

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370

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**Fri 8b**

April 28, 2004

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR**  
**SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO OFFICE**  
**BILL PONDER COASTAL PROGRAM ANALYST, SAN DIEGO OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR**  
**LCP IMPLEMENTATION PLAN AMENDMENT NO. 5-03A**  
**(Various Code Changes) For Commission Meeting of May 12-14, 2004**

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**SYNOPSIS****SUMMARY OF AMENDMENT REQUEST**

The wireless communication facilities (WCFs commonly known as "cell sites") proposal is the most substantive part of the LCP amendment. The LCP implementation plan amendment proposes to incorporate into the LCP Council Policy Statement 64, which provides review and operation guidelines for WCFs. The amendment addresses the possible adverse impacts WCFs might have on the aesthetics, safety, or welfare of the City. Currently, the City's LCP does not contain any provisions specifically addressing these types of facilities. The remainder of the amendment involves various housekeeping changes to the LCP zoning. This LCP amendment was submitted on December 8, 2003 and is part of a submittal from the City of Carlsbad that also includes revisions to the floodplain regulations. The entire LCP amendment has not yet been deemed complete or suitable for filing, thus, there is no deadline for Commission action associated with this component.

**SUMMARY OF STAFF RECOMMENDATION**

With the exception of the wireless communication facilities amendment, the proposed changes are minor and would not have adverse impacts to coastal resources or public access. Staff recommends that, following a public hearing, the Commission deny the proposed Implementation Plan amendment as submitted, and then approve the amendment subject to the suggested modifications listed below. Regarding the proposed wireless communication facilities proposal, a suggested modification is proposed to add "beaches" as a "discouraged location" for locating WCFs. Another suggested modification is proposed to require that approval of WCFs in discouraged locations, such as environmentally sensitive habitat and beaches, should only occur if no other less sensitive discouraged location is feasible, denial would violate federal regulations, and the least environmentally damaging location is chosen. If siting in these areas is unavoidable, it must occur in the disturbed and least environmentally sensitive location and not be visible from public access routes or vista points, or require shoreline protection. Finally, a suggested modification is proposed to clarify that the same

## **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

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

- I. **MOTION I:** *I move that the Commission reject the Implementation Program Amendment #3-03A for the City of Carlsbad as submitted.*

### **STAFF RECOMMENDATION OF REJECTION:**

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

### **RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:**

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

- II. **MOTION II:** *I move that the Commission certify the Implementation Program Amendment #3-03A for the City of Carlsbad 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.

3. Change Section D.2 of Council Policy Statement 64 as follows:

*D. Application and Review Guidelines*

2. For WCFs proposed in a zone or area that is a discouraged WCF location as listed in Location Guideline A.2., the applicant should provide evidence that no location in a preferred zone or area as listed in Location Guideline A.1. can accommodate the applicant's proposed facility. Evidence should document that preferred zone or area locations do not meet engineering, coverage, location, or height requirements, or have other unsuitable limitations. For WCFs proposed in environmentally sensitive habitat or on beaches, the applicant shall also provide evidence that: (1) no location in another discouraged zone or area as listed in Location Guideline A.2. can accommodate the applicant's proposed facility, and (2) denial of the WCF in the proposed location would effectively prohibit the provision of personal wireless services or unreasonably discriminate among providers of such services. If locating WCFs in environmentally sensitive habitat or on beaches is unavoidable pursuant to the above, the WCFs shall be sited in the disturbed and least sensitive portion of the property, not be visible from scenic public access routes and/or public vista points, and not require shoreline protection.

4. Change Section D.4 and D.5 of Council Policy 64 as follows:

4. In considering a Conditional Use Permit and Coastal Development Permit for a WCF, the Planning Commission should consider the following factors:

- a. Compliance with these guidelines.
- b. Heights and setbacks.
- c. Proximity to residential uses.
- d. The nature of uses on adjacent and nearby properties.
- e. Surrounding topography and landscaping.
- f. Quality and compatibility of design and screening.
- g. Impacts on public views and the visual quality of the surrounding area..
- h. Availability of other facilities and buildings for collocation.

5. Conditional Use Permits and Coastal Development Permits for WCFs should be granted for a period not to exceed five years. Upon a request for either an extension or an amendment of a CUP and CDP, the WCF should be reevaluated to assess the impact of the facility on adjacent properties, the record of maintenance and performance with reference to the conditions of approval, and consistency with these guidelines. Additionally, the City should review the appropriateness of the existing facility's technology, and the applicant should be required to document that the WCF maintains the technology that is the smallest, most efficient, and least visible and that there are not now more appropriate and available locations for the facility, such as the opportunity to collocate or relocate to an existing building.

## **REVISE REVIEW REQUIREMENTS FOR SUBDIVISIONS WITH PANHANDLE LOTS**

### *Background*

Panhandle lots, also known as flag lots, have a long, narrow throat that connects to a developable area. Three separate zoning ordinance sections provide review standards for subdivisions with panhandle lots

### *Amendment*

Proposed amendments would change each of the three zoning ordinance sections regulating review of subdivisions with panhandle lots to require a review process identical to the existing review process for all other subdivisions which is identified in the Environmental Protection Ordinance (Chapter 20 of the municipal ordinance). Sections 21.08.080(b) and 21.09.120(2) would be revised to provide that the official or decision-making body with the authority to otherwise approve the subdivision may approve panhandle or flag-shaped lots. Currently the City Engineer reviews minor subdivisions (5 lots or less) that include panhandle lots. The amendment would allow this practice to continue as well as providing that the Planning Commission review subdivisions containing between 5 and 50 lots and the City Council review subdivisions that contain greater than 50 lots.

Additionally, the amendment proposes to change the existing review process to allow administrative approval of the minor changes to minor subdivisions proposing one panhandle lot related to parking and turnaround areas of flag lots or horizontal expansion of buildings. Such changes must be consistent with design requirements and standards contained in the certified LCP. Currently, discretionary review is required for such changes and this section would be deleted. The City found that giving planning staff the authority to approve these limited and minor changes can be without a public review process and the Commission concurs. The Commission notes that for a minor subdivision application with two or more panhandle lots, the authority for approval remains with the planning commission. The changes would not affect existing development standards in the coastal zone and as such is consistent with the certified LUP.

## **AMEND INCOMPLETE APPLICATION PROCEDURES**

### *Background*

Zoning Ordinance Section 21.54.010 establishes the basic requirements for the filing and review of land use applications. Included are the processing procedures for applications the City determines incomplete. An incomplete application is one that fails to provide all the required filing information. From the date the Planning Director determines an application is incomplete, the section states the applicant has six months to resubmit the application or else it will be deemed withdrawn. An existing provision requires that this standard sunsets in 1986 even though the City currently follows this practice.

requirements regarding public noticing are not changed in a way that would diminish public review on appeals and as such are consistent with the certified LUP.

## **REVISE VARIANCE FINDINGS TO BE CONSISTENT WITH THE CALIFORNIA GOVERNMENT CODE**

### *Background*

Local governments approve variances to allow deviations from development standards, such as setbacks, lot sizes, and building height. However, a city may grant a variance only if it can make specific findings that unique circumstances exist to justify deviating from standards. The LCP contains three sections that list the necessary findings to grant a variance.

State law (Government Code Section 65906) specifies the findings under which Carlsbad and other general law cities may consider variance proposals. The three findings, each of which must be made to grant a variance, are:

1. Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and,
2. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and,
3. A variance shall not be granted for a parcel of property, which authorizes a use, or activity, which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

To ensure protection of its coastal resources, the City, in 1996, added a finding requiring consistency with coastal zone requirements to Section 21.50.030 only. However, as drafted, Carlsbad's variance findings are inconsistent with state law. For example, Carlsbad's variance findings applicable outside the Village Redevelopment Zone allow "exceptional or extraordinary circumstances" of either a property or an intended use as a basis for granting a variance. Conversely, state law allows only the "special circumstances" of a property, and not of the intended use, as a basis for granting a variance. Moreover, unlike state law, all three Zoning Ordinance sections require that a variance approval "not be materially detrimental to the public welfare."

Additionally, though not listed as findings specific to a variance, approval of a variance, as with any land use approval, must be consistent with the General Plan and, when applicable, the Local Coastal Program. Present variance findings for the Village Redevelopment Zone (Section 21.35.130) do not include a finding of consistency with

Except when the city council is the final decision making body for a project, a decision of the planning commission establishing density may be appealed to the city council not later than ten days after the decision or not later than the time for appeal of the discretionary permit or entitlement for the project, whichever is later.”

The City adopted this provision to reduce the maximum density permitted in the above zones and achieve consistency with the density allowed by the General Plan in 1981. At that time, in addition to the General Plan density ranges, another acceptable method for determining density existed for apartment projects, based on a designated minimum lot area per unit. While the maximum General Plan residential density was 30 units/acre, this alternative density method allowed 51 to 72 apartments/acre, depending on the zone.

Currently the General Plan establishes a maximum residential density range of 15-23 units/acre. Since the above section allows a density of up to 30 units/acre, it is clearly inconsistent with today's General Plan.

#### *Proposal*

State law mandates zoning ordinance consistency with the general plan. Furthermore, it is Carlsbad's General Plan Land Use Element, not a particular zone or group of zones, that sets density ranges. The amendment establishes consistency between the land use plan and zoning with regards to permitted density and as such is consistent with the certified LCP.

### **UPDATE CHAPTER 21.05 TO REFLECT CURRENTLY ADOPTED ZONES**

#### *Background*

Zoning Ordinance Chapter 21.05 (“Zone Establishment – Boundaries”) lists the different zones in the City and provides other clarifying information about the City's classes of zones and the zoning map.

#### *Proposal*

Section 21.05.010 identifies 27 different zones, including overlay zones, within the City. Three of the zones listed no longer exist and several current zones are unidentified. The City's proposed amendment would eliminate the three zones that no longer exist (Commercial Limited Residential Zone, Limited Multiple-family Residential and Residential Density-High) and add the 11 zones the section does not currently identify, bringing the correct and current total number of zones in the City to 35.

The proposed amendments would remove those zones (R3-L, RD-H and C-LR) that no longer exist and add zones that allow permitted uses consistent with permitted uses in the certified land use plans; therefore, the Commission can accept the proposed changes as being consistent with the certified LUPs.

## **1. AMENDMENT DESCRIPTION**

In the one remaining component of the LCP Amendment, the City proposes to amend Chapter 21.42, Conditional Uses, by adding a new section that would specifically identify WCFs as a conditionally permitted use in all zones, subject to Council Policy Statement 64 (Exhibit 2).

“21.42.010(16) All zones: Wireless communication facilities, which must comply with City Council Policy Statement No. 64.”

The amendment also proposes adding the following new definition to Chapter 21.04, Definitions:

“21.04.379 Wireless communication facility.

‘Wireless communication facility’ means any component, including antennas and all related equipment, buildings, and improvements for the provision of personal wireless services as defined by the federal Telecommunications Act of 1996 and as subsequently amended. Personal wireless services include but are not limited to cellular, personal communication services (PCS), enhanced specialized mobile radio (ESMR), paging, ground based repeaters for satellite radio services, micro-cell antennae and similar systems which exhibit technological characteristics similar to them.”

As proposed, the Council Policy Statement 64 must be followed in the review of conditional use permits (CUPS) for new wireless facilities as well as extensions and amendments to CUPS for existing installations.

In October 2001, the City Council adopted Council Policy Statement 64, approving review and operation guidelines for wireless communication facilities (WCFs), commonly referred to as “cell sites.” To effectively carry out and communicate the purpose and guidelines of the policy statement, the proposed amendment incorporates the policy statement. The certified LCP contains no standards specifically for WCFs, nor does it specifically list WCFs or antennas as permitted uses. Instead, the City permits such facilities through Section 21.42.010(2)(J), which is found in Chapter 21.42 (“Conditional Uses”) which is part of the LCP. This section allows accessory public and quasi-public utility buildings and facilities by CUP in all zones.

The purpose and intent of the proposed ordinance amendment is to address the possible adverse impacts telecommunications facilities might have on the aesthetics, safety, or welfare of the City. Also, the City has been concerned that the proliferation of wireless telecommunication facilities, including but not limited to antennae, towers, whip antennae and monopoles within the City could result in a pattern of incompatible land uses.

Freestanding facilities are discouraged unless there is no feasible alternative. The facilities must meet noise standards, landscaping must be maintained and the site must be maintained free of trash and graffiti. Security lighting must be shielded to limit light exposure to residential properties.

Another concern the Commission has had with WCFs is with abandonment of such facilities if new technology renders them obsolete. As proposed, the policy requires that abandoned or discontinued facilities must be removed. Thus, if technological changes eliminate the need for wireless telecommunications facilities, the facilities will not be allowed to remain in place. The ordinance provides that any WCF that is not operated for a continuous period of 180 days will be considered abandoned and must be removed and the site restored. Failure to comply will result in a finding that the WCF will be considered a nuisance subject to abatement. If there are two or more users of a single WCF, then this provision will not become effective until all users stop using the WCF. These provisions call for removal of WCFs when appropriate which mirrors permit conditions the Commission typically requires in its review of WCFs.

## 2. Findings for Denial.

In general, these provisions will ensure that coastal resources, including visual quality and community character are protected. The amendment would not change the City's existing coastal development permit requirements or criteria, and thus, a coastal development permit would also be required for communications facilities unless otherwise exempt under the certified LCP. However, the Commission is concerned about the possible siting of WCFs in environmentally sensitive areas, open space and on public beaches, how such sitings would relate to governing LUP policies, and that the appropriate standards are applied through the coastal development permit process, not only a conditional use permit, as proposed.

The certified City of Carlsbad LCP land use plan (LUP) has been amended to incorporate the City's Habitat Management Plan (HMP) that was developed to meet the requirements of the Coastal Act, the Endangered Species Act and the Natural Communities Conservation Planning (NCCP) process. The certified LUP includes Section 30233 and 30240 as applicable standards of review for development within and adjacent to wetlands and other environmentally sensitive habitat areas. In addition, the HMP and certified LUP contain habitat protection requirements and conservation standards for the remaining undeveloped properties within the Carlsbad coastal zone, to concentrate future development adjacent to already-developed areas and protect slopes greater than 25% grade and scenic natural landforms.

Mello II LUP policies provide the following.

### 3-1.2 Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be



Regarding the protection of visual resources, the ordinance lists several discouraged locations where WCFs should not be sited, including open space zones and lots. While the ordinance requires that WCFs should locate where least visible to the public, and that no WCF should be installed in a scenic area or residential area unless it is satisfactorily located and/or screened to be hidden or disguised, the "beach" is not identified as a discouraged location. The above visual provisions of the LCP put a special emphasis on the protection of visual resources in shoreline areas i.e., shoreline development should be built in clusters to leave open areas around them to permit more frequent views of the shoreline. As such, the Commission finds the ordinance must specifically identify that beaches are a discouraged location to be found consistent with the certified LUP.

The provisions of the certified LCP related to the C-D Overlay Zone contain detailed regulations regarding the construction of revetments, seawalls, cliff-retaining walls, and other similar shoreline structures. Specifically, the C-D ordinance allows for the construction of seawalls only when they are required in order to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion.

In addition, Section 21.204.030 of the certified Coastal Shoreline Development Overlay Zone provides:

21.204.030 Permitted uses and developments are limited to the following uses and require a coastal development permit according to the requirements of this zone:

- A. Steps and stairways for access from the top of the bluff to the beach.
- B. Toilet and bath houses.
- C. Parking lots, only if identified as an appropriate use in the local coastal program Mello II Segment land use plan; (see Policy 2-3).
- D. Temporary refreshment stands, having no seating facilities within the structure.
- E. Concession stands for the rental of surfboards, air mattresses and other sports equipment for use in the water or on the beach.
- F. Lifeguard towers and stations and other lifesaving and security facilities.
- G. Fire rings and similar picnic facilities.
- H. Trash containers.
- I. Beach shelters

While the LCP does not specifically identify a WCF as a permitted beach use, it may be a potential use or structure that was not envisioned when the LCP was developed. Rather than change all of the various locations which identify permitted uses in the City code, the City has proposed to incorporate the Council Policy to address citywide where such structures can be located and to identify the analysis and standards that apply to the appropriate siting of such structures.

public access routes or public vista points. Therefore, approval of WCFs in these discouraged locations should only occur if it is unavoidable, denial would violate federal regulations, and the least environmentally damaging location is chosen. Other resource protection provisions and mitigation requirements of the certified LCP, including the HMP, would also apply.

Suggested Modification #2 adds beaches as a discouraged location for WCFs. Although WCFs are not identified in the certified LCP as a permitted use on the beach, the Commission feels it is appropriate to clearly identify beaches as a discouraged location. In addition to meeting the criteria discussed above, such structures should be located on a beach only if no shoreline protection would be required to avoid adverse effects on public access and shoreline sand supply

Suggested modification 1 and 4 are proposed to reference the coastal development permit in addition to the conditional use permit as the means to apply the approved standards and analysis requirements in the Council Policy to WCFs in the coastal zone. Although the Council Policy is clearly incorporated into the LCP and an applicable standard of review, it is the CDP process that is designed to implement the policies of the Coastal Act and certified LCP. In addition, if the LCP does not assure these standards approved herein are applied by the City through the CDP process, the Commission would have no ability to assure these standards have been met in review of any future City of Carlsbad decisions on coastal development permits for WCFs, on appeal. The Commission finds that without the suggested modifications, the proposed LCP amendment is inconsistent with the certified LUP and inadequate to carry out its protections. The proposed amendment, if modified as suggested, conforms to the certified land use plans, and the proposed ordinance can be found in conformance with and adequate to implement the certified LUPs.

#### **PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an IP submittal or, as in this case, an IP amendment submittal, to find that the approval of the proposed IP, or IP, as amended, does conform to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA AMENDING THE LOCAL COASTAL PROGRAM AND TITLE 21 OF THE MUNICIPAL CODE BY AMENDING VARIOUS SECTIONS AFFECTING THE REVIEW AND PROCESSING OF LAND USE APPLICATIONS, INCLUDING: (1) REVISING AND STANDARDIZING VARIANCE FINDINGS AND THE APPEAL PROCESS FOR MANY LAND USE PROJECTS; (2) REVISING AND CLARIFYING SOME REVIEW PROCEDURES AND DEVELOPMENT STANDARDS; (3) REPLACING AND REPEALING OUTDATED OR SUPERSEDED NAMES AND TITLES; (4) REPEALING DENSITY PROVISIONS INCONSISTENT WITH THE GENERAL PLAN; AND (5) ADDING A DEFINITION FOR WIRELESS COMMUNICATION FACILITIES AND INCORPORATING A CITY POLICY ON THE SAME.

CASE NAME: VARIOUS CODE CHANGES

CASE NO.: ZCA 00-02

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That Section 21.04.065(a)(4) of the Carlsbad Municipal Code is amended to read as follows:

"21.04.065(a)(4) Building height is measured to the peak of the structure. Per Section 21.46.020 of this title, ~~protrusions above height limits may be allowed roof structures specifically for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building; fire or parapet walls, skylights, architectural towers, flagpoles, chimneys, smokestacks, wireless masts and similar structures may be erected above the height limits prescribed in this title, but no roof structure or any other space above the height limit prescribed for the zone in which the building is located shall be allowed for the purpose of providing additional floor space, or be taller than the minimum height requirement to accommodate or enclose the intended use.~~

SECTION II: That Chapter 21.04 of the Carlsbad Municipal Code is amended by the addition of Section 21.04.099 to read as follows:

"21.04.099 Community development director.

'Community development director' means the director of community development of the city or his or her designee."

SECTION III: That Section 21.04.108 of the Carlsbad Municipal Code is repealed as follows:

~~21.04.108 Director.~~

~~"Director" means the director of planning.~~

SECTION IV: That Section 21.04.201 of the Carlsbad Municipal Code is amended as follows:

21.04.201 Land Use Planning Manager

EXHIBIT NO. 1

APPLICATION NO.

**Carlsbad**

**LCPA No. 5-03A**

Strikeout Underline  
of Changes

**C-F -- Community Facilities Zone**  
 RMHP--Residential Mobile Home Park  
~~C-LR--Commercial Limited Residential Zone~~  
 C-1--Neighborhood Commercial Zone  
**O -- Office Zone**  
 C-2--General Commercial Zone  
**C-T-- Commercial Tourist Zone**  
 C-M--Heavy Commercial-Limited Industrial Zone  
 F-P--Floodplain Overlay Zone  
 M--Industrial Zone  
 O-S--Open Space Zone  
 P-M--Planned Industrial Zone  
 P-U--Public Utility Zone  
 P-C--Planned Community Zone  
 L-C--Limited Control Zone  
 S-P--Scenic Preservation Overlay Zone  
 VR--Village Redevelopment Zone  
**BAO -- Beach Area Overlay Zone**  
**T-C -- Transportation Corridor Zone**  
**Coastal Agriculture Overlay Zone**  
**Coastal Resource Protection Overlay Zone**  
**Coastal Shoreline Development Overlay Zone**  
**Coastal Resource Overlay Zone Mello I LCP Segment**  
**C/V-SO -- Commercial/Visitor-Serving Overlay Zone"**

SECTION IX: That Section 21.05.020(2)(a) of the Carlsbad Municipal Code is amended to read as follows:

"21.05.020(2)(a) All other uses are less restrictive in the order they are first permitted in the respective zones. All other zones are less restrictive in the order established by this subsection. Residential zones are more restrictive than commercial zones and commercial zones more restrictive than industrial zones.

(a) The degree of restrictiveness for residential zones shall be in a sequence from most restrictive to least restrictive as follows:

R-1, R-E, R-A, equally restrictive except as provided in subsection (3);  
 R-2, RMHP equally restrictive;  
 R-3, RD-M, equally restrictive;  
 R-T, RW, equally restrictive;  
 RD-H, R-P, equally and least restrictive.

(b) The degree of restrictiveness for commercial zones shall be in a sequence from most restrictive to least restrictive as follows: ~~C-LR~~, C-1, C-2, C-T, C-M.

(c) The degree of restrictiveness for commercial industrial zones shall be in a sequence from most restrictive to least restrictive as follows: P-M, M."

SECTION X: That Section 21.05.020(4) of the Carlsbad Municipal Code is repealed as follows and the following subsection shall be sequentially renumbered:

~~21.05.020 (4) Uses permitted in the R-3L zone shall be considered to be as restrictive as those permitted in the R-1 zone.~~

1                   SECTION XIV: That Section 21.06.160 of the Carlsbad Municipal Code is  
2                   renumbered to be Section 21.06.150.

3                   SECTION XV: That Section 21.08.080(b) of the Carlsbad Municipal Code is  
4                   amended to read as follows:

5                   **"21.08.080(b) The official or decision-making body with the authority to**  
6                   ~~otherwise approve the subdivision city council for major subdivisions or minor subdivisions on~~  
7                   ~~appeal and the planning commission for minor subdivisions~~ may approve panhandle or flag-  
8                   shaped lots where the lot width and yards shall be measured in accord with this section if the  
9                   following circumstances are found to exist: **For a minor subdivision application with two or**  
10                   **more panhandle lots, the authority for approval shall be with the planning commission."**

11                   SECTION XVI: That Section 21.08.080(d)(1) of the Carlsbad Municipal Code is  
12                   amended to read as follows:

13                   **"21.08.080(d)(1) The area of the buildable portion of the lot shall be a minimum**  
14                   **ten thousand square feet or the minimum required by the zone whichever is greater. In zone**  
15                   **districts permitting less than ten thousand square-foot lots, the buildable portion of the lot may be**  
16                   **less than ten thousand square feet provided the official or decision-making body with the**  
17                   **authority to otherwise approve the subdivision planning commission** finds from evidence  
18                   submitted on a site plan that all requirements of this section will be met; however, in no case  
19                   shall the buildable portion of the lot be less than eight thousand square feet in area. If a site plan  
20                   for a subdivision with panhandle lots, with a buildable portion of less than ten thousand square  
21                   feet, is approved, development within such subdivision shall conform to the plan as approved.  
22                   Any modification to the parking and turnaround areas, or horizontal expansion of buildings, shall  
23                   be submitted to the planning commission for approval. The planning commission may approve,  
24                   approve with conditions or deny any such modifications."

25                   SECTION XVII: That Section 21.08.080(d)(2) of the Carlsbad Municipal Code is  
26                   amended to read as follows:

27                   **"21.08.080(d)(2) The width requirements for the buildable portion of the lot shall**  
28                   **be met as required for interior lots in the zone district."**

29                   SECTION XVIII: That Section 21.08.080 (d)(10) of the Carlsbad Municipal Code  
30                   is amended to read as follows:

31                   **"21.08.080(d)(10) Any other condition the official or decision-making body with**  
32                   **the authority to otherwise approve the subdivision city council or planning commission** may  
33                   determine to be necessary to properly develop such property."

34                   SECTION XIX: That Section 21.09.120(2) of the Carlsbad Municipal Code is  
35                   amended to read as follows:

36                   **"21.09.120(2) The official or decision-making body with the authority to**  
37                   **otherwise approve the subdivision city council, for major subdivisions, or minor subdivisions**

1 "21.10.080(d)(10) Any other condition the official or decision-making body with  
2 the authority to otherwise approve the subdivision city council or land use planning manager  
may determine to be necessary to properly develop such property."

3 SECTION XXV: That Section 21.10.080(e) of the Carlsbad Municipal Code is  
4 repealed as follows:

5 ~~"21.10.080(e). Any decision of the land use planning manager shall promptly be  
6 reported to the planning commission and city council and is final unless appealed within ten days  
to the planning commission. The decision of the planning commission is final unless appealed  
within ten days to the city council. The decision of the council is final."~~

7 SECTION XXVI: That Section 21.16.070 of the Carlsbad Municipal Code is  
8 repealed as follows and all following sections of Chapter 21.16 shall be sequentially renumbered:

9 "21.16.070 Maximum allowable density.

10 ~~The maximum allowable density shall be twenty units per acre. A density of up to  
thirty dwelling units per acre may be established by the planning commission or city council,  
11 whichever is the final decisionmaking body for a project requiring a discretionary permit or  
entitlement under this code, or the planning commission for all other projects if said body finds  
12 that the density is consistent with the general plan and the provisions of this code.~~

13 ~~Except when the city council is the final decisionmaking body for a project, a  
decision of the planning commission establishing density may be appealed to the city council not  
later than ten days after the decision or not later than the time for appeal of the discretionary  
14 permit or entitlement for the project, whichever is later."~~

15 Section XXVII: That Section 21.18.040 of the Carlsbad Municipal Code is  
16 amended to read as follows:

17 "21.18.040 Uses and structures permitted by conditional use permit.

18 **Subject to the provisions of Chapters 21.42 and 21.50, the following uses and structures are**  
permitted by conditional use permit approved and issued by the land use planning office:

- 19 (1) Circuses and carnivals and private clubs;  
20 (2) Health facilities, long-term;  
(3) Radio, television and microwave stations or towers;  
21 (4) Professional care facilities."

22 SECTION XXVIII: That Section 21.18.050(2) of the Carlsbad Municipal Code is  
23 repealed as follows and all following subsections of Section 21.18.050 shall be renumbered  
24 sequentially:

25 ~~"21.18.050(2) Maximum Allowable Density. The maximum allowable density shall  
be twenty units per acre. A density of up to thirty dwelling units per acre may be established by  
26 the planning commission or city council, whichever is the final decisionmaking body for a project  
requiring a discretionary permit or entitlement under this code, or the planning commission for all  
27~~

1                   ~~(2) At the time of filing for such appeal, the applicant shall pay a processing fee in~~  
2                   ~~an amount specified by city council resolution.~~

3                   ~~(3) The decision of the planning commission shall be consistent with the~~  
4                   ~~provisions of this chapter and shall be supported by appropriate findings.~~

5                   ~~(4) If the planning commission fails to act on an appeal within the time limits~~  
6                   ~~specified in this subsection, the appeal shall be deemed denied."~~

7                   SECTION XXXII: That Section 21.34.050(f) of the Carlsbad Municipal Code is  
8                   amended to read as follows:

9                   **"21.34.050(f) Effective Date of Order and Appeal of Planning Commission**  
10                  **Decision. The effective date of the planning commission's decision and method for appeal**  
11                  **of such decision shall be governed by Section 21.54.150 of this Code.**

12                  ~~(1) The applicant or any other interested person may appeal, from any action of~~  
13                  ~~the planning commission with respect to a planned industrial permit, to the city council.~~

14                  ~~Any such appeal shall be filed with the city clerk within ten days after the action of~~  
15                  ~~the planning commission from which the appeal is being taken.~~

16                  ~~Upon the filing of an appeal, the city clerk shall set the matter for hearing. Such~~  
17                  ~~hearing shall be held within thirty days after the date of filing the appeal. Within ten days~~  
18                  ~~following the conclusion of the hearing, the city council shall render its decision on the appeal.~~  
19                  ~~The decision of the city council is final.~~

20                  ~~(2) At the time of filing for such appeal, the applicant shall pay a processing fee in~~  
21                  ~~an amount specified by city council resolution.~~

22                  ~~(3) The decision of the city council shall be consistent with the provisions of this~~  
23                  ~~chapter and shall be supported by appropriate findings.~~

24                  ~~(4) If the city council fails to act on an appeal within the time limits specified in this~~  
25                  ~~subsection, the appeal shall be deemed denied."~~

26                  SECTION XXXIII: That Section 21.35.090(f) of the Carlsbad Municipal Code is  
27                  amended to read as follows:

28                  **"21.35.090(f) The effective date of order of a Housing and Redevelopment**  
Director decision and the method for appeal of such decision shall be governed by  
Section 21.54.140 of this Code. ~~The director's decision or determination shall be made in~~  
~~writing. The date of the decision shall be the date the writing containing the decision or~~  
~~determination is mailed or otherwise delivered to the person or persons affected by the decision~~  
~~or determination."~~

SECTION XXXIV: That Section 21.35.100 of the Carlsbad Municipal Code is  
amended to read as follows:

**"21.35.100 Design review board action.**

(a) The design review board shall hold a public hearing on:

(1) Appeals of decisions made by the director on administrative redevelopment  
permits as defined in Section 21.35.080 or administrative variances;

(2) Minor or major redevelopment permits; and

(3) Nonadministrative variances for which the board has final decision making  
authority pursuant to Section 21.35.130(b).

1 vicinity and under identical zoning classification ~~The application of certain provisions of this~~  
2 ~~chapter will result in practical difficulties or unnecessary hardships which would make~~  
3 ~~development inconsistent with the general purpose and intent of the Carlsbad village area~~  
4 ~~redevelopment plan;~~

5 (2) The variance shall not constitute a grant of special privileges  
6 inconsistent with the limitations upon other properties in the vicinity and zone in which  
7 the subject property is located and is subject to any conditions necessary to assure  
8 compliance with this finding ~~There are exceptional circumstances or conditions unique to the~~  
9 ~~property or the proposed development which do not generally apply to other properties or~~  
10 ~~developments which have the same standards, restrictions and controls;~~

11 (3) The granting of a variance does not authorize a use or activity which is not  
12 otherwise expressly authorized by the zone regulation governing the subject property will  
13 not be injurious or materially detrimental to the public welfare, other properties or improvements  
14 in the project area; and

15 (4) ~~The granting of a variance is consistent with the general purpose and~~  
16 ~~intent of the general plan, Carlsbad village area redevelopment plan, and the Carlsbad~~  
17 ~~village redevelopment master plan and design manual; will not contradict the standards~~  
18 ~~established in the village master plan and design manual. An application for exemption shall be~~  
19 ~~processed in the same manner established by this chapter for a redevelopment permit. In~~  
20 ~~granting a variance, the housing and redevelopment commission may impose such conditions as~~  
21 ~~are necessary to protect the public health, safety and welfare.~~

22 (5) In addition, in the coastal zone, that the variance is consistent with and  
23 implements the requirements of the certified local coastal program and that the variance  
24 does not reduce or in any manner adversely affect the protection of coastal resources as  
25 specified in the zones included in this title, and that the variance implements the  
26 purposes of zones adopted to implement the local coastal program land use plan. ~~The~~  
27 ~~application of certain provisions of this chapter will result in practical difficulties or unnecessary~~  
28 ~~hardships which would make development inconsistent with the general purpose and intent of~~  
29 ~~the Carlsbad village area redevelopment plan;~~

30 (b) An application for a variance shall be processed in the same manner  
31 established by this chapter for a redevelopment permit.

32 (c) (b) The design review board may grant variances from the limits, restrictions  
33 and controls established by this chapter for minor redevelopment projects (or otherwise  
34 administrative projects consolidated or on appeal from a director decision), if the board makes  
35 the variance findings set forth in subsection (a) of this section.

36 (d) (e) The director may grant administrative variances in accordance with  
37 section 21.35.090(e), if the director makes the findings set forth in subsection (a) of this section."

38 SECTION XXXVII: That Section 21.40.140 of the Carlsbad Municipal Code is  
39 amended to read as follows:

40 "21.40.140 Effective date of order and appeal of planning commission decision  
41 process.

42 The effective date of the planning commission's decision and method for  
43 appeal of such decision shall be governed by Section 21.54.150 of this Code. ~~The order of~~  
44 ~~the planning commission in granting or denying a special use permit shall become final and~~  
45 ~~effective ten days after the rendering of its decision granting or denying the special use permit~~  
46 ~~unless within such ten day period an appeal in writing is filed with the city clerk by either an~~  
47 ~~applicant or an opponent. The filing of such appeal within such time limit shall stay the effective~~  
48 ~~date of the order of the planning commission until such time as the city council has acted on the~~  
49 ~~appeal as specified by Sections 21.50.110, 21.50.120, 21.50.130, 21.50.140, 21.50.150 and~~



1 In any "R" zone, no fence, wall or hedge over forty-two inches in height shall be  
2 permitted in any required front yard setback. In the required side yard or street side of either a  
3 corner lot or reversed corner lot, a six-foot high fence may be permitted when approved by the  
4 ~~planning director land use planning office and the building and planning department~~ when the  
5 safety and welfare of the general public are not imposed upon. The issuing of a permit upon the  
6 approval of the ~~planning director land use planning office and the building and planning~~  
7 ~~department of the city~~ shall be subject to special conditions which may vary due to the  
8 topography, building placement and vehicular or pedestrian traffic. On an interior lot a wall or  
9 fence not more than six feet in height may be located anywhere to the rear of the required front  
10 yard. In any "R" zone, any fence that exceeds six feet in height, for special uses or under  
11 special circumstances, shall be granted by the planning commission and subject to the  
12 conditions imposed by this commission."

13 SECTION XLIII: That Section 21.47.073 of the Carlsbad Municipal Code is  
14 amended to read as follows:

15 "21.47.073 Effective date of order and aAppeal of planning commission  
16 decision.

17 (a) The effective date of the planning commission's decision and method for  
18 appeal of such decision shall be governed by Section 21.54.150 of this Code. The decision  
19 of the planning commission is final and effective ten calendar days after the adoption of the  
20 resolution of decision unless within such ten-day period applicant or any other interested person  
21 files a written appeal with the city clerk. An individual member of the city council can be an  
22 interested person. The written appeal shall specifically state the reason or reasons for the appeal  
23 and the manner in which the decision of the planning commission is in error. The burden of proof  
24 is on the appellant to establish by substantial evidence that the reason(s) for the appeal exist.  
25 The hearing before the council is de novo, but the council shall determine all matters not  
26 specified in the appeal have been found by the planning commission and are supported by  
27 substantial evidence. If the council finds one or more grounds set forth in the notice of appeal  
28 supported by substantial evidence, it may, nevertheless, affirm, modify, or reverse the action of  
the planning commission, and make such order supported by substantial evidence as it deems  
appropriate, including remand to the planning commission with directions for further proceedings.  
The decision of the planning director on projects processed in accordance with Section  
21.47.110 may be appealed to the planning commission by filing a written notice of appeal with  
the planning director within ten calendar days of the decision in the same manner and subject to  
the same burden of proof as appeals to the city council. Fees for filing an appeal under this  
section shall be established by resolution of the city council.

Upon the filing of an appeal, the city clerk shall set the matter for public hearing.  
Such hearing shall be held within thirty days after the date of filing the appeal. Within ten days  
following the conclusion of the hearing, the city council shall render its decision on the appeal.  
The decision of the city council is final.

(b) The decision of the city council shall be consistent with the provisions of this  
chapter and shall be supported by appropriate findings.

(c) If the city council fails to act on an appeal within the time limits specified in this  
section, the appeal shall be deemed denied."

25 SECTION XLIV: That Chapter 21.47 of the Carlsbad Municipal Code is  
26 amended by the addition of Section 21.47.075 to read as follows:

27 "21.47.075 Effective date of order and appeal of planning director decision.

1           SECTION XLVII: That Section 21.50.100 of the Carlsbad Municipal Code is  
2 amended to read as follows:

3           ~~"21.50.100 Effective date of order and appeal of Planning Commission decision~~  
4 ~~for variance or conditional use permit—Time for appeal.~~

5           The effective date of the planning commission's decision and method for  
6 appeal of such decision shall be governed by Section 21.54.150 of this Code. The order of  
7 the planning commission in granting or denying a variance or conditional use permit shall  
8 become final and effective ten calendar days after the rendering of its decision granting or  
9 denying the variance or conditional use permit unless within such ten-day period an appeal in  
10 writing is filed with the city clerk by an interested person. An individual member of the city council  
11 can be an interested person. The written appeal shall specifically state the reason or reasons for  
12 the appeal and the manner in which the decision of the planning commission is in error. The  
13 burden of proof is on the appellant to establish by substantial evidence that the reason(s) for the  
14 appeal exist. The hearing before the council is de novo, but the council shall determine all  
15 matters not specified in the appeal have been found by the planning commission and are  
16 supported by substantial evidence. If the council finds one or more grounds set forth in the notice  
17 of appeal supported by substantial evidence, it may, nevertheless, affirm, modify, or reverse the  
18 action of the planning commission, and make such order supported by substantial evidence as it  
19 deems appropriate, including remand to the planning commission with directions for further  
20 proceedings. The filing of such appeal within such time limits shall stay the effective date of the  
21 order of the planning commission until such time as the city council has acted on the appeal as  
22 hereafter set forth in this title. Fees for filing an appeal under this section shall be established by  
23 resolution of the city council."

24           SECTION XLVIII: That Sections 21.50.110, 21.50.120, 21.50.130, 21.50.140, and  
25 21.50.150 of the Carlsbad Municipal Code are repealed as follows:

26           ~~"21.50.110 Transmission of planning commission's record to the city council.~~

27           ~~Upon receipt of a written appeal filed with the city council by the applicant or~~  
28 ~~opponent, as provided in this chapter, the clerk of the city council shall advise the land use~~  
~~planning manager who shall transmit to said clerk of the city council the planning commission's~~  
~~complete record of the case.~~

29           ~~21.50.120 Appeal Hearing~~

30           ~~Within and not to exceed thirty days following the receipt of the written appeal the~~  
31 ~~city council shall conduct a public hearing, public notice of which shall be given as provided in~~  
32 ~~Section 21.54.060(1).~~

33           ~~21.50.130 Decision of city council.~~

34           ~~The city council may grant, deny or modify, subject to such conditions or~~  
35 ~~limitations that it may impose, the variance or conditional use permit. Any action by the city~~  
36 ~~council shall be final and conclusive; provided, however, that any action reversing the decision of~~  
37 ~~the planning commission on such matters shall be by the affirmative vote of at least three~~  
38 ~~members of the city council.~~

39           ~~21.50.140 Council announcement of findings and decision by resolution.~~

40           ~~The city council shall announce its findings and decision by formal resolution not~~  
41 ~~more than twenty days following the termination of the hearing. Said resolution shall recite,~~  
42 ~~among other things, the facts and reasons, in the opinion of the city council, make the granting~~

resources as specified in the zones included in this title, and that the variance implements the purposes of zones adopted to implement the local coastal program land use plan.

~~(3) In granting any variance, the land use planning manager may impose such conditions as he deems necessary or desirable to protect the public health, safety and general welfare in accordance with the purpose and intent of this code."~~

SECTION L: That Section 21.51.060 of the Carlsbad Municipal Code is amended to read as follows:

"21.51.060 Effective date of order and appeal of planning director decision variance—Appeal.

(a) The effective date of the planning director's decision and method for appeal of such decision shall be governed by Section 21.54.140 of this Code. ~~The order of the land use planning manager in granting or denying a variance shall become final and effective ten days after the rendering of his decision granting or denying the variance, unless within such ten-day period an appeal in writing is filed with the planning commission by either an applicant or an opponent. The filing of such appeal within such time limit shall stay the effective date of the order of the land use planning manager until such time as a final decision on the appeal is reached.~~

~~(b) An appeal to the planning commission shall be processed in the same manner as an original application for a variance under Chapter 21.50 of this code.~~

~~(c) The decision of the planning commission shall be final unless appealed to the city council in the manner provided for appeals of variances under Chapter 21.50 of this code."~~

SECTION LI: That Section 21.52.030 of the Carlsbad Municipal Code is amended to read as follows:

"21.52.030 Application.

Whenever the owner of any land or building desires an amendment, supplement to or change in any of the regulations prescribed for his property, he shall prepare an application requesting such amendment, supplement or change on the prescribed form and forward it with the required fee to the planning director land use planning manager.

~~The land use planning manager shall review all such applications and determine whether or not the requested amendment, supplement to or change in regulations for the subject property will be consistent with all applicable specific and general plans. If he determines the application will be consistent, he shall file it with the planning commission for processing in accord with this chapter. If he determines that the application will result in an inconsistency, he shall so inform the applicant in writing and return the application. Notwithstanding an inconsistency, the manager may file an application with the planning commission for action if the commission has approved a general plan amendment removing the inconsistency. The manager's determination may be appealed to the planning commission and city council in accord with the provisions of this chapter."~~

SECTION LII: That Section 21.52.080 of the Carlsbad Municipal Code is amended to read as follows:

"21.52.080 Commission action to be final when denying application.

The action of the planning commission in denying an application for amendment shall be final and conclusive unless appealed. The effective date of the decision and method for appeal of such decision shall be governed by Section 21.54.150 of this Code. within ten

1                   SECTION LVII: That Section 21.54.010(d) of the Carlsbad Municipal Code is  
2 amended to read as follows:

3                   "21.54.010(d) Failure by the city to meet the deadlines specified in this section  
4 shall cause the application to be deemed complete. The failure of the applicant to meet any of  
5 the time limits specified in this section shall be deemed to constitute withdrawal of the  
6 application. Nothing in this section precludes an applicant and in the city from mutually agreeing  
7 to an extension of any time limit provided in this section."

8                   SECTION LVIII: That Section 21.54.010(e) of the Carlsbad Municipal Code is  
9 repealed as follows:

10                   ~~"21.54.010(e) Subsections (b) through (d) of this section shall remain in effect  
11 only until January 1, 1991, and as of that date are repealed unless an ordinance which is  
12 enacted before January 1, 1991, deletes or extends that date."~~

13                   SECTION LIX: That Section 21.54.100 of the Carlsbad Municipal Code is  
14 amended to read as follows:

15                   "21.54.100 Hearing continuance without public notice.  
16 If, for any reason, testimony on any case set for public hearing cannot be  
17 completed on the date set for such hearing, the person presiding at such public hearing may,  
18 before adjournment or recess thereof, publicly announce the time and place to, and at which,  
19 said hearing will be continued, and no further notice is required. However, ~~within the coastal~~  
20 ~~zone, if a decision on a matter set for public hearing development permit is continued by the~~  
21 ~~decision-making body local government to a time which is not neither (a) previously stated in~~  
22 ~~the notice provided pursuant to Section 21.54.060, nor (b) announced at the hearing to be~~  
23 ~~continued to a time certain, the city shall provide notice of the further hearings (or action on the~~  
24 ~~proposed development) in the same manner and within the same time limits as established in~~  
25 ~~Sections 21.54.060 and 21.54.061."~~

26                   SECTION LX: That Section 21.54.130 of the Carlsbad Municipal Code is  
27 amended to read as follows:

28                   "21.54.130 Restriction on reapplication after denial  
No application for a zone change, general plan amendment, planned  
development, variance, conditional use permit, site development plan, specific plan, master plan  
or other permit, or any amendment to a previously issued permit or plan shall be accepted if a  
substantially similar application has been finally denied within one year prior to the application  
date. The planning director and use planning manager shall determine if the subsequent  
application is substantially similar to the previously denied application. ~~The decision of the land~~  
24 ~~use planning manager shall be final. The effective date of the planning director's decision~~  
25 ~~and method for appeal of such decision shall be governed by Section 21.54.140 of this~~  
26 ~~Code."~~

27                   SECTION LXI: That Section 21.54.140 of the Carlsbad Municipal Code is  
28 amended to read as follows:

1                   Section LXII: That Chapter 21.54 of the Carlsbad Municipal Code is amended by  
2                   the addition of Section 21.54.150 to read as follows:

3                   **"21.54.150 Effective date of order and appeal of planning commission or**  
4                   **design review board decisions.**

5                   (a) This section shall apply to those decisions or determinations of the  
6                   planning commission or design review board made pursuant to this title or Title 19.  
7                   Accordingly, in this section, "housing and redevelopment director" shall be  
8                   interchangeable with "planning director;" "housing and redevelopment department" shall  
9                   be interchangeable with "planning department;" "design review board" shall be  
10                  interchangeable with "planning commission;" and "housing and redevelopment  
11                  commission" shall be interchangeable with "city council."

12                  (b) Whenever the planning commission is authorized pursuant to this title or  
13                  Title 19 to make a decision or determination, such decision or determination is final and  
14                  effective upon the adoption of the resolution or decision. Within ten calendar days of the  
15                  date that a decision or determination becomes final, a written appeal may be filed with the  
16                  city clerk. An individual member of the city council can be an interested person for  
17                  purposes of the appeal. Filing of such an appeal within such time limits shall stay the  
18                  effect of the decision or determination of the planning commission until such time as the  
19                  city council has acted on the appeal as set forth in this Title. The appeal shall specifically  
20                  state the reason or reasons for the appeal. The burden of proof is on the appellant to  
21                  establish by substantial evidence that the grounds for the requested action exist. Fees  
22                  for filing an appeal under this section shall be established by resolution of the city  
23                  council.

24                  (c) Upon the filing of an appeal, the city clerk shall schedule the appeal for  
25                  hearing before the city council as soon as practicable. An appeal shall be heard and  
26                  noticed in the same manner as was required of the determination or decision being  
27                  appealed. The hearing before the city council is de novo, but the city council shall  
28                  determine all matters not specified in the appeal have been found by the planning  
                    commission and are supported by substantial evidence. The city council shall consider  
                    the recommendations of the planning department, the decision of the planning  
                    commission and all other relevant documentary and oral evidence as presented at the  
                    hearing. The city council may affirm, modify, or reverse the action of the planning  
                    commission, and make such order supported by substantial evidence as it deems  
                    appropriate, including remand to the planning commission with directions for further  
                    proceedings. Any action by the city council shall be final and conclusive; provided,  
                    however, that any action reversing the decision of the planning commission shall be by  
                    the affirmative vote of at least three members of the city council.

                    (d) Upon receipt of a written appeal to the city council filed with the city  
                    clerk, the city clerk shall advise the planning director who shall transmit to said clerk the  
                    planning commission's complete record of the case."

23                   Section LXIII: That Section 21.80.050 of the Carlsbad Municipal Code is  
24                   amended to read as follows:

25                   **"21.80.050 Duties of planning director of building and planning.**

26                   (a) After the application has been accepted as complete the planning director of  
27                   building and planning shall determine if the project is exempt from the requirements of this  
28                   chapter pursuant to Section 21.80.030. The director shall give notice of a determination of  
                    exemption to all persons specified in Section 21.80.160. The cost of providing this notice shall be



1 "21.80.160(d) The effective date of aAny decision of the director pursuant to this  
2 section and the method for appeal of such decision shall be governed by Section  
3 21.54.140 of this Code may be appealed by any person to the planning commission. The  
4 appeal shall be in writing and filed with the director not later than twenty days after the giving of  
5 notice as provided in this section. The appeal shall be considered by the planning commission in  
6 accordance with the provisions of this chapter for any other application."

7 SECTION LXVI: That Section 21.81.055(e) of the Carlsbad Municipal Code is  
8 amended to read as follows:

9 "21.81.055(e) The effective date of the director's decision and the method for  
10 appeal of such decision shall be governed by Section 21.54.140 of this Code is final unless  
11 the decision is appealed by an interested person to the design review board. An individual  
12 member of the housing and redevelopment commission can be an interested person. The written  
13 appeal shall specifically state the reason or reasons for the appeal and the manner in which the  
14 decision of the director is in error. The decision of the director shall be affirmed by the design  
15 review board unless the appellant shows by a preponderance of the evidence that the decision of  
16 the director is in error, inconsistent with state law, the general plan or the redevelopment area  
17 plan, village master plan and design manual, this title or any policy of the housing and  
18 redevelopment commission or the city. The appeal shall be filed in writing with the secretary of  
19 the design review board within ten calendar days after the date of the director's decision. The  
20 decision by the design review board on all appeals of the director's decision shall be final. The  
21 director shall give notice of final local decision on the appeal in accordance with Section  
22 21.81.120."

23 SECTION LXVII: That Section 21.81.080 of the Carlsbad Municipal Code is  
24 amended to read as follows:

25 "21.81.080 Effective date of order and aAppeal of Carlsbad design review  
26 board decision.

27 (a) The effective date of the design review board's decision and the method  
28 for appeal of such decision shall be governed by Section 21.54.150 of this Code The action  
of the design review board is final and effective ten calendar days after the adoption of the  
resolution of decision unless the applicant or any other interested person files a written appeal  
within that time with the secretary to the housing and redevelopment commission. An individual  
member of the housing and redevelopment commission can be an interested person. The written  
appeal shall specifically state the reason or reasons for the appeal and the manner in which the  
decision of the design review board is in error. The burden of proof is on the appellant to  
establish by substantial evidence that the reason(s) for the appeal exist. The hearing before the  
housing and redevelopment commission is de novo, but the housing and redevelopment  
commission shall determine all matters not specified in the appeal have been found by the  
design review board and are supported by substantial evidence. If the housing and  
redevelopment commission finds one or more grounds set forth in the notice of appeal supported  
by substantial evidence, it may, nevertheless, affirm, modify, or reverse the action of the planning  
commission, and make such order supported by substantial evidence as it deems appropriate,  
including remand to the design review board with directions for further proceedings. Upon the  
filing of an appeal, the city clerk shall set the matter for public hearing. Such hearing shall be  
held within thirty days after the date of filing the appeal. Within ten days following the conclusion  
of the hearing, the housing and redevelopment commission shall render its decision on the  
appeal. The decision of the housing and redevelopment commission is final.

1 "21.83.070C. The effective date of the director's decision and the method for  
2 appeal of such decision shall be in accordance with the procedures set forth in Section  
3 21.54.140 of this title final unless the decision is appealed by an interested person to the  
4 planning commission. The written appeal shall specifically state the reason or reasons for the  
5 appeal and the manner in which the decision of the director is in error. The decision of the  
6 director shall be affirmed by the planning commission unless the appellant shows by a  
7 preponderance of evidence that the decision of the director is in error, inconsistent with state law,  
8 the general plan, this zoning ordinance or any policy of the city. The appeal shall be filed in  
9 writing with the secretary of the planning commission within ten calendar days after the date of  
10 the director's decision. The decision by the planning commission on appeals of the director's  
11 decision shall be final. If the matter includes a coastal development permit the director shall give  
12 notice of final action on the appeal in accordance with Sections 21.201.160 and 21.201.170 of  
13 this title."

14 SECTION LXXII: That Section 21.110.240(b) of the Carlsbad Municipal Code is  
15 amended to read as follows:

16 "21.110.240(b) The effective date of order of the floodplain administrator  
17 granting or denying a special use permit, variance or other entitlement and the method for  
18 appeal of such order shall be become governed by Section 21.54.150 of this Code. final  
19 and effective ten days after the rendering of this decision, unless within such ten day period, an  
20 appeal in writing is filed with the city council by either an applicant or an opponent. The filing of  
21 such an appeal within such time limit shall stay the effective date of the order of the floodplain  
22 administrator until such time as a final decision on the appeal is reached. Appeals shall be  
23 processed according to Chapter 21.50 of this title. In passing upon appeals and requests for  
24 variances from the requirements of this chapter, the city council shall consider all technical  
25 evaluations, all relevant factors, standards specified in other sections of this chapter, and:"

26 SECTION LXXIII: That Section 21.201.080C. of the Carlsbad Municipal Code is  
27 amended to read as follows:

28 "21.201.080C. The director may approve, approve with conditions or deny the  
permit. The director may waive a public hearing on a minor coastal development permit if notice  
has been provided in accordance with subsection (B)(1) of this section and a request for a public  
hearing has not been received by the city within fifteen working days from the date of sending the  
notice. If a request for a public hearing is received, a public hearing before the director shall be  
held in the same manner as a planning commission hearing. In either event the director's  
decision shall be based upon the requirements of, and shall include specific factual findings  
supporting whether the project is or is not in conformity with, the certified local coastal program  
(and, if applicable, with the public access and recreation policies of Chapter 3 of the Coastal  
Act).

This director's decision shall be made in writing. The effective date of the  
decision and the method for appeal of such decision shall be governed by Section  
21.54.140 of this Code. the date the writing containing the decision or determination is mailed or  
otherwise delivered to the person or persons affected by the decision or determination. Unless  
the decision is appealed to the planning commission, the director shall provide a notice of final  
local action in accordance with Sections 21.201.160 and 21.201.170 of this code, in addition to  
the director's written decision."

1 21.38.130, 21.40.060, 21.40.080, 21.40.090, 21.42.010, 21.46.120, 21.47.020, 21.47.040,  
2 21.47.050, 21.47.072, 21.47.110, 21.47.120, 21.47.150, 21.48.080, 21.50.110, 21.51.010,  
3 21.51.020, 21.51.030, 21.51.040, 21.51.050, 21.51.060, 21.52.030, 21.54.010, 21.54.130,  
4 21.55.070, 21.55.170, 21.55.180, 21.55.190, 21.80.120, and 21.82.060.

5 SECTION LXXVII: That Title 21 of the Carlsbad Municipal Code is amended by  
6 replacing "manager" with "planning director" wherever it occurs in sections 21.37.080, 21.38.080,  
7 and 21.51.050.

8 SECTION LXXVIII: That Title 21 of the Carlsbad Municipal Code is amended by  
9 replacing "director of building and planning" with "planning director" wherever it occurs in  
10 sections 21.80.030, 21.80.040, 21.80.050, 21.80.160, and 21.80.170.

11 SECTION LXXIX: That Title 21 of the Carlsbad Municipal Code is amended by  
12 the replacing "building official," "building and planning director," "director of building and  
13 planning," and "principal building inspector" with "community development director" wherever  
14 they occur in the following sections: 21.34.130, 21.34.140, 21.42.010, 21.47.120, 21.47.130,  
15 21.47.150, 21.48.080, 21.55.070, 21.60.010, 21.60.030, 21.80.010, 21.83.080, and 21.81.010.

16 SECTION LXXX: That Title 21 of the Carlsbad Municipal Code is amended by  
17 replacing "land use planning office" with "planning director" wherever it occurs in Section  
18 21.42.010.

19 SECTION LXXXI: That Title 21 of the Carlsbad Municipal Code is amended by  
20 replacing "land use planning office" with "planning department" wherever it occurs in the following  
21 sections: 21.06.060, 21.37.040, 21.38.050, 21.42.010, and 21.43.080.

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING THE CARLSBAD MUNICIPAL CODE TO (1) REPLACE IN VARIOUS MUNICIPAL CODE SECTIONS "BUILDING AND PLANNING DIRECTOR," "DIRECTOR OF BUILDING AND PLANNING," "LAND USE PLANNING MANAGER," "LAND USE PLANNING OFFICE," AND "PRINCIPAL BUILDING INSPECTOR" WITH CURRENT TITLES; AND (2) AMEND MUNICIPAL CODE SECTIONS 19.04.080B., 19.04.110A., AND 19.04.170 REGARDING APPEAL PROCEDURES.

CASE NAME: VARIOUS CODE CHANGES  
CASE NO.: MCA 03-01

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That Title 2 of the Carlsbad Municipal Code is amended by replacing "building and planning director" with "community development director" wherever it occurs in sections 2.08.050, 2.24.020, and 2.48.030.

SECTION II: That Title 2 of the Carlsbad Municipal Code is amended by replacing "land use planning manager" with "planning director" wherever it occurs in sections 2.24.020, 2.24.030, and 2.48.030.

SECTION III: That Title 5 of the Carlsbad Municipal Code is amended by replacing "building and planning director" and "director of building and planning" with "community development director" wherever they occur in sections 5.04.120, 5.09.050, 5.09.110, 5.24.005, 5.24.015, 5.24.020, 5.24.025, 5.24.030, 5.24.040, 5.24.045, 5.24.065, 5.24.075, 5.24.080, 5.24.085, 5.24.095, 5.24.100, 5.24.105, 5.24.115, 5.24.120, 5.24.125, 5.24.210, 5.24.315, and 5.24.335.

SECTION IV: That Section 5.50.040 of the Carlsbad Municipal Code is amended by replacing "land use planning manager" with "planning director."

SECTION V: That Title 6 of the Carlsbad Municipal Code is amended by replacing "building and planning director" with "community development director" wherever it occurs in sections 6.16.030 and 6.16.050.

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1           SECTION XII: That Title 20 of the Carlsbad Municipal Code is amended by  
2 replacing "land use planning office" with "planning department" wherever it occurs in sections  
3 20.08.010, 20.08.020, and 20.12.120.

4           SECTION XIII: That Title 20 of the Carlsbad Municipal Code is amended by  
5 replacing "building and planning director" "and "director of building and planning" with  
6 "community development director" wherever they occur in sections 20.08.140, 20.48.010, and  
7 20.48.030.

8           SECTION XIV: That Title 20 of the Carlsbad Municipal Code is amended by  
9 replacing "land use planning manager" with " planning director" wherever it occurs in sections  
10 20.12.010, 20.12.015, 20.12.070, 20.17.020, 20.20.110, 20.24.090, 20.36.070, and 20.48.010.

11           SECTION XV: That Section 22.08.020 of the Carlsbad Municipal Code is  
12 amended by replacing "land use planning manager" with "planning director."

13           SECTION XVI: That Section 22.10.020 of the Carlsbad Municipal Code is  
14 amended by replacing "director of building and planning" with "community development director"  
15 wherever it occurs.

16           EFFECTIVE DATE:       This ordinance shall be effective thirty days after its  
17 adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be  
18 published at least once in a publication of general circulation in the City of Carlsbad within  
19 fifteen days after its adoption. *(Not withstanding the preceding, this ordinance shall not be*  
20 *effective within the City's Coastal Zone until approved by the California Coastal Commission.)*

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1 RESOLUTION NO. 2003-334

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
3 CARLSBAD, CALIFORNIA ADOPTING MINOR REVISIONS TO  
4 CITY COUNCIL POLICY NO. 64 - WIRELESS  
COMMUNICATION FACILITIES

5 WHEREAS, wireless communication facilities, or WCFs, refer to the many  
6 antenna installations, commonly known as "cell sites," that transmit and receive signals to  
7 enable mobile phone, wireless Internet, and other "wire-free" communication and information  
8 services; and

9 WHEREAS, on October 2, 2001, the City Council adopted Policy No. 64 which  
10 establishes guidelines for the review of wireless communication facilities; and

11 WHEREAS, on October 7, 2003, the City Council approved an amendment to the  
12 Zoning Ordinance to incorporate by reference Policy No. 64 into the review of conditional use  
13 permits for wireless communication facilities; and

14 WHEREAS, Staff has proposed certain minor revisions to Policy No. 64 which  
15 the City Council believes are necessary to clarify certain portions of the Policy.

16 NOW, THEREFORE, the City Council of the City of Carlsbad, California does  
17 hereby resolve as follows:

- 18 1. That the above recitations are true and correct; and

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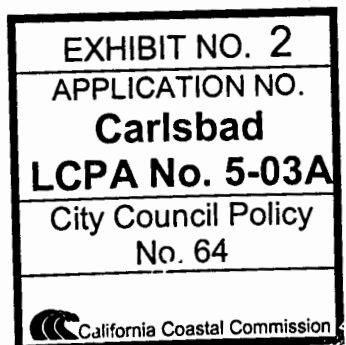
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**CITY OF CARLSBAD**

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**COUNCIL POLICY STATEMENT**

DATED: September 21, 2001

Policy No.	64
Date Issued	December 16, 2003
Effective Date	December 16, 2003
Cancellation Date	
Supersedes No.	64, dated Oct. 3, 2001

General Subject: WIRELESS COMMUNICATION FACILITIES

Specific Subject: Review and operation guidelines for wireless communication facilities

Copies to: City Council, City Manager, City Attorney, Department Heads and Division Heads,  
Employee Bulletin Boards, Press, File**PURPOSE AND GOAL:**

Wireless communication facilities, or WCFs, refer to the many facilities with antennas and supporting equipment that receive and transmit signals and together enable mobile or other "wire-free" communication and information services. Unlike ground-wired telecommunications, such as the land-based telephone system, wireless communication technologies, by their operational nature, require a network of antennas mounted at various heights and attached typically to buildings, structures and poles. A common name for a WCF is "cell site."

WCF proposals to the city became commonplace in the mid-1990s. Since then, Carlsbad has processed dozens of new WCF applications and numerous permit renewals for existing facilities, all without benefit of specific review criteria. As the City's population and the popularity and variety of wireless services grow, providers are expected to install more facilities to improve coverage and gain user capacity.

This policy's purpose is to guide the public, applicants, boards and commissions, and staff in reviewing the placement, construction, and modification of WCFs. The goal is to assure WCFs in Carlsbad:

- Are reviewed and provided within the parameters of law.
- Are encouraged to locate away from residential and other sensitive areas, except in limited circumstances.
- Represent the fewest possible facilities necessary to complete a network without discriminating against providers of functionally equivalent services or prohibiting the provision of wireless services.
- Use, as much as possible, "stealth" techniques so they are not seen or easily noticed.
- Operate consistent with Carlsbad's quality of life.

This policy applies to all commercial providers of wireless communication services. It does not apply to amateur (HAM) radio antennas and dish and other antennas installed on a residence for an individual's private use.

**BACKGROUND:**

To secure the right to provide wireless services to a region, companies obtain airwave licenses that are auctioned by the Federal Communications Commission (FCC), the federal agency that regulates the telecommunications industry. The FCC mandates the licensees establish their service networks as quickly as possible.

In Carlsbad, there are three common types of wireless communication systems: Cellular, PCS (Personal Communications Services), and ESMR (Enhanced Specialized Mobile Radio). The table below provides the relevant similarities and differences between the three.

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## REVIEW RESTRICTIONS:

The Federal Telecommunications Act of 1996 (TCA) preserves the City's ability to regulate the placement, construction, and modification of wireless communication facilities subject to the following restrictions, as contained in TCA Section 704.

- ***The City may not favor any carrier.***  
Regulations may not unreasonably discriminate among competitive providers.
- ***The City may not prevent completion of a network.***  
Regulations may not prohibit or have the effect of prohibiting the provision of wireless communication services.
- ***Applications are to be processed in a reasonable time.***  
A city must act on an application for WCFs within a "reasonable" amount of time, roughly the same time as for any similar application.
- ***The City cannot deny an application because of perceived radio frequency health hazards.***  
If federal standards are met, cities may not deny permits or leases on the grounds that radio frequency emissions are harmful to the environment or to the health of residents. However, local governments may require wireless carriers to prove compliance with the standards. The FCC has established procedures to enforce compliance with its rules.
- ***A decision to deny an application must be supported by substantial evidence.***  
A decision to deny a WCF application must be in writing and supported by substantial evidence contained in a written record.

In Airtouch Cellular v. City of El Cajon (9<sup>th</sup> Cir. 2000) 83 F. Supp. 2d 1158, 1166, the court ruled that a city may consider factors such as community aesthetics and noise in regulating the placement, construction, or modification of WCFs.

## HEALTH CONCERNS &amp; SAFEGUARDS:

Possible health risks from exposure to the radio frequency (RF) electromagnetic fields generated by WCFs are a significant community concern. Accordingly, the FCC requires facilities to comply with RF exposure guidelines published in the Code of Federal Regulations (see 47 CFR §1.1307 and 47 CFR §1.1310). The limits of exposure established by the guidelines are designed to protect the public health with a very large margin of safety as they are many times below the levels that generally are accepted as having the potential to cause adverse health effects. Both the Environmental Protection Agency and Food and Drug Administration have endorsed the FCC's exposure limits, and courts have upheld the FCC rules requiring compliance with the limits.

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- b. Residential zones or areas (except as noted in location guideline A.1).
  - c. Major power transmission towers in corridors located in/or next to a residential zone or area.
  - d. Environmentally sensitive habitat.
  - e. On vacant land in any zone.
3. *Visibility to the Public* – In all areas, WCFs should locate where least visible to the public and where least disruptive to the appearance of the host property. Furthermore, no WCF should be installed on an exposed ridgeline or in a location readily visible from a public place, recreation area, scenic area or corridor, or residential area unless it is satisfactorily located and/or screened so it is hidden or disguised.
4. *Collocation* – Collocating with existing or other planned wireless communication facilities is recommended whenever feasible. Service providers are also encouraged to collocate with water tanks, major power transmission and distribution towers, and other utility structures when in compliance with these guidelines.
5. *Monopoles* – No new ground-mounted monopoles should be permitted unless the applicant demonstrates no existing monopole, building, or structure can accommodate the applicant's proposed antenna as required by Application and Review Guideline D.3.

**B. Design Guidelines**

1. *Stealth Design* – All aspects of a WCF, including the supports, antennas, screening methods, and equipment should exhibit "stealth" design techniques so they visually blend into the background or the surface on which they are mounted. Subject to City approval, developers should use false architectural elements (e.g., cupolas, bell towers, dormers, and chimneys), architectural treatments (e.g., colors and materials), elements replicating natural features (e.g., trees and rocks), landscaping, and other creative means to hide or disguise WCFs. Stealth can also refer to facilities completely hidden by existing improvements, such as parapet walls.
2. *Equipment* – Equipment should be located within existing buildings to the extent feasible. If equipment must be located outside, it should be screened with walls and plants. If small outbuildings are constructed specifically to house equipment, they should be designed and treated to match nearby architecture or the surrounding landscape.
3. *Collocation* – Whenever feasible and appropriate, WCF design and placement should promote and enable collocation.

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8. *Lattice Towers*

- a. New lattice towers should not be permitted in the City.
- b. On existing lattice towers, all antennas should be mounted as close as possible to the tower so they are less noticeable.

9. *Undergrounding* – All utilities should be placed underground.10. *Regulatory Compliance* – WCFs should comply with all FCC, FAA (Federal Aviation Administration), and local zoning and building code requirements.**C. Performance Guidelines**

1. *Noise* – All equipment, such as emergency generators and air conditioners, should be designed and operated consistent with the City noise standards.
2. *Maintenance* – All facilities, related equipment, and landscaping should be maintained in good condition and free from trash, debris, graffiti, and any form of vandalism. All required landscaping should be automatically irrigated. Damaged equipment and damaged, dead, or decaying landscaping should be replaced promptly. Replacement of landscaping that provides facility screening should be, as much as possible, of similar size (including height), type, and screening capability at the time of planting as the plant(s) being replaced.
3. *Maintenance Hours* – Except in an emergency posing an immediate public health and safety threat, maintenance activities in or within 100 feet of a residential zone should only occur between 7 AM (8 AM on Saturdays) and sunset. Maintenance should not take place on Sundays or holidays.
4. *Lighting* – Security lighting should be kept to a minimum and should only be triggered by a motion detector where practical.
5. *Compliance with FCC RF Exposure Guidelines* – Within six (6) months after the issuance of occupancy, and with each time extension or amendment request, the developer/operator should submit to the Planning Director either verification that the WCF is categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1) or a project implementation report that provides cumulative field measurements of radio frequency (RF) electromagnetic fields of all antennas installed at the subject site. The report should quantify the RF emissions and compare the results with currently accepted ANSI/IEEE standards as specified by the FCC. The Planning Director should review the report for consistency with the project's preliminary proposal report submitted with the initial project application and the accepted ANSI/IEEE standards. If, on

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locations do not meet engineering, coverage, location, or height requirements, or have other unsuitable limitations.

3. For proposed new ground-mounted monopoles, the applicant should also provide evidence to the City's satisfaction that no existing monopole, building, structure, or WCF site ("existing facility") could accommodate the proposal. Evidence should demonstrate any of the following:
  - a. No existing facility is located within the geographic area or provides the height or structural strength needed to meet the applicant's engineering requirements.
  - b. The applicant's proposed WCF would cause electromagnetic interference with the existing antennae array or vice versa.
  - c. The fees, costs, or contractual provisions required by the owner to locate on an existing facility or to modify the same to enable location are unreasonable. Costs exceeding new monopole development are presumed to be unreasonable.
  - d. The applicant demonstrates to the Planning Commission's satisfaction that there are other limiting factors that render an existing facility unsuitable.
4. In considering a Conditional Use Permit for a WCF, the Planning Commission should consider the following factors:
  - a. Compliance with these guidelines.
  - b. Height and setbacks.
  - c. Proximity to residential uses.
  - d. The nature of uses on adjacent and nearby properties.
  - e. Surrounding topography and landscaping.
  - f. Quality and compatibility of design and screening.
  - g. Impacts on public views and the visual quality of the surrounding area.
  - h. Availability of other facilities and buildings for collocation.
5. Conditional Use Permits for WCFs should be granted for a period not to exceed five years. Upon a request for either an extension or an amendment of a CUP, the WCF should be reevaluated to assess the impact of the facility on adjacent properties, the record of maintenance and performance with reference to the conditions of approval, and consistency with these guidelines. Additionally, the City should review the appropriateness of the existing facility's technology, and the applicant should be required to document that the WCF maintains the technology that is the smallest, most efficient, and least visible and that there are not now more appropriate and available locations for the facility, such as the opportunity to collocate or relocate to an existing building.