STATE OF CALIFORNIA - THE RESOURCES AGENCY GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Tu8a

March 31, 1999

MEMORANDUM

TO: Commissioners and Interested Persons RECORD PACKET COPY

FROM: Deborah Lee, Senior Deputy Director
Teresa Henry, District Manager, South Coast District
Pam Emerson, Los Angeles County Area Supervisor

SUBJECT: Major Amendment Request No. 1-98B to the City of Manhattan Beach Certified Local Coastal Program For Public Hearing and Commission Action at the April 13-16, 1999, meeting in Long Beach

SYNOPSIS

The Manhattan Beach LCP, was effectively certified in 1964. The current proposal, amendment 1-98, is the City's fourth major LCP amendment since certification. The proposed LCP amendment would affect only the implementing ordinances (LIP) of the City's certified LCP. The certified Land Use Plan (LUP) would not be affected. This present amendment was spilt into two parts for Commission consideration. The first half, Amendment 1-98-A (Ordinance 1977) included changes to residential fence height requirements and some retail parking requirements. The Commission certified amendment 1-98-A on January 15, 1999, with suggested modifications.

This amendment 1-98B, Ordinance 1978, would establish regulations addressing the issuance of antenna permits for wireless communications facilities, amateur radio masts, and microwave dish antennas. The Commission must act on this amendment at the April 1999 Commission hearings.

SUMMARY OF STAFF RECOMMENDATION.

Staff recommends the Commission **reject** the proposed amendment and approve it only if modified so that the ordinances will be consistent with and adequate to carry out the certified LUP. The motions are found on **page 3** of this report. The suggested modifications would eliminate the proposed antenna ordinance from the LCP and instead would suggest procedures and standards for the issuance of coastal development permits for those antennas that can be regulated under federal law. When a coastal development permit is required for an antenna, the suggested modifications would add a requirement that the antennas and satellite dishes be consistent with the certified Land Use Plan standards regarding access and view corridors. Modifications to an antenna or wireless service facility are only suggested consistent with federal law.

SUBMITTAL OF LCP AMENDMENT

The City submitted the proposed LCP amendment for Commission action with Resolution No. 5373 (Exhibit #2). The proposed changes to the certified LCP are contained in Ordinance Number 1978 (Exhibit # 4). The City Planning Commission held public hearings for the proposed LCP amendment on December 10, 1997 (Exhibit 1). On January 20, 1998, the City Council held a public hearing and adopted Ordinance No. 1977 and 1978. The Council adopted Resolution No. 5373 on February 3, 1998, and the City submitted the request on February 9, 1998. In April 1998, the Commission extended the time available for review of this matter for one year. Accordingly, the Commission must act on the proposed LCPA at the April 1999 hearings. In January 1999, the Commission certified LCPA 1-98A, regarding ordinance 1977 (fences), if modified.

STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementing Ordinances, pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed amendment is consistent with, and adequate to carry out, the provisions of the certified Land Use Plan (LUP).

ADDITIONAL INFORMATION

Copies of the staff report are available at the South Coast District office located at 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Pam Emerson in the Long Beach office at (562) 590-5071.

I. STAFF RECOMMENDATION.

The staff recommends the Commission adopt the following motion and resolution.

DENIAL OF THE AMENDMENT TO THE LCP IMPLEMENTING ORDINANCES AS SUBMITTED:

MOTION I

"I move that the Commission reject Amendment request No .1-98B to the City of Manhattan Beach LCP Implementing Ordinance as submitted."

Staff recommends a YES vote, which would result in the adoption of the following resolution and findings. An affirmative vote by the majority of the appointed Commissioners is needed to pass the motion.

RESOLUTION TO REJECT THE AMENDMENT TO THE IMPLEMENTING ORDINANCES AS SUBMITTED:

The Commission hereby rejects the certification of the amendment to the implementing ordinances of the City of Manhattan Beach Certified Local Coastal Program for the reasons discussed below, on the grounds that it does not conform with or is inadequate to carry out the provisions of the certified Land Use Plan as certified. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the approval of the amendment to the Implementing Ordinances would have on the environment.

APPROVAL OF THE AMENDMENT TO THE LCP IMPLEMENTING ORDINANCES, IF MODIFIED.

MOTION II

"I move that the Commission approve Amendment request No .1-98B to the City of Manhattan Beach LCP Implementing Ordinance if modified in conformity with the modifications suggested below."

Staff recommends a YES vote and the adoption of the following resolution and findings. An affirmative vote by the majority of the appointed Commissioners is needed to pass the motion.

RESOLUTION TO CERTIFY THE AMENDMENT TO THE IMPLEMENTING ORDINANCES, IF MODIFIED

The Commission hereby approves the certification of the amendment to the implementing ordinances of the City of Manhattan Beach Certified Local Coastal Program for the reasons discussed below, on the grounds that the amended ordinances, maps and other implementing actions are consistent with and adequate to carry out the provisions of the certified Land Use Plan if amended according to the suggested modifications stated in Section II of this report. The amendment is consistent with applicable decisions of the Commission that guide local government actions pursuant to Section 30625(c) of the Coastal Act, and approval of the amendment will not have significant environmental effect for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

The Commission further finds that if the local government adopts and transmits its revisions to the amendment to the Implementing ordinances in conformity with the suggested modifications, then the Executive Director shall so notify the Commission.

II. SUGGESTED MODIFICATIONS:

Certification of amendment 1-98B to the City of Manhattan Beach LCP implementing Ordinances is subject to the following modifications (Staff's suggested additions are indicated in **bold type**, suggested deletions are ~~crossed out.~~)

1. Amend Section 10.60.130 of Title 10 of the Manhattan Beach Municipal Code ~~and Section A.60.130 of the Implementation Program of the Local Coastal Program in its entirety~~, as follows:

10.60.130~~/A.60.130~~ Wireless Service Facilities, Amateur Radio and Satellite Dish Antennas **Outside the Coastal Zone.**

A. Purpose. To establish procedures and regulations **outside the coastal zone** for processing wireless service facility applications in all non-residential areas and to create consistency between federal legislation and local ordinances regarding amateur radio and satellite dish antennas. The intent of these regulations is to protect the public health, safety and general welfare while ensuring fairness and reasonable permit processing time.

B. Permit Required. An Antenna permit shall be required for the construction, modification and placement of all Federal Communication Commission (FCC) regulated amateur radio and satellite dish antennas in all districts and all wireless service facilities, including but not limited to, common carrier wireless exchange access services, unlicensed wireless services and commercial mobile services (i.e., cellular, personal communication services (PCS), specialized mobile radio (SMR) and paging services). Wireless service facilities shall only be permitted in non-residential zoning districts.

Exceptions. An Antenna permit shall not be required for the construction, modification and placement of any satellite dish antenna measuring one meter or less in diameter designed to receive direct broadcast satellite service, including direct-to-home satellite service and multi-channel multi-point distribution services (MMDS) on masts not exceeding 12 feet in height.

C. Amateur Radio Antennas. Amateur radio antennas associated with the authorized operations of an amateur radio station licensed by the FCC (i.e. "HAM" radio transmission) shall be permitted in any district and administratively reviewed provided the structure complies with the following requirements.

1. No portion of the antenna structure shall be located in any required yard and must maintain at least five (5) feet clear from any property line (including support cables).
2. No portion of the antenna structure may exceed a height of sixty (60) feet above finished ground level grade.
3. Construction of such antenna shall be subject to the provisions of Chapter 1 of Title of the Manhattan Beach Municipal Code.

Upon demonstration by the applicant that the above requirements prevent the possibility of receiving a signal of acceptable quality, an applicant may, through the appeal procedure specified in Chapter 10.100 of Title 10 of the Manhattan Beach Municipal Code, request relief from the requirements of this section from the Planning Commission.

D. Wireless Service Facilities and Satellite Dish Antenna Regulations. Antennae permit applications shall be processed either administratively or shall require a use permit as follows:

1. Administrative Review. Applications for satellite dish antennas and roof wall or similarly mounted wireless service facilities including modification to existing monopole structures, successfully integrated

with the natural or built environment, may be administratively approved if the proposal is in compliance with the following applicable standards:

a. The proposed facility shall comply with all applicable development standards of the base district in which it is located.
b. Roof, wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened on all sides to the satisfaction of the Director of Community Development. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and vegetation.
c. Requests for collocation on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, may be administratively approved if aesthetically acceptable, structurally and technologically feasible.
d. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are not highly visible from surrounding uses.
e. No signage or advertisement shall be permitted except for required public safety signs.
f. Exterior facility lighting and fencing shall not be permitted unless required by federal regulations or by the Director of Community Development for safety purposes.

2. Use Permit Review. A use permit shall be required pursuant to Chapter 10.84 for the construction, modification or placement of all satellite dish antennas and wireless service facilities not previously exempted or that fail to comply with the administrative standards listed above. In addition to Chapter 10.84 ~~/ A.84~~, the Planning Commission must make the following findings to approve an Antenna permit:

a. The proposed antenna and associated equipment blends into the surrounding environment, or provides adequate concealment through architecturally integrated elements.
b. Where screening potential is low, innovative designs have been incorporated to reduce the visual impact.
c. The applicant has demonstrated good faith to collocate on existing facilities or sites.

d. The impact on surrounding residential views has been considered.

3. Submittal Requirements. The following material shall be submitted with an application request for an Antenna permit:

a. Site Plan and Vicinity Map
b. Elevation drawings and floor plans (survey may be required).
c. An updated Wireless Master Plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable.
d. Color renderings, or photographs showing the existing and proposed site conditions.
e. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, which quantifies the project's radio frequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable.
f. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations.

For projects requiring a use permit, documentation demonstrating compliance with the findings in Section D2 above and additional submittal information and material identified in Chapter 10.84 ~~/ A.84~~ (including an application form, notification packet environmental information form, etc.), shall also be provided.

E. Abandonment. Any antenna structure and related equipment regulated by this Chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed abandonment and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68 "Public Nuisances-Premises" of the Manhattan Beach Municipal Code.

2. Amend ~~Section 10.60.130 of Title 10 of the Manhattan Beach Municipal Code and~~ Section A.60.130 of the Implementation Program of the Local Coastal Program in its entirety, as follows:

10.60.130/A.60.130 Wireless Service Facilities, Amateur Radio and Satellite Dish Antennas **Within the Coastal Zone**

A. Purpose. To establish procedures and regulations **within the coastal zone** for processing wireless service facility applications in all non-residential areas and to create consistency between federal legislation and local ordinances regarding amateur radio and satellite dish antennas. The intent of these regulations is to protect the public health, safety and general welfare while ensuring fairness and reasonable permit processing time.

B. **(1)** Permit Required. A~~n Antenna~~ **coastal development** permit shall be required for the construction, modification and placement of all Federal Communication Commission (FCC) regulated amateur radio and satellite dish antennas in all districts and all wireless service facilities, including but not limited to, common carrier wireless exchange access services, unlicensed wireless services and commercial mobile services (i.e., cellular, personal communication services (PCS), specialized mobile radio (SMR) and paging services). Wireless service facilities shall only be permitted in non-residential zoning districts.

(2) Exceptions. A~~n Antenna~~ **coastal development** permit shall not be required for:

(1) the construction, modification and placement of any satellite dish antenna measuring one meter or less in diameter designed to receive direct broadcast satellite service, including direct-to-home satellite service and multi-channel multi-point distribution services (MMDS), on masts not exceeding 12 feet in height **above the roofline if on property within the exclusive use or control of the antenna user.**

(2) the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter and is proposed to be located in any area where commercial or industrial uses are generally permitted by the land use designation.

(3) any federally regulated wireless service facility, amateur radio antenna or satellite dish antenna that qualifies as development exempt under section A.96.50.

C. Amateur Radio Antennas. Amateur radio antennas associated with the authorized operations of an amateur radio station licensed by the FCC (i.e. "HAM" radio transmission) shall be permitted in any district. ~~and administratively reviewed provided t~~ **A coastal development permit shall**

be required pursuant to Chapter A.84 for the construction, modification and placement of all antenna not exempted by Section A96.50 or Section B2 above. The **antenna** structure **shall** comply~~ies~~ with the following requirements **only to the extent such requirements do not restrict the effectiveness of the amateur radio by preventing the receipt of a signal of acceptable quality.**

1. No portion of the antenna structure shall be located in any required yard and must maintain at least five (5) feet clear from any property line (including support cables).
2. No portion of the antenna structure may exceed a height of sixty (60) feet above finished ground level grade.
3. Construction of such antenna shall be subject to the provisions of Chapter 1 of Title of the Manhattan Beach Municipal Code.
4. **No portion of the antenna structure extends onto a public walk street or other public coastal access corridor as identified in the Policy IA3 of the certified LUP.**
5. **The proposed antenna shall be consistent with the certified LCP.**
6. **Any proposed antenna between the first road and the sea shall be consistent with the access and recreation policies of Chapter 3 of the Coastal Act.**

~~Upon demonstration by the applicant that the above requirements prevent the possibility of receiving a signal of acceptable quality, an applicant may, through the appeal procedure specified in Chapter 10.100 of Title 10 of the Manhattan Beach Municipal Code, request relief from the requirements of this section from the Planning Commission.~~

D. ~~Wireless Service Facilities and~~ Satellite Dish Antenna Regulations. ~~Antennae permit applications shall be processed either administratively or shall require a use permit as follows:~~

~~2. Administrative Review. Applications for satellite dish antennas and roof, wall or similarly mounted wireless service facilities including modification to existing monopole structures, successfully integrated with the natural or built environment, may be administratively approved if the proposal is in compliance with the following applicable standards:~~

~~a. The proposed facility shall comply with all applicable development standards of the base district in which it is located.~~

~~b. Roof, wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened on all sides to the~~

~~satisfaction of the Director of Community Development. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and vegetation.~~

~~c. Requests for collocation on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, may be administratively approved if aesthetically acceptable, structurally and technologically feasible.~~

~~d. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are not highly visible from surrounding uses.~~

~~e. No signage or advertisement shall be permitted except for required public safety signs.~~

~~f. Exterior facility lighting and fencing shall not be permitted unless required by federal regulations or by the Director of Community Development for safety purposes.~~

1. ~~Use~~ **Coastal Development** Permit Review. A ~~use~~ **coastal development** permit shall be required pursuant to Chapter ~~10.84~~ **A.84** for the construction, modification or placement of all satellite dish antennas ~~and wireless service facilities~~ not ~~previously~~ exempted **by Section A.96.50 or Section B2 above** ~~or that fail to comply with the administrative standards listed above. In addition to Chapter 10.84 / A.84, the Planning Commission must make the following findings to approve an Antenna permit:~~ **The proposed antenna shall comply with the following requirements only to the extent such requirements are necessary to find the development consistent with the visual, public view protection, hazard and access policies of the certified LUP.**

   a. **The proposed antenna complies with all applicable development standards of the base district in which it is located.**

   ~~a.~~**b.** The proposed antenna and associated equipment blends into the surrounding environment, or provides adequate concealment through architecturally integrated elements.

   ~~b.~~**c.** Where screening potential is low, innovative designs have been incorporated to reduce the visual impact.

   ~~c.~~**d.** The applicant has demonstrated good faith to collocate on existing facilities or sites.

   ~~d.~~**e.** The ~~impact on surrounding residential views has been considered~~ **proposed antenna does not significantly impact public views to the ocean.**

f. **No portion of the proposed antenna extends onto a public walk street or other public coastal access corridor as identified in the Policy IA3 of the certified LUP.**
g. **The proposed antenna is consistent with the certified LCP.**
h. **Any proposed antenna between the first road and the sea is consistent with the access and recreation policies of Chapter 3 of the Coastal Act.**

2. Submittal Requirements. The following material shall be submitted with ~~a~~**n coastal development permit** application request for ~~a~~**n Satellite** Antenna ~~permit~~:

a. Site Plan and Vicinity Map
b. Elevation drawings and floor plans (survey may be required).
~~c. An updated Wireless Master Plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable.~~
~~d.~~**c.** Color renderings, or photographs showing the existing and proposed site conditions.
~~e.~~**d.** ~~Provide v~~**V**erification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, which quantifies the project's radio frequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable.
~~f.~~**e.** Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations.
f. ~~For projects requiring a use permit, d~~**D**ocumentation demonstrating compliance with the findings in Section D~~2~~ 1 above ~~and~~
g. ~~a~~**A**dditional submittal information and material identified in Chapter ~~10.84 /~~ A.84 (including an application form, notification packet environmental information form, etc.)~~, shall also be provided.~~ **And**

h. **A written report from an installer showing all locations where an unimpaired signal can be received.**

E. Wireless Service Facilities Regulations.

1. Coastal Development Permit Review. A coastal development permit shall be required pursuant to Chapter A.84 for the construction, modification or placement of wireless service facilities not previously exempted by Section A.96.50. The proposed wireless service facility shall comply with the following requirements only to the extent such requirements (1) do not unreasonably discriminate among providers of functionally equivalent services or (2) do not have the effect of prohibiting the provision of personal wireless services within the City of Manhattan Beach.

   a. The proposed wireless service facility complies with all applicable development standards of the base district in which it is located.
   b. The proposed wireless service facility blends into the surrounding environment, or provides adequate concealment through architecturally integrated elements to the maximum extent feasible.
   c. Where screening potential is low, innovative designs have been incorporated to reduce the visual impact.
   d. The applicant has demonstrated good faith to collocate on existing facilities or sites.
   e. The proposed wireless service facility does not significantly impact public views to the ocean.
   f. No portion of the wireless facility extends onto a public beach, public walk street or other public coastal access corridor as identified in the Policy IA3 of the certified LCP.
   g. Any proposed wireless service facility between the first road and the sea is consistent with the access and recreation policies of Chapter 3 of the Coastal Act.
   h. Wireless service facilities shall not be permitted in an RH, RM, or open space zone.

2. Any decision to deny a permit for a personal wireless service facility shall be in writing and shall be supported by substantial evidence, and shall specifically identify the reasons for the decision, the evidence that led to the decision, and the written record of all evidence.

3. Submittal Requirements. The following material shall be submitted with a coastal development permit application request for Wireless Service Facilities:

a. **Site Plan and Vicinity Map**
b. **Elevation drawings and floor plans (survey may be required).**
c. **An updated Wireless Master Plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable.**
d. **Color renderings, or photographs showing the existing and proposed site conditions.**
e. **Verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, which quantifies the project's radio frequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable.**
f. **Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations.**
g. **Documentation demonstrating compliance with the findings in Section E1 above.**
h. **Additional submittal information and material identified in Chapter A.84 (including an application form, notification packet environmental information form, etc.) and**
i. **A written report from an installer showing all locations where an unimpaired signal can be received.**

~~E.~~**F.** Abandonment. Any antenna structure and related equipment regulated by this Chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed abandonment and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68 "Public Nuisances-Premises" of the Manhattan Beach Municipal Code.

III. FINDINGS FOR REJECTION AS SUBMITTED.

A. Amendment Description

The proposed amendment is encompassed in ordinance 1978 (Exhibit 4)

Ordinance number 1978 establishes a procedure to issue "Antenna Permits" for satellite dishes, ham radio masts and wireless service facilities. It restricts wireless (commercial) service facilities to commercial zones. The ordinance then exempts small satellite-dish antennas that are exempted from local regulation by federal standards from antenna permit requirements [1]. These exempt antennas are satellite dish antennas that are one meter (thirty-nine inches) or less in diameter. The ordinance also establishes standards for amateur radio antennas (ham radio masts), allowing permits for amateur radio antennas up to sixty feet in height to be issued "Administratively," if the proposed antenna complies with height and setback standards. If the mast does not comply, the applicant must apply for a conditional use permit.

The ordinance then lists six standards applying to larger satellite dish antennas and wireless service facilities, which federal standards allow local government to regulate. If the wireless facility or satellite dish conforms to the six standards, it can receive an "administrative approval." Administrative approval requires no notice or hearing. If the wireless service facility or satellite dish does not conform to the six standards, the applicant may seek approval of a conditional use permit. Conditional use permits are reviewed by the Planning Commission. To approve the CUP, the Planning Commission must make four findings concerning the visual compatibility of the facility and its impacts on views. (Exhibit 4, Ordinance 1978)

While the City has submitted the antenna ordinance as an amendment to its LIP, the antenna ordinance does not identify the relationship between the procedures for issuing antenna permits and the city's coastal development permit process. The City proposes to issue the majority of antenna permits "administratively." This administrative process does not include the notice and hearing procedures required for coastal development permits. The ordinance also does not include a cross reference to those sections of the Municipal Code that describe which development in the Coastal Zone needs a coastal development permit and which is exempted under Section 30610 and the related regulations.

Specific requirements. Ordinance 1978 would establish a procedure to issue antenna permits but not coastal development permits for antennas and wireless

[1] Actually, the (federal) FCC rules allow local government to appeal to the FCC and ask for permission to regulate in areas of high visual sensitivity (historic areas) or in areas where the unregulated antennas would pose a hazard. This appeal process has not been pursued.

service facilities. The proposed ordinance limits commercial facilities to commercial zones. In addition, the ordinance establishes procedures for antennas in all zones, establishing four categories review as outlined below:

(1) Small Satellite Dish Antennas: These antennas, having a dish one meter or less in diameter on a mast that is up to 12 feet are exempt and do not require "an antenna permit". No coastal development permit is contemplated for exempt permits.

(2) Amateur radio antennas. These would be approved "administratively" if they are lower than 60 feet and are set back five feet from all property lines. "Administrative antenna permits" do not require hearings or coastal development permits.

(3) Satellite Dish Antennas that are approved "administratively." The antenna ordinance allows the planning director to approve larger satellite dishes administratively (without notice or hearing). The staff may approve the permit if the antenna complies with six standards, which include screened installations where the screening is "architecturally integrated and compatible with the site," and antennas co-located with existing monopoles, if they are "aesthetically acceptable." The intent is to allow approval of larger antennas without hearing notice or delay if they, in the judgment of the staff are not obtrusive. No coastal development permit is required for administratively approved satellite dishes.

(4) Antennas that require a conditional use permit, which are those that are not exempt and which do not comply with the six standards that would make them eligible for administrative approval. These would require a conditional use permit and a CDP.

B. FEDERAL PREEMPTION

The LCPA proposes to regulate communication devices that are also regulated by federal law. These communication devices include: radio antenna, satellite antenna and wireless services facilities. The consideration of this LCPA is bound by federal law as summarized in the following chart and further discussed below.

Type of Communication Device	Federal Authority Which Limits State and Local Regulation of Communication Device	Federal Limitation on State and Local Regulation of Communication Device
1. Amateur Radio Antenna	47 CFR Part 97 101 F.C.C. 2d 952 (See Exhibit 7)	1. State and local regulations that preclude amateur radio communications are preempted. 2. State and local regulations which involve the placement, screening, or height of antennas based on health, safety or aesthetic considerations are permitted as long as the regulations do not restrict the effectiveness of the amateur radio.
2. Satellite Antennas Smaller Than 1 Meter Used to Receive Video Programming which are placed on property owned or within the exclusive control of the user where the user has a direct or indirect ownership interest in the property.	47 CFR 1.4000 (See Exhibit 8)	1. Federal Rule prohibits state and local aesthetic or visual restrictions that: (a) unreasonably delay or prevent installation, maintenance or use (such as the requirement to obtain a permit); (b) unreasonably increase the cost of installation, maintenance or use (such as the requirement to purchase an antenna of a different height); or (c) preclude reception of an acceptable quality signal.

3. Satellite Earth Station Antennas Larger Than 1 Meter	47 CFR 25.104 (See Exhibit 9)	1. Federal rule prohibits state and local regulation of a satellite earth station antenna that is two meters or less in diameter (i.e. between 1 and 2 meters) and is proposed to be located in any area where commercial or industrial uses are generally permitted by land use designation. 2. Federal rule prohibits state and local regulations that materially limit transmission or reception by satellite earth station antennas (other than those listed in 1 above) unless the regulation (a) has a clearly defined health, safety or aesthetic objective that is stated in the text of the regulation itself; and (b) furthers the stated health, safety or aesthetic objective without unnecessarily burdening the federal interests in ensuring access and promoting fair competition
4. Wireless Services Facilities	47 U.S.C. 332(c) (See Exhibit 10)	1. Federal statute prohibits state and local regulations that unreasonably discriminate among providers of functionally equivalent services. 2. Federal statute prohibits state and local regulations that prohibit or have the effect of prohibiting the provision of personal wireless services. 3. Federal statute prohibits state and local regulation of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions. 4. Any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence.

1. AMATEUR RADIO ANTENNA

Conflicts between amateur operators regarding radio antennas and governing authorities regarding restrictive ordinances are common. The amateur radio operator is governed by the regulations contained in 47 C.F.R. Part 97. Those rules do not limit the height of an amateur radio antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for radio antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some amateur radio antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur radio operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their radio antennas is limited by a local ordinance.

By declaratory ruling, the FPPC announced a limited preemption of state and local regulations governing amateur radio installations. 101 F.C.C. 2d 952. The FPPC stated that there is a strong federal interest in promoting amateur radio communications and that state and local regulations that preclude amateur radio communications are in direct conflict with federal objectives and must be preempted. However, regulation of such devices is permitted as long as the regulations do not restrict the effectiveness of the communications involved.

Because amateur radio communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Therefore, state or local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the governing authority's legitimate purpose.

2. ANTENNAS SMALLER THAN 1 METER USED TO RECEIVE VIDEO PROGRAMMING

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and non-governmental restrictions on

viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multichannel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS"). (See 47 U.S.C. § 332.)

The rule is cited in 47 C.F.R. Section 1.4000 and has been in effect since October 14, 1996. It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal. The rule does not apply to devices that have transmission capability only. Also VSAT, a commercial satellite service that may use satellite antennas less than one meter in diameter, is not within the purview of the rule because it is not used to provide over-the-air video programming.

The rule applies to viewers who place video antennas on property that they own and that is within their exclusive use or control, including condominium owners and cooperative owners who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes. The rule does not apply to leased property or property not under the viewer's exclusive use or control.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair and restrictions that are needed for safety or historic district preservation. The rule prohibits restrictions that impair a viewer's ability to install, maintain, or use a video antenna and restrictions that are imposed for other than safety or historic district preservations. Accordingly, restrictions for aesthetic or visual purposes are prohibited unless a local government petitions the FCC for a waiver of 47 CFR Section 1.4000. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a viewer from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

Procedural requirements can unreasonably delay installation, maintenance or use of an antenna covered by this rule. A regulation or restriction that unreasonably delays or prevents antenna installation, maintenance or use will be found to impair reception. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Only permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible. Permits or prior approvals for aesthetic or visual purposes are not permissible unless a local government petitions the FCC for a waiver of 47 CFR Section 1.4000.

A restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission rule. For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation for a legitimate safety or historic preservation purpose that requires that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply. Under this approach, a safety or historic preservation restriction cannot require that relatively unobtrusive DBS antennas be screened by expensive landscaping. On the other hand, a requirement to paint an antenna in a fashion that will not interfere with reception so that it blends into the background against which it is mounted would likely be acceptable.

Finally, because masts are very often necessary part of an MMDS receiving device, they are included in the definition of MMDS antennas. However, including masts in the definition of MMDS does not exempt all masts from regulation. The FCC requires antenna users to obtain a permit only in cases in which the antennas must extend more than twelve feet above the roofline in order to receive signals.

3. TRANSMISSION OR RECEPTION BY SATELLITE ANTENNAS LARGER THAN 1 METER

The FCC adopted 47 CFR § 25.104 as an implementing regulation of the Communications Policy Act of 1984. The purpose of the regulation was to protect "the federally guaranteed right of earth station antenna users to receive certain satellite signals for home viewing. The rule was adopted in 1986 in response to evidence that state and local governments were, in some instances, imposing unreasonably restrictive burdens on the installation of satellite antennas. The 1986

rule preempted ordinances that discriminate against satellite antennas and impose unreasonable limitations on reception or unreasonable costs on users.

In the Telecommunications Act of 1996, Congress specifically directed the Commission, within 180 days, to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." Thus in 1996, the FCC adopted revisions to its 1986 rule, further preempting regulation of satellite earth station antennas.

The satellite earth station antennas governed by the rule fall into two basic categories, depending on the service provided. The first category consists of antennas designed for direct-to-home (DTH) reception of video programming for home entertainment purposes. Service can be provided with antennas less than one meter in diameter. The second broad category of antennas is designed for two-way, commercial communications. Most VSAT antennas are less than two meters in diameter.

In crafting the preemption policies, the FCC attempted to reflect the differences in the antennas involved and have tried to accommodate the varying local interests. The main state and local concerns regarding installation of satellite earth stations related to aesthetics, health, and safety. These concerns would appear to be greater for larger antennas, thus the rule permits greater local regulation for larger antennas. For smaller antennas, these interests are less compelling and, accordingly, the FCC has more narrowly defined permissible regulation.

Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable. Regulation of a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by land-use regulation shall be presumed unreasonable and is also preempted.

Therefore, for satellite earth station antennas larger than one meter in residential areas and two meters in commercial and industrial areas, state and local governments can impose reasonable health, safety, or aesthetic regulations. It must be noted that unlike the FCC rule for antennas smaller than 1 meter used to receive video programming (see section 2 above), this rule allows a state or local government to regulate antennas larger than 1 meter in residential areas and antennas larger than 2 meters in industrial and commercial areas for aesthetic or visual purposes. Some set-back from a public road, for example, would appear to

be a reasonable health and safety regulation under the rule as long as comparable setbacks are required for other visual obstructions. Finally, for truly unique situations, such as an architecturally historic area, a waiver procedure is available. Some examples of circumstances that might warrant consideration of a waiver, depending on the circumstances and on how other types of antennas or modern accoutrements are treated, are genuine historic districts, waterfront property, or environmentally sensitive areas.

4. WIRELESS SERVICE FACILITIES

Under section 307(c)(7)(B) of the Telecommunications Act of 1996, state and local governments may not unreasonably discriminate among providers of personal wireless services, and any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. These provisions are similar to the requirements of California law, including the Coastal Act. The Telecommunications Act also 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 (FCC) concerning such emissions.

5. Consistency of City submittal with Federal Rules

In preparing this ordinance, the City staff has relied on a fact sheet put out by the FCC that characterizes the implications of the Act for local government in the following way (Exhibit 5):

> "The new rule prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. These antennas include DBS satellite dishes that are less than one meter (39") in diameter, TV antennas, and antennas used to receive MMDS. ... A local restriction that prohibits all antennas is prohibited by the Federal Communications Commission's rule. Local regulations that require a person to obtain a permit or approval prior to receiving service will delay reception; this is generally allowed only if it is necessary to serve a safety or historic preservation purpose. ... Any requirement to pay a fee to the local authority in order to be allowed to install an antenna would be unreasonable unless it is a permit fee that is needed to serve safety or historic preservation or a permit is required in the case of installation of a mast greater than 12 feet."

Faced with these rules, the City has exempted the one-meter dishes from its antenna permits and has developed an expedited procedure for other devices. However, the proposed ordinance is not consistent with all of the above-identified federal regulations. Therefore, no coastal development permits should be issued on the basis of the ordinance as proposed. Therefore, as discussed further below, the ordinance as proposed must be denied.

C COASTAL DEVELOPMENT PERMIT REQUIREMENTS

Antennas are development as defined in coastal act section 30106 and in section A.96.030.I of the Manhattan Beach Municipal Code. Section 30106 states:

> **Section 30106.**
>
> "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Section A.96.030.I of the Municipal Code is nearly identical to section 30106[2]. An antenna is a solid material. If a dish antenna were placed on the roof or exterior wall of a structure, it would increase its height as defined by the city zoning code. Section A.96.040 of the Municipal Code requires that a coastal development permit be obtained for all development "Except as provided in by section A.96.050."

City LIP section, A.96.050, is based on Section 30610 of the Coastal Act and section 13250 and 13253 of the California Code of Regulations which exempt

[2] The definition stops after the words: "timber operations." Effectively, the language is identical since there are no timber operations n Manhattan Beach.

certain development, such as additions to existing structures, from coastal development permit requirements. Many antennas located on developed property would be considered additions to existing structures. Accordingly, these additions are located more than 300 feet from the inland extent of the beach (outside the appeal area), these antennas would **not** require coastal development permits under section 30610 of the Coastal Act, sections 13250 and 13253 of the Code of Regulations and subsection A.96.50 of the LIP. (The City ordinance granting exemptions does not apply to all "structures" but instead is limited to additions to existing buildings. The effect of this distinction would result in no difference when considering antennas attached to commercial and residential buildings. However, unless the City considers an antenna a building, antennas that are additions to existing antennas that are not attached to a building would require coastal development permits under the city ordinance).

Based on the Coastal Act, additions to structures located within 300 feet of the beach require coastal development permits if they add more than 10% to the height or bulk of the structure. Thus, antennas proposed on structures located less than 300 feet from the inland extent of the beach would require coastal development permits, if their installation raise the height of the structure by more than 10%. Based on this criterion, many smaller antennas will be exempt. However, not all antennas will be exempt. Since the maximum allowable height for new buildings in Manhattan Beach is thirty feet, any antenna that adds over three feet to the height of the structure would require a coastal development permit, unless such a requirement would be inconsistent with federal law. (Ten percent of a 30-foot heigh structure is three feet or 36 inches.) In addition, many older structures are not built to the maximum height, and in the case of those buildings, a smaller antenna would trigger a coastal development permit.

As stated above, Section A.96.050 does not exempt additions to single family houses or other structures if they add more than ten percent to the height or bulk of a structure that is also located less than 300 feet from the inland extent of the beach. Thus, an antenna is proposed on a house or duplex located less than 300 feet from the inland extent of the beach, it would require a coastal permit if it extended more than three feet above the roof. However, as stated above on the Section on federal preemption, even when a CDP would otherwise be required consistent with Section 30601 and 30610, a CDP shall not be required for: (1) satellite antennas smaller than 1 meter used to receive video programming which are placed on property owned or within the exclusive control of the user where the user has a direct or indirect ownership interest in the property and (2) satellite earth station antenna that is two meters or less in diameter and is proposed to be located in any area where commercial or industrial uses are generally permitted by land use designation. The reason these antenna are exempt, however, is not a function of their size; it is a result of the federal government's preemption of state and local regulations.

4. APPLICABLE LUP STANDARDS.

If a coastal development permit is required, the Coastal Act requires that the certified local government approve and issue that permit consistent with the certified Land Use Plan (LUP). The certified Land Use Plan (LUP) establishes the following policies that might be used to analyze impacts of development that might have impacts on views or public access:

- I.A.I. The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach coastal zone;
- I.A.3. The City shall preserve pedestrian access systems including the Spider Web Park concept (Spider Web Park concept: a linear park system linking the Santa Fe railroad right-of way jogging trail to the beach with a network of walkstreets and public open spaces. See figure NR-1 of the General Plan);
- I.A.5 The City shall preserve its walk-street resources, shall prohibit noncomplying walk street encroachments including decks, shall enforce measures to eliminate walk street noncompliance with existing guidelines and shall provide expedited appeal procedures related thereto.
- III.A.2 Preserve the predominant existing commercial building scale of one and two stories by limiting any future development to a 2-story maximum within a 30" height limitation as required by section A.04.030, A.16.030, and A.60.50 of chapter 2 of the Implementation Plan;
- III.B.1 Maintain building scale in coastal zone residential neighborhoods consistent with Chapter 2 of the Implementation Plan;
- III.B.2 Maintain residential building bulk control established by development standards in Chapter 2 of the Implementation Plan;
- III.B.3 Maintain coastal zone residential height limit not to exceed 30', as required by section A.04.030 and A.60.050 of chapter 2 of Implementation Plan;
- IV B.1 The City shall maintain the new height measurement definition found in the city zoning ordinance which will not allow a residential structure to exceed thirty (30) feet at any point;
- The Beach shall be preserved for public beach recreation. No permanent structures, with the exception of bikeways, walkways and restrooms shall be permitted on the beach;

The City submitted a map of the walk streets as coastal view and access corridors. These walk streets are perpendicular to the Strand, the paved beach-fronting walkway. (Exhibit 8)

The Commission, in reviewing the LIP change must find it is consistent with and adequate to carry out the certified Land Use Plan (LUP). The LUP establishes view and access corridors, and establishes height limits. Without the reference to height, view corridors and impacts on these corridors, the Commission can not find the proposed ordinance consistent with the certified LUP.

D. COASTAL ACT ANALYSIS.

1. COASTAL DEVELOPMENT PERMIT REQUIREMENTS.

The proposed ordinance includes the standards listed below, which if followed, qualify a proposed antenna to be issued "Administratively." "Administratively" means at the discretion of the city staff, without public notice or hearing. The City staff explains that these standards are for locally issued antenna permits only. If a coastal development permit is required, an additional finding is required that the project conforms to the certified LCP. However, If a Coastal development permit were required, there are no specifically identified coastal standards. Nor are there provisions for hearings on coastal development permits that would be appealable to the Commission. The city staff states that the standards are open-ended because flexibility is needed in evaluating these structures. If a coastal development permit is required, an additional finding is required that the project conforms to the certified LCP. By submitting this amendment, the City is requesting that the above standards for antenna permits be incorporated into the Local Implementation Plan (LIP.)

The City staff contends: (1) Small antennas are not development as defined in 30106; (2) Federal law preempts the City from holding hearings or noticing antenna permits for smaller antennas and discourages them from "delay" in considering larger antennas; (3) it is not the City's intention to process coastal development permits for antennas issued administratively; (4) Coastal permits will issue for antennas considered as conditional use permits because the city ordinance automatically requires a coastal development permit when a conditional use permit is required.

As stated above, within the appeal area, amateur radio masts, antennas that are attached to existing structures located within 300 feet of the beach which also add more than 10% to the height of a structure, and freestanding antennas or wireless facilities do require coastal development permits, unless exempted by Federal Law.

However, it is unclear in the language of the ordinance when antennas that would require conditional use permits would also require coastal developments permits. In addition, for proposed development between the first road and the sea, the proposed ordinance does not require that development conform with both the certified local coastal program and the public access and recreation policies of Chapter 3 of the Coastal Act as part of its approval of a coastal development permit.

The proposed ordinance does not specify when coastal development permits are required. The ordinance discusses only when antenna permits are required and does not discuss the relationship between chapter A.96 (the city's coastal development permit ordinance) and chapter A.130 (Wireless Service Facilities and Antennas). Since the proposed ordinance does not require coastal development permits for antennas which are not exempted by either the Coastal Act or Federal Law, the ordinance is inconsistent with and inadequate to carry out the certified LUP. Finally, as noted above, the ordinance asserts jurisdiction over some antennas which are preempted by federal requirements. Therefore, the proposed ordinance must be rejected as submitted.

2. ALLOWABLE LAND USE.

The City proposes allowing personal TV antennas in single family and multiple family residential zones and commercial facilities in commercial zones. The land uses adjacent to the beach, where coastal development permits will be required, are predominately residential with the exception of a small node of commercial development located on Manhattan Avenue and Manhattan Beach Boulevard. The City does not propose to allow such antennas on the beach, or in the open space zone. Since these uses would be appurtenant to residential and commercial uses, this portion of the proposed ordinance is consistent with the designations of the certified LUP.

3, PROTECTION OF COMMUNITY CHARACTER.

The Coastal Act requires that development shall be consistent with the character and scale of communities in the Coastal Zone. Manhattan Beach, along with other Cities, is faced with regulating communications devices which can be installed in an obtrusive manner and which can extend up over the roofline of houses. The certified LUP requires the City to protect the scale and visual quality of the City, to restrict the height and control the scale of development in commercial and residential areas,

The certified Land Use Plan (LUP) establishes policies noted above that might be used to analyze impacts of development that might have impacts on views or

public access. The City submitted a map of the walk streets as coastal view and access corridors. These walk streets are perpendicular to the Strand, the paved beach-fronting walkway.

The Commission, in reviewing the LIP change must find it is consistent with and adequate to carry out the certified Land Use Plan (LUP). The LUP establishes view and access corridors, and establishes height limits. Without the reference to height, view corridors and impacts on these corridors, the Commission can not find the proposed standards consistent with the certified LUP.

Therefore, the proposed ordinance must be rejected as submitted.

IV. FINDINGS FOR APPROVAL IF MODIFIED.

The proposed ordinance must be denied insofar as it refers to the issuance of antenna permits within the coastal zone. Instead, the Commission suggests that the City utilize its proposed antenna ordinance outside the Coastal Zone and adopt a new ordinance addressing the regulation of antennas in the City's Coastal Zone under the City's Coastal Development Permit process. The revised ordinance would take into account federal preemption and would indicate that even though many antennas do not require permits because they are exempt as additions to existing buildings, others, that are located within 300 feet of the beach do require coastal development permits.

The Commission adopts the following suggested modifications.

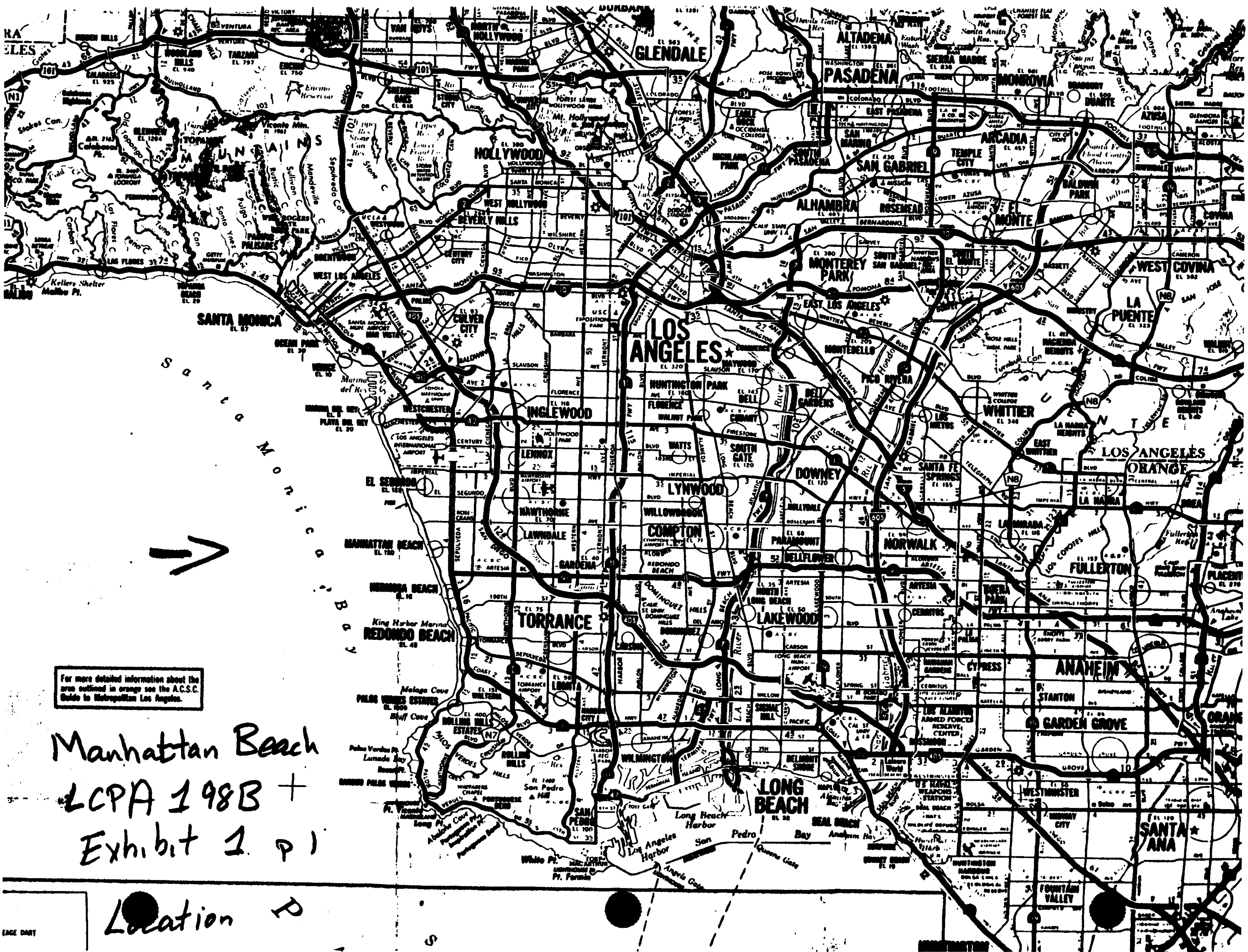
1) Modifications to procedures and standards addressing to amateur radio antennas. The Commission suggests modifications that would require a coastal development permit for the construction, maintenance and placement of amateur radio antennas consistent with specified requirements. However, the suggested modifications also clarify that the radio antennas shall comply with the requirements only to the extent such requirements do not restrict the effectiveness of the amateur radio.

2) Modifications to procedures and standards addressing satellite dishes less than one meter in diameter. The Commission suggests modifications which eliminate the permit requirements for satellite antennas smaller than one meter in diameter, used to receive video programming, which are placed on property owned or within the exclusive control of the user where the user has a direct or indirect ownership interest in the property. Unlike the City's proposal, and consistent with the federal law, the modifications only exempt from permit requirements antennas small than one meter on masts not exceeding 12 feet in height above the roofline.

3) Modifications to procedures and standards addressing satellite dishes larger than one meter in diameter. The Commission suggests modifications which incorporate the design standards previously adopted by the City to minimize impacts on height by camouflaging increases in height. The suggested modifications require that antennas be located outside these public areas such as public beach and walk streets. The suggested modifications also require an antenna user to place an antenna in a location where it will not impact public views to the ocean.

4) Modifications to procedures and standards addressing wireless facilities. The Commission suggests modifications that incorporate the design standards previously adopted by the City and standards confining the use to commercial zone, again previously proposed by the City. The suggested standards would minimize impacts on height by camouflaging increases in height. The suggested modifications also require that wireless service facilities be located outside public areas such as the public beach and walkstreets. And be placed in a location where they will not impact public views to the ocean. However, the suggested modifications clarify that the wireless service facility shall comply with the identified requirements only to the extent such requirements (1) do not unreasonably discriminate among providers or (20 have the effect of prohibiting the provision of personal wireless services within the City of Manhattan Beach.

As modified the LIP will be consistent with and adequate the carry out the certified LUP.



Manhattan Beach
LCPA 198B
Exhibit 1 p1

Location

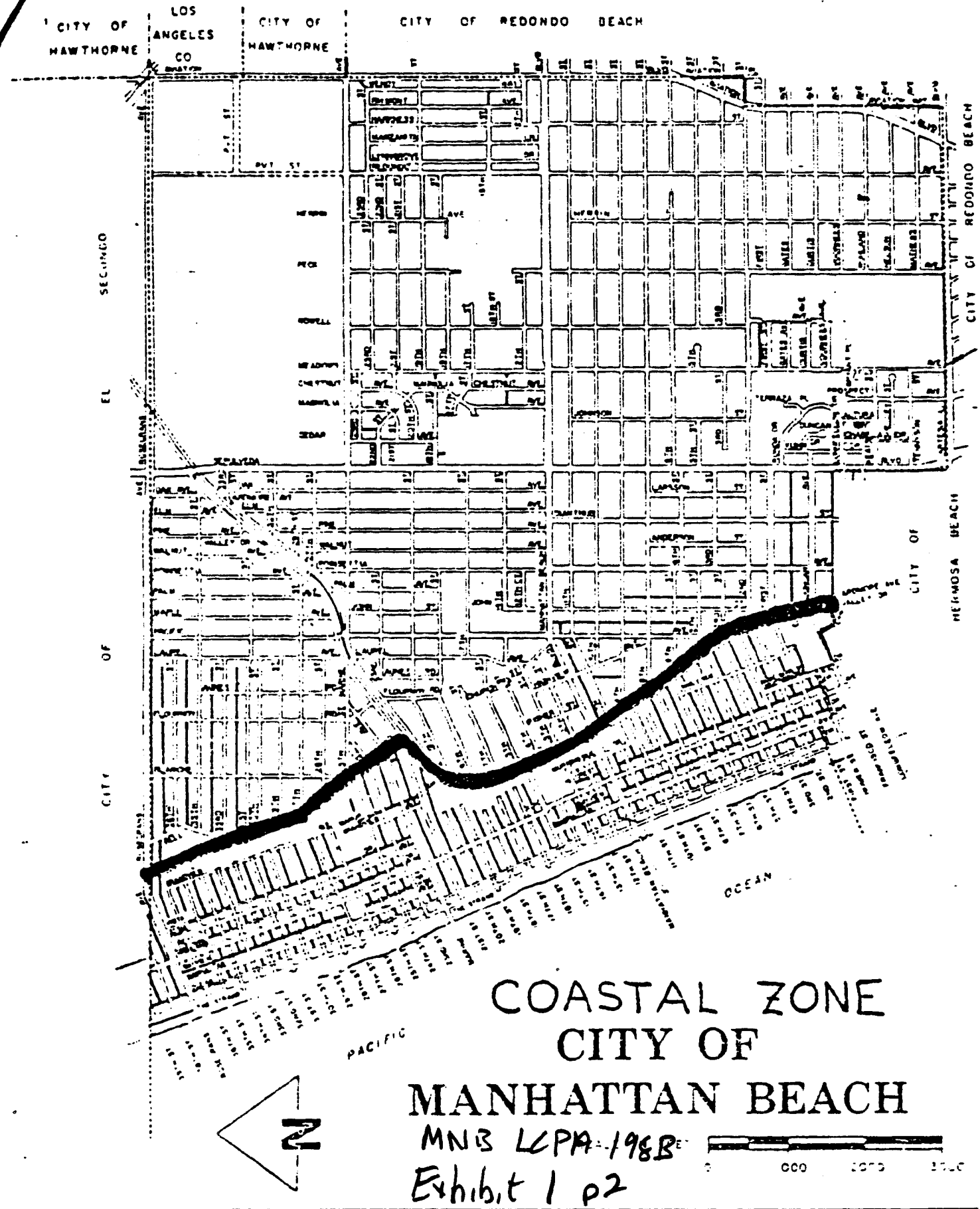


Figure 1., Manhattan Beach Coastal Zone

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 545-5621 FAX (310) 545-9322 TDD (310) 546-3501

February 5, 1998

Charles Damm, Regional Director
California Coastal Commission
South Coast Area
200 Oceangate - Suite 1000
Long Beach, CA 90802

Subject: Proposed Local Coastal Program Amendments

The City of Manhattan Beach respectfully submits the enclosed amendments to the Implementation Program of the City's Local Coastal Program for Commission consideration. The proposed amendments are presented on two Ordinances. Ordinance 1977 (attached as Exhibit 3) amends residential fence height requirements and clarifies warehouse/retail parking standards. Ordinance 1978 (attached as Exhibit 4) addresses wireless communication facilities, amateur radio and microwave dish antennas. Early consultation with Commission staff classified Ordinance 1977 as de minimis. It is the City's desire to also have Ordinance 1978 processed de minimisly on the basis that the proposed amendments do not have an impact on coastal resources, involve any changes in existing or proposed use of land or water and are consistent with the policies of Chapter 3 of the Coastal Act.

In the event the Commission determines Ordinance 1978 does not qualify for the streamlined procedure, staff has made ever effort to satisfy all of the procedural requirements necessary for de minimis and minor/major amendment processing. To this end, staff has included pertinent staff reports, resolutions, agenda minutes, notices and correspondence.

To further understand the events leading up to this submittal, a chronology of the process has been prepared and is attached as Exhibit 1. Should the Commission require additional information, or if you have any questions, please do not hesitate to contact me at (310) 545-5621, Extension 291.

Sincerely,

Richard Thompson, Director
Community Development Department

Exhibit 2
p1

Fire Department Address: 400 15th Street, Manhattan Beach, CA 90266 FAX (310) 545-8925
Police Department Address: 420 15th Street, Manhattan Beach, CA 90266 FAX (310) 545-7707
Public Works Department Address: 3621 Bell Avenue, Manhattan Beach, CA 90266 FAX (310) 546-1752
City of Manhattan Beach Web Site: http://www.ci.manhattan-beach.ca.us

RESOLUTION NO. 5373

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, SUBMITTING ORDINANCE NO. 1977 AND 1978 TO THE CALIFORNIA COASTAL COMMISSION FOR AMENDMENT OF SECTIONS A.04.030, A.08.050, A.12.030 A.60.130 AND A.64.030 OF THE CITY OF MANHATTAN BEACH LOCAL COASTAL PROGRAM (LCP) - IMPLEMENTATION PROGRAM

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

A. The City Council of the City of Manhattan Beach conducted a public hearing, pursuant to applicable law, on January 20, 1998, to consider the proposed amendments to the City of Manhattan Beach Local Coastal Program (LCP) - Implementation Program.

B. The City Council approved the proposed amendments at the hearing of January 20, 1998.

C. Ordinance No. 1977 and 1978 were adopted on February 3, 1998, and became effective on March 3, 1998.

D. An Initial Study was prepared in accordance with the California Environmental Quality Act (CEQA), as implemented by the City of Manhattan Beach CEQA Guidelines, for Sections A.04.030, A.08.050, A.60.130 and A.64.030 concerning warehouse/retail parking and wireless service facilities, finding that the proposed project will not have a significant impact upon the environment, nor individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

E. Based upon the Initial Study and the finding of no significant impact, a proposed Negative Declaration has been prepared in accordance with CEQA, and the City of Manhattan Beach CEQA Guidelines. No mitigation measures are required by the Negative Declaration.

F. No Initial Study was prepared for Section A.12.030 concerning residential fence height requirements, as the proposal is exempt from the requirements of the California Environmental Quality Act, pursuant to Section 15061 (b)(3) of the CEQA Guidelines, due to the determination that it is certain that it has no potential for causing a significant effect on the environment.

G. The subject amendments are consistent with all applicable procedures and policies of the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Coastal Program.

H. The proposal involves an amendment to the City of Manhattan Beach Local Coastal Program (LCP) - Implementation Program, adopted by the City Council on February 3, 1998, as Ordinance No. 1977 and 1978.

I. The City Council certifies that the subject amendments will be implemented in a manner fully in conformity with the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Coastal Program.

SECTION 2. Pursuant to Government Code Section 65907 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this

EXHIBIT 2
RESO. 5373

decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 3. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED, and ADOPTED this 3rd day of February, 1998.

Ayes: Jones, Napolitano, Wilson, Lilligren, Mayor Cunningham
Noes: None
Absent: None
Abstain: None

/s/ Jack Cunningham
Mayor, City of Manhattan Beach, California

ATTEST:

/s/ Liza Tamura
City Clerk

CITY OF MANHATTAN BEACH CALIFORNIA

Certified to be a true copy of the original of said document on file in my office.

City Clerk of the City of Manhattan Beach, California

Exhibit 2
p3

ORDINANCE NO. 1978

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING AMENDMENTS TO THE MANHATTAN MUNICIPAL CODE TITLE 10 (ZONING ORDINANCE) AND THE IMPLEMENTATION PROGRAM OF THE LOCAL COASTAL PROGRAM PERTAINING TO WIRELESS COMMUNICATION FACILITIES, AMATEUR RADIO ANTENNAS AND MICROWAVE EQUIPMENT

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

A. The Planning Commission conducted a public hearing pursuant to applicable law to consider amendments to Section 10.60.130 of Title 10 of the Manhattan Beach Municipal Code and Section A.60.130 of the Implementation Program of the Local Coastal Program.
B. The public hearing was advertised pursuant to applicable law, testimony was invited and received on November 12, 1997.
C. An Initial Study was prepared in accordance with the California Environmental Quality Act (CEQA), as implemented by the City of Manhattan Beach CEQA Guidelines, finding that the proposed project will not have a significant impact upon the environment, nor individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
D. Based upon the Initial Study and the finding of no significant impact, a proposed Negative Declaration has been prepared in accordance with CEQA, and the City of Manhattan Beach CEQA Guidelines. No mitigation measures are required by the Negative Declaration.
E. The proposed amendments are consistent with the goals and policies of the City's General Plan and Local Coastal Program and with the purposes of Title 10 (Zoning Ordinance) of the Manhattan Beach Municipal Code.
F. The proposed amendments are consistent with the policies of Chapter 3 of the Coastal Act, will not have an impact either individually or cumulatively on coastal resources, and do not involve any change in existing or proposed use of land or water.

SECTION 2. The City Council hereby certifies the Negative Declaration prepared for the subject amendment.

The Planning Commission of the City of Manhattan Beach hereby recommends approval of the subject amendments to the Manhattan Beach Municipal Code and the Local Coastal Program as follows:

SECTION 3. Amend Section 10.60.130 of Title 10 of the Manhattan Beach Municipal Code and Section A.60.130 of the Implementation Program of the Local Coastal Program in its entirety, as follows:

10.60.130 / A.60.130 Wireless Service Facilities, Amateur Radio and Satellite Dish Antennas

A. Purpose. To establish procedures and regulations for processing wireless service facility applications in all non-residential areas and to create consistency between federal legislation and local ordinances regarding amateur radio and satellite dish antennas. The intent of these regulations is to protect the public health, safety and general welfare while ensuring fairness and reasonable permit processing time.

EXHIBIT 3
ORD. 1978

B. Permit Required. An Antenna permit shall be required for the construction, modification and placement of all Federal Communication Commission (FCC) regulated amateur radio and satellite dish antennas in all districts and all wireless service facilities, including but not limited to, common carrier wireless exchange access services, unlicensed wireless services and commercial mobile services (i.e., cellular, personal communication services (PCS), specialized mobile radio (SMR) and paging services). Wireless service facilities shall only be permitted in non-residential zoning districts.

Exceptions: An Antenna permit shall not be required for the construction, modification and placement of any satellite dish antenna measuring one meter or less in diameter designed to receive direct broadcast satellite service, including direct-to-home satellite service and multi-channel multi-point distribution services (MMDS) on masts not exceeding 12 feet in height.

C. Amateur Radio Antennas. Amateur radio antennas associated with the authorized operations of an amateur radio station licensed by the FCC (i.e. "HAM" radio transmission) shall be permitted in any district and administratively reviewed provided the structure complies with the following requirements.

1. No portion of the antenna structure shall be located in any required yard and must maintain at least five (5) feet clear from any property line (including support cables).
2. No portion of the antenna structure may exceed a height of sixty (60) feet above finished ground level grade.
3. Construction of such antenna shall be subject to the provisions [redacted] Chapter 1 of Title 9 of the Manhattan Beach Municipal Code.

Upon demonstration by the applicant that the above requirements prevent the possibility of receiving a signal of acceptable quality, an applicant may, through the appeal procedure specified in Chapter 10.100 of Title 10 of the Manhattan Beach Municipal Code, request relief from the requirements of this section from the Planning Commission.

D. Wireless Service Facilities and Satellite Dish Antenna Regulations. Antennae permit applications shall be processed either administratively or shall require a use permit as follows:

1. Administrative Review. Applications for satellite dish antennas and roof, wall or similarly mounted wireless service facilities including modification to existing monopole structures, successfully integrated with the natural or built environment, may be administratively approved if the proposal is in compliance with the following applicable standards:

   a. The proposed facility shall comply with all applicable development standards of the base district in which it is located.
   b. Roof, wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened on all sides to the satisfaction of the Director of Community Development. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and vegetation. [redacted]

MNBLCPA 198B

Exhibit 3a2

c. Requests for collocation on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, may be administratively approved if aesthetically acceptable, structurally and technologically feasible.
d. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are not highly visible from surrounding uses.
e. No signage or advertisement shall be permitted except for required public safety signs.
f. Exterior facility lighting and fencing shall not be permitted unless required by federal regulations or by the Director of Community Development for safety purposes.

2. Use Permit Review. A use permit shall be required pursuant to Chapter 10.84 for the construction, modification or placement of all satellite dish antennas and wireless service facilities not previously exempted or that fail to comply with the administrative standards listed above. In addition to Chapter 10.84 / A.84, the Planning Commission must make the following findings to approve an Antenna permit:

a. The proposed antenna and associated equipment blends into the surrounding environment, or provides adequate concealment through architecturally integrated elements.
b. Where screening potential is low, innovative designs have been incorporated to reduce the visual impact.
d. The applicant has demonstrated good faith to collocate on existing facilities or sites.
e. The impact on surrounding residential views has been considered.

3. Submittal Requirements. The following material shall be submitted with an application request for an Antenna permit:

a. Site Plan and Vicinity Map
b. Elevation drawings and floor plans (survey may be required).
c. An updated Wireless Master Plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable.
d. Color renderings, or photographs showing the existing and proposed site conditions.
e. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, which quantifies the project's radiofrequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable.
f. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations.

For projects requiring a use permit, documentation demonstrating compliance with the findings in Section D2 above and additional

MNB 19B
exhibit 3, p3

submittal information and material identified in Chapter 10.84 / A.84 (including an application form, notification packet environmental information form, etc.), shall also be provided.

E. Abandonment. Any antenna structure and related equipment regulated by this Chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed abandonment and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68 "Public Nuisances-Premises" of the Manhattan Beach Municipal Code.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. This notice shall be published by one insertion in *The Beach Reporter*, the official newspaper of the City, and this ordinance shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

SECTION 6. The City Clerk shall certify to the adoption of this ordinance; shall cause the same to be entered in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted; and shall within fifteen (15) days after the passage and adoption thereof cause the same to be published by one insertion in *The Beach Reporter*, the official newspaper of the City and a weekly newspaper of general circulation, published and circulated within the City of Manhattan Beach hereby designated for that purpose.

PASSED, APPROVED, and ADOPTED this 3rd day of February, 1998.

Ayes: Jones, Napolitano, Wilson, Lilligren, Mayor Cunningham
Noes: None
Absent: None
Abstain: None

/s/ Jack Cunningham
Mayor, City of Manhattan Beach, California

ATTEST:

/s/ Liza Tamura
City Clerk

Certified to be a true copy of said document on file in my office.
City Clerk of the City of Manhattan Beach

Certified to be a true copy of the original of said document on file in my office.
City Clerk of the City of Manhattan Beach, California

MNB 198 Exhibit 3p 4

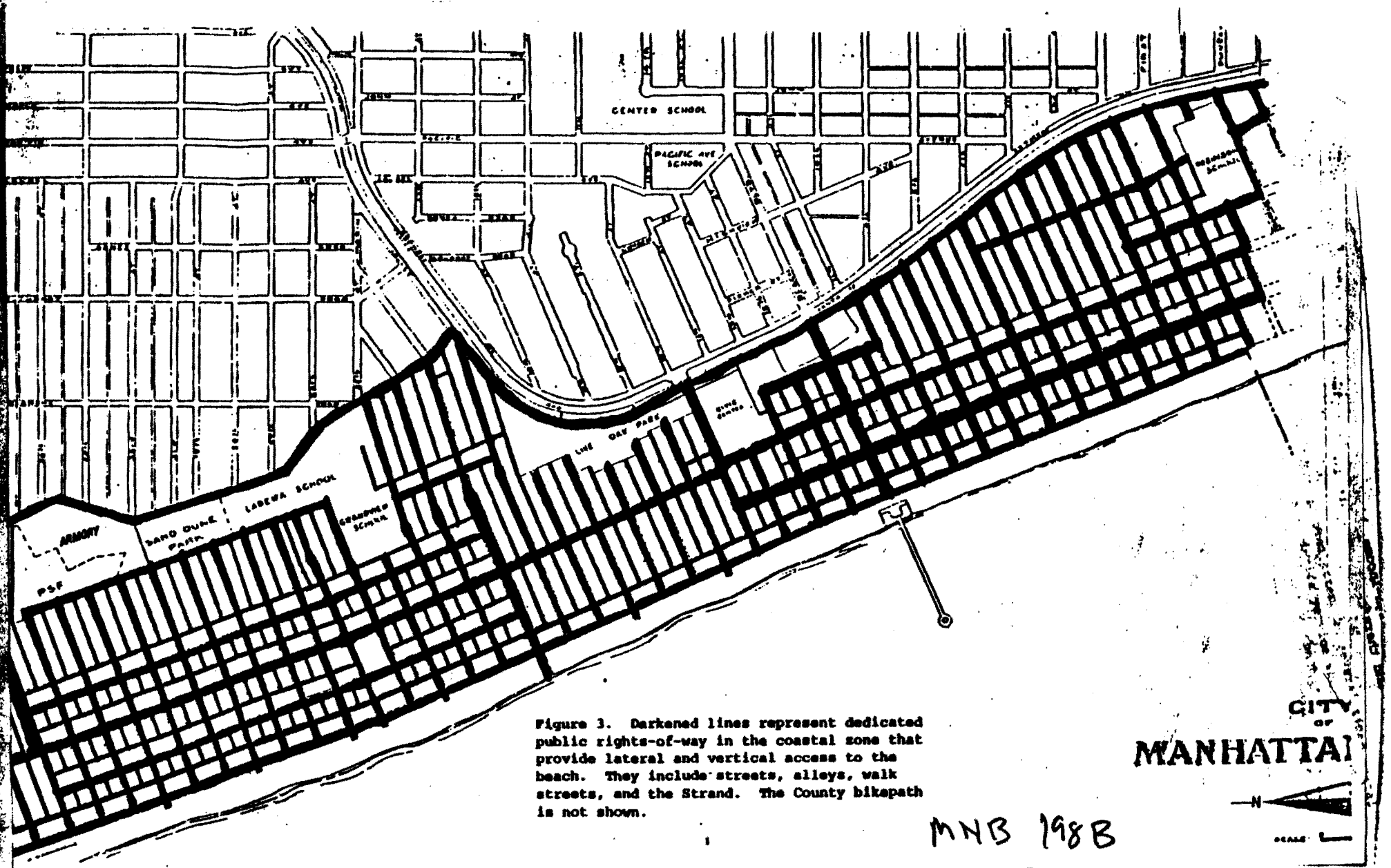
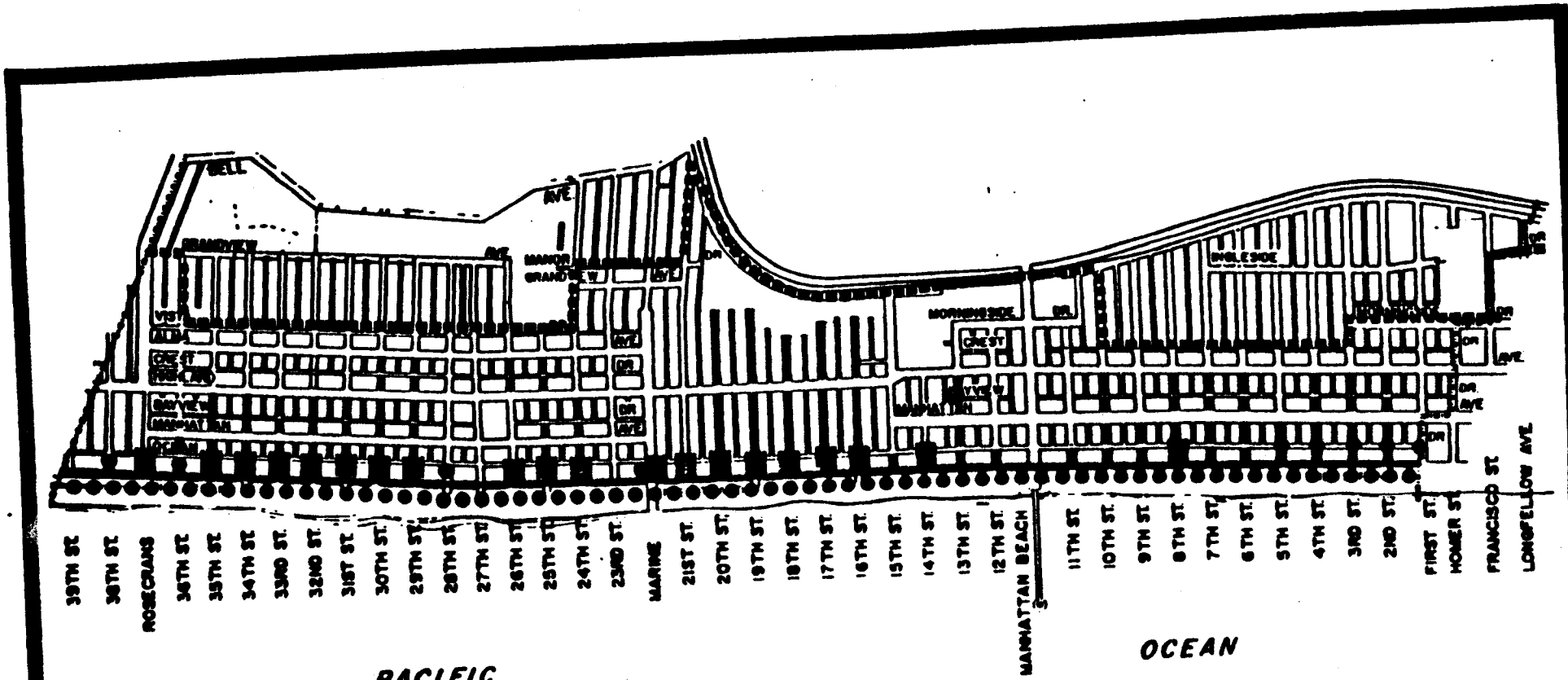


Figure 3. Darkened lines represent dedicated public rights-of-way in the coastal zone that provide lateral and vertical access to the beach. They include streets, alleys, walk streets, and the Strand. The County bikepath is not shown.

MNB 198B

Exhibit 5 pt



Walk Streets & Beach Access

Walk Streets within Coastal Zone

Bicycle Path

Bicycle Ramp

Stairs to Beach

Exhibit 5
MNB LCPA 1-98 B
Access / view corridors & LUP

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 545-5621 FAX (310) 545-5234 TDD (310) 546-3501

March 11, 1998

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

RE: City of Manhattan Beach LCPA 1-98

Dear Ms Emerson,

I've had an opportunity to review the suggested modifications for the subject amendment and have two comments for your consideration.

Proposed Retail Parking Amendment (Clarification)
This amendment was created to clarify existing language in the City's Zoning Code. It was intended to address large retail establishments that have a tendency to locate along Sepulveda Boulevard, a primary commercial boulevard outside of the coastal zone. By amending the LCP, the City was attempting to maintain a certain degree of consistency between those two land use documents. However, given the concerns raised by the Coastal Commission staff (particularly regarding the former Metlox pottery site), the City suggests the Commission disregard the proposed parking amendment and proceed with the fence amendment as submitted.

Wireless Service Facilities Amendment
The proposed language added to the "Exceptions" section of the amendment appears to be in conflict with the Telecommunications Act of 1996. The exceptions provided in the proposed ordinance specifically address 1 (one) meter diameter dishes, which according to the Federal Communication Commission Fact Sheet (attached – 4 pages), prohibits restrictions that unreasonably delay, prevent use, increase cost, or precludes a subscriber from receiving an acceptable quality of signal for any of the exempted dishes. As illustrated below, the proposed modifications could delay and significantly increase the cost to a subscriber if s/he chooses to erect one of these dishes.

Suppose a property owner within the appealable area of the City's Coastal Zone, decided to attach to the roof of his/her three story house, a one meter dish supported by a 12 foot mast, that property owner, according to one interpretation of the A.96.050 regulations, would be required to obtain a coastal permit. At best the owner would pay $112 for a coastal permit and be subject to a processing time of a minimum of 30 days. It seems a fairly good argument could be made that the fees and processing time unreasonably delay the subscribers right to construct the structure.

Exhibit 6

At worst, a coastal permit would be reviewed subject to subsections C through E of the submitted Ordinance (if retained should read subsections D and E; C applies to amateur radio antennas which are not exempt). Subsection D establishes the guidelines for administrative and use permit review. Such an antenna would not be administratively reviewed because it would exceed the base district height limit of 30 feet. Therefore a use permit would be required. Use permits cost $2,146 plus the coastal permit fee of $112 and an environmental review fee of $112, or $2,370. The processing time of such a permit, including the required Coastal Commission appeal period, would take several months and could conceivably be denied.

If the latter is correct, it seems that the proposed language would clearly violate federal legislation regarding these exempted antenna structures. Let me know what you think. I'd hate to put the City in a position were we are unable to enforce portions of the LCP, or subject the City to a potential lawsuit.

Sincerely,

Jonathan Lait, Assistant Planner
Community Development Department

Exhibit 6 p 2

Manhattan LCPA-198B Exhibit 7 Federal rule on radio antennas

Citation Found Document Rank 1 of 1 Database
101 F.C.C.2d 952 FCOM-FCC
58 Rad. Reg. 2d (P & F) 1452, 1985 WL 260421 (F.C.C.)

Amateur Operator
Amateur Radio Service
Antenna, Structure
Antenna, Tower

By declaratory ruling, Commission announced a limited preemption of state and local regulations governing amateur installations. The Commission said that there is a strong federal interest in promoting amateur communications and that state and local regulations that preclude amateur communications are in direct conflict with federal objectives and must be preempted.

--Amateur Radio Preemption

FCC 85-506

In the Matter of
Federal preemption of state and local regulations pertaining to Amateur radio facilities.

PRB-1

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985; Released: September 19, 1985
BY THE COMMISSION: COMMISSIONER RIVERA NOT PARTICIPATING.

Background

1. On July 16, 1984, the American Radio Relay League, Inc. (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective, reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter [FN1] With extension, comments were due on or before December 26, 1984 [FN2], with reply comments due on or before January 25, 1985. [FN3] Over sixteen hundred comments were filed.

Manhattan LCPA 198B Exhibit 7 p1

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some amateur antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions--anti-climb devices on towers or fences around them; minimum

MNBLCPA 1-98B Exhibit 7 p2

distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition # 2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

MNBLCPA 1-98B Exhibit 7p3

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of free speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (televisions, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS) [FN4], Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments

MNB LCPA 1-98B Exhibit 7 p4

In support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.

We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of that regulation on Federal goals. Its position is that Federal preemption is warranted whenever local governmental regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment.

MNB LCPA 1-98B Exhibit 7 p5

Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied.

A blanket ruling to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to ... legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a 'national policy'. However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as 'liveable' neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of these antennas.

... the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the

MNB LCPA 1-98B Exhibit 7p6

tate and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See Fidelity Federal Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," Florida Lime & ocado Growers, Inc. v. Paul, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of full purposes and objectives of Congress," Hines v. Davidowitz, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes. Fidelity Federal Savings & Loan Association v. de la Cuesta, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of viewpoint as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the gitimate interests of local governments in regulating local zoning matters.

MNB LCPA 198B Exhibit 7

The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in Earth Satellite Communications, Inc., 95 FCC 2d 1223 (1983), we recognized that

... countervailing state interests inhere in the present situation ... For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. [FN5] Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the Amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local

MNB LCPA 1-98B Exhibit 7 p8

government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. [FN6]

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and, in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO, Secretary

FN1. Public Notice, August 30, 1984, Mimeo. No. 6299, 49 F.R. 36113, September 14, 1984.

FN2. Public Notice, December 19, 1984, Mimeo No. 1498.

FN3. Order, November 8, 1984, Mimeo. No. 770.

FN4. MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.

FN5. 47 CFR Part 97.

FN6. We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.

FCC
101 F.C.C.2d 952, 58 Rad. Reg. 2d (P & F) 1452, 1985 WL 260421 (F.C.C.)
END OF DOCUMENT

MNPLCPH 1-98B Exhibit 7 P9

MB 1-98B Exhibit 8 Federal regulations Satellite antennas less than one meter

47 CFR s 1.4000
47 C.F.R. § 1.4000

CODE OF FEDERAL REGULATIONS
TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER A--GENERAL
PART 1--PRACTICE AND PROCEDURE
SUBPART S--PREEMPTION OF RESTRICTIONS THAT "IMPAIR" A VIEWER'S ABILITY TO RECEIVE TELEVISION BROADCAST SIGNALS, DIRECT BROADCAST SATELLITE SERVICES OR MULTICHANNEL MULTIPOINT DISTRIBUTION SERVICES

Current through March 2, 1999; 64 FR 10194

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

(i) An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska;

(ii) An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is designed to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii) or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance or use,

(ii) Unreasonably increases the cost of installation, maintenance or use, or

(iii) Precludes reception of an acceptable quality signal.

(3) Any fee or cost imposed on a viewer by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (c) or (d) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (c) or (d) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a viewer, the viewer shall be granted at least a 21-day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the viewer if the viewer complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the viewer's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users,

Manhattan Beach LCPA 1-98B Exhibit 8 p1

and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraph (b)(1) or (b) (2) of this section.

(c) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3. Waiver requests must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under § 1.2, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(e) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(f) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(g) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th St. S.W., Washington, D.C. 20554, Attention: Cable Services Bureau. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, D.C. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

[63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998]

<< SUBPART S--PREEMPTION OF RESTRICTIONS THAT "IMPAIR" A VIEWER'S

Satellite antenna

FEDERAL COMMUNICATIONS COMMISSION

FACT SHEET

January 1999

Over-the-Air Reception Devices Rule

Preemption of Restrictions on Placement of Direct Broadcast Satellite, Multichannel Multipoint Distribution Service, and Television Broadcast Antennas

Quick Links to Document Sections Below

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multichannel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS").

The rule is cited as 47 C.F.R. Section 1.4000 and has been in effect since October 14, 1996. It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to- home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

The rule applies to viewers who place video antennas on property that they own and that is within their exclusive use or control, including condominium owners and cooperative owners who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair, as well as restrictions needed for safety or historic preservation. In addition, under some circumstances, the availability of a central or common antenna can be used by a community association or landlord to restrict the installation of individual antennas. In addition, the rule does not apply to common areas that are owned by a landlord, a community association, or jointly by condominium or cooperative owners. Therefore, restrictions on antennas installed in common areas are enforceable.

On November 20, 1998, the Commission amended the rule so that it will also apply to rental property where the renter has exclusive use, such as a balcony or patio. The effective date of the amended rule is January 22, 1999.

This fact sheet provides general answers to questions that may arise about the implementation of the rule. For further information or a copy of the rule, call the Federal Communications Commission at

MNB LCPA 1988 P3

Exhibit 8

888-CALLFCC (toll free) or (202) 418-7096.

Q: What types of antennas are covered by the rule?

A: The rule applies to the following types of video antennas:

(1) A "dish" antenna that is one meter (39.37") or less in diameter (or any size dish if located in Alaska) and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Such antennas may be mounted on "masts" to reach the height needed to establish line-of-sight contact with the transmitter. Masts higher than 12 feet above the roofline may be subject to local permitting requirements for safety purposes.

(3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local permitting requirements.

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a viewer's ability to install, maintain, or use a video antenna. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a viewer from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

Q: What types of restrictions unreasonably delay or prevent viewers from using an antenna?

A: A local restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also unreasonably delay installation, maintenance or use of an antenna covered by this rule. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible.

Q: What is an unreasonable expense?

A: Any requirement to pay a fee to the local authority for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited. It may also be unreasonable for a local government, community association or landlord to require a viewer to incur additional costs associated with installation. Things to consider in determining the reasonableness of any costs imposed include: (1) the cost of the equipment and services, and (2) whether there are similar requirements for comparable objects, such as air conditioning units or trash receptacles. For example, restrictions cannot require that relatively unobtrusive DBS antennas be screened by expensive landscaping. A requirement to paint an antenna so that it blends into the background against which it is mounted would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

Q: What restrictions prevent a viewer from receiving an acceptable quality signal?

MNB LCPA 1-98 B
Exhibit 8 p 4

A: For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation requiring that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply.

The acceptable quality signal standard is different for devices designed to receive digital signals, such as DBS antennas, digital MMDS antennas and digital television ("DTV") antennas. For these antennas to receive an acceptable quality signal, a DBS antenna or other digital reception antenna covered by the rule must be installed where it has an unobstructed, direct view of the satellite or other device from which video programming service is received. Unlike analog antennas, digital antennas, even in the presence of sufficient over-the-air signal strength, will at times provide no picture or sound unless they are placed and oriented for optimal reception.

Q: Are all restrictions prohibited?

A: No, many restrictions are permitted. Clearly-defined, legitimate safety restrictions are permitted even if they impair installation, maintenance or use because they are necessary to protect public safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes; restrictions requiring that a person not place an antenna within a certain distance from a power line; electrical code requirements to properly ground the antenna; and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. Safety restrictions cannot discriminate between objects that are comparable in size and weight and pose the same or a similar safety risk as the antenna that is being restricted. The safety restriction also cannot impose a more burdensome requirement than is needed to ensure safety.

Restrictions necessary for historic preservation may also be permitted even if they impair installation, maintenance or use of the antenna. To qualify for this exemption, the property may be any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places. In addition, restrictions necessary for historic preservation must be no more burdensome than necessary to accomplish the historic preservation goal. They must also be imposed and enforced in a non-discriminatory manner, as compared to other modern structures that are comparable in size and weight and to which local regulation would normally apply.

Q: Whose antenna restrictions are prohibited?

A: The rule applies to restrictions imposed by local governments, including zoning, land-use or building regulations; by homeowner, townhome, condominium or cooperative association rules, including deed restrictions, covenants, by-laws and similar restrictions; and by manufactured housing (mobile home) park owners and landlords, including lease restrictions. The rule only applies to restrictions on property where the viewer has an ownership or leasehold interest and exclusive use or control.

Q: If I live in a condominium or an apartment building, does this rule apply to me?

A: The rule applies to viewers who live in a multiple dwelling unit building, such as a condominium or apartment building, if the viewer has an exclusive use area in which to install the antenna.

MNB LCPA 1-98
Exhibit 8 p 5

"Exclusive use" means an area of the property that only you, and persons you permit, may enter and use to the exclusion of other residents. For example, your condominium or apartment may include a balcony, terrace, deck or patio that only you can use, and the rule applies to these areas. The rule does not apply to common areas, such as the roof, the hallways, the walkways or the exterior walls of a condominium or apartment building. Restrictions on antennas installed in these common areas are not covered by the Commission's rule.

Q: Does the fact that management or the association has the right to enter these areas mean that the resident does not have exclusive use?

A: No. The fact that the building management or the association may enter an area for the purpose of inspection and/or repair does not mean that the resident does not have exclusive use of that area. Likewise, if the landlord or association regulates other uses of the exclusive use area (e.g., banning grills on balconies), that does not affect the viewer's rights under the Commission's rule. This rule permits persons to install video antennas on property over which the person has *either* exclusive use *or* exclusive control. Note, too, that nothing in this rule changes the landlord's or association's right to regulate use of exclusive use areas for other purposes. For example, if the lease prohibits antennas and flags on balconies, only the prohibition of antennas is eliminated by this rule; flags would still be prohibited.

Q: Does the rule apply to residents of rental property?

A: Yes. The Commission recently amended the rule, and the effective date of the amendment is January 22, 1999. When the amendment takes effect, renters may install video antennas within their leasehold, which means inside the dwelling or on outdoor areas that are part of the tenant's rented space and which are under the exclusive use or control of the tenant. Typically, for apartments, these areas include balconies, balcony railings, and terraces. For rented single family homes or manufactured homes which sit on rented property, these areas include the home itself and patios, yards, gardens or other similar areas. If renters do not have access to these outside areas, the tenant may install the video antenna inside the rental unit. Renters are not required to obtain the consent of the landlord prior to installing a video antenna in these areas. The rule does not apply to common areas, such as the roof or the exterior walls of an apartment building.

Q: Are there restrictions that may be placed on residents of rental property?

A: Yes. A restriction necessary to prevent damage to leased property may be reasonable. For example, tenants could be prohibited from drilling holes through exterior walls or through the roof. However, a restriction designed to prevent ordinary wear and tear (*e.g.*, marks, scratches, and minor damage to carpets, walls and draperies) would likely not be reasonable.

In addition, rental property is subject to the same protection and exceptions to the rule as owned property. Thus, a landlord may impose other types of restrictions that do not impair installation, maintenance or use under the rule. The landlord may also impose restrictions necessary for safety or historic preservation.

Q: If I live in a condominium, cooperative, or other type of residence where certain areas have been designated as "common," do these rules apply to me?

A: No, not if the only place you can install an antenna is on a common area, such as a walkway, hallway, community garden, exterior wall or the roof. However, a resident of these types of buildings may install the video antenna on a balcony, deck, patio, or other area where the individual resident has exclusive use.

Q: If my association, building management, landlord, or property owner provides a central antenna for video programming, may I install an individual video antenna?

MNB LCPA 1-98B PB
Exhibit 8

A: Generally, the availability of a central antenna may allow the association, landlord, property owner, or other management entity to restrict the installation of video antennas by individuals. Restrictions based on the availability of a central antenna will generally be permissible provided that: (1) the viewer receives the particular video programming service the viewer desires and could receive with an individual antenna (*e.g.*, the viewer would be entitled to receive service from a specific DBS provider, not simply a DBS provider selected by the association); (2) the video reception in the viewer's home using the central antenna is as good as, or better than, than the quality the viewer could receive with an individual antenna; (3) the costs associated with the use of the central antenna are not greater than the costs of installation, maintenance and use of an individual antenna; and (4) the requirement to use the central antenna instead of an individual antenna does not unreasonably delay the viewer's ability to receive video programming.

Q: May the association, landlord, building management or property owner restrict the installation of an individual video antenna because a central antenna will be available in the future?

A: It is not the intent of the Commission to deter or unreasonably delay the installation of individual antennas because a central antenna may become available. However, viewers could be required to remove individual antennas once a central antenna is available if the cost of removal is paid by the landlord or association and the viewer is reimbursed for the value of the antenna. Further, an individual who wants video programming other than that available through the central antenna should not be unreasonably delayed in obtaining the desired programming either through modifications to the central antenna, installation of an additional central antenna, or by using an individual antenna.

Q: I live in a townhome community. Am I covered by the FCC rule?

A: Yes. If you own the whole townhouse, including the walls and the roof and the land under the building, then the rule applies just as it does for a single family home, and you may be able to put the antenna on the roof, the exterior wall, the backyard or any other place that is part of what you own. If the townhouse is a condominium, then the rule applies as it does for any other type of condominium, which means it applies only where you have an exclusive use area. If it is a condominium townhouse, you probably cannot use the roof or the exterior walls unless the condominium association gives you permission.

Q: I live in a condominium with a balcony, but I cannot receive a signal from the satellite because my balcony faces north. Can I use the roof?

A: No. The roof of a condominium is generally a common area, not an area reserved for an individual's exclusive use. If the roof is a common area, you may not use it unless the condominium association gives you permission.

Q: I live in a mobile home that I own but it is located in a park where I rent the lot. Am I covered by the FCC rule?

A: Yes. The rule applies if you install the antenna anywhere on the mobile or manufactured home that is owned by you. Beginning January 22, 1999, the rule will also apply to antennas installed on the lot or pad that you rent, as well as to other areas that are under your exclusive use and control. However, the rule does not apply if you want to install the antenna in a common area or other area outside of what you rent.

Q: I want an antenna to receive a distant television signal. Does the rule apply to me?

A: No. The rule does not apply to television antennas used to receive a distant signal.

MNB LCPR 1988 p7

Q: I want to install an antenna for radio, amateur radio or internet service. Does the rule apply to me?

A: No. The rule only applies to antennas used for video reception. Antennas for AM/FM radio, amateur ("ham") radio or internet are not covered by this rule.

Q: I'm a board member of a homeowners' association, and we want to revise our restrictions so that they will comply with the FCC rule. Do you have guidelines you can send me?

A: We do not have sample guidelines because every community is different. We can send you the rule and the first and second Report and Order and the Order on Reconsideration, which will give you general guidance. Some communities have written restrictions that provide a prioritized list of placement preferences so that residents can see where the association wants them to install the antenna. The residents should comply with the placement preferences provided the preferred placement does not impose unreasonable delay or expense or preclude reception of an acceptable quality signal.

Q: What restrictions are permitted if the antenna must be on a very tall mast to get a signal?

A: If the mast is more than 12 feet above the roof line, the local government, community association or landlord may require you to apply for a permit for safety reasons. If you meet the safety requirements, the permit should be granted.

Q: Does the rule apply to commercial property or only residential property?

A: Nothing in Section 207 or the rule excludes antennas installed on commercial property. The rule applies to property used for commercial purposes in the same way it applies to residential property.

Q: What can a local government, association, or consumer do if there is a dispute over whether a particular restriction is valid?

A: Restrictions that impair installation, maintenance or use of the antennas covered by the rule are preempted (unenforceable) unless they are no more burdensome than necessary for the articulated legitimate safety purpose or for preservation of a designated or eligible historic site or district. If a viewer believes a restriction is preempted, but the local government, community association, or landlord disagrees, either the viewer or the restricting entity may file a Petition for Declaratory Ruling with the FCC or a court of competent jurisdiction. We encourage parties to attempt to resolve disputes prior to filing a petition. Often calling the FCC for information about how the rule works and applies in a particular situation can help to resolve the dispute. If a local government, community association, or landlord acknowledges that its restriction impairs and is preempted under the rule but can demonstrate "highly specialized or unusual" concerns, the restricting entity may apply to the Commission for a waiver of the rule.

Q: What is the procedure for filing a petition or requesting a waiver at the Commission?

A: Petitions for declaratory rulings and waivers must be served on all interested parties. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific viewer, service must be made on that specific viewer. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from

MNB LCPA 1-98 B p 8

Exhibit 8

the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Finally, if a viewer files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the viewer must serve the local government, association or landlord, as appropriate.

All allegations of fact contained in petitions and related pleadings before the Commission must be supported by an affidavit signed by one or more persons who have actual knowledge of such facts. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Cable Services Bureau

Certificates of service and proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached.

Be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions.

Q: Can I continue to use my antenna while the petition or waiver request is pending?

A: Yes, unless the restriction being challenged or for which a waiver is sought is necessary for reasons of safety or historic preservation. Otherwise, the restriction cannot be enforced while the petition is pending.

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the local government, community association, property owner, or management entity that is trying to enforce the restriction has the burden of proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the entity seeking to enforce the restriction to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Can I be fined and required to remove my antenna immediately if the Commission determines that a restriction is valid?

A: You will have a minimum of 21 days to comply with an adverse ruling. If you remove your antenna during this period, in most cases you cannot be fined.

Q: Who do I call if my town, community association or landlord is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (888) CALLFCC (888-225-5322), which is a toll-free number, or 202-418-7096, which is not toll-free. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service or television broadcast station whose service is desired.

Links to Relevant Orders and the Rule

- (First) Report and Order, FCC 96-328, released August 6, 1996: [Text Version | WordPerfect Version]

MNB LCPA 1-98B p. 9

- Order on Reconsideration, FCC 98-214, released September 25, 1998: [WordPerfect | Text]
- Second Report and Order, FCC 98-273, released November 20, 1998: [Text | WordPerfect | Acrobat | News Release and Statements]
- OTARD Rule, 47 C.F.R. Section 1.4000: [Text | Acrobat]

GUIDANCE ON FILING A PETITION

Q: What are the procedural requirements for filing a Petition for Declaratory Ruling or Waiver with the Commission?

A: If you wish to file either a Petition for Declaratory Ruling or a Petition for Waiver pursuant to the Commission's Over-the-Air Reception Devices Rule (47 CFR Section 1.4000), you must file an original and two copies of your Petition on the following address:

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Attn: Cable Services Bureau

Petitions for declaratory rulings and waivers must be served on all interested parties. If you are a viewer, you must serve a copy of the Petition on the entity seeking to enforce the restriction (i.e., the local government, community association or landlord). If you are a local government, community association or landlord, you must serve a copy of the Petition on the residents in the community who currently have or wish to install antennas that will be affected by the restriction your Petition seeks to maintain. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific viewer, service must be made on that specific viewer. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Finally, if a viewer files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the viewer must serve the local government, association or landlord, as appropriate.

An entity seeking to impose or maintain a restriction must include with its petition a proof of service that it has served the affected residents. Similarly, a viewer seeking to challenge the permissibility of a restriction must include with the petition a proof of service that the viewer has served the restricting entity with a copy of the Petition. The proof of service should give the name and address of the parties served, the date served, and the method of service used (*e.g.*, regular mail, personal service, certified mail).

Q: What are the substantive requirements for filing a petition for waiver or declaratory ruling?

A: To file a Petition for Waiver, follow the requirements in Section 1.4000(c) of the rule. The local government, community association or landlord requesting the waiver must demonstrate "local concerns of a highly specialized or unusual nature." The petition must also specify the restriction for which the waiver is sought, or the petition will not be considered.

To file a Petition for Declaratory Ruling, follow the requirements set forth in Section 1.4000(d) of the

MNB LCPA 1-98B p 10

Exhibit 8

rule. Set out the restriction in question so that we can determine whether it is permissible or prohibited under the rule. In a Petition for Declaratory Ruling, the burden of demonstrating that a particular restriction complies with the rule is on the entity seeking to impose the restriction (*e.g.*, the local government, community association or landlord).

While a petition for declaratory ruling or waiver is pending with the Commission or a court, the restriction in question may not be enforced unless it is necessary for safety or historic preservation. No fines or penalties, including attorneys fees, may be imposed by the restricting entity while a petition is pending. If the restriction is found to be permissible, the viewers subject to the ruling will generally have at least 21 days in which to comply before a fine or penalty is imposed.

- FCC -

MNB LCPA 1-98B
Exhibit 8
(antennas less
than one meter)
end. 8

Page ... 11

FCC Regulations on Satellite antennas greater than one meter

Exhibit 9

company, trust, corporation, or other entity which owns or controls, directly or indirectly, or is under direct or indirect common control with, any such carrier.

(b) *Authorized carrier.* (1) Except as provided in paragraph (b)(2) of this section, the term "authorized carrier" means a communications common carrier which is authorized by the Federal Communications Commission under the Communications Act of 1934, as amended, to provide services by means of communications satellites.

(2) For the purposes of subpart H of this part, the term "authorized carrier" means a communications common carrier which is specifically authorized or which is a member of a class of carriers authorized by the Commission to own shares of stock in the corporation.

(c) *Communications satellite corporation.* (1) The terms "communications satellite corporation" or "corporation" as used in this part mean the corporation created pursuant to the provisions of Title III of the Communications Satellite Act of 1962.

(2) The corporation shall be deemed to be a common carrier within the meaning of section 3(h) of the Communications Satellite Act of 1962.

(d) *Communication-satellite earth station complex.* The term communication-satellite earth station complex includes transmitters, receivers, and communications antennas at the earth station site together with the interconnecting terrestrial facilities (cables, lines, or microwave facilities) and modulating and demodulating equipment necessary for processing of traffic received from the terrestrial distribution system(s) prior to transmission via satellite and of traffic received from the satellite prior to transfer of channels of communication to terrestrial distribution system(s).

(e) *Communication-satellite earth station complex functions.* The communication-satellite earth station complex interconnects with terminal equipment of common carriers or authorized entities at the interface; accepts traffic from such entities at the interface, processes for transmission via satellite and performs the transmission function; receives traffic from a satellite or satellites, processes it in a form necessary to deliver channels of communication to terrestrial common carriers or such other authorized entities and delivers the processed traffic to such entities at the interface.

(f) *Interface.* The point of interconnection between two distinct but adjacent communications systems having different functions. The interface in the communication-satellite service is that point where communications terminal equipment of the terrestrial common carriers or other authorized entities interconnects with the terminal equipment of the communication-satellite earth station complex. The interface in the communication-satellite service shall be located at the earth station site, or if this is impracticable, as close thereto as possible.

[26 FR 13037, Dec. 5, 1963, as amended at 31 FR 3289, Mar. 2, 1966]

§25.104 Preemption of local zoning of earth stations.

(a) Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable, except that non-federal regulation of radio frequency emissions is not preempted by this section. For purposes of this paragraph (a), reasonable means that the local regulation:

(1) Has a clearly defined health, safety, or aesthetic objective that is stated in the text of the regulation itself; and

(2) Furthers the stated health, safety or aesthetic objective without unnecessarily burdening the federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

(b)(1) Any state or local zoning, land-use, building, or similar regulation that affects the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally

MAR 1968 Exhibit 9 01

MNB 1988
Exhibit 9 p2

permitted by non-federal land-use regulation shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2) of this section. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e) of this section, or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to paragraph (b)(2) of this section.

(2) Any presumption arising from paragraph (b)(1) of this section may be rebutted upon a showing that the regulation in question:

(i) Is necessary to accomplish a clearly defined health or safety objective that is stated in the text of the regulation itself;

(ii) Is no more burdensome to satellite users than is necessary to achieve the health or safety objective; and

(iii) Is specifically applicable on its face to antennas of the class described in paragraph (b)(1) of this section.

(c) Any person aggrieved by the application or potential application of a state or local zoning or other regulation in violation of paragraph (a) of this section may, after exhausting all nonfederal administrative remedies, file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when:

(1) The petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal and variance procedure has been exhausted;

(2) The petitioner's application for a permit or other authorization required by the state or local authority has been on file for ninety days without final action;

(3) The petitioner has received a permit or other authorization required by the state or local authority that is conditioned upon the petitioner's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install the antenna, greater than the aggregate purchase or total lease cost of the equipment as normally installed; or

(4) A state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.

(d) Procedures regarding filing of petitions requesting declaratory rulings and other related pleadings will be set forth in subsequent Public Notices. All allegations of fact contained in petitions and related pleadings must be supported by affidavit of a person or persons with personal knowledge thereof.

(e) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create a necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

(f) a satellite earth station antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska is covered by the regulations in §1.4000 of this chapter.

[61 FR 10696, Mar. 18, 1996, as amended at 61 FR 46562, Sept. 4, 1996]

EFFECTIVE DATE NOTE: At 61 FR 46562, Sept. 4, 1996, §25.104 was amended by revising paragraph (b)(1) and adding paragraph (f). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Exhibit F p2

Manhattan Beach wireless service facilities

UNITED STATES CODE ANNOTATED
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5--WIRE OR RADIO COMMUNICATION
SUBCHAPTER III--SPECIAL PROVISIONS RELATING TO RADIO
PART I--GENERAL PROVISIONS

Current through P.L. 105-220, approved 8-7-1998

§ 332. Mobile services

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will--

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of Title 5 or section 1342 of Title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that--

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if

MN B LCPA 1.98 B Exhibit 10 p2

such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C.A. § 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C.A. § 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

MNB 1-98B Exhibit 10 p3

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to- home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

MNB LCPA 1-98 B
Exhibit 10

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section--

(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B) of this section; and

(3) the term "private mobile service" means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

CREDIT(S)

1998 Electronic Update

(June 19, 1934, c. 652, Title III, § 332, formerly § 331, as added Sept. 13, 1982, Pub.L. 97-259, Title I, § 120(a), 96 Stat. 1096; renumbered § 332, Oct. 5, 1992, Pub.L. 102-385, § 25(b), 106 Stat. 1502, and amended Aug. 10, 1993, Pub.L. 103-66, Title VI, § 6002(b)(2)(A), 107 Stat. 393; Feb. 8, 1996, Pub.L. 104-104, § 3(d)(2), Title VII, §§ 704(a), 705, 110 Stat. 61, 151, 153.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Act. Senate Report Nos. 97-191 and 97-404, and House Conference Report No. 97-765, see 1982 U.S.Code Cong. and Adm.News, p. 2237.

1992 Acts. Senate Report No. 102-92 and House Conference Report No. 10-862, see U.S. Code Cong. and Adm. News, p. 1133.

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213, see 1993 U.S. Code Cong. and Adm. News, p. 378.

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

Manhattan Beach Exh. 6, t 10
LCPA 1-98B p 5