

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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June 23, 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 July 14-16, 2004**

**STAFF NOTES:**

This LCP amendment was scheduled for the May 2004 Commission hearing with a staff recommendation of denial and approval with suggested modifications. The recommended modifications were to the proposed review and approval guidelines contained in the Council Policy addressing wireless communication facilities (WCFs commonly known as "cell sites"). At the request of the City of Carlsbad, Commission action on the item was postponed and a time extension of up to one year was granted. Since that time, City staff has indicated that there will be additional changes made to the referenced Council Policy 64 in the future, and there may be revisions that would not incorporate the entire Council Policy into the certified LCP. Therefore, instead of the Commission taking action on the proposed changes which will be subsequently modified by the City and require another LCP amendment, City and Commission staff agree the proposed changes addressing WCFS should be deleted from the approved ordinance thereby allowing approval of the remainder of the proposed minor changes to go forward at this time. A suggested modification is necessary to delete the proposed changes addressing WCFs from the ordinance as approved by the City and the Commission. The City has indicated such changes addressing wireless communication facilities will be the subject of a future LCP amendment.

**SUMMARY OF AMENDMENT REQUEST**

The wireless communication facilities (WCFs) proposal is the most substantive part of the subject LCP amendment. The LCP implementation plan amendment proposes to reference into the LCP Council Policy Statement 64, which provides review and operation guidelines for proposed 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.

### **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 one suggested modification. Instead of suggesting modifications to the proposed language addressing WCFs, staff recommends the Commission delete from the proposed ordinance the changes that reference wireless communication facilities. This will allow approval of the remainder of the proposed minor changes to go forward at this time, and the City to address changes to the location and design guidelines for WCFs in a future LCP amendment. This approach is concurred with by City staff per the attached letter dated June 23, 2004.

The appropriate resolutions and motions begin on page 3. The suggested modifications begin on page 4. The findings for approval of portions of the Implementation Plan Amendment as submitted, and denial of portions and approval, if modified, begin on page 4.

### **ADDITIONAL INFORMATION**

Further information on the LCP amendment may be obtained from **Bill Ponder**, Coastal Planner, at (619) 767-2370.

## **PART I. OVERVIEW**

### **A. LCP HISTORY**

#### **Carlsbad Local Coastal Program (LCP)**

The City's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified. The subject amendment request affects all segments of the certified LCP.

**B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

**C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

**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 #5-03A 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 #5-03A 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.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

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

**PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested modification to the proposed Implementation Plan amendment be adopted:

1. Prior to effective certification of Ordinance No. NS-675 (Case No. ZCA 00-02) as part of the certified LCP Implementation Plan, the City shall delete the following portions: 1) proposed Section 21.04.379 that includes a definition of wireless communication facilities; and 2) proposed Section 21.42.010 (16) that includes a provision that allows wireless communication facilities in all zones, subject to Council Policy 64.

**PART IV. FINDINGS FOR APPROVAL OF PORTIONS OF THE CITY OF CARLSBAD'S IMPLEMENTATION PLAN AMENDMENT #5-03A AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

The subject request is to amend the City's certified implementation program (Title 21 of the municipal code) with changes to the code to do the following: revise standards for the noticing of continued public hearings; revise the review requirements for subdivisions

with panhandle lots; amend procedures for incomplete application; revise and standardize the appeal process for most types of land use decisions; revise variance findings to be consistent with the California Government Code; change provisions affecting the review of General Plan and Zoning Ordinance amendments; repeal density provisions that are inconsistent with the General Plan; update Chapter 21.05 to reflect currently adopted zones; replace outdated titles, such as "land use planning manager", with current titles, such as "planning director".

The above would be applied citywide, and will potentially affect the following segments of the certified Carlsbad LCP: Mello I, Mello II, Agua Hedionda, Village Redevelopment Area, East Batiquitos Lagoon, and West Batiquitos Lagoon.

## **B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN**

### **1. Findings for Approval as Submitted**

#### **REVISE STANDARDS FOR THE NOTICING OF CONTINUED HEARINGS**

##### *Background*

Zoning Ordinance Section 21.54.100 states that when a decision-making body such as the Planning Commission holds a public hearing, it may continue the public hearing without renoticing surrounding property owners only if the date, time and place to which the matter will be continued is publicly announced at that initial hearing. While implied for all public hearings, the zoning ordinance explicitly requires renoticing for public hearing items continued to a date uncertain only if the items are located in the coastal zone.

##### *Proposal*

The proposed Section 21.54.100 requires the renoticing of all public hearing items continued to a date uncertain, not just those in the Coastal Zone, to include any public hearing item, rather than just development permits. The change would not affect noticing requirements in the coastal zone and as such is consistent with the certified LUP.

#### **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

##### *Proposal*

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. Additionally, the section also provides that the applicant may file an appeal of an incompleteness determination with the Planning Commission within 20 days of the date of such determination. Upon the proper filing of an appeal, the Commission must act on it within 60 days.

### *Proposal*

The amendment would eliminate the sunset clause and reinstate the requirement that applications inactive for more than six months will be deemed withdrawn. The changes would not materially affect existing standards in the certified coastal permits ordinance and as such is consistent with the certified LUP.

## **REVISE AND STANDARDIZE THE APPEAL PROCESS FOR MOST TYPES OF LAND USE DECISIONS**

### *Background*

Amendments are proposed to every Zoning Ordinance section (there are more than 30) regarding appeals, except in two cases: the appeal provisions found in Chapter 21.41, the Sign Ordinance, and Chapter 21.43, the Adult Entertainment Ordinance.

### *Proposal*

The amendment proposes to consolidate all zoning ordinance appeal procedures into two sections for consistency. Proposed amendments to Section 21.54.140 would provide the procedure for the appeal of Planning Director or Housing and Redevelopment Director decisions to, as appropriate, the Planning Commission or Design Review Board. A second, new section (Section 21.54.150) is proposed to contain the same procedure, but for the appeal of Planning Commission or Design Review Board decisions to, as appropriate, the City Council or Housing and Redevelopment Commission. The proposed changes include: adding that appeal procedures also apply to decisions made pursuant to the Environmental Protection Procedures Ordinance, which is Title 19 of the Municipal Code; establishing how and when a decision becomes final and effective; clarifying that a properly filed appeal stays the effect of the director's decision until the Planning Commission or Design Review Board acts on the decision; and removing the requirement that the appellant demonstrate the manner in which the director's decision was in error.

The City found that with the existing requirement that the appellant demonstrate substantial evidence exists to support an appeal, there is no reason to further require proof of an erroneous decision; requiring that the appeal be noticed and heard in the same manner as was required of the original decision was desirable; and that establishing that the appeal hearing will occur as soon as practicable is fair. This requires replacing some existing timeframes that require the hearing of appeals within 20 or 30 days of the appeal filing. The amendment allows for accommodation of full meeting agendas, holidays, and scheduling needs; establishing that reversal of a Planning Commission (or Design Review Board) decision on appeal by the City Council (or Housing and Redevelopment Commission) will require three affirmative votes. The noticing and public participation 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 the General Plan, and neither this section nor Section 21.51.010 require a finding of consistency with the Local Coastal Program.

#### *Proposal*

Amendments to the Zoning Ordinance's three sections on variances are proposed to ensure each section:

1. Is consistent with the other;
2. Matches the wording found in the State Government Code; and,
3. Includes findings for consistency with the General Plan and Local Coastal Program.

Based on the above, the proposed changes are consistent with the certified LUP.



## **CHANGE PROVISIONS AFFECTING THE REVIEW OF GENERAL PLAN AND ZONING ORDINANCE AMENDMENTS**

### *Background*

Chapter 21.52 of the Zoning Ordinance ("Amendments") establishes the procedures for amending both the General Plan and Zoning Ordinance.

### *Proposal*

The city proposes amendments to Chapter 21.52 to revise appeal requirements (as discussed above) and to limit the Planning Director's review authority. The amendment gives the Planning Director the authority to return to the applicant an amendment application if the director believes it is inconsistent with the general plan or an applicable specific plan. An amendment is also proposed to Section 21.52.100 to allow the City to hold a noticed public hearing "as soon as practicable" to accommodate scheduling needs, full agendas, and holidays rather than within 30 days of receipt of a Planning Commission resolution of approval as presently certified, which the Commission finds acceptable.

## **REPEAL DENSITY PROVISIONS THAT ARE INCONSISTENT WITH THE GENERAL PLAN**

### *Background*

In 1981, the City Council added the following section to the standards of the Residential Multiple-Family (R-3), Residential Professional (R-P), Residential Tourist (R-T), and Residential Waterway (R-W) zones.

"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 the planning commission or city council, whichever is the final decision making 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 that the density is consistent with the general plan and the provisions of this code.

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.

### **REPLACE OUTDATED TITLES, SUCH AS "LAND USE PLANNING MANAGER," WITH CURRENT TITLES, SUCH AS "PLANNING DIRECTOR"**

#### *Background*

Over the years, Carlsbad has used different titles for the individuals and offices involved in the land use process. The amendment proposes to replace "land use planning manager" with "planning director" in all but two exceptions:

1. Zoning Ordinance Section 21.10.080(d)(1) currently gives the land use planning manager authority to approve a substandard size for the buildable portion of a flag lot in the R-1 zone, subject to specific requirements. The City found the authority to approve a substandard size should coincide with the official or decision-making body

that approves the subdivision containing the panhandle lot. Therefore, the amendment proposes replacing "land use planning manager" in this section with "official or decision-making body with the authority to otherwise approve the subdivision."

2. Zoning Ordinance Section 21.18.040, part of the standards of the R-P Residential Professional Zone, indicates the planning director may approve a variety of uses by conditional use permit. This conflicts with Chapter 21.50 ("Variances-Conditional Use Permits"), which in Section 21.50.040 states the Planning Commission has the authority to grant a conditional use permit. Section 21.18.040 is proposed for amendment to indicate that subject to the provisions of Chapters 21.42 and 21.50 several uses and structures must be permitted by CUP via the planning commission, including circuses, health facilities, TV towers and professional care facilities. These changes would be subject to discretionary review to assure consistency with applicable LCP standards and are acceptable.

The above changes do not raise issues with the procedural elements of the certified LCP.

Three additional minor changes are proposed (delete an unnecessary word in Section 21.45.020D of Chapter 21.45 ("Planned Developments"), correct a word in Section 21.83.030A ("Child Care") and amend two sections regarding allowed protrusions above building height limits. The proposed changes will make the standards regarding roof structures, towers, chimneys, and the like easier to understand and apply and will not allow any additional increases in height than the certified LCP would allow. Therefore, the Commission can accept the changes as being consistent with the certified land use plans.

**PART V. FINDINGS FOR DENIAL OF A PORTION OF THE CITY OF CARLSBAD'S IMPLEMENTATION PLAN AMENDMENT #5-03A AS SUBMITTED AND APPROVAL IF MODIFIED**

**A. 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 would have to 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 proposed 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 into the Municipal Code provisions governing the issuance of CUPS. The certified LCP contains no standards specifically for WCFs, nor does it specifically list WCFs or antennas as permitted uses. Instead, the City currently 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.

Council Policy 64 contains specific and extensive development and design standards for communications facilities including requirements that the facility not reduce the number of required parking spaces on a proposed site; meet the required setbacks of the underlying zone; and minimize the visual impact of the facility through placement, screening, camouflage, color and landscaping to ensure compatibility with adjacent uses and other site characteristics. Façade-mounted antennae must be integrated architecturally into the style and character of the structure to which they are attached, and roof-mounted antennae may not exceed the minimum height necessary to serve the operator’s service area while complying with the building height requirements.

The Council policy contains extensive siting provisions as identified in the Location Guidelines section. Siting criteria for preferred locations and discouraged locations are proposed. The policy provides that WCFs should locate on buildings and structures, not on vacant land. In addition, WCFs should locate in zones and areas which are listed in

order of descending preference. For example, Commercial, Industrial and Public Utility zones are preferred areas for location while discouraged locations include open space zones and environmentally sensitive habitat unless the applicant demonstrates no feasible alternative exists.

Council Policy 64 contains provisions identifying that WCFs should locate where they are least visible to the public and where they are least disruptive to the appearance of the host property. 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. The ordinance contains Design Guidelines to further limit the visual obtrusiveness of WCFs. For example, WCFs should employ a "Stealth" Design to visually blend into the background or the surface on which they are mounted. Architectural elements are encouraged to hide or disguise WCFs. Stealth can also refer to facilities completely hidden by existing improvements, such as parapet walls. Equipment is encouraged to locate 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.

Council Policy 64 contains provisions that address many of the Commission's concerns relating to the siting of such facilities. For example, the ordinance provides that collocating with existing or planned WCFs is recommended when feasible. The ordinance provides that collocation with water tanks and utility towers is encouraged. No new ground-mounted monopoles are permitted unless the applicant demonstrates that no existing monopole, building, or structure can accommodate the proposed antenna as required by Application and Review Guideline D.3.5. These provisions call for an alternatives analysis of possible locations for WCFs that address similar informational requirements the Commission considers when reviewing WCFs.

As proposed, the amendment requires that applicants for communication facilities assess all potential alternative sites, and attempt to co-locate new facilities at existing sites. 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.

**1. 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 Coastal Act Sections 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 protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Regarding the protection of environmentally sensitive habitat from adverse impacts associated with construction of WCFs, the proposed ordinance requires evidence that no location in a preferred zone or area as listed in Location Guideline A.1. is feasible. The preferred zone or area locations must not meet engineering, coverage, location, or height requirements, or have other unsuitable limitations before a WCF can be sited in a "discouraged" location such as, environmentally sensitive habitat or open space. However, there are other potentially less environmentally damaging options in the list of "discouraged" locations, such as residential zones, major power transmission tower corridors and vacant land that should be considered first to avoid adverse effects on sensitive coastal resources and inconsistency with the LUP policies protecting such resources.

While the ordinance requires an alternatives analysis to determine whether a WCF can be sited in a preferred area, it fails to require that an alternatives analysis be done to determine the most appropriate "discouraged" location should it be unavoidable. Therefore, without a thorough alternatives analysis to assure the WCF is sited in the least environmentally damaging location, the proposed ordinance is inconsistent with the LUP.

Regarding the protection of visual resources, Policy 8-1 of the Mello II LUP requires new development be sited and designed to protect existing views and panorama.

Policy 8-1

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad Coastal Zone to assure maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

In addition, Section 21.40.135 of the City's certified LCP Implementation Plan is applicable to the proposed development and states, in part:

Within the coastal zone, existing public views and panorama shall be maintained. Through the individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitations and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open areas around them to permit more frequent views of the shoreline. Vista points shall be incorporated as a part of larger projects.

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.

Federal law states that WCF's cannot be categorically prohibited if doing so could "have the effect of prohibiting the provision of personal wireless services" or would "unreasonably discriminate among providers" 47 U.S.C § 332(c)(7)(B)(i). However, in order to comply with the above visual policies of the LUP, any change that potentially allows WCFs on the beach must also make clear that WCFs should not be located on beach unless no feasible alternative exists and it would be inconsistent with federal law to deny that location, to ensure preservation of scenic values and shoreline resources. In addition, to comply with the above LUP policy regarding seawalls, a WCF must be sited so no shoreline protective device is needed. The same analysis is appropriate for potentially siting a WCF in an environmentally sensitive habitat area. The certified LUP allows only uses dependent on the resources within an environmentally sensitive habitat area to protect against any significant disruption of habitat value. Therefore, siting WCFs in such areas should be avoided unless denial would meet the above stated federal regulatory criteria.



Finally, while the proposed change requires that Policy 64 be followed in the review of CUPS for WCFs, the same standards are not identified as applying to the CDP review and approval process. As such, while a WCF in the coastal zone would require a CDP, the LCP as presently drafted and as proposed to be modified, would not require the same siting and design criteria be followed during CDP review.

For these reasons, as submitted, the Commission cannot find the proposed ordinance is adequate to carry out the public access, scenic preservation and resource protection provisions of the certified LUP.

## **2. Findings For Approval, If Modified**

As stated above, the proposed LCP amendment, as submitted, includes a number of design standards and alternative considerations that must be made in order to determine the appropriate design and location of WCFs. In addition, the ordinance identifies preferred locations and discouraged locations for the cell sites. As proposed, a discouraged location is only acceptable if no viable alternative exists in a preferred location because it cannot meet engineering, coverage, location, or height requirements, or has other unsuitable limitations.

However, to further ensure that impacts to habitat, scenic resources and public views are minimized to the maximum extent feasible, the Commission believes several changes are necessary to the analysis required if a WCF is proposed in environmentally sensitive habitat or on beaches, both of which are also potentially designated open space areas. Instead of incorporating these suggested changes into the ordinance with this action, City staff has indicated additional changes will be made to Council Policy 64 in the future, which will require a new LCP amendment. Therefore, City staff has requested instead of suggesting changes to the policy, that the Commission approve the LCP amendment with a modification that would delete the two sections addressing WCFs from this ordinance. The Commission concurs with this approach with the understanding that a LCP amendment will be processed in the future to incorporate into the LCP more specific standards for review and approval of WCFs.

Therefore, the Commission finds that without changes to the policies addressing WCFs, the proposed LCP amendment does not conform with the certified LUP and would be inadequate to carry out its protections. The proposed amendment, if modified as suggested to delete those sections referencing WCFs, 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 substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b). In the case of the subject LCP amendment, the Commission finds that approval of the subject LCP amendment, if modified as suggested, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act.

For the most part, the proposed amendment to the City of Carlsbad's Implementation Plan is consistent with and adequate to carry out the policies of the certified land use plan. Suggested modifications have been added to delete portions of the amendment referencing WCFs. If modified as suggested, no impacts to coastal resources will result from the amendment.

Any specific impacts associated with individual development projects would be assessed through the environmental review process, and, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that no significant unmitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment as modified.

ORDINANCE NO. NS-675

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 for 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

1                   ~~"Land use planning manager" means the planning director of the city; further, the~~  
2 ~~term "building and planning director" or any term of equivalent meaning shall refer to the planning~~  
3 ~~director of the city.~~

4                   SECTION V: That Section 21.04.292 of the Carlsbad Municipal Code is amended  
5 by its renumbering to Section 21.04.293.

6                   SECTION VI: That Chapter 21.04 of the Carlsbad Municipal Code is amended by  
7 the addition of new Subsection 21.04.292 to read as follows:

8                   **"21.04.292 Planning director.**

9                   **'Planning director' means the director of planning of the city or his or her**  
10 **designee. In addition, the term "director" as used throughout this Title shall also mean**  
11 **the planning director unless the context clearly requires otherwise."**

12                   SECTION VII: That Chapter 21.04 of the Carlsbad Municipal Code is amended by  
13 the addition of Section 21.04.379 to read as follows:

14                   **"21.04.379 Wireless communication facility.**

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

22                   SECTION VIII: That Section 21.05.010 of the Carlsbad Municipal Code is  
23 amended to read as follows:

24                   **"21.05.010 Names of zones.**

25                   In order to classify, regulate, restrict and segregate the uses of land and buildings,  
26 to regulate and restrict the height and bulk of buildings, to regulate the area of yards and other  
27 open spaces about buildings, and to regulate the density of population, ~~thirty-five~~ **twenty-three**  
28 **classes of zones are established by this title to be known as follows:**

Q--Qualified Development Overlay Zone  
E-A--Exclusive Agricultural Zone  
R-A--Residential Agricultural Zone  
R-E--Residential Estate Zone  
R-1--One-family Residential Zone  
R-2--Two-family Residential Zone  
R-3L--~~Limited Multiple-family Residential Zone~~  
R-3--Multiple-family Residential Zone  
R-P--Residential-Professional Zone  
R-T--Residential Tourist Zone  
H-O -- Hospital Overlay Zone  
R-W--Residential Waterway Zone  
RD-H--~~Residential Density High Zone~~  
RD-M--Residential Density-Multiple Zone

**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 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 XI: That Section 21.06.130 of the Carlsbad Municipal Code is amended  
2 to read as follows:

3 "21.06.130 Effective date of order and appeal of planning commission  
4 decision.

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

22 SECTION XII: That Section 21.06.140 of the Carlsbad Municipal Code is repealed  
23 as follows:

24 "21.06.140 City council hearing

25 Upon receipt of a written appeal the city clerk shall advise the land use planning  
26 manager and shall set the matter for public hearing by the city council. Notice of the public  
27 hearing shall be given pursuant to Section 21.54.060(1) of this code. The city council shall  
28 announce its decision by resolution. If such resolution grants approval of a site development plan  
it shall also recite such conditions, requirements, design criteria or development standards as the  
council may impose. The decision of the city council is final. In the event the decision of the city  
council on an appeal is contrary to a decision of the planning commission the land use planning  
manager shall so report to the commission and include the basis of the council action."

SECTION XIII: That Section 21.06.150 of the Carlsbad Municipal Code is  
renumbered and amended to read as follows:

"21.06.140150 Final site development plan.

After approval the applicant shall submit a reproducible copy of the site  
development plan which incorporates all requirements of the approval to the planning director  
land use planning manager for signature. Prior to signing the final site development plan, the  
planning director manager shall determine that all applicable requirements have been  
incorporated into the plan and that all conditions of approval have been satisfactorily met or  
otherwise guaranteed.

The final signed site development plan shall be the official site layout plan for the  
property and shall be attached to any application for a building permit on the subject property."

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 on appeal, and the planning commission for minor subdivisions, may approve panhandle or flag-  
2 shaped lots where the lot area width and yards shall be measured as follows: **For a minor**  
3 **subdivision application with two or more panhandle lots, the authority for approval shall**  
4 **be with the planning commission."**

5 SECTION XX: That Section 21.09.120(2)(F) of the Carlsbad Municipal Code is  
6 amended to read as follows:

7 "21.09.120(2)(F) Each lot shall have at least three nontandem parking spaces,  
8 with an approach not less than twenty-four feet in length, with proper turnaround space to permit  
9 complete turnaround for forward access to the street. This parking and access arrangement shall  
10 be designated to the satisfaction of the city engineer and use planning manager."

11 SECTION XXI: That Section 21.10.080(b) of the Carlsbad Municipal Code is  
12 amended to read as follows:

13 "21.10.080(b) The official or decision-making body with the authority to  
14 otherwise approve the subdivision city council, for major subdivisions, and the land use  
15 planning manager, for minor subdivisions may approve panhandle or flag-shaped lots where the  
16 lot width and yards shall be measured in accord with this section if the following circumstances  
17 are found to exist: **For a minor subdivision application with two or more panhandle lots,**  
18 **the authority for approval shall be with the planning commission."**

19 SECTION XXII: That Section 21.10.080(d)(1) of the Carlsbad Municipal Code is  
20 amended to read as follows:

21 "21.10.080(d)(1) The area of the buildable portion of the lot shall be a minimum  
22 ten thousand square feet or the minimum required by the zone whichever is greater. In zone  
23 districts permitting less than ten thousand square-foot lots, the buildable portion of the lot may be  
24 less than ten thousand square feet provided the official or decision-making body with the  
25 authority to otherwise approve the subdivision land use planning manager finds from  
26 evidence submitted on a site plan that all requirements of this section will be met; however, in no  
27 case shall the buildable portion of the lot be less than eight thousand square feet in area. If a site  
28 plan for a subdivision with panhandle lots with a buildable portion of less than ten thousand  
square feet is approved, development within such subdivision shall conform to the plan as  
approved. Any modification to the parking and turnaround areas, or horizontal expansion of  
buildings, shall be submitted to the land use planning manger who may approve, approve with  
conditions or deny any such modifications."

SECTION XXIII: That Section 21.10.080(d)(2) of the Carlsbad Municipal Code is  
amended to read as follows:

"Section 21.10.080(d)(2) The width requirements for the buildable portion of the  
lot shall be met as required for interior lots in the zone district."

SECTION XXIV: That Section 21.10.080(d)(10) of the Carlsbad Municipal Code is  
amended to read as follows:



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, t**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 ~~other projects if said body finds that the density is consistent with the general plan and the~~  
2 ~~provisions of this code.~~

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

7 SECTION XXIX: That Section 21.20.100 of the Carlsbad Municipal Code is  
8 repealed as follows and all following sections of Chapter 21.20 shall be renumbered sequentially:

9 "21.20.100 Maximum allowable density.

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

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

19 SECTION XXX: That Section 21.22.080 of the Carlsbad Municipal Code is  
20 repealed as follows and all following sections of Chapter 21.22 shall be renumbered sequentially:

21 "21.22.080 Maximum allowable density.

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

27 ~~Except when the city council is the final decision making body for a project, a~~  
28 ~~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."

SECTION XXXI: That Section 21.34.050(e) of the Carlsbad Municipal Code is  
amended to read as follows:

"21.34.050(e) Effective date of order and Appeal of Planning Director Land  
Use Planning Manager Decision. 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.

(4) ~~The applicant or any other interested person may appeal, from any action of~~  
the land use planning manager with respect to a planned industrial permit, to the planning  
commission.

Any such appeal shall be filed with the land use planning office within ten days of  
written notification of the land use planning manager's decision.

Upon the filing of an appeal, the land use planning manager shall set the matter  
for planning commission 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 planning  
commission shall render its decision on the appeal.

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

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

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

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

6                   "21.34.050(f) Effective Date of Order and Appeal of Planning Commission  
7 Decision. The effective date of the planning commission's decision and method for appeal  
of such decision shall be governed by Section 21.54.150 of this Code.

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

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

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

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

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

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

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

17                  "21.35.090(f) The effective date of order of a Housing and Redevelopment  
18 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~~  
19 ~~writing. The date of the decision shall be the date the writing containing the decision or~~  
20 ~~determination is mailed or otherwise delivered to the person or persons affected by the decision~~  
~~or determination."~~

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

23                  "21.35.100 Design review board action.

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

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

26                  (2) Minor or major redevelopment permits; and

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

1           (b) ~~The decision of the board shall be made in writing. The date of the decision~~  
2 ~~shall be the date the writing containing the decision or determination is mailed or otherwise~~  
3 ~~delivered to the person or persons affected by the decision or determination.~~

4           (c) ~~Except for reports and recommendations on major redevelopment permits and~~  
5 ~~decisions on appeals of director decisions, all board decisions may be appealed to the housing~~  
6 ~~and redevelopment commission.~~

7           (b) ~~(d) For major redevelopment projects, the board shall consider the evidence~~  
8 ~~and by resolution report and recommend to the housing and redevelopment commission~~  
9 ~~approval, conditional approval, or denial of the project. Such resolution shall state, among other~~  
10 ~~things, the facts and reasons why the board determined the approval, conditional approval or~~  
11 ~~denial to be consistent with this chapter. The action to approve, conditionally approve or deny is~~  
12 ~~advisory to the commission and the city clerk shall set the matters to public hearing before the~~  
13 ~~commission within thirty days after adoption of the resolution."~~

14           SECTION XXXV: That Section 21.35.110 of the Carlsbad Municipal Code is  
15 amended to read as follows:

16           "21.35.110 Effective date of order and appeal of design review board  
17 decision Appeal to Housing and Redevelopment Commission.

18           The effective date of the design review board's decision and method for  
19 appeal of such decision shall be governed by Section 21.54.150 of this Code. ~~Except as~~  
20 ~~provided in Section 21.35.100(c), the action of the design review board is final and effective ten~~  
21 ~~calendar days after the adoption of the resolution of decision unless an interested person~~  
22 ~~appeals a design review board decision on a minor project or nonadministrative variance or by~~  
23 ~~filing a written appeal with the city clerk within such ten day period. An individual member of the~~  
24 ~~housing and redevelopment commission can be an interested person for the purposes of appeal.~~  
25 ~~The written appeal shall specifically state the reason or reasons for the appeal and the manner in~~  
26 ~~which the decision of the design review board is in error. The burden of proof is on the appellant~~  
27 ~~to establish by substantial evidence that the reason(s) for the appeal exist. The hearing before~~  
28 ~~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. The filing of~~  
~~an appeal shall stay the effective date of the design review board decision until such time as the~~  
~~housing and redevelopment commission has acted on the appeal. Fees for filing an appeal under~~  
~~this section shall be established by resolution of the city council."~~

29           SECTION XXXVI: That Section 21.35.130 of the Carlsbad Municipal Code is  
30 amended to read as follows:

31           "21.35.130 Variances.

32           (a) The housing and redevelopment commission may grant variances from the  
33 limits, restrictions and controls established by this chapter for major redevelopment permits if the  
34 commission finds that:

35           (1) Because of special circumstances applicable to the subject property,  
36 including size, shape, topography, location or surroundings, the strict application of the  
37 zone regulation deprives such property of privileges enjoyed by other property in the  
38

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~~  
the Carlsbad village area redevelopment plan;

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

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

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

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

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

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

1 ~~21.50.160 of this title. In making its decision on any such appeal the city council shall be guided~~  
2 ~~by the provisions of Section 21.31.100."~~

3 SECTION XXXVIII: That Chapter 21.42 of the Carlsbad Municipal Code is  
4 amended by the addition of Section 21.42.010(16) to read as follows:

5 **"21.42.010(16) All zones: Wireless communication facilities, which must**  
6 **comply with City Council Policy Statement No. 64."**

7 SECTION XXXIX: That Section 21.44.060(7) of the Carlsbad Municipal Code is  
8 amended to read as follows:

9 **"21.44.060(7) Administrative Hearing. Any person objecting to a decision made**  
10 **pursuant to subsection (2)(C) above may request in writing within ten days of the determination**  
11 **by the planning director, an administrative hearing with the planning director. The planning**  
12 **director shall apply the criteria of this section in making his determination. The decision of the**  
13 **director shall be final unless the director's decision is appealed to the planning commission city**  
14 **council within ten days following said decision. The effective date of the planning director's**  
15 **decision and method for appeal for such decision shall be governed by Section 21.54.140**  
16 **of this Code."**

17 SECTION XL: That Section 21.45.020D. of the Carlsbad Municipal Code is  
18 amended to read as follows:

19 **"21.45.020D. If there is a conflict between the regulations of this chapter and any**  
20 **regulations approved as part of the city's certified local coastal programs, or a redevelopment**  
21 **master or specific plan, the regulations of the local coastal program or the master or specific plan**  
22 **shall prevail."**

23 SECTION XLI: That Section 21.46.020 of the Carlsbad Municipal Code is  
24 amended to read as follows:

25 **"21.46.020 Allowed protrusions above height limits. Roof structures specifically**  
26 **for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to**  
27 **operate and maintain the building, fire or parapet walls, skylights, architectural features or**  
28 **towers, flagpoles, chimneys, smokestacks, wireless masts and similar structures may be erected**  
29 **above the height limits prescribed in this title but no roof structure or any other space above the**  
30 **height limit prescribed for the zone in which the building is located shall be allowed for the**  
31 **purpose of providing additional floor space, or be taller than the minimum height requirement to**  
32 **accommodate or enclose the intended use.**

33 **However, the exception in this section does not apply if there is a specific**  
34 **provision elsewhere in this title for the above-described protrusions under consideration or for**  
35 **protrusions which are architectural features."**

36 Section XLII: That Section 21.46.130 of the Carlsbad Municipal Code is amended  
37 to read as follows:

38 **"21.46.130 Walls, fences or hedges.**

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."

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

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



1           The effective date of the planning director's decision and method for appeal  
2 of such decision shall be governed by Section 21.54.140 of this Code."

3           SECTION XLV:       That Section 21.47.110(b) of the Carlsbad Municipal Code  
4 is amended to read as follows:

5           "21.47.110(b) A site plan and elevations for such projects which include all design  
6 criteria and development standards as contained in this chapter shall be submitted to the  
7 ~~planning director land use planning manager~~ who may approve, conditionally approve or  
8 disapprove the permit. The ~~planning director land use planning manager~~ shall approve or  
9 conditionally approve a permit if he makes all of the findings specified in Section 21.47.072. The  
10 ~~planning director's land use planning manager's~~ decision may be appealed in accordance with  
11 the procedures of Section 21.47.075 ~~21.47.073~~ of this chapter."

12           SECTION XLVI: That Section 21.50.030 of the Carlsbad Municipal Code is  
13 amended to read as follows:

14           "21.50.030 Required findings showing for variances.

15           Before any variance may be granted, it shall be shown:

16           (1) That ~~because of there are~~ special circumstances applicable to the subject  
17 property, including size, shape, topography, location or surroundings, the strict  
18 application of the zoning ordinance deprives such property of privileges enjoyed by other  
19 property in the vicinity and under identical zoning classification ~~exceptional or~~  
20 ~~extraordinary circumstances or conditions applicable to the property or to the intended use that~~  
21 ~~do not apply generally to the other property or class of use in the same vicinity and zone;~~

22           (2) That ~~the~~ such variance shall not constitute a grant of special privileges  
23 inconsistent with the limitations upon other properties in the vicinity and zone in which  
24 the subject property is located and is subject to any conditions necessary to assure  
25 compliance with this finding ~~is necessary for the preservation and enjoyment of a substantial~~  
26 ~~property right possessed by other property in the same vicinity and zone but which is denied to~~  
27 ~~the property in question;~~

28           (3) That ~~the granting of such variance does not authorize a use or activity~~  
which is not otherwise expressly authorized by the zone regulation governing the subject  
property will not be materially detrimental to the public welfare or injurious to the property or  
improvements in such vicinity and zone in which the property is located;

          (4) That the granting of such variance is consistent with the general purpose  
and Intent of will not adversely affect the comprehensive general plan, and any applicable  
specific or master plans. ~~or in the coastal zone, that the granting of such a variance is~~  
~~consistent with and implements the requirements of the certified local coastal program and that~~  
~~the granting of such variance does not reduce or in any manner adversely affect the~~  
~~requirements to protect coastal resources as specified in the zones included in this title and that~~  
~~the variance implements the purposes of zones adopted as implementation of the local coastal~~  
~~program land use plan.~~

          (5) In addition, in the coastal zone, that the variance is consistent with and  
implements the requirements of the certified local coastal program and that the variance  
does not reduce or in any manner adversely affect the protection of coastal 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."



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."

14                   SECTION XLVIII: That Sections 21.50.110, 21.50.120, 21.50.130, 21.50.140, and  
15 21.50.150 of the Carlsbad Municipal Code are repealed as follows:

16                   ~~"21.50.110 Transmission of planning commission's record to the city council.~~

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

21                   ~~21.50.120 Appeal Hearing~~

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

25                   ~~21.50.130 Decision of city council.~~

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

29                   ~~21.50.140 Council announcement of findings and decision by resolution.~~

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

1 or denial of the variance or conditional use permit necessary to carry out the general purpose of  
2 this title and shall order that the variance or conditional use permit be granted or denied or  
modified subject to such conditions or limitations that it may impose.

3 21.50.150 Mailing of notice of decision of city council.

4 Not later than seven days following the adoption of a resolution ordering that a  
variance or conditional use permit be granted or denied, a copy of the resolution shall be mailed  
5 to the applicant and to any other parties requesting notice of the action, and one copy shall be  
attached to the planning commission's file of the case and said file returned to the planning  
6 commission for permanent filing."

7 SECTION XLIX: That Section 21.51.010 of the Carlsbad Municipal Code is  
8 amended to read as follows:

9 "21.51.010 Authority of planning director land use planning manager to grant  
certain variances.

10 The planning director land use planning manager shall have the following  
powers and duties:

11 (1) To grant such variances from the zoning provisions of this code as will not be  
contrary to its intent or to the public health, safety and general welfare when, due to special  
12 circumstances conditions or exceptional characteristics of the property or of its location or  
surroundings as specified in subsection (2) of this section, strict and literal interpretation and  
13 enforcement of the provisions of this code would result in unusual difficulties or unnecessary  
hardship or be inconsistent with the general purpose of this code.

14 (2) The planning director land use planning manager may grant a variance from  
the zoning provisions of this code when it appears from the facts contained in the application and  
15 from information obtained by the planning director land use planning manager that the following  
findings can be made:

16 (a) That because of there are special circumstances applicable to the subject  
property, including size, shape, topography, location or surroundings, the strict  
17 application of the zoning ordinance deprives such property of privileges enjoyed by other  
property in the vicinity and under identical zoning classification exceptional or  
18 extraordinary circumstances or conditions applicable to the property or to the intended use that  
do not apply generally to the other property or class of use in the same vicinity and zone;

19 (b) That the such variance shall not constitute a grant of special privileges  
Inconsistent with the limitations upon other properties in the vicinity and zone in which  
20 the subject property is located and is subject to any conditions necessary to assure  
compliance with this finding is necessary for the preservation and enjoyment of a substantial  
21 property right possessed by other property in the same vicinity and zone but which is denied to  
the property in question;

22 (c) That the granting of such variance does not authorize a use or activity  
which is not otherwise expressly authorized by the zone regulation governing the subject  
23 property will not be materially detrimental to the public welfare or injurious to the property or  
improvements in such vicinity and zone in which the property is located;

24 (d) That the granting of such variance is consistent with the general  
purpose and intent of the general plan and any applicable specific or master plans. will not  
25 adversely affect the comprehensive general plan

26 (e) In addition, in the coastal zone, that the variance is consistent with  
and implements the requirements of the certified local coastal program and that the  
27 variance does not reduce or in any manner adversely affect the protection of coastal  
28

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

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

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

8 "21.51.060 Effective date of order and appeal of planning director decision  
9 variance—Appeal.

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

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

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

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

24 "21.52.030 Application.

25 Whenever the owner of any land or building desires an amendment, supplement  
26 to or change in any of the regulations prescribed for his property, he shall prepare an application  
27 requesting such amendment, supplement or change on the prescribed form and forward it with  
28 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 ~~calendar days following the date of decision by the planning commission, an appeal in writing is~~  
2 ~~filed with the city council by the applicant. Fees for filing an appeal under this section shall be~~  
3 ~~established by resolution of the city council."~~

4 SECTION LIII: That Section 21.52.090 of the Carlsbad Municipal Code is  
5 repealed as follows:

6 ~~"21.52.090 Transmission of commission's record to city council.~~

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

11 SECTION LIV: That Section 21.52.100 of the Carlsbad Municipal Code is  
12 amended to read as follows and all following sections of Chapter 21.52 shall be sequentially  
13 renumbered:

14 ~~"21.52.090400~~ Public hearing on commission's recommendations on  
15 ~~amendments and appeals.~~

16 ~~Within not to exceed thirty days F~~following receipt of a the resolution from the  
17 ~~planning commission recommending the adoption of the amendment or the filing of a written~~  
18 ~~appeal from an order of the commission denying an application for amendment, as provided in~~  
19 ~~this chapter, the city council shall conduct a duly advertised public hearing on the matter as~~  
20 ~~soon as practicable, public notice of which shall be given as provided in Section 21.52.040."~~

21 SECTION LV: That Section 21.52.120 of the Carlsbad Municipal Code is  
22 amended to read as follows:

23 ~~"21.52.110420~~ The city council shall render its decision as soon as practicable  
24 ~~not more than thirty days~~ following the termination of proceedings of the hearing or upon the  
25 receipt of report from the planning commission when a matter has been referred back to the  
26 planning commission."

27 SECTION LVI: That Section 21.54.010(c) of the Carlsbad Municipal Code is  
28 amended to read as follows:

29 ~~"21.54.010(c) If the application together with the materials submitted in response~~  
30 ~~to a determination of completeness are determined by the planning director land-use planning~~  
31 ~~manager to not be complete pursuant to this section the applicant may appeal the decision in~~  
32 ~~writing to the planning commission pursuant to Section 21.54.140 within twenty days after the~~  
33 ~~determination has been transmitted to the applicant. The applicant may also appeal the~~  
34 ~~decision of the planning commission to the city council pursuant to Section 21.54.150.~~  
35 ~~The city council planning commission shall make a final written determination of the~~  
36 ~~completeness of the application not later than sixty calendar days after the receipt of the~~  
37 ~~applicant's written appeal to the planning commission."~~

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  
use planning manager shall be final. 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."

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

1 "21.54.140 Effective date of order and aAppeal of planning director or housing  
and redevelopment director decisions.

2 (a) This section shall apply to those decisions or determinations of the planning  
3 director or housing and redevelopment director made pursuant to this title or planning  
4 director determinations pursuant to Title 19 for which an appeal process is not otherwise  
5 specifically established. Accordingly, in this section, "housing and redevelopment  
6 director" shall be interchangeable with "planning director;" "housing and redevelopment  
7 department" shall be interchangeable with "planning department;" "design review board"  
8 shall be interchangeable with "planning commission;" and "housing and redevelopment  
9 commission" shall be interchangeable with "city council."

10 (b) Whenever the planning director is authorized, pursuant to this title or Title 19,  
11 to make a decision or determination, such decision or determination is final and effective when  
12 the planning director's written determination is mailed or otherwise delivered to the  
13 person(s) affected by the determination, whichever time is least restrictive. Within ten  
14 calendar days of the date that a decision or determination becomes final, a written appeal  
15 may be filed with the secretary of the planning commission unless the determination or  
16 decision is appealed by an interested person to the planning commission. An individual member  
17 of the city council can be an interested person for purposes of the appeal. Filing of such an  
18 appeal within such time limits shall stay the effect of the decision or determination of the  
19 planning director until such time as the planning commission has acted on the appeal.  
20 The written appeal shall specifically state the reason or reasons for the appeal and the manner in  
21 which the decision of the planning director is in error. The burden of proof is on the appellant to  
22 establish by substantial evidence that the grounds reason(s) for the requested action appeal  
23 exist. Fees for filing an appeal under this section shall be established by resolution of the  
24 city council. The hearing before the planning commission is de novo, but the planning  
25 commission shall determine all matters not specified in the appeal have been found by the  
26 planning director and are supported by substantial evidence. If the planning commission finds  
27 one or more grounds set forth in the notice of appeal supported by substantial evidence, it may,  
28 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 director with directions for further proceedings. The appeal shall be filed in writing with  
the secretary of the planning commission within ten calendar days after the date of the planning  
director's decision. The planning 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.  
The planning commission action on an appeal shall be final. Fees for filing an appeal under this  
section shall be established by resolution of the city council.

20 (c) Upon the filing of an appeal, the secretary of the planning commission  
21 shall schedule the appeal for hearing before the planning commission as soon as  
22 practicable. An appeal shall be heard and noticed in the same manner as was required of  
23 the determination or decision being appealed. The hearing before the planning  
24 commission is de novo, but the planning commission shall determine all matters not  
25 specified in the appeal have been found by the planning director and are supported by  
26 substantial evidence. The planning commission shall consider the recommendations of  
27 the planning department, the decision of the planning director and all other relevant  
28 documentary and oral evidence as presented at the hearing. The planning commission  
may affirm, modify, or reverse the decision of the planning director, and make such order  
supported by substantial evidence as it deems appropriate, including remand to the  
planning director with directions for further proceedings. The planning commission  
action on an appeal shall be final unless appealed to the city council, pursuant to the  
provisions of Section 21.54.150."



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 included in the fee paid by the applicant. ~~The director's decision may be appealed in writing to~~  
2 ~~the planning commission within fifteen days after the date of the notice.~~

3 (b) ~~The planning director of building and planning shall approve, conditionally~~  
4 ~~approve or deny permits for projects qualifying for administrative approval pursuant to Section~~  
5 ~~30624 of the state Public Resources Code; providing, however, that an administrative permit~~  
6 ~~shall not be issued for any development which must be reviewed by the coastal commission~~  
7 ~~pursuant to Sections 30579(b) and 30601 of the Public Resources Code.~~

8 (c) ~~The planning director of building and planning shall issue all emergency~~  
9 ~~permits.~~

10 (d) If the director determines that the matter does not qualify for an exemption or  
11 an administrative or emergency permit then the director shall set the matter for public hearing  
12 before the planning commission. The coastal permit may be set for hearing at the same time as  
13 any other permit for the project.

14 (e) **The effective date of the planning director's decision and the method for**  
15 **appeal of such decision shall be governed by Section 21.54.140."**

16 SECTION LXIV: That Section 21.80.080 of the Carlsbad Municipal Code is  
17 amended to read as follows:

18 "21.80.080 **Effective date of order and a**Appeal of planning commission  
19 decision.

20 (a) ~~The effective date of the decision of the planning commission and method~~  
21 ~~for appeal of such decision shall be governed by Section 21.54.150 of this code is final and~~  
22 ~~effective ten calendar days after the adoption of the resolution of decision unless within such ten-~~  
23 ~~day period the applicant or any other interested person files a written appeal with the city clerk.~~  
24 ~~An individual member of the city council can be an interested person. The written appeal shall~~  
25 ~~specifically state the reason or reasons for the appeal and the manner in which the decision of~~  
26 ~~the planning commission in error. The burden of proof is on the appellant to establish by~~  
27 ~~substantial evidence that the reason(s) for the appeal exist. The hearing before the council is de~~  
28 ~~novo, but the council shall determine all matters not specified in the appeal have been found by~~  
the planning commission and are supported by substantial evidence. If the council 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  
planning commission 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 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.~~

(b) ~~(d)~~ If the development for which a coastal development permit also requires  
other discretionary approvals for which the planning commission is not given final approval  
authority then the planning commission action on the coastal development permit shall be  
deemed a recommendation to the city council.

(e) ~~No fee shall be charged for the appeal."~~

SECTION LXV: That Section 21.80.160(d) of the Carlsbad Municipal Code is  
amended to read as follows:



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 (b) The decision of the housing and redevelopment commission shall be  
2 consistent with the provisions of this chapter and shall be supported by appropriate findings.

3 (c) If the development for which a coastal development permit also requires other  
4 discretionary permits or approvals for which the design review board is not given final approval  
5 authority then the design review board action on the coastal development permit shall be  
6 deemed a recommendation to the housing and redevelopment commission."

7 SECTION LXVIII: That Section 21.83.030A. of the Carlsbad Municipal Code is  
8 amended to read as follows:

9 "21.83.030A. Any child day care home providing care for the children of only one  
10 family in addition to the provider's owner children."

11 SECTION LXIX: That Section 21.83.050K. of the Carlsbad Municipal Code is  
12 amended to read as follows:

13 "21.83.050K. Large family day care home providers shall make written application  
14 to the director and shall include all materials deemed necessary by the director to show that the  
15 requirements of this section are met. The director shall grant the permit without a hearing if all  
16 the requirements of this section are satisfied. The decision of the director shall be made within  
17 fifteen working days of the receipt of a complete application and provided to the applicant in  
18 writing. The effective date of the decision of the director and the method for appeal of such  
19 decision shall may be appealed to the planning commission within ten calendar days of the  
20 date of the written decision of the director. The appellant shall pay the cost of the appeal. Any  
21 appeal shall be filed in accordance to the procedures set forth in Section 21.54.140 of this title;  
22 the appellant shall pay the fee applicable to single family dwellings."

23 SECTION LXX: That Section 21.83.070B. of the Carlsbad Municipal Code is  
24 amended to read as follows:

25 "21.83.070B. The director may approve, approve with conditions, or deny the  
26 permit. The director may waive a public hearing on an administrative permit if notice has been  
27 provided in accordance with subsection (A)(1) of this section and a request for a public hearing  
28 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 requirements of Section 21.83.080 of this  
chapter.

The director's decision 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.~~ If the matter includes a coastal development  
permit, unless the decision is appealed to the planning commission, the director shall provide a  
notice of final action in accordance with Sections 21.201.160 and 21.201.170 of this code, in  
addition to the director's written decision."

SECTION LXXI: That Section 21.83.070C. of the Carlsbad Municipal Code is  
amended to read as follows:

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 SECTION LXXIV: That Section 21.201.080D. of the Carlsbad Municipal Code is  
2 repealed as follows and all following subsections shall be sequentially re-lettered:

3 ~~"21.201.080 D. The director's decision is final unless the decision is appealed by~~  
4 ~~an interested person to the planning commission. The written appeal shall specifically state the~~  
5 ~~reason or reasons for the appeal and the manner in which the decision of the director is in error.~~  
6 ~~The decision of the director shall be affirmed by the planning commission unless the appellant~~  
7 ~~shows by a preponderance of the evidence that the decision of the director is in error,~~  
8 ~~inconsistent with state law, the general plan, this zoning ordinance or any policy of the city. The~~  
9 ~~appeal shall be filed in writing with the secretary of the planning commission within ten calendar~~  
10 ~~days after the date of the director's decision. The decision by the planning commission on all~~  
11 ~~appeals of the director's decision shall be final. The director shall give notice of final action on the~~  
12 ~~appeal in accordance with Sections 21.201.160 and 21.201.170."~~

13 SECTION LXXV: That Section 21.201.120. of the Carlsbad Municipal Code is  
14 amended to read as follows:

15 "21.201.120 Effective date of order and aAppeal of planning commission  
16 decision.

17 A. The effective date of the planning commission decision and the method  
18 for appeal of such decision shall be governed by Section 21.54.150 of this Code. The  
19 decision of the planning commission is final and effective ten calendar days after the adoption of  
20 the resolution of decision unless within such ten-day period the applicant or any other interested  
21 person files a written appeal with the city clerk. An individual member of the city council can be  
22 an interested person. The written appeal shall specifically state the reason or reasons for the  
23 appeal and the manner in which the decision of the planning commission is in error. The decision  
24 of the planning commission shall be affirmed by the city council unless the appellant shows by a  
25 preponderance of the evidence that the decision of the planning commission is in error,  
26 inconsistent with state law, the general plan, LCP, or any applicable specific plan, master plan,  
27 zoning ordinance or policy of the city. Upon the filing of an appeal, the city clerk shall set the  
28 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. If the development for which a coastal development permit also requires other  
discretionary permits or approvals for which the planning commission is not given final approval  
authority then the planning commission action on the coastal development permit shall be  
deemed a recommendation to the city council.

C. The city council may establish and levy a fee for appeals of coastal permit  
decisions."

SECTION LXXVI: That Title 21 of the Carlsbad Municipal Code is amended by  
replacing "land use planning manager" with "planning director" wherever it occurs in the following  
sections: 21.06.050, 21.06.070, 21.07.120, 21.08.040, 21.08.100, 21.09.190, 21.10.040,  
21.10.100, 21.12.040, 21.21.110, 21.21.130, 21.21.170, 21.24.040, 21.27.020, 21.27.050,  
21.34.020, 21.34.050, 21.34.060, 21.34.070, 21.34.090, 21.34.110, 21.34.130, 21.34.140,  
21.37.040, 21.37.050, 21.37.080, 21.37.100, 21.38.050, 21.38.080, 21.38.090, 21.38.120,

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

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2003, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the \_\_\_\_\_ day of \_\_\_\_\_ 2003, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
CLAUDE A. LEWIS, Mayor

ATTEST:

\_\_\_\_\_  
LORRAINE M. WOOD, City Clerk

(SEAL)

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.

...

1           SECTION VI: That Title 13 of the Carlsbad Municipal Code is amended by  
2 replacing "building and planning director" with "community development director" in sections  
3 13.20.020 and 13.20.040.

4           SECTION VII: That Title 18 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 18.05.020, 18.12.030,  
7 18.12.040, 18.12.050, 18.12.080, 18.12.100, 18.12.110, 18.12.120, 18.12.130, 18.12.140,  
8 18.12.150, 18.12.160, 18.12.180, 18.12.200, 18.30.020, 18.32.010, and 18.40.110.

9           SECTION VIII: That Section 18.28.050 of the Carlsbad Municipal Code is  
10 amended by replacing "principal building inspector" with "community development director."

11           SECTION IX: That Section 19.04.080B. of the Carlsbad Municipal Code is  
12 amended to read as follows:

13           "19.04.080B. Notice of hearing on appeal before ~~either~~ the planning commission  
14 ~~or the city council~~ shall be sent by first class mail to the applicant and to the appellant."

15           SECTION X: That Section 19.04.110A. of the Carlsbad Municipal Code is  
16 amended to read as follows:

17           "19.04.110A. If the planning director or the planning commission has the  
18 authority under this code to approve or deny a project, the decision to adopt, conditionally adopt  
19 or disapprove adoption of a negative declaration or a mitigated negative declaration is final  
unless any interested party files an appeal of the negative declaration, as provided by this code  
in Title 21, Chapter 21.54, Sections 21.54.140 and 21.54.150."

20           SECTION XI: That Section 19.04.170 of the Carlsbad Municipal Code is  
21 amended to read as follows:

22           "19.04.170 Appeal of environmental impact report.

23           A. Any challenge to the adequacy of an EIR certified by the planning  
24 commission may be appealed to the city council in accordance with the procedures set forth in  
Title 21, Chapter 21.54, Section 21.54.150.

25           B. Notice of the hearing on appeal before ~~either the planning commission or the~~  
26 city council shall be sent by first class mail to the applicant and to the appellant."

27           ...



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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INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the \_\_\_\_ day of \_\_\_\_\_ 2003, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the \_\_\_\_ day of \_\_\_\_\_ 2003, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
CLAUDE A. LEWIS, Mayor

ATTEST:

\_\_\_\_\_  
LORRAINE M. WOOD, City Clerk

(SEAL)

RESOLUTION NO. 2003-334

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

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

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

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

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

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

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

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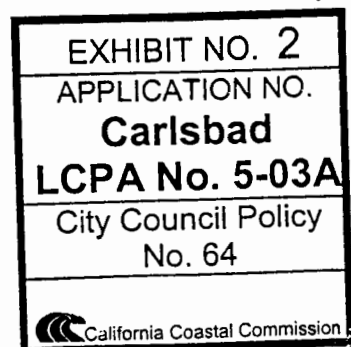
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1                   2.     That City Council Policy Statement No. 64, as revised, attached hereto  
2     and incorporated, is hereby adopted.

3                   PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
4     Carlsbad on the 16th day of DECEMBER, 2004, by the following vote, to wit:

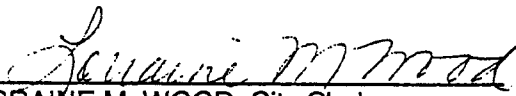
5                   AYES: Council Members Lewis, Finnilla, Kulchin, Hall and Packard

6                   NOES: None

7                   ABSENT: None

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9                   \_\_\_\_\_  
10          CLAUDE A. LEWIS, Mayor

11                  ATTEST:

12                    
13                  \_\_\_\_\_  
14          LORRAINE M. WOOD, City Clerk

15                  (SEAL)

**COUNCIL POLICY STATEMENT**

DATED: September 21, 2001

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

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.

## CITY OF CARLSBAD

Page 2 of 9

## COUNCIL POLICY STATEMENT

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ATTRIBUTES	SYSTEM		
	Cellular	ESMR	PCS
Technology	Analog, converting to digital	Digital	
Network Coverage	Analog: Established Digital: Developing	Developing	
Frequency	800 MHz		1900 MHz
Features	Telephone, call waiting, voice mail, caller ID, paging, e-mail, and Internet access (Notes: Analog cellular does not provide all of these features. ESMR also offers dispatching and two-way radio. PCS also has video transmission ability.)		
Transmission	A network of interconnected WCFs carries signals across a city and beyond. Each WCF contains antennas that transmit and receive signals over a small geographic area known as a "cell." As the user travels from one cell to another, the signal is passed from one WCF to another in the next cell.		
Cell Size Radius	Average 5 miles		0 – 1 mile
Antenna Types	Dish, Panel (or sector), and Whip		
Antenna Support	Lattice towers, Monopoles, Building or Structure-Attached		
Supporting Equipment	In buildings generally under 500 square feet		In cabinets about the size of vending machines
Provider	Verizon, AT&T, Cingular Wireless	Nextel	Sprint PCS

## Table Notes

- More facilities may be needed to complete a PCS network since its higher operating frequency limits the range of its antennas and consequently the size of its cells.
- The antennas for all three systems function on a line of sight transmission. Antennas need to be placed at specific heights in relation to one another in order to transmit and receive signals. As a result, height is a determining factor in the design and location of WCFs.
- Monopole antenna supports may be installed on buildings or on the ground.
- A single wireless communication facility may consist of two or more antennas and antennas of different types. A facility may also include the antennas and supporting equipment of more than one provider. This is known as "collocation." Collocation also refers to a WCF placed together with utility structures such as water tanks, light standards, and transmission towers.
- WCFs are usually unmanned and require maintenance visits once or twice each month.
- This table is based on current information that is subject to change.

## CITY OF CARLSBAD

Page 3 of 9

## COUNCIL POLICY STATEMENT

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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.

**CITY OF CARLSBAD**

Page 4 of 9

**COUNCIL POLICY STATEMENT**

DATED: September 21, 2001

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Most WCFs create maximum exposures that are only a small fraction of the limits. Furthermore, because the antennas in a PCS, cellular, or other wireless network must be in a line of sight arrangement to effectively transmit, their power is focused on the horizon instead of toward the sky or ground. Generally, unless a person is physically next to and at the same height as an antenna, it is not possible to be exposed to the established limits for RF exposure.

The FCC requires providers, upon license application, renewal, or modification, to demonstrate compliance with RF exposure guidelines. Where two or more wireless operators have located their antennas at a common location (called "collocation"), the total exposure from all antennas taken together must be within FCC guidelines. Many facilities are exempt from having to demonstrate compliance with FCC guidelines, however, because their low power generation or height above ground level is highly unlikely to cause exposures that exceed the guidelines.

**REVIEW AND APPROVAL GUIDELINES:**

Carlsbad Municipal Code Section 21.42.010(16) allows WCFs in all zones with the approval of a conditional use permit (CUP) and subject to this policy. These guidelines should be followed in the review of conditional use permits for new wireless facilities as well as extensions and amendments to CUPs for existing installations.

**A. Location Guidelines**

1. Preferred Locations – WCFs should locate on buildings and structures, not on vacant land. In addition, WCFs should locate in the following zones and areas, which are listed in order of descending preference:
  - a. Industrial and public utility zones.
  - b. Commercial zones.
  - c. Public property (e.g., city facilities) not in residential areas.
  - d. Other non-residential zones, except open space.
  - e. Major power transmission towers in non-residential zones or areas.
  - f. Public and private utility installations (not publicly accessible) in residential and open space zones (e.g., water tanks, reservoirs, or the existing communication towers near Maerle Reservoir).
  - g. Parks and community facilities (e.g., places of worship, community centers) in residential zones or areas.
2. Discouraged Locations – WCFs should not locate in any of the following zones or areas unless the applicant demonstrates no feasible alternative exists as required by Application and Review Guideline D.2.
  - a. Open space zones and lots (except as noted in Location Guideline A.1.).



**COUNCIL POLICY STATEMENT**

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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.

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

DATED: September 21, 2001

Page 6 of 9

Policy No.	64
Date Issued	December 16, 2003
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Cancellation Date	
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4. *Height* – WCFs should adhere to the existing height limitations of the zone in which they are located.
5. *Setbacks* – WCFs, including all equipment, should adhere to the building setback requirements of the zone in which they are located, with the following clarifications:
  - a. If on a site next to a residential zone, the WCF should be set back from the residential zone boundary a minimum distance equal to the above-ground height of the antenna.
  - b. If in a residential zone and in a public utility installation, park, or community facility, the WCF should be set back from the property boundaries of the utility installation, park, or community facility a minimum distance equal to the above-ground height of the antenna.
  - c. The Planning Commission may decrease or increase these setbacks if it finds such changes would improve the overall compatibility of the WCF based on the factors contained in Application and Review Guideline D.4.
6. *Building or Structure-Mounted WCFs:*
  - a. Antennas and their associated mountings should generally not project outward more than 18 inches from the face of the building.
  - b. Roof-mounted antennas should be located as far away as possible from the outer edge of a building or structure and should not be placed on roof peaks.
  - c. If permitted, WCFs on residential buildings should only be allowed if disguised as a typical residential feature (e.g., a chimney, a dormer) and if all equipment is located inside, not outside, the building.
7. *Ground-mounted Monopoles:*
  - a. All antennas should be mounted as close as possible to the monopole to improve facility appearance.
  - b. The placement, screening, and disguise of the monopole should fit with the surrounding site design, architecture, and landscaping. Tree disguises, such as a "mono-palm," may be acceptable depending on their quality and compatibility with landscaping nearby.
  - c. Landscaping should be provided as necessary to screen, complement, or add realism to a monopole. Landscaping should include mature shrubs and trees. Some of the trees should be tall enough to screen at least three-quarters of the height of the monopole at the time of planting. Sometimes, landscaping may not be needed because of the monopole's location or vegetation already nearby.
  - d. When possible, and in compliance with these guidelines, monopoles should be placed next to tall buildings, structures, or tall trees.

CITY OF CARLSBAD

Page 7 of 9

**COUNCIL POLICY STATEMENT**

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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

**COUNCIL POLICY STATEMENT**

DATED: September 21, 2001

Policy No.	64
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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

review, the Planning Director finds the project does not meet ANSI/IEEE standards, the City may revoke or modify the conditional use permit.

6. **Abandonment** - Any WCF that is not operated for a continuous period of 180 days will be considered abandoned. Within 90 days of receipt of notice from the City notifying the owner of such abandonment, the WCF owner must remove the facility and restore the site, as much as is reasonable and practical, to its prior condition. If such WCF is not removed within the 90 days, the WCF will be considered a nuisance and in addition to any other available remedy, will be subject to abatement under Chapter 6.16 of the Carlsbad Municipal Code. 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. The provider or owner must give notice to the City of the intent to discontinue use of any facility before discontinuing the use.

**D. Application and Review Guidelines**

1. Besides the typical submittal requirements for a conditional use permit (including plans, landscape details, and color and material samples, as appropriate), all WCF applications should include the following items:
  - a. A description of the site selection process undertaken for the WCF proposed. Coverage objectives and the reasons for selecting the proposed site and rejecting other sites should be provided.
  - b. A description or map of the applicant's existing and other proposed sites.
  - c. A description of the wireless system proposed (e.g., cellular, PCS, etc.) and its consumer features (e.g., voice, video, and data transmissions).
  - d. Verification that the proposed WCF will either comply with the FCC's guidelines for human exposure to radio frequency (RF) electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). If WCFs are proposed for collocation, the verification must show the total exposure from all facilities taken together meets the FCC guidelines.
  - e. Color photo-simulation exhibits, prepared to scale, of the proposed WCF to show what the project would look like at its proposed location and from surrounding viewpoints. The Planning Director may waive the requirement to provide the exhibits if he determines they are unnecessary.
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

**COUNCIL POLICY STATEMENT**

DATED: September 21, 2001

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

General Subject: WIRELESS COMMUNICATION FACILITIES

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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.



# City of Carlsbad

## Planning Department

June 23, 2004

**RECEIVED**

JUN 24 2004

Sherilyn Sarb  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**CITY OF CARLSBAD LOCAL COASTAL PROGRAM MAJOR AMENDMENT 5-03A**

Dear Sherilyn,

In accordance with Public Resources Code Section 30513, the City of Carlsbad requests that the Coastal Commission not suggest modifications to the following portions of Major Local Coastal Program (LCP) Implementation Plan Amendment No. 5-03A – Various Code Changes: (1) a definition for Wireless Communication Facility (proposed Section 21.04.379); and (2) a provision that allows wireless communication facilities in all zones, subject to Council Policy 64 (proposed Section 21.42.010(16)). Instead, the City requests that, if the Commission finds that those portions of the LCP Amendment do not conform with, or are inadequate to carry out, the provisions of the certified land use plan, the Commission suggest a general modification to the entire LCP Amendment to delete those proposed sections. Further, we request the Coastal Commission recommend approval of all other City-proposed amendments as submitted.

Sincerely,

**MICHAEL J. HOLZMILLER**  
Planning Director

MJH:SD:bd

c: Gary Barberio  
Scott Donnell  
Eric Munoz  
Bill Ponder

**EXHIBIT NO. 3**

**Carlsbad**  
**LCPA No. 5-03A**  
Letter from City

California Coastal Commission