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NORTH CENTRAL COAST DISTRICT OFFICE
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Th18c

DATE: **Prepared 11/20/2009 for Meeting of 12/10/2009**

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Charles Lester, Deputy Director
Ruby Pap, North Central Coast District Supervisor
Madeline Cavalieri, Coastal Program Analyst

SUBJECT: **County of San Mateo LCP Amendment No. SMC-MAJ-1-09 (Wireless Facilities Ordinance)**

SUMMARY OF AMENDMENT REQUEST

The proposed LCP Amendment would amend the Implementation Plan (IP) to establish regulations and permitting requirements for wireless telecommunication facilities. The proposed regulations contain standards requiring wireless towers and other facilities to be located outside the public viewshed and east of Highway 1, unless no other alternative exists, to be designed to blend in with the surroundings, and to be as short as technically feasible. Under the proposed regulations, use permits for wireless facilities would be limited to a ten-year development authorization period.

Under the proposed regulations, all new wireless telecommunication facilities would continue to require a coastal development permit (CDP) in all districts. Therefore, the CDPs issued for wireless telecommunications facilities would be appealable to the Commission because wireless telecommunications facilities are not the principally permitted use in any district.

The proposed regulations would also encourage collocation of new wireless telecommunication facilities on existing facilities, in an attempt to minimize visual impacts by reducing the total number of wireless facility sites in the County. New facilities would be required to accommodate future collocated facilities, and new collocated facilities would not be required to obtain a new use permit and CDP, as long as the underlying facility has a valid use permit and CDP that provided for the collocation. The collocated facility would be required to adhere to the terms and conditions of the underlying use permit and CDP. Collocated facilities that do not require a new use permit or CDP would not be appealable to the Commission.

The proposed regulations have been drafted to conform to the Federal Telecommunications Act, which prohibits local governments from discriminating among

providers and from applying regulations that have the effect of prohibiting the provision of personal wireless services. For example, the proposed regulations allow development of wireless telecommunication facilities in sensitive habitat areas when no other sites are feasible and where adverse impacts are minimized to the greatest extent feasible. Also, in conformance with the Telecommunications Act, the proposed amendment would not attempt to regulate the placement of wireless service facilities on the basis of the environmental effects of radio frequency emissions. The proposed amendment would not affect regulations for radio or television towers.

The full text of the IP Amendment request can be found in Exhibit 2.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission reject the proposed amendment and approve it only if modified to ensure that the ordinance is in conformance with and adequate to carry out the certified LUP visual resources and sensitive habitats policies. The motion can be found on page 3 of this report.

Although the proposed regulations would protect visual resources by restricting new development of wireless facilities in scenic areas and requiring facilities to be designed to blend in to the surroundings, additional provisions are necessary to ensure that in the future, obsolete technological design is replaced by available, feasible, technological designs that further reduce visual impacts. Therefore, Staff recommends that the Commission adopt **Suggested Modification 1**, which requires, at the time of renewal or amendment to the permit, that applicants further reduce visual impacts if new, feasible, technologies are available to do so. This approach is consistent with the Commission's past actions on similar amendments

The proposed IP amendment states that if the application of LUP sensitive habitats policies would prohibit siting facilities in sensitive habitats, that action is preempted by the Federal Telecommunications Act if there are no other alternatives. Although it is accurate for the regulations to state that the Telecommunications Act may preempt state and local laws and require development in sensitive habitats under certain circumstances, this section must be modified to ensure all feasible alternatives are considered before allowing such a development. Therefore, staff recommends **Suggested Modification 2**, which would require the reviewing authority to make a series of findings when allowing development of wireless telecommunication facilities in sensitive habitat areas, including finding that there is no other feasible location or alternative facility configuration that would avoid impacts to sensitive habitat areas and that prohibiting the facility would be inconsistent with federal law.

The "Purpose" section of the proposed ordinance states that the regulations are intended to conform to applicable Federal and State laws. To ensure such conformance, staff recommends **Suggested Modification 3**, which would expand this

section to include the specific requirements of the Federal Telecommunications Act of 1996 prohibiting local governments from unreasonably discriminating among providers of functionally equivalent services, from taking actions that have the effect of prohibiting personal wireless services within the County, and from prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

Finally, staff recommends **Suggested Modification 4** to clarify that CDPs for wireless telecommunication facilities are subject to the ten-year development authorization period that the use permits must adhere to, and that new co-located facilities must obtain a CDP, except if there is an underlying CDP that has already authorized the new co-located facility.

As modified as recommended above, Staff believes the IP amendment would conform with and adequately carry out the certified LUP.

Additional Information
For further information about this report or the amendment process, please contact Madeline Cavalieri, Coastal Planner, at the North Central Coast District Office of the Coastal Commission, North Central Coast District, 45 Fremont St., Ste. 2000, San Francisco, CA 94105; telephone number (415) 904-5260.

EXHIBIT LIST

1. Board of Supervisors Resolution
2. Proposed Ordinance

1. STAFF RECOMMENDATION

COMMISSION RESOLUTION ON COUNTY OF SAN MATEO IMPLEMENTATION PLAN AMENDMENT 1-09

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

Motion #1

> I move that the Commission reject Implementation Program Amendment No. SMC-MAJ-1-09 for the County of San Mateo as submitted.

Staff Recommendation of Rejection:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the implementation plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for denial:

The Commission hereby denies certification of the Implementation Program Amendment No. SMC-MAJ-1-09 as submitted for the County of San Mateo and adopts the findings set forth below on grounds that the implementation plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified land use plan as amended. Certification of the implementation plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the implementation program amendment as submitted.

Motion #2

> I move that the Commission certify Implementation Plan Amendment No. SMC-MAJ-1-09 for the County of San Mateo if it is modified as suggested in this staff report.

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in certification of the implementation program amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Implementation Plan Amendment SMC-MAJ-1-09 for the County of San Mateo if modified as suggested and adopts the findings set forth below on grounds that the implementation plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified land use plan as amended. Certification of the implementation plan amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the implementation plan amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

2. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LCP amendment be adopted. The language shown in underline represents language that the Commission suggests be added and the language shown in ~~strike through~~ represents language that the Commission suggests be deleted from the language as originally submitted.

Suggested Modification 1:

SECTION 6512.4. ADDITIONAL REQUIREMENTS AND STANDARDS FOR WIRELESS TELECOMMUNICATION FACILITIES IN THE COASTAL ZONE.

…

C. At the time of renewal of the Use Permit in accordance with Section 6512.6 or the Coastal Development Permit in accordance with Section 6512.4.C, or at the time of an amendment to the Use Permit or Coastal Development Permit, if earlier, the applicant shall incorporate all feasible new or advanced technologies that will reduce previously unavoidable environmental impacts, including reducing visual impacts in accordance with Section 6512.2.E, to the maximum extent feasible.

Suggested Modification 2:

SECTION 6512.2. DEVELOPMENT AND DESIGN STANDARDS FOR NEW WIRELESS TELECOMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES.

A. New wireless telecommunication facilities shall be ~~allowed~~ prohibited in a Sensitive Habitat, as defined by Policy 1.8 of the General Plan (Definition of Sensitive Habitats) for facilities proposed outside of the Coastal Zone, and by Policy 7.1 of the Local Coastal Program (Definition of Sensitive Habitats) for facilities proposed in the Coastal Zone, except when all of the following written findings are made by the reviewing authority: (1) There is no other feasible location(s) in the area; and (2) There is no alternative facility configuration that would avoid impacts to environmentally sensitive habitat areas; and (3) Prohibiting such facility would be inconsistent with federal law; ~~when the Federal Telecommunications Act preempts State and local law.; Location in sensitive habitat shall only be allowed when it can be demonstrated that other sites are not feasible,~~ and (4) ~~where~~ Adverse impacts to the sensitive habitat are minimized to the maximum ~~greatest~~ extent feasible ~~possible~~; and (5) Unavoidable impacts ~~shall be~~ are mitigated so that there is no loss in habitat quantity or biological productivity.

Suggested Modification 3:

6510. PURPOSE.

...

E. ~~Conform to applicable Federal and State laws.~~ The regulations in this chapter are intended to be consistent with state and federal law, particularly the Federal Telecommunications Act of 1996, in that they are not intended to: (1) be used to unreasonably discriminate among providers of functionally equivalent services; (2) have the effect of prohibiting personal wireless services within San Mateo County; or (3) have the effect of prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

Suggested Modification 4:

SECTION 6512.4. ADDITIONAL REQUIREMENTS AND STANDARDS FOR WIRELESS TELECOMMUNICATION FACILTIIES IN THE COASTAL ZONE.

…

C. New wireless telecommunication facilities shall obtain a CDP, pursuant to Section 6328.4, and the period of development authorization for any such CDP shall be limited to ten years.

SECTION 6513.3. ADDITIONAL REQUIREMENTS AND STANDARDS FOR CO-LOCATION FACILITIES IN THE COASTAL ZONE.

…

B. Co-location facilities shall comply with all applicable policies, standards, and regulations of the Local Coastal Program (LCP) and the CZ or CD Zoning Districts, ~~except that no public hearing shall be required~~.

C. Pursuant to Public Resources Code sections 30106 and 30610(b) as well as Title 14, Section 13253(b)(7) of the California Code of Regulations, the placement of co-located facilities on an existing wireless telecommunication facility shall require a CDP, except that if a CDP was issued for the original wireless telecommunication facility and that CDP authorized the proposed new co-location facility, the terms and conditions of the underlying CDP shall remain in effect and no additional CDP shall be required.

3. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan (LUP). The Commission must act by majority vote of the Commissioners present when making a decision on the implementing portion of a local coastal program.

4. FINDINGS AND DECLARATIONS

4.1. Visual Resources

LUP Policies

8.5 Location of Development

a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007.5.

Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.

…

8.15 Coastal Views

Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches.

LUP policy 8.5 requires development to be located where it is least visible from scenic roads, where it is least likely to impact views from public viewpoints, and where it best preserves the visual qualities of the parcel. LUP policy 8.15 prohibits development from substantially blocking views to or along the shoreline.

The proposed IP amendment requires new wireless telecommunication facilities to avoid and minimize impacts to visual resources. Proposed section 6512.2.E requires facilities to be sited outside of the public viewshed whenever feasible, and, when facilities must be in the public viewshed, it requires them to be designed to blend into the surroundings through the use of landscaping and appropriate paint colors. This section also requires towers to be no taller than necessary to provide adequate coverage. Views of the shoreline are given additional protection through Section 6512.4, which restricts development of new wireless telecommunication facilities between the first public road and the sea in urban areas, and between Highway 1 and the sea in rural areas.

Despite the important provisions described above, additional requirements are necessary to ensure that in the future, obsolete technological designs are replaced by current technological designs that further reduce visual impacts that may have been previously unavoidable. In previous wireless facilities ordinances (including those for Santa Cruz County and Monterey County) the Commission has certified provisions that ensure visual impacts are reduced or eliminated at the time of amending or renewing permits, when future technological advances render such modifications feasible. The language used in these regulations is similar to that used in a condition the Commission typically employs when granting permits for wireless telecommunication facilities. Therefore, the Commission adopts **Suggested Modification No. 1**, which adds this requirement to the ordinance.

As modified as described above, the Commission finds the proposed IP amendment would conform with and be adequate to carry out the visual policies of the LUP,

including policy 8.5, preserving visual and open space qualities, and policy 8.15, protecting views of the shoreline.

4.2. Sensitive Habitats

LUP Policies

> *7.3 Protection of Sensitive Habitats*
>
> *a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.*
>
> *b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.*
>
> *7.4 Permitted Uses in Sensitive Habitats*
>
> *a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.*
>
> *b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.*

LUP policy 7.3 prohibits development that has significant adverse impacts on sensitive habitat areas and LUP policy 7.4 permits only resource dependent uses in sensitive habitat areas.

Proposed Section 6512.2.A states that if the application of LUP policies, including LUP policies 7.3 and 7.4, prohibiting facilities in sensitive habitats is preempted by the Federal Telecommunications Act, then development in sensitive habitats would be allowed. As described below in Section 4.3, the Federal Telecommunications Act only preempts state and local laws that prohibit development in certain areas if no feasible alternatives exist and denial of the application would constitute either discriminating among providers or prohibiting the provision of personal wireless services. Therefore, it is accurate for the regulations to state that the Telecommunications Act may preempt state and local laws and require development in sensitive habitats under certain circumstances. However, the proposed section does not specify the circumstances under which this preemption may occur. This lack of specification may lead to

unnecessary impacts to sensitive habitat areas, inconsistent with the above-mentioned policies.

Therefore, the Commission adopts **Suggested Modification 2**. This modification would require the reviewing authority to make a series of findings when allowing development of wireless telecommunication facilities in sensitive habitat areas. These findings would ensure that there is no other feasible location or alternative facility configuration that would avoid impacts to sensitive habitat areas and that prohibiting such facility would be inconsistent with federal law.

The Commission finds that, as modified, the IP amendment conforms with and is adequate to carryout the LUP policies 7.3 and 7.4.

4.3. Other Federal and State Laws

Federal Telecommunications Act

The subject IP amendment proposes to regulate wireless services facilities, which are also regulated by other federal and state laws. Under section 307(c)(7)(B) of the Telecommunications Act of 1996, state and local governments may not unreasonably discriminate among providers or apply regulations that have the effect of prohibiting the provision of personal wireless services. Any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. Also, the Telecommunications Act prevents state and local governments from regulating the placement of wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

The County's proposed ordinance is consistent with the Federal law summarized above, and the Purpose section of the proposed ordinance states that the regulations are intended to conform to all applicable Federal and State laws. But to ensure such conformance, the Commission adopts **Suggested Modification 3**, which would expand this section to include the specific requirements of the Federal Telecommunications Act of 1996 prohibiting local governments from unreasonably discriminating among providers of functionally equivalent services, from taking actions that have the effect of prohibiting personal wireless services within the County, and from prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

The limitations upon a state and local government's authority with respect to telecommunications facilities contained within the Telecommunications Act of 1996 (TCA) do not state or imply that the TCA prevents public entities from exercising their

traditional prerogative to restrict and control development based upon aesthetic or other land use considerations. Other than the enumerated exceptions, the TCA does not limit or affect the authority of a state or local government. Though Congress sought to encourage the expansion of telecommunication technologies, the TCA does not federalize telecommunications land use law. Instead, Congress struck a balance between public entities and telecommunication service providers. Under the TCA, public entities retain control "over decisions regarding the placement, constructions, and modification of telecommunication facilities." 47 U.S.C. section 332(c)(7)(A).

Laws Governing Local Regulatory Authority Over Telecommunication Facilities

Government Code section 65964 addresses a local government's ability to limit the duration of a local permit for a telecommunication facility to less than 10 years. Government Code section 65850.6 limits a local government's local regulation of collocation facilities, prohibiting local governments from requiring a discretionary permit for wireless facilities that are collocated on existing wireless facilities that have received a discretionary permit and undergone environmental review. Although the suggested modifications adopted herein are consistent with Government Code sections 65964 and 65850.6, when acting on a coastal development permit, neither the Commission nor the County are operating pursuant to such local law authority. In fact, as with most laws governing local regulatory authority, section 65850.6 expressly acknowledges the ability of a local government to regulate consistent with state laws, such as the Coastal Act.

A fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. (See *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 489 [Commission exercises independent judgment in approving LCP because it is assumed statewide interests are not always well represented at the local level].) Under the Coastal Act's legislative scheme, the LCP and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. (*Pratt v. California Coastal Commission* (2008) 162 Ca. App.4th1068.) Once the LCP is certified, it does not become a matter of local law.

The Coastal Act specifically requires that local governments assume a regulatory responsibility that is in addition to their responsibilities under other state laws. In section 30005.5 of the Coastal Act, the Legislature recognized that it has given authority to local governments under section 30519 that would not otherwise be within the scope of the power of local governments. Section 30005.5 provides:

Nothing in this division shall be construed to authorize any local government…to exercise any power it does not already have under the Constitution and the laws of this state or that is not specifically delegated pursuant to section 30519. (Emphasis added.)

Thus, when deciding whether an applicant for a CDP has complied with the requirements of a certified LCP, a city or county is not acting under its "police power" authority but rather under authority delegated to it by the state. LCP provisions regulating development activities within the coastal zone are an element of a statewide plan, and are not local in nature. In exercising the development review authority delegated to it under the Coastal Act, with the attendant obligations to comply with Coastal Act policies and the certified LCP, the local government implements a statewide statutory scheme to which all persons, including state and local public agencies, are subject.

4.4. Permitting Requirements

CCC Regulations

Section 13253. Improvements that Require Permits.

…

(b) Pursuant to Public Resources Code Section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

…

(7) Any improvement to a structure which changes the intensity of use of the structure;

…

IP Sections

SECTION 6328.4. REQUIREMENT FOR COASTAL DEVELOPMENT PERMIT.

Except as provided by Section 6328.5, any person, partnership, corporation or state or local government agency wishing to undertake any project, as defined in Section 6328.3(r), in the "CD" District, shall obtain a Coastal Development Permit in accordance with the provisions of this Chapter, in addition to any other permit required by law. Development undertaken pursuant to a Coastal Development Permit shall conform to the plans, specifications, terms and conditions approved or imposed in granting the permit.

SECTION 6328.3. DEFINITIONS. For the purpose of this Chapter, certain terms used herein are defined as follows:

…

(r) "Project" means any development (as defined in Section 6328.3(h)) as well as any other permits or approvals required before a development may proceed. Project includes any amendment to this Part, any amendment to the County General Plan, and any land division requiring County approval.

…

Coastal Act sections 30106 and 30610(b) as well as Section 13253(b)(7) of the Commission's regulations requires a coastal development permit for any improvement to a structure which changes the intensity of use of the structure. And, existing IP section 6328.4 requires any entity who wishes to undertake a project in the Coastal Zone to obtain a CDP. Section 6328.3(r) defines "project" as being any development, and any other permits or approvals required before a development may proceed.

The proposed IP amendment establishes a ten-year development authorization period for Use Permits, but does not specify whether the associated CDP would also be limited to the ten-year period. However, because an approval of a renewed use permit meets the definition of a "project" according to Section 6328.3 of the zoning regulations, a new CDP would be required. To avoid confusion and ensure the proposed IP amendment is carried out in conformance with CDP requirements, the Commission adopts **Suggested Modification 4**, clarifying that CDPs are also limited to the ten-year development authorization period.

The addition of a co-located facility to an existing wireless telecommunication facility results in a change in the intensity of use of the existing facility and therefore requires a CDP under Coastal Act sections 30106 and 30610(b) as well as Section 13253(b)(7) of the Commission's regulations. However, because new wireless telecommunication facilities are required under the proposed regulations to anticipate future co-located facilities, it is possible that the addition of new co-located facilities was authorized under the existing permit. Any co-located facility that has been authorized by an existing, valid CDP would not require an additional CDP. Therefore, **Suggested Modification 4** clarifies that new co-located facilities require a CDP except when there is an underlying CDP that has already provided the necessary authorization. New co-located facilities are required to comply with the terms and conditions of the underlying CDP.

5. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of

preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCPA. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

The County's LCP Amendment consists of an Implementation Plan (IP) amendment. The Commission incorporates its findings on land use plan conformity into this CEQA finding as it is set forth in full. The Implementation Plan amendment as originally submitted does not conform with and is not adequate to carry out the policies of the certified LUP with respect to visual resources and sensitive habitat policies.

The Commission, therefore, has suggested modifications to bring the Implementation Plan amendment into full conformance with the certified Land Use Plan. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of the California Environmental Quality Act. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

The Commission finds that the Local Coastal Program Amendment, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of the CEQA. Further, future individual projects would require coastal development permits, issued by the County of San Mateo, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.

RESOLUTION NO. 039809

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION AMENDING THE SAN MATEO COUNTY LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN BY ADDING CHAPTER 24.5 TO DIVISION VI, PART ONE, OF THE SAN MATEO COUNTY ORDINANCE CODE (ZONING REGULATIONS), WHICH ESTABLISHES REGULATIONS FOR TELECOMMUNICATION FACILITIES

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that:

WHEREAS, in November, 1980, the San Mateo County Local Coastal Program (LCP) was certified by the California Coastal Commission; and

WHEREAS, since its certification, the LCP has been amended various times, to improve Coastal Act conformance or respond to local circumstances; and

WHEREAS, the LCP Implementation Plan does not currently contain regulations specific to the construction, expansion, and operation of telecommunication facilities; and

WHEREAS, in order to protect public health, safety, and the environment, it is in the public's interest for local governments to establish rules and regulations addressing certain land use aspects relating to the construction, design, siting, major modification, and operation of wireless communication facilities and their compatibility with surrounding land uses; and

WHEREAS, commercial wireless communication facilities are commercial uses and as such are generally incompatible with the character of residential zones in the County and, therefore, should not be located on residentially zoned parcels unless it

can be proven that there are no alternative non-residential sites or combination of sites from which can be provided adequate coverage; and

WHEREAS, in the proliferation of antennas, towers, satellite dishes, and other telecommunication facilities could create significant adverse visual impacts, and there is therefore the need to regulate the siting, design, and construction of such facilities particularly within scenic coastal areas; and

WHEREAS, the San Mateo County Planning Commission considered the proposed regulations for telecommunication facilities and held public hearings regarding these regulations on April 23, 2008, June 25, 2008, and July 23, 2008; and

WHEREAS, maximum opportunity for public participation in the Planning Commission hearing process was provided through: (1) publication of all Planning Commission meeting announcements in the San Mateo County Times and Half Moon Bay Review newspapers, and (2) direct mailing of meeting announcements and reports to interested parties; and

WHEREAS, on July 23, 2008, the Planning Commission adopted a recommendation that the Board of Supervisors approve the proposed zoning text amendment and certify the associated Negative Declaration; and

WHEREAS, on December 9, 2008, the Board of Supervisors conducted a public hearing on the zoning text/LCP amendment recommended for approval by the Planning Commission, considered all comments received, determined that the amendment is consistent with the General Plan, and certified the Negative Declaration; and

WHEREAS, maximum opportunity for public participation in the hearing process was provided through: (1) publication of the Board of Supervisors meeting announcement in the San Mateo County Times and Half Moon Bay Review newspapers, and (2) direct mailing of meeting announcements to interested parties; and

WHEREAS, all interested parties were afforded the opportunity to be heard at the Board of Supervisors hearings; and

WHEREAS, the matter herein is an individual amendment to the Local Coastal Program Implementation Plan and requires certification by the Coastal Commission as being in conformity with, and adequate to carry out, the provisions of the certified Land Use Plan before the amendment can become effective.

NOW, THEREFORE, BE IT RESOLVED, that the San Mateo County Board of Supervisors amends the San Mateo County LCP Implementation Plan to add Chapter 24.5 to Division VI, Part One, of the San Mateo County Ordinance Code (Zoning Regulations) as shown in Exhibit "A" of this resolution, and will carry out this amendment in accordance with the Coastal Act.

AND, BE IT FURTHER RESOLVED, that the San Mateo County Board of Supervisors directs staff to submit this Local Coastal Program (LCP) amendment as an individual amendment to the Coastal Commission for certification of conformity with the California Coastal Act.

AND, BE IT FURTHER RESOLVED, that this Local Coastal Program amendment shall not have the force of law within the Coastal Zone until the California Coastal Commission has certified it as conforming with the California Coastal Act. If the Coastal Commission's certification requires the County to accept suggested modifications to the amendment, the amendments will not take effect until the Board of Supervisors has accepted the suggested modifications and received confirmation from the Commission staff that the County's action accepting the modifications was been reported to the Commission and determined to be legally adequate.

Regularly passed and adopted this 9th day of December, 2008.

AYES and in favor of said resolution:

Supervisors: MARK CHURCH

RICHARD S. GORDON

ROSE JACOBS GIBSON

ADRIENNE J. TISSIER

NOES and against said resolution:

Supervisors: NONE

Absent Supervisors: NONE

Adrienne J. Tissier
President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Marie L. Peterson

Marie L. Peterson, Deputy
Clerk of the Board of Supervisors

ORDINANCE NO. 04450

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

AN ORDINANCE ADDING CHAPTER 24.5 TO DIVISION VI, PART ONE, OF THE SAN MATEO COUNTY ORDINANCE CODE (ZONING REGULATIONS) TO ESTABLISH REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES

The Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

SECTION 1. The San Mateo County Ordinance Code, Division VI, Part One, is hereby amended to add Chapter 24.5, Sections 6510 through 6514, as follows:

CHAPTER 24.5. WIRELESS TELECOMMUNICATION FACILITIES

SECTION 6510. PURPOSE. The purpose of this chapter is to establish regulations for the establishment of wireless telecommunication facilities within the unincorporated area of San Mateo County, consistent with the General Plan, and with the intent to:

A. Allow for the provision of wireless communications services adequate to serve the public's interest within the County.

B. Require, to the maximum extent feasible, the co-location of wireless telecommunication facilities.

C. Encourage and require, to the maximum extent feasible, the location of new wireless telecommunication facilities in areas where negative external impacts will be minimized.

D. Protect and enhance public health, safety, and welfare.

E. Conform to applicable Federal and State laws.

SECTION 6511. DEFINITIONS. For purposes of this chapter, the following terms shall have the meanings set forth below:

A. "Abandoned." A facility shall be considered abandoned if it is not in use for six consecutive months.

B. "Administrative review" means consideration of a proposed co-location facility by staff for consistency with the requirements of this chapter, the consideration of which shall be ministerial in nature, shall not include conditions of approval, and shall not include a public hearing.

C. "Co-location" means the placement or installation of wireless telecommunication facilities, including antennas and related equipment on, or immediately adjacent to, an existing wireless telecommunication facility.

D. "Co-location facility" means a wireless telecommunication facility that has been co-located consistent with the meaning of "co-location" as defined in Section 6511.C. It does not include the initial installation of a new wireless telecommunication facility that will support multiple service providers.

E. "Wireless telecommunication facility" or "WTF" means equipment installed for the purpose of providing wireless transmission of voice, data, images, or other information including, but not limited to, cellular telephone service, personal communications services, and paging services, consisting of equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems. Wireless telecommunication facility does not include radio or television broadcast facilities.

SECTION 6512. PERMIT REQUIREMENTS AND STANDARDS FOR NEW WIRELESS TELECOMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES. All new wireless telecommunication facilities that are not co-location facilities must meet the following standards and requirements:

SECTION 6512.1. PERMIT REQUIREMENTS FOR NEW WIRELESS TELE-COMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES. A use permit will be required for the initial construction and installation of all new wireless telecommunication facilities, in accordance with requirements, procedures, appeal process, and revocation process outlined in Sections 6500 through 6505 of Chapter 24 of the Zoning Regulations, except as modified by this chapter.

SECTION 6512.2. DEVELOPMENT AND DESIGN STANDARDS FOR NEW WIRELESS TELECOMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES. All new wireless telecommunication facilities must meet the following minimum standards. Where appropriate, more restrictive requirements may be imposed as a condition of use permit approval.

A. New wireless telecommunication facilities shall be allowed in a Sensitive Habitat, as defined by Policy 1.8 of the General Plan (Definition of Sensitive Habitats) for facilities proposed outside of the Coastal Zone, and by Policy 7.1 of the Local Coastal Program (Definition of Sensitive Habitats) for facilities proposed in the Coastal Zone, when the Federal Telecommunications Act preempts State and local law. Location in sensitive habitat shall only be allowed when it can be demonstrated that other sites are not feasible, and where adverse impacts are minimized to the greatest extent possible. Unavoidable impacts shall be mitigated so that there is no loss in habitat quantity or biological productivity.

B. New wireless telecommunication facilities shall not be located in areas zoned Residential (R), unless the applicant demonstrates, by a preponderance of the evidence, that a review has been conducted of other options with less environmental impact, and no other sites or combination of sites allows feasible service or adequate capacity and coverage. This review shall include, but is not limited to, identification of alternative site(s) within 2.5 miles of the proposed facility. See Section 6512.5.B.11 for additional application requirements.

C. New wireless telecommunication facilities shall not be located in areas where co-location on existing facilities would provide equivalent coverage with less environmental impact.

D. Except where aesthetically inappropriate, new wireless telecommunication facilities must be constructed so as to accommodate co-location, and must be made available for co-location unless technologically infeasible.

E. The adverse visual impact of utility structures shall be avoided by: (1) siting new wireless telecommunication facilities outside of public viewshed whenever feasible; (2) maximizing the use of existing vegetation and natural features to cloak wireless telecommunication facilities; and (3) constructing towers no taller than necessary to provide adequate coverage. When visual impacts cannot be avoided, they shall be minimized and mitigated by: (a) screening wireless telecommunication facilities with landscaping consisting of non-invasive and/or native plant material; (b) painting all equipment to blend with existing landscape colors; and (c) designing wireless telecommunication facilities to blend in with the surrounding environment. Attempts to replicate trees or other natural objects shall be used as a last resort. Landscaping shall be maintained by the property or facility owner and/or operator. The landscape screening requirement may be modified or waived by the Community Development Director or his/her designee in instances

where it would not be appropriate or necessary, such as in a commercial or industrial area.

F. Paint colors for the wireless telecommunication facility shall minimize its visual impact by blending with the surrounding environment and/or buildings. Prior to the issuance of a building permit, the applicant shall submit color samples for the wireless telecommunication facility. Paint colors shall be subject to the review and approval of the Planning and Building Department. Color verification shall occur in the field after the applicant has painted the equipment the approved color, but before the applicant schedules a final inspection.

G. The exteriors of wireless telecommunication facilities shall be constructed of non-reflective materials.

H. The wireless telecommunication facility shall comply with all the requirements of the underlying zoning district(s), including, but not limited to, setbacks, Design Review in the DR district(s), Architectural Review in designated Scenic Corridors, and Coastal Development Permit regulations in the CZ or CD zones.

I. Except as otherwise provided below, ground-mounted towers, spires and similar structures may be built and used to a greater height than the limit established for the zoning district in which the structure is located; provided that no such exception shall cover, at any level, more than 15% in area of the lot nor have an area at the base greater than 1,600 sq. ft.; provided, further that no tower, spire or similar structure in any district shall ever exceed a maximum height of 150 feet.

1. In the PAD, RM, RM-CZ, TPZ, and TPZ-CZ districts, in forested areas, no structure or appurtenance shall exceed the height of the forest

canopy by more than 10% of the height of the forest canopy, or five feet, whichever is less.

2. In any Residential (R) district, no monopole or antenna shall exceed the maximum height for structures allowed in that district, except as allowed under Chapter 4 of the Zoning Regulations, and except that new or co-located equipment on an existing structure in the public right-of-way shall be allowed to exceed the maximum height for structures allowed in that district, or, if the public right-of-way is not in a district, in the closest adjacent district, by 10% of the height of the existing structure, or by five feet, whichever is less.

3. A building-mounted wireless telecommunication facility shall not exceed the maximum height allowed in the applicable zoning district, or 16 feet above the building roofline, whichever is higher, except that in any Residential (R) district, no monopole or antenna shall exceed the maximum height for structures allowed in that district, and except as allowed under Chapter 4 of the Zoning Regulations.

J. In any Residential (R) district, accessory buildings in support of the operation of the wireless telecommunication facility may be constructed, provided that they comply with the provisions of Sections 6410 through 6411 regarding accessory buildings, except that the building coverage and floor area maximums shall apply to buildings in aggregate, rather than individually. If an accessory building not used in support of a wireless telecommunication facility already exists on a parcel, no accessory building in support of the operation of the wireless telecommunication facility may be constructed absent removal of the existing accessory building. If an accessory building(s) in support of the operation of the wireless telecommunication facility is constructed on a parcel, no other accessory buildings not used in support of a wireless telecommunication facility shall be

constructed until the accessory building(s) in support of the operation of that wireless telecommunication facility is(are) removed.

K. In any Residential (R) district, ground-mounted towers, spires and similar structures may be built and used provided that the overall footprint of the facility shall be as small as possible, and further provided that they shall not cover, in combination with any accessory building(s), shelter(s), or cabinet(s) or other above-ground equipment used in support of the operation of the wireless telecommunication facility, more than 15% in area of the lot nor an area greater than 1,600 sq. ft. Buildings, shelters, and cabinets shall be grouped. Towers, spires, and poles shall also be grouped, to the extent feasible for the technology.

L. Diesel generators shall not be installed as an emergency power source unless the use of electricity, natural gas, solar, wind or other renewable energy sources is not feasible. If a diesel generator is proposed, the applicant shall provide written documentation as to why the installation of options such as electricity, natural gas, solar, wind or other renewable energy sources is not feasible.

SECTION 6512.3. PERFORMANCE STANDARDS FOR NEW WIRELESS TELECOMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES. No use may be conducted in a manner that, in the determination of the Community Development Director, does not meet the performance standards below. Measurement, observation, or other means of determination must be made at the limits of the property, unless otherwise specified.

A. Wireless telecommunication facilities shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

B. The applicant shall file, receive, and maintain all necessary licenses and registrations from the Federal Communications Commission (FCC), the California Public Utilities Commission (CPUC) and any other applicable regulatory bodies prior to initiating the operation of the wireless telecommunication facility. The applicant shall supply the Planning and Building Department with evidence of these licenses and registrations. If any required license is ever revoked, the applicant shall inform the Planning and Building Department of the revocation within ten (10) days of receiving notice of such revocation.

C. Once a use permit is obtained, the applicant shall obtain a building permit and build in accordance with the approved plans.

D. The project's final inspection approval shall be dependent upon the applicant obtaining a permanent and operable power connection from the applicable energy provider.

E. The wireless telecommunication facility and all equipment associated with it shall be removed in its entirety by the applicant within 90 days if the FCC and/or CPUC license and registration are revoked or the facility is abandoned or no longer needed, and the site shall be restored and revegetated to blend with the surrounding area. The owner and/or operator of the wireless telecommunication facility shall notify the County Planning Department upon abandonment of the facility. Restoration and revegetation shall be completed within two months of the removal of the facility.

F. Wireless telecommunication facilities shall be maintained by the permittee(s) and subsequent owners in a manner that implements visual resource protection requirements of Section 6512.2.E, and F above (e.g., landscape maintenance and painting), as well as all other applicable zoning standards and permit conditions.

G. Road access shall be designed, constructed, and maintained over the life of the project to avoid erosion, as well as to minimize sedimentation in nearby streams.

H. A grading permit may be required, per Sections 8600-8609 of the County Ordinance Code. All grading, construction and generator maintenance activities associated with the proposed project shall be limited from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday or as further restricted by the terms of the use permit. Construction activities will be prohibited on Sunday and any nationally observed holiday. Noise levels produced by construction activities shall not exceed 80-dBA at any time.

I. The use of diesel generators or any other emergency backup energy source shall comply with the San Mateo County Noise Ordinance.

J. If technically practical and without creating any interruption in commercial service caused by electronic magnetic interference (EMI), floor space, tower space and/or rack space for equipment in a wireless telecommunication facility shall be made available to the County for public safety communication use, subject to reasonable terms and conditions.

SECTION 6512.4. ADDITIONAL REQUIREMENTS AND STANDARDS FOR WIRELESS TELECOMMUNICATION FACILITIES IN THE COASTAL ZONE.

A. New wireless telecommunication facilities shall not be located between the first public road and the sea, or on the seaward side of Highway 1 in rural areas, unless no feasible alternative exists, the facility is not visible from a public location, or will be attached to an existing structure in a manner that does not significantly alter the appearance of the existing structure.

B. New wireless telecommunication facilities shall comply with all applicable policies, standards, and regulations of the Local Coastal Program (LCP) and the CZ or CD Zoning Districts.

SECTION 6512.5. APPLICATION REQUIREMENTS FOR NEW WIRELESS TELECOMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES.

A. A Major Development Pre-Application will be required for all new wireless telecommunication facilities in accordance with the procedures outlined in Sections 6415.0 through 6415.4 of the San Mateo County Zoning Regulations, unless there is an existing wireless telecommunication facility within a 1-mile radius of the proposed facility. This requirement may be waived at the discretion of the Community Development Director or his/her designee.

B. In addition to the requirements set forth in Chapter 24, Use Permits, applicants for new wireless telecommunication facilities shall submit the following materials regarding the proposed wireless telecommunication facility:

1. A completed Planning Permit application form.

2. A completed Use Permit for a Cellular or Other Personal Wireless Telecommunication Facility Form.

3. A completed Environmental Information Disclosure Form.

4. Proof of ownership or statement of consent from the owner of the property.

5. A site plan, including a landscape plan (if appropriate under the provision of Section 6512.2.E), and provisions for access.

6. Elevation drawing(s).

7. Photo simulation(s) of the wireless telecommunication facility from reasonable line-of-sight locations from public roads or viewing locations.

8. A preliminary erosion control plan shall be submitted with the use permit application. A complete construction and erosion control plan shall be submitted with the building permit application.

9. A maintenance plan detailing the type and frequency of required maintenance activities, including maintenance of the access road.

10. For projects that are technically capable of accommodating additional facilities, a description of the planned maximum ten-year buildout of the site for the applicant's wireless telecommunication facilities, including, to the extent possible, the full extent of wireless telecommunication facility expansion associated with future co-location facilities by other wireless telecommunication facility operators. The applicant shall use best efforts to contact all other wireless telecommunication service providers in the County known to be operating in the County upon the date of application, to determine the demand for future co-locations at the proposed site, and, to the extent feasible, shall provide written evidence that these consultations have taken place, and a summary of the results, at the time of application. The County shall, within 30 days of its receipt of an application, identify any known wireless telecommunication providers that the applicant has failed to contact and with whom the applicant must undertake

their best efforts to fulfill the above consultation and documentation requirements. The location, footprint, maximum tower height, and general arrangement of future co-locations shall be identified by the ten-year buildout plan. If future co-locations are not technically feasible, an explanation shall be provided of why this is so. In addition, the applicant may propose a smaller facility to be considered by the decision maker.

11. Identification of existing wireless telecommunication facilities within a 2.5-mile radius of the proposed location of the new wireless telecommunication facility, and an explanation of why co-location on these existing facilities, if any, is not feasible. This explanation shall include such technical information and other justifications as are necessary to document the reasons why co-location is not a viable option. The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall also provide a written explanation why the alternatives considered were either unacceptable or infeasible. If an existing tower was listed among the alternatives, the applicant must specifically address why the modification of such tower is not a viable option. The written explanation shall also state the radio frequency coverage and/or capacity needs and objective(s) of the applicant.

12. A statement that the wireless telecommunication facility is available for future co-location projects, or an explanation of why future co-location is not technologically feasible.

13. A Radio Frequency (RF) report describing the emissions of the proposed wireless telecommunication facility and, to the extent reasonably ascertainable, the anticipated increase in emissions associated with future co-location facilities.

14. The mandated use permit application fee, and other fees as applicable.

15. Depending on the nature and scope of the project, other application materials, including but not limited to a boundary and/or topographical survey, may be required.

16. Applications for the establishment of new wireless telecommunication facilities inside Residential (R) zoning districts and General Plan land use designations shall be accompanied by a detailed alternatives analysis that demonstrates that there are no feasible alternative non-residential sites or combination of non-residential sites available to eliminate or substantially reduce significant gaps in the applicant carrier's coverage or network capacity.

SECTION 6512.6. USE PERMIT TERM, RENEWAL AND EXPIRATION. Use permits for wireless telecommunication facilities, including approval of the ten-year buildout plan as specified by Section 6512.5.B.10, shall be valid for ten years following the date of final approval. The applicant shall file for a renewal of the use permit and pay the applicable renewal application fees six months prior to expiration with the County Planning and Building Department, if continuation of the use is desired. In addition to providing the standard information and application fees required for a use permit renewal, wireless telecommunication facility use permit renewal applications shall provide an updated buildout description prepared in accordance with the procedures established by Section 6512.5.B.10.

Where required, renewals for use permits for existing wireless telecommunication facilities constructed prior to the effective date of this chapter [January 9, 2009] are subject to the provisions of Sections 6512 through 6512.5. Renewals of use permits approved after the effective date of this chapter shall only be

approved if all conditions of the original use permit have been satisfied, and the ten-year buildout plan has been provided. If the use permit for an existing wireless telecommunication facility has expired, applications for co-location at that site, as well as after-the-fact renewals of use permits for the existing wireless telecommunication facilities, will be subject to the standards and procedures for new wireless telecommunication facilities outlined in Sections 6512 through 6512.5.

SECTION 6513. PERMIT REQUIREMENTS AND STANDARDS FOR CO-LOCATION FACILITIES.

A. Co-location Facilities Requiring a Use Permit. In accordance with Section 65850.6 of the California Government Code, applications for co-location will be subject to the standards and procedures outlined for new wireless telecommunication facilities, above (in Section 6512 through 6512.6), if any of the following apply:

1. No use permit was issued for the original wireless telecommunication facility,

2. The use permit for the original wireless telecommunication facility did not allow for future co-location facilities or the extent of site improvements involved with the co-location project, or

3. No Environmental Impact Report (EIR) was certified, or no Negative Declaration or Mitigated Negative Declaration was adopted for the location of the original wireless telecommunication facility that addressed the environmental impacts of future co-location of facilities.

B. Permit Requirements for Other Co-location Facilities. Applications for all other co-locations shall be subject to a building permit approval. Prior to the

issuance of a building permit for co-location, the applicant shall demonstrate compliance with the conditions of approval, if any, of the original use permit, by submitting an application to the Planning and Building Department for an administrative review of the original use permit, including all information requests and all associated application fees, including specifically those for administrative review of a use permit, which fee shall be equivalent to the fee established for a use permit inspection.

SECTION 6513.1. DEVELOPMENT AND DESIGN STANDARDS FOR CO-LOCATION FACILITIES.

A. The co-location facility must comply with all approvals and conditions of the underlying use permit for the wireless telecommunication facility.

B. The adverse visual impact of utility structures shall be avoided by: (1) maximizing the use of existing vegetation and natural features to cloak wireless telecommunication facilities; and (2) constructing towers no taller than necessary to provide adequate coverage. When visual impacts cannot be avoided, they shall be minimized and mitigated by: (a) screening co-location facilities with landscaping consisting of non-invasive and/or native plant material; (b) painting all equipment to blend with existing landscape colors; and (c) designing co-location facilities to blend in with the surrounding environment. Attempts to replicate trees or other natural objects shall be used as a last resort. To the extent feasible, the design of co-location facilities shall also be in visual harmony with the other wireless telecommunication facility(ies) on the site. Landscaping shall be maintained by the owner and/or operator. The landscape screening requirement may be modified or waived by the Community Development Director or his/her designee in instances where it would not be appropriate or necessary, such as in a commercial or industrial area.

C. Paint colors for the co-location facility shall minimize its visual impact by blending with the surrounding environment and/or buildings. Prior to the issuance of a building permit, the applicant shall submit color samples for the co-location facility. Paint colors shall be subject to the review and approval of the Planning and Building Department. Color verification shall occur in the field after the applicant has painted the equipment the approved color, but before the applicant schedules a final inspection.

D. The exteriors of co-location facilities shall be constructed of non-reflective materials.

E. The wireless telecommunication facility shall comply with all the requirements of the underlying zoning district(s), including, but not limited to, setbacks, and Coastal Development Permit regulations in the CZ or CD zones.

F. Except as otherwise provided below, ground-mounted towers, spires and similar structures may be built and used to a greater height than the limit established for the zoning district in which the structure is located; provided that no such exception shall cover, at any level, more than 15% in area of the lot nor have an area at the base greater than 1,600 sq. ft.; provided, further that no tower, spire or similar structure in any district shall ever exceed a maximum height of 150 feet.

1. In the PAD, RM, RM-CZ, TPZ and TPZ-CZ districts, in forested areas, no structure or appurtenance shall exceed the height of the forest canopy by more than 10% of the height of the forest canopy, or five feet, whichever is less.

2. In any Residential (R) district, no monopole or antenna shall exceed the maximum height for structures allowed in that district, except as

allowed under Chapter 4 of the Zoning Regulations, and except that new or co-located equipment on an existing structure in the public right-of-way shall be allowed to exceed the maximum height for structures allowed in that district, or, if the public right-of-way is not in a district, in the closest adjacent district, by 10% of the height of the existing structure, or by five feet, whichever is less.

3. A building-mounted wireless telecommunication facility shall not exceed the maximum height allowed in the applicable zoning district, or 16 feet above the building roofline, whichever is higher, except that in any Residential (R) district, no facility, monopole or antenna shall exceed the maximum height for structures allowed in that district, and except as allowed under Chapter 4 of the Zoning Regulations.

G. In any Residential (R) district, accessory buildings in support of the operation of the wireless telecommunication facility may be constructed, provided that they comply with the provisions of Sections 6410 through 6411 regarding accessory buildings, except that the building coverage and floor area maximums shall apply to buildings in aggregate, rather than individually. If an accessory building not used in support of a wireless telecommunication facility already exists on a parcel, no accessory building(s) in support of the operation of the wireless telecommunication facility may be constructed absent removal of the existing accessory building. If an accessory building(s) in support of the operation of the wireless telecommunication facility is(are) constructed on a parcel, no other accessory buildings not used in support of a wireless telecommunication facility shall be constructed until the accessory building(s) in support of the operation of that wireless telecommunication facility is(are) removed.

H. In any Residential (R) district, ground-mounted towers, spires and similar structures may be built and used provided that the overall footprint of the

facility shall be as small as possible, and further provided that they shall not cover, in combination with any accessory building(s), shelter(s), or cabinet(s) or other above-ground equipment used in support of the operation of the wireless telecommunication facility, more than 15% in area of the lot nor an area greater than 1,600 sq. ft. Buildings, shelters, and cabinets shall be grouped. Towers, spires, and poles shall also be grouped, to the extent feasible for the technology.

I. Diesel generators shall not be installed as an emergency power source unless the use of electricity, natural gas, solar, wind or other renewable energy sources is not feasible. If a diesel generator is proposed, the applicant shall provide written documentation as to why the installation of options such as electricity, natural gas, solar, wind or other renewable energy sources is not feasible.

J. Expansion of co-location facilities beyond the footprint and height limit identified in the planned maximum ten-year buildout of the site as specified in Section 6512.5.B.10, or in the original use permit for the facility, shall not be subject to administrative review and shall instead comply with the use permit provisions for new wireless telecommunication facilities in Sections 6512 through 6512.5, unless a minor change or expansion beyond these limits is determined to be a minor modification of the use permit by the Community Development Director. If the Community Development Director does determine that such change or expansion is a minor modification, the change or expansion shall instead be subject to the provisions of Sections 6513 through 6513.4.

K. At the discretion of the Community Development Director, a co-location proposal that is smaller in extent, footprint, height, number of antennas or accessory buildings, or is otherwise smaller than that proposed in the ten-year buildout plan as specified in Section 6512.5.B.10, may be considered

using the administrative review provisions of Sections 6513 to 6513.4 if it will have less environmental impact than the original plan.

SECTION 6513.2. PERFORMANCE STANDARDS FOR CO-LOCATION FACILITIES. No use may be conducted in a manner that, in the determination of the Community Development Director, does not meet the performance standards below. Measurement, observation, or other means of determination must be made at the limits of the property, unless otherwise specified.

A. Co-location facilities shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

B. The applicant shall file, receive and maintain all necessary licenses and registrations from the Federal Communications Commission (FCC), the California Public Utilities Commission (CPUC) and any other applicable regulatory bodies prior to initiating the operation of the co-location facility. The applicant shall supply the Planning and Building Department with evidence of each of these licenses and registrations. If any required license is ever revoked, the applicant shall inform the Planning and Building Department of the revocation within ten (10) days of receiving notice of such revocation.

C. The project's final inspection approval shall be dependent upon the applicant obtaining a permanent and operable power connection from the applicable energy provider.

D. The co-location facility and all equipment associated with it shall be removed in its entirety by the applicant within 90 days if the FCC and/or CPUC licenses required to operate the site are revoked or the facility is abandoned or no longer needed, and the site shall be restored and

revegetated to blend with the surrounding area. The owner and/or operator of the wireless telecommunication facility shall notify the County Planning Department upon abandonment of the facility. Restoration and revegetation shall be completed within two months of the removal of the facility.

E. Co-location facility maintenance shall implement visual resource protection requirements of Section 6513.1.B, and C above (e.g., landscape maintenance and painting).

F. Road access shall be maintained over the life of the project to avoid erosion, as well as to minimize sedimentation in nearby streams.

G. The use of diesel generators or any other emergency backup energy source shall comply with the San Mateo County Noise Ordinance.

H. If technically practical and without creating any interruption in commercial service caused by electronic magnetic interference (EMI), floor space, tower space and/or rack space for equipment in a wireless telecommunication facility shall be made available to the County for public safety communication use, subject to reasonable terms and conditions.

SECTION 6513.3. ADDITIONAL REQUIREMENTS AND STANDARDS FOR CO-LOCATION FACILITIES IN THE COASTAL ZONE.

A. Co-location facilities located between the first public road and the sea, or on the seaward side of Highway 1 in rural areas, shall only be allowed if the facility is not visible from a public location, or will be attached to an existing structure in a manner that does not significantly alter the appearance of the existing structure.

B. Co-location facilities shall comply with all applicable policies, standards, and regulations of the Local Coastal Program (LCP) and the CZ or CD Zoning Districts, except that no public hearing shall be required.

SECTION 6513.4. APPLICATION REQUIREMENTS FOR CO-LOCATION FACILITIES. Applicants that qualify for administrative review of co-location facilities in accordance with Section 6513 shall be required to submit the following:

A. A completed Planning Permit application form.

B. Proof of ownership or statement of consent from the owner of the property and/or the primary operator of the wireless telecommunication facility where the co-location is proposed.

C. A site plan showing existing and proposed wireless telecommunication facilities.

D. Elevation drawing(s) showing existing and proposed wireless telecommunication facilities.

E. A completed Environmental Information Disclosure Form.

F. A preliminary erosion control plan shall be submitted with the use permit application. A complete construction and erosion control plan shall be submitted with the building permit application.

G. A maintenance and access plan that identifies any changes to the original maintenance and access plan associated with the existing wireless telecommunication facility or use permit.

H. A Radio Frequency (RF) report demonstrating that the emissions from the co-location equipment as well as the cumulative emissions from the co-location equipment and the existing facility will not exceed the limits established by the Federal Communications Commission (FCC) and the use permit for the existing wireless telecommunication facility.

I. The mandated administrative review fee, and other fees as applicable.

J. Prior to the issuance of a building permit, the applicant shall submit color samples for the co-location equipment. Paint colors shall be subject to the review and approval of the Planning and Building Department. Color verification shall occur in the field after the applicant has painted the equipment the approved color, but before the applicant schedules a final inspection.

SECTION 6514. SEVERABILITY. If any provision of this Chapter 24.5 to Division VI, Part One, of the San Mateo County Ordinance Code (Zoning Regulations) or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 2. Outside of the Coastal Zone, this ordinance shall be in full force and effect 30 days after adoption by the San Mateo County Board of Supervisors. Within the Coastal Zones (CZ or CD), this ordinance shall take force and effect immediately upon final certification by the Coastal Commission.