



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"  
www.washoecounty.us

CM/ACM KS  
Finance DN  
DA ✓  
Risk Mgmt De  
HR N/A  
Comptroller MS

## STAFF REPORT

BOARD MEETING DATE: January 26, 2016

**DATE:** December 30, 2015  
**TO:** Board of County Commissioners  
**FROM:** Dave Solaro, Arch., P.E., Director  
Community Services Department, 328-3600, [dsolaro@washoecounty.us](mailto:dsolaro@washoecounty.us)  
**THROUGH:** Kevin Schiller, Assistant County Manager  
**SUBJECT:** Approve a Communications Use Lease for Fox Mountain (NVN-004731) between the United States of America, acting through the Bureau of Land Management, Department of the Interior and Washoe County to replace an existing Right of Way Grant. (Commission District 5.)

### SUMMARY

Staff is requesting approval of a Communications Use Lease for Fox Mountain in northern Washoe County to replace an existing Right of Way Grant issued August 10, 1970. The existing Right of Way Grant expires August 10, 2020; however, staff has been approached by the Bureau of Land Management (BLM) to convert the Right of Way Grant agreement to a Communication Use Lease.

This Communication Use Lease, if approved, will expire one minute after midnight on December 31, 2049, but a new lease can be requested by giving notice one year prior to the expiration in 2049.

The existing Right of Way Grant is utilized by Washoe County for the Regional 800 Mhz radio program, the BLM, Los Angeles Department of Water and Power, and the State of Nevada. The site is necessary for radio coverage of many parts of northern Washoe County.

Strategic Objective supported by this item: Safe Secure and Healthy Communities.

### PREVIOUS ACTION

August 10, 1970 a Right of Way Grant was issued to the Washoe County Civil Defense Agency for Fox Mountain for a Communication Site.

### BACKGROUND

Washoe County currently occupies and manages the Fox Mountain peak communications site in northern Washoe County for the benefit of the 800 Mhz radio program. A Right of Way Grant from the Bureau of Land Management was issued on August 10, 1970 to the Washoe County Civil Defense Agency and allows occupancy of the site by the BLM, Los Angeles Department of Water and Power, and the State of Nevada, Division of Wildlife.

AGENDA ITEM # 5.E.3.

Recently the BLM has requested a conversion of the existing Right of Way Grant to a Communication Use Lease, a more consistent document for similar sites owned by the BLM. Staff has been working with all parties involved in the site to understand the impacts of such a conversion, and it has been determined that there are no impacts to the conversion. A potential benefit to the conversion includes the ability to sub-lease the site to commercial communications companies who may be interested in providing services to northern Washoe County. Under the existing Right of Way Grant, Washoe County cannot sublease to commercial companies.

### **FISCAL IMPACT**

The Communication Use Lease has no lease cost to Washoe County.

Upon approval of this agreement, BLM shall provide road maintenance to the access road on every third year from grant issuance. Washoe County will provide maintenance to the access road as necessary during the other years. In the event there is a large repair or roadway issue, the users shall be notified and will be obligated to pay a prorata share of the expense.

Washoe County currently maintains the roadway each year at a cost of approximately \$3,000 due to an agreement with Los Angeles Water and Power in exchange for 15,000 kilowatt hours of electricity per year at the site. This new Communications Use Lease provides relief every third year to that obligation.

### **RECOMMENDATION**

It is recommended that the Board of County Commissioners approve a Communications Use Lease for Fox Mountain (NVN-004731) between the United States of America, acting through the Bureau of Land Management, Department of the Interior and Washoe County to replace an existing Right of Way Grant.

### **POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be, "Move to approve a Communications Use Lease for Fox Mountain (NVN-004731) between the United States of America, acting through the Bureau of Land Management, Department of the Interior and Washoe County to replace an existing Right of Way Grant."

THE UNITED STATES  
Department of the Interior  
Bureau of Land Management

COMMUNICATIONS USE LEASE

Washoe County of P.O. Box 11130  
(Billing Address -2) Reno NV 89520  
(City) (ST) (Zip Code)

THIS LEASE, dated this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the UNITED STATES OF AMERICA, acting through the Bureau of Land Management, Department of the Interior (hereinafter called the "United States" or "Bureau of Land Management"), as authorized by the Act of October 21, 1976, and implementing regulations (90 Stat. 2743; 43 U.S.C. 1701, et seq.; 43 CFR 2800), and Washoe County, a political subdivision of the State of Nevada, its agents, successors, and assigns (hereinafter called the "Lessee").

The United States and the Lessee are jointly referred to herein as the "Parties." As used herein, the "Authorized Officer" refers to the Bureau of Land Management official having the delegated authority to execute and administer this lease. Generally, unless otherwise indicated, such authority may be exercised by the Field Manager or District Manager for the public lands wherein the following described lands are located. This Lease agreement shall replace the existing Right of Way Grant Serial number N-4731, to allow the agreement to reflect the actual site configuration and users of this existing Communications Site.

The United States, for and in consideration of the terms and conditions contained herein and the payment to the United States of a rental in advance by the Lessee, does hereby grant to the Lessee a lease for the following described lands in the County of Washoe, State of Nevada: T.36N., R.22E., Section 6 Lot 5. MDM (Legal Description) (hereinafter called the "property"). The Lessee accepts this lease and possession of the property, subject to any valid existing rights, and agrees not to use the property, or any part thereof, except as a site for only the construction, operation, maintenance, and termination of a Communications Site and related equipment and facilities

The location of the property is shown generally on the site plan dated 7/9/2007 for the Buildings, Towers, and Solar panels. The facilities specifically authorized under this lease are shown on the plat contained in Exhibit A.

The dated and initialed exhibit(s), attached hereto, are incorporated into and made a part of this instrument as fully and effectively as if they were set forth herein in their entirety.

The parties agree that this lease is made subject to the following terms and conditions.

**I. TENURE, RENEWAL AND TRANSFERABILITY**

A. This lease will terminate at one minute after midnight on 12/31/2049. Termination at the end of the lease term occurs by operation of law and does not require any additional notice or documentation by the Authorized Officer. This lease is not renewable; but the Lessee has the right to request a new lease pursuant to paragraph "C" below.

B. The Lessee will undertake and pursue with due diligence the communication site operation that is authorized by this lease and shown in Exhibit A.

C. If the Lessee desires a new lease upon termination/ expiration of this lease, the Lessee must notify the Authorized Officer accordingly, in writing. The notice must be received by the Authorized Officer at least one year prior to the end of the lease term. The Authorized Officer will determine if the use should continue and, if it is to continue, if a new lease should be issued to the Lessee and under what conditions. The Authorized Officer will require payment of any amounts owed the United States under any Bureau of Land Management authorization before issuance of another authorization.

D. This lease is assignable with prior written approval of the Authorized Officer. Renting of space does not constitute an assignment under this clause.

## II. RENTAL

A. The Lessee as a public safety governmental agency is EXEMPT from rental payments unless they expand their occupancy to include non-exempt users who shall be obligated to pay in advance an annual rental determined by the Authorized Officer in accordance with law, regulation, and policy. The annual rental will be adjusted by the Authorized Officer to reflect changes in fair market value, annual adjustments using the Consumer Price Index-Urban (CPI-U), changes in tenant occupancy, or phase-in of rental, if applicable.

B. After the initial rental period rental payments are due at the close of the first business day after January 1 of each calendar year for which a payment is due. Payments due the United States for this use must be received at the Bureau of Land Management office as noted on the billing statement in the form of a check or money order payable to Bureau of Land Management/DOI. Credit card payments (VISA and MasterCard) can be made in person, through the mail, or by telephone. This lease will terminate automatically if accrued rent is not received by the Bureau of Land Management within 90 calendar days after the initial due date for the payment of such rent.

C. Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3717, *et seq*, regulations at 7 CFR Part 3, Subpart B and 4 CFR Part 102, an interest charge will be assessed on any amount due but not received by the due date. Interest will accrue from the date the payment was due. Administrative costs will also be assessed in the event that two or more billing notices are required for unpaid accounts. In addition, an administrative penalty at a percentage rate prescribed by law or regulation will be assessed for failure to pay any portion of the debt that is more than 90 days past due. This paragraph survives the termination of this lease, regardless of cause.

Other late fee charges may be assessed in accordance with standard BLM accounting procedures and policy.

D. Disputed rentals are due and payable on or before the due date.

E. No rental is due when the facility owner (Washoe County) is exempt or waived from rent and all occupants are exempt or waived from rent. Rental would be collected if the facility owner charges its customers commercial rental rates to occupy the facility. Exemptions and waivers are in accordance to 43 CFR 2806.14 & 2806.15.

## III. RESPONSIBILITIES OF THE LESSEE

A. The Lessee is authorized to rent space and provide other services to customers and/or tenants and may charge each customer/tenant a reasonable rental without discrimination for the use and occupancy of the facilities and services provided, excluding existing users which are exempt from rental costs but may be obligated to share in the costs for the upkeep of the roadway in exchange for the existing power service. The Lessee must impose no unreasonable restrictions nor any restriction restraining competition or trade practices. By October 15th of each year, the Lessee must provide the Authorized Officer a certified statement, listing all tenants and customers, by category of use, located within the facility on September 30th of that year.

B. All development, operation and maintenance of the authorized facility, improvements, and equipment located on the property must be in accordance with stipulations in the communications site plan approved by the Authorized Officer. If required by the Authorized Officer, all plans for development, layout, construction, or alteration of improvements on the property as well as revisions of such plans must be prepared by a licensed engineer, architect, and or landscape architect. Such plans must be approved in writing by the Authorized Officer before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information will be provided to the Authorized Officer and appended to the communications site plan.

C. The Lessee must comply with applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this lease. The obligations of the Lessee under this lease are not contingent upon any duty of the Authorized Officer, or other agent of the United States, to inspect the premises. A failure by the United States, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms or conditions of this lease. Lessee waives all defenses of laches or estoppel against the United States. The Lessee must at all times keep the title of the United States to the property free and clear of all liens and encumbrances.

D. Use of communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization (if required), and the operation of the equipment is in strict compliance with applicable requirements of FCC or IRAC. A copy of each applicable license or authorization must at all times be maintained by the Lessee for each transmitter being operated. The Lessee must provide the Authorized Officer, when requested, with current copies of all licenses for equipment in or on facilities covered by this lease.

E. The Lessor approves the current use and configuration of the site and confirms there are no issues with the current equipment related to interference. If any modifications occur by Lessee or Lessor on the site which disrupt the service levels by, the responsible Party must ensure that equipment within his or her facility (including tenant and customer equipment) operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If the Authorized Officer or authorized official of the Federal Communications Commission (FCC) determines that the Lessor or Lessee's use interferes with existing equipment, the responsible party must promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the Authorized Officer or FCC official. When there is interference, if requested by the Lessee, the Authorized Official must furnish technical information concerning the equipment located within their area to determine what may be the cause of the problem, and the responsible party must correct the issue or remove their equipment.

F. When requested by the Authorized Officer, the Lessee must furnish technical information concerning the equipment located on the property.

G. Upon approval of this agreement, BLM shall provide road maintenance to the access road on every third year from grant issuance. Washoe County will provide maintenance to the access road as necessary during the other years. In the event there is a large repair or roadway issue, the users shall be notified and will be obligated to pay a prorata share of the expense. Washoe County CSD shall be responsible for entering into a separate road maintenance agreement with customers and/or tenants.

#### IV. LIABILITIES

A. The Lessee assumes all risk of loss to the authorized improvements.

B. The Lessee must comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S. C. 9601 *et seq.*, and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

C. Pursuant to Nevada Revised Statutes, Chapter 41, and without waiving provisions thereof, Lessee must indemnify, defend, and hold the United States for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States harmless for any violations incurred under any such laws and regulations or for judgements, claims, or demands assessed against the United States in connection with the Lessee's use or occupancy of the property. The Lessee's indemnification of the United States must include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this lease. Indemnification must include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph survives the termination or revocation of this lease, regardless of cause.

D. The Lessor must indemnify, defend, and hold the Lessee harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against Lessee in connection with the Lessor's use or occupancy of the property, or negligence. The Lessors indemnification of the Lessee must include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this lease. Indemnification must include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph survives the termination or revocation of this lease, regardless of cause.

E. The United States has no duty, either before or during the lease term, to inspect the property or to warn of hazards and, if the United States inspects the property, it will incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This paragraph survives the termination or revocation of this lease, regardless of cause.

F. The Lessee has an affirmative duty to protect from damage the land, property, and interests of the United States.

G. In the event of any breach of the lease by the Lessee, the Authorized Officer may, on reasonable notice, cure the breach at the expense of the Lessee. In any adversarial proceedings between the parties arising out of this agreement or the Lessee's lease of the property, the prevailing party will be entitled to recover from the other party, in addition to the judgement, all expenses that the prevailing party incurs in the proceedings, including attorneys' fees and costs. If the Bureau of Land Management is the prevailing party, it may deem its expenses, along with all interest and the judgement, to be additional rent due from the Lessee to the Bureau of Land Management on the first day of the month following its decision to treat the expenses, interest, and judgment as additional rent.

## V. OTHER PROVISIONS

A. **Nondiscrimination.** The Lessee must at all times operate the described property and its appurtenant areas and its buildings and facilities, whether or not on the property, in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of the Interior and in effect on the date this lease is granted to the end that no person in the United States will, on the grounds of race, sex, color, religion, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the programs or activities provided thereon.

B. **Termination and Suspension.**

1. **General.** For purposes of this lease, termination and suspension refer to the cessation of uses and privileges under the lease.

"Termination" refers to an action by the Authorized Officer to end the lease because of noncompliance with any of the prescribed terms, abandonment, or for reasons in the public interest. Termination also occurs when, by the terms of the lease, a fixed or agreed upon condition, event, or time occurs. For example, the lease terminates at expiration. Termination ends the Lessee's right to use the public land for communication purposes.

"Suspension" is a temporary action and the privileges may be restored upon the occurrence of prescribed actions or conditions.

2. This lease may be suspended or terminated upon breach of any of the terms or conditions herein or upon nonuse, or when in the public interest. Nonuse refers to a failure to operate consistently the facilities on the property for any period during the term in excess of 180 days. When suspended or terminated in the public interest, the Lessee will be compensated subject to the availability of appropriated funds. Compensation will be based upon the initial cost of improvements located on the lease, less depreciation as allocated over the life of the improvements as evidenced by the Lessee's Federal tax amortization schedules.

3. Except in emergencies, or in case of nonuse, the Authorized Officer will give the Lessee written notice of the grounds for termination or suspension and a reasonable time, not to exceed 90 days, to complete the corrective action. After the prescribed period, the Bureau of Land Management is entitled to such remedies as are provided herein.

4. Any discretionary decisions or determinations by the Authorized Officer on termination or suspension are subject to appeal in accordance with the regulations in Title 43, Code of Federal Regulations.

C. **Equipment removal and Restoration**

1. In the event the Lessee does not desire a new lease, the Lessee must, prior to the termination of this lease, transfer site to a new facility owner or remove equipment and restore and stabilize the site to the satisfaction of the Authorized Officer.

2. In the event this lease is revoked for noncompliance, the Lessee must transfer site to a new facility owner or remove all structures and improvements within a reasonable period as determined by the Authorized Officer, except those owned by the United States, and must restore the site as nearly as reasonably possible to its original condition unless this requirement is otherwise waived in writing by the Authorized Officer.

3. If the Lessee fails to remove all structures or improvements within the prescribed period, they will become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States.

D. **Members of Congress.** No member of or Delegate to Congress or Resident Commissioner may benefit from this lease either directly or indirectly, except when the lease provides a general benefit to a corporation.

E. **Reservations.** This lease is granted subject to the following reservations by the United States:

1. The right to all natural resource products now or hereafter located on the property unless stated otherwise herein, and the right to obtain, utilize, or dispose of such resources insofar as the rights and possession of the Lessee are not unreasonably affected.

2. The right to modify the communications site plan as deemed necessary at Lessor's sole cost and expense.

3. The right to enter upon the lease and inspect all facilities to assure compliance with the conditions of this lease.

4. The right of the United States to use or to authorize the use of the property for compatible uses, including the subsurface and air space, subject to all existing rights of the current users.

F. Operation

1. Subject to space and availability of Power service, the Lessee may choose to accommodate the entry/development of other compatible communication uses of the facility on a first-come, first-served basis. If an applicant agrees to comply with all the terms and conditions for use of the site contained herein, obtains a Federal Communications Commission or Interdepartmental Radio Advisory Committee authorization, and there is space available, Lessee may enter into a use agreement with applicant. At the applicant's sole cost and expense for all necessary work. Exceptions to this requirement will be made by the BLM authorized officer on a case-by-case basis.

2. All equipment in the facility must be clearly posted with the owner's name and operating frequency.

3. The holder shall ensure that the BLM serial number assigned to this authorization is posted on the door of the holder's building in letters that are at least 1.5" high.

4. All areas authorized under this lease/grant shall be maintained in a sanitary condition at all times; waste materials shall be disposed of promptly at an appropriate waste disposal site. 'Waste' means all discarded matter including, but not limited to, human waste, trash, spare or damaged radio equipment/antennas/cables, excess construction materials, refuse, oil drums, petroleum products, ashes, and equipment.

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned have read, understand and accept the terms and conditions of this lease.

\_\_\_\_\_  
Lessee

IN WITNESS WHEREOF, the Bureau of Land Management, by its Authorized Officer, has executed this lease on the day and year first written above.

UNITED STATES OF AMERICA

\_\_\_\_\_  
(Signature of Authorized Officer)

Chair, Washoe County Commission  
\_\_\_\_\_  
(Title of Authorized Officer)

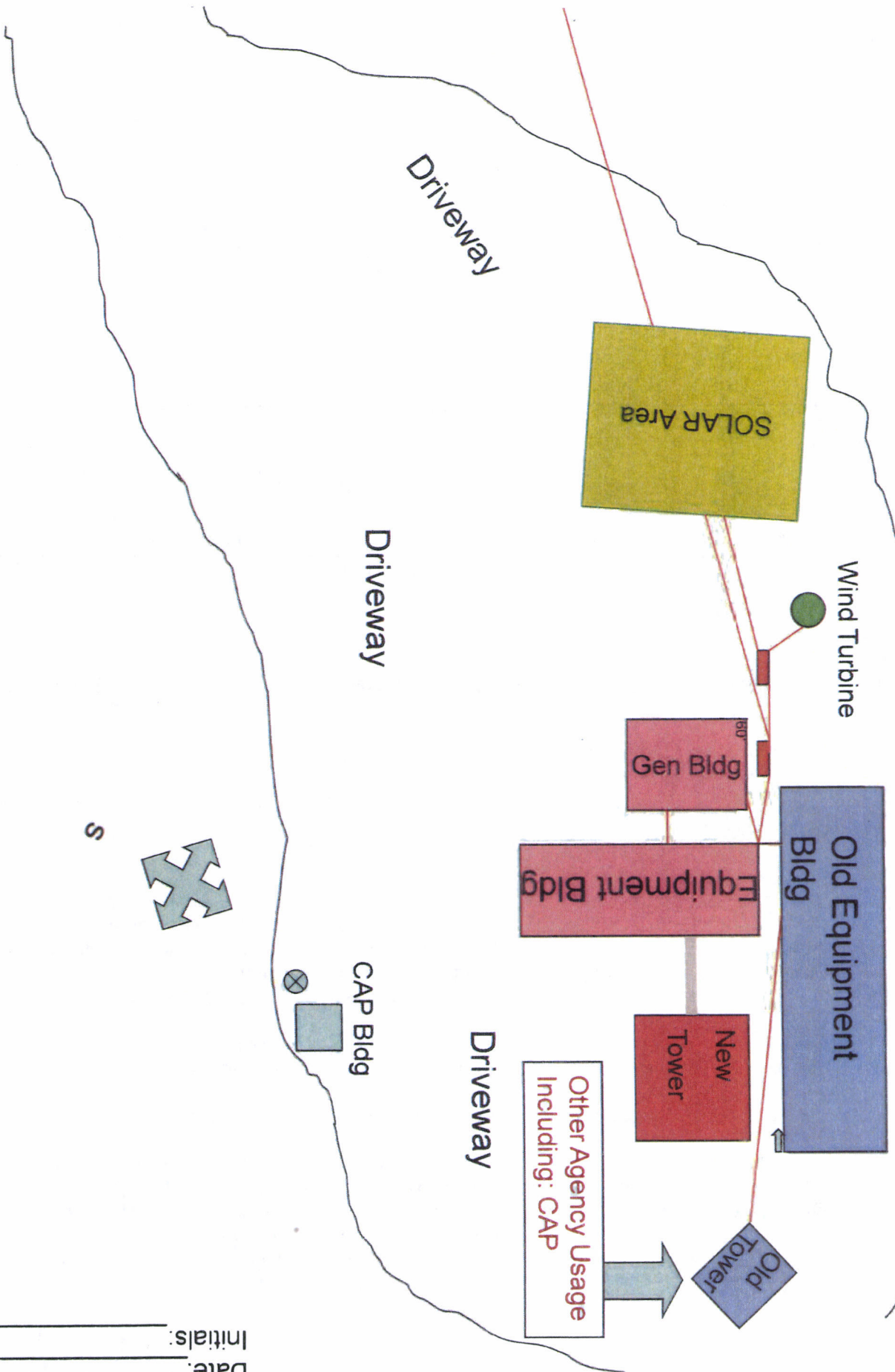
\_\_\_\_\_  
(Printed Name of Authorized Officer)

\_\_\_\_\_  
(Date)



# EXHIBIT A

- Power Conduit
- Waveguide Bridge



Other Agency Usage  
Including: CAP

Date: \_\_\_\_\_  
Initials: \_\_\_\_\_