulations and limitations that pertain to the deployment of 5G/small cell facilities which is attached to this memo. The legal memo provides an analysis on RF limitations, fees, aesthetics, underground infrastructure, and minimum spacing of small cell facilities.

With the likelihood of 5G/small cell deployment in Moscow at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. The small wireless facility standards would apply to the installation of new small wireless facility antennas or the co-location on existing support structures. There are three categories of installations: Co-location upon existing antenna support structures; replacement combination light and antenna towers; and new small wireless facility antenna towers.

Co-location upon existing antenna support structures would be a permitted use and would be subject to standards such as height of antennas, shrouding of antennas and supporting equipment, maximum number of shrouds, shroud mounting method, and prohibiting the obstruction of lighting. Replacement combination light and antenna towers would apply to existing support structures such as light poles that would be replaced with a combination small wireless facility and the originally intended function (i.e. light pole). Standards for this type of installation would include requiring the replacement to be the same quality, color, design, style, and height as the existing structure, designed to internally accommodate all supporting equipment, and restricting the replacement of historic fixtures. New small wireless facility antenna towers would only apply to new towers and would be subject to standard such as maximum height, fully enclosed antenna and equipment shrouding, limiting the maximum number of shrouds, setting a minimum spacing distance between small cell antenna towers, and requiring a specific tower design.

While the Planning and Zoning Commission was researching and working on the draft 5G/small cell ordinance over the past year, the Sustainable Environment Commission was also discussing the RF emissions concerns that both commissions had received public comments on. The draft ordinance was presented to the Sustainable Environment Commission at their regular meeting on June 16, 2020 by Staff and the

Chair of the Planning and Zoning Commission to discuss a potential unified recommendation. After a lengthy discussion, the SEC voted to recommend that the P&Z proceed with the current ordinance and the SEC will continue to research health effects and the changing legal landscape to potentially make recommendations in the future when appropriate.

On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. The proposed ordinance has been scheduled for a public hearing before City Council at the Council's upcoming October 19, 2020 meeting.

ATTORNEY-CLIENT PRIVILEGED
LEGAL MEMORANDUM

DATE: June 12, 2020

TO: Mike Ray, Planning Manager

FROM: Mia Bautista, City Attorney

RE: Municipality Limitations regarding Deployment of 5G Small Wireless Facilities

C: Gary J. Riedner, City Supervisor
Bill Belknap, Deputy City Supervisor

QUESTION PRESENTED

Whether there are limitations placed on municipalities regulation of 5G Small Wireless Facilities in the Cities Rights of Way? Specifically, whether the City is permitted to deny an application for a 5G Small Wireless Facility based on concern for adverse health effects due to RF emissions?

SHORT ANSWER

Yes, the City has limitations regarding the requirements and restrictions we place on the deployment of Small Wireless Facilities within our city limits and in our rights-of-way.

No, the City is not permitted to deny an application for a 5G Small Wireless Facility based on concern for adverse health effects as long as the applicant is complying with the FCC's existing regulations regarding RF emissions. The City is also not permitted to outright deny the deployment of Small Wireless Facilities within our city limits.

RELEVANT STATUTES AND REGULATIONS

47 U.S.C. 224, 253 and 332(c)(7)

Federal Communications Commission, Declaratory Ruling and Third Report and Order, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure

Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Adopted September 26, 2018, FCC 18-133 (116 pages).

Federal Communications Commission, Declaratory Ruling and Third Report and Order, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Adopted August 2, 2018, FCC 18-111 (140 pages).

DEFINITION – SMALL WIRELESS FACILITY

The FCC relies upon the following definition of "Small Wireless Facilities," consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

> (1) The facilities—
>
> > (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
> >
> > (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
> >
> > (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
>
> (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
>
> (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
>
> (4) The facilities do not require antenna structure registration under part 17 of this chapter;
>
> (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
>
> (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

BACKGROUND

The history of the implementation and evolution of telecommunication regulations is extensive, which is evidenced by the lengthy Declaratory Rulings of the Federal Communications Commission (FCC). This legal memorandum is not intended to be an in-depth review and analysis of the FCC's authority to issue authoritative interpretations of the relevant United States Code

(USC), or an in-depth analysis of the numerous issues discussed, but to focus on the limited questions presented.

The Federal Communications Commission (FCC), under the leadership of Chairman Pai, has made it clear that it "is pursuing a comprehensive strategy to Facilitate America's Superiority in 5G Technology (the 5G FAST Plan). The Chairman's strategy includes three key components: (1) pushing more spectrum into the marketplace; (2) updating infrastructure policy; and (3) modernizing outdated regulations." -fcc.gov/5G

The FCC believes that we are on the brink of a technological revolution and failure to speed up the implementation and deployment of enhanced 4G and 5G networks could have negative effects on job and economic growth. The FCC found regulatory requirements were unnecessarily impeding deployment of wireless broadband networks and took steps to remove or reduce those impediments to serve a greater public interest with its Declaratory Rulings. The Declaratory ruling contained in FC 18-133, is intended to clear the different and conflicting views regarding the scope and nature of the limits imposed on state and local governments through USC Sections 253 and 332.

DISCUSSION

The Commission has observed that, "Each local government may believe it is simply protecting the interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress' recognition of this fact was the genesis of its grant of preemption authority to this Commission." (FCC 18-133, Pg. 22-23).

The Commission provided significant legal and legislative history to support its interpretation of the applicable United States Code regarding what particular requirements would be preempted and addressed various court rulings interpreting the same statutes. The Declaratory Rulings address fees and other state and local requirements that govern the deployment of small facilities.

The FCC's Third Report and Order and Declaratory Ruling, FCC 18-111, explains that 47 USC 224, grants the FCC with broad authority "to regulate attachments to utility-owned and controlled poles, ducts, conduits, and rights-of-way." The Act further authorizes the FCC to "prescribe rules to: ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights of way to telecommunications carriers…" (Pg. 4).

The FCC Declaratory order, FCC 18-111, specifically states "Section 253(a) of the Act specifies that '[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.' Notwithstanding that clear admonition, some states and localities have adopted moratoria on the deployment of telecommunications services or telecommunications facilities, including explicit refusals to authorize deployment and dilatory tactics that amount to *de facto* refusals to allow deployment. To provide regulatory certainty and further deployment, we issue this Declaratory Ruling making clear that such state and local moratoria violate section

253(a) and strike at the heart of the ban on barriers to entry that Congress enacted in that provision." (Pg. 84)

The FCC Declaratory Order also states "As the Eighth Circuit has explained, section 253(a) of the Act provides 'a rule of preemption[]' that articulates a reasonably broad limitation on state and local governments' authority to regulate telecommunications providers."[1] Section 253(b) provides an exception for state requirements that are competitively neutral, consistent with section 254 of the Act, and "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[2] Section 253(c) provides another set of exceptions to the limits on state and local authority by specifying that nothing in section 253 "affects the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." Section 253(d) requires the Commission, after notice and comment, to preempt the enforcement of specific state or local requirements that are contrary to section 253(a) or (b) "to the extent necessary to correct such violation or inconsistency."[3] Pursuant to section 253(d), the Commission has preempted both state and local actions that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services, such as a locality's denial of franchise applications from a new competitor,[4] provisions in state

[1] *Level 3 Commc'ns, LLC. v. City of St. Louis, Mo.*, 477 F.3d 528, 531–32 (8th Cir. 2007) (*Level 3*).

[2] 47 U.S.C. § 253(b); *see also Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, Memorandum Opinion and Order, 15 FCC Rcd 16227, 16231–32, para. 9 (2000).

[3] 47 U.S.C. § 253(d). In the discussion below, we discuss the relation between subsections (d) and (a) and find that the former does not preclude us from issuing this *Declaratory Ruling* under subsection (a). *See infra* section IV.B.3.

[4] *See Classic Telephone, Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13101, para. 36 (1996) (*Classic Telephone*).

codes that protect rural incumbents,[5] and a state grant of an exclusive license to provide telecommunications services.[6]" (Pg. 84)

Declaratory Ruling FCC 18-111, makes it clear that USC Section 253(a) bars state and local moratoria on telecommunication services and facility deployment because they "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service."

47 U.S.C. 253 in its entirety states,

> *§253. REMOVAL OF BARRIERS TO ENTRY*
>
> (a) In general
>
> No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.
>
> (b) State regulatory authority
>
> Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.
>
> (c) State and local government authority
>
> Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.
>
> (d) Preemption
>
> If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall

[5] *See Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-14 et al., Memorandum Opinion and Order, 13 FCC Rcd 3460, 3466, para. 13 (1997) (*Public Utility Comm'n of Texas*); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15658, para. 42 (1997), *aff'd sub nom. RT Commc'ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000) (*RT Commc'ns*).

[6] *See Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5888, para. 26 (2017).

preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

(June 19, 1934, ch. 652, title II, §253, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 70.)

In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, Adopted September 26, 2018, FCC 18-133, the Commission stated.

> "9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.
>
> 10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the "materially inhibit" standard articulated in 1997 by the Clinton-era FCC's California Payphone decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.
>
> 11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.9 Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality's reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that

> presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.
>
> 12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts." (Pg. 3-4)

Excerpts that address the Commission's ruling on Radio Frequency (RF) emissions, fees, aesthetics, underground infrastructure, and spacing requirements are included below.

RF Limitations:

The Declaratory Ruling made it clear that the Small Wireless Facilities are subject to the same RF emissions exposure limits that are already in place. This Ruling does not modify the RF exposure limits for Small Wireless Facilities. The City is not permitted to deny an application for a Small Wireless Facility if the RF exposure limits are within the approved range already established.

Fees:

The Declaratory Ruling's decision regarding fees is as follows:

> Based on our review of the Commission's pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more Small Wireless Facilities; and (b) $270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW. (FCC 18-133, Pg 45).

Aesthetics:

The Declaratory Ruling addressed aesthetic requirements and concluded that, "aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance." (FCC 18-133, Pg. 45). The Declaratory Ruling further explains that "in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. 'Secret' rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design

or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site." (FCC 18-133, Pg. 45).

Underground Infrastructure:

Imposing a regulation that all infrastructure be deployed underground would likely amount to an effective prohibition and not permitted, but there may be circumstances that would justify requiring such. (FCC 18-133, Pg. 46).

Minimum Spacing:

Imposing minimum spacing requirements are permitted so long as they are reasonable aesthetic requirements, safety requirements, or any other articulable reasonable basis that is made publicly available in advance. (FCC 18-133, Pg. 46). Consideration should be given to the current practice of spacing requirements, if we make the minimum spacing requirements more restrictive than our current practice we need to be able to articulate the reasonable basis for the difference.

CONCLUSION

The City is allowed to:

1) Develop application criteria and processes, so long as the criteria and processes are reasonable, clearly defined and ascertainable;
2) Develop reasonable and targeted construction standards;
3) Charge the presumptively reasonable fees set by the FCC or set fees that are nondiscriminatory and represent a reasonable approximation of the City's reasonable cost;
4) Implement reasonable and not overly burdensome aesthetic restrictions/requirements that may include factors such as:
    a. Technically feasible;
    b. Compatibility with nearby land uses;
    c. Traffic safety;
    d. Coordinate various uses;
    e. Protect integrity of historic, cultural, and scenic resources;
    f. Minimum spacing; and
    g. Underground infrastructure in specific circumstances.

The City is not allowed to:

1) Place a moratoria on the deployment of 5G Small Wireless Facilities in our community;
    a. No express moratoria where we implement laws, regulations, or legal requirements that expressly by their terms, prevent or suspend the acceptance, processing or approval of applications or permits.
    b. No de facto moratoria, where our local actions would effectively halt or suspend the application process.
2) Deny an application for installing 5G Small Wireless Facilities on the basis it will produce RF emissions;

3) Implement criteria or standards that will "materially inhibit" the deployment of Small Wireless Facilities.

Please note there are cases pending and additional actions pending with the FCC that may impact some of the conclusions reached in this memo. I will continue to follow the progress of those cases and watch for any additional guidance or orders the FCC may publish. I do not believe the fact that there is pending lawsuits or matters scheduled before the FCC should slow us down from moving forward with finalizing and implementing our ordinance, application and permitting process.

PLANNING & ZONING COMMISSION

Wendy McClure
Commission Chair

p&z@ci.moscow.id.us

Mike Ray
Staff Liaison

208.883.7008

~Meeting Minutes~
September 9, 2020

http://id-moscow.civicplus.com/agendacenter

McClure called the meeting to order at 7:01 PM

MEMBERS PRESENT: in person: Wendy McClure, Chair; Mike Nelsen, Robb Parish, Victoria Seever, Dennis Wilson

via Zoom: Joel Hamilton

MEMBERS ABSENT: Rich Beebe, Nels Reese

STAFF IN ATTENDANCE: Mike Ray, Sandra Kelly, Jennifer Fleischman

1. Approval of Minutes from August 12, 2020 [ACTION ITEM]
Parish moved approval of the minutes as presented, seconded by Wilson. Motion carried by acclamation.

2. Public Comment
None.

3. Public Hearing: Legislative Hearing Providing for the Amendment of Moscow City Code Title 4, Chapter 3; Providing for the Amendment of the Telecommunications Code to Establish Standards for Small Wireless Facilities [ACTION ITEM]

Telecommunications service providers are currently in the process of deploying 5G/small cell wireless technology throughout the developed world. 5G high speed deployment will bring much higher data speeds and traffic, but requires small cell installations to accommodate the data demand. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow, Staff has been working on drafting an ordinance to address them in the Zoning Code. The draft ordinance was presented to the Sustainable Environment Commission at their regular meeting on June 16, 2020 to discuss a unified recommendation with the Planning and Zoning Commission. The SEC voted to recommend that the Planning and Zoning Commission proceed with the current ordinance and the SEC will continue to research health effects and the changing legal landscape to potentially make recommendations in the future.

Ray presented about amendment of Moscow City Code. Gave brief background of cellular communication systems while reviewing historical and current cellular tower styles housed in Moscow. Provided images of proposed 5G cell tower modifications and addressed visual clutter concerns. Outlined Small Cell Program objectives:

- Provide reasonable access to provide desired services
- Minimize visual clutter upon utility poles
- Ensure installations are as aesthetically pleasing as possible

- Ensure that installations do not obstruct sidewalks and roadways and do not interfere with light fixture function
- Create a permitting system that can facilitate processing of applications with allotted time period dictated by FCC
- Coordinate with utility and street light owners

Presented on the background of the Telecommunications Act and the FCC new ruling that was intended to streamline the permitting of 5G small cell deployments. This affects the maximum fees that can be charged for small cell applications and right-of-way use, decision time frames for small cell applications, and appeal process for violations.

Existing telecommunications code was briefly touched on, noting that small cells are not currently addressed in the City Code. Staff provided a draft Small Cell Ordinance Amendment with several stipulations that would change current code to include Small Cell regulation rules:

- Defining Small Wireless Facilities and Facility standards
- Addresses co-location standards upon existing support structures
- Replacement of existing antenna support structures
- New small wireless facility antenna tower standards

Sustainable Environment Commission recommended that the P&Z Commission continue with the Small Cell Ordinance draft provided by Staff. SEC would move forward with a recommendation in the future if the legal landscape changes and health concerns are allowed to be addressed.

Ray indicated that a lot of the public comments have been implemented into the draft Ordinance. One common concern was also changed to add more clarification addressing the FCC regulations regarding radio frequency compliance. An amended draft ordinance incorporating the additional requirements was distributed for the Commission's consideration.

McClure asked if the FCC standards should change and become more stringent, should that be addressed in the Ordinance. Ray indicated that the Ordinance would accommodate any changes to the FCC as it speaks to the current regulations. Staff recommendation is to forward the proposed draft Ordinance to City Council.

McClure mentioned that the majority of the negative public comments have been in regards to health and safety, and requesting small cells not be placed in residential zones, however the City doesn't appear to have the liberty to prevent that and asked if that was Staff's impression as well. Ray responded affirmatively.

Wilson asked about the 40ft limit for the poles, which Ray indicated would be from grade. Hamilton said he liked the additions that Staff made to the draft Ordinance and McClure agreed.

Public hearing opened at 7:25pm.

Public hearing closed at 7:25pm.

Seever brought up the concerns about the health effects and how little the Commissioners can do in changing current FCC regulations. Parish commends the Commissioners on doing so much work to create an Ordinance that tries to limit Small Cell within the current parameters set by FCC and proposes coming back to address this Ordinance again in the future to see if anything else can be improved.

Seever thanked Mia Bautista, City Attorney, for working so hard on handling this issue. McClure agrees that everything was done that the Commission and City could do in regards to the ordinance.

Hamilton moved to recommend approval of the draft Ordinance with the proposed redline adjustments, seconded by Nelson. Motion was approved with acclamation.

5. Public Art Lightning Discussion [ACTION ITEM]

With the installation of the recent public art project, there has been some discussion amongst Staff regarding the lighting of public art in the City. Currently the majority of lighting is required to be full cut-off with up-lighting only permitted in certain circumstances. The Art Department would like to request that the Commission review the current lighting ordinance to see if there's a possibility of providing an exemption from the full cut-off requirement for public art.

Ray presented background on Public Art Lighting, including proposal by artists to add lighting to current art installation in Moscow. Art installation pictures and lighting plans were shown. A memo from Arts Department to support lighting for other art installations around town was also reviewed. The current outdoor lighting ordinance requires that all lights be full cut-off, with some exceptions in residential areas.

Seever requested a definition of "full cut-off" and Ray explained the stipulations. Non-residential full cut-off lighting is exempted in limited scenarios. There is a possibility of addressing amendments to the code for lighting of public art that could be woven into the current exemptions.

Parish expressed approval of having lighting for public artwork. Suggested an exemption in the code may be the easiest way to make the change. Seever and McClure both agree as well. Hamilton advocates for the black sky initiatives and is worried about the public response to allowing more up-lighting options. Would like to see an option of having the light focused more closely on the artwork instead of spreading into the sky. Discussion about the "slippery slope" of where art lighting stops and other lighting exceptions will start. McClure asked Ray if it would be better to have a conditional use application. Staff said it is an option to have Board of Adjustment review all lighting applications, but not advisable because of the simplicity of such proposals.

Ray clarified that this exemption would only cover city owned art projects. Parish suggested this be sent to the City Attorney to make sure that it would be legal to have exclusive exemptions to city owned art. Ray said he would bring it to the City Attorney. Discussion around public art versus private art installations. Hamilton would like to see shrouding suggestions to prevent light pollution. Gropp will research some options and report back. Ray mentioned that the Arts Department would be heavily involved in any art installation project and lighting for it.

Subject will be placed on the agenda until next meeting, where Staff will provide draft language.

4. Review of Draft Sign Code Status [ACTION ITEM]

The Supreme Court Case, Reed vs. Town of Gilbert, in 2015 clarified when municipalities may impose content-based restrictions on signage. There are various places within the Sign Code which apply content-based restrictions and need to be amended to comply with the Supreme Court's ruling. Staff has started to convert portion of the sign code into table format and will review the progress with the Commission.

Ray requested this topic be tabled until next meeting.

5. Transportation Commission Meeting Report

Transportation Commission meeting September 10. Working on paring down ex-officio memberships and reviewing City's Capital Improvement plan. Will be electing officers since the Chair and Vice Chair positions have recently become vacated.

6. Announcements

Welcomed two new staff: Jennifer Fleischman as Deputy City Clerk, and David Harlan as Digital Media Specialist. Thanked Mayor Bill Lambert for note and tumblers presented to Commissioners.

Seever announced that the Commission survey has been sent out.

The meeting adjourned at 7:53 PM

Robb Parish, Vice Chair

NOTICE OF PUBLIC HEARING

Legislative Hearing Providing for the Amendment of Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code

A public hearing at which you may be present and speak will be conducted before the Moscow City Council at which time the following proposals will be considered:

> Legislative Hearing Providing for the Amendment of Moscow City Code Title 4, Chapter 3; Providing for the Amendment of the Telecommunications Code to Establish Standards for Small Wireless Facilities.

The City of Moscow Planning and Zoning Commission conducted a public hearing on the proposed ordinance on September 9, 2020 and recommended approval to City Council.

HEARING DATE: Monday, October 19, 2020

HEARING LOCATION: Council Chambers on the Second Floor of Moscow City Hall
206 East Third Street, Moscow, Idaho

MEETING TIME: 7:00 p.m.

Note: Meeting start time is not necessarily indicative of hearing start time for the proposal advertised in this notice. Multiple hearings and/or agenda items may make it difficult to determine hearing start time, which could occur late in the meeting.

The file containing information on this matter is available for public review at the Community Development Department located in the Paul Mann Building at 221 East Second Street, Moscow, Idaho. Call 883-7035 to get a meeting agenda and further information about the matter.

Verbal testimony at the hearing is generally limited to three (3) minutes time. Minor amounts of written materials (less than two (2) pages) may be submitted to the hearing body at any time prior to the close of comments, as determined by the hearing body. More in-depth written materials require at least five (5) calendar days for review prior to the hearing. You may obtain further information about the public hearing process and procedures on the City's Website at: http://id-moscow.civicplus.com/593/Public-Hearing-Notices

Laurie M. Hopkins, Moscow City Clerk

Jennifer Fleischman, Deputy City Clerk

Publish: September 19, 2020

To: Mike Ray, Staff Liaison, Moscow Planning and Zoning Commission

From: George Bedirian

Subject: Comments on Small Cell Facility Draft Ordinance

Date: September 8, 2020

The preamble to the Small Cell Facility Draft Ordinance articulates the City's desire "to encourage the location and co-location of transmission equipment on existing structures, to reduce visual clutter, promote public safety, and reduce impacts to the existing built environment"; "to protect and promote the public health, safety and welfare of the community"; and "to protect and promote the character of the City." Needless to say, these are important and laudable goals. However, in its overwhelming emphasis on issues relating to the deployment of wireless infrastructure in a manner that adheres to FCC regulations, the draft foregoes a number of opportunities to strengthen the protections it seeks to advance.

With the following comments, I would like to offer a number of recommendations with an eye to enabling the ordinance to provide a more robust array of protections to the well being of the community and its environment..

Regarding compliance with FCC RF emissions standards:

Section 7 of the draft, "Permits Required,"states (7.c.xi) that applicants for building permits must provide "documentation of such compliance. Later, Section 10.b requires service providers to provide "an annual written statement verifying continued . . . compliance with state and federal agency regulations," which would presumably include adherence to FCC emissions standards. In both these instances, no mention is made of what the source of these assurances should be, implying that the source could well be the applicant/provider.

Rather than relying solely on service providers to monitor and certify themselves, perhaps it would serve the public interest better if the city were to add a second layer of protection, as it were, by reserving the right to retain a qualified independent radio frequency engineer to conduct, at random intervals, unannounced tests, the reasonable costs of which would be borne by the carrier, of wireless installations to certify FCC emissions standard compliance.

A third level of protection would be to require performance bonds of carriers. I discuss this more fully in the final section of these comments.

Regarding the siting of wireless infrastructure throughout the city:

The draft ordinance contemplates the placement of wireless infrastructure across all zones without hindrance or without recognizing any distinction among zones in terms of the primary types of activities conducted and their relative aesthetic and emotional impacts. But the city could move some way toward recognizing these distinctions, promoting the public welfare, and perhaps allaying some concerns about safety, by making a good faith effort to steer the placement of infrastructure by expressing in the ordinance preferences as to its location. This could be as simple as stating location preferences, from most preferred to least preferred, in industrial zones, commercial zones, mixed commercial and industrial zones, and residential zones. Or it could be more nuanced, linking relative preferences to specific zones within any or all of the aforementioned categories.

In addition to location preferences, the city could articulate preferences regarding the configuration of wireless infrastructure. In fact, in expressing a preference for co-locating facilities, it has already taken a step in this direction. Again, an order of preference from most to least preferred

could look like this: collocation with existing facilities, roof-mounted, building-mounted, mounted on an existing pole, mounted on a new or replacement pole, mounted on a new telecommunication tower.

Regarding building permit application requirements:.

Referring again to Section 7, paragraph c lists a number of items applicants for building permits might be required to provide at the discretion of the Zoning Administrator, who might also require additional unnamed supporting material. I propose that the following be included among the named items required of building permit applicants:

A traffic control plan demonstrating the protective measures that will be employed during installation/construction of facilities to prevent injury or damage to persons and property and to minimize disruptions to the free flow of pedestrian and vehicular traffic.

Documentation demonstrating good faith efforts to locate and configure facilities in accordance with any expressed location or configuration preferences.

Documentation that all property owners within 250 feet of any proposed installation(s) have been notified of the filing of an application for a permit within five days of such filing.

An executed indemnification agreement holding the city and its agents harmless against claims and actions to attack, set aside, void, or annul an approval of the city concerning the permit and the project.

All required documentation to demonstrate either full compliance with National Environmental Policy Act requirements or the basis for any claimed exemption from those requirements, plus proof that each exempt installation meets prescribed requirements.

Regarding additional requirements:

The ordinance should also include the following requirements:

Payment of an application and processing fee and a deposit for consultant review if applicable.

Provision of a performance bond as a guarantee that no installation, including any co-located equipment, exceeds or will exceed allowable FCC limits for RF exposure as determined by a qualified independent RF engineer. The bond should remain in effect until the covered facility is removed. In addition to covering removal, it should also cover maintenance and landscaping obligations.

A provision that the application for a building permit, including all related documents, shall be made available for public inspection and copying.

A provision to establish an effective setback for installation in commercial and industrial zones with a 1,000 foot setback from any of the following: Residential zones, mixed use zones, schools, daycare facilities, medical facilities, nursing homes, parks, playgrounds, sports facilities, houses of worship.

Carriers should be required to repair any damage to infrastructure, from streets and sidewalks to underground utilities and sewer lines, resulting from installation of wireless facilities.

Carriers should be required, as new technology becomes available, to replace larger, more visually intrusive facilities with smaller, less visually intrusive ones.

A provision requiring proof and documentation that the applicant and corporate operator of any proposed small cell antenna have obtained liability insurance which does not include a "pollution" exclusion.

A requirement to provide adequate fall zones for each small cell facility to minimize the possibility of damage or injury resulting from pole collapse or failure, ice or debris fall, etc.

Finally, if at all feasible, carriers should be required to locate all small cell equipment not to be installed on or inside a pole to be located underground.

I hope you find these recommendations worthy of consideration.

Michael Ray

From: Romney Boehm <florafairy@earthlink.net>
Sent: Wednesday, September 09, 2020 3:13 PM
To: Planning & Zoning Commission; Michael Ray
Subject: 5G regulations, comments

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

To the Moscow Planning and Zoning Commission and Mike Ray,

I have heard that you have been open to hearing from people with concerns about 5G, and I appreciate that. I hope you can find ways to include our concerns in your proposals.

It feels so counterintuitive to have federal regulations that say we can't protect our own health, the health of our community, and future generations. Yet, there are such regulations that apply to 5G, at this time. The things I have heard indicating the possible and probable health risks of EMFs and 5G have sounded very alarming to me. I find myself not knowing how to write about these concerns. At this time, with so many voices in the news, so many commentaries and opinions, and people thinking... who to believe..., I wonder how can I be a voice that is listened to and taken seriously?

Then I wonder... what if we weren't allowed to think that COVID-19 was or could be dangerous? What if all sorts of medical workers and researchers around the world weren't receiving support and encouragement to study it? What if the City and citizens weren't allowed to take precautions on behalf of our health in our concerns about the virus?

I try to break down different words. "Health concerns" can translate to "suffering". It can also, in some cases, become "life or death". I can break down all the things I've heard connected to EMF and 5G, their possible affects on people... neurological and psychological, reproductive, cardiac, stroke, cancer. There are way more illustrative ways to consider these words.

Along these lines is why I care about these regulations. And why I think EMF and 5G need to be studied more by independent researchers before rolling them out more. And why I wish that people were given the chance to make informed choices... real choices, on something like this. Wishing that we'd be allowed the chance to learn and to protect ourselves.

Please consider the following for inclusion in your proposal for regulating 5G in Moscow:

1. A provision to allow installation only in commercial and industrial zones not in or within 1,000 feet of residential zones and mixed use zones.

2. A provision to establish an effective setback for installation in commercial and industrial zones with a 1,000 foot setback from any of the following: Residential zones, mixed use zones, schools, daycare facilities, medical facilities, nursing homes, parks, playgrounds, sports facilities, houses of worship.

3. A provision authorizing the City to conduct random, unscheduled and independent testing of any wireless antennas installation to ensure compliance with the Federal Communications Commission's radio

frequency radiation guidelines for the general public, to be paid for by the applicant or corporate entity operating the antenna;

4. A provision requiring certification and documentation that any proposed small cell installation(s) addresses an existing and significant gap in coverage in the service area;

5. A provision requiring photo simulations of the proposed installation(s) from the perspective of any property owner within 250 feet.

6. A provision that all property owners within 250 feet of any proposed installation(s) have been notified of the filing of an application for a permit within five days of such filing, and that the application, including all related documents, shall be made available for public inspection and copying.

7. A provision requiring proof and documentation that the applicant and corporate operator of any proposed small cell antenna have obtained liability insurance which does not include a "pollution" exclusion.

Thanks you for your consideration,

Romney Boehm
732 Logan St.
Moscow, ID

Michael Ray

From: David Hall <david_hall@hotmail.com>
Sent: Wednesday, September 09, 2020 12:14 PM
To: Planning & Zoning Commission; Michael Ray
Subject: Comments on small cell ordinance hearing before P&Z tonight

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Public hearing regarding proposed ordinance regulating small cell equipment
Moscow Planning and Zoning Commission
Wednesday, September 9, 2020
Moscow City Hall Council Chambers

I continue to be confused about which parts within the ordinance apply to installations in the public rights-of-way and which to private property. And what applies to small cell versus large cell installations.

Allow small cell installation only in commercial and industrial zones not in or within 1,000 feet of residential zones and mixed use zones. Pullman's draft ordinance does consider zones.

Provide an effective setback for installation in commercial and industrial zones with a 1,000 foot setback from any of the following: residential zones, mixed use zones, schools, daycare facilities, medical facilities, nursing homes, parks, playgrounds, sport facilities. A draft of Pullman's ordinance has restrictions on deployment for a few of these.

Require the applicant to submit a sworn declaration regarding an engineer's analysis of radio frequency emissions. Require periodic randomized testing of cumulative emissions, paid by the telecommunications company. Pullman's draft ordinance so stipulates.

Require certification and documentation that any proposed small cell installation addresses an existing significant gap in coverage in the service area.

Please look into and address the legal issue of not allowing the public to be "incommoded" by operations in the public right of way.

Let the City Council and the public know what liabilities the City is leaving itself open to. General terms within the Master License Agreement template should be open to review.

David Hall, 1334 Wallen Road, Moscow

Michael Ray

From: deegregory1@twc.com
Sent: Wednesday, September 09, 2020 9:42 AM
To: Planning & Zoning Commission
Subject: 5G

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I don't believe 5G antennas should be installed at all, but where they are, they should NOT be close to residents' homes.

Michael Ray

From: Terri <terrischmidt@roadrunner.com>
Sent: Tuesday, September 08, 2020 10:19 AM
To: Planning & Zoning Commission; Michael Ray
Subject: 5G regulations

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Hello Committee Members,

I am being extra cautious about going places with the upsurge in Covid
19 cases lately, so I won't be at the P & Z meeting tomorrow, but I wanted to write and share my thoughts. I am very concerned about 5G coming into Moscow. I've done a lot of reading and attended talks by two different radiation specialists. I know the telecommunications companies are saying 5G is safe, but the tobacco companies said the same thing about cigarettes. What I've learned leads me to believe it is not safe at all.

I know the lobbyists for the telecom industry have gotten a regulation passed that says cities can't stop them from expanding services into their town. I'm dismayed that those big corporations have used their power and money to take away our city's ability to make the best choices for their citizens, and I know this ties your hands to some degree. But I'm asking you to please do what you can within those regulations to help protect our citizens - restricting 5G from neighborhoods, parks, school zones, etc.

Thank you for looking out for the well-being of our community in the best way you are able.

Yours truly, Terri Schmidt

711 S. Jefferson, Moscow

Michael Ray

From: Toni Salerno <benedetta333@icloud.com>
Sent: Tuesday, September 08, 2020 7:50 AM
To: Michael Ray
Subject: 5G

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Moscow absolutely does NOT want 5G! There are verified potential health and environmental consequences from it and you would be extremely negligent to push it forward without doing the necessary research apart from the people pushing it!

Sent from my iPhone

Michael Ray

From: Nancy Chaney <nancy.chaney@outlook.com>
Sent: Tuesday, September 08, 2020 5:45 PM
To: Michael Ray
Cc: Wendy McClure
Subject: Public comments on P&Z agenda item 3, Sept 9, 2020

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Dear Planning and Zoning Commissioners:

Thank you for considering my earlier remarks, and for your careful consideration of amendments to MCC Title 4, Chapter 3, to establish standards for small wireless facilities. The FCC rule on 5G diminishes local control, intimidates policymakers, and puts you in a difficult spot. Accordingly, much of Moscow's draft is narrowly focused on aspects where you appear to have the most latitude: Aesthetics, lighting, noise, and preventing equipment from falling on people or structures. It's trickier to introduce language that would require periodic random independent measurement of RF emissions, and to set aggregate limits in circumstances of collocation, cumulatively over extended periods of time. That doesn't mean you shouldn't try.

Other cities around the country have figured out ways to set additional reasonable limits on 5G. (Mill Valley CA, Arlington VA, and Boulder CO Codes are good examples.) At the very least, please document unregulated concerns through "Whereas..." recitations in resolutions or reasoned statements, to lay a foundation for eventual intervention, once federal exposure standards (incredibly, still based on 1996 technology) are updated.

Pullman is working on a draft too. Their Section 17.36.050 about permit applications (p. 36-14) item 2(g) requires the applicant to submit a sworn declaration regarding an engineer's analysis of RF emissions. A model ordinance, pasted below and attached to Pullman's working draft, would require periodic randomized testing of cumulative emissions, paid by the telecom (5(a) Section 3.2). See Item E, below.

(g) The applicant shall submit a sworn declaration under penalty of perjury signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facility ~~cell~~ deployment will be compliant with all FCC and any other applicable regulations in connection with human exposure to radio frequency emissions for every frequency at which the small wireless ~~cell~~ facility and associated wireless backhaul will operate. An existing franchisee applying for a small wireless facility ~~cell~~ permit for small wireless facility ~~cell~~ deployment shall provide an RF certification for all facilities included in the deployment.

From the model ordinance:

E. Certification by an independent certified radio-frequency (RF) engineer that cell installation will be in compliance with the FCC standards for RF emissio relate to the general public, including aggregate emissions for all co-locatec equipment;

A June 2020 article by an FCC appointee and expert in RF radiation justifies updates to regulatory standards and more frequent and comprehensive testing: https://www.isemag.com/2020/06/telecom-rf-radiation-5g-safety/ A 2015 letter from Senator Blumenthal and Congresswoman Eshoo describes hazards of workers' unwitting exposure to RF radiation, and could as importantly apply to constant multiple input-multiple output (MIMO)/beamforming RF exposure by the lay public: https://www.blumenthal.senate.gov/imo/media/doc/Blumenthal%20Eshoo%20RF%20Letter%20to%20FCC%2020150917.pdf It may be too soon to understand unintended adverse consequences of 5G (to health, property values, fee structure, etc.), but we must remain alert to the possibilities.

Thank you for considering these comments.

Sincerely,

Nancy Chaney
1333 Ponderosa Dr.
Moscow ID 83843

Michael Ray

From: Lauren Wuthrich <lauren.wuthrich@gmail.com>
Sent: Thursday, September 10, 2020 4:14 PM
To: Planning & Zoning Commission
Subject: Comments regarding 5G antennae

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

To whom it may concern,
I would like to submit my comments regarding placing 5G antennas within 50 feet of homes in Moscow, Idaho. I think the idea of installing brand new, untested technology that carries safety concerns within 50 feet of someone's home is not only unthoughtful, but unconstitutional. Where there is risk, there must be a choice. The FCC and big telecom companies have bulldozed citizens rights to choose what level of radiation they are exposed to on a daily basis. In my opinion, enough is enough. I sincerely hope the 5G antennae are kept far, far away from people's living spaces. In fact I'd like to see them banned altogether, but that's not what this email is about. Thank you so much for reading my comments!

Sincerely,
Lauren Wuthrich

Michael Ray

From: Cory Payne <corykpayne@gmail.com>
Sent: Wednesday, September 09, 2020 6:08 PM
To: Planning & Zoning Commission
Subject: No small cell 5G towers in Idaho

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I do not agree with the installation of 5G cell towers. There has been no research on the health impacts of the millimeter wave being used in 5G tech. The FCC guidelines for wireless secret are long out dated. They only consider the potential tissue temperature increase and do not look at the many other proven health impacts of RF and EMF technology.

--

Thanks!
Cory Payne

Michael Ray

From: Jolene McManus <simplyhearing2@gmail.com>
Sent: Wednesday, September 09, 2020 7:08 PM
To: Planning & Zoning Commission
Subject: 5G cell towers.
Attachments: E7BDAB46-C851-4DC7-828A-E5DC6FB20081.jpeg; E3D5D195-AEAF-4307-A70D-6E06DF2FE717.jpeg; 2DDF7B59-9FAC-433A-A41D-74CB16884256.jpeg; 60395845-DE5D-4A6D-961B-AB61409473BC.jpeg; B9D2AA2D-8305-4D29-B61B-63EAEA8D04ED.jpeg

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Dear City of Moscow,

Please choose the health of your people and protect them from harmful EMFs emitted, by 5G towers.

There is profound evidence proving; it's deadly affects. Please see attachments. Thank you.

Sincerely,
Jolene McManus
Latham County Resident

Nancy Chaney 1333 Ponderosa Dr. Moscow ID 83843 nchaney@moscow.com (208) 882-9350

Oct. 12, 2020

Public Works-Finance Committee
Moscow City Council

Dear Committee Members:

Today's PW/F agenda includes development of recommendations for amendments to the City's Telecommunications Code, to establish Standards for Small Wireless Facilities. I offer the following comments on the draft ordinance in advance of the public hearing before the full council on Oct. 19.

The fourth WHEREAS (p. 1 of 11) in recitations is grammatically incorrect. Change "…by which *it* transmit*s*…" to "…by which *they transmit*…" for subject-verb agreement. (Facilities (plural) = they (not it) > transmit (not transmits)

The fifth WHEREAS (p. 1 of 11) in recitations speaks to "the number and *frequency* of "*small cell* facilities." In this case, does "frequency" refer to EMF transmission or to *spacing* of equipment? Also, I'm assuming that the preferred language is "small wireless facilities," not "small cell…"

The ninth WHEREAS (p. 2 of 11) in recitations regarding P&Z's recommendation for approval assumes adoption of the draft amendments without modification. I suggest rephrasing this paragraph to reflect the reality that minor and/or non-substantive changes (or even substantive ones) may result over the course of deliberation, and subsequent to the public hearing on Oct. 19.

Section 1-H(2)(c) (p. 3 of 11): "…other structures for antenna mounting…" seems unduly vague and broad, so could have unintended consequences. I suggest more restrictive phrasing about what you mean by "other structures."

Section 1-H(3)(i)(iii) (p. 3 of 11): Reconcile "equipment" and "are" (to "is") for subject-verb agreement.

Section 1-H(3)(i)(iv) (p. 3 of 11)**:** Does the reference to Part 17 of FCC regulations require more detail, like the date of that document, which of the FCC regulations you mean (by title), or where it may be found?

Section 1-H(3)(j) (p. 3 of 11): This definition of *telecommunications facilities* seems circular, saying the term refers to equipment for providing (undefined) "telecommunications services," or (also undefined) "wireless communications."

Section 1-H(3)(k) (p. 3 of 11): What is the timeframe for a "temporary" antenna tower? (Note: That term is eventually defined in Section 1-H(4)(d), but even then doesn't specify what a "reasonable" amount time is, or who makes that determination.

Section 1-H(4)(d) (p. 4 of 11): Because the "time reasonably needed" is so vague, I suggest at least adding the phrase, "…as determined by the City's Zoning Administrator."

Section 1-H(5)(b) (p. 4 of 11): Is the minimum setback of 100ft. arbitrary? Could a tower conceivably exceed 100ft? Those aspects should probably be addressed here.

Section 1-H(5)(c) (p. 4 of 11): Why is it even helpful to specify that separation from adjacent property lines in all zones other than residential zones be at least "one-half (1/2) the height of the antenna tower?" It seems comparably dangerous if a tower fell on a house, as much as on a daycare in a commercial zone. The intent of that requirement isn't clear. Neither is it obvious that the council couldn't require a greater separation, if practicable.

Section 1-H(5)(d) (p. 4 of 11): "Appropriate security measures" should be "*as determined by the Zoning Administrator*." Please add that clarification, lest the applicants be allowed to decide for themselves what measures are appropriate.

Section 1-H(5)(f) (p. 4 of 11): Specify that the 45dB noise limit is measured cumulatively (all co-located equipment together) and does not otherwise violate the City's noise ordinance (which includes elements like incessancy and annoyance to reasonable persons).

Section 1-H(5)(g) (p. 4 of 11): Specify "…each 50 *lineal* feet of wall…"

Section 1-H(5)(i)(iii) (p. 5 of 11): Last sentence of this paragraph should specify, "…or at an alternate *PROXIMAL* location…"

Section 1-H(5)(j) (p. 5 of 11): The phrase "…make antenna tower available for use by *others*…" is too broadly accommodating. It would better be more narrowly described as "other commercial telecommunications providers," of something similar.

Section 1-H(5)(l) (p. 6 of 11): I have three suggestions* for this paragraph. *"…within the service area" is too vague, especially when 5G functions as a gigantic network, involving multiple service providers. *This paragraph also references "the public hearing *where* the application will be considered." It might read better to say "at which," rather than "where." *The stipulation that, "Upon request, the Zoning Administrator shall place on a list the name and address of any user or prospective user of antenna towers to receive notification of applications" seems an impossible task. I think I know what is intended by the statement, but am not sure it can be accomplished in a mobile cellular network. Accordingly, you might rephrase that, relative to proximity of property owners and public notice (paid by the telecom??) for transitory (end) users.

Section 1-H(6)(c)(ii) (p. 7 of 11): The requirement for gray "or other similar color" might better include qualifiers like "unobtrusive" and/or "neutral."

Section 1-H(6)(c)(iii) (P. 7 of 11): The exception allowing one additional shroud per pole when the antenna is located within the second shroud may have unintended consequences by precluding subsequent co-locators from housing their antennas within shrouds on those poles.

Section 1-H(6)(c)(iv) (P. 7 of 11): I'm unclear about the newly-introduced terminology, "utility cable owner" in this paragraph. Who is that? The allowance of strand-mounted aerial cables seems to warrant an explanation about your rationale for disallowing guy wires, which I'm guessing relates to public safety, not obstructing passage (or incommoding) along public rights-of-way, and the visual blight of guy wires. Why are strand-mounted aerial cables less of a blight, and could they pose additional hazards to birds, etc.?

Section 1-H(6)(c)(iv)(a) (P. 7 of 11): It seems like the clearance above sidewalks should be higher than eight feet. How did you determine that limit, given that the clearance over roadways is 14 feet? (Could this paragraph be problematic, as it may apply to locations where awnings, suspended ornamental lighting, and overhead signage might be allowed? Who would prevail; the telecom or the small business?)

Finally, note in the City Attorney's memo of June 12 (included in your packets, as part of the public record) that the FCC Declaratory Order allows for the protection of "public safety and welfare" (See p. 4 and p. 5). That seems to leave open the opportunity for the council to do that, to the fullest extent allowed by law. Thanks for keeping it in mind as you improve the draft ordinance.

Sincerely,

Nancy Chaney

Review of draft standards for small wireless facilities
presented to the Moscow Public Works / Finance Committee

Lose the redundant numerology throughout (i.e., "fifty feet (50')"). At least be consistent: 3.i.i(a) has "Fifty (50) feet" but 4.b has "thirty-five feet (35')." Do the numerals come before or after the units?

H. Telecommunications Facilities

H1. Applicability [p. 2]
"...any of which are used..." → "...any of which is used..." *["any" is singular]*
"...exclusively used..." → "...used exclusively..."

H3.h. Monopole. [p. 3]
"...guys." → "...guy wires." *[compare 5.a]*

H3.k. Temporary Antenna Tower. [p. 3]
Remove hyphen in "tele-communications"

H4.c. [p. 3]
Is it "Except for small wireless facilities which are subject to the standards contained in Section 6 herein, ..." *or* "Except for small wireless facilities, which are subject to the standards contained in Section 6 herein, ..."? *The added comma makes a significant change in meaning of the sentence. Without the added comma, some facilities are subject to the standards, and some are not. With the comma, it indicates that all small wireless facilities are subject to the standards.*

H5.f. Noise Reduction. [p. 4]
"...not more than ~~forty-five decibels (~~45 dB~~)~~." → "...no more than 45 dB."
For an installation in the right-of-way, where is this measured?

~~H5.h.~~ [p. 4]*As this paragraph is removed completely, the following paragraphs must be renumbered*

H5.i. → H5.h. Aesthetic Considerations. [p. 4]
H5.i.i. Antenna towers shall be painted…[p. 5]
"...required by the Federal Aviation Administration or any other State..." →
"...required by ~~the Federal Aviation Administration or~~ any ~~other~~ State..."
H5.h.vi. Ancillary facilities located above ground…
"...will present no greater adverse visual and audio impacts…" *Greater than what?*

H5.j. → H5.i. Co-Location Consent [p. 5]
"Co-Location" → "Co-location" *[Compare 3.f and 6.c.]*
H5.j.ii. New Antenna Towers. [p. 6]
"Subsection 5.j.i" → "Subsection 5.i.i"

H5.k. → H5.j. Antenna Tower Inventories. [p. 6]

H5.l. → H5.k. Notice of Antenna Tower Permit Application. [p. 6]
Retain requirement to notify neighbors.

H6. Small Wireless Facility Standards

H6.a. Small Wireless Facility Standards [p. 7]

"The City Council may adopt additional small wireless facility ~~design and construction~~ standards by Resolution..."

H6.c.iv(a) Side mounted. [p. 7]

"sixteen inch" *or* "sixteen-inch"? *[See H6.c.iv(b)]*

"Side mounted equipment shrouds shall be located in such a manner as to **not obstruct pedestrian access** on adjacent sidewalks."

This can be expanded to restrict installations that would incommode the public:

> ***5. General Telecommunication Facility Development Standards***
>
> *a. Endangerment, Interference.* ***No person or entity shall install****, use or maintain* ***any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons*** *or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use,* ***or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic*** *including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. [****Physicians for Safe Technology****. mdsafetech.org/cell-tower-and-city-ordinances]*
>
> *See page 4 for more openings to consider the effects of installations on public health and the environment.*

H6.e.iv. Minimum spacing between small wireless facility antenna towers… [p. 8]

"...no closer than two hundred and fifty feet (250') from another small wireless facility antenna tower." →

"...no closer than two hundred ~~and~~ fifty feet ~~(250')~~ from any other small wireless facility antenna tower."

H7.c.v. Description of proposed and required lighting… [p. 9]

"Section 5c" → "Section 5e." *Section 5.c. is Antenna tower setback.*

H7.c.viii. Antenna tower or tower location study… [p. 9]

Add a requirement that they show a gap in service at the location.

H7.c.ix. Antenna tower inventory… [p. 9]

"Section 5.k" → "Section 5.j"

H7.c.x. Notarized… [p. 9]

"Section 5.j" → "Section 5.i"

H7.c.xi. Documentation… [p. 9]

Report results to the City (in a reasonable amount of time).

H7.c.xiv. Name and address… [p. 10]

"...a written statement of approval of the application by the property owner."
How does this work for an application for installation on City right-of-way?

H8.a.v. These findings shall be required… [p. 10]
This paragraph should be a continuation of H8.a. It is not one of the required findings.

Do you need to reference somewhere the required adherence to the Master License Agreement?

= = = = = =

See next page for considerations regarding safeguarding the health and safety of Moscow's citizens.

installations must not incommode the public

5. General Telecommunication Facility Development Standards

a. Endangerment, Interference. **No person or entity shall install,** use or maintain **any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property**, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, **or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location**. ...

A win for cities occurred April 4, 2019 in a California court, as a battle for local control of cell tower placement continues. San Francisco challenged the FCC interpretation of the 1996 Telecommunication Acts rules which state that phone companies **cannot install equipment that may "incommode the public use of the road.**" ...

Plaintiffs' position is that 'incommode' means only physical obstruction of travel in the public right-of-way. The City, on the other hand, points out that **the dictionary definition of 'incommode' is broader and includes 'inconvenience, discomfort, and disturbance beyond mere blockage**.' …

Judge Corrigan notes, "Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. But **travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel**. (T-Mobile West, at pp. 355-356.) For example, lines or **equipment might** generate noise, **cause negative health consequences**, or create safety concerns. **All these impacts could disturb public road use**, or disturb its quiet enjoyment."

[**Physicians for Safe Technology**. mdsafetech.org/cell-tower-and-city-ordinances]

Telecommunications Act Section 253(b) provides a "safe harbor" to protect the ability of states and localities to regulate zoning and construction of wireless facilities:

> 253(b) State regulatory authority: **Nothing in this section shall affect the ability of a State to impose … requirements necessary to... protect the public safety and welfare, … and safeguard the rights of consumers**. [Section 253 of the Communications Act, 47 U.S.C.]
>
> "...**localities can enforce "generally applicable** building, structural, electrical, and **safety codes and** [] **other laws codifying objective standards reasonably related to health and safety**." [2014 Infrastructure Order, 29 FCC Rcd at 12951, para. 202.]"

Section 1.1307(a) requires an applicant to submit an environmental assessment if a facility "may significantly affect the environment," which includes facilities that may affect historic properties, endangered species, or critical habitats. [47 CFR § 1.1307(a).]"

David Hall
1334 Wallen Road
Moscow, ID

City of Moscow
Community Planning & Design

Memo

To: Mayor and City Council

Cc: Gary Riedner, City Supervisor; Mia Bautista, City Attorney; Bill Belknap, Deputy City Supervisor of Community Planning and Design

From: Mike Ray, AICP - Planning Manager

Date: October 14, 2020

Re: Small Wireless Facilities Ordinance Public Comments

On Monday, October 12, 2020, Staff gave a report to the Public Works/Finance Committee regarding amendments to the City's Telecommunications Code to insert standards for Small Wireless Facilities. Earlier that day there were public comments submitted from Mrs. Nancy Chaney and Mr. David Hall in regards to the proposed ordinance. Staff had not had a chance to fully review the comments prior to the meeting, although most appeared to be grammatical in nature. Staff has since thoroughly reviewed the comments and amended the ordinance where appropriate. Below are the comments that were received as well as Staff's response to each comment. The proposed ordinance has been revised and will be included in the Council's packet for the public hearing on October 19, 2020.

Comment 1:
The fourth WHEREAS (p. 1 of 11) in recitations is grammatically incorrect. Change "…by which it transmits…" to "…by which they transmit…" for subject-verb agreement. (Facilities (plural) = they (not it) > transmit (not transmits)
Response: Corrected.

Comment 2:
The fifth WHEREAS (p. 1 of 11) in recitations speaks to "the number and frequency of "small cell facilities." In this case, does "frequency" refer to EMF transmission or to spacing of equipment? Also, I'm assuming that the preferred language is "small wireless facilities," not "small cell…"
Response: This refers to spacing of equipment. The terms have been changed for consistency.

Comment 3:
The ninth WHEREAS (p. 2 of 11) in recitations regarding P&Z's recommendation for approval assumes adoption of the draft amendments without modification. I suggest rephrasing this paragraph to reflect the reality that minor and/or non-substantive changes

(or even substantive ones) may result over the course of deliberation, and subsequent to the public hearing on Oct. 19.
Response: The ordinance has been amended to clarify that the P&Z recommendation was to recommended approval with modifications.

Comment 4:
Section 1-H(2)(c) (p. 3 of 11): "…other structures for antenna mounting…" seems unduly vague and broad, so could have unintended consequences. I suggest more restrictive phrasing about what you mean by "other structures."
Response: This is a purpose statement, not a regulation, and it is Staff's opinion that the way it is stated is adequate.

Comment 5:
Section 1-H(3)(i)(iii) (p. 3 of 11): Reconcile "equipment" and "are" (to "is") for subject-verb agreement.
Response: Corrected.

Comment 6:
Section 1-H(3)(i)(iv) (p. 3 of 11): Does the reference to Part 17 of FCC regulations require more detail, like the date of that document, which of the FCC regulations you mean (by title), or where it may be found?
Response: Small Wireless Facility is defined by the FCC and the definition used in the proposed ordinance is the same. Staff sees no reason to reference it further.

Comment 7:
Section 1-H(3)(j) (p. 3 of 11): This definition of telecommunications facilities seems circular, saying the term refers to equipment for providing (undefined) "telecommunications services," or (also undefined) "wireless communications."
Response: Staff sees no issue with this definition.

Comment 8:
Section 1-H(3)(k) (p. 3 of 11): What is the timeframe for a "temporary" antenna tower? (Note: That term is eventually defined in Section 1-H(4)(d), but even then doesn't specify what a "reasonable" amount time is, or who makes that determination.
Response: This will be a case-by-case basis, but generally within the building code temporary structures are limited to 180 days. Staff believes the language within Section 1-H(4)(d) is sufficient.

Comment 9:
Section 1-H(4)(d) (p. 4 of 11): Because the "time reasonably needed" is so vague, I suggest at least adding the phrase, "…as determined by the City's Zoning Administrator."
Response: Added.

Comment 10:
Section 1-H(5)(b) (p. 4 of 11): Is the minimum setback of 100ft. arbitrary? Could a tower conceivably exceed 100ft? Those aspects should probably be addressed here.

Response: The 100' is an existing regulation that applies to larger macrocell towers. This does not apply to small wireless facilities and Staff does not believe this would need to be changed.

Comment 11:
Section 1-H(5)(c) (p. 4 of 11): Why is it even helpful to specify that separation from adjacent property lines in all zones other than residential zones be at least "one-half (1/2) the height of the antenna tower?" It seems comparably dangerous if a tower fell on a house, as much as on a daycare in a commercial zone. The intent of that requirement isn't clear. Neither is it obvious that the council couldn't require a greater separation, if practicable.
Response: Again, this is an existing regulation for macrocell towers that does not apply to small wireless facilities. The intent of the separation is because of the height of the tower compared to the average height of structures in a residential area, not because it my fall on a house. These towers are engineered and required to have an engineer stamp the construction drawings to certify that they are structurally sound. The required wind loads of Moscow are part of that calculation.

Comment 12:
Section 1-H(5)(d) (p. 4 of 11): "Appropriate security measures" should be "as determined by the Zoning Administrator." Please add that clarification, lest the applicants be allowed to decide for themselves what measures are appropriate.
Response: This regulation largely applies to macrocell towers, and the owner of the tower determines their own security, not Staff.

Comment 13:
Section 1-H(5)(f) (p. 4 of 11): Specify that the 45dB noise limit is measured cumulatively (all co-located equipment together) and does not otherwise violate the City's noise ordinance (which includes elements like incessancy and annoyance to reasonable persons).
Response: Staff does not believe this section needs to be amended.

Comment 14:
Section 1-H(5)(g) (p. 4 of 11): Specify "…each 50 lineal feet of wall…"
Response: Added.

Comment 15:
Section 1-H(5)(i)(iii) (p. 5 of 11): Last sentence of this paragraph should specify, "…or at an alternate PROXIMAL location…"
Response: Staff believes it is appropriate to retain the flexibility to decide alternate locations that may not be in close proximity to the wall.

Comment 16:
Section 1-H(5)(j) (p. 5 of 11): The phrase "…make antenna tower available for use by others…" is too broadly accommodating. It would better be more narrowly described as "other commercial telecommunications providers," of something similar.
Response: Staff does not have any concern with the existing language.

Comment 17:
Section 1-H(5)(l) (p. 6 of 11): I have three suggestions* for this paragraph. *"…within the service area" is too vague, especially when 5G functions as a gigantic network, involving multiple service providers. *This paragraph also references "the public hearing where the application will be considered." It might read better to say "at which," rather than "where." *The stipulation that, "Upon request, the Zoning Administrator shall place on a list the name and address of any user or prospective user of antenna towers to receive notification of applications" seems an impossible task. I think I know what is intended by the statement, but am not sure it can be accomplished in a mobile cellular network. Accordingly, you might rephrase that, relative to proximity of property owners and public notice (paid by the telecom??) for transitory (end) users.
Response: One suggested change has been made, but Staff does not believe the other proposed changes are warranted.

Comment 18:
Section 1-H(6)(c)(ii) (p. 7 of 11): The requirement for gray "or other similar color" might better include qualifiers like "unobtrusive" and/or "neutral."
Response: Unobtrusive is subjective and Staff does not have concerns with the proposed language.

Comment 19:
Section 1-H(6)(c)(iii) (P. 7 of 11): The exception allowing one additional shroud per pole when the antenna is located within the second shroud may have unintended consequences by precluding subsequent co-locators from housing their antennas within shrouds on those poles.
Response: The goal here is to reduce clutter and aesthetics. If co-location is a possibility, there's certainly an option to replace the pole and have all the equipment contained within the pole instead of on the exterior.

Comment 20:
Section 1-H(6)(c)(iv) (P. 7 of 11): I'm unclear about the newly-introduced terminology, "utility cable owner" in this paragraph. Who is that? The allowance of strand-mounted aerial cables seems to warrant an explanation about your rationale for disallowing guy wires, which I'm guessing relates to public safety, not obstructing passage (or incommoding) along public rights-of-way, and the visual blight of guy wires. Why are strand-mounted aerial cables less of a blight, and could they pose additional hazards to birds, etc.?
Response: The utility cable owner is the utility company that owns the cable that is connected to the antenna support structure. Guy wires are much closer to the ground and present safety and aesthetic concerns, as a result, Staff does not believe it would be appropriate to allow them to be attached to guy wires. Below is an image of the strand mounted shroud, as the proposed regulations detail.

Figure 1-2: Type 1B - Strand Mounted Shroud

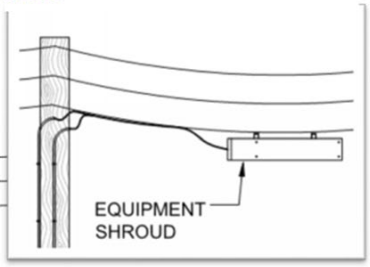
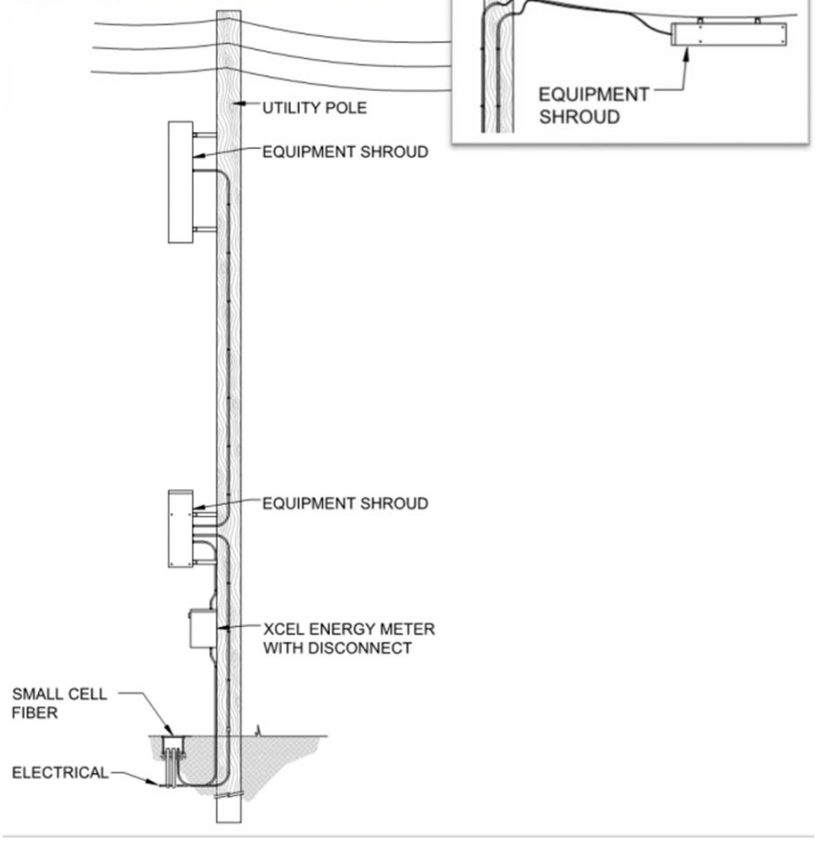


Figure 1-3: Type 1A - Utility Pole Mounted Shroud



Comment 21:
Section 1-H(6)(c)(iv)(a) (P. 7 of 11): It seems like the clearance above sidewalks should be higher than eight feet. How did you determine that limit, given that the clearance over roadways is 14 feet? (Could this paragraph be problematic, as it may apply to locations where awnings, suspended ornamental lighting, and overhead signage might be allowed? Who would prevail; the telecom or the small business?)
Response: The standard clearance height throughout the City is 8' for sidewalks and 14' for streets. The antenna support structures are likely to be far enough away from any building or awning, but this would be reviewed on a case-by-case basis by the Engineering Department.

Comment 22:
Finally, note in the City Attorney's memo of June 12 (included in your packets, as part of the public record) that the FCC Declaratory Order allows for the protection of "public safety and welfare" (See p. 4 and p. 5). That seems to leave open the opportunity for the council to do that, to the fullest extent allowed by law. Thanks for keeping it in mind as you improve the draft ordinance.
Response: None required.

Comment 23:
Lose the redundant numerology throughout (i.e., "fifty feet (50')"). At least be consistent: 3.i.i(a) has "Fifty (50) feet" but 4.b has "thirty-five feet (35')." Do the numerals come before or after the units?
Response: Corrected.

Comment 24:
H. Telecommunications Facilities

H1. Applicability [p. 2]
"...any of which are used..." → "...any of which is used..." *["any" is singular]*
"...exclusively used..." → "...used exclusively..."
Response: Corrected.

Comment 25:
H3.h. Monopole. [p. 3]
"...guys." → "...guy wires." *[compare 5.a]*
Response: Added.

Comment 26:
H3.k. Temporary Antenna Tower. [p. 3]
Remove hyphen in "tele-communications"
Response: The hyphen is actually a deletion, there was apparently a space previously.

Comment 27:
H4.c. [p. 3]
Is it "Except for small wireless facilities which are subject to the standards contained in Section 6 herein, ..." *or* "Except for small wireless facilities, which are subject to the standards contained in Section 6 herein, ..."? *The added comma makes a significant change in meaning of the sentence. Without the added comma, some facilities are subject to the standards, and some are not. With the comma, it indicates that all small wireless facilities are subject to the standards.*
Response: Comma added.

Comment 28:
H5.f. Noise Reduction. [p. 4]
"...not more than ~~forty-five decibels~~ (45 dB)." → "~~.~~..no more than 45 dB." Corrected.
For an installation in the right-of-way, where is this measured?
Response: This would likely be measured at the source, but there is likely no noise generated from small cell installations. The noise typically associated with telecommunications facilities are ground generators, which are not a part of small cell installations.

Comment 29:
H5.h. [p. 4]*As this paragraph is removed completely, the following paragraphs must be renumbered*
Response: Corrected.

Comment 30:
H5.i. → H5.h. Aesthetic Considerations. [p. 4]
Response: Corrected.

Comment 31:
H5.i.i. Antenna towers shall be painted…[p. 5]
"...required by the Federal Aviation Administration or any other State..." → "...required by the ~~Federal Aviation Administration or~~ any ~~other~~ State..."
Response: Deleted.

Comment 32:
H5.h.vi. Ancillary facilities located above ground…
"...will present no greater adverse visual and audio impacts…" *Greater than what?*
Response: Greater than an ancillary facility set 50' back.

Comment 33:
H5.j. → H5.i. Co-Location Consent [p. 5]
"Co-Location" → "Co-location" *[Compare 3.f and 6.c.]*
Response: Corrected.

Comment 34:
H5.j.ii. New Antenna Towers. [p. 6] "Subsection 5.j.i" → "Subsection 5.i.i"
Response: Corrected.

Comment 35:
H5.k. → H5.j. Antenna Tower Inventories. [p. 6]
Response: Corrected.

Comment 36:
H5.l. → H5.k. Notice of Antenna Tower Permit Application. [p. 6] Corrected.
Retain requirement to notify neighbors.
Response: A new antenna tower requires a CUP. A CUP requires property owners within 600' to be notified. This is just eliminating redundant language.

Comment 37:
H6. Small Wireless Facility Standards
H6.a. Small Wireless Facility Standards [p. 7]
"The City Council may adopt additional small wireless facility ~~design and construction~~ standards by Resolution..."

Response: This is intended to say design and construction standards, similar to the City's Standard Construction Drawings for streets and facilities.

Comment 38:
H6.c.iv(a) Side mounted. [p. 7]
"sixteen inch" *or* "sixteen-inch"? *[See H6.c.iv(b)]*
Response: Corrected.

Comment 39:
"Side mounted equipment shrouds shall be located in such a manner as to not obstruct pedestrian access on adjacent sidewalks."
Response: The standards contained within this section would prevent the public from being incommoded by the installation.

This can be expanded to restrict installations that would incommode the public:

5. General Telecommunication Facility Development Standards

a. Endangerment, Interference. No person or entity shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. [Physicians for Safe Technology. mdsafetech.org/cell-tower-and-city-ordinances]

See page 4 for more openings to consider the effects of installations on public health and the environment.

Comment 40:
H6.e.iv. Minimum spacing between small wireless facility antenna towers… [p. 8]
"...no closer than two hundred and fifty feet (250') from another small wireless facility antenna tower." →
"...no closer than two hundred and fifty feet (250') from any other small wireless facility antenna tower."
Response: Corrected.

Comment 41:
H7.c.v. Description of proposed and required lighting… [p. 9]
"Section 5c" → "Section 5e." *Section 5.c. is Antenna tower setback.*
Response: Corrected.

Comment 42:
H7.c.viii. Antenna tower or tower location study… [p. 9]
Add a requirement that they show a gap in service at the location.
Response: Staff believes the language is sufficient as it currently exists.

Comment 43:
H7.c.ix. Antenna tower inventory… [p. 9] "Section 5.k" → "Section 5.j"
Response: Corrected.

Comment 44:
H7.c.x. Notarized… [p. 9]
"Section 5.j" → "Section 5.i"
Response: Corrected.

Comment 45:
H7.c.xi. Documentation… [p. 9]
Report results to the City (in a reasonable amount of time).
Response: It is Staff's opinion this section is fine as it currently exists.

Comment 46:
H7.c.xiv. Name and address… [p. 10]
"...a written statement of approval of the application by the property owner."
How does this work for an application for installation on City right-of-way?
Response: The property owner portion would likely not be applicable since the property would be located in the right-of-way.

Comment 47:
H8.a.v. These findings shall be required… [p. 10]
This paragraph should be a continuation of H8.a. It is not one of the required findings.
Response: Corrected.

Comment 48:
Do you need to reference somewhere the required adherence to the Master License Agreement?
Response: Reference to the MLA does not need to be included in the ordinance.

Additional General Comments:
See next page for considerations regarding safeguarding the health and safety of Moscow's citizens.

installations must not incommode the public

5. General Telecommunication Facility Development Standards

a. Endangerment, Interference. No person or entity shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. ...

A win for cities occurred April 4, 2019 in a California court, as a battle for local control of cell tower placement continues. San Francisco challenged the FCC interpretation of the 1996 Telecommunication Acts rules which state that phone companies cannot install equipment that may "incommode the public use of the road." ...

Plaintiffs' position is that 'incommode' means only physical obstruction of travel in the public right-of- way. The City, on the other hand, points out that the dictionary definition of 'incommode' is broader and includes 'inconvenience, discomfort, and disturbance beyond mere blockage.' …

> Judge Corrigan notes, "Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. But **travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel**. (T-Mobile West, at pp. 355-356.) For example, lines or **equipment might** generate noise, **cause negative health consequences**, or create safety concerns. **All these impacts could disturb public road use**, or disturb its quiet enjoyment."
>
> [**Physicians for Safe Technology**. mdsafetech.org/cell-tower-and-city-ordinances]

Telecommunications Act Section 253(b) provides a "safe harbor" to protect the ability of states and localities to regulate zoning and construction of wireless facilities:

253(b) State regulatory authority: Nothing in this section shall affect the ability of a State to impose … requirements necessary to... protect the public safety and welfare, … and safeguard the rights of consumers. [Section 253 of the Communications Act, 47 U.S.C.]

"...localities can enforce "generally applicable building, structural, electrical, and safety codes and [] other laws codifying objective standards reasonably related to health and safety." [2014 Infrastructure Order, 29 FCC Rcd at 12951, para. 202.]"

> Section 1.1307(a) requires an applicant to submit an environmental assessment if a facility "may significantly affect the environment," which includes facilities that may affect historic properties, endangered species, or critical habitats. [47 CFR § 1.1307(a).]"

CITY COUNCIL STAFF REPORT

DATE: Monday, November 2, 2020

RESPONSIBLE STAFF	REVIEWED BY
Jen Pfiffner, Assistant City Supervisor, Dwight Curtis, Parks & Recreation Director	

ADDITIONAL PRESENTER(S)	OTHER RESOURCES

AGENDA ITEM TITLE

Proposal to Develop Plan to Address Potential for Gender-Neutral Restroom Conversion (ACTION ITEM) - Jen Pfiffner

DESCRIPTION

At the request of the Mayor in response to inquiries and encouragement from citizens and the Human Rights Commission, City staff has conducted preliminary research to determine the potential for converting city-owned restrooms to gender-neutral facilities where feasible.

Preliminary research has been conducted to determine an approach to address that request. A review of gender-neutral restrooms in Idaho have been completed to provide background on how other municipalities have or have not addressed the conversion process. An inventory of the existing City of Moscow restroom facilities has also been completed. Facilities include City occupied buildings, City owned but not occupied buildings, and City parks facilities. Should staff receive direction to develop a plan, additional considerations initially identified (certainly not limited to) would include safety, privacy, number of fixtures, accessibility, etc. Additional considerations would include costs for conversion.

Staff is seeking City Council direction to develop a phased planning approach for conversion of existing City restrooms to gender-neutral restrooms.

STAFF RECOMMENDATION

Recommend Council approve development of a phased planning approach for conversion of existing City restrooms to gender-neutral restrooms.

PROPOSED ACTIONS

PROPOSED ACTIONS: Recommend Council approve development of a phased planning approach for conversion of existing City restrooms to gender-neutral restrooms, or provide staff further direction.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

None

CITY COUNCIL STAFF REPORT

DATE: Monday, November 2, 2020

RESPONSIBLE STAFF	REVIEWED BY
Gary Riedner, City Supervisor	

ADDITIONAL PRESENTER(S)	OTHER RESOURCES

AGENDA ITEM TITLE

COVID / CARES Act Update and Direction (ACTION ITEM) – Gary J. Riedner

DESCRIPTION

Staff will present an update regarding the City's current COVID-19 response, including authorization for reimbursements under the City's CARES Act allocation.

STAFF RECOMMENDATION

Receive status report and authorize requests for reimbursements under the City's CARES Act allocation.

PROPOSED ACTIONS

PROPOSED ACTIONS: Receive status report and authorize requests for reimbursements under the City's CARES Act allocation, or provide staff direction.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. 10-30-2020 Radio Purchase Memo (3)
2. Cares Act radio replacement 10.2020

City of Moscow
Fire Department

Dedicating our efforts to the preservation of life, the protection of property and the safety of our personnel.

◆ ◆ ◆ ◆ ◆

Brian R. Nickerson
Fire Chief

Dan Ellinwood
Division Chief/Fire Marshal

Debby Carscallen
Division Chief/EMS

Scott Williams
Captain/Training & Safety

Matt Caples
Fire Inspector

229 Pintail Lane
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City Hall 208.883.7000

◆ ◆ ◆ ◆ ◆

Bill Lambert
Mayor

Gary J. Riedner
City Supervisor

◆ ◆ ◆ ◆ ◆

Memo

To: Gary Riedner, City Supervisor

From: Brian R. Nickerson, Fire Chief

Subject: Radio Purchase

Date: October 30, 2020

The current COVID-19 pandemic has resulted in the need to provide individual-use portable radios to our volunteer firefighters to help the Fire Department address the volatile and infectious COVID-19 environment by reducing the risk of cross contamination and COVID transmission among our emergency responders. Our volunteers who deliver both emergency medical and fire fighting services are particularly at risk in delivering these services, as there is no way to avoid close contact to those individuals we serve. Within the past month the Department has seen a sharp increase in calls for EMS and ambulance transport for COVID-19 symptoms.

We have implemented numerous increased hygiene measures and provided additional personal protective equipment to reduce risk whenever and wherever possible, including sanitizing of equipment and vehicles, as well as providing remote training and meeting opportunities.

Currently the Department has an insufficient inventory of portable radios to provide all active volunteer responders with individual-use radios. Acquisition of individual-use portable radios would add another level of protection to our volunteer EMS and Firefighters. Shared radios act as another potential vector for COVID-19 exposure, placing our volunteers at risk. Acquisition of a sufficient number of radios to allow our volunteers to have a radio assigned to each of them personally, would serve the following purposes:

- Prevent contamination between volunteer care providers/emergency services responders and patients from the COVID-19 virus;
- Individually-assigned radios will assist in the prevention of contamination of shared radio resources and prevent the spread of COVID-19 between volunteers and others, including hospital personnel;
- P-25 compliant multi-band radios allow for both VHF and 700/800mhz, thereby reducing the number of radios needed to communicate between the two systems and streamline response to COVID-19 incidents;
- Providing communication for inter-agency response to incidents. This will allow for communication with Latah County volunteer fire and ems agencies, as well as other mutual aid agencies and communicate on a multi-state level response with our mutual aid partners;

City of Moscow
Fire Department

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Fire Chief

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Bill Lambert
Mayor

Gary J. Riedner
City Supervisor

◆ ◆ ◆ ◆ ◆

- Allows volunteers to respond to incidents from home or work (rather than responding to the fire station), further reducing the risk of COVID-19 exposure;
- Allows for emergency services personnel to communicate COVID-19 risks to each other as well as responding law enforcement personnel.
- Allows for volunteers to remotely monitor incidents and to respond, should the incident require additional resources.

I request that the City move to acquire the individual-use portable radios as soon as practicable, in order to safeguard our volunteers as they struggle to provide and maintain these critical emergency medical and firefighting services to our community.

Thank you.

City of Moscow
Information Systems

Memo

To: Gary J. Riedner, City Supervisor

From: Jesse Flowers, Information Systems Director

Date: 10/28/2020

Re: Radio replacement Proposal

At Administration's direction, I have been conducting research regarding the request from the Fire Department for the acquisition of individual-use portable radios for the Moscow Volunteer Fire Department volunteers and Fire Department personnel to assist with reducing the risk of COVID 19 transmission within our Fire and EMS personnel.

As you know, the Information Systems Department has been working with Hatfield & Dawson Consulting Engineers to identify alternatives for radio systems that will meet the current and foreseeable needs of the City. It appears that the City will need to move away from the VHF band and into the 700/800mhz band. This is a change that is being driven by the limited frequencies available in the VHF band as well as more modern planning to make the most efficient use of the limited number of radio frequencies.

Several Idaho state agencies have moved to the 700/800mhz band and many have joined the Idaho State Radio network. The Idaho State Radio network is building out capacity state wide and has focused on the following areas; Southern Idaho, Coeur d'Alene, and Lewiston. Some of the State using this system include; Idaho State Patrol, Idaho EMS/HW, Idaho Fish and Game, Idaho Department of Corrections, and Idaho Military Division.

Currently, our mutual aid partners are using VHF and as we transition to the 700/800mhz band we will need dual band radios to communicate with current partners who still use VHF. Dual band radios will provide a future proofing of equipment

purchased for an estimated 10-year service life as radio systems continue to be updated throughout the region.

The estimated per unit cost for the replacement of 104 individual-use portable radios for the Fire Department is $6,760.92. 104 units would amount to $703,135.68 (104 x 6,760.92 = 703,135.68).

Given the current risk of Covid-19 transmittal concerns I recommend acquiring individual-use portable radios to be used by our volunteer fire fighters and Fire Department personnel. This will allow members of the Fire department to not share radios and reduce exposure of our firefighters, EMTs, and Paramedics to Covid-19 and help ensure that they are able to respond to calls for Moscow and the surrounding area.