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MICHELLE NAUER, OURAY COUNTY, CO. CLERK & RECORDER

RESOLUTION NO. 2013-011

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO REGARDING AN APPLICATION FOR A MODIFICATION TO AN EXISTING TELECOMMUNICATIONS FACILITY AND A DETERMINATION OF SUBSTANTIAL VS NON-SUBSTANTIAL CHANGE

WHEREAS, the Telecommunications Act of 1996 was amended in February 2012 by Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat. 156 ("Tax Act") to limit the authority of local governments to regulate modifications to existing telecommunications facilities and requires approval of requests for modifications that are not substantial; and

WHEREAS, Black & Veatch Corporation, authorized agent for New Cingular Wireless PSC, LLC, authorized agent for Dallas Creek Water Company – Region 10, applied to the Land Use Department for approval of a modification of an existing telecommunications facility; and

WHEREAS, the Board of County Commissioners has directed staff to bring such applications to them for initial determination of the threshold issue of whether the requested modification is substantial or non-substantial, such applications to be presented in a manner that does not result in bias on the application should the Board determine that the requested modification is substantial, requiring a special use permit; and

WHEREAS, as provided by County procedures for these types of applications, notification of the request was sent to the appropriate Homeowners Association on January 11, 2013; and

WHEREAS, information regarding the subject request was posted on the County website on January 17, 2013; and

WHEREAS, all application materials, with redactions to prevent disclosure of the name of the applicant, were provided to the Board of County Commissioners; and

WHEREAS, Board of County Commissioners reviewed and considered materials provided by staff, including the redacted application, a memo from the County Attorney stating that in her opinion the proposed modification is one contemplated by Section 6409(a) of the Tax Act, and a Wireless Telecommunications Bureau of the FCC Guidance document dated January 25, 2013 interpreting Section 6409(a) and specifically addressing the Bureau's interpretation of the statutory language "substantial increase in the size of the tower"; and

WHEREAS, Section 6409(a) provides that the County is required to approve a modification that will not result in a substantial increase in the size of the tower; and

WHEREAS, the Board of County Commissioners held a properly noticed public hearing on February 19, 2013 to hear and consider public comments and the materials presented by staff.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners determined that the proposed modification to an existing telecommunications facility was *not a substantial change.*

Approved and adopted this 26th Day of February, 2013.

Voting for: Commissioners Fedel, Padgett and Batchelder
Voting against: None

BOARD OF COUNTY COMMISSIONERS OF
OURAY COUNTY, COLORADO

F. Mike Fedel, Chair

Lynn M. Padgett, Vice-Chair

Don Batchelder, Member

Attest:

Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board