

Item FR 5e

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
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RECORD PACKET COPY

DATE: September 23, 2004
TO: Commissioners and Interested Persons
FROM: Charles Damm, Senior Deputy Director
Gary Timm, District Manager
Jack Ainsworth, Supervisor, Planning and Regulation
Barbara Carey, Coastal Program Analyst
SUBJECT: City of Oxnard Local Coastal Program Amendment 2-04 (Wireless Communications Ordinance) for Public Hearing and Commission Action at the October 15, 2004, Commission Meeting in San Diego.

DESCRIPTION OF THE SUBMITTAL

The City of Oxnard is requesting an amendment to the Coastal Zoning Ordinance/Implementation Plan (CZO/IP) portion of its certified Local Coastal Program (LCP) to provide new procedures and development standards that regulate the construction and use of wireless communication facilities.

The submittal was deemed complete and filed on May 19, 2004. At its July 2004 Commission meeting, the Commission extended the 60-day time limit to act on Local Coastal Program Amendment 2-04 for a period not to exceed one year. The Commission must therefore act upon the amendment by its July 2005 Commission meeting.

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 4 and 5** of this report. The suggested modifications clarify that appealable projects may not be approved through the development review process to ensure consistency with the provision of the certified CZO. The suggested modifications also require that wireless communication facilities are prohibited within the Resource Protection zone district and that the disturbed areas associated with such facilities may not occur within the boundaries or buffer of ESHAs, unless it is demonstrated that there is no other feasible location that would avoid impacts to ESHA, in which case all impacts must be fully mitigated. Further, the suggested modifications prohibit wireless communication facilities within the Coastal Recreation zone district and specify that facilities approved within the Coastal Visitor Serving Commercial zone district must be subordinate to a visitor-serving commercial use. Finally, the suggested modifications require wireless communication facilities in scenic areas and where there are views to or along the coast or inland waterways to be sited and designed to minimize impacts to visual resources.

Substantive File Documents

City of Oxnard, City Council Ordinance No. 2649, dated February 3, 2004

City of Oxnard, Planning Commission Resolution No. 2003-112, dated December 4, 2003

City of Oxnard, Planning Commission Staff Report, dated December 4, 2003

Additional Information: Please contact Barbara Carey, California Coastal Commission, South Central Coast Area, 89 So. California St., Second Floor, Ventura, CA. (805) 585-1800.

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides that:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30514)

The standard of review for the proposed amendments to the Implementation Plan (Coastal Zoning Ordinance) of the certified Local Coastal Program, pursuant to Section 30513 and 30514 of the Coastal Act, is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified City of Oxnard Local Coastal Program.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held a series of public hearings (Planning Commission Hearing 12/4/03 and City Council Hearing 1/27/04) and received verbal and written comments regarding the project from concerned parties and members of the public. The hearings were noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of the California Code of Regulations, the City may submit a Local Coastal Program Amendment that will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (Section 13544.5; Section 13537 by reference;). Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. If the Commission denies the LCP Amendment, as submitted, no further action is required by either the Commission or the City.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. DENIAL AS SUBMITTED

MOTION I: *I move that the Commission reject the City of Oxnard Implementation Program/Coastal Zoning Ordinance Amendment OXN-MAJ-2-04 as submitted.*

STAFF RECOMMENDATION OF REJECTION:

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

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the City of Oxnard Implementation Program/Coastal Zoning Ordinance Amendment OXN-MAJ-2-04 and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

B. CERTIFICATION WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify City of Oxnard Implementation Program/Coastal Zoning Ordinance Amendment OXN-MAJ-2-04 if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of

the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the City of Oxnard Implementation Program/Coastal Zoning Ordinance Amendment OXN-MAJ-2-04 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended, if modified as suggested herein. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)

The staff recommends the Commission certify the following, with the modifications as shown below. The proposed amended language to the certified LCP Implementation Plan is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line-out~~. Language proposed by Commission staff to be inserted is shown underlined.

Modification No. 1.

Sec. 37-4.8.4(a)

- (a) Development Review Permit. A development review permit may be processed in accordance with section 37-5.3.3 of this chapter for the following wireless communication facilities that do not meet the definition of appealable development pursuant to section 37-1.2.0 of this chapter, and that comply with all of the development standards of this section and the zoning district in which such facilities are to be located.

1. A stealth facility located in a non-residential coastal zone district, i.e. Coastal Neighborhood Commercial (CNC), ~~Coastal Visitor Serving Commercial (CVC)~~, Coastal Dependent Industrial (CDI), Coastal Energy Facilities (EC), Coastal Oil Development (COD), ~~Coastal Recreation (RC)~~ or the Harbor, Channel Islands (HCI) zones.
2. A stealth facility located in the Coastal Visitor Serving Commercial (CVC) zone district that is subordinate to a visitor-serving commercial use on the site.
- ~~23.~~ A micro-cell facility within a public right-of-way or utility easement.

Modification No. 2.

Sec. 37-4.8.4(b)

(b) Coastal Development Permit. A coastal development permit, processed in accordance with section 37-5.3.3 of this chapter, may be issued for the following wireless communication facilities:

1. A non-stealth facility in a non-residential coastal zone district, i.e. Coastal Neighborhood Commercial (CNC), ~~Coastal Visitor Serving Commercial (CVC)~~, Coastal Dependent Industrial (CDI), Coastal Energy Facilities (EC), Coastal Oil Development (COD), ~~Coastal Recreation (RC)~~ or the Harbor, Channel Islands (HCI) zones.
2. A non-stealth facility located in the Coastal Visitor Serving Commercial (CVC) zone district that is subordinate to a visitor-serving commercial use on the site.
23. A stealth facility located in any coastal residential zone district, i.e. Single Family Beach (R-B-1), Single-Family Water-Oriented (R-W-1), Townhouse Water-Oriented (R-W-2), Coastal Low Density Multiple-Family (R-3-C), Coastal Planned Unit Community (CPC), Coastal Mobile Home Park (MHP-C), and Beachfront Residential (R-BF) zones.
34. Although strongly discouraged, a wireless communication facility with an individual support tower (e.g. monopole or lattice tower).
45. A wireless communication facility within a Southern California Edison (SCE) substation.

Modification No. 3.

Sec. 37-4.8.4 (c) (Section added)

(c) Wireless communication facilities are prohibited within the Coastal Resource Protection (RP) and Coastal Recreation (RC) zone districts.

Modification No. 4.

Section 37-4.8.7 (e) (Section added)

(e) *Environmentally Sensitive Habitat Areas.* Disturbed areas associated with the development of a facility shall not occur within the boundaries or buffer of any area meeting the definition of environmentally sensitive habitat area, either identified by the certified LCP or identified by the City through a site-specific biological survey. An exemption may be approved only upon showing of sufficient evidence that there is no other feasible location(s) in the area or other alternative facility configuration that would avoid impacts to environmentally sensitive habitat areas. If an exemption is approved with regard to this standard, the City shall require the applicant to fully mitigate impacts to environmentally sensitive habitat consistent with the provisions of the certified LCP.

Modification No. 5.

Section 37-4.8.7 (e)

(e-f) *Design Standards.* Wireless communication facilities shall be designed as follows:

1. In General

- a. Wireless communication facilities and accessory equipment shall have subdued colors and be constructed of non-reflective materials that blend with the materials and colors of the surrounding areas.
- b. Wireless communication facilities shall not bear any signs or advertising devices other than certification, warning, or other required seals or signs.
- c. In scenic areas and where there are views to or along the coast or inland waterways, wireless communication facilities shall be sited and designed to minimize impacts to visual resources.

2. Towers

- a. All towers shall have either a galvanized steel finish or be painted a neutral color to reduce visibility.

3. Equipment Facilities

- a. Accessory equipment shall be located within a building, structure, enclosure or underground vault. All rooftop equipment shall be fully screened from view from public right-of-ways, using architecturally appropriate material approved by the approving authority.
- b. ~~Equipment facilities located 500 feet or less from a scenic highway shall be screened from view by a landscaping species appropriate within the coastal zone.~~ In scenic areas and where there are views to or along the coast or inland waterways, impacts to visual resources should be minimized through the undergrounding of accessory equipment, where feasible.

(f g) *Lighting.* Wireless communication facilities shall not be artificially illuminated. Equipment facilities may have security and safety lighting that is appropriately shielded to keep light within the boundaries of the site.

IV. FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL OF THE LOCAL COASTAL PROGRAM IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the LCP amendment as submitted, and approval of the LCP amendment if modified as indicated in Section III (*Suggested Modifications*) above. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The City of Oxnard is requesting an amendment to the Coastal Zoning Ordinance/Implementation Plan (CZO/IP) portion of its certified Local Coastal Program (LCP) to provide new procedures and development standards that regulate the construction and use of wireless communication facilities.

The certified CZO consists of 6 articles as follows:

Article 1	General Provisions
Article 2	Coastal Sub-Zones
Article 3	Specific Coastal Development and Resource Standards
Article 4	General Coastal Development and Resource Standards
Article 5	Administration
Article 6	Transfer of Development Rights

Each article contains one or more sections, including purpose, permitted uses, development standards, and other requirements. The new procedures and standards regarding wireless communications are proposed to comprise a new section of Article 4 (General Coastal Development and Resource Standards) of the Coastal Zoning Ordinance, shown in Exhibit 2.

At present, the certified CZO does not contain any provisions regarding wireless communication facilities. The City's staff report (12/4/03) regarding the amendment states that:

No wireless communication facilities are currently allowed within the coastal zone area of the City of Oxnard. This is contrary to the City's goals to promote services adequate to serve existing and future development within the City's urban boundaries. Cellular service is deficient in the coastal zone and the ability to provide such services would conform to the goals of the City's general plan.

The proposed ordinance parallels an ordinance that the City has in place concerning wireless communication facilities in the area of the City outside the Coastal Zone.

B. BACKGROUND--FEDERAL PREEMPTION

The subject LCP amendment proposes to regulate communication devices that are also regulated by federal law. These communication devices include 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
Personal Wireless Services Facilities	47 U.S.C. 332(c)	<ol style="list-style-type: none">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.

Under section 307(c)(7)(B) of the Telecommunications Act of 1996, state and local governments may not unreasonably discriminate among providers or apply regulations that have the effect of prohibiting the provision of personal wireless services. Any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. 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 concerning such emissions.

C. CONSISTENCY ANALYSIS

The proposed ordinance implements the Land Use Plan (LUP) policies with regard to protection of coastal resources. The certified LUP contains provisions for, visual resources, environmentally sensitive habitat, and public access and recreation policies, to name a few. The ordinance itself focuses primarily on impacts to visual resources, a notable impact from these types of facilities. However, all other standards of the certified LUP shall still be implemented during the processing of telecommunication facilities applications unless they are in direct conflict with the telecommunications ordinance. Note, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified LUP as guiding policies.

Visual

Coastal Act Section 30251 (incorporated by reference into the certified LUP) requires that visual qualities of coastal areas be protected, landform alteration be minimized,

and where feasible, degraded areas shall be enhanced and restored. This policy requires that development be sited and designed to protect views to and along the ocean and other scenic coastal areas. This policy also requires that development be sited and designed to be visually compatible with the character of surrounding areas. New development must also minimize the alteration of natural landforms, and, where feasible, include measures to restore and enhance visual quality where it has been degraded. Furthermore, Policy 37 of the certified LUP requires that new development in the coastal zone be designed to minimize impacts on visual resources and Policy 38 requires height restrictions to avoid blocking views.

Consistent with the above policies for protection of visual resources, the amendment includes new development standards for wireless communication facilities intended to minimize visual impacts. These measures include a preference for "stealth" facilities, which the proposed ordinance defines as:

A wireless communication facility designed to blend into the surrounding environment, typically integrated into a building or other concealing structure. Mounting structures may include, but are not limited to, clock towers, bell steeples, and other similar structures designed to camouflage or conceal the presence of antennae or towers.

Additionally, the proposed amendment includes standards for the height of facilities, landscaping and screening, design standards such as colors and materials, location and screening of accessory equipment, and lighting. These standards would apply in all areas of the coastal zone. However, the amendment does not include any standard particular to scenic areas, with the exception of a requirement for equipment facilities 500 feet or less from a scenic highway to be screened from view by the use of native landscaping. In this case, there are no scenic highways located within the coastal zone. So, Modification No. 5 deletes this requirement and substitutes a requirement for the undergrounding, where feasible, of accessory equipment in scenic areas and where there are views to or along the coast or inland waterways. Modification No. 5 also requires that in scenic areas and where there are views to or along the coast or inland waterways, wireless communication facilities shall be sited and designed to minimize impacts to visual resources. The Commission finds this modification necessary to protect visual resources consistent with the policies of the certified LUP.

Public Access/ Recreation

To carry out the requirement of Section 4 of Article X of the California Constitution, Coastal Act Section 30210 (incorporated by reference into the certified LUP) provides that maximum access and recreational opportunities be provided consistent with public safety, public rights, private property rights, and natural resource protection. Coastal Act Section 30211 (also incorporated by reference into the certified LUP) requires that development not interfere with the public's right of access to the sea with certain exceptions. Section 30240 of the Coastal Act (incorporated by reference into the certified LUP) further requires that development adjacent to parks and recreation areas be sited and designed to prevent impacts.

In the proposed amendment, wireless communication facilities are permitted in all non-residential zone districts, including the Coastal Recreation (RC) zone district. The purpose of the RC zone district is to provide open space for various forms of outdoor recreation of either a public or private nature. The intent is to encourage outdoor recreational uses which will protect and enhance areas which have both active and passive recreation potential. Such development should offer recreational uses which complement and are appropriate to the area because of their beauty and natural features.

However, the placement of wireless communication structures could adversely impact long-term access or recreation if sited in the recreation zone district. Therefore to ensure protection of public recreational opportunities consistent with the above requirements, the Commission finds it necessary to impose Suggested Modification No. 1, 2, and 3 such that these facilities are prohibited within the Coastal Recreation zone district.

Additionally, the proposed amendment would allow wireless communication facilities within the Coastal Visitor Serving Commercial (CVC) zone district. The purpose of the CVC zone is to provide coastal-dependent visitor serving commercial/recreational opportunities for both the visiting public and the residents of the City. The zone is designed to assure an orderly and balanced utilization of Oxnard's coastal resources and provide maximum access enjoyment, and use of these resources by all segments of the public, while protecting scenic resources in environmentally sensitive habitat areas. Wireless communication facilities, particularly those considered to be "stealth" under the definition of the proposed ordinance, could be incorporated into existing visitor serving commercial structures without adversely affecting their use for the public. However, larger facilities or those developed on vacant property within the CVC zone could preclude the use of a site for visitor serving uses, inconsistent with the purpose of the zone and the policies of the LUP. Suggested Modifications No. 1 and 2 are required to ensure that any facilities approved within the CVC zone district will be subordinate to a visitor serving use on the same site.

ESHA

The Coastal Act requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development may be permitted within ESHA, except for uses that are dependent on the resource. Section 30240 (incorporated by reference into the certified LUP) of the Coastal Act further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. The certified LCP contains policies regarding the protection of ESHA resources, including restriction of uses, the requirement of biologic studies, and development siting and design measures, including buffers. Additionally, the LCP designates properties known to contain ESHA as part of the Coastal Resource Protection (RP) zone district. The purpose of the RP zone is to protect, preserve, and restore environmentally sensitive habitat areas. The ESHAs identified in the LCP include wetlands, dunes, riparian, and marine habitats. Development approved within

the RP zone district is required to be consistent with the ESHA policies of the certified LUP as well as Sections 30230, 30231, 30236, and 30240 of the Coastal Act.

In the proposed amendment, the RP zone district is not listed among the zones where wireless communication facilities may be permitted. However, these facilities are not specifically prohibited in the RP zone district. It is clear that wireless communication facilities are not resource dependent and would not be compatible with the protection of ESHA. As such, Suggested Modification No. 3 is required to clarify that wireless communication facilities are prohibited with the RP zone district. Further, there may be areas in the coastal zone that contain sensitive resources that would meet the definition of ESHA, but are not currently identified in the certified LCP as ESHA or designated RP. To ensure that such areas are protected from impacts, the Commission finds it necessary to require Suggested Modification No. 4 which states that disturbed areas associated with the development of a wireless communication facility shall not occur within any ESHA or ESHA buffer that is identified by the certified LCP or by the City through a site-specific biological survey. Additionally, Suggested Modification 4 specifies that an exemption may be approved only upon showing of sufficient evidence that there is no other feasible location(s) in the area or other alternative facility configuration that would avoid impacts to environmentally sensitive habitat areas. If such an exemption is approved, the City shall require the applicant to fully mitigate impacts to environmentally sensitive habitat consistent with the provisions of the certified LCP.

Conclusion

For the reasons above, the Commission finds that the proposed IP amendment is not consistent with or adequate to carryout the provisions of the certified LUP with respect to visual, access/recreation, or environmentally sensitive habitat areas, unless modified as suggested above. With the changes detailed in Suggested Modifications 1 through 5, the Commission finds that the City of Oxnard Implementation Plan/Coastal Zoning Ordinance, as amended by Amendment 2-04 will conform with and be adequate to carry out the provisions of the City of Oxnard Land Use Plan, consistent with Sections 30513 and 30514 of the Coastal Act

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to Section 21080.9 of the California Environmental Quality Act ("CEQA"), the Coastal Commission is the lead agency responsible for reviewing Local Coastal Programs for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission's program of reviewing and certifying LCPs qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the LCP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(2)(A) of CEQA and Section 13540(f) of the California Code of Regulations require that the Commission not approve or adopt a LCP, "...if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

The proposed amendment is to the City of Oxnard's certified Local Coastal Program Implementation Ordinance (Coastal Zoning Ordinance). The Commission originally certified the City of Oxnard's Local Coastal Program Land Use Plan and Implementation Ordinance in 1982 and 1985, respectively. For the reasons discussed in this report, the LCP amendment, as submitted is inconsistent with the applicable policies of the Coastal Act, as incorporated by reference into the Land Use Plan, and the certified Land Use Plan and feasible alternatives and mitigation are available which would lessen any significant adverse effect which the approval would have on the environment. The Commission has, therefore, modified the proposed LCP amendment to include such feasible measures adequate to ensure that such environmental impacts of new development are minimized. As discussed in the preceding section, the Commission's suggested modifications bring the proposed amendment to the Land Use Plan and Implementation Plan components of the LCP into conformity with the certified Land Use Plan. Therefore, the Commission finds that the LCP amendment, as modified, is consistent with CEQA and the Land Use Plan.

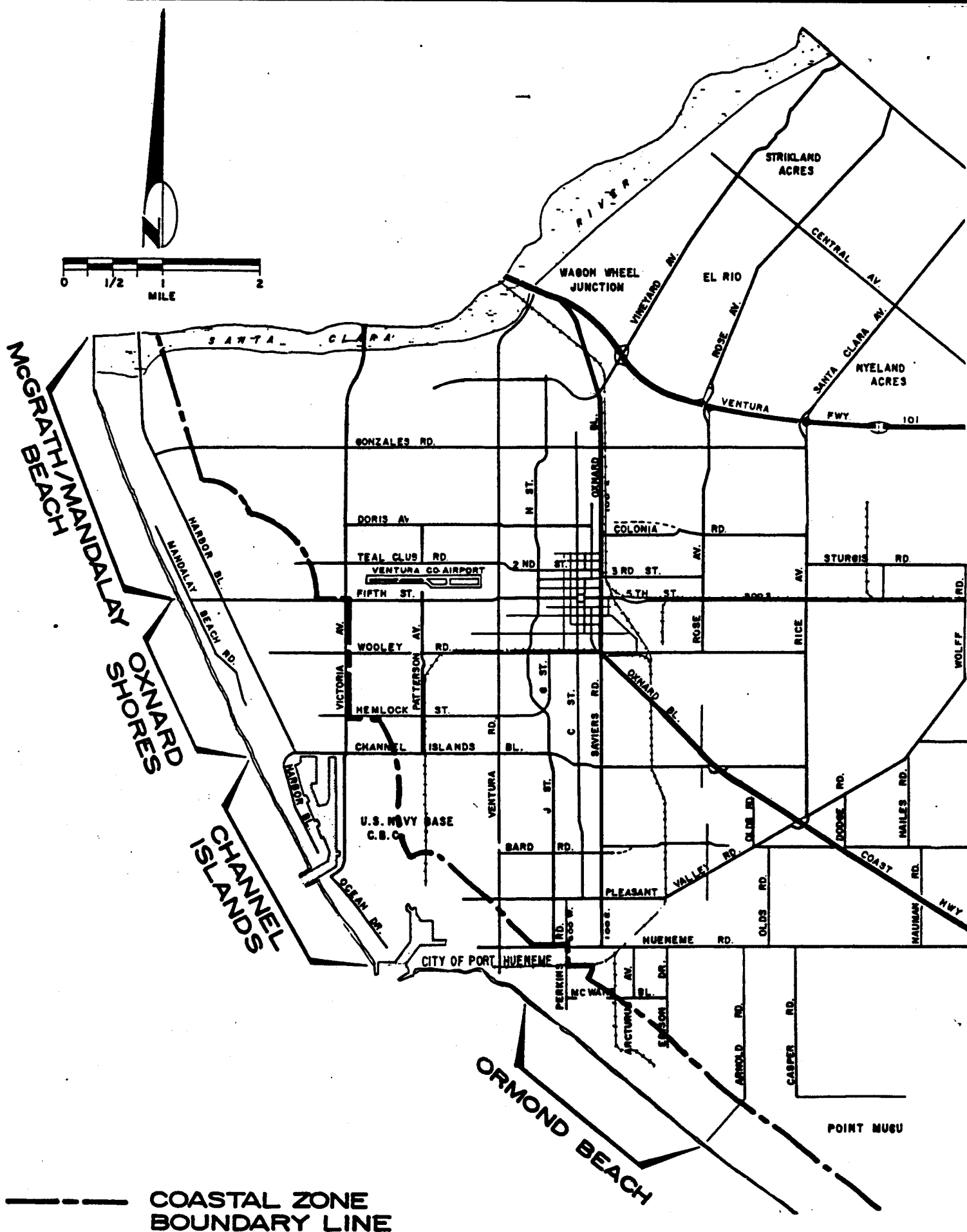


Exhibit 1
Oxnard LCPA 2-04
Map showing Coastal Zone

CITY COUNCIL OF THE CITY OF OXNARD

Ordinance No. 2649

**ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA
AMENDING CHAPTER 37 OF THE CITY CODE
TO PROVIDE FOR WIRELESS COMMUNICATION FACILITIES**

The City Council of the City of Oxnard does ordain as follows:

Part 1. Sections 37-4.8.0 through 37-4.8.13 are added to Chapter 37 of the City Code, to read:

Sec. 37-4.8.0 Wireless Communication Facilities

Sec. 37-4.8.1 Purpose.

The purpose of this section is to provide standards governing the installation of towers, antennae, and other wireless communication facilities (hereinafter collectively "wireless communication facilities") to greatly reduce or eliminate any adverse impacts on coastal zoned properties. Specifically, the purpose of this section is to:

- (a) Permit stealth installation of wireless communication facilities within the coastal zones;
- (b) Encourage the joint use of new and existing sites as a primary option rather than the construction of additional single-use sites;
- (c) Encourage the location of wireless communication facilities in areas where adverse impacts to coastal zoned properties are minimal;
- (d) Discourage the construction of monopoles and non-stealth facilities;
- (e) Encourage the configuration of wireless communication facilities to minimize adverse visual impacts through careful design (such as the use of stealth facilities, siting, landscape screening, and other camouflaging techniques); and
- (f) Expand the availability of quick, effective and efficient wireless communications services in the coastal zone.

Sec. 37-4.8.2 Applicability.

- (a) This section applies to wireless communication facilities that were not approved prior to the effective date of this section, whether the application was received by the city before or after the effective date of this section.
- (b) This section shall not apply to wireless communication facilities under 70 feet in height that are owned and operated by a federally licensed amateur radio station.

Sec. 37-4.8.3 Definitions.

- (a) *Antenna.* A device used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.

Exhibit 2

Oxnard LCPA 2-04

Wireless Communication
Facilities Ordinance

- (b) *Cell site.* A geographical area with a typical radius of one-half mile to five miles, containing both transmitting and receiving antennae.
- (c) *Cellular.* Analog or digital wireless communication technology based on systems of interconnected neighboring cell sites.
- (d) *Co-location.* The locating of wireless communication facilities from more than one provider on a single building or structure.
- (e) *Electromagnetic field.* The local electric and magnetic fields that envelop the surrounding space, as by the movement and consumption of electric power by transmission lines, household appliances and lighting.
- (f) *Equipment facility.* A structure containing ancillary equipment for a wireless communication facility, including cabinets, shelters, and similar structures.
- (g) *FCC.* The Federal Communications Commission.
- (h) *Lattice tower.* A multi-sided, open, metal frame tower.
- (i) *Manager.* The City's Planning and Environmental Services Manager.
- (j) *Micro-cell facility.* A small low power radio transceiver contained in equipment cabinets with a total volume of 100 cubic feet or less, that are either under or above ground, and up to four directional panel antennas with dimensions no greater than two feet by two feet or one foot by four feet or one cylindrical antenna with dimensions no greater than six inches in diameter and five feet in height mounted on a single pole, an existing convention utility pole or other similar support structure.
- (k) *Monopole.* A single pole wireless communication facility.
- (l) *Scenic highway.* A road, street, highway or freeway designated as a scenic highway in the open space/conservation element of the city's general plan.
- (m) *Stealth facility.* A wireless communication facility designed to blend into the surrounding environment, typically architecturally integrated into a building or other concealing structure. Mounting structures may include, but are not limited to, clock towers, bell steeples, and other similar structures designed to camouflage or conceal the presence of antennae or towers.
- (n) *Tower.* A structure higher than its diameter and high relative to its surroundings, free-standing or attached to another structure, of skeleton framework or enclosed, that is erected primarily for the purpose of supporting one or more antennae for wireless communication facilities.

- (o) *Wireless communications.* Personal wireless services as defined in the Telecommunications Act of 1996, including cellular, personal communication, specialized mobile radio, enhanced specialized mobile radio, paging, and similar services.
- (p) *Wireless communication facility.* A structure, including a tower, pole, monopole, lattice tower, water tower, building or other structure, that supports antennae and related equipment that sends or receives radio frequency signals.

Sec. 37-4.8.4 Approval Process.

Applications for all wireless communication facilities shall be supported by information described in section 34-233(f) of the City Code. Such wireless communication facilities shall not be constructed, installed, operated, or maintained before a development review permit is granted or a coastal development permit is issued, as set out in this chapter. Applicants are encouraged to submit a single application for multiple wireless communication facilities or a single application for multiple wireless communication facilities to be located on one site (i.e. co-location).

- (a) *Development Review Permit.* A development review permit may be processed in accordance with section 37-5.3.3 of this chapter for the following wireless communication facilities that comply with all of the development standards of this section and the zoning district in which such facilities are to be located.
 - 1. A stealth facility located in a non-residential coastal zone district, i.e. Coastal Neighborhood Commercial (CNC), Coastal Visitor Serving Commercial (CVC), Coastal Dependent Industrial (CDI), Coastal Energy Facilities (EC), Coastal Oil Development (COD), Coastal Recreation (RC) or the Harbor, Channel Islands (HCI) zones.
 - 2. A micro-cell facility within a public right-of-way or utility easement.
- (b) *Coastal Development Permit.* A coastal development permit, processed in accordance with section 37-5.3.3 of this chapter, may be issued for the following wireless communication facilities:
 - 1. A non-stealth facility in a non-residential coastal zone district, i.e. Coastal Neighborhood Commercial (CNC), Coastal Visitor Serving Commercial (CVC), Coastal Dependent Industrial (CDI), Coastal Energy Facilities (EC), Coastal Oil Development (COD), Coastal Recreation (RC) and the Harbor, Channel Islands (HCI) zones.
 - 2. A stealth facility located in any coastal residential zone district, i.e. Single-Family Beach (R-B-1), Single-Family Water-Oriented (R-W-1), Townhouse, Water-Oriented (R-W-2), Coastal Low Density Multiple-Family (R-2-C), Coastal Medium Density Multiple-Family (R-3-C), Coastal Planned Unit Community

(CPC), Coastal Mobile Home Park (MHP-C), and Beachfront, Residential (R-BF) zones.

3. Although strongly discouraged, a wireless communication facility with an individual support tower (e.g. monopole or lattice tower).
4. A wireless communication facility within a Southern California Edison (SCE) substation.

Sec. 37-4.8.5 Co-location Policy.

Wireless communication facilities shall be designed to promote site sharing and co-location, and shall comply with the following standards:

- (a) All new wireless communication facilities shall be designed to accommodate co-location.
- (b) Accessory structures, including light poles, existing utilities and buildings, shall be utilized as co-location facilities.

Sec. 37-4.8.6 Health and Safety.

- (a) Every wireless communication facility shall be placed, operated and maintained in a manner that fully complies with current regulations of the FCC governing radio frequency emissions.
- (b) All wireless communication facilities shall meet the minimum siting distances to habitable structures required for compliance with FCC regulations and standards governing the environmental effects of radio frequency emissions.
- (c) New or existing wireless communication facilities shall not interfere with public safety telecommunications or private use telecommunication devices.
- (d) Wireless communication facilities shall meet current standards and regulations of the FCC and any other agency of the state or federal government with authority to regulate wireless communication facilities. If such standards or regulations change, the owners of wireless communication facilities governed by this article shall bring wireless communication facilities into compliance with the revised standards or regulations within six months of the effective date of the revisions, unless a different compliance schedule is required by the controlling agency. Failure to bring wireless communication facilities into compliance with the revised standards or regulations shall constitute grounds for the city to remove such facilities at the owner's expense, following a duly noticed public hearing where it is found that such facilities are not operating in full compliance with said revised standards and regulations.
- (e) If applicable, mitigation measures shall be implemented to mitigate environmental impacts associated with the facility.

Sec. 37-4.8.7 Development Standards.

- (a) ***Height.*** In all coastal zone districts, no structures, antennae, or appurtenances associated with wireless communication facilities shall exceed the height limitations of the subject zone district. For those zone districts where maximum height is not specified, the maximum height for such facilities shall not exceed the maximum height of the existing building/structure by more than 15 feet. Height shall be measured as the vertical distance from the grade at the base of the wireless communication facility to the top of the wireless communication facility, or in the case of roof mounted wireless communication facilities, from the grade directly below the exterior base of the building to the highest point of the wireless communication facility (inclusive of any screening device). Antennae and other projections from the wireless communication facility shall be included in the measurement of height.
- (b) ***Setbacks.*** All wireless communication facilities shall comply with the setbacks specified in the zone in which the facility is located. For those zone districts without established setbacks, such distances shall be set at the height of the structure for a freestanding structure. A building-mounted facility shall be set back from habitable structures as required by FCC regulations.
- (c) ***Separation and Screening from Residential Property.*** Wireless communication facilities shall be placed far enough from residential property or be screened to mitigate visual impacts of the facilities on residences.
- (d) ***Landscaping and Screening.*** Wireless communication facilities shall be landscaped and screened to comply with the requirements of the zone and specific plan area in which they are located. The manager or the planning commission shall have discretion to require such landscaping and screening as may be reasonably required to mitigate visual impacts. If an equipment screen is proposed to be located on the roof of an existing building or structure, it shall be fully screened or incorporated into the architectural design of the structure. Existing mature trees and natural land forms on the site shall be preserved to the extent feasible. Vegetation that causes interference with antennae or inhibits access to an equipment facility may be trimmed. Existing on site vegetation may be used in lieu of other landscaping when approved by the manager.
- (e) ***Design Standards.*** Wireless communication facilities shall be designed as follows:
 - 1. ***In General***
 - a. Wireless communication facilities and accessory equipment shall have subdued colors and be constructed of non-reflective materials that blend with the materials and colors of the surrounding areas.
 - b. Wireless communication facilities shall not bear any signs or advertising devices other than certification, warning, or other required seals or signs.

2. Towers

- a. All towers shall have either a galvanized steel finish or be painted a neutral color to reduce visibility.

3. Equipment Facilities

- a. Accessory equipment shall be located within a building, structure, enclosure or underground vault. All rooftop equipment shall be fully screened from view from public rights-of-ways, using architecturally appropriate material approved by the approving authority.
- b. Equipment facilities located 500 feet or less from a scenic highway shall be screened from view by a landscaping species appropriate within the coastal zone.

- (f) *Lighting.* Wireless communication facilities shall not be artificially illuminated. Equipment facilities may have security and safety lighting that is appropriately shielded to keep light within the boundaries of the site.

Sec. 37-4.8.8 Removal of Abandoned Wireless Communication Facilities. A wireless communication facility that has not operated for six continuous months shall be considered abandoned, and the owner shall remove such facility at the owner's expense within 90 days of notice from the manager. If the wireless communication facility is not removed within 90 days, the city may remove such facility at the owner's expense. If there are two or more users of a single wireless communication facility, this section shall not apply until all users cease using such facility for six continuous months.

Sec. 37-4.8.9 Removal of Wireless Communication Facilities within Utility Right of Way. A wireless communication facility that is located within any utility right of way where undergrounding of utilities is scheduled to occur, shall be removed at the owner's expense within 6 months of notice. If the wireless communications facility is not removed within the 6-month period, the city may remove such facility at the owner's expense.

Sec. 37-4.8.10 Modifications to Existing Wireless Communications Facilities.

- (a) *Minor Modification.* The manager may approve minor modifications to existing wireless communication facilities. For purposes of this section, a minor modification is defined as any modification to an existing and permitted wireless communications facility that does not result in any increase or intensification in dimensions or power output. In addition, minor modifications shall not increase the visual impact of any wireless communication facility.
- (b) *Major Modification.* The planning commission may approve a major modification to wireless communication facilities as an amendment to a previously approved coastal development permit. Major modifications are any modifications that exceed the definition of minor modifications or that the manager does not consider to be minor modifications.

Sec. 37-4.8.12 Validation of Proper Operation. Within 90 days of commencement of operation of a wireless communication facility approved after the effective date of section 37-4.8.0 et seq., the operator of such facility shall provide to the manager a report prepared by a qualified engineer, verifying that the operation of such facility is in compliance with the standards established by the American National Standards Institute and the Institute of Electrical and Electrical Engineers for safe human exposure to electromagnetic fields and radio frequency radiation.

Sec. 37-4.8.13 Violations. Violation of any provision of Section 37-4.8.0 et seq. is a misdemeanor. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense by a fine. In accordance with the City's bail schedule, or imprisonment for a term not to exceed six months, or both.

Part 2. The City Council of the City of Oxnard certifies that this ordinance is intended to be carried out in a manner fully in conformity with Division 20 of the Public Resources Code (the Coastal Act).

Part 3. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City. Ordinance No. 2649 was first read on January 27, 2004, and finally adopted on February 3, 2004, to become effective automatically upon approval by the California Coastal Commission.

AYES: Councilmembers Maulhardt, Pinkard, Zaragoza, Herrera and Lopez.

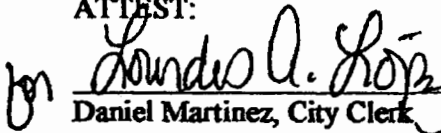
NOES: None.

ABSENT: None;



Dr. Manuel M. Lopez, Mayor

ATTEST:



Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Gary L. Gillig, City Attorney

