



1 **HOFMEYR LAW, PLLC**
2 3849 E. Broadway Blvd., #323
3 Tucson, Arizona 85716
4 Telephone: (520) 477-9035
5 *Filings@hofmeyrlaw.com*

6 Adriane J. Hofmeyr
7 Arizona State Bar No. 025100
8 *Adriane@hofmeyrlaw.com*
9 Rui Wang
10 Arizona State Bar No. 024184
11 *Rui@hofmeyrlaw.com*

12 **LAW OFFICE OF ROBERT J. BERG PLLC**
13 425 Mount Pleasant Avenue
14 Mamaroneck, NY 10543
15 Telephone: (914) 522-9455

16 Robert J. Berg (*Pro hac vice* to be filed)
17 *robertbergesq@aol.com*
18 Zoe Berg (*Pro hac vice* to be filed)
19 Oklahoma State Bar No. 365401
20 *zoe@rjberglaw.com*

21 *Attorney for Plaintiffs*

22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
23 **IN AND FOR THE COUNTY OF NAVAJO**

24 SNOWFLAKE FOR RESPONSIBLE
25 TECHNOLOGY, an Arizona community
26 coalition, SUSAN R. MOLLOY, an
27 individual, MARLENE SCHMIDT, an
28 individual, ANNA PARASCANDO, an
individual,

Plaintiffs,

vs.

NAVAJO COUNTY, a political subdivision
of the State of Arizona, THE NAVAJO
COUNTY BOARD OF SUPERVISORS, by
and through its Chair, DARYL SEYMORE,
in his official capacity,

Defendants,

Case No. *CN202600088*

**VERIFIED COMPLAINT FOR
ORIGINAL SPECIAL ACTION**

Assigned to:

1 the County's Zoning Ordinance which protects the citizens of Navajo County, simply in
2 order to settle a lawsuit, without any determination of liability by the Court in that lawsuit.
3 The Board cannot circumvent or break County law to settle unproved allegations that the
4 Board may have violated certain sections of federal law.

5
6 4. The Board's issuance of the Unlawful SUP in violation of the County's
7 Zoning Ordinance must be declared null and void as a matter of law, and the Board's
8 actions must be declared as *ultra vires*.

9
10 **PARTIES**

11 5. Plaintiff SUSAN R. MOLLOY owns a home and resides approximately three
12 miles from the Proposed Tower site. *See* Declaration of Susan R. Molloy, attached marked
13 **Exhibit A**, ¶ 6. Ms. Molloy has been diagnosed with Electromagnetic Radiation Syndrome
14 ("EMR-S"), also referred to as Electromagnetic Hypersensitivity ("EHS"), chemical
15 sensitivities, and other autoimmune conditions. *See Ex. A*, ¶ 4, 5. Ms. Molloy is part of a
16 close-knit community of individuals who live with EMR-S (or EHS), who have chosen to
17 make the area around Snowflake their home due to, in part, its rural nature and lack of cell
18 towers and lack of other pollutants. *See Ex. A*, ¶ 4. The State of Arizona has funded
19 construction of special housing units approximately two miles from the Proposed Tower
20 site, especially for and in recognition of individuals whose disabilities include chemical
21 and electromagnetic sensitivities. *Id.* Ms. Molloy chose the location of her home outside
22 Snowflake, Arizona specifically because she is profoundly disabled and the area's sparse
23 population, clean air, and minimal electrical and technological infrastructure helped
24 alleviate her EMR-S symptoms. *See Ex. A*, ¶ 7. Ms. Molloy's home was specially sited,
25 designed, and constructed to help alleviate those symptoms due to wireless radiation
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1 emissions from cell towers and other sources of pollutants. *See* **Ex. A**, ¶ 7. From her
2 property, Ms. Molloy will be able to see the Proposed Tower if it is constructed. *See* **Ex.**
3 **A**, ¶ 8. Ms. Molloy’s U.S. Post Office mailbox is located on the northwest intersection of
4 East Concho Highway and White Antelope Road, immediately across from the Property
5 and Proposed Tower. *See* **Ex. A**, ¶ 9. The mailboxes serve as a frequent gathering place for
6 Ms. Molloy and other community members. *See* **Ex. A**, ¶ 10. If the Proposed Tower is
7 constructed, Ms. Molloy will have to come within approximately 200 feet of the Proposed
8 Tower on a near daily basis to check her mail and meet with her neighbors. *See* **Ex. A**, ¶
9 11. Ms. Molloy passes by the intersection of East Concho Highway and White Antelope
10 Road daily to go to the store, to medical appointments, and to accomplish other necessary
11 errands. *See* **Ex. A**, ¶ 12. This is the only route into and out of her neighborhood. *See* **Ex.**
12 **A**, ¶ 12. Not only will construction of the Proposed Tower have a negative impact on her
13 own abilities to take care of daily living, but it will also have a negative impact on the
14 property value of her house due to the special nature of her home and the proximity of her
15 house to the Proposed Tower site. *See* **Ex. A**, ¶ 13. The present market value of Ms. Molloy
16 house is substantially higher than the present market value of houses of comparable size
17 and features (e.g., number of bedrooms, baths, kitchen) because her house is outfitted with
18 special materials that block or degrade radio frequency (“RF”) signals which constitute
19 wireless radiation. *Id.* These RF-blocking materials are expensive, and the resulting house
20 construction does not necessarily appeal to the typical buyer, thus limiting its marketability
21 largely to people living with EMR-S and related conditions. *Id.* Such persons are willing,
22 however, to pay a substantial premium to live in a “protected” house in an area largely free
23 from wireless radiation in the environment -- meaning an area not in close proximity to cell
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1 towers. *Id.* Should the Proposed Tower be built, the desirability of her house and location
2 to persons afflicted with EMR-S would be destroyed. *Id.* Consequently, the market value
3 of her property would drop significantly. *Id.* It would be very difficult for her to move
4 elsewhere because housing specially designed to accommodate this disability is extremely
5 scarce and expensive to locate. *See* **Ex. A**, ¶ 14. Construction of the Proposed Tower will
6 also have a negative effect on her enjoyment of the rural viewshed at that location. *See* **Ex.**
7 **A**, ¶ 15. The Proposed Tower will stand out starkly as a 120-foot tall steel industrial
8 structure, adorned with multiple platforms of wireless antennas and associated cables, and
9 steel supporting infrastructure, and are completely out of character from the treasured
10 classic Western desert landscape. *Id.* Ms. Molloy will be directly harmed by the Board’s
11 approval of the Unlawful SUP, in violation of the Zoning Ordinance. *Id.* Ms. Molloy is
12 thus a person “aggrieved in any manner” by the decision of Defendants to approve the
13 Unlawful SUP and has standing to file this original special action pursuant to the Navajo
14 County Zoning Ordinance, Section 1408. Ms. Molloy is a member of Plaintiff Snowflake
15 for Responsible Technology (“SRT”). *See* **Ex. A**, ¶ 3, 16.

19 6. Plaintiff MARLENE SCHMIDT resides approximately two miles from the
20 Proposed Tower. *See* Declaration of Marlene Schmidt, attached marked **Exhibit B**, ¶ 6.
21 She is among a close-knit community of individuals who suffer from Electromagnetic
22 Hypersensitivity (“EHS”), also referred to as Electromagnetic Radiation Syndrome
23 (“EMR-S”), who have chosen to make this area around Snowflake, Arizona their home due
24 to its rural nature and lack of cell towers. *See* **Ex. B**, ¶ 4. The State of Arizona has funded
25 construction of special housing units in the area, especially for and in recognition of
26 individuals with multiple chemical and electromagnetic sensitivities, approximately two
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1 miles from the Proposed Tower site. *Id.* Ms. Schmidt has been diagnosed with EHS. *See*
2 **Ex. B, ¶ 5.** Ms. Schmidt’s home is one of the units funded by the State of Arizona and was
3 specially sited, designed, and constructed to help alleviate health symptoms, including
4 wireless radiation emissions from cell towers and other sources of wireless radiation. *See*
5 **Ex. B, ¶ 7.** It would be very difficult for Ms. Schmidt to move elsewhere because housing
6 specially designed to accommodate this disability is extremely scarce and expensive to
7 locate. *See Ex. B, ¶ 8.* From her property, Ms. Schmidt will be able to see the Proposed
8 Tower if it is constructed. *See Ex. B, ¶ 9.* Ms. Schmidt passes by the intersection of East
9 Concho Highway and White Antelope Road two or three times a week to go to the store,
10 to church, to Bible study, to appointments, and to accomplish other necessary errands. *See*
11 **Ex. B, ¶ 10.** This is the only route into and out of her neighborhood. *Id.* Not only will the
12 construction of the Proposed Tower have a negative impact on Ms. Schmidt’s own abilities
13 to take care of daily living, but construction of the Proposed Tower will also have a
14 negative effect on her enjoyment of the rural viewshed at that location. *See Ex. B, ¶ 11.*
15 The Proposed Tower will stand out starkly as a 120-foot tall steel industrial structure,
16 adorned with multiple platforms of wireless antennas and associated cables, and steel
17 supporting infrastructure, and are completely out of character from the classic Western
18 desert landscape that she treasures. *Id.* Ms. Schmidt will be directly harmed by the Board’s
19 approval of the Unlawful SUP, in violation of the Zoning Ordinance. *See Ex. B, ¶ 12.* Ms.
20 Schmidt is thus a person “aggrieved in any manner” by the decision of Defendants to
21 approve the Unlawful SUP and has standing to file this original special action pursuant to
22 the Navajo County Zoning Ordinance, Section 1408. Ms. Schmidt is a member of Plaintiff
23 SRT. *See Ex. B, ¶ 3, 13.*

1 7. Plaintiff ANNA PARASCANDO and her husband reside approximately
2 3,000 feet from the Proposed Tower. *See* Declaration of Anna Parascando, attached marked
3 **Exhibit C**, ¶ 4. Ms. Parascando and her husband specifically moved here to avoid cell
4 towers and light pollution, and their plan was to spend the rest of their lives here. *See* **Ex.**
5 **C**, ¶ 6. The Proposed Tower would be visible from Ms. Parascando's property if
6 constructed. *See* **Ex. C**, ¶ 7. Ms. Parascando's United States Post Office mailbox is located
7 on the northwest intersection of East Concho Highway and White Antelope Road,
8 immediately across from the Property and Proposed Tower. *See* **Ex. C**, ¶ 8. The mailboxes
9 serve as a gathering place for Ms. Parascando and other community members. *See* **Ex. C**,
10 ¶ 9. Ms. Parascando will come within approximately 200 feet of the Proposed Tower on a
11 near daily basis to check her mail and meet with other neighbors. *See* **Ex. C**, ¶ 10. She
12 passes by the intersection of East Concho Highway and White Antelope Road daily to go
13 to the store, to appointments, and to accomplish other necessary errands. *See* **Ex. C**, ¶ 11.
14 This is the only route into and out of her neighborhood. *Id.* Not only does she believe the
15 construction of the Proposed Tower will have a negative impact on her health, but it will
16 also have a negative impact on the property value of Ms. Parascando's house due to the
17 proximity of her house to the Proposed Tower site. *See* **Ex. C**, ¶ 12. Construction of the
18 Proposed Tower will have a negative effect on Ms. Parascando's enjoyment of the rural
19 viewshed at that location. *Id.* The Proposed Tower will stand out starkly as a 120-foot tall
20 steel industrial structure, adorned with multiple platforms of wireless antennas and
21 associated cables, and steel supporting infrastructure, and are completely out of character
22 from the classic Western desert landscape that she and her husband treasure. *Id.* If the
23 Proposed Tower is built, Ms. Parascando and her husband will likely have to move. *See*

1 **Ex. C, ¶ 13.** Ms. Parascando is thus a person “aggrieved in any manner” by the decision of
2 Defendants to approve the Unlawful SUP and has standing to file this original special
3 action pursuant to the Navajo County Zoning Ordinance, Section 1408. Ms. Parascando is
4 a member of Plaintiff SRT. *See Ex. C, ¶ 3, 15.*

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6 8. Plaintiff SNOWFLAKE FOR RESPONSIBLE TECHNOLOGY (“SRT”) is
7 a voluntary coalition of individuals, including Plaintiffs, affected by Defendants’ violation
8 of the Zoning Ordinance. *See Ex. A, ¶ 16; Ex. B, ¶ 13; Ex. C, ¶ 15.* SRT’s membership
9 includes Navajo County residents and property owners who live and conduct their lives
10 near and around the Proposed Tower. *Id.* SRT’s membership includes residents in and
11 around Snowflake, Arizona who suffer from EMR-S (or EHS) or have a loved one who
12 suffers from EMR-S. *Id.* SRT’s mission is to protect the public interest by promoting the
13 public health, safety, and general welfare of the citizens of Navajo County; ensuring
14 responsible growth and development of the community, including common-sense
15 technological development; and protecting the beauty, character, and rural nature of the
16 area. *Id.* SRT’s members are negatively affected by Defendants’ violations of the Zoning
17 Ordinance, in particular, the Board’s approval of SBA’s Unlawful SUP that would result
18 in construction of the Proposed 120-foot Tower. *Id.* SRT brings this action on behalf of its
19 members who are “aggrieved in any manner” and thus have standing to bring this special
20 action lawsuit pursuant to the Navajo County Zoning Ordinance, Section 1408. Therefore,
21 SRT has representational standing to file this suit on behalf of all the community members
22 it represents who are harmed by the Defendants’ approval of the Unlawful SUP and the
23 Proposed Tower.
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1 15. Venue is proper in this Court under A.R.S. § 12-401(15) and RPSA 6(a)(1).
2 Plaintiffs reserve the right to request a change of venue pursuant to A.R.S. § 12-408.

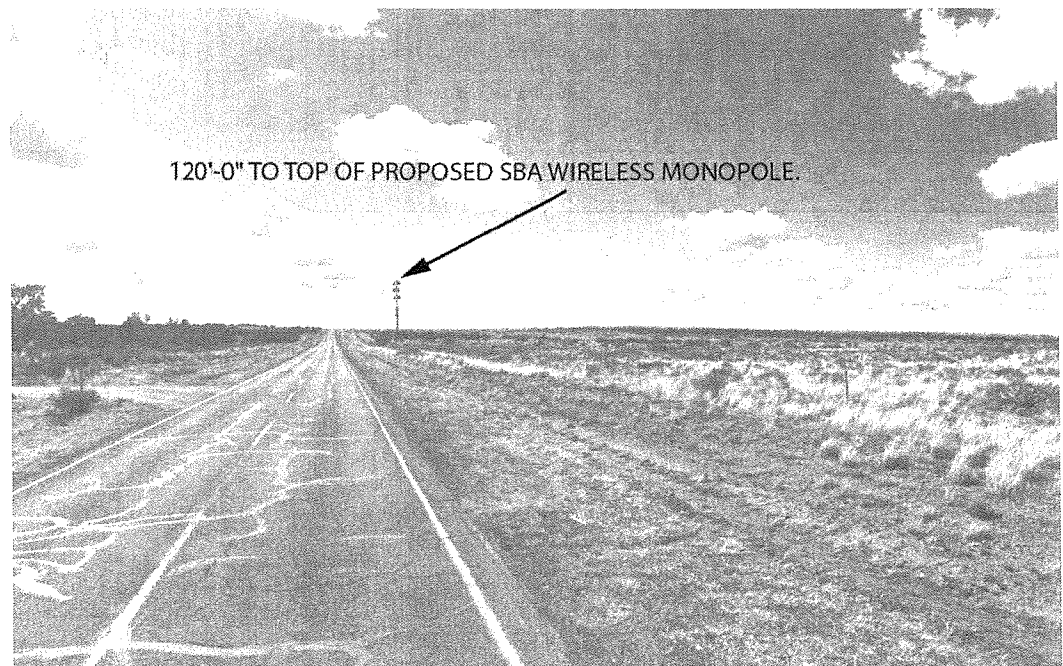
3 **FACTUAL ALLEGATIONS**

4 **A. In 2024, SBA applies for a special use permit and the Board denies it**

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6 16. On July 1, 2024, SBA Communications filed a Special Use Permit
7 Application (“the SUP App”) with Navajo County Planning and Development Services
8 requesting a Special Use Permit to erect the Proposed Tower.

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10 17. The Proposed Tower location is a 51.16-acre parcel of land, Assessor Parcel
11 Number 303-93-003, located on the northeast corner of East Concho Highway and White
12 Antelope Road near Snowflake, Arizona, in Navajo County (“the Property”).

13 18. As part of the SUP App, SBA submitted a mock-up of how the 120-foot tall
14 monopole tower might appear from some distance away:



1 19. The SUP App included a letter, dated May 17, 2024, from Joe McCarty with
2 Verizon Southwest Network Engineering claiming that the tower is needed “to expand
3 wireless service into an area that either has no service or bad service.”

4 20. On September 24, 2024, the Board considered SBA’s SUP App in a public
5 hearing, and heard public comments from residents of Navajo County opposing the SUP
6 App.

7 21. At the September 24, 2024 public meeting, SBA confirmed that Verizon was
8 already constructing a new cell tower east of its Proposed Tower. The new Verizon cell
9 tower was scheduled to be built and operational by late 2024 or early 2025. This Verizon
10 tower had been previously approved by the Board.
11 <https://navajocountyaz.new.swagit.com/videos/315948>, timestamp 1:32:06.

12 22. On November 12, 2024, the Board denied SBA’s SUP App in Resolution 44-
13 2024 (“2024 Resolution”) by a vote of 5-0. *See Exhibit D* hereto (“2024 Resolution”).

14 23. The 2024 Resolution specifically found that “the Special Use Permit is not
15 consistent with the public health, safety and general welfare and should be denied.”

16 **B. In 2024, SBA sues the Board**

17 24. On December 12, 2024, SBA filed a lawsuit against the County in United
18 States District Court, District of Arizona, Case No. 3:24-cv-08230-DWL (“the Lawsuit”).

19 25. The Lawsuit alleged that the County’s denial of the SUP App violated
20 Section 332 of the federal Telecommunications Act of 1996, 47 U.S.C. §332, because it
21 constituted an “effective prohibition” of personal wireless communications services and
22 the decision denying the SUP App was not supported by “substantial evidence” in the
23 record.
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1 26. During the pendency of the Lawsuit, virtually no activity took place with
2 respect to the merits of the action. Rather, shortly after its onset, the parties began
3 settlement discussions with the assistance of the Magistrate Judge.

4 27. On September 12, 2025, prior to any findings on the merits of the Lawsuit,
5 and without the filing of any dispositive motions, SBA and the County entered into an
6 agreement to resolve the Lawsuit (“the Agreement”).

7 28. Pursuant to the Agreement, the County agreed that the Board would approve
8 the SUP App; in exchange, SBA agreed to pay Navajo County \$25,000.00 and dismiss the
9 Lawsuit. The County expressly disclaimed any liability for any claims asserted in the
10 lawsuit.
11

12 29. The U.S. District Court Judge did not rule or make any findings on the merits
13 of the Lawsuit.
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15 **C. On January 27, 2026, the Board approves SBA’s previously-rejected SUP**
16 **App solely to settle the Lawsuit**
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18 30. On January 27, 2026, the Board held a public meeting the sole purpose of
19 which was to approve SBA’s previously-rejected 2024 SUP App in order to settle the
20 Lawsuit.
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22 31. At the January 27, 2026 meeting, SBA presented no evidence or information
23 to the Board.

24 32. After an executive session pursuant to A.R.S. § 38-431.03(A)(3), the Board
25 reconvened and approved the Unlawful SUP by a vote of 4 ayes and 1 nay.
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27 33. After the vote, Board Chairman Seymore stated, “I wish there was a path
28 forward that we could have denied this... it’s not what any of us wanted.” The Chairman

1 expressed his belief that the Board did not have a choice, apparently based on some
2 misbegotten belief or erroneous legal advice that the Board is **required** to grant the SUP
3 by the Telecommunications Act of 1996.
4 <https://navajocountyaz.new.swagit.com/videos/373337>, timestamp 1:19:10.

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6 34. The Chairman’s comment flies in the face of the express language of Section
7 332(c)(7) of the Telecommunications Act of 1996 which is titled: “Preservation of Local
8 Zoning Authority” and provides: “(A) **General authority** Except as provided in this
9 paragraph, nothing in this chapter shall limit or affect the authority of a State or local
10 government or instrumentality thereof over decisions regarding the placement,
11 construction, and modification of personal wireless service facilities.”

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13 35. Chairman Seymore also stated, “I just hope that somewhere along the line
14 that SBA can understand the sympathy that we have for our community and for the citizens.
15 And especially with the evidence that was shown today since the new tower has gone
16 online, that there is better coverage in that area and [SBA] find it in their heart to maybe
17 reconsider where they locate this next tower.”
18 <https://navajocountyaz.new.swagit.com/videos/373337>, timestamp 1:19:46.

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20 36. On January 27, 2026, the Board signed Resolution 02-2026 granting SBA
21 the Unlawful SUP (“2026 Resolution”). *See Exhibit E.*

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23 37. In the 2026 Resolution, the sole reason given by the Board for approving the
24 Unlawful SUP is because the County and the Board had agreed to grant the Unlawful SUP
25 in exchange for settling the Lawsuit.

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27 **D. At the time of the 2026 Resolution, the area was already experiencing**
28 **dramatically improved wireless coverage from a newly-constructed**

1 **commercial cell tower in Black Mesa, rendering SBA’s application materials**
2 **outdated and obsolete**

3 38. Since SBA filed its 2024 SUP App and the Board’s denial thereof on
4 November 12, 2024, SBA has not submitted a new special use permit application, nor has
5 it resubmitted its 2024 SUP App.
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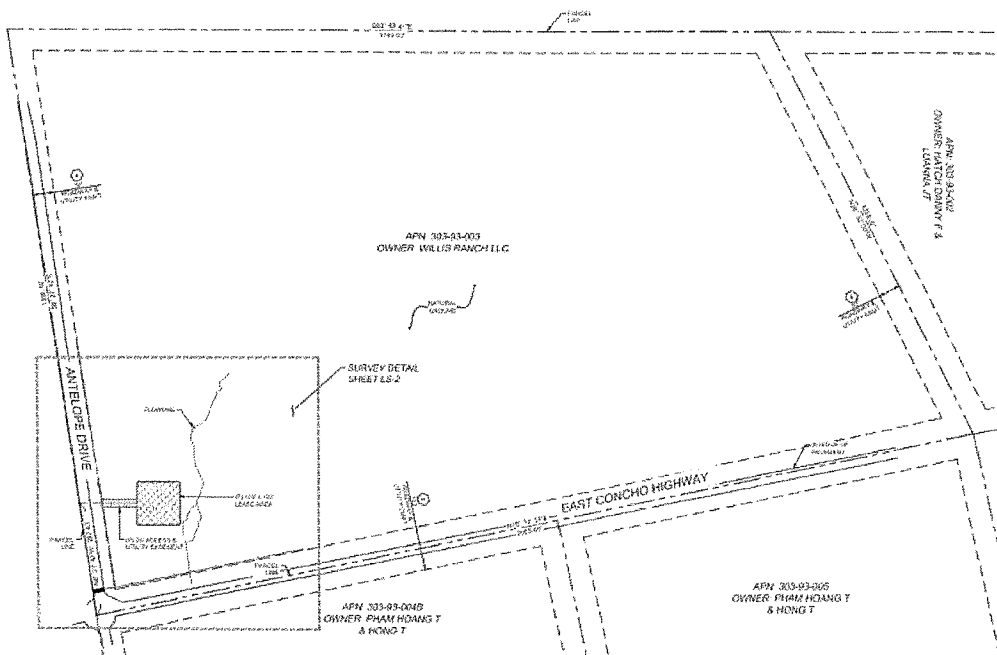
7 39. Since SBA filed its 2024 SUP App and the Board’s denial thereof on
8 November 12, 2024, at least one new cell tower has been built and become operational in
9 the area of the Proposed Tower. *See Ex. A, ¶ 18; Ex. B, ¶ 15; Ex. C, ¶ 17.*

10 40. Since at least November 12, 2024, Plaintiffs have observed dramatically
11 improved, adequate cell reception, especially for Verizon Wireless users (the anchor tenant
12 of the Proposed Tower) in the same area that would purportedly be served by the Proposed
13 Tower. *See Ex. A, ¶ 17; Ex. B, ¶ 14; Ex. C, ¶ 16.* Indeed, Chairman Seymore
14 acknowledged that evidence, which was presented at the January 27, 2026 meeting, before
15 the Board voted to approve the Unlawful SUP.
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18 **D. Plaintiffs are harmed by the Unlawful SUP**

19 41. SBA’s site plan for the Proposed Tower and the 10,000 square foot chain
20 link compound would place the structure on the southwest corner of the Property (the
21 northeast corner of East Concho Highway and White Antelope Road):
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42. There are dozens of U.S. Postal Service mailboxes located at the northwest corner of East Concho Highway and White Antelope Road, directly across from the site of the Proposed Tower:



43. The mailboxes are located approximately 200 feet from the Proposed Tower.

1 44. The mailboxes serve as a community gathering place for Plaintiffs and their
2 neighbors. *See* **Ex. A**, ¶ 10; **Ex. C**, ¶ 8.

3 45. Plaintiffs go to the intersection of East Concho Highway and White Antelope
4 Road daily to check their mail and to meet with other members of the community. *See* **Ex.**
5 **A**, ¶ 11; **Ex. C**, ¶ 9.

6 46. Plaintiffs pass by the intersection of East Concho Highway and White
7 Antelope Road daily to go to the store, to church, to appointments, and to accomplish other
8 necessary errands. *See* **Ex. A**, ¶ 12; **Ex. B**, ¶ 10; **Ex. C**, ¶ 11.

9 47. Plaintiffs reside in specially constructed homes that help alleviate adverse
10 health effects linked to RF radiation exposure. Living in these “fortified” structures allows
11 them to effectively manage their disabilities as best they can. *See* **Ex. A**, ¶ 7; **Ex. B**, ¶ 7 .

12 48. Plaintiffs’ home values will be negatively impacted by the construction of
13 the Proposed Tower. *See* **Ex. A**, ¶ 13; **Ex. C**, ¶ 12. It would be very difficult for Plaintiffs
14 to move elsewhere because housing specially designed to accommodate their disability is
15 extremely scarce and expensive to locate. *See* **Ex. A**, ¶ 14; **Ex. B**, ¶ 8.

16 49. The scenic value of the area will be negatively impacted by construction of
17 the 120-foot tall Proposed Tower, degrading the beauty and rural nature of the viewshed
18 that Plaintiffs enjoy on a daily basis. *See* **Ex. A**, ¶15 ; **Ex. B**, ¶ 11; **Ex. C**, ¶ 12.

19 50. At a November 12, 2024 Board meeting, SBA stated that the U.S. Postal
20 Service had told SBA that it was not viable to move the community mailboxes at the
21 corner of East Concho Highway and White Antelope Road to another location. *See*
22 minutes of November 12, 2024 meeting; and *see*
23 <https://navajocountyaz.new.swagit.com/videos/319797>, timestamp 32:30.
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1 58. While the County has “some discretion in the grant or denial of a conditional
2 use permit,” that discretion “is not without limitation,” which requires that a “finding that
3 the applicant has complied with the [pertinent] required standards.” *Redelsperger v. City*
4 *of Avondale*, 207 Ariz. 430, 435 (App. 2004).

5 59. “Actions taken by a board of supervisors by methods unrecognized by statute
6 are without jurisdiction and wholly void.” *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App.
7 1996) (internal citations omitted) (all emphasis added unless otherwise noted).

8 60. “A governmental body may not do indirectly what a statute does not give it
9 the power to do directly.” *Hancock, supra*.

10 61. “When a building permit is issued in violation of an ordinance or under a
11 mistake of fact, it is void.” *Rivera v. City of Phoenix*, 186 Ariz. 600, 602 (App. 1996)

12 62. “Arizona courts have long taken a firm stand demanding strict compliance
13 with zoning procedures.” *Specht v. City of Page*, 128 Ariz. 593, 598 (App. 1981).

14 63. A statute prevails over the terms of a settlement agreement. *Edsall v.*
15 *Superior Court In and For Pima County*, 143 Ariz. 240, 249, 693 P.2d 895, 904 (App.
16 1984).

17 64. “Contract provisions are unenforceable if they violate legislation or other
18 identifiable public policy.” *Abbott v. Banner Health Network*, 236 Ariz. 436, 442 (App.
19 2014), rev'd, 239 Ariz. 409, 372 P.3d 933 (2016).

20 65. The County cannot ignore procedural and substantive requirements in its
21 own Ordinance, prescribed to protect the public, under the shield of negotiating a
22 settlement agreement.

1 66. Persuasive judicial decisions in other jurisdictions support this general
2 proposition. Parties “[can]not agree to terms which would exceed their authority and
3 supplant state law.” *Keith v. Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997) (Federal
4 contractual consent decree invalid because it required state agency to violate California
5 law). In other words, “the doctrine of federalism forbids the district court’s overriding of
6 California’s valid laws....” *Id.* In its ruling, the Ninth Circuit stated, “[w]e are mindful of
7 the United States Supreme Court’s admonition that a ‘federal court is more than a recorder
8 of contracts from whom parties can purchase injunctions; it is an organ of government
9 constituted to make judicial decisions.’” *Id.*, quoting *Local Number 93, Int’l Ass’n of*
10 *Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986).

13 67. A settlement agreement is invalid and unenforceable when it is at odds with
14 state law. In *League of Residential Neighborhood Advocates v. City of Los Angeles*, the
15 Ninth Circuit reiterated the principle in *Keith v. Volpe* that “[a] federal consent decree or
16 settlement agreement cannot be a means for state officials to evade state law.” 498 F.3d
17 1052, 1055 (9th Cir. 2007).

19 68. Under similar facts to the present matter, the Ninth Circuit found that that
20 city had “impermissibly circumvented the procedural and substantive limitations”
21 contained in the city’s Municipal Code when it entered into a settlement agreement that
22 granted a right to use permit for congregational worship without going through the
23 necessary procedures and issuing the requisite factual findings. *Id.* at 1057. Before allowing
24 a “conditional use,” the city was “required to comply with the ordinance’s procedural
25 formalities.” *Id.* at 1056. Because the City did not satisfy those formalities when it entered
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1 into the Settlement Agreement, the Agreement is invalid and unenforceable under state
2 law.” *Id.*

3 69. Other courts confronting a challenge to a settlement agreement in a federal
4 action that violates state and local laws have reached the same conclusion. *See*
5 *generally, St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264 (8th Cir. 2011) (prohibiting
6 a municipality from settling a federal Telecommunications Act of 1996 case
7 if the settlement terms violate state law); *Perkins v. City of Chicago Heights*, 47 F.3d
8 212, 216 (7th Cir.1995) (“While parties can settle their litigation with consent
9 decrees, they cannot agree to ‘disregard valid state laws’”); *People v. Cleveland Cnty. Bd.*
10 *of Comm’rs*, 142 F.3d 468, 478 (D.C. Cir. 1998) (“The Cleveland County Board of
11 Commissioners is, like any party, free to choose settlement of a suit over the threat of
12 prolonged litigation. But like any other party, it may not do so in a manner that
13 disregards applicable state law.”).

14 70. Here, the process for obtaining a special use permit in Navajo County is
15 mandated by A.R.S. § 11–814 and the Navajo County Zoning Ordinance (“the
16 Ordinance”).

17 71. State law imposes strict criteria on the circumstances under which a special
18 use permit may be granted, including section 1912 (“General Conditions Applicable to all
19 Special Use Permits”) and Article 13 (“Wireless Communication Facilities”) of the
20 Ordinance.

21 72. Here, the only basis given by the Board for granting the Unlawful SUP was
22 that “the County agrees” that the Board “will approve” the SUP App.
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1 73. Nowhere in the 2026 Resolution or in the minutes of the January 27, 2026
2 Board meeting did the Board address or consider a single factor that applies to special use
3 permits under the statute or the Ordinance.

4 74. Nowhere in the statute or the Zoning Ordinance is settlement agreement with
5 an applicant a factor in considering a special use permit.

6
7 75. The County cannot use a settlement agreement to override the Ordinance,
8 which it is duty-bound to follow and enforce.

9 76. The Agreement is an illegal basis upon which to grant the Unlawful SUP.

10 77. The 2026 resolution is unlawful, *ultra vires*, void *ab initio* and of no effect,
11 and Plaintiffs are entitled to special action relief vacating the Unlawful SUP.

12 78. In the alternative, Plaintiffs are entitled to declaratory relief under A.R.S. §
13 12-1831 *et seq.*

14
15 79. Courts have authority to “declare rights, status, and other legal relations
16 whether or not further relief is or could be claimed. . . . The declaration may be either
17 affirmative or negative in form and effect; and such declarations shall have the force and
18 effect of a final judgment or decree.” A.R. S. § 12-1831. “The declaratory judgment act is
19 remedial and is to be liberally construed.” *Citizens’ Comm. for Recall of Jack Williams v.*
20 *Marston*, 109 Ariz. 188, 192 (1973).

21
22 80. A plaintiff may seek relief under the Uniform Declaratory Judgment Act if
23 they can show the issue is ripe and they have standing. *See Mills v. Ariz. Bd. of Tech.*
24 *Registration*, 514 P.3d 915, 923 , ¶ 24 (Ariz. 2022).

25
26 81. An actual and justiciable controversy exists regarding whether the
27 Commission had jurisdiction to issue the Unlawful SUP.
28

1 4. Considering historical and environmentally sensitive
2 areas.

3 5. Encouraging the collocation of facilities.

4 88. Section 1304 of the Ordinance requires “[n]ew facilities shall use the most
5 preferred facility type where technically feasible.... A lesser preferred facility type may be
6 permitted only if the applicant presents substantial evidence to show that it will have a
7 lesser visual impact than the use of more preferred facilities.”

8 89. Section 1304 lays out the order of preference for new facilities, from most
9 preferred to least preferred:

- 10 1. Collocation on an existing facility or electrical utility pole.
- 11 2. Attached antennas on an existing structure.
- 12 3. New sites located on public lands at least three hundred feet (300’) from
13 private land.
- 14 4. New concealed, disguised, or attached antenna sites located on/at public
15 or quasi-public facilities.
- 16 5. Concealed/Stealth antennas.
- 17 6. New towers/facilities suitable for collocating multiple providers.
- 18 7. New towers/facilities under ninety-nine feet (99’).
- 19 8. New towers/facilities one hundred feet (100’) to one hundred ninety-nine
20 feet (199’).

21 90. At the time the Board granted the Unlawful SUP, it failed to consider any
22 evidence that the Proposed Tower will use “the most preferred facility type” as required by
23 the Ordinance.

24 91. At the time the Board granted the Unlawful SUP, it failed to consider any
25 evidence, much less “substantial evidence,” showing that SBA’s Proposed Tower “will
26 have a lesser visual impact than the use of more preferred facilities” as required by the
27 Ordinance.

28 92. At the time the Board granted the Unlawful SUP, SBA failed to comply with
any of the requirements of the Section 1306 application review process.

1 93. The Board failed to apply, or discuss or address, the “needs” analysis
2 required by section 1306(2)(i), pursuant to which an applicant must certify “that no Navajo
3 County or municipal owned site, or existing wireless facility reasonably meets the needs
4 of the applicant, listing all such sites within five (5) miles of the proposed site and the
5 reason each is not physically adequate for reasonable commercial coverage, or not
6 economically feasible for location.”
7

8 94. The Board failed to apply, or discuss or address, the “needs” analysis
9 required by section 1306(2)(k), pursuant to which an applicant must explain “why it is
10 necessary that the proposed wireless communications facility be located in the proposed
11 location.”
12

13 95. To the extent that any “need” analysis was offered by SBA in 2024 in its SUP
14 App, such an analysis is outdated and was irrelevant to the Board’s decision on January 27,
15 2026.
16

17 96. At a minimum, it is known that at least one additional cell tower has been
18 constructed in the vicinity of the Proposed Tower since SBA submitted its application in
19 July of 2024. *See Ex. A, ¶ 18; Ex. B, ¶ 15; Ex. C, ¶ 17.* This has a material impact on
20 whether yet another tower is “needed” to meet the “need” standard in section 1306(2)(k)
21 of the Ordinance.
22

23 97. The Board failed to apply, or discuss or address, Section 1303 (installation
24 of a tower must still comply with “applicable zoning district regulations”).
25

26 98. The Board failed to apply, or discuss or address, Section 1307
27 (“Collocation”).
28

1 99. The manner in which the County proceeded here was in disregard for the
2 Ordinance's requirements, in violation of its duty to under A.R.S. § 11-802(A) to "conserve
3 and promote the public health, safety and general welfare," its duty under Section 1301 of
4 the Ordinance to provide for "the public health, safety, and welfare," and encourage
5 "configuration which minimizes additional visual impact" under the same Section.
6

7 100. In approving the Unlawful SUP, the County failed to provide a public
8 discussion of the various approval criteria set out in the Ordinance, and failed to make
9 specific findings concerning the extent to which the applicant has met its burden of
10 demonstrating that its application complies with the standards set forth in the Ordinance.
11

12 101. The County's decision to approve the Unlawful SUP based only on a
13 settlement agreement under these circumstances is erroneous, based on a misapprehension
14 of its legal authority, and illegal.
15

16 102. The County does not have the authority to approve special use applications
17 by means of a settlement agreement in a manner contrary to the procedures laid out in its
18 own Ordinance. "The Board of Supervisors can exercise only those powers specifically
19 ceded to it by the legislature." *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996).
20

21 103. The County's failure to adhere to the Code requirements renders the
22 Unlawful SUP void and of no effect. *See Hancock, supra*.

23 104. Plaintiffs are entitled to special action relief vacating the Unlawful SUP .

24 105. In the alternative, Plaintiffs are entitled to declaratory relief under A.R.S. §
25 12-1831 *et seq.*
26

27 106. An actual and justiciable controversy exists regarding whether the County
28 complied with the Ordinance when it issued the Unlawful SUP.

Rule 80 Declaration

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I, Susan R. Molloy, declare under penalty of perjury of the laws of the State of Arizona that the foregoing Verified Original Special Action Complaint is true and correct to the best of my knowledge and belief and that this Declaration is executed by me on the 26th day of February, 2026, in Navajo County, Arizona.

Signature: /s/ Susan R. Molloy

EXHIBIT A

1 **HOFMEYR LAW, PLLC**
2 3849 E. Broadway Blvd., #323
3 Tucson, Arizona 85716
4 Telephone: (520) 477-9035
5 *Filings@hofmeyrlaw.com*

6 Adriane J. Hofmeyr
7 Arizona State Bar No. 025100
8 *Adriane@hofmeyrlaw.com*
9 Rui Wang
10 Arizona State Bar No. 024184
11 *Rui@hofmeyrlaw.com*

12 **LAW OFFICE OF ROBERT J. BERG
13 PLLC**

14 425 Mount Pleasant Avenue
15 Mamaroneck, NY 10543
16 Telephone: (914) 522-9455

17 Robert J. Berg (*Pro hac vice* to be filed)
18 *robertbergesq@aol.com*
19 Zoe Berg (*Pro hac vice* to be filed)
20 Oklahoma State Bar No. 365401
21 *zoe@rjberglaw.com*

22 *Attorneys for Plaintiffs*

23 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
24 **IN AND FOR THE COUNTY OF PIMA**

25 SNOWFLAKE FOR RESPONSIBLE
26 TECHNOLOGY, an Arizona community
27 coalition, SUSAN R. MOLLOY, an
28 individual, MARLENE SCHMIDT, an
individual, ANNA PARASCANDO, an
individual,

Plaintiffs,

vs.

NAVAJO COUNTY, a political subdivision
of the State of Arizona, THE NAVAJO
COUNTY BOARD OF SUPERVISORS,
by and through its Chair, DARYL
SEYMORE, in his official capacity,

Defendants,

Case No.

**DECLARATION OF SUSAN R.
MOLLOY IN SUPPORT OF
PLAINTIFFS' VERIFIED
COMPLAINT FOR ORIGINAL
SPECIAL ACTION**

Assigned to:

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And
SBA Communications Corporation, a
Delaware corporation,
Real Party in Interest

I, SUSAN R. MOLLOY, pursuant to Arizona Rule of Civil Procedure 80(c), declare, under penalty of perjury, that the following is true and correct:

1. I am an adult who resides just outside Snowflake, Navajo County, Arizona.

2. I have personal knowledge of the facts stated herein, and if called upon, I could and would testify competently to them.

3. I act in my personal capacity, and as a member of and on behalf of Plaintiff Snowflake for Responsible Technology (“SRT”).

4. I am among a close-knit community of individuals who live with Electromagnetic Radiation Syndrome (“EMR-S”), also referred to as Electromagnetic Hypersensitivity (“EHS”), and have chosen to make the area around Snowflake our home due to, in part, its rural nature and lack of cell towers and lack of other pollutants. The State of Arizona has funded construction of special housing units in the area, especially for and in recognition of individuals whose disabilities include chemical and electromagnetic sensitivities.

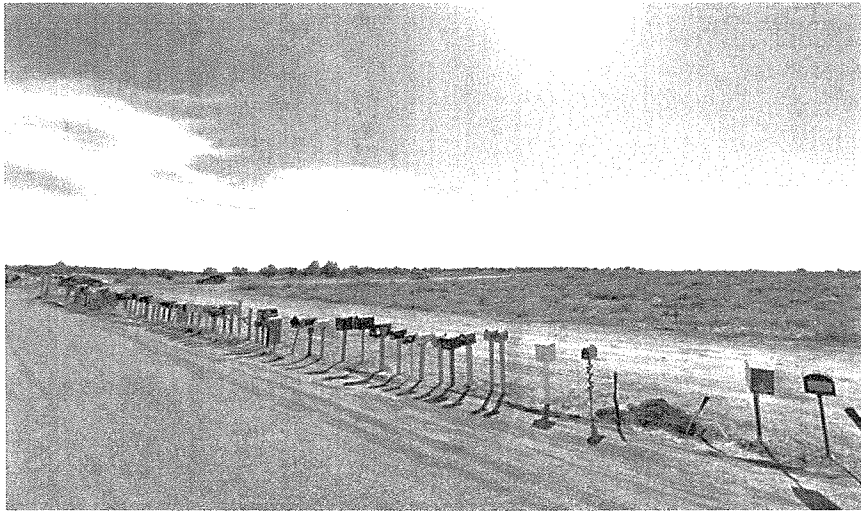
5. I have been diagnosed with EMR-S, also referred to as EHS, chemical sensitivities, and other autoimmune conditions.

6. My home is located approximately three (3) miles northeast of the Property and Proposed Tower and I have lived there since 1996, before the advent of cell towers.

7. I chose the location of my home outside Snowflake, Arizona specifically because I am profoundly disabled and the area’s sparse population, clean air, and minimal electrical and technological infrastructure helped alleviate my EMR-S symptoms. My home was specially sited, designed, and constructed to help alleviate those symptoms due to wireless radiation emissions from cell towers and other sources of pollutants.

8. From my property, I will be able to see the Proposed Tower if it is constructed.

1 9. I have a United States Post Office mailbox, one of many as shown in this
2 photograph, at the northwest intersection of East Concho Highway and White Antelope
3 Road, which is immediately across from the Property and Proposed Tower:



13 10. The mailboxes serve as a frequent gathering place for myself and other
14 community members.

15 11. If the Proposed Tower is constructed, I will have to come within
16 approximately 200 feet of the Proposed Tower on a near daily basis to check my mail and
17 meet with my neighbors.

18 12. I pass by the intersection of East Concho Highway and White Antelope
19 Road daily to go to the store, to medical appointments, and to accomplish other necessary
20 errands. This is the only route into and out of our neighborhood.

21 13. Not only will construction of the Proposed Tower have a negative impact on
22 my own abilities to take care of daily living, but it will also have a negative impact on the
23 property value of my house due to the special nature of my home and the proximity of my
24 house to the Proposed Tower site. The present market value of my house is substantially
25 higher than the present market value of houses of comparable size and features (e.g.,
26 number of bedrooms, baths, kitchen) because my house is outfitted with special materials
27 that block or degrade radio frequency (“RF”) signals which constitute wireless radiation.
28 These RF-blocking materials are expensive, and the resulting house construction does not
necessarily appeal to the typical buyer, thus limiting its marketability largely to people

1 living with EMR-S and related conditions. Such persons are willing, however, to pay a
2 substantial premium to live in a “protected” house in an area largely free from wireless
3 radiation in the environment -- meaning an area not in close proximity to cell towers.
4 Should the Proposed Tower be built, the desirability of my house and location to persons
5 afflicted with EMR-S would be destroyed. Consequently, the market value of my
6 property would drop significantly.

7 14. It would be very difficult for me to move elsewhere because housing
8 specially designed to accommodate this disability is extremely scarce and expensive to
9 locate.

10 15. Construction of the Proposed Tower will also have a negative effect on my
11 enjoyment of the rural viewshed at that location. The Proposed Tower will stand out
12 starkly as a 120-foot tall steel industrial structure, adorned with multiple platforms of
13 wireless antennas and associated cables, and steel supporting infrastructure, and are
14 completely out of character from the treasured classic Western desert landscape. I will be
15 directly harmed by the Board’s approval of the Unlawful SUP, in violation of the Zoning
16 Ordinance.

17 16. Snowflake for Responsible Technology (“SRT”) is a voluntary coalition of
18 individuals, including myself, affected by Defendants’ violation of the Zoning Ordinance.
19 SRT’s membership includes Navajo County residents and property owners who live and
20 conduct their lives near and around the Proposed Tower. SRT’s membership includes
21 residents in and around Snowflake, Arizona who suffer from EMR-S (or EHS) or have a
22 loved one who suffers from EMR-S. SRT’s mission is to protect the public interest by
23 promoting the public health, safety, and general welfare of the citizens of Navajo County;
24 ensuring responsible growth and development of the community, including common-
25 sense technological development; and protecting the beauty, character, and rural nature of
26 the area. SRT’s members are negatively affected by Defendants’ violations of the Zoning
27 Ordinance, in particular, the Board’s approval of SBA’s Unlawful SUP that would result
28 in construction of the Proposed 120-foot Tower. SRT brings this action on behalf of its

1 members who are “aggrieved in any manner” and thus have standing as citizens under
2 Navajo County Zoning Ordinance, Section 1408.

3 17. I have observed improved, adequate cell reception in the same area that
4 would purportedly be served by the Proposed Tower.

5 18. I know that at least one additional cell tower has been constructed in the
6 vicinity of the Proposed Tower since 2024.

7 I declare under penalty of perjury under the laws of the state of Arizona that the
8 foregoing is true and correct.

9 DATED this 26th day of February, 2026.

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/s/ Susan R. Molloy
Susan R. Molloy

EXHIBIT B

1 **HOFMEYR LAW, PLLC**
2 3849 E. Broadway Blvd., #323
3 Tucson, Arizona 85716
4 Telephone: (520) 477-9035
5 *Filings@hofmeyrlaw.com*

6 Adriane J. Hofmeyr
7 Arizona State Bar No. 025100
8 *Adriane@hofmeyrlaw.com*
9 Rui Wang
10 Arizona State Bar No. 024184
11 *Rui@hofmeyrlaw.com*

12 **LAW OFFICE OF ROBERT J. BERG
13 PLLC**

14 425 Mount Pleasant Avenue
15 Mamaroneck, NY 10543
16 Telephone: (914) 522-9455

17 Robert J. Berg (*Pro hac vice* to be filed)
18 *robertbergesq@aol.com*

19 Zoe Berg (*Pro hac vice* to be filed)
20 Oklahoma State Bar No. 365401
21 *zoe@rjberglaw.com*

22 *Attorneys for Plaintiffs*

23 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
24 IN AND FOR THE COUNTY OF PIMA**

25 SNOWFLAKE FOR RESPONSIBLE
26 TECHNOLOGY, an Arizona community
27 coalition, SUSAN R. MOLLOY, an
28 individual, MARLENE SCHMIDT, an
individual, ANNA PARASCANDO, an
individual,

Plaintiffs,

vs.

NAVAJO COUNTY, a political subdivision
of the State of Arizona, THE NAVAJO
COUNTY BOARD OF SUPERVISORS,
by and through its Chair, DARYL
SEYMORE, in his official capacity,

Case No.

**DECLARATION OF MARLENE
SCHMIDT IN SUPPORT OF
PLAINTIFFS' VERIFIED
COMPLAINT FOR ORIGINAL
SPECIAL ACTION**

Assigned to:

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Defendants,
And
SBA Communications Corporation, a
Delaware corporation,
Real Party in Interest

I, MARLENE SCHMIDT, pursuant to Arizona Rule of Civil Procedure 80(c),
declare, under penalty of perjury, that the following is true and correct:

1. I am an adult who resides just outside Snowflake, Navajo County, Arizona.
2. I have personal knowledge of the facts stated herein, and if called upon, I could and would testify competently to them.
3. I act in my personal capacity, and as a member of and on behalf of Plaintiff Snowflake for Responsible Technology (“SRT”).
4. I am among a close-knit community of individuals who suffer from Electromagnetic Hypersensitivity (“EHS”), also referred to as Electromagnetic Radiation Syndrome (“EMR-S”), and have chosen to make this area around Snowflake, Arizona our home due to its rural nature and lack of cell towers. The State of Arizona has funded construction of special housing units in the area, especially for and in recognition of individuals with multiple chemical and electromagnetic sensitivities, approximately two miles from the Proposed Tower site.
5. I have been diagnosed with EHS.
6. My home is located approximately two (2) miles northwest of the Property and Proposed Tower, and I have lived there since 2015.
7. My home is one of the units funded by the State of Arizona and was specially sited, designed, and constructed to help alleviate health symptoms, including wireless radiation emissions from cell towers and other sources of wireless radiation.
8. It would be very difficult for me to move elsewhere because housing specially designed to accommodate this disability is extremely scarce and expensive to locate.

1 9. From my property, I will be able to see the Proposed Tower if it is
2 constructed.

3 10. I pass by the intersection of East Concho Highway and White Antelope
4 Road two or three times a week to go to the store, to church, to Bible study, to
5 appointments, and to accomplish other necessary errands. This is the only route into and
6 out of our neighborhood.

7 11. Not only will the construction of the Proposed Tower have a negative
8 impact on my own abilities to take care of daily living, but construction of the Proposed
9 Tower will also have a negative effect on my enjoyment of the rural viewshed at that
10 location. The Proposed Tower will stand out starkly as a 120-foot tall steel industrial
11 structure, adorned with multiple platforms of wireless antennas and associated cables, and
12 steel supporting infrastructure, and are completely out of character from the classic
13 Western desert landscape that I treasure.

14 12. I will be directly harmed by the Board's approval of the Unlawful SUP, in
15 violation of the Zoning Ordinance.

16 13. SRT is a voluntary coalition of individuals, including myself, affected by
17 Defendants' violation of the Zoning Ordinance. SRT's membership includes Navajo
18 County residents and property owners who live and conduct their lives near and around
19 the Proposed Tower. SRT's membership includes residents from in and around
20 Snowflake, Arizona who suffer from EHS or EMR-S or have a loved one who suffers
21 from EHS or EMR-S. SRT's mission is to protect the public interest by promoting the
22 public health, safety, and general welfare of the citizens of Navajo County; ensuring
23 responsible growth and development of the community, including common-sense
24 technological development; and protecting the beauty, character, and rural nature of the
25 area. SRT's members are negatively affected by Defendants' violations of the Zoning
26 Ordinance, in particular, the Board's approval of SBA's Unlawful SUP that would result
27 in construction of the Proposed 120-foot Tower. SRT brings this action on behalf of its
28

1 members who are “aggrieved in any manner” and thus have standing as citizens under
2 Navajo County Zoning Ordinance, Section 1408.

3 14. I have observed improved, adequate cell reception in the same area that
4 would purportedly be served by the Proposed Tower.

5 15. I know that at least one additional cell tower has been constructed in the
6 vicinity of the Proposed Tower since 2024.

7 I declare under penalty of perjury under the laws of the state of Arizona that the
8 foregoing is true and correct.

9

10 DATED this 26th day of February, 2026.

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/s/ Marlene Schmidt
Marlene Schmidt

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EXHIBIT C

1 **HOFMEYR LAW, PLLC**
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3 Tucson, Arizona 85716
4 Telephone: (520) 477-9035
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13 PLLC**

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18 *robertbergesq@aol.com*

19 Zoe Berg (*Pro hac vice* to be filed)
20 Oklahoma State Bar No. 365401
21 *zoe@rjberglaw.com*

22 *Attorneys for Plaintiffs*

23 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
24 IN AND FOR THE COUNTY OF PIMA**

25 SNOWFLAKE FOR RESPONSIBLE
26 TECHNOLOGY, an Arizona community
27 coalition, SUSAN R. MOLLOY, an
28 individual, MARLENE SCHMIDT, an
individual, ANNA PARASCANDO, an
individual,

Plaintiffs,

vs.

NAVAJO COUNTY, a political subdivision
of the State of Arizona, THE NAVAJO
COUNTY BOARD OF SUPERVISORS,
by and through its Chair, DARYL
SEYMORE, in his official capacity,

Defendants,

Case No.

**DECLARATION OF ANNA
PARASCANDO IN SUPPORT OF
PLAINTIFFS' VERIFIED
COMPLAINT FOR ORIGINAL
SPECIAL ACTION**

Assigned to:

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And
SBA Communications Corporation, a
Delaware corporation,
Real Party in Interest

I, ANNA PARASCANDO, pursuant to Arizona Rule of Civil Procedure 80(c), declare, under penalty of perjury, that the following is true and correct:

1. I am an adult who resides just outside Snowflake, Navajo County, Arizona.
2. I have personal knowledge of the facts stated herein, and if called upon, I could and would testify competently to them.
3. I act in my personal capacity, and as a member of and on behalf of Plaintiff Snowflake for Responsible Technology (“SRT”).
4. My husband and I chose to make this area of Snowflake, Arizona our home due to its rural nature and lack of cell towers.
5. My home is located approximately 3,000 feet southeast of the Property and Proposed Tower, and I have lived there since 2017.
6. My husband and I specifically moved here to avoid cell towers and light pollution, and our plan was to spend the rest of our lives here.
7. From my property, I will be able to see the Proposed Tower once it is constructed.
8. I have a United States Post Office mailbox at the northwest intersection of East Concho Highway and White Antelope Road, which is immediately across from the Property and Proposed Tower.
9. The mailboxes serve as a frequent gathering place for myself and other Snowflake community members.
10. If the Proposed Tower is constructed, I will have to come within approximately 200 feet of the Proposed Tower on a near daily basis to check my mail and meet with my neighbors.
11. I pass by the intersection of East Concho Highway and White Antelope

1 Road daily to go to the store, to appointments, and to accomplish other necessary errands.
2 This is the only route into and out of our neighborhood.

3 12. Not only do I believe the construction of the Proposed Tower will have a
4 negative impact on my health, but it will also have a negative impact on the property
5 value of my house due to the proximity of my house to the Proposed Tower site.

6 Construction of the Proposed Tower will have a negative effect on my enjoyment of the
7 rural viewshed at that location. The Proposed Tower will stand out starkly as a 120-foot
8 tall steel industrial structure, adorned with multiple platforms of wireless antennas and
9 associated cables, and steel supporting infrastructure, and are completely out of character
10 from the classic Western desert landscape that we treasure.

11 13. If the Proposed Tower is built, my husband and I will likely have to move.

12 14. I will be directly harmed by the Board's approval of the Unlawful SUP, in
13 violation of the Zoning Ordinance.

14 15. SRT is a voluntary coalition of individuals, including myself, affected by
15 Defendants' violation of the Zoning Ordinance. SRT's membership includes Navajo
16 County residents and property owners who live and conduct their lives near and around
17 the Proposed Tower. SRT's membership includes residents of Snowflake, Arizona who
18 suffer from Electromagnetic Radiation Syndrome ("EMR-S") or have a loved one who
19 suffers from EMR-S. SRT's mission is to protect the public interest by promoting the
20 public health, safety, and general welfare of the citizens of Navajo County; ensuring
21 responsible growth and development of the community, including common-sense
22 technological development; and protecting the beauty, character, and rural nature of the
23 Snowflake area. SRT's members are negatively affected by Defendants' violations of the
24 Zoning Ordinance, in particular, the Board's approval of SBA's Unlawful SUP that would
25 result in construction of the Proposed 120-foot Tower. SRT brings this action on behalf of
26 its members who are "aggrieved in any manner" and thus have standing as citizens under
27 Navajo County Zoning Ordinance, Section 1408.

28

EXHIBIT D

When recorded mail to:

Melissa Buckley, Clerk of the Board
P O Box 668
Holbrook Arizona 86025

CAPTION HEADING:
DENYING A SPECIAL USE PERMIT FOR SBA WHITE ANTELOPE
WIRELESS COMMUNICATION FACILITY
RECORDING NO. 2024-16177

RE-RECORDED TO INCLUDE THE WRITTEN DECISION

DO NOT REMOVE

THIS IS PART OF THE OFFICIAL DOCUMENT



RESOLUTION 44-2024

A RESOLUTION OF THE NAVAJO COUNTY BOARD OF SUPERVISORS DENYING A SPECIAL USE PERMIT FOR SBA WHITE ANTELOPE WIRELESS COMMUNICATION FACILITY.

WHEREAS, an application for a Special Use Permit was duly filed on July 1st, 2024, by Reg Destree to allow for the construction of a one hundred and twenty foot (120') monopole wireless communication tower and associated facilities on a 51.16 acre parcel, located east of the Snowflake area; and

WHEREAS, the application concerns the following real property in Navajo County: APN # 303-93-003, Township 13 North, Range 22 East, Section 01 of the of the Gila and Salt River Base and Meridian; and

WHEREAS, the application was considered by the Navajo County Planning & Zoning Commission at a duly noticed public hearing on August 15th, 2024; and

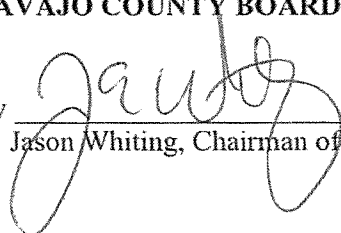
WHEREAS, the Navajo County Board of Supervisors after considering the testimony and other evidence presented at the hearing, as well as the recommendations of Staff, found that the Special Use Permit is not consistent with the public health, safety and general welfare and should be denied; and

NOW, THEREFORE BE IT RESOLVED the Board of Supervisors hereby deny the Special Use Permit.

0 **DENIED** by the Navajo County Board of Supervisors by a vote of 5 yeas and _____ nays on this 12th day of November 2024.


NAVAJO COUNTY BOARD OF SUPERVISORS

By



Jason Whiting, Chairman of the Board

ATTEST:



Melissa W. Buckley, Clerk of the Board



NAVAJO COUNTY

Board of Supervisors

Fern Benally • Alberto L. Peshlakai • Jason E. Whiting • Daryl Seymore • Dawnafe Whitesinger

"We are Navajo County"

WRITTEN DECISION AND RECORD OF THE NAVAJO COUNTY BOARD OF SUPERVISORS REGARDING SPECIAL USE PERMIT RESOLUTION 44-2024

The request to approve Special Use Permit 44-2024 (the "**SUP Application**") application, filed by SBA Communications, (the "Applicant,"), for property located east of Snowflake, Arizona, for the construction and operation of a 120' multi-carrier, monopole communication tower and associated facilities, having come for review by the Navajo County Board of Supervisors (the "**Board**") on November 12, 2024, and the Board having heard and considered the testimony and evidence presented, and by unanimous decision in the finding and decision:

The Navajo County Board of Supervisors, has voted unanimously to DENY SUP 44-2024. Request to install a 120' multi-carrier, monopole communication tower and associated facilities, on property located east of Snowflake, Arizona.

WRITTEN DECISION:

The Navajo County Board of Supervisors makes the following findings in recognition of 47 USC § 332(c)(7)(B)(iii), which provides that, "[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record."

1. **Adverse Health Concerns Not Considered.** In rendering its decision, the Board has specifically excluded from its consideration or reasoning for denial of the SUP Application any and all comments, statements, submissions, and any other materials or information regarding any potential adverse health concerns or effects over radio frequency (RF) emissions, recognizing that, "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."
2. **Public Protest/Property Value.** The Board finds that the SUP Application has generated significant public opposition based on concerns of the potential adverse effects on nearby property values. The Board further finds that these concerns were raised by property owners who have clearly stated they will be directly and personally impacted by a decrease in property values should the SUP Application be approved. These concerns are substantiated by statements, letters, and Broker Price Opinions from local real estate professionals, grounding the opposition in the specific circumstances of this case, rather than general fears about potential impacts on property values. Notably, the neighborhood in question was partially funded with public money, with the specific goal of creating an environment that minimizes radio frequency (RF) exposure, particularly for residents who are Electromagnetic Hypersensitive (EHS). The development and funding of this community were designed with the intent of prioritizing the health and well-being of individuals who are highly sensitive to electromagnetic fields, ensuring they could live in an area that minimizes RF emissions

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and supports their unique medical needs. Residents have provided compelling evidence that the proposed location of the cell tower would significantly and negatively affect property values. This impact is particularly pronounced due to the tower's proximity, which would undermine the carefully implemented protections against harmful electromagnetic fields, thereby diminishing both the desirability and market value of their homes.

3. **Public Protest/Aesthetics.** The Board finds that the SUP Application has been met with significant public opposition, primarily focused on concerns regarding the aesthetic and visual impacts of the proposed wireless communications facility on nearby properties. In addition to vocal opposition expressed during the public hearing, the Board also received a Memorandum in Opposition, submitted on behalf of Safeguard Snowflake (the "Memorandum"), which includes approximately twelve (12) opposition letters detailing concerns about the visual impact of the proposed tower. The Board further finds that these concerns are raised by property owners who have personally and compellingly articulated how the proposed tower would directly and adversely affect the aesthetics and visual appeal of their properties if the SUP application is granted. These objections are not a general opposition to wireless communications facilities but are specific to the unique circumstances of this case. Testimony presented to the Board indicated that some property owners would have chosen not to purchase their homes had they known the tower would be located nearby, while one resident stated that the presence of the tower would compel them to move, as they would not tolerate seeing it from their home every day.
4. **Public Protest/Americans with Disability Act Compliance.** The Board finds that the applicant for the SUP Application has failed to adequately address the applicability of the Americans with Disabilities Act (ADA) and the request by affected residents for accommodations related to Electromagnetic Hypersensitivity (EHS). The Board further finds that land use law requires the County to consider the rights and necessary accommodations of individuals with EHS, as protected under the ADA. EHS is recognized by some as a medical condition that may necessitate reasonable accommodations to protect individuals' health and well-being. In this context, the County is obligated to carefully assess how the proposed land use—specifically the placement of the cell tower—may impact residents with EHS and to determine whether any accommodations or modifications are required to ensure compliance with applicable disability protections.
5. **Lack of Hard Data - Insufficient Evidence to Establish a Need for the Proposed Tower at the Proposed Location.** The Board finds that the applicant for the SUP Application has failed to present meaningful, hard data and probative evidence to establish a need for the proposed Tower at the proposed location, as opposed to possible less intrusive viable alternative facilities or locations; that the Tower must be built to its proposed height; or otherwise that approving the SUP Application would be the only feasible means to fill a significant gap in coverage or remedy a capacity deficiency; and that there are no other potential solutions to do so. For example, although the SUP Application includes purported coverage maps, the denial of service records, drive test data, and RF data; the applicant did not provide adequate data to show a gap in coverage by failing to include projected coverage data with the approved, but not yet operational towers at the AZ3 Willis Ranch and AZ3 Concho Highway sites. Without data for the site that took these future sites in consideration, there was

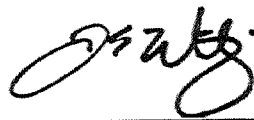
not sufficient evidence to indicate the need for a wireless communication facility at the AZ3 White Antelope site. The Board further finds that, based on the non-health concern related testimony and evidence presented by the public, and the lack of meaningful data and probative evidence from the applicant to the contrary, the applicant has failed to show that a denial of the SUP application would materially inhibit the provision of new or additional telecommunication services or improve existing services in the area.

6. **Granting the SUP Application is Not Consistent With Local Area.** Without limiting any of the foregoing, the Board finds that granting the SUP Application is inconsistent with the unique character of the area where the proposed tower is to be located. The regulation of wireless communications facilities in this area is intended to protect the integrity, character, and identity of the neighborhood by minimizing the adverse visual impact of towers through careful design, siting, and screening. The Board further finds that approving the SUP Application would have an unreasonably negative impact on nearby properties, substantially altering and materially affecting the surrounding neighborhood. The neighborhood was specifically designed to minimize exposure to electromagnetic fields (EMF), and placing a cell tower in this location would directly harm residents who chose to build their homes in this environment. Additionally, this neighborhood was developed with public funding, with the original intent of creating a space free from such facilities. Allowing a cell tower in this area now would undermine that purpose and adversely affect the citizens who moved to this location based on those protections.

This written denial letter is being sent to you concurrently with the Navajo County Board of Supervisors record to comply with the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(B), and United States Supreme Court decisions which dictate the "in writing" requirement of the Telecommunications Act of 1996.

IT IS HEREBY ORDERED that SUP 44-2024 is **DENIED**.

Dated this 12th day of November 2024



Jason Whiting, Chairman
Navajo County Board of Supervisors

EXHIBIT E



2026-01509



Page 1 of 3

Navajo County Recorder - Timothy Jordan

Requested By: BOARD OF SUPERVISORS

02-04-2026 04:24 PM Recording Fee \$0.00

RESOLUTION 02-2026

A RESOLUTION OF THE NAVAJO COUNTY BOARD OF SUPERVISORS APPROVING A SPECIAL USE PERMIT FOR SBA WHITE ANTELOPE WIRELESS COMMUNICATION FACILITY.

WHEREAS, an application for a Special Use Permit was duly filed on July 1st, 2024, by Reg Destree to allow for the construction of a one-hundred-and twenty-foot (120') monopole wireless communication tower and associated facilities on a 51.16 acre parcel, located to the east of the Snowflake area; and

WHEREAS, the application concerns the following real property in Navajo County: APN # 303-93-003, T13N, R22E, S01 of the Gila and Salt River Base and Meridian; and

WHEREAS, the application was considered by the Navajo County Planning & Zoning Commission at a duly noticed public hearing on August 15th, 2024; and

WHEREAS, the Navajo County Board of Supervisors initially denied the Special Use Permit for this wireless communication tower on November 12th, 2024; and

WHEREAS, Plaintiffs SBA Communications Corporation' and SBA Towers X, LLC filed a lawsuit against Navajo County alleging that the Defendants violated provisions of the Federal Telecommunications Act of 1996, 47 U.S.C. § 332, et seq. Plaintiffs' claims are set forth in the lawsuit filed in the United States District Court, District of Arizona. entitled *SBA Communications Corporation, a Delaware corporation, and SBA Towers X, LLC, a Delaware limited liability company, v. Navajo County, Arizona, and The Navajo County Board of Supervisors*, Case No. 3:24-cv-08230-DWL; and

WHEREAS, the Navajo County Board of Supervisors entered into a Settlement Agreement and Release of All Claims with SBA Communications Corporation, a Delaware corporation, and SBA Towers X, LLC, a Delaware limited liability company at their regularly scheduled meeting on January 27, 2026; and

WHEREAS, this Settlement Agreement and Release of All Claims stipulated in Section 2.1 in consideration of the Release set forth above, and the covenants and agreements therein the County agrees that the Navajo County Board of Supervisors will approve Special Use Permit application, No. SUP 24-006, in an open meeting pursuant to A.R.S. §38-431, et seq., within 14 days of the effective date of the Agreement; and

NOW, THEREFORE BE IT RESOLVED the Board of Supervisors, in complying with the terms of the Settlement Agreement and Release of All Claims, hereby approves the Special Use Permit, subject to the following conditions:

1. This Special Use Permit shall permit 1 (one) monopole wireless communication tower, not

to exceed 120 feet in height, and accessory structures necessary for operation of the tower on the subject property.


2. The applicant shall obtain a Building Permit from Navajo County for such tower and facilities prior to commencing construction.
3. The applicant shall meet all State and Federal requirements concerning communication towers prior to any building permits being issued.
4. The tower shall be constructed as a monopole, as indicated in the supplied plans. The owner of the tower shall maintain the tower, antennae as necessary.
5. A fence of material acceptable to the Planning and Development Services Director shall be constructed to enclose the base of the tower and necessary accessory structures.
6. A Geotechnical Report for the Access Easement shall be submitted and approved.
7. The permitted Special Use shall be allowed to occur per the attached/approved site plan. Any expansion or change of the Special Use shall require an amendment to this permit.
8. If the permitted Special Use is not utilized within a twelve (12) month period, from the date of Board approval, this permit shall become null and void.
9. Should the operator decide to abandon the use of the tower, they shall notify Navajo County Planning and Development Services that the tower is no longer being utilized.
10. If the tower is no longer being utilized, the property owner shall cause, at their expense, the removal of all components of this tower within a 90-day period.
11. The owner shall provide reasonable cooperation to other public and private users who may be interested in collocation on this tower and shall consider such collocation upon commercially reasonable terms, unless such collocation is not technically feasible.
12. This Special Use Permit shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. Upon completion and final inspection by the Planning and Development Services Director (or designee) of any authorized structures, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the Special Use Permit shall thereafter be transferable and shall run with the land, whereupon the maintenance of special conditions imposed by the permit, as well as the compliance with other provisions of this title, shall be the responsibility of the property owner.
13. This Special Use Permit and the subject site shall be reviewed and inspected by Planning and Development Staff on the fifth (5th) anniversary of Board of Supervisors approval and every five (5) years thereafter to ensure the site is being utilized as approved and is in compliance with all conditions contained herein. If the subject site is found to be out of compliance with these conditions, this Special Use Permit and its privileges may be

revoked.

4 **PASSED AND ADOPTED** by the Navajo County Board of Supervisors by a vote of 1 yeas and 1 nays on this 27th day of January 2026.

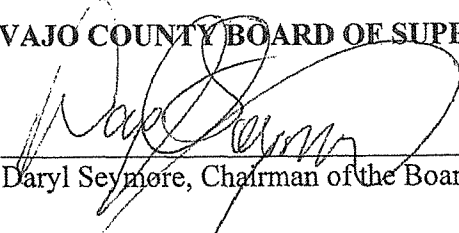
NAVAJO COUNTY BOARD OF SUPERVISORS

ATTEST:



Leah Thomas, Clerk of the Board

By



Daryl Seymore, Chairman of the Board