

**Unsuccessful ruling that did NOT hold up in Fed Court (see Consent Order Judgment attached to the end).**

**Must address Gap in Coverage!**

**Important Info is Highlighted and/or Redlined**



**BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS**

In re:

Application of Stanley J. Tharp c/o Eberle Berlin Law Firm

Project No. 201801311 A

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**FINDINGS OF FACT**

If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

A. The Board finds that the record is comprised of:

1. Exhibits to the Staff Report.
2. Exhibit A to the Findings of Fact, Conclusions of Law and Order.
3. All other information contained in Ada County Development Services File for Project No. 201801311 A.
4. All information and testimony presented at the Public Hearing held on January 30, 2019.

B. As to procedural items, the Board finds the following:

1. On October 18, 2018, the Ada County Planning and Zoning Commission (Commission) approved the conditional use application (Project #201801311 CU).
2. On November 2, 2018, Development Services received an application appealing the Commission's decision and scheduled the appeal for public hearing before the Board of Ada County Commissioners on January 9, 2019.
3. On November 6, 2018, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached as Exhibits.
4. On November 30, 2018, property owners within 1,000 feet of the site were notified of the hearing by mail.

5. On December 24, 2018, legal notice of the Board's hearing was published in The Idaho Statesman.
6. On December 28, 2018, notices of the public hearing were posted on the property and a certification sign posting was submitted to the director on December 28, 2018.
7. On January 9, 2019, the Board tabled the application to their January 30, 2019 public hearing.
8. On January 17, 2019, a public service announcement was issued for the January 30, 2019 public hearing.
9. On January 30, 2019, the Board voted to approve the appeal and deny Project #201801311 CU and tabled the application to their February 6, 2019 meeting for revised Findings of Fact.

C. As to the project description, the Board finds based on the application materials found in the file for Project No. 201801311 A the following:

1. PROPOSED USES: A 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure with associated equipment storage in a fence leased area.
2. PROPOSED STRUCTURES: A 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure with associated equipment storage.
3. PROPOSED SITE IMPROVEMENTS: None.

D. Based on the materials found in the file for Project No. 201801311 A, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: The parcel number is R7132900300 and it is located at 2557 N. Sky View Lane in Section 5, T. 4N, R. 1E.
2. OWNERSHIP: Skyview Development Corp.

3. SITE CHARACTERISTICS

Property size: 5.0 acres.

Existing structures: 1,806 square foot single-family dwelling with a 703 square foot attached garage and 454 square feet of covered patio/deck and a 7,200 square foot accessory structure.

Existing vegetation: Pasture and residential landscaping.

Slope: The site is relatively flat with slopes less than 15%.

Irrigation: The property is within the jurisdiction of the Farmers Union Ditch Company.

Drainage: The property is within the boundaries of Drainage District No. 2.

Views: The site is generally visible from all directions.

- E. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the current land use and zoning:

The property is rural residential in the Pony Subdivision and is zoned Rural-Urban Transition (RUT).

- F. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the surrounding land use and zoning:

North: The site is rural residential in the Pony Subdivision and is located in the Rural-Urban Transition (RUT) District.

South: The site is rural residential and large lot residential in the Academy Place Subdivision and is located in the City of Eagle in their Residential-Estates (R-E) District.

East: The site is large lot residential in the Lighthouse Subdivision and is located in the City of Eagle in their Residential-Estates (R-E) District.

West: The site is large lot residential in the Pony Hollow Subdivision and is located in the City of Eagle in their Residential-Estates (R-E) District.

- G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 201801311 A, the Board finds the following concerning services:

Access Street and Designation: Access is off N. Sky View Lane, which is designated as a private road.

Fire Protection: Eagle Fire District.

Sewage Disposal: Individual Septic System.

Water Service: Individual Well.

Irrigation District: Farmers Union Ditch Co.

Drainage District: Drainage District No. 2.

- H. As to the applicable law, the Board finds the following:

This section details the comp plan goals, objectives and policies; the zoning ordinance regulations; and other applicable standards regarding development of the subject property.

1. The Board finds **Section 8-7-7 of the Ada County Code** is applicable because the appellant is appealing the Commission's decision to approve a conditional use for a 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure with associated equipment storage. The Board finds the application complies with

**Section 8-7-7 of the Ada County Code.** Regarding Section 8-7-7 the Board finds the following:

A. *Application: Any decision or action may be appealed as set forth in this chapter. The appellant shall be an affected person as defined in Idaho Code section 67-6521(1)(a).*

1. *A person aggrieved by a final decision or action within the jurisdiction and authority of the Board (see subsection 8-7-2A of this chapter), the hearings examiner (see subsection 8-7-2F of this chapter), or the commission (see subsection 8-7-2D of this chapter) may appeal to the board.*

The Board finds that the appellant is Stanley J. Tharp who is representing neighboring property owners Christie Hodge, Tamara & Donald Beach, Neil & Katherine Tassano, Larry Fischer, David & Kristen Gardner, Hank & Donalyn Allen, and AJ Osborne. Six (6) of the seven (7) listed property owners own property within 1,000 feet of the proposed 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure with associated equipment storage.

B. *Appeal Procedures:*

1. *Appeals of written decisions shall be filed with the director within fifteen (15) days after the date of the written decision, or it shall not be accepted. An application and fees, as set forth in article A of this chapter, shall be submitted to the director on forms provided by the development services department.*

The Board finds that Stanley J. Tharp filed the appeal with the Director on November 2, 2018, which is within fifteen (15) days after the date of the written decision made on October 18, 2018 to approve Project #201801311 CU.

2. *The director shall schedule and the board shall hold a public hearing and make a decision pursuant to the procedures as set forth in section 8-7A-8 of this chapter.*

The Board finds that the Director scheduled a public hearing in front of the Board on January 30, 2019 and that the Board held a public hearing. The Board has made a decision pursuant to the procedures as set forth in Section 8-7A-8.

3. *At the public hearing, the board shall consider the order, requirements, permit, decision, or determination of the commission, and any attached conditions thereto. The board shall also consider any additional evidence that may be offered by the public, applicant, director, and/or commission.*

The Board finds that they have at their January 30, 2019 public hearing considered the order, decision, determination, and supporting materials from the Commission's October 18, 2018 public hearing as well as evidence submitted to the Board before and at the Board's January 30, 2019 public hearing.

The Board finds that the appellant has submitted a detailed letter (Exhibit #3A) illustrating why the Board should overturn the Commission's decision and deny

the tower. The appellant's detailed letter states the following reasons for overturning the Commission's decision:

- The developers were deceptive to local homeowners using an outdated map, as well as failing to notify various homeowners of the neighborhood meeting.
- Nearby home values of the area, as well as vacant land values, will decrease;
- Close proximity of the proposed cell tower to existing large home estates with little to no vegetation, with values exceeding \$1,000,000, is not aesthetically pleasing;
- The unknown health risks associated with cell towers, which emit high frequency radio waves or microwaves; and
- Construction and maintenance of the cell tower would invade the privacy of the homeowners who built and live where they do.

The Board finds that the tower will have an undue impact to neighboring property values. The property values following the construction of the proposed cell tower shows an estimated decrease of 10% to 20% to surrounding properties as depicted in the appraisal report for the Hodge Estate Home in Exhibit #21A, which is located immediately west of the proposed tower.

The Board finds that the tower is not architecturally and visually compatible with the existing structures and uses in the area as the proposed monopine cell tower will be visible from neighboring properties as the subject property is an open field with no tall trees or other similarly sized structures for the tower to blend into. Since the surrounding area does not have trees or structures that are similar in height; the proposed tower will stick out and be obtrusive to the surrounding area.

The Board finds that Section 332(c)(7) of the Communications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, assuming that the provider is in compliance with the Commission's RF rules.

The Board finds that the construction and maintenance of the cell tower will invade the privacy of nearby home owners due to its height and the proximity of nearby residences.

The Board finds that the cell tower and associated equipment storage will be detrimental to the public health, safety, and welfare as the proposed. The tower may present a fire hazard as it would be located in an open field with dry grasses and weeds. In addition, it will affect the general welfare of neighboring property owners by interrupting the quiet enjoyment of their property as the tower would be obtrusive and imposing to surrounding properties.

The Board finds that the cell tower applicant has not adequately explored all options for placing the cell tower on a more suitable site. The applicant's representative testified that he looked at properties for the tower until he found a willing landowner. Additionally, AJ Osborne testified at the January 30, 2019 public hearing that he offered to buy lands that were for sale. He stated that there was a 15 acre parcel of property just a ½ mile away that does not have a house on it. Mr. Osborne indicated he had an RF study performed on the site and the RF study showed that there would be no impact but that other locations would have even better coverage with the alternative site rather than the proposed site (Exhibit #24A). He replied that he is more than happy to buy the land where it will impact fewer residences.

4. *The board may affirm, reverse, modify, in whole or in part the order, requirement, permit, decision, or determination appealed from, or make or substitute any additional conditions that in its deliberations it may find warranted.*

The Board finds that they have at their January 30, 2019 public hearing considered the order, decision, determination, and supporting material from the Commission's October 18, 2018 public hearing as well as evidence submitted to the Board before and at the Board's January 30, 2019 public hearing.

At their January 30, 2019 public hearing the Board vote to approve the appeal and deny the conditional use as set forth in this document.

2. The Board finds **Section 8-5B-5 of the Ada County Code** is applicable because the applicant has applied for a conditional use for a 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure with associated equipment storage. The Board finds that the application does not comply with **Section 8-5B-5 of the Ada County Code**. Regarding Section 8-5B-5 the Commission finds the following:

- A. *The proposed use is not detrimental to the public health, safety, and welfare.*

The Board finds that the 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure with associated equipment storage will be detrimental to the public health, safety, and welfare as proposed. The tower may be a fire hazard as it would be located in an open field with dry grasses and weeds. In addition, it will affect the general welfare of neighboring property owners by interrupting the quiet enjoyment of their property as the tower would be obtrusive and imposing to surrounding properties.

- B. *The proposed use shall not create undue adverse impacts on surrounding properties;*

The Board finds that the 65 foot tall commercial cell tower (height 73 feet with lightning rod) and antenna structure creates undue impacts on surrounding properties as the tower would be obtrusive and imposing. Even disguised as a monopine the tower will be readily visible to the neighboring properties as the subject property is an open field and there are no tall trees or other structures for the tower to blend into. The construction and maintenance of the tower would invade the privacy of neighboring homes due to the close proximity of nearby residences. The proposed

tower will have an undue impact to neighboring property values. Property values following the construction of the proposed cell tower shows an estimated decrease of 10% to 20% to surrounding properties as depicted in the appraisal report for the Hodge Estate Home in Exhibit #21A, which is located immediately west of the proposed cell tower.

C. *The proposed use is consistent with the applicable comprehensive plan;*

The Board finds as evidenced in the record that the subject property is located in Eagle's Impact Area and therefore, the Eagle Comprehensive Plan as adopted by Ada County is the applicable comprehensive plan. The subject property is designated as Residential Estates.

The Board finds that the 65 foot tall commercial cell tower (height 73 feet with lightning rod) is a utility service that is not compatible in this residential area.

D. *The proposed use complies with the purpose statement of the applicable base district and with the specific use standards as set forth in this chapter;*

The Board finds that the 65 foot tall commercial cell tower (height 73 feet with lightning rod) complies with the purpose statement of the Rural-Urban Transition (RUT) District as a cell tower is a utility service that is utilized in residential areas.

The Board finds that the 65 foot tall commercial cell tower (height 73 feet with lightning rod) does not comply with the specific use standards for a (Tower or Antenna Structure, Commercial) Section 8-5-3-114 of this title. The Commission finds the following regarding compliance with the specific use standards in Section 8-5-3-114 of the Ada County Code.

A. *Applicability:*

1. *The following regulations shall apply to tower structures and associated equipment for the purpose of commercial radio, television, telephone, paging, or satellite reception and/or transmission.*

The Board finds as a term of approval that specific use standards in Section 8-5-3-114 of this title apply to tower structures and associated equipment.

2. *A facility that meets the following standard shall be reviewed as an accessory use. Any other facility shall be reviewed as a conditional use.*
  - a. *Collocation of new antenna and/or equipment for an approved tower structure, commercial shall be deemed an accessory use and shall require a zoning certificate prior to installation.*

The Board finds that the proposed use is for a new cell tower and is not a collocation and therefore the tower is being reviewed as a conditional use.

B. *General Standards For Commercial Tower Structures And Associated Equipment:*

1. *Radio Frequency Emissions: The facility shall comply with FCC standards regarding radio frequency (RF) emissions.*

The Board finds this standard could have been met with a term of approval that commercial tower facilities shall comply with FCC standards regarding radio frequency (RF) emissions. The applicant has provided a letter (CU Exhibit #14) stating that Horizon Tower and his, her or its successors would comply with all federal, state and local regulations, including but not limited to regulations set forth by the FAA, FCC, Idaho Bureau of Aeronautics, and the Boise Airport as required by Ada County Code.

2. *Approval Required: The facility shall have approval from the federal aviation administration and the chief of the Idaho bureau of aeronautics prior to operation.*

The Board finds this standard could have been met with a term of approval that cell towers shall have approval from the Federal Aviation Administration and the Chief of the Idaho Bureau of Aeronautics prior to operation. The Federal Aviation Administration and the Chief of the Idaho Bureau of Aeronautics were notified of this project through the conditional use application's transmittal, which was sent to them on July 3, 2018. The applicant has provided a "Determination Of No Hazard To Air Navigation" letter from the Federal Aviation Administration (CU Exhibit #31). The Federal Aviation Administration stated that the aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation. In addition, the applicant has provided a letter (CU Exhibit #14) stating that Horizon Tower and his, her or its successors will comply with all federal, state and local regulations, including but not limited to regulations set forth by the FAA, FCC, Idaho Bureau of Aeronautics, and the Boise Airport as required by Ada County Code.

3. *Additional Approval: The facility shall have approval from the Boise Airport director prior to operation. The approval shall include specific reference to the site location, height of the facility, lighting, and issuance of an aviation easement.*

The Board finds this standard could have been met with a term of approval that cell towers shall have approval from the Boise Airport Director prior to operation. The Boise Airport was notified of this project through the conditional use application's transmittal, which was sent to them on July 3, 2018. The applicant has provided a letter (CU Exhibit #14) stating that Horizon Tower and his, her or its successors will comply with all federal, state and local regulations, including but not limited to regulations set forth by the FAA, FCC, Idaho Bureau of Aeronautics, and the Boise Airport as required by Ada County.

4. *Permits Required: The applicant or owner shall be required to obtain all necessary permits, as may be required under federal, state or local statutes, regulations, or ordinances including, but not limited to, building permits.*

The Board finds as a matter of law that the applicant and/or owners of cell towers are required to obtain all necessary permits as may be required under



federal, state, or local statutes, regulations, or ordinances. Also, as a term of approval the applicant and/or owners of cell towers are required to obtain a building permit for the facility.

5. *Maintenance Of Facility: The facility shall be maintained in compliance with all federal, state, and local regulations and the construction standards set forth in this section.*

The Board finds as a matter of law that cell tower facilities are required to be maintained in compliance with all federal, state, and local regulations.

6. *Public Nuisance Prohibited: The owners of the facility shall have a continuous obligation to ensure the maintenance and upkeep and to prevent the creation of a public nuisance.*

The Board finds as a term of approval that the owners of cell tower facilities have a continuous obligation to ensure the maintenance and upkeep and to prevent the creation of a public nuisance.

7. *Outdoor Storage Areas: The proposed facility shall meet the standards for outdoor storage areas in section 8-5-3-78 of this chapter.*

The Board generally requires that cell tower facilities shall meet the standards for outdoor storage areas in Section 8-5-3-78 of this chapter.

8. *Conditional Use Approval: For any utility requiring conditional use approval, the director shall notify all property owners within a minimum of one thousand feet (1,000') of any property boundary (or lease boundary lines, if applicable) of the proposed site.*

The Board finds that the director notified all property owners within a minimum of 1,000 feet from the property boundary on August 1, 2018 for the conditional use application.

9. *Removal: The tower and associated facilities shall be removed within sixty (60) days of cessation of use.*

The Board would, as a term of approval, require that cell towers and associated facilities have to be removed within sixty (60) days of cessation of use.

10. *Tower Construction, Setback, And Fall Zone Standards:*

- a. *The tower shall be constructed to the Telecommunications Industry Association/Electronic Association (TIA/EIA) 222 revision F standard entitled "Structural Standards For Steel Antenna Supporting Structure", or as hereinafter may be amended.*

The Board finds as evidenced in the record that stamped engineering drawings and calculations (CU Exhibit #37) have been submitted. As a term of approval cell towers have to be constructed to the Telecommunications Industry Association/Electronic Industries

Association (TIA/EIA) 222 revision F standards entitled, “Structural Standards for Steel Antenna Supporting Structures.”

- b. *Within the Boise air terminal airport influence areas overlay district, the height limit on the tower or antenna structure shall be as required by the code of federal regulation 14 CFR 77.*

The Board finds as evidenced on the Ada County Zoning Map that the tower is not located within the Boise Air Terminal Airport Influence Areas Overlay District.

- c. *Towers over twenty feet (20’) in height must be designed to allow future arrangements of antennas upon the tower. Such towers must also be designed to accept antennas mounted at varying heights.*

The Board finds that the height of the tower is 65 feet and is 73 feet tall with a lightning rod. The applicant has stated in the detailed letter (CU Exhibit #7) that there will be space provided on the tower and within the lease area for future carrier collocations.

- d. *If the tower does not exceed the height limitation of the applicable base district, the tower shall meet the setback requirements of the district. If the tower exceeds the height limitation of the applicable base district, the tower shall meet the setback requirements of the district or it shall be set back one foot (1’) for every ten feet (10’) of total tower height from all property lines, whichever is greater.*

The Board finds as evidenced in the record that the tower exceeds the applicable height limit of the Rural-Urban Transition (RUT) District. The setback requirements for the RUT District is 30 feet from any property line on an arterial or collector street; 25 feet for a front property line on a local street or private road; 25 feet for an interior side property line; and 25 feet for a rear property line. As evidenced on the site plan (CU Exhibit #8) the tower is set back 27 feet from the nearest property line, which exceeds the minimum setback requirements for the RUT District of 25 feet for the property. In addition, the tower is set back beyond one foot (1’) for every ten feet (10’) of total tower height from all property lines.

- e. *In addition to the setback requirements noted in the preceding paragraph, a fall zone for each tower shall be delineated and permanently restricted from future development, as follows:*

- (1) *The fall zone shall consist of the land area centered beneath the tower and circumscribed by a circle with a radius equal to a length of one foot (1’) for every ten feet (10’) of tower height.*

- (2) *If the fall zone does not lie completely within the subject property, the applicant must obtain a nonevocable easement from all owners of property within the fall zone that prohibits the construction or placement of new structures within the fall zone except as may be*

*specifically permitted through the conditional use process. If an easement is utilized, a copy of the fully executed easement agreement shall be submitted as part of the application.*

The Board finds as evidenced on the site plan (CU Exhibit #8) that the fall zone lies completely within the subject property.

- f. *Towers shall be architecturally and visually compatible with the existing structures, vegetation and/or uses in the area or likely to exist in the area under the terms of the applicable base district and/or comprehensive plan. The decision making body shall consider, but shall not be limited to, the following factors: similar height, color, bulk, and/or shape, or camouflage techniques to disguise the facility. This shall not preclude towers requiring FAA painting and/or marking form meeting those standards.*

The Board finds that the tower is not architecturally and visually compatible with the existing structures and uses in the area as the proposed. The monopine cell tower will be readily visible from neighboring properties as the subject property is an open field with no tall trees or structures for the tower to blend into. Since the surrounding area does not have trees and structures that are similar in height; the proposed tower will stick out and be obtrusive to the surrounding area.

C. *Application Requirements: The application materials include the following documentation:*

1. *Suitability Analysis Of The Proposed Site: The analysis shall include, but is not limited to, the following:*

- a. *Description of the surrounding area within one mile of the subject site including topography;*

The Board finds that the applicant has provided a written description in the detailed letter (CU Exhibit #7) describing the surrounding area within one mile of the subject site. The area within one (1) mile of the site is low-density residential. The ground elevations within one (1) mile of the site range between approximately 2,600' and 2,620'.

- b. *Propagation charts showing existing and proposed transmission coverage at the subject site and within an area large enough to provide understanding of why the facility needs to be placed at the chosen location.*

The Board finds that the applicant has submitted RF propagation maps (CU Exhibit #11) depicting existing coverage and the area that will be covered with the new tower. The applicant did not sufficiently demonstrate the need to place the tower at the chosen location. Applicant failed to show they explored locating the tower on other more compatible sites in the area which would achieve the same or similar coverage.

2. *Signed Lease Agreement: If applicable, relevant portions of a signed lease agreement that requires the applicant to remove the tower and/or associated facilities upon cessation of use.*

The Board finds that the applicant has submitted a redacted copy of the signed lease agreement requiring the removal of the facility upon cessation of use (CU Exhibit #12). Section 12 of the lease states, “The Communication Facility, including all below-grade foundations, conduits and improvements to the Property (up to a depth of two feet (2’) below grade), shall be removed by Tenant upon the expiration or termination of this Agreement, unless otherwise agreed to in writing by the parties.”

D. *Additional Application Requirements For Facilities That Require A Conditional Use Approval:*

1. *Engineering data showing that the tower is designed structurally, electrically, and in all other respects to accommodate both the applicant’s equipment and comparable equipment for a minimum of one additional user if the tower is over one hundred ten feet (110’) in height, it shall be designed structurally, electrically, and in all other respects to accommodate both the applicant’s equipment and comparable equipment for a minimum of two (2) additional users.*

The Board finds that the applicant has submitted engineering data (CU Exhibit #37) showing that the tower is designed structurally, electrically, and in all other respects to accommodate the applicant’s equipment and the comparable equipment for a minimum of one (1) additional user.

2. *A report from a qualified and licensed professional engineer that describes the facility height and design (including a cross section and elevation); documents the height above grade for the recommended mounting position for collocated antennas and the minimum separation distances between antennas; describes the facility’s capacity; and any other information necessary to evaluate the request. The report must include the engineer’s stamp and registration number.*

The Board finds that the applicant has submitted a report (CU Exhibit #37) from Amy R. Herbst who is a professional engineer that describes the facility height and design and includes a cross section and elevation drawing.

3. *A letter of intent committing the facility owner and successors to allow the shared use of the facility, as required by this title, if additional users agree in writing to meet reasonable terms and conditions for shared use.*

The Board finds that the applicant has submitted a letter (CU Exhibit #13) stating that Horizon Tower and his, her or its successors allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

4. *Written analysis demonstrating that the facility cannot be accommodated on an existing or approved tower within;*
  - a. *A two (2) mile radius for towers with a height over one hundred ten feet (110');*
  - b. *A one (1) mile radius for towers with a height over eighty feet (80'), but not more than one hundred ten feet (110');*
  - c. *A one-half (1/2) mile radius for towers with a height over fifty feet (50'), but not more than eighty feet (80'); or*
  - d. *A one-fourth (1/4) mile radius for towers with a height of fifty feet (50') or less.*

The Board finds that the applicant has provided a map (CU Exhibit #10) showing the location of existing cell towers in the area. The tower is 65 feet tall (73 feet with lightning rod) and the map shows that there are no towers within a ½ mile of the proposed tower site. The closest tower is the Eagle High School Tower, which is 1.83 miles away. The RF Propagation Study (CU Exhibit #11) also indicates that coverage is lacking in the vicinity of the proposed tower. The applicant did not adequately demonstrate that this is the only location for citing of the tower to provide coverage lacking in the vicinity.

5. *It shall be the burden of the applicant to demonstrate that the proposed facility cannot be accommodated on an approved tower or structure within the required search radius due to one or more of the following reasons:*
  - a. *Unwillingness of a property owner, or tower or facility owner to entertain shared use.*
  - b. *The planned equipment would exceed the structural capacity of the existing tower or structure, as documented by a qualified and licensed professional engineer, and the existing tower or facility structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.*
  - c. *The planned equipment would cause radio interference with material impacting the usability of other existing or planned equipment at the tower or structure, and the interference cannot be prevented at a reasonable cost as documented by a qualified and licensed professional engineer or other professional qualified to provide necessary documentation.*
  - d. *Existing or approved towers or other structures within the search radius cannot accommodate the planned equipment at a height necessary to be commercially functional as documented by a qualified and licensed professional engineer or other professional qualified to provide necessary documentation.*
  - e. *The proposed collocation with an existing tower or structure would be in violation of a local, state, or federal law.*

The Board finds that the proposed facility cannot be accommodated on an approved tower or structure within the required search radius. The applicant has stated in the detailed letter (CU Exhibit #7) that based on the design criteria for selecting wireless facilities, Verizon Wireless' radio frequency engineers first develop a "Search Area" that identifies the geographic area where the site must be located in order to provide additional network capacity service. The location of the search area is based on radio frequency coverage objectives including usage patterns, topography and other technical factors. There are no existing towers or structures within the geographic area capable of meeting the proposed facility's requirements. The search area size is important to maintain adequate separation from Verizon Wireless' existing sites in their network. The search area map (CU Exhibit #11) depicts the geographic area where the proposed site must be located to provide its services. The applicant has failed to adequately demonstrate that this location is the only suitable property in the search area.

E. *The proposed use complies with all applicable county ordinances;*

The Board finds that the 65 foot tall commercial cell tower (height 73 feet with lightning rod) does not comply with the applicable county ordinances as outlined above.

F. *The proposed use complies with all applicable state and federal regulations;*

The Board finds that all uses are innately required to comply with all applicable state and federal regulations as a matter of law.

G. *The proposed use and facilities shall not impede the normal development of surrounding property;*

The Board finds that the proposed cell tower would impede the normal development of surrounding property as the tower would be obtrusive and imposing to the current residential uses of the surrounding properties. Even disguised as a monopine the tower will be readily visible to the neighboring properties as the subject property is an open field and there are no tall trees or structures for the tower to blend into. The construction and maintenance of the tower would invade the privacy of neighboring homes due to the close proximity of nearby residences. In addition, the proposed tower will have an undue impact to neighboring property values. Property values following the construction of the proposed cell tower shows an estimated decrease of 10% to 20% to surrounding properties as depicted in the appraisal report for the Hodge Estate Home in Exhibit #21A, which is located immediately west of the proposed cell tower.

H. *Adequate public and private facilities such as utilities, landscaping, parking spaces, and traffic circulation measures are, or shall be, provided for the proposed use.*

The Board finds that adequate landscaping is not available for the proposed tower. Even disguised as a monopine the tower will be visible to the neighboring properties

as the subject property is in an open field and there are no tall trees for the tower to blend into.

- I. *Political subdivisions, including school districts will be able to provide services for the proposed use.*

The Board finds that this finding is not applicable since the Board has voted to deny the cell tower.

3. The Board finds Section 67-6519 (5) of Idaho State Code is applicable.

*(5) Whenever a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify:*

- (a) The ordinance and standards used in evaluating the application;*
- (b) The reasons for approval or denial; and*
- (c) The actions, if any, that the applicant could take to obtain approval.*

The Board finds that based on the residential nature of the immediate area, and the close proximity of neighboring homes, this location is not suitable for a commercial cell tower use and no actions could be taken to obtain approval for this 73 foot cell phone tower at this site.

### **CONCLUSIONS OF LAW**

If any of these Conclusions of Law are deemed to be Findings of Fact they are incorporated into the Findings of Fact section.

1. The Board concludes that Project No. 201801311 A complies with Section 8-7-7 of the Ada County Code.
2. The Board concludes that Project No. 201801311 CU does not comply with Section 8-5B-5 of the Ada County Code.
3. The Board concludes that Project No. 201801311 CU does not comply with the specific use standards in Section 8-5-3-114 of the Ada County Code.
4. The Board concludes to approve Project No. 201801311 A and deny Project No. 201801311 CU.

**ORDER**

Based upon the Findings of Fact and Conclusions of Law contained herein and the testimony from the public hearing, the Board approves Project #201801311 A and denies Project #201801311 CU.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Board of Ada County Commissioners**

\_\_\_\_\_  
By: Kendra Kenyon, Commissioner

\_\_\_\_\_  
By: Diana Lachiondo, Commissioner

\_\_\_\_\_  
By: Rick Visser, Commissioner

ATTEST:

\_\_\_\_\_  
Phil McGrane, Ada County Clerk



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

HORIZON TOWER LIMITED  
PARTNERSHIP-II, and HORIZON  
TOWER, LLC,

Plaintiffs,

v.

ADA COUNTY, IDAHO, and BOARD OF  
ADA COUNTY COMMISSIONERS,

Defendants

Case No.: 1:19-cv-00125-DCN

**CONSENT ORDER AND  
JUDGMENT**

Upon joint motion by all parties to this action, and pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7) (the “Communications Act” or “Act”), the parties’ Settlement Agreement filed with this Court, the documents and information submitted in this action, and based on applicable law, the Court finds and orders as follows:

This Court has jurisdiction over the parties, subject matter jurisdiction over this case pursuant to 47 U.S.C. § 332(c)(7)(B)(v) and 28 U.S.C. § 1331, and is authorized to issue declaratory relief pursuant to 28 U.S.C. § 2201-2202. The Court finds that venue is proper.

Plaintiffs Horizon Tower Limited Partnership-II and Horizon Tower, LLC (collectively “Horizon” or “Plaintiffs”) allege that Defendants Ada County (“County”) and the Board of Ada County Commissioners (“Board”) (collectively, the “Defendants”) unlawfully denied Plaintiffs’ application for a conditional use permit to construct a wireless telecommunications facility in Ada County, Idaho.

On June 20, 2018, Powder River Development Services, LLC (“Powder River”), as the contractor on behalf of Horizon, applied to the County for a conditional use permit (“CUP”) to allow the installation, operation, and maintenance of a personal wireless services facility at the Proposed Site (“Application”). The personal wireless service facility initially proposed by Horizon in its Application was an 85-foot tall monopole tower.

Based on feedback from neighbors, Horizon ultimately applied to install a 65-foot tall tower designed to resemble a pine tree to conceal the tower and make it “stealth” (the “Stealth Tower”). In addition, after meeting with some of the Opponents, Horizon moved the Proposed Facility to the back of the property to reduce the perceived visual impact. Thus, the Stealth Tower would be sited on a 50’x50’ gravel compound, surrounded by a solid vinyl fence, with vegetative screening in the form of 20 evergreen trees (with the Stealth Tower, as a whole, “Proposed Facility”).

On October 18, 2018, the Ada County Planning and Zoning Commission (the “Commission”) accepted written testimony and held a public hearing to evaluate the Application. At the October 18, 2018 public hearing, Horizon presented evidence and testimony, in addition to the Application and its supporting materials. On October 18, 2018, the Commission issued a “Findings of Fact, Conclusions of Law and Order” (“Commission Order”) approving Horizon’s Application, subject to standard conditions of approval.

On November 2, 2018, a group of property owners (collectively, the “Opponents”) filed an appeal (the “Appeal”) with the Board of the Commission Order approving the Application, pursuant to Section 8-7-2 of the County Code.

The Board accepted written public testimony and heard testimony on the Appeal on January 30, 2019.

On February 6, 2019, the Board issued a “Finding of Facts, Conclusions of Law and Order” (the “Denial”) by which the Board granted the Opponents’ appeal and reversed the Commission’s approval of Horizon’s application and, in so doing, denied Horizon’s Application. Pursuant to Idaho Code § 67-6535 and County Code § 8-7E-5.A, on February 20, 2019, Horizon exhausted its administrative remedies by filing a timely Motion for Reconsideration before the Board.

The Board denied Horizon’s Motion for Reconsideration on March 19, 2019 (the “Reconsideration Denial”), which constituted the County’s final action on the Application under Idaho and federal laws.

Horizon timely appealed under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B) (the “Communications Act” or “Act”), from the denial by the County of its Application by filing the Complaint in the above-captioned case (the “TCA Case”).

On May 16, 2019, Defendants filed an Answer to Plaintiffs’ Complaint.

The Act, 47 U.S.C. § 332(c)(7)(B)(i)(II), preempts the County from denying the Application where doing so will effectively prohibit the provision of personal wireless services. Applicable federal case law holds that a denial violates the Act’s effective prohibition provision when the Application proposes to close a significant service coverage gap by the least intrusive means. *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995 (9th Cir. 2009). Under *Anacortes*, the provider must make a *prima facie* showing of

effective prohibition by demonstrating that alternatives were considered and that the proposed wireless facility is the least intrusive means of filling the significant gap. 572 F.3d at 997-98.

On or about October 11, 2019, Horizon disclosed to the County an expert report drafted by Steven E. Kennedy, owner of Biwabkos Consultants, LLC (“Expert Report”). The Expert Report establishes that Plaintiffs have established that both Verizon Wireless and AT&T have a significant gap in their service in the vicinity of the Proposed Site. The Expert Report also establishes that Plaintiffs undertook a good faith and thorough investigation of potential alternative sites in and around the area of the Proposed Site. The Expert Report ruled out all existing towers in the vicinity as infeasible or unavailable for collocation. The Expert Report shows that Plaintiffs investigated several additional properties in the vicinity, but were unable to identify an available, technically feasible alternative to the Proposed Site. The Expert Report establishes that the Proposed Site is, therefore, the least intrusive location to remedy a significant gap in wireless service.

Counsel for the respective parties have engaged in discussions regarding settlement. The parties, after analyzing and weighing the issues involved in this case, and the inherent costs and risks associated with litigation, presented the Court with a resolution of the litigation that accomplishes the goals of the parties and which establishes a mechanism for the County and the Plaintiffs to meet their mutual objectives. Accordingly, Plaintiffs and the County have entered into and executed a Settlement Agreement to settle and resolve the claims by Plaintiffs in this matter.

The County is a body politic and corporate, pursuant to Idaho Code § 31-601, and its powers can only be exercised by the Board or its authorized agents and officers, pursuant to Idaho Code § 31-602.

The Board is authorized, pursuant to Idaho Code § 31-813, “[t]o direct and control the prosecution and defense of all suits to which the county is a party in interest... .”

No third parties have petitioned to intervene in this matter.

Pursuant to the Communications Act and consistent with the parties’ Settlement Agreement, the Court finds Plaintiffs’ claims well-taken and specifically finds that the Proposed Facility at the Proposed Site is the least intrusive means of remedying a significant gap in personal wireless service of Verizon Wireless and AT&T. The Court further finds that the appropriate resolution is the issuance of an order requiring the Defendants to grant Plaintiffs’ Application and to issue the conditional use permit to construct the Proposed Facility attached hereto as Exhibit A.

Therefore, IT IS ORDERED that within ten (10) business days of this Consent Order and Judgment Defendants shall issue to Plaintiffs final zoning approval by approving and issuing the CUP attached hereto as Exhibit A, thereby authorizing the installation, operation and maintenance of the Proposed Facility at the Proposed Site, subject to the conditions of approval attached thereto.

IT IS FURTHER ORDERED that following issuance of the Defendants’ approval for the Proposed Facility, the Defendants will cooperate to the extent required by law to provide any and all additional approvals for, or documents or information about, the

Proposed Facility as may be required for the Plaintiffs to obtain the requisite building permit and any other approvals from Defendants.

IT IS FURTHER ORDERED that as a result of the Defendants' actions in response to this Order, granting the Plaintiffs' Application, and upon receipt of any other necessary approvals, Plaintiffs shall be authorized to construct, operate, maintain, and use a personal wireless service facility located at the Proposed Site, as proposed in the Application and as conditioned by this Order, the Parties' Settlement Agreement, and subject to the conditions of approval of the CUP attached hereto as Exhibit A. No other relief except that provided according to the provisions of this Consent Order and Judgment and the Settlement Agreement entered into by the Parties is granted hereby. No costs and/or attorney's fees are to be sought by or awarded to any party.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this action after the entry of this Consent Order and Judgment to the extent necessary to enforce compliance with it and the terms of the Settlement Agreement and to take any action necessary or appropriate for its interpretation, modification, or enforcement. Specifically, the Court's jurisdiction will continue until the proposed tower construction is complete. The Court's continuing jurisdiction does not extend to other zoning matters beyond the scope of the subject of the Application and Settlement Agreement.



DATED: November 7, 2019

A handwritten signature in black ink, appearing to read "David C. Nye". The signature is written over a horizontal line.

David C. Nye  
Chief U.S. District Court Judge

**EXHIBIT A**  
**to the**  
**Consent Order and Judgment**

**BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS**

In re:  
Application of Powder River Development  
Services, LLC, on behalf of Horizon Tower  
Project No. 201801311 CU

In re:  
Application of Eberle Berlin Law Firm  
(Stanley J. Tharp, agent)  
Project No. 201801311 A

**ORDER GRANTING CONDITIONAL USE PERMIT**

On June 20, 2018, Powder River Development Services, LLC (“Powder River”), as the contractor on behalf of Horizon Tower Limited Partnership-II and Horizon Tower, LLC (collectively “Horizon”), applied to the County for a conditional use permit (“CUP”) to allow the installation, operation, and maintenance of a personal wireless services facility at 2557 N. Sky View Lane, Ada County, Idaho (the “Proposed Site”) (“Application”). The personal wireless service facility initially proposed by Horizon in its Application was an 85-foot tall monopole tower.

Based on feedback from neighbors, Horizon ultimately applied to install a 65-foot tall tower designed to resemble a pine tree to conceal the tower and make it “stealth” (the “Stealth Tower”). In addition, after meeting with some of the neighbors, Horizon moved the Proposed Facility to the back of the property to reduce the perceived visual impact. Thus, the Stealth Tower would be sited on a 50’x50’ gravel compound, surrounded by a solid vinyl fence, with vegetative screening in the form of 20 evergreen trees (with the Stealth Tower, as a whole, “Proposed Facility”).

On October 18, 2018, the Ada County Planning and Zoning Commission (the “Commission”) accepted written testimony and held a public hearing to evaluate the Application. At the October 18, 2018 public hearing, Horizon presented evidence and testimony, in addition to the Application and its supporting materials. On October 18, 2018, the Commission issued a “Findings of Fact, Conclusions of Law and Order” (“Commission Order”) approving Horizon’s Application, subject to standard conditions of approval.

On November 2, 2018, a group of property owners (collectively, the “Opponents”) filed an appeal (the “Appeal”) with the Board of the Commission Order approving the Application, pursuant to Section 8-7-2 of the County Code.

The Board accepted written public testimony and heard testimony on the Appeal on January 30, 2019.

On February 6, 2019, the Board issued a “Finding of Facts, Conclusions of Law and Order” (the “Denial”) by which the Board granted the Opponents’ appeal and reversed the Commission’s approval of Horizon’s application and, in so doing, denied Horizon’s Application. Pursuant to Idaho Code § 67-6535 and County Code § 8-7E-5.A, on February 20, 2019, Horizon exhausted its administrative remedies by filing a timely Motion for Reconsideration before the Board.

The Board denied Horizon's Motion for Reconsideration on March 19, 2019 (the "Reconsideration Denial"), which constituted the County's final action on the Application under Idaho and federal laws.

Horizon timely appealed the Denial and Reconsideration Denial to the federal district court for the District of Idaho under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B) (the "Communications Act" or "Act") by filing a Complaint captioned *Horizon Tower Limited Partnership-II v. Ada County*, Case No.: 1:19-cv-00125-DCN (the "TCA Case"). On May 16, 2019, the County and Board filed an Answer to Horizon's Complaint.

On November 7, 2019, the United States District Court for the District of Idaho in the TCA Case entered an Order and Judgment in which it found that the County's Denial had the effect of prohibiting personal wireless services, which prohibition violated 47 U.S.C. § 332(c)(7)(B)(i)(II). In that Order and Judgment, the Court ordered the County and Board to issue to Horizon final zoning approval by approving and issuing this Conditional Use Permit, subject to the conditions which are attached hereto as Exhibit A, thereby authorizing the installation, operation and maintenance of the Proposed Facility at the Proposed Site.

### ORDER

Based on the foregoing and pursuant to the Judgment and Order issued in the TCA Case, the Board grants Project # 201801311 CU, subject to the Conditions of Approval attached hereto as Exhibit A.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

Board of Ada County Commissioners

By: \_\_\_\_\_  
Kendra Kenyon, Commissioner

By: \_\_\_\_\_  
Diana Lachiondo, Commissioner

By: \_\_\_\_\_  
Rick Visser, Commissioner

ATTEST:

\_\_\_\_\_  
Phil McGrane, Ada County Clerk



EXHIBIT A

CONDITIONS OF APPROVAL

REQUIRED ACTIONS. THE FOLLOWING LIST DETAILS THE TASKS THAT MUST BE COMPLETED BEFORE THE APPROVAL OF PROJECT #201801311 CU WILL BE CONSIDERED FINAL. THE APPLICANT AND/OR OWNER HAVE UNTIL TWO YEARS OF THE WRITTEN DECISION TO COMPLETE THE REQUIRED ACTIONS AND TO OBTAIN A ZONING CERTIFICATE UNLESS A TIME EXTENSION IS GRANTED. SEE SECTION 8-7-6 OF THE ADA COUNTY CODE FOR INFORMATION ON TIME EXTENSIONS. IF A BUILDING PERMIT IS REQUIRED, THE ZONING CERTIFICATE SHALL BE ISSUED WITH THE BUILDING PERMIT. THIS APPROVAL SHALL BECOME VOID IF A VALID ZONING CERTIFICATE HAS NOT BEEN ISSUED BY THAT DATE. SITE IMPROVEMENTS ARE NOT ALLOWED UNTIL THE ZONING CERTIFICATE HAS BEEN ISSUED.

1. The applicant and/or owner shall obtain written approval of the development (site plan and/or use) from the agencies noted below. All site improvements are prohibited prior to approval of these agencies.
  - a) The Federal Aviation Administration (FAA) shall approve the facility.
  - b) The Chief of the Idaho Bureau of Aeronautics shall approve the facility.
  - c) The Farmers Union Ditch Company must approve all proposed modifications to the existing irrigation system.
  - d) The Drainage District No. 2 must approve all proposed modifications to the existing drainage system.
  - e) If applicable, the County Engineer must approve a surface drainage run-off plan. The plan shall contain all proposed site grading. Please contact the County Engineer at (208) 287-7900 for fee and application information. See Section 8-4A-11 of the Ada County Code for drainage plan standards.
2. The facility shall have approval from the Boise Airport Director prior to operation.
3. If required by the Ada County Building Code as set forth in Title 7, Chapter 2, of the Ada County Code, the applicant and/or owner shall obtain a building permit prior to commencing any development. Please contact the County Building Official at (208) 287-7900 for fee and application information. The design and construction of the development shall comply with the approved and stamped master site plan and the Ada County Code.
4. The footprint of the tower plus any equipment shelters cannot exceed 727 square feet.
5. A Professional Land Surveyor shall establish the boundary of the real property lease parcel and access and utility easements relative to the boundary of the parent parcel, monument corners of said lease parcel and access and utility easements, and file a Record of Survey with the Ada County Recorder's Office delineating said lease parcel relative to the boundary of the parent parcel. The Record of Survey shall be submitted to the Director for review prior to recordation.

6. Once construction is complete, the applicant shall request a zoning compliance inspection from the Development Services Department. Staff will check for compliance with the approved master site plan. The Director must approve any modification and/or expansion to the master site plan. See Section 8-4E-3 of the Ada County Code.
7. A Certificate of Occupancy will be issued when all of the above conditions have been met. In the event conditions cannot be met by the desired date of occupancy, the owner and/or applicant may request a surety agreement in lieu of completing the improvements. See Title 8, Chapter 4, Article K of the Ada County Code for the terms and regulations of surety agreements.

TERMS OF APPROVAL. THE FOLLOWING TERMS MUST BE COMPLIED WITH AT ALL TIMES OR YOUR APPROVAL MAY BE REVOKED.

8. A zoning certificate and/or a building permit may not be issued until 15 days after the Commission issued the written decision on the proposed development. In the event the decision of the Commission is appealed, the building permit may not be issued until the appeal is resolved in favor of the proposed development. See Section 8-7-7 of the Ada County Code for more information on appeals.
9. The Director must approve any modification and/or expansion to the master site plan. See Section 8-4E-3 of the Ada County Code.
10. The use must comply with the specific use standards for [Tower or Antenna Structure, Commercial] in Section 8-5-3 of the Ada County Code.
11. The property must be managed and maintained consistent with the standard regulations in Title 8, Chapter 4, Article A of the Ada County Code. Please note that this Article contains specific regulations regarding the accumulation of junk, atmospheric emissions, construction sites, hazardous material storage, outdoor public address systems, outdoor storage of chemicals and fertilizers, transmission line corridors, and utilities.
12. Any lighting on the site shall comply with the lighting regulations in Title 8, Chapter 4, Article H, of the Ada County Code.
13. The use must comply with the noise regulations in Ada County Code, Title 5, Chapter 13.
14. All drainage shall be retained onsite during and after construction.
15. The contractor shall restore disturbed areas to predevelopment condition.
16. Any outdoor storage on the site shall be a solid fence. Per subsection 8-4F-5A cyclone or chainlink fencing (with or without slats) shall not be deemed a screening material.
17. If there is a change in ownership or lessee interest, Ada County Development Services shall be notified of such change and any subsequent owners or lessee interests will abide by the conditions of approval.
18. The tower and associated facilities shall comply with FCC standards regarding radio frequency (RF) emissions.

19. The facility shall be maintained in compliance with all federal, state, and local regulations and construction standards.
20. The facility shall be removed within sixty (60) days after cessation of use.
21. The applicant shall plant 20 evergreen trees around the site subject to approval of staff.



**Powder River Development Services, LLC**  
408 S. Eagle Rd, Ste. 200  
Eagle, ID 83616  
(208) 938-8844 office  
(208) 938-8855 fax  
[www.powderriverdev.com](http://www.powderriverdev.com)

June 20, 2018 .

Ada County Development Services:  
Planning & Zoning Division  
200 W Front Street  
Boise, ID 83702

**Subject: Suitability Analysis / Written Analysis / Written Demonstration**  
**Parcel:** R7132900300  
**Site Address:** 2557 North Sky View Ln  
**Project Name:**  
Horizon Tower 'Beagle' Wireless Communications Facility

**Suitability:**

The proposed location of this development in the RUT (Rural-urban transition) zoning district, is allowed with a Conditional Use Permit (Article B. Residential Base Districts 8-2B-3: Allowed Uses). The proposed facility will be located approximately 1,000 feet south of the intersection of W Beacon Light Rd and Sky View Lane on a parcel with a single-family residence. The existing uses surrounding area within 1 mile of the site is low-density residential. The ground elevation of the proposed site is 2618'. The surrounding ground elevations within 1 mile of the site range between approximately 2600' and 2620'.

**Written Analysis:**

The proposed 65' monopine wireless telecommunications facility at the above-mentioned location is located over 1/2 mile from the nearest existing wireless telecommunication facilities as depicted on the map enclosed.

**Written Demonstration:**

All of the nearest wireless telecommunication facilities are located outside the 1/2-mile search radius area.

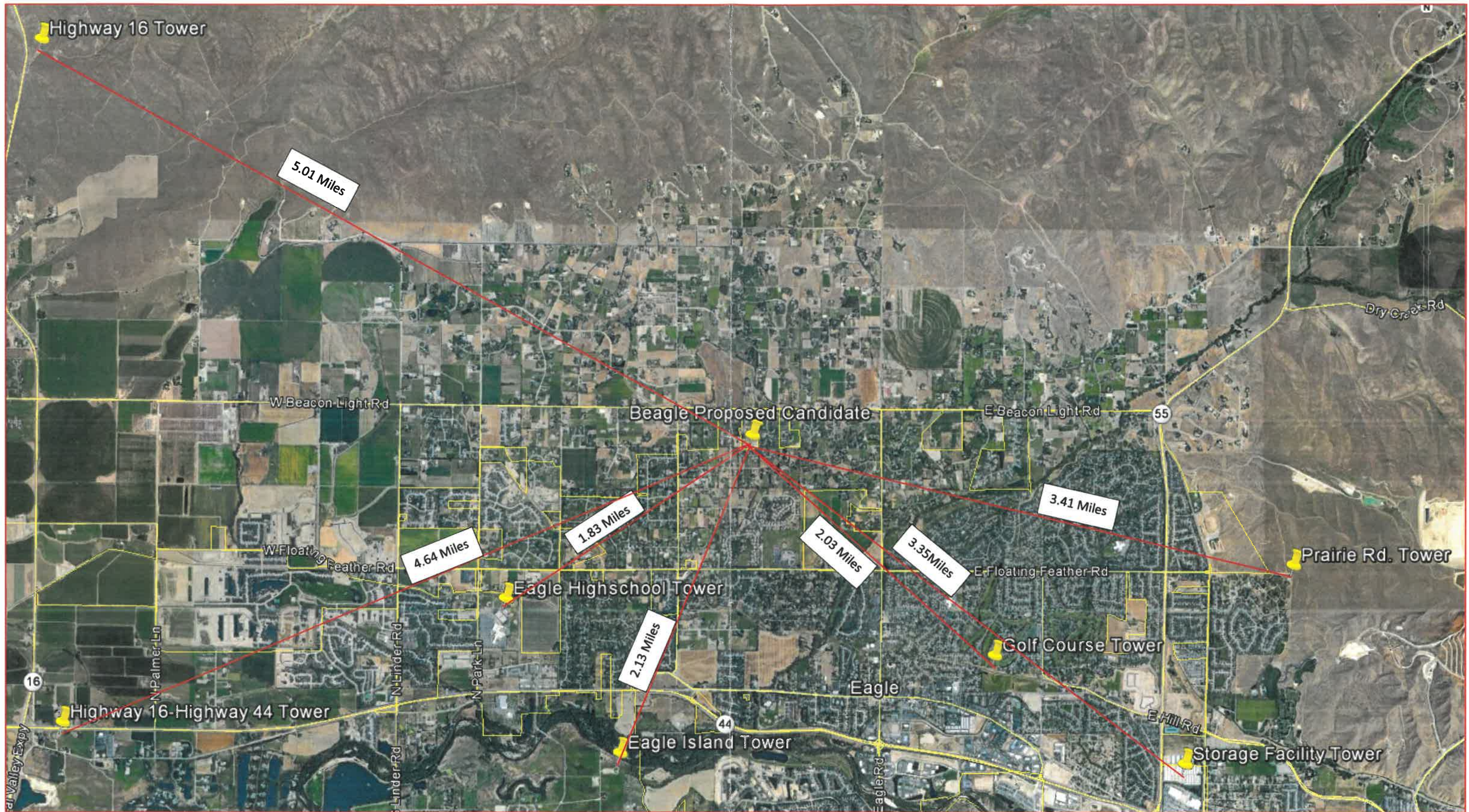
Thank you,

***Zachary Williams***

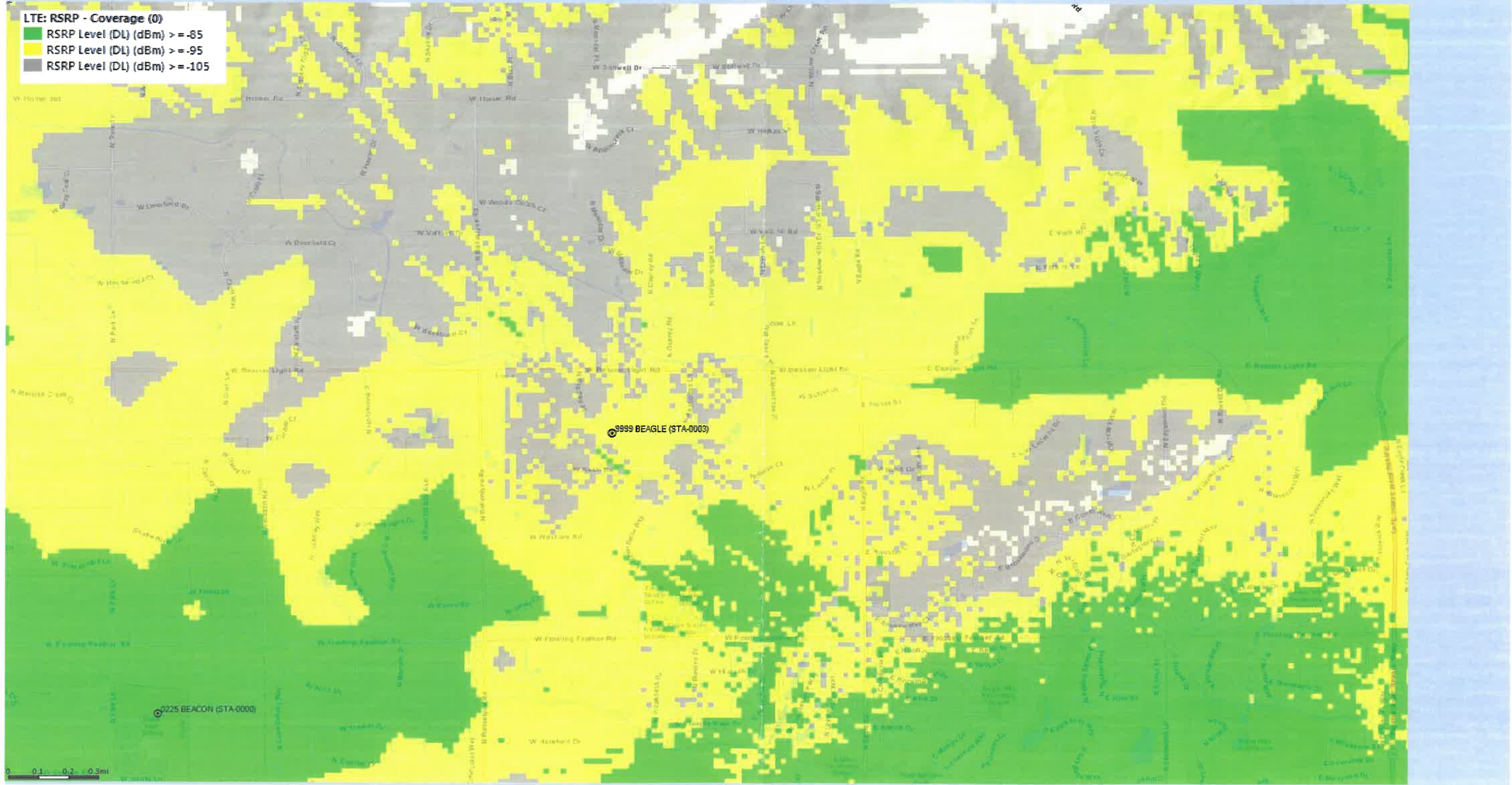
Site Acquisition Agent  
Powder River Development Services, LLC  
408 S. Eagle Rd, Ste. 200  
Eagle, ID 83616  
(208) 963-4026  
[zachary.williams@powderriverdev.com](mailto:zachary.williams@powderriverdev.com)

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EXHIBIT 10  
Page 1 of 2  
Project # 201801311 CW



Current view: Before BEAGLE cell site RSRP coverage view

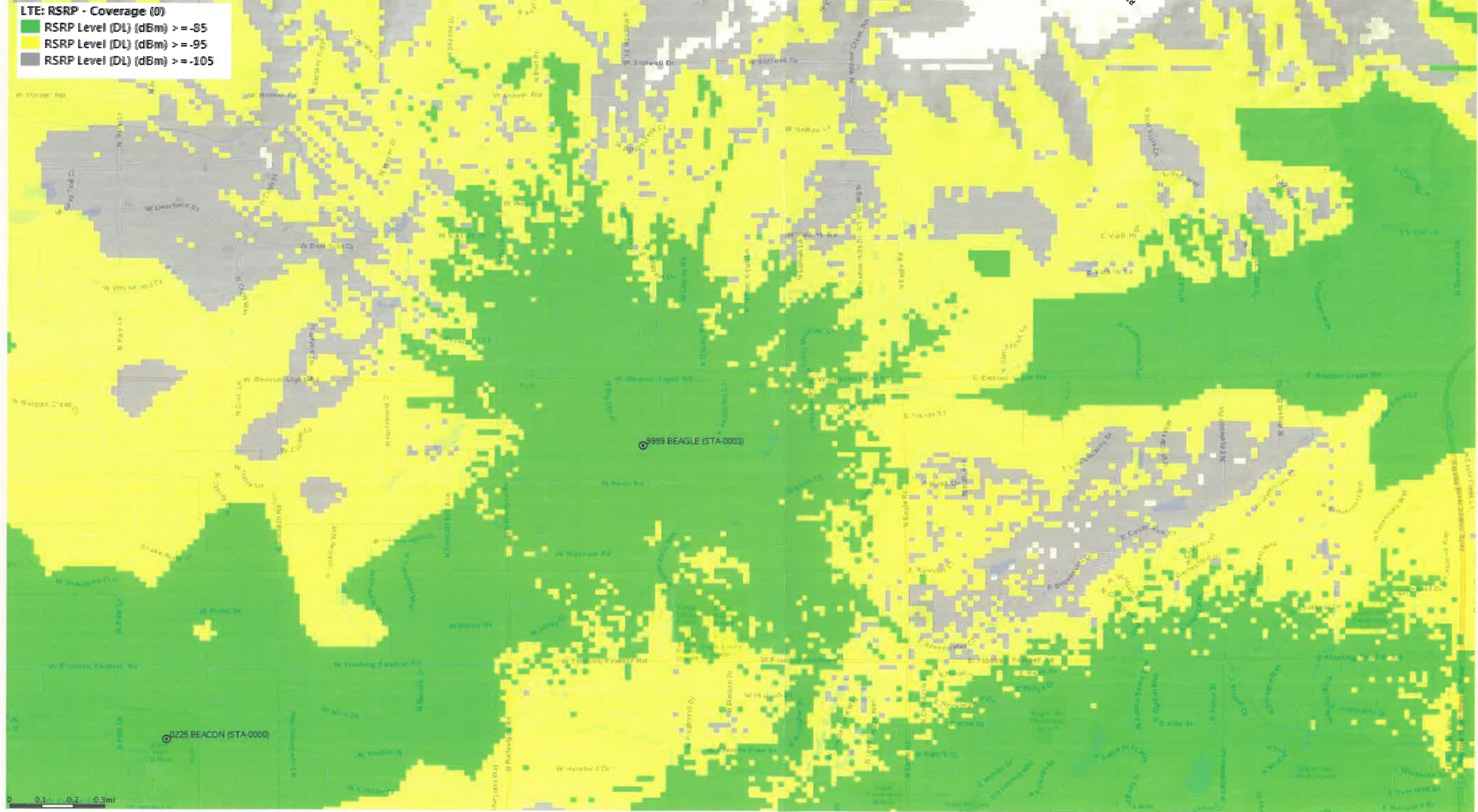


**LTE: RSRP - Coverage (0)**

- RSRP Level (DL) (dBm)  $\geq$  In-building coverage
- RSRP Level (DL) (dBm)  $\geq$  In-vehicle coverage
- RSRP Level (DL) (dBm)  $\geq$  Outdoor coverage

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Proposed view: After BEAGLE cell site RSRP coverage view. At 80' centerline antenna height.



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